



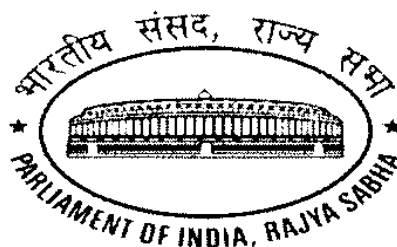
**PARLIAMENT OF INDIA
RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

EIGHTY SEVENTH REPORT

**Inordinate Delay in Filling up the Vacancies in the Supreme
Court and High Courts**

(Presented to the Rajya Sabha on 8th December, 2016)
(Laid on the Table of Lok Sabha on 8th December, 2016)



**Rajya Sabha Secretariat, New Delhi
December, 2016/Agrahayana, 1938 (Saka)**

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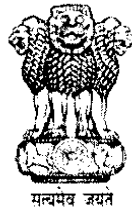
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COMPOSITION OF THE COMMITTEE

1. Shri Anand Sharma — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Prabhat Jha
4. Shri Dilipbhai Pandya
5. Shrimati Rajani Patil
6. Shri D. Raja
7. Shri Sukhendu Sekhar Roy
8. Shri Ram Chandra Prasad Singh
9. Shri Tiruchi Siva
10. Shri K.T.S. Tulsi

LOK SABHA

11. Shri Tariq Anwar
12. Shri Idris Ali
13. Shri Sharad Bansode
14. Shri A.H. Khan Choudhary
15. Adv. Joice George
16. Choudhary Mehboob Ali Kaiser
17. Shri Santosh Kumar
18. Shri Bhagwant Mann
19. Shri B.V. Nayak
20. Shri Vincent H. Pala
21. Shri Vittalbhai Hansrajbhai Radadiya
22. Shri V. Panneer Selvam
23. Dr. A. Sampath
24. Shri M. Udhayakumar
25. Shri Varaprasad Rao Velagapalli
26. Dr. Anshul Verma

©27. Shrimati Meenakashi Lekhi

©28. Shri Pralhad V. Joshi

©29. Dr. Satya Pal Singh

30. Vacant

31. Vacant

SECRETARIAT

Dr. D.B. Singh, *Secretary*

Shri K.P. Singh, *Joint Secretary*

Shrimati Sunita Sekaran, *Director*

Shri Ashok K. Sahoo, *Joint Director*

Shrimati Niangkhanem Guite, *Assistant Director*

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorized by the Committee, present the Eighty-Seventh Report on the subject "Inordinate Delay in Filling up the Vacancies in the Supreme Court and High Courts".

2. The Committee identified the subject to critique the extant procedures and processes associated with judicial appointment to constitutional courts and also to address systemic shortcomings therein with a view to alleviate the burden upon the judiciary to ensure access of common man to speedy justice. The subject was *inter-alia* notified in Parliamentary Bulletin Part-II No. 55868, dated on 7th October, 2016.

3. The Committee decided to take up the subject in view of the alarming pendency of cases before Supreme Court and High Courts and thereby addressing the slow pace of dispensation of justice for the common citizens of the country. One of the main reasons identified for the large number of vacancies to the extent of 43 percent in the High Courts is the delay in the appointment of judges. The access to justice is the Fundamental Right of every citizen under Articles 14 and 21 of the Constitution. In fact, delay in dispensation of justice has deprived lakhs of undertrial prisoners of their constitutional rights, as they continue to languish in jails for years together and in many cases for term exceeding the term they would have remained in jail if convicted for the offence for which they are facing trial.

4. The Committee heard the views of Secretary, Department of Justice, Ministry of Law and Justice during its meetings held on 13th October and 21st November, 2016. The Committee consulted the eminent legal luminaries, namely, Shri Harish Salve, Senior Advocate, Supreme Court of India; Shri K. Parasaran, Member, Rajya Sabha and Senior Advocate, Supreme Court of India; Shri Dushyant A. Dave (Sr.), President, Supreme Court Bar Association; Shri Fali S. Nariman, Senior Advocate, Supreme Court of India; Ms. Indira Jaising, Senior Advocate, Supreme Court of India and Bar Council of India on the subject during its meeting held on 25th October, 2016. The Committee also interacted with the representatives of High Court Bar Associations of Madras; Allahabad; and Bombay in its meeting held on 2nd November, 2016. The Committee received written submissions from Shri Fali. S. Nariman, Shri Gopal Subramaniam, Madras Bar Association and Shri K. Parasaran, Member, Rajya Sabha which are annexed to the Report.

5. In order to solicit the views from stakeholders and public, the Committee issued a Press Communique on 3rd November, 2016. The suggestions received from them were considered by the Committee. List of stakeholders who submitted their views is annexed to the Report.

6. While considering the subject, the Committee has mainly relied upon following documents/information: —

- (i) Background Note on the subject furnished by the Department of Justice, Ministry of Law and Justice;
- (ii) Constituent Assembly Debates(CAD) Vol. No. 8, 24 May, 1949;
- (iii) National Commission to Review the Working of Constitution (2001);

- (iv) A. Kesavananda Bharati Vs. State of Kerala {(1973) 4 SCC, 225};
- (v) S.P. Gupta Vs. Union of India (AIR, 1982, SC, 149)
- (vi) Supreme Court Advocates - on- Record Association Vs. Union of India {(1993)4 SCC 441};
- (vii) Supreme Court Advocates - on Record Association Vs. Union of India{(1998) 7 SCC, 739};
- (viii) National Judicial Appointments Commission Case (16 October, 2015);
- (ix) National Judicial Appointments Commission Act, 2014;
- (x) Eightieth Report of Law Commission on the Method of Appointment of Judges (August, 1979);
- (xi) One Hundred Twenty-first Report of Law Commission of India (July, 1987) on a New Forum for Judicial Appointments;
- (xii) One Hundred Twentieth Report of Law Commission on the Manpower Planning in Judicial: Blue Print (July, 1987);
- (xiii) Two Hundred and Thirty-second Report of Law Commission on Retirement Age of Chairpersons and Members of Tribunals Need for Uniformity (August, 2009);
- (xiv) Two Hundred and Fifty-fourth Report on the Arrears and Backlog: Creating Additional Judicial Manpower (July, 2014);
- (xv) Two Hundred Fourteenth Report of Law Commission on the proposal for Reconsideration of Judges Cases I, II & III (November 2008);
- (xvi) Economic Political Weekly (Mumbai) Vol No. 48, 28 November 2015;
- (xvii) The Parliamentarian (London) Vol. 97/2/2016; and
- (xviii) The Week (13th November, 2016).

7. The Committee wishes to express its sincere thanks to the Secretary, Department of Justice, the legal luminaries who benefited the Committee by their valuable views and the office bearers of the Bar Associations who appeared before the Committee to assist it during the course of examination of this subject.

8. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

9. The Committee adopted the Report on 6th December, 2016.

NEW DELHI;
6th December, 2016

ANAND SHARMA
Chairman,
Department-related Parliamentary Standing Committee
on Personnel, Public Grievances, Law and Justice
Rajya Sabha.

ACRONYMS

CJI	:	Chief Justice of India
CAG	:	Comptroller and Auditor General
CEC	:	Chief Election Commission
CIC	:	Central Information Commission
DoJ	:	Department of Justice
HC	:	High Court
HCC	:	High Court Collegium
MoP	:	Memorandum of Procedure
NJAC	:	National Judicial Appointment Commission
NCRB	:	National Crime Records Bureau
SC	:	Supreme Court
SCC	:	Supreme Court Collegium
UPSC	:	Union Public Service Commission

REPORT

A large number of vacancies in higher judiciary is a cause of concern and worry for all and sundry. Nearly 43 per cent of the approved strength of Judges in High Courts is vacant; large number of vacancies exist in all the 24 High Courts, the Supreme Court and even in the subordinate courts. The approved strength of judicial officers as compared to size of population of the country is even otherwise awfully inadequate to clear arrears and backlog of cases clogging the courts and delay in filling existing vacancies of Judges makes the position worse. Law Commission of India in its Reports has highlighted the aforesaid problems. The incumbent Chief Justice of India (CJI) has time and again expressed his anguish and concern openly in public forums over twin burdens of pendency and vacancies upon the judicial organ of the State. A large number of undertrials are languishing behind the bar with majority of them belonging to marginalised section of society and dispensation justice to them is becoming a far cry. Deprived of even adequate legal aid, they constitute two-thirds of jail inmates which is a sad state of affairs. In this background, the Committee *suo motu* has taken up the Subject, "Inordinate delay in filing up the vacancies in higher judiciary" to make an attempt to harmonise the systemic differences/ conflicts that emerged particularly after the famous Second Judges case (1993), Presidential reference (1998), the enactment of the Ninety-ninth Constitution (Amendment) Act, and NJAC Act in 2014 and the Supreme Court's judgment declaring it as unconstitutional in 2015 and to address the shortcomings inherent in Memorandum of Procedure (MoP), to allay the concerns of all the stakeholders *viz.*, the Judiciary, the Executive, the Bar and also the common man for timely dispensation of justice.

Appointment Procedure

2. Articles 124 and 217 of the Constitution of India deal with the appointment of Regular judges to higher judiciary. Articles 127 and 124 of the Constitution talk about appointment of *Ad-hoc*/Additional judges in the Supreme Court and High Courts, respectively. In addition to those constitutional provisions, Memorandum of Procedure (MoP) containing detailed guidelines with regard to procedure, processes and timeline to be followed in judicial appointment was formulated by Department of Justice in pursuance of directions given by the Supreme Court in the Second Judges Case (1993) and Third Judges Case (1998). Judiciary is independent and integrated with Supreme Court at the apex and Subordinate courts at the bottom. The unique feature of the Constitution is harmonisation of principle of parliamentary sovereignty and judicial review. Judicial independence and integrity is essential for promotion of Rule of Law, which has been held to be the Basic Structure of the Constitution.

CONSULTATION VIS-A-VIS CONCURRENCE OF JUDICIARY IN JUDICIAL APPOINTMENTS:

Constituent Assembly Debates

3. Our Constitution makers were very keen to ensure independence of the Judiciary from the Executive as is evident from the following words of Dr. Ambedkar, "There can be no difference of opinion in the House that our judiciary must be both independent of the Executive and also be competent in itself. And the question is how these two objects can be secured. Judicial independence is not only one of the highest aspirations of any nation but is also a necessary prerequisite for a free and fair society

and the Rule of Law." Indeed, the independence of the judiciary is the hallmark of a Constitutional democratic system. Judicial independence is essential to secure the Constitutional mandate of the Rule of Law and Separation of Powers. Judicial independence must also secure freedom at the individual level of judges and also at the institutional level of Courts.

4. Our Constitution makers, however, were also aware that judges were also after all men with all the failings, all the sentiments and all the prejudices which we as the common people have and, therefore, in matters of appointment to Constitutional courts, they were not inclined to give a veto power even to Chief Justices of India. Dr. B.R. Ambedkar, Chairman of the Drafting Committee stated that;

".....With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgment. I personally feel no doubt that the Chief Justice is a very eminent, person. But after all the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to veto is the President or the Government of the day. I, therefore, think that is also a dangerous proposition."

5. After full debate, the Constituent Assembly rejected an amendment proposed by B. Pocker Sahib to Article 103 of the Draft Constitution (Article 124 of the Constitution). The proposed amendment reads as follows:-

"That for clause (2) and the first proviso of clause (2) of Article 103, the following be substituted:-

(2) Every judge of the Supreme Court other than the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with the concurrence of the Chief Justice of India; and the Chief Justice of India shall be appointed by the President by a warrant under his hand and seal after consultation with the judges of the Supreme and the Chief Justice of the High Court in the States and every judge of the Supreme Court shall hold office until he attains the age of sixty-eight years."

6. The Constituent Assembly finally adopted Article 124(2) which *inter-alia* states that:

"... Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted..."

7. It is ironical that despite the fact that the Constituent Assembly rejected the amendment proposed viz., that the appointment of judge should be made with the concurrence of the Chief Justice of India,

and only "consultation" was provided for in the Constitution, the Supreme Court has interpreted the word "consultation" in Article 124 as concurrence and the "Chief Justice of India" as a collegiums comprising the CJI and 4 senior-most judges of Supreme Court for appointment of judges to Supreme Court, and CJI and 2 senior-most judges of Supreme Court for appointment of High Court judges.

8. It is also observed that plain language of the Article shows that the word "Chief Justice of India" refers to "Chief Justice of India" individually and not as representing collective opinion of Judiciary for the Article empowers the President to consult with such of the Judges of the Supreme Court and the High Courts in the States as he deems necessary for the purpose.

9. It is therefore, clear from the Constituent Assembly debates that the founding fathers of the Constitution were in favour of independent and impartial judiciary and for this purpose favoured role of multiplicity of Constitutional authorities in the appointment of judges for a vibrant democracy based on Rule of Law. The Constituent Assembly deliberately preferred to use the word 'consultation' in place of the word 'concurrence' in Articles 124 and 217 of Constitution for judicial appointment. However, the delicate balance was upset by the Second Judges Case (1993) in which the Supreme Court interpreted the word 'consultation' as contained in Articles 124 and 217 as 'concurrence', establishing the primacy of Chief Justice of India in the matters of appointment of judges in the higher judiciary.

Collegium System: A Judicial Innovation

10. The role of Collegium in judicial appointment is a by product of case laws. The judiciary through its power of interpretation under Article 141 expanded the term 'the Chief Justice of India' occurring in Articles 124 (2), 217 (1) and 222(1) to mean a Collegium of select Judges which was three in Second Judges Case(1993) and further expanded to five in the Third Judge Cases (1998).

11. The three important judicial pronouncements which gave birth to the Collegium system are together popularly known as 'Three Judges Case'. The seven-judge Constitutional Bench in *S.P. Gupta vs. Union of India* (1982) also popularly known as First Judges Case, the apex court held that 'consultation' does not mean 'concurrence' and ruled that the concept of primacy of the Chief Justice of India is not found in the Constitution of India. It was also held that proposal for appointment to High Court can emanate from any of the four constitutional functionaries mentioned in Article 217 and not necessarily from the Chief Justice of the High Court. The Judgment tilted the balance in favour of the Executive in the appointment of judiciary.

12. The nine-judge Bench in the *Supreme Court Advocates-on-Record Association Vs. Union of India* (1993), also known as Second Judges Case, the apex court over-ruled the decision in *S.P. Gupta Case* (1982) with 7:2 majority and devised procedure for appointment of Judges of the Supreme Court. The Second Judges decision was reaffirmed unanimously in Third Judges Case (1998) by the nine-Judge Bench of the Supreme Court on a reference being made by the President under Article 143 of the Constitution. It also held that the recommendation should be made by the Chief Justice of India and his four senior-most colleagues.

Memorandum of Procedure (MoP)

13. Like Collegium, MoP is a judicial innovation which was drafted by the Ministry of Law and Justice

(Department of Justice) as per the directions given by Supreme Court in the Second and Third Judges cases. It lays down detailed process and procedure for appointment of Judges in higher judiciary. There are two MoPs, one for the appointment of Judges of the Supreme Court (Annexure-I) and the other for the appointment and transfer of High Court Judges (Annexure-II). In case of appointment of Supreme Court Judges, the CJI is now required to consult the four senior most puisne Judges. However, there is no time line given for appointment of Supreme Court Judges in the MoP.

14. A comparison of appointment procedure for Supreme Court and High Court judges in both the existing MoPs are made in the accompanying Table-I.

TABLE-I

Existing Memorandum of Procedure (Mop)

Supreme Court of India	High Court
Appointment of Chief Justice	
<p>(a) CJI should be the senior most judge of the Supreme Court (SC). Law Minister to seek recommendation of the outgoing CJI for appointment of new CJI at an appropriate time.</p> <p>(b) In case of doubt about the fitness of the seniormost Judge to hold office of CJI consultation with other Judges under Article 124(2) to be made.</p> <p>(c) Law Minister to put up recommendation to Prime Minister (PM) who will advise the President on appointment.</p>	<p>(a) Chief Justice of all High Courts to be appointed from outside.</p> <p>(b) For elevation as Chief Justice <i>inter-se</i> seniority of puisne Judges in their own court will be reckoned. Will be considered for appointment as Chief Justice in other High Courts when their turn would normally have come in their own High Court.</p> <p>(c) A puisne Judge, who has one year or less to retire, considered for elevation as Chief Justice in his own High Court, if vacancy is to occur during that period.</p> <p>(d) Procedure:</p> <p>(i) The process is to be initiated by the CJI one month prior to the date of anticipated vacancy for the Chief Justice of the High Court. When a Chief Justice is transferred from one High Court to another simultaneous appointment of his successor in office should be made and ordinarily the arrangement of appointment of an acting Chief Justice should not be made for more than one month.</p>

Supreme Court of India	High Court
	<p>(ii) The CJI would consult two senior-most Judges of the SC for appointing a Chief Justice of HC. He would also ascertain the views of the senior-most colleague in the Supreme Court who is conversant with the affairs of the High Court in which the recommendee has been functioning.</p> <p>(iii) The views of the Judges of the SC thus consulted would then be sent by the CJI along with his proposal, to the Law Minister.</p> <p>(e) After receipt of the recommendation of the CJI, the Law Minister would obtain the views of the concerned State Government. After receipt of the views of the State Government, the Law Minister, will submit proposals to the PM, who will then advise the President as to the selection.</p> <p>(f) On approval the President, the Department of Justice (DoJ) will announce the appointment and issue necessary notification in the Gazette of India.</p>

Appointment of Acting Chief Justice

(a) The senior-most available Judge of the SC will be appointed till the absence of the CJI.	(a) Intimation from the Chief Justice about his leave or being unable to perform his duties should be sent to all concerned well in advance by the office of Chief Justice for appointment of Acting Chief Justice.
(b) On approval of the President, the Secretary DoJ will inform the concerned Judges and issue necessary notification.	(b) In case the senior-most puisne Judge is to be made Acting Chief Justice, the Law Minister would appoint him and the Secretary, DoJ will inform the CM and issue notification to this effect. In case the proposed puisne Judge is not the senior-most, procedure for appointment of a regular Chief Justice will be followed.

Appointment of Permanent Judges

- (a) The CJI in consultation with the Collegium of four senior-most puisne Judges of the SC will forward the proposal for appointment to the Law Minister, against an expected vacancy in the SC. The CJI would also consult the senior-most Judge who hails from the High Court from where the person has been recommended or the Judge conversant with the working of the said High Court.
 - (b) On receipt of the final recommendation of the CJI the Law Minister will put up them to the PM who will advise the President in the matter of appointment.
 - (c) On approval by the President the CJI will be intimated by the Secretary, DoJ and a medical certificate will be obtained from the candidate so selected.
 - (d) Once the warrant is signed by the President the Secretary, DoJ will notify it in official gazette.
 - (a) Appointment is to be made in a time bound manner preferably one month before the occurrence of the anticipated vacancy.
 - (b) The Chief Justice should initiate the process at least 6 months in advance before occurrence of the anticipated vacancies. After consulting the two senior-most judges on the Bench the names should be forwarded to the CM of the State.
 - (c) In case the CM desires to recommend the name of any person he should forward the same to the Chief Justice.
 - (d) A copy of Chief Justice's proposal is simultaneously sent to the Governor of the State, CJI, union Law Minister. The Governor on advice of the CM forwards his recommendation to the Law Minister within six weeks of its receipt and if the same is not received it will be presumed that they have nothing to add on the proposal.
 - (e) The Law Minister after considering the recommendations in the light of reports available with the Government will forward the same to the CJI. The CJI would consider the proposal with the Collegium of two senior-most Judges and may also consult the Judge conversant with the affairs of the said High Court.
 - (f) The CJI within 4 weeks will send the recommendation to the Law Minister who within 3 weeks put up the recommendations to the PM who will advise the President on the matter.
 - (g) After approval of the President, the Chief Justice of High Court will obtain certificate regarding the fitness and date of birth of the candidate so selected.
 - (h) Thereafter, the warrant of appointment is signed by the President, the Secretary DoJ will inform the Chief Justice and the CM and a notification is issued in this regard.
-

Attendance of Retired Judges

- | | |
|--|--|
| <p>(a) Whenever such a necessity arises the CJI will informally sound the retired judge and his willingness is obtained. The name is forwarded to the Law Minister with the period for which he will be required to sit and act as a Judge of the SC.</p> <p>(b) The Law Minister may bring any point to the notice of the CJI or may suggest some other name by way of this personal correspondence to the CJI.</p> <p>(c) The final recommendation is put up to the PM who will advise the President on appointment. On obtaining the President's approval the same is notified by the Secretary, DoJ.</p> | <p>(a) Whenever such a necessity arises the Chief Justice of the High Court after obtaining the consent of the concerned, forward the name to the CM of the State along with the period for which he will be required to sit and act as a Judge. The CM after consulting the Governor forwards the name to the Law Minister.</p> <p>(b) The Law Minister consults the CJI in accordance with the prescribed procedure. On receipt of the CJI's advice the same is put up to the PM, who advises the President on appointment.</p> <p>(c) On obtaining the President's approval the same is communicated to the Chief Justice of the High Court and the CM and the same notified by the Secretary, DoJ.</p> |
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-

**Appointment of
Ad-hoc Judges**

- (a) Whenever the necessity of such an appointment arises, the CJI will seek the consent of the Chief Justice of the High Court from where the appointment is to be made, who in turn consult the concerned CM of the State.
- (b) The CJI will communicate the recommendation to the Law Minister along with the period for which he will be required to sit as SC Judge.
- (c) The Minister will then put up the same to the PM who will advise the President on the matter. On approval of the President the same will be notified by the Secretary DoJ.
-

**Transfer of Judges
(Including Chief Justice)**

- (a) The initiation of the proposal for transfer should be made by the CJI whose opinion in this regard is determinative. The consent of the Judge to be transferred is not required and all transfers are to be made in public interest.
- (b) In formation of the opinion for transfer of a Judge other than Chief Justice, the CJI is expected to seek the opinion of the Chief Justices of the High Court from which the Judge is to be transferred and the one to which he will be transferred. Along with this CJI should also seek views of one or more SC Judges. In case of Chief Justice only the views of one or more knowledgeable SC Judges need to be taken by the CJI.
- (c) The proposed transfer should be considered by the CJI and four senior-most Judges of the SC. Then the proposal is forwarded to the Law Minister.
- (d) The Minister will then put up the same to the PM who will advise the President on the matter. On approval of the President the same will be notified by the Secretary DoJ and the Chief Justices and CMs of the concerned States are informed accordingly.
-

15. In case of appointment of HC Judges as per the MoP, the appointment against the anticipated vacancies should commence six months prior to the anticipated vacancy and should be completed one month before the occurrence of the vacancy. The following time lines have been prescribed for various constitutional authorities who are involved in the process of selection:

TABLE-II

Sl. No.	Constitutional Authority	Time Line
(i)	HC Collegium	Initiates the process least six months in advance before occurrence of the anticipated vacancy after consulting two puisne judges of the Bench.
(ii)	Governor/CM of the concerned State	Have six weeks time to send his/her recommendation to the Union Law Minister.
(iii)	Supreme Court Collegium	CJI after consulting two senior-most puisne Judges of the Supreme Court within four weeks sends the recommendations to the Union Law Minister.
(iv)	Union Law Minister	Within three weeks time put up recommendations to the PM who advise President on the appointment.
(v)	Prime Minister	No time limit prescribed
(vi)	President	No time limit prescribed

16. The Second Judges Case earlier laid a time-bound schedule for completion of various stages in the appointment process of the judges of the Constitutional Courts in the following words:

"(12) Adherence to a time bound schedule would prevent any undue delay and avoid dilatory methods in the appointment process. On initiation of the proposal by the Chief Justice of India or the Chief Justice of the High Court, as the case may be, failure of any other constitutional functionary to express its opinion within the specified period should be construed to mean the deemed agreement of that functionary with the recommendation, and the President is expected to make the appointment in accordance with the final opinion of the Chief Justice of India. In such a situation, after expiry of the specified time within which all the constitutional functionaries are to give their opinion, the Chief Justice of India is expected to request the President to make the appointment without any further delay, the process of consultation being complete.

(13) On initiation of the proposal by the Chief Justice of India or the Chief Justice of the High Court, as the case may be copies thereof should be sent simultaneously to all the other constitutional functionaries involved. Within the period of six weeks from receipt of the same, the other functionaries must convey their opinion to the Chief Justice of India. In case any such functionary disagrees, it should convey its disagreement within that period to the others. The others, if they change their earlier opinion, must, within a further period of six weeks, so convey it to the Chief Justice of India. The Chief Justice of India would

then form his final opinion and convey it to the President within four weeks, for final action to be taken. It is appropriate that a memorandum of procedure be issued by the Government of India to this effect, after consulting the Chief Justice of India, and with the modifications, if any, suggested by the Chief Justice of India to effectuate the purpose.

(14) The process of appointment must be initiated well in time to ensure its completion at least one month prior to the date of an anticipated vacancy; and the appointment should be duly announced soon thereafter, to avoid any speculation or uncertainty. This schedule should be followed strictly and invariably in the appointment of the Chief Justices of the High Courts and the Chief Justice of India, to avoid the institution being rendered headless for any significant period. In the case of appointment of the Chief Justice of a High Court to the Supreme Court, the appointment of the successor Chief Justice in that High court should be made ordinarily within one month of the vacancy."

17. As reported by the Department of Justice (DoJ) the time lines prescribed in the MoP are not strictly adhered to, which is leading to delay in filling up the vacancies.

Appointment Process: In Practice

18. Since its inception, the Collegium has been making recommendations for transfer and appointments of judges in the Higher Judiciary. The names of the candidates for appointment to Bench of High Court are initiated by the High Court Collegium, which is simultaneously sent to the Governor/CM of the State, Chief Justice of India and Department of Justice (DoJ). The Governor as advised by the Chief Minister should forward his recommendation along with the entire set of papers to the Union Minister of Law and Justice as early as possible as but not later than six weeks from the date of receipt of the proposal from the Chief Justice of the High Court. If the comments are not received within the said time frame, it should be presumed by the Union Minister of Law and Justice that the Governor (*i.e.* Chief Minister) has nothing to add to the proposal and proceed accordingly. The DoJ after considering various reports available with it including the Intelligence Bureau (IB) report on the candidate, forward its recommendations to the CJI. The CJI then considers the proposal with the Collegium of two senior-most puisne Judges and may also consult the Judge conversant with the affairs of the particular High Court. The CJI sends the recommendation to the DoJ. It is learnt that that Supreme Court Collegium sometimes accepts the government's recommendations in full or in part. Thereafter, the DoJ forwards the recommendations to the President *via* PMO for the issuance of the warrant of appointment of those whose names have been recommended for appointment. The warrant of appointment is sent to the Governor for administering the oath to them. Those vacancies against whom the names were rejected, the process starts *de novo*.

19. High Court Collegiums recommendation for appointment reaches the Government only after approval by the Chief Justice of India and Supreme Court Collegium. Thus, the role of Government begins only after names have been decided by the Collegium. The role of Government is limited to background check by Intelligence agencies and in case of any doubt about the candidates credibility, the Government seeks clarification from the Collegium. However, in case the Collegium reiterates the name of same candidates, the Government is bound under the Constitution Bench judgment to appoint the candidate.

20. While deposing before the Committee, the Secretary stated that Governors/CMs are sometimes not consulted by the Collegium which is not just violation of the MoP but also bypassing authorities in this regard. Such process only broad bases the consultation helping the selection of the appropriate candidate.

21. As per the statistics provided by the DoJ the rejection rate by the Supreme Court Collegium in appointment of Judges of HCs is 30 percent to 100 percent. In such a scenario a dedicated Secretariat may help in processing of proposals at the initial stage itself in order to avoid such large number of rejection at later stage. The proposal for a Secretariat has also been made in the NJAC judgment.

22. The Supreme Court in the NJAC Judgment on 16th October, 2015 directed the Government to supplement the existing MoP in consultation with CJI / Supreme Court Collegium taking into account factors *viz.* Eligibility criteria, Transparency, Secretariat, Complaint mechanism, etc. As informed by the Government, the Collegium has agreed to some of the suggestions made by the Government, in the supplemental MoP, while it has not accepted some others. Many of the proposals to bring greater transparency, objectivity and accountability not accepted by the Collegium. After more than one year the revised MoP is yet to be finalized due to lack of consensus on several issues between the Government and the judiciary.

Judicial Appointment Commission *vis-a-vis* National Judicial Appointment Commission

23. The National Commission to Review the Working of the Indian Constitution (2001), headed by Justice M.N. Venkatchiliah, examined and made suggestions on the issue of appointment, transfer and removal of Judges of the Superior Courts by suggesting establishment of the National Judicial Commission. The Commission to comprise of the Chief Justice of India as Chairman, two senior most judges of the Supreme Court as Member, Union Minister for Law and Justice as Member and one eminent person nominated by the President after consulting the Chief Justice of India as Member.

24. The Government of India introduced the National Judicial Appointment Commission Bill, 2013 in the Parliament and referred the same for examination to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. The Government re-introduced National Judicial Appointment Commission Bill, 2014 incorporating the recommendations of the Sixty-fourth Report of the Parliamentary Committee to streamline the process of judicial appointments. The Act advocated for the formation of the National Judicial Appointment Commission for appointment in the higher judiciary by Ninety-ninth Constitutional Amendment, which insert a new Article 124A in the Constitution of India. It sought to broad base the appointment of Judges in the higher judiciary by enabling participation of judiciary, executive and eminent persons in the appointment processes, which was an exclusive judicial domain since the Second Judges Case. The National Judicial Appointment Commission was to consist of Chief Justice of India as Chairperson, two other senior Judges of the Supreme Court next to the Chief Justice of India as Members, the Union Minister in charge of Law and Justice as Member, and two eminent persons as members to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House.

25. A five Judges Bench of the Apex Court by a majority of 4:1 *vide* its judgment dated 16th October, 2015 struck down the Constitutional 99th Amendment Act which was passed unanimously by the Lok

Sabha and near unanimity by the Rajya Sabha (with one dissent). It also struck down National Judicial Appointment Commission Act, 2014.

26. The Judicial Appointment Commission recommended by Venkatchiliah Commission had judicial primacy, whereas the National Judicial Appointment Commission, which was struck-down by the apex court, had equal number of members from executive and judiciary leading to apprehension of executive veto in the appointment of judiciary.

Shortage of Judge: Judges-Population Ratio

27. The Law Commission in its *One Hundred and Twentieth Report on the Manpower Planning in Judiciary: Blueprint (1987)* observed that India has only 10.5 judges per million population, which is quite low in comparison to that of Australia (41.6), Canada (75.2), England (50.9) and USA (107), per million population. The Commission recommended increasing the ratio from 10.5 to 50 per million population in the country. The Commission further advocated that, India should have at least 107 judges per million population as commanded by USA in 1981. The distribution of increased number of judges should be on the basis of population of each State and initiation of cases. However, the Law Commission in its *Two Hundred and Fifty Fourth Report on the Arrears and Backlog: Creating Additional Judicial (wo) Manpower (2014)* submitted that there is no universal standard to measure judge-population ratio and submitted that:

..."while population might be the appropriate metric to measure the availability of other essential services like health care and nutrition, it is not an appropriate standard for measuring the requirement for Judicial Services".

28. The Department of Justice in response to the query of the Committee submitted that:

...The Law Commission found that in the absence of complete and scientific approach to data collection across various High Courts in the country, the "Rate of Disposal" method to calculate the number of additional Judges required to clear the backlog of case as well as to ensure that new backlog is not created, is more pragmatic and useful.

29. Information about case load and judge-population ratio State/UT-wise as received from Department of Justice is at **Annexure-III**.

30. On the basis of resolution passed in the Joint Conference of Chief Ministers and Chief Justices in 2013, the strength of judges was increased by 25 per cent, leading to creation of 173 additional posts of judges in High Courts in June, 2014. However, the increase in the additional posts did not translate to reduction in arrears as the Government did not make any judicial appointment between April and December, 2015 due to National Judicial Appointment Commission litigation.

31. The Committee pointed out that approved strength of Bihar and Gujarat High Courts is almost the same while the population of Bihar is more than that of Gujarat and a large number of under-trials have been languishing in various jails of Bihar for want of access to justice and desired to know reasons for

non-application of judge-population ratio formula enunciated by the Law Commission of India in its Report.

32. The Department submitted that the case load in Gujarat High Court is four times higher than the case load of High Court of Bihar. The Department further stated that Law Commission Report on Judge-Population ratio is under consideration of Chief Justice of India. The Committee feels that the Government needs to examine if the lower case load in Bihar is on account of lack of access to justice to millions of poor in Bihar.

33. As per information available, the judge population ratio in Uttar Pradesh is at 10 per million population, which is lesser than the judge-population ratio of Maharashtra, which is 21 per million population. Similarly, judge-population ratio of Gujarat and Bihar is 20 and 13 per million, respectively. The cases pending at district Courts in U.P. (5363613) are higher than the cases pending in District Courts of Maharashtra (3154681)¹. Therefore, the rationale of case load given by Department of Justice doesn't explain strength of the Judges of Maharashtra and U.P.

34. The present Chief Justice of India expressing concern over low judge-population ratio in the country has projected requirement of more than 70000 judges to clear pending cases in the country.

35. As per the latest data available, judge population ratio of France, USA, Australia, Canada, England and India are 124, 108, 40, 33, 22 and 18 per million, respectively². While the neighbouring country China with highest population in the world, has more than two lakh judges³, whereas in India despite being second largest populous country have only 21320 Judges which is around 10 per cent of China.

Increase of retirement age of Judges

36. The age of retirement for the Judges of the High Courts and of the Judges of Supreme Court was 60 and 65, respectively. By virtue of the Fifteenth Amendment (1963), the age of retirement for the Judges of the High Courts has been enhanced to 62. The National Commission to review the Working of the Constitution-A Consultation Paper on *Superior Judiciary* (September 26, 2001) highlighted the views of some section of the judicial family that the age of retirement for the Supreme Court and High Court Judges should be the same and had suggested the uniform age of superannuation to be 65. The reason given in support of this view was that some Judges/Chief Justices of High Courts, who are about to retire, seek to be elevated to the Supreme Court lured by the attraction of three more years in office; that they hardly have sufficient time to make a contribution. The Commission was of the view that, uniform age of retirement for both the High Courts and the Supreme Court would attract only those Judges, who really wish to work with devotion, by coming to Supreme Court. The Commission felt that the proposition appears to be more reasonable and acceptable than the existing difference in retirement age of the High Courts and the Supreme Court Judges.

¹Ramseyer, J. Mark & Eric B. Rasmusen (2010) Comparative Litigation Rates, Harvard law school. Published in Hindustan Times (15th November, 2016).

²ibid

³China's Judicial System and its Reform. Institute of Developing Economics, Asian Law Series No.2, Japan (2001), p.21.

37. It may be pertinent to point out that the retirement age of members of various National Commissions, such as the National Consumer Disputes Redressal Commission and National Human Rights Commission has been fixed at 70 years or five years term, whichever is earlier.

38. The First Law Commission in its Fourteenth Report considered the case and recommended that it was necessary to safeguard the independence of the Supreme Court Judges by enacting a law barring further employment except as *ad hoc* Judges of the Supreme Court under Article 128 of the Constitution. M.C. Setalvad, the Chairman of the First Law Commission wrote in his autobiography:

"The Commission had, after careful consideration expressed the unanimous view that the practice of Judges looking forward to or accepting employment under the Government after retirement was undesirable as it could affect the independence of the Judiciary. We therefore recommended that a constitutional bar should be imposed on Judges accepting office under the Union or State Governments similar to the bar in the case of the Auditor and Comptroller-General and members of Public Service Commissions."

39. The Law Commission in its Two Hundred and Thirty-Second Report (August, 2009) recommended the uniformly fixing of Chairpersons of all the Tribunals at 70 years. The Commission had also highlighted the need to enhance the retirement age of Judges of the higher judiciary from 62 to 65 in High Courts and 65 to 70 in the Supreme Court.

40. The Committee in its various Reports *viz.*, Twentieth, Twenty-sixth, Thirty-ninth and Seventy-fifth Reports had supported the argument that if Judges can work upto 65 years of age in the Supreme Court, there is no rationale in the argument that at 62, a High Court Judge is too old to continue to work, but he can be entrusted to carry out the duties of a Supreme Court Judge for three more years. In that backdrop, the Committee had recommended the same while approving for a Constitutional Amendment Bill to raise the retirement age of Judges of High Courts from 62 to 65 to be at par with the retirement age of a Judge of the Supreme Court. Retirement ages of Superior Court Judges of other countries are at **Annexure-IV**.

Vacancy and pendency correlation

41. As on 1st November, 2016, about 461 posts in 24 High Courts out of 1079 approved strengths on an average 43 per cent of approved strengths in High Courts are lying vacant. Some of the High Courts are having vacancies above the aforesaid, *i.e.* Hyderabad (60.8), Karnataka (59), Uttar Pradesh (51.25), Chhattisgarh (50) and Assam (45.8)⁴. So far, the Government of India has not received any proposal from the Chief Justice of India for filing up of six vacancies in the Supreme Court. Some High Courts are functioning without regular Chief Justices. Even the Apex Court is having shortage of six Judges of which one occurred in 2015 and the rest in the year 2016. Around 5000 posts, out of 21320 approved strength in subordinate judiciary, are also lying vacant as on date.

⁴ Jaffrelot, Christophe (2016, November 23). An ill-judged Conflict. *The Indian Express*.

TABLE-V

**Statement showing the approved strength, working Strength and vacancies of Judges
in the Supreme Court of India and the High Courts⁵.**

(as on 01.11.2016)

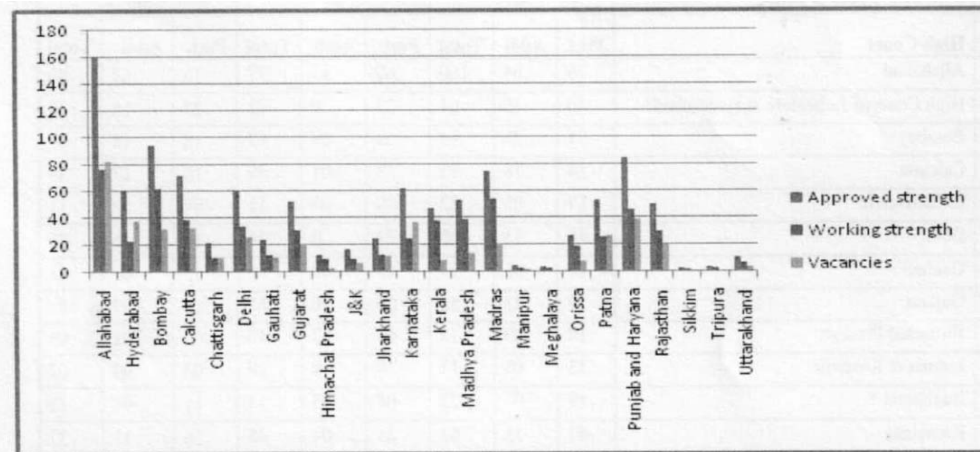
Sl. No.	Name of the Court	Approved strength			Working strength			Vacancies as per approved strength		
A.	Supreme Court of India	31			26			05		
B.	High Court	Pmt.	Addl.	Total	Pmt.	Addl.	Total	Pmt.	Addl.	Total
1.	Allahabad	76	84	160	60	17	77	16	67	83
2.	High Court of Judicature at Hyderabad*	46	15	61	23	0	23	23	15	38
3.	Bombay	71	23	94	53	09	62	18	14	32
4.	Calcutta	54	18	72	38	01	39	16	17	33
5.	Chhattisgarh	17	05	22	08	03	11	09	02	11
6.	Delhi	45	15	60	34	0	34	11	15	26
7.	Guwahati	18	06	24	05	08	13	13	-02	11
8.	Gujarat	39	13	52	25	06	31	14	07	21
9.	Himachal Pradesh	10	03	13	08	02	10	02	01	03
10.	Jammu and Kashmir	13	04	17	10	0	10	03	04	07
11.	Jharkhand *	19	06	25	08	05	13	11	01	12
12.	Karnataka	47	15	62	21	04	25	26	11	37
13.	Kerala	35	12	47	26	12	38	09	0	09
14.	Madhya Pradesh *	40	13	53	20	19	39	20	-06	14
15.	Madras	56	19	75	54	0	54	02	19	21
16.	Manipur	04	01	05	03	0	03	01	01	02
17.	Meghalaya	03	01	04	03	0	03	0	01	01
18.	Orissa	20	07	27	16	03	19	04	04	08
19.	Patna *	40	13	53	26	0	26	14	13	27
20.	Punjab and Haryana	64	21	85	44	02	46	20	19	39
21.	Rajasthan	38	12	50	23	07	30	15	05	20
22.	Sikkim	03	0	03	02	0	02	01	0	01
23.	Tripura	04	0	04	03	0	03	01	0	01
24.	Uttarakhand	09	02	11	07	0	07	02	02	04
	TOTAL	771	308	1079	520	98	618	251	210	461

* Acting chief Justice.

⁵Department of Justice, Government of India. Retired from <http://doj.gov.in/appointment-of-judges/vacancy-positions>

42. The approved strength, working strength and vacancy positions is also provided in bar graph below for easy appreciation.

Approved strength, working strength and vacancies in various High Courts⁶



43. There are allegations of nepotism in appointment of Judges reported by the media. Meritorious lawyers in the Bar are not considered by the High Court's Collegium while those whose names are recommended by High Court's Collegium are rejected by the Supreme Court Collegium to the extent of thirty per cent on an average. In some cases it has gone up to eighty to hundred per cent.

44. The Committee was apprised by the Department of Justice that in many cases, High Court Collegium recommend names of competent lawyers after two years of occurrence of such vacancies which is a serious concern as well as contravention of MoP prepared in pursuant to the Apex court judgment in the Second Judges Case (1998), which laid down that process of appointment, should start at least six months prior to the date of anticipated vacancies.

45. Linked to the problems of vacancies and in-adequate strength of judges in the country is the pendency of over twenty-seven million cases in various courts, clogging the judiciary, ultimately affecting its efficiency and leading to delay in justice delivery system. As informed by Department of Justice on 03.08.2016, total 60,946 cases (50,174 Civil and 10,772 Criminal cases) are pending in the Supreme Court. A Statement indicating pendency of cases in the High Courts as on 30.12.2015 High Court-wise is given at **Annexure-V**. A Statement indicating State and UT-wise details of pendency of cases in District/Subordinate courts as on 31.12.2015 is at **Annexure-VI**. At the same time, two-thirds of prison inmates languishing in various jails are under-trials, large number of them for want of proper legal assistance making a mockery of the Article 39A providing for legal aid. As per data furnished by the National Crime Records Bureau (NCRB) on under-trial prisoners lodged in various jails of the country, out of the total number of 2,82,076 undertrials, 13.35 per cent are in jail for 1-2 years, 6.34 per cent are in jail for 2-3 years, 4.05 per cent are in jails for 3-5 years and 1.27 per cent for more than 5 years. Further, Communities and caste-wise disaggregated data of undertrials as furnished by NCRB is at **Annexure-VII**.

⁶ Mandhani, A. (2016, November, 6). Government Judiciary Agree To Invoke Art. 224A to Appoint Retd. Judges To High Courts. Retrieved from <http://www.livelaw.in/govt-judiciary-agree-invoke-art-224a-appoint-retd-judges-high-courts/>

Deposition of Secretary, Department of Justice

46. The Committee heard the views of Department of Justice on the 13th October, 2016 on the subject, wherein the Secretary submitted the following :

- (i) Large number of vacancies between 30 to 44 per cent has existed for the past several years.
- (ii) 173 additional posts in the higher judiciary were created in June, 2014 in pursuance of the Resolution of Joint Conference of Chief Ministers and Chief Justices in 2013 and approved strength in higher judiciary was increased from 906 to 1079.
- (iii) Detailed procedure for judicial appointment was laid down in the MoP and timeline for each constitutional authorities was also delineated therein.
- (iv) While declaring the Ninety-ninth Constitutional Amendment Act, 2014 and the National Judicial Appointment Commission Act, 2014 as unconstitutional, direction was given by the Supreme Court on 16th October, 2015 to supplement the existing MoP in consultation with the Chief Justice of India/Supreme Court Collegium, taking into accounts the factors of transparency, complaint mechanism, secretariat and eligibility criteria.
- (v) The Government forwarded the draft MoP to the Chief Justice of India in March, 2016 and response of CJI were received in May and July, 2016, wherein they have accepted some minor proposals leaving aside major proposals dealing with transparency, accountability and objectivity, etc.
- (vi) There is a provision for Secretariat to the Collegium in the judgment of the Supreme Court; however, there is a disagreement over the composition, function and duties of the full time Secretariat between the Government and the Judiciary.
- (vii) Major reasons for delay in filling-up of the vacancies are due to rejection of candidates recommended by High Court Collegium ranging between 30 to 80 per cent by Supreme Court Collegium for various reasons, adverse Intelligence report, creation of 173 additional posts and halting of fresh selection between 13th April to 16th December, 2015 due to National Judicial Appointment Commission case in the Supreme Court.
- (viii) As per the existing MoP, the concerned Chief Minister is to be consulted during finalisation of names of candidates. However, they could not find any reference of consultation with Chief Minister by the Collegium in some cases.
- (ix) Articles 124 and 217 do not provide for reservation for any caste or class of persons. However, keeping in view the need of social diversity in the country, inadequate representation of various sections of people, lower percentage of Judges belonging to SCs, STs and Women, the Government has requested the Chief Justices of the 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 from women.

Ad-hoc and Additional Judges

47. The Committee notes that a decision was taken in the meeting of Chief Ministers–Chief Justices Conference in April, 2016 about the appointment of *Ad-hoc* judges. The relevant extracts of the minutes is reproduced below:

" ...Subject to integrity, suitability and performance of a person who has held the office as a judge of the high court, the provisions of Article 224 A can be invoked to deal with the extraordinary situation involving the large pendency of civil and criminal cases in the High Courts...⁷"

48. The Committee had sought information regarding the appointment of *Ad-hoc* and Additional Judges in higher judiciary under Articles 127 and 224 of the Constitution. The Department submitted that between 1.1.2012 to 15.11.2016, 361 Additional Judges were appointed to various High Courts and the same numbers of Judges were absorbed/appointed as Judges in the High Courts. The Department further submitted that *Ad-hoc* judges are appointed in special cases and as per their records no *Ad-hoc* judge has been appointed in the Supreme Court and only one retired Judge of Allahabad High Court was appointed to sit and act as a Judge of the Allahabad High Court in the year 2007 for a period of one year. However, the proposal to extend his tenure further was not agreed to on the ground that there were large number of vacancies and giving further appointment to a retired judge was not desirable or proper. The Department further submitted that:

...as a matter of policy, ad hoc appointment of judges are to be considered only when all the vacancies in the High Court have been filled up and still there is large number of cases pending disposal.

49. The Department also submitted that there are no objective criteria for assessment of works of *Ad-hoc* judges during their tenure, including no mechanism to deal with complaint against retired judges in Higher Judiciary. The Department added that:

"... impeachment is the only remedy to remove a sitting Judge. However, in this case, if the retired Judge indulges in wrongful act or omissions, no such mechanism has been laid down in respect of retired Judges."

Fixed Tenure for Chief Justice of High Court and Supreme Court

50. The Committee observes that in last twenty years (since 1997), seventeen Chief Justices of Supreme Court have been appointed and out of those only three had tenure of more than two years. Many of them had tenure of even less than one year. One former CJI (Justice S. Rajendra Babu) had tenure of less than a month. Similarly, Chief Justice of High Courts in most cases are appointed for less than two years. Some of the Chief Justices are also elevated to the Bench of Supreme Court. Acting Chief Justice of High Courts is usually appointed for a period of three months. More so those acting judges donot take vital decisions about matters relating to Collegium. Government of India have made provisions whereby they may extend the tenure of important functionaries like of Cabinet Secretary upto

⁷ibid

four years and for Defence Secretary, Foreign Secretary, Home Secretary, Director IB, Secretary R&AW and Director CBI upto two years. A short tenure does not provide Chief Justice adequate time to implement any major reform or long-term decisions. Thus with CJI getting frequently changed, no substantial judicial reforms, which may require his long term continuance seem possible.

Views of legal luminaries and other stakeholders

51. The Committee during its meeting held on 25th October and 2nd November, 2016 heard Bar Council of India, legal luminaries and High Court Bar Associations of Allahabad, Bombay and Madras on the subject. List of Legal luminaries and other stakeholders who submitted written views are given at **Annexure-VIII**. The following are the main points submitted by them:-

- (i) Retired Chief Justice of India and Judges of Supreme Court including former Chief Justice J.S. Verma, Former Chief Justice E.S. Venkataramaiah, Retd. Justice V.R. Krishna Iyer, Retd. Justice O. Chinnappa Reddy, Retd. Justice Ruma Pal, Retd. Justice R.M. Sahai and Retd. Justice A.P. Shah have also expressed their dissatisfaction with the working of Collegium system. A retired judge of Supreme Court and former member of Collegium expressed that the functioning of Collegium is opaque and promotes lobbying, nepotism and sycophancy.
- (ii) Hon'ble Judges in Fourth Judges case have themselves recognised that 'there is no healthy system of appointments in practice' and that the Collegium system lacks transparency, accountability and objectivity. There is a requirement to amend the Memorandum of Procedure to strengthen the method of selection of judges by the Collegium.
- (iii) Presence of Law Minister in consultation process in NJAC cannot be held to affect separation of powers or independence of judiciary. Finding *vice* in NJAC mechanism in the veto power to be exercised by the Law Minister and eminent Jurists jointly may upset the primacy of judiciary in the selection processes.
- (iv) The strength of the Collegium may be increased and more Judges should be made to participate in the decision making process.
- (v) The process of designation of senior advocates in the Supreme Court and High Court is more stringent than the process of appointing Judges. While the designation of senior advocates depends on the consent of 50 per cent or 2/3rd of the strength of the judges, the appointment of Judges depends only on the view of 15 per cent of the Judges (*i.e.* 5 out of a maximum sanctioned strength of 31). The minimum number of Judges to be consulted by the President may be specified in the Constitution itself by bringing amendment, either by number (such as 15 to 20) or by proportion (such as half or one-third).
- (vi) The Constitution of India does not sanction any kind of judicial sovereignty. The sovereignty lies with the people, which is exercised by three organs of the State. However, the area provided to the three organs is subject to checks and balance, even though it may overlap in certain sphere in the Constitution. The power of judicial review does not mean judicial sovereignty, rather it is a means to check and balance other two organs of the State.

- (vii) The word concurrence in the relevant Articles relating to judicial appointment was rejected by Constituent Assembly upon the reasoning given by Dr. B.R. Ambedkar as per which concurrence of Chief Justice of India may allow the latter to veto practically while making the appointment.
- (viii) A judicial Appointment Commission with the non-judge domination is not viable in India, as was also endorsed by Venkatchiliah Commission (2001). As supersession in apex court on two occasions during 1970s by the executive was viewed as an executive interference in judicial appointments by downplaying the mandatory consultation with Chief Justice of India as provided in the Constitution. The composition of National Judicial Appointment Commission was basic issue before the Supreme Court of India, which does not give importance to the primacy of judiciary in judicial appointment as laid down in Second Judges Case (1993) and re-affirmed in the Third Judges Case (1998). The Judicial Commission envisaged in Venkatchiliah Report (2001) has given dominance to judiciary which was ignored in National Judicial Appointment Commission Act, 2014.
- (ix) The Collegium system must remain and judiciary should have primacy in judicial appointments.
- (x) The balance between secrecy and confidentiality must be maintained, as everything cannot be made public and everything cannot be made secret either. There has to be balance between rights of general public to scrutiny and individual's rights to privacy.
- (xi) At the time of enacting the Constitution, the strength of Judges in the Supreme Court was only seven and a Bench with a minimum strength of five Hon'ble Judges were prescribed for deciding any case involving the substantial question of law as to the interpretation of Constitution or a Reference under Article 143. Considering that the sanctioned strength of Judges has increased to thirty one, and there are twenty eight Judges now functioning, the minimum number of Judges to hear cases concerning the validity of a constitution amendment may also be increased to eleven to thirteen of Hon'ble Judges, as opposed to the present stipulation of a Bench of minimum of five Hon'ble Judges.
- (xii) The appointment of Judges should be in conformity with the Basic Structure Doctrine as enunciated in the Keshavananda Bharti judgement (1973).
- (xiii) The appointment procedure and process followed in the USA and UK is not conducive in India. The selection by nomination in our country is better as compared to selection by application followed in UK and certain other countries.
- (xiv) There should be timeline for appointment of Judges and fixed tenure of more than one year for the Chief Justice of Supreme Court and High Courts.
- (xv) *Ad-hoc* judges are not appointed not because of the Government, but due to the protocols within judiciary. There should be a list of Judges retiring in due course and should be given options to serve as *ad-hoc* judges. They should be given the same status, position which he/she was enjoying before retirement.

- (xvi) Age of retirement should be increased, as at the age of 70 years, a person is intellectually and mentally very productive.
- (xvii) The whole process of appointment of judges is very secretive in nature and functioning of Collegium is opaque. This opacity has led to a sense of disconnect of judiciary from general public. Therefore, the yardstick applied by the Collegiums to assess suitability of candidate should be made available in black and white for selection of judges by Collegium and it should be open to public scrutiny.
- (xviii) Institutional procedures should not change with the change of people in control, instead there should be a clearly laid out guidelines for appointment and transfers.
- (xix) Memorandum of Procedure (MoP) formulation between judiciary and Government is shrouded in secrecy, subjectivity and is not open to public scrutiny and debate.
- (xx) The shortage of judiciary is due to junior-senior compartmentalisation attitude of judiciary, unwillingness of large number of bright young lawyers to join the Bench due to age barriers, arbitrary transfers, etc. Merit and competency should be awarded. The present Canadian Chief Justice is junior to other pusine judges.
- (xxi) The zone of consideration for appointment should be enlarged and there should be transparency in the elevation to the Supreme Court.
- (xxii) Since the exit/removal of judges is very tough and cumbersome, the entry of judges to the Bench should be flawless giving due importance to impartiality and probity of candidates selected for the sake of independence of judiciary. There is no accountability for wrong appointment and wrong judgement which may create constitutional crisis.
- (xxiii) Delay in appointment leads to delay in justice delivery system, ultimately leading to large number of under-trials suffering in jails.
- (xxiv) There is gender, caste, community bias in the appointment of judiciary, which can be inferred from the composition of judiciary in the country. There should be representation from ST/SC/Women and Other Backward Classes to make the judiciary more inclusive.
- (xxv) The name of successor in higher judiciary should be announced before their retirement as done in the case of Army, Navy, Air Force Chiefs.
- (xxvi) In order to enable timely appointments, the Collegium must have a proper Secretariat. The Secretariat to include retired Civil Servants, eminent lawyers, former Election Commissioners, former CAG and others.
- (xxvii) Apprehension has been expressed that IB verification is conducted by a junior level intelligence officer and it needs to be done by a senior level officer of at least DSP rank.
- (xxviii) If judicial independence is the Basic Structure of the Constitution, Parliamentary democracy is much greater Basic Structure of the Constitution and, therefore, judiciary cannot rob the Parliament of its powers.

- (xxix) Inefficiency and corruption in the judiciary has led to large scale vacancies of Judges, pendency of cases and poor justice delivery system.
- (xxx) Vacancies in the Subordinate Courts due to disagreement between High Courts and State Governments are serious concern, which are the real actors as the High Courts and Supreme Court comes at later stage.
- (xxxix) Judges have no idea how to manage case load, no idea of latest administrative reforms and management techniques. Therefore, independent management experts, including foreign experts should be appointed to manage case-load to clear arrears/backlog in the country.
- (xxxii) Parliament should enact a law to streamline method of selection, procedure and criteria for appointment of judges.
- (xxxiii) The current system of appointment is responsible for the large number of vacancies in the judiciary.
- (xxxiv) There is nepotism in judiciary, where we have examples of people appointed in judiciary for three generations. There are brilliant people in the District and High Court Bar, who never make it to Judiciary.
- (xxxv) Independence of Judiciary and strong Bar Associations are non-negotiable.
- (xxxvi) Since Bar Council of India is the apex council to regulate the legal profession, it should be associated with the appointment process of the judiciary.
- (xxxvii) Bar Associations should be legally recognised and regulated by a central legislation.
- (xxxviii) Strict time line is laid down in the MoP for each Constitutional authorities/officers.
- (xxxix) Fixed tenure for Chief Justice of India/Chief Justice to High Court to enable him to take decision in judicial appointment as he/she in the head of the Collegium.
- (xl) There should be interaction with the short-listed candidates by the Collegium, which is a sort of interview.
- (xli) When none of the judges of the High Court Collegium are from the State where the High Court is located, two other judges from the same State may be co-opted in the Collegium.
- (xlii) Primacy of President should be restored in the appointment of judiciary. As per the General Clauses Act, appointing authority is the terminating authority, however, after the second judges case, the role of appointing judges was usurped by the judiciary from the President. The Government should file review petition of the Second Judges Case.
- (xliii) Parliament should bring a procedural law for the appointment of judiciary, as the lack of procedural law has given room to judiciary for interference in the executive function. Transfer and posting system in High Courts should also be enforced by amending Constitution.
- (xliv) Judges of higher judiciary are Constitutional authorities, therefore, they should be appointed by the President on the recommendations of Independent Commission.

- (xlv) In public interest, the Collegium system of appointment must cease to function as 60 percent appointments in higher judiciary are based on nepotism.
- (xlvi) Collegium is not answerable to any authority, which is against the basic spirit of democratic system.
- (xlvii) We have rigorous appointment process for appointing peons, but we don't know how judges get appointed. In USA, Judges of Supreme Court needs ratification by senate, upper House. The entire process of selection of judges should be on the lines of U.S. system, *i.e.* open hearings by the senate judiciary committee.
- (xlviii) If the person being short-listed is from judiciary, number of verdicts that has been reversed in appeal court should be an important criterion that reflects his understanding of law and procedures. No person whose verdicts in the last ten years have been set side/overruled in more than twenty per cent of the judgments delivered should be considered as a candidate.
- (xlix) The names of the short-listed candidates under consideration for appointment as judges should be in public domain for at least thirty days so that the legal fraternity and other stakeholders can make suggestions or complaints on the short-listed candidates.
 - (l) There should be a mechanism evolved to ensure that people from rural background, women and weaker social strata also gets due consideration.
 - (li) Fifty per cent of judges should come from district judges or persons who have served as Government advocates.
 - (lii) Judicial temperament, ethics, integrity vision, and higher education and experience should be considered while making appointment.
 - (liii) Higher Judiciary Nomination Commission consisting of Union and State Law Ministers and Presidents of Bar Council of India and State Bar Councils or their nominees, and members appointed by the collegiums must be set up to seek nominations or nominate deserving candidates from lower judiciary and/or members of the Bar.
 - (liv) Area specializations are not given importance during appointment process. Seniority, service record and performance should be given more weightage while making selection. Advocates/legal officers working in Banks and other organizations should also be made eligible for appointment as judges.
 - (lv) There should be a data bank of judges so as to facilitate the appointing authorities in verifying the credibility of candidates.
 - (lvi) The maximum age for appointment in Supreme Court and High Courts should be fixed at 55 and 50, respectively.
 - (lvii) Indian Judicial Service at all India level should be constituted for direct recruitment of judges.
 - (lviii) Judges should get higher salary and they should not be equated with CEC, CAG, CIC, UPSC Chairman etc. who are appointed on political grounds.

- (lix) Independence of judiciary is not a Basic Structure of Constitution as per the Kesavananda Bharati case. The Constitution lays down that the separation of powers is the Basic Structure of Constitution and independent of judiciary is a misnomer.
- (lx) The Memorandum of procedure should clearly lay down the appointment process and eligibility criteria alongwith a mechanism for dealing with complaints against anyone who is being considered for appointment as a judge.
- (lxi) There should be a provision of judicial review of the appointment processes.
- (lxii) Apart from legal practice, the candidates to be appointed as judge should also have administrative and teaching experience in tribunals and research institutions, respectively.
- (lxiii) More eminent jurists may be appointed as judges in higher judiciary.
- (lxiv) Age of retirement should be increased and there should be uniformity in the retirement age of High Court and Supreme Court.

Views of Members of the Committee

52. During the meetings of the committee, the members took the opportunity to express their concerns/ views. A summary thereof is given below:

- (i) Judicial appointments are a shared responsibility of the executive and the judiciary to be exercised jointly, rather than giving primacy to either organ of the State.
- (ii) The Collegium of High Courts generally short-list names of legal practitioners who have argued before the judges who are members of the Collegium. There is every likelihood that senior advocates who have not appeared before them may not be shortlisted. It was proposed that legal practitioners who are shortlisted by the Secretariat to the Collegium need to widen. The views of all judges in that Court and Bar Association may be obtained. For the sake of transparency complaints/comments on those names may also be invited within a time line. All those information may be placed before the Collegium for making final selection for recommendation to Supreme Court Collegium/Union Government.
- (iii) While making selection of candidates from Bar, the Secretariat to Collegium should short-list names, which could be representative of composition of Bar as well as the society and its diversity which in turn could be reflected in the composition of Bench for a truly inclusive judiciary.
- (iv) The Secretariat to Collegium can be a dedicated cell of the existing registry of the court to collate information about eligible legal practitioners and judicial officers and also obtain view/comments of the Bench, Bar, State Government and general public for deeper security and transparency.
- (v) Retired judges may be appointed as *Ad-hoc* judges under Article 224A and should be given same status and position in the Bench, which was available to him/her while in office. The appointment procedure need not be *de-novo*. Such a measure would certainly check further accumulation of vacancies.

- (vi) The Committee may not compromise the core deficiencies in the existing MoP, it should have access to the supplemental MoP to address inherent deficiencies causing bottlenecks in appointments.
- (vii) Those practitioner members of Bar, who have expressed the interest to serve as a judge, their candidature should be evaluated by the Secretariat to the Collegium and placed before the Collegium for taking a decision.
- (viii) Rejection of names recommended by High Court Collegium and by the Supreme Court Collegium should be intimated to the candidates indicating the reasons in the interest of Principle of Natural Justice.
- (ix) Majority of under-trial languishing behind the bar belongs to marginalised sections of society. Adequate legal aid is not being provided to them leading to mis-carriage of justice.
- (x) Providing fixed tenure to Chief Justice of India and Chief Justice of High Courts to avoid the Collegium being dysfunctional. In the case of elevation of High Court judge to the Bench of Supreme Court, the successor Chief Justice need to be appointed simultaneously to obviate any delay of Collegium to function.
- (xi) Judicial appointment should be completed on the basis of existing MoP till the Supplemental MoP is finalised.
- (xii) All India Judicial Service should be constituted on par with All India Services to streamline and bring transparency in the judicial appointment.

53. In the course of examination the Committee felt that the Department of Justice should share perspectives of the judiciary and the executive on the Supplemental Memorandum of Procedure (MoP) including areas of disagreement between them so that the Committee could have meaningful discussion and would be in a position to recommend appropriate measures in its collective wisdom towards the improvements in procedures and processes involved in judicial appointment to constitutional courts. Since the proceedings of the Committee are held in camera, secrecy need not to be emphasised by the Department in sharing the draft MoP, in larger interest. In order to understand the intricacies of the entire process, the Committee specifically called for the information as under:

- (i) Date of occurrence of various vacancies in Supreme Court;
- (ii) High Court-wise date of occurrence of various vacancies in each High Court;
- (iii) Date of recommendations of candidates by the respective High Court Collegiums in respect of each vacancy, High Court-wise;
- (iv) Date of recommendations of the candidates by the Supreme Court Collegium for each existing vacancy in that Court;
- (v) Date the Government finalized its decision on the recommendations of the Collegiums of High Court/Supreme Court against each vacancy;

- (vi) Number of recommendations of the High Court and Supreme Court Collegium turned down by the Government along with the grounds for each of them;
- (vii) Pendency of cases in the Supreme Court and the High Courts, High Court-wise as on the 30th September, 2016;
- (viii) State/UT-wise details of pendency of cases in subordinate courts as on 30th September, 2016;
- (ix) A copy of the draft Memorandum of Procedure (MoP) submitted for consideration of the Supreme Court and the date on which it was sent to it;
- (x) Date on which the same was returned to Government by the Supreme Court and the comments of Supreme Court thereon, if any;
- (xi) Whether the same was sent again to Supreme Court? if so, on what date;
- (xii) What are the areas of disagreement between the Government and Judiciary? Details thereof.
- (xiii) Difference, if any, between appointment procedures of Regular Judge *vis-a-vis Ad-hoc* Judge in the Supreme Court of India?
- (xiv) Procedure of appointment of retired judges in High Courts?
- (xv) Whether *Ad-hoc* judges, as per Constitutional provision have ever been appointed? If so, details thereof, and also what has been the experience in having such *Ad-hoc* Judge?
- (xvi) Procedure of appointment of Regular/Additional/Acting judges in High Courts? Details of appointment of *Ad-hoc*/Additional/Acting Judges made in the Supreme Court/High Courts and duration of their appointment, High Court-wise?
- (xvii) Number of Additional Judges appointed to various High Courts in the last five years? How many of them have been absorbed/appointed as regular judges in High Courts? Merit/demerits of appointment of *Ad-hoc*/Additional/Acting Judges in Supreme Court/High Courts?
- (xviii) State-wise number of convicts awarded capital punishment in the past three years indicating the break-up of SCs, STs, OBCs, Women and Minorities; and
- (xix) State-wise number of under-trials languishing in various jails, as on date, showing break-up of SCs, STs, OBCs, Women and Minorities
- (xx) What is the number/percentage of Judges belonging to ST/SC/OBCs/minorities and female Judges in the Supreme Court and High Courts in the country as on date?
- (xxi) What is the male-female judge ratio in various High Courts and Subordinate Courts as on 31st October, 2016 for the same period. Please furnish State/UT/High Court-wise figures?
- (xxii) What is the total number of judges appointed in the Supreme Court since 1950? How many women judges have been appointed in the Supreme Court during the same period? Please also furnish name and tenure?

- (xxiii) States/UTs like Tamil Nadu, Andhra Pradesh and Delhi have reservation in Subordinate Judicial Services for backward castes and women, respectively. What is the view of the Department of Justice for providing representation of backward castes and women in the higher judiciary.
- (xxiv) What is the average age of appointment of Judges from High Courts, from Bar and Subordinate Judiciary?
- (xxv) What is the judge-population ratio (a judge per million population) in India? Please provide data with regard to population of the State, case load, number of judges and judge-population ratio State/Union territory-wise?
- (xxvi) What is the recommendation of Law Commission of India on judge-population ratio in the country?
- (xxvii) What is the judge-population ratio in major democratic countries, including US and UK?

54. In response to the query of the Committee about supplemental MoP and the areas of disagreement between the Government and judiciary, the Department of Justice submitted as under:-

"...In para 7 of Supreme Court Order dated 16.12.2015 in Writ Petition (Civil) No. 13 of 2015, it was submitted by Attorney General for India that the views expressed by the Supreme Court, while disposing of the main controversy would enable the Government of India, to introduce amendments and to redraw the existing Memorandum of Procedure with the object of considering the criterion/benchmark for the appointment of judges of the higher judiciary, including widening the zone of consideration; to introduce transparency in the matter of appointment of judges in the higher judiciary, as would be appropriate keeping in mind the sensitivity of the issue; to make the present procedure broad based, by introducing supporting measures, whereby candidates can be screened and evaluated, and complaints against them are evaluated through a secretariat constituted for the said purpose, under the control of Chief Justice of India, as supplemented (and not as a substitute) to the process contemplated through the Second Judges case and the Third Judges case as well as judgement on the merits in the present batch of cases.

In para 8 of above mentioned order dated 16.12.2015, it was stated that the introduction of the above changes referred to are broadly in tune with the majority of the suggestions which were also referred by the Committee under the category of "transparency", "secretariat", "eligibility criteria", and "complaints" as per order dated 5th November, 2015.

In para 9 of order dated 16-12-2015, it was stated that the Attorney General for India has also informed that Memorandum of Procedure and introduction amendments therein, has always been prepared by the Government of India in consultation with the President of India and the Chief Justice of India and this practice has been consistently adopted, in consonance with the directions contained in para 478 of the Second Judges case. It was submitted that the same procedure would be adopted now, if the task was entrusted to the executive. The Court agreed with the suggestion of the learned Attorney General.

In para 10 of order dated 16-12-2015, it was stated that the Government of India may finalize the existing 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 the four senior-most puisne Judges of the Supreme Court. They shall take the following factors into consideration:

Eligibility criteria

The Memorandum of Procedure may indicate the eligibility criteria, such as the minimum age, for the guidance of the collegium (both at the level of the High Court and the Supreme Court) for appointment of Judges, after inviting and taking into consideration the views of the State Government and the Government of India (as the case may be) from time to time.

Transparency in the appointment process

The eligibility criteria and the procedure as detailed in the Memorandum of Procedure for the appointment of Judges ought to be made available on the website of the Court concerned and on the website of the Department of Justice of the Government of India. The Memorandum of Procedure may provide for an appropriate procedure for minuting the discussions including recording the dissenting opinion of the Judges in the collegium while making provision for the confidentiality of the minutes consistent with the requirement of transparency in the system of appointment of Judges.

Secretariat

In the interest of better management of the system of appointment of Judges, the Memorandum of Procedure may provide for the establishment of a Secretariat for each High Court and the Supreme Court and prescribe its functions, duties and responsibilities.

Complaints

The Memorandum of Procedure may provide for an appropriate mechanism and procedure for dealing with complaints against anyone who is being considered for appointment as a Judge.

Miscellaneous

The Memorandum of Procedure may provide for any other matter considered appropriate for ensuring transparency and accountability including interaction with the recommendee(s) by the collegium of the Supreme Court, without sacrificing the confidentiality of the appointment process. "

55. In the above mentioned background, the Government of India proposed changes to supplement the existing Memorandum of Procedure (MoP). The draft MoPs for appointment of Chief Justice of India and Judges of Supreme Court of India and Appointment and transfer of Chief Justices and Judges of High Courts were sent to the Hon'ble Chief Justice of India vide letter dated 22.3.2016. The Committee

is privy to draft supplemental MoPs as submitted to Chief Justice of India. The response of the Chief Justice of India was received on 25.05.2016 and 01.07.2016. The Supreme Court Collegium has agreed with some of the suggestions made in the revised MoP while it has not accepted some other provisions. Many of the proposals of the Government to bring greater transparency, objectivity and accountability in the appointment process have not been accepted by the Supreme Court Collegium (SCC). The views of Government were conveyed to the Chief Justice of India (CJI) on 3.8.2016. The response of the CJI is awaited.

56. The Secretary, Department of Justice during her deposition before the Committee on the 13th October, 2016 apprised that appointments of eighty-one judges in various High Courts recommended by the Supreme Court Collegium (SCC) are under process. The Committee sought reasons of delay on the part of the Government to accept the names recommended by the SCC and issue of notification of appointment.

57. The Secretary in her deposition on 21st November, 2016 submitted that out of eighty-seven names recommended by SCC, forty-four have been cleared for appointment while forty-three names were referred back to SCC for reconsideration on the various grounds which includes holding office of profit, adverse IB report, held elected positions in political parties, contradictory/lack of views of consultee Judges, charges of sexual harassment and corruption. These forty names belong to five High Courts *i.e.* Allahabad (24), Madras (6), Uttarakhand (3), Karnataka (3), Calcutta (07).

58. The clubbing of vacancy positions of different years together by HCC appears to be a general trend as per the information furnished by the Department of Justice on the date of occurrence of vacancy positions and meetings of High Court Collegiums. The vacancy positions of 2007-2015 of the Allahabad High Court were clubbed with vacancy positions of 2016 and considered by HCC and SCC in 2015-16. Similarly, the vacancy positions from 2009-15 of the Rajasthan High Court were clubbed and considered by HCC and SCC in 2015-16 and similar is the trend with Karnataka High Court where the vacancy positions from 2009-16 were clubbed together and considered by HCC and SCC in 2015-16. In case of High Courts of Sikkim, Manipur, Meghalaya, Gujarat, Himachal Pradesh no meetings of HCC were held to recommend names of judges for appointment after the occurrence of vacancy positions since the year 2002, 2013, 2013, 2010, 2014, respectively. The Committee notes that High Court collegiums in these cases have inordinately delayed making their recommendations and have not adhered to the timeline laid by the Second Judges' Case/MoP which has contributed to delay in filling up of these vacancies.

59. The Information furnished by Department of Justice on the 29th November, 2016 reveals that Government has taken around one and half to eleven months to forward the names of judges to be appointed to the Supreme Court Collegium. The maximum time of eleven months and minimum time of one and half months was taken in the case of Allahabad and Delhi High Court, respectively. The data also reveal that Government has taken almost three to nine months to consider the name recommend by Supreme Court Collegium. The maximum of time was taken in the case of Allahabad (9 months) and Chhattisgarh (8 months). The Minimum time was taken in case of Madhya Pradesh High Court (1½ months) and two and half months each for Chhattisgarh and Karnataka.

60. Para 478 (7) of Second Judge Case (1993) 4 SCC 441, lays down that "...if after due consideration of reasons disclosed to Chief Justice of India, that recommendation reiterated by the Chief Justice of India with the unanimous agreement of the Judges of the Supreme Court consulted in the matter, with reasons for not withdrawing the recommendation, then the appointment as a matter of healthy convention ought to be made". Department of Justice submitted that Mandamus cannot be issued against the President of India for not accepting names reiterated by SCC.

RECOMMENDATIONS/OBSERVATIONS — AT A GLANCE

61. After having gone through the Constitutional provisions, the intent behind them as enshrined in the debates of the Constituent Assembly, the developments following four Supreme Court judgments in Judges Cases and the views expressed by the legal luminaries and the Bar, the Committee is of the opinion that appointment of judges of Higher Judiciary is essentially an executive function and is envisaged as a participatory Constitutional function to be jointly performed by the Judiciary and the Executive. The deliberate use of word "consultation" in place "concurrence" in the relevant provisions of the Constitution by the framers of the Constitution strengthens this opinion. Accordingly, the Committee is of the view that judicial appointments are shared responsibility of the Executive and the Judiciary to be exercised jointly with neither organ of the State having a primacy over the other. The Committee, accordingly recommends that the distortion in the original mandate of the Constitution arising from the judgments of the Apex Court in the Second Judges Case and subsequent cases needs to be reversed and the original Constitutional position needs to be respected in letter and spirit for which Government may take appropriate measures.

62. The Committee notes that Constitution 99th Amendment Act which was unanimously passed by the Lok Sabha and near unanimity by the — Rajya Sabha (with one dissent) was struck down by a majority of 4:1 by a 5 Judges Bench of the Hon'ble Supreme Court. The Committee having noted that at the time of enacting the Constitution, the strength of the judges in the Supreme Court was only 7 and a Bench with a minimum strength of 5 Hon'ble Judges was prescribed for deciding any case involving interpretation of Constitution or a reference under Article 143 and now the sanctioned strength of judges has gone up to 31, recommends that a minimum number of 11 Judges of the Supreme Court should hear cases involving the validity of a Constitutional amendment. The Committee further recommends that the cases involving the interpretation of the Constitution should not be heard by a Bench of less than 7 Judges.

63. The Committee is concerned at the present stand-off over the finalization of Memorandum of Procedure between the Executive and the Judiciary which is leading to delay in filling the vacancies in the Constitutional Courts and is adversely affecting administration of justice. The Committee expects that both the sides would quickly resolve their differences in the larger public interest and will not allow the administration of justice to suffer on this account. The Committee further feels that pending finalization of supplemental MoP/review of judgements/Constitutional amendments, appointments of Judges should continue as per hitherto existing practice as an ad-hoc measure so that administration of justice does not suffer.

64. The Committee expresses its deep anguish that recruitment process for the vacancies occurring as early as in the year 2007 was not initiated by certain High Courts as late as the year 2016. The Committee understands that several High Courts wait initiation of the proposal till a bunch of vacancies becomes available. This practice is not desirable and leads to delay in filling up the vacancies apart from being violative to the timelines laid in the Second Judges' Case and existing Memorandum of Procedure and needs to be discontinued forthwith. The

Committee feels that for each vacancy, the recruitment process should be initiated well before its occurrence so that by the time the vacancy occurs, a judge is available to fill that vacancy.

65. The Committee notes that timelines were prescribed in the Second Judges Case for completion of various stages in the process of appointment of judges to the Constitutional Courts. The existing Memorandum of Procedure, however, only provides timelines for filling the vacancies of judges in the High Courts but not in the Supreme Court. As per the data provided by the Department of Justice, it has been observed that timelines are not being observed by both Judiciary and the Government. The Government on one hand is taking too much time than the prescribed to process the recommendations, the Judiciary on the other hand by clubbing vacancies is unduly delaying forwarding of its recommendations to the Government. The Committee expresses its deep sense of disappointment and anguish that the timelines laid in the Second Judges Case and the MoP are not being adhered to and are violated with impunity which is leading to extraordinary and unacceptable delay in filling up of the vacancies. The Committee recommends that an institutional mechanism should be evolved, so that retirement of a particular Judge and appointment against the resultant vacancy is simultaneously completed. Such a mechanism will be in the interest of the judicial administration and its efficacy. For this to happen the timelines for completion of various stages of appointment process in all Constitutional Courts should not only to be firmly laid in the Memorandum of Procedure but also needs to be scrupulously adhered to by all Constitutional authorities.

66. The Committee recommends bringing in more transparency in the appointment process of the judges of the Constitutional Courts. The Committee feels that the eligibility criteria, the method of selection, manner of evaluation of merit, criteria of selection, candidates found eligible for consideration, number of vacancies, etc. should be made public. The confidentiality, however, may be maintained with regard to names finally short-listed for appointment till the process is completed.

67. The Committee understands that Government on grounds of 'national security' and 'larger public interest', proposes to decline the Supreme Court Collegiums' recommendations. Moreover, the Committee has learnt that those parameters are proposed as part of the revised MoP. The Committee apprehends that the Government may reject any name duly approved by the Supreme Court Collegium under the veil of those parameters. This would tantamount to giving veto power to the Government, which is not as per mandate of the Constitution. In order to avoid such a situation, the Committee recommends that the terms 'national security' and 'larger public interest' should, in no ambiguous terms be defined and circumstances/antecedents which fall within their purview listed.

68. The Committee notes that Hon'ble Judges in Fourth Judges case have themselves recognised that 'there is no healthy system of appointments in practice' and that the collegium system lacks transparency, accountability and objectivity. The Committee is in agreement with the observations of the Hon'ble Supreme Court and believes that absence of these three and unnecessary zeal for primacy have led us to the present unfortunate situation. At the same time the Committee

strongly feels that the Judiciary should continue to enjoy trust and confidence that people of the country have in it and its credibility needs to be maintained and should not be lowered at any cost. The Committee, therefore, suggests that at least the supplemental Memorandum of Procedure which is under revision must incorporate these three essentials.

69. As per present practice, the Collegium of High Courts generally shortlist names of legal practitioners who have argued before the judges in the Collegium. There is every likelihood that advocates who have not appeared before judges forming Collegium may not be shortlisted. The Committee feels that the zone of consideration of the legal practitioners who are shortlisted should be done by wider consultation amongst judges. The views of all judges in the Court and Bar Association needs to be obtained within a definite timeframe. All the names so recommended be placed before the High Court Collegium for making final recommendations of names to the Supreme Court Collegium/Union Government.

70. The Committee notes that there is no dedicated mechanism available for processing the proposals for filling the vacancies of the Judges in the Constitutional Courts and that contributes to delay in appointment of the Judges in the Constitutional Courts. The Committee accordingly recommends that a dedicated Cell in the Registry of the Constitutional Courts be set up to assist initiation of the proposals in time for filling the various vacancies. The Cell may be made responsible for collecting/collating information and maintaining a computerized database of persons eligible for appointment as Judges to the Constitutional Courts. It may also be made responsible for obtaining views/comments of experts on the quality of work of eligible persons as also for obtaining views/comments from various stakeholders on their suitability, caliber, reputation, character and antecedents. This would help in making an intensive scrutiny and ensure greater objectivity in the selection process. The Cell may also be responsible for keeping a track of the vacancies and making the required information available in time for timely processing of the proposals. The professional and personal particulars maintained in such database of any person may also be shared with that person so that he gets an opportunity to make a representation in case the database does not reflect his particulars correctly. The Cell while maintaining the database of candidates eligible for such appointments may particularly ensure that the eligible persons from women, minorities, etc. are also included so that the composition of higher judiciary becomes reflective of the diversity of the society.

71. The Chief Justice of High Court in addition to his judicial functions also heads the Collegium. Chief Justices of High Courts also get elevated to the Supreme Court and the vacancy in the High Court from which he is elevated often remains vacant for a long time. In his absence, the acting Chief Justice does not hold the meetings of the Collegium, which leads to further delay in the appointments. Therefore, barring certain sudden exigencies, there should not be any occasion of having a gap between vacation of the post of Chief Justice (due to retirement transfer, elevation or any other reason) and the appointment of his successor. In case the Chief Justice of High Court is elevated to the Supreme Court or is transferred, filling up of the vacancy in the High Court should be simultaneous.

72. At present, the reasons for rejection of a particular candidate by the Supreme Court Collegium are not disclosed. The Committee feels that in case a candidate's name is rejected for any reason by the Collegium, the candidate must be informed of the grounds of rejection. The Committee also observes that the Government also rejects the names recommended by the Supreme Court Collegium without furnishing cogent reasons therefor. Such practices are against the principles of natural justice and leads to opaqueness in the appointment process. Therefore, the Committee feels that *Glasnost* in process of appointment of Judges is the need of hour.

73. The Committee notes that there is no mention of the procedure and method for appointment of High Court Judges from the subordinate judiciary in the existing MoP from where one-thirds appointments are made. The Committee, therefore, recommends that MoP must also contain eligibility criteria and procedure for their appointments.

74. In order to tackle mounting burden of cases at the High Court level Article 224 A may be invoked to allow Chief Justices of High Courts to appoint retired judicial officers as ad-hoc judges. This will not just help in reduction of pending cases but also reduce the burden of the judiciary. Further, an elaborate procedure akin to procedure for new appointments is laid for appointment of Ad-hoc Judges in the Supreme Court and retired Judges in the High Court in the MoP. The Committee feels that such appointments should not be considered *de novo*, as all requisites relating to their antecedents has been done prior to their appointments. There is no merit in repeating the same, except making quick performance appraisal before such appointments. This will help in appointment of such Judges in the minimum possible time, when so required. Further, they must be given the same status what they were enjoying prior to their retirement in order to make the position more acceptable to them. But such appointment of ad-hoc judges should be in addition to the sanctioned strength.

75. The Ministry has informed that it does not maintain data of judges belonging to SCs/STs/OBCs and Minorities as the Constitution does not provide representation on the basis of caste or class of persons. The Committee also notes that women representation in higher judiciary for which data has been provided, is not encouraging as so far only six women judges have been elevated to the Bench of Supreme Court of India since 1950, with Justice M. Fathima Beevi as the first female judge elevated in 1989. As on 1st November, 2016, there are 64 women as compared to 397 male judges in 24 High Courts, including High Courts of Delhi and Bombay which are headed by women Chief Justice. In Supreme Court there is only one woman judge, out of twenty-five⁸. High Courts of Chhattishgrh, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Manipur, Meghalaya, Tripura and Uttarakhand have no woman judges. There is no female office bearers in Bar Council of India. There are only 12 senior female advocates in Supreme Court Bar. It is noted that some of the National Law Schools have given reservation to girls in their law programmes, which is encouraging. The Committee desires that the Bench of Higher Judiciary to be reflective of composition of society and its diversity and recommends that suitable measures to achieve that may be taken.

⁸ The Week (13 November, 2016)

76. The age of Supreme Court judge was fixed at 65 years by the Constituent Assembly which has not been revised till now. However, retirement age of High Court judges was increased to 62 from 60 by the Fifteenth Amendment (1963) of the Constitution when the life expectancy was 60 years. With improvements in social and financial conditions as well as in medical facilities, the life expectancy has since increased considerably. The retirement age in some Tribunals is now 70 for Chairmen and 65 for Members. The retired judges of Supreme Court and High Courts are appointed as Chairmen and Members of various Commissions/Tribunals where they are discharging their role and duties including adjudication quite efficiently. Moreover, it is now the global practice of engaging persons with enriched professional experience which is attained with protracted exposure in the profession. The retirement age of judges of Superior Courts in countries such as USA, UK, Switzerland, South Africa, Denmark, Phillipines is 70 years while in some countries such as, Australia, Canada, Argentina, Brazil, etc. judges of Superior Courts retire at 75 years. The Committee, accordingly, recommends increase of retirement age of Supreme Court judge to 67 years and of High Court judge to 65 years.

77. The Committee observes that in last twenty years (since 1997), seventeen Chief Justices of Supreme Court have been appointed and out of those, only three had tenure of more than two years. Many of them had tenure of even less than one year. Similarly, Chief Justice of High Courts in most cases get appointed for less than two years term. Some of the Chief Justices also get elevated to the Bench of Supreme Court further shortening their tenure in High Courts. In many cases, the post of Chief Justice are not filled-up simultaneously and acting Chief Justice, appointed as a stop gap arrangement, does not often take decision about names to be recommended to the Union Government/Supreme Court Collegium for filling-up of vacancies in that High Court. In eventuality, the High Court Collegium becomes dysfunctional, which causes delay in judicial appointment. The Committee feels that ensuring a minimum tenure may resolve this issue once for all and recommends that the Department of Justice should consider ways so that a Chief Justice in the High Courts and in the Supreme Court remains in position for a certain minimum tenure.

MINUTES

III
THIRD MEETING

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 11:30 A.M. on Thursday, the 13th October, 2016 in Room No. 63, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shri Anand Sharma — *Chairman*

RAJYA SABHA

2. Shri Dilipbhai Pandya
3. Shrimati Rajani Patil
4. Shri D. Raja
5. Shri Tiruchi Siva

LOK SABHA

6. Shri Tariq Anwar
7. Shri Idris Ali
8. Shri A.H. Khan Choudhary
9. Adv. Joice George
10. Choudhary Mehboob Ali Kaiser
11. Shri Santosh Kumar
12. Dr. A. Sampath

SECRETARIAT

Dr. D. B. Singh, *Secretary*

Shrimati Sunita Sekaran, *Director*

Shri Ashok K. Sahoo, *Joint Director*

Shrimati Niangkhanem Guite, *Assistant Director*

WITNESSES

Department of Justice, Ministry of Law and Justice:

1. Ms. Snehlata Srivastava, Secretary;
2. Shri Rajender Kumar Kashyap, Joint Secretary; and
3. Shri Anil Kumar Gulati, Joint Secretary.

2. At the outset, the Chairman welcomed Members of the Committee and apprised them that the Department of Justice had made a request not to take up the subject - "Inordinate delay in filling up of the vacancies in Supreme Courts and High Courts citing the subject matter being *sub judice* which was not acceded to by him as the issue has already been discussed in the Rajya Sabha during the Monsoon Session of the Parliament. The Committee also decided to hear Bar Council of India, select High Court Bar Associations and eminent legal luminaries and publish a Press Release in print and electronic media to solicit views of stakeholders on the subject.

3. The Chairman thereafter, welcomed the Secretary, Department of Justice and her colleagues to the meeting. Referring to the letter of Department of Justice wherein they had requested the Committee not to take up the subject identified by it in view of the Public Interest Litigations (PILs) on the subject pending adjudication of the Supreme Court, he clarified that unless the subject matter under adjudication of the court is criminal in nature where chargesheet have been filed and prosecution has started, Parliament has every right to take up the issue for discussion and consideration. He alluded to the Calling Attention Motion and Questions on the subject which were admitted and discussed/answered in the Rajya Sabha in August, 2016, in larger public interest. More so, the Standing Committees are not barred under the Rules of the Council of States to take up any subject. The Committee of Parliament is well within its rights to seek accountability of the Government over inordinate delay in appointment of judges, particularly, in the Constitutional Courts. Thereafter, he requested the Secretary to apprise the Committee of the reasons for delay and accumulation of vacancies to the extent of 42% of the approved strength; steps taken for clearing those accumulations; status of Supplemental Memorandum of Procedure (MoP) for appointment and transfer of judges, while making her presentation.

4. The Secretary, Department of Justice, gave brief overview of judicial appointments to Constitutional Courts and submitted that it evolved from interpretations of Articles 124 and 217 of the Constitution of India by the apex court in Supreme Court Advocates-on-Record Association Vs Union of India Case. She mentioned that with the enactment of the Ninety-ninth Constitutional Amendment Act, 2014 and the National Judicial Appointment Commission Act, 2014 and subsequent litigations thereon, the appointment process of judges got temporarily halted. She added that, the process of appointments was, however, expedited and more appointments were made in the current year as compared to the previous year. She also apprised the Committee of the Resolution of Joint Conference of Chief Ministers and Chief Justices in 2013 to raise the strength of judges in High Courts by 25 percent and creation of 173 additional posts of judges in pursuance thereto in June, 2014. The Secretary also expressed her limitations on apprising the Committee of the details of supplemental Memorandum of Procedure (MoP) as that is under process between the Judiciary and the Government.

5. The Joint Secretary, Department of Justice made a power point presentation to supplement the deposition of Secretary. He apprised the Committee that, primacy has been accorded to the opinion of Collegium of senior judges in the matter of appointment of Supreme Court and High Court judges in pursuance of ratio of case laws on the issue. He added that a detailed procedure was laid down in the MoP and timeline for each constitutional authorities has also delineated therein. He apprised the Committee of the direction given by the Supreme Court on 16th December, 2015 to supplement the existing MoP in consultation with the Chief Justice of India/Supreme Court Collegium while declaring the Ninety-ninth

Constitutional Amendment Act, 2014 and the National Judicial Appointment Commission Act, 2014 as unconstitutional. He added that the Government forwarded the draft MoP to the Chief Justice of India in March, 2016 and response of CJI were received in May and July, 2016, wherein they have accepted some minor proposals leaving aside major proposals dealing with transparency, accountability and objectivity, etc.

6. He also apprised the Committee of the provision for Secretariat of the Collegium in the judgment of the Supreme Court. He added that there is, however, a disagreement over the composition, function and duties of the full time Secretariat between the Government and the Judiciary. He counted the major reasons for delay in filling-up of the vacancies which were due to rejection of candidates recommended by High Court Collegium ranging between 30 to 80 per cent by Supreme Court Collegium for various reasons, adverse Intelligence report, increase due to creation of 173 additional posts and halting of fresh selection between 13th April to 16th December, 2015 due to National Judicial Appointment Commission case in the Supreme Court. He cited extracts of Supreme Court Judgement to support his submission, wherein they have expressed their doubts on the transparency and efficiency of the working of the Collegium. The Secretary supplemented that as per the existing MoP, the concerned Chief Minister is to be consulted during finalization of names of candidates by the High Court Collegium. However, they could not find any reference which shows that Chief Minister have been consulted by the Collegium at present, though he/she is the constitutional authority.

7. The Committee felt that the Department of Justice should share perspectives of the judiciary and the executive on the Supplemental Memorandum of Procedure (MoP) including areas of disagreement between them so that the Committee could have meaningful discussion and would be in a position to recommend appropriate measures in its collective wisdom for improvements to the procedures and processes involved in judicial appointment to constitutional courts. Since the proceedings of the Committee happened to be in-camera, secrecy need not to be emphasized by the Department in sharing the draft MoP, in larger interest.

8. Some of the Members pointed out inordinate delay on the part of some of the High Courts Collegiums as they failed to adhere to timeline stipulated in the existing MoP in recommending names of competent advocates to the Supreme Court Collegium entailing delay in the process of judicial appointment which in their view could be sheer dereliction of administrative function of the judiciary and judiciary should be held accountable for such administrative lapses on their part. *Other Members raised query about quality of legal education, nepotism in judicial appointment, etc.*

9. The Committee noted that approved strength of Bihar and Gujarat High Courts is almost the same while the population of Bihar is higher than that of Gujarat and a large number of under-trials have been languishing in various jails of Bihar for want of access to justice. In that context, the Department of Justice was asked to explain the reasons for non-application of judge-population ratio formula enunciated by the Law Commission of India in its Report.

10. The Department was also asked to render a copy of draft MoP for consideration of the Committee; the break-up of data relating to percentage of rejection of names of advocates recommended by High Court Collegiums by the Supreme Court Collegium, due to divergence of opinion amongst consultee

judges in Supreme Court Collegium and also rejection due to adverse intelligence bureau inputs, High Court-wise; and the data about vacancy, pendency and infrastructural development of subordinate judiciary.

11. To a query relating to strength of Judge in High Court of Bihar and Gujarat, the concerned Joint Secretary submitted that the case load in Gujarat High Court is four times higher than the case load of High Court of Bihar. He also added that Law Commission Report on Judge-Population ratio is under consideration of Chief Justice of India. The representative of the Ministry also submitted that a Committee of Ministers constituted by the Government had already studied various provisions of existing MoP, criteria flagged by the Supreme Court on 16th December, 2015 and suggestions received from general public.

(The witnesses withdrew)

12. Verbatim record of meeting of the Committee was kept.

13. The meeting adjourned at 1.55 P.M. to meet again on Tuesday, the 25th October, 2016.

IV
FOURTH MEETING

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3.00 P.M. on Thursday, the 25th October, 2016 in Room No. 63, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shri Anand Sharma — *Chairman*

RAJYA SABHA

2. Shri Dilipbhai Pandya
3. Shrimati Rajani Patil
4. Shri D. Raja
5. Shri Sukhendu Sekhar Roy
6. Shri Ram Chandra Prasad Singh
7. Shri Tiruchi Siva
8. Shri K.T.S. Tulsi

LOK SABHA

9. Shri Tariq Anwar
10. Adv. Joice George
11. Choudhary Mehboob Ali Kaiser
12. Shri B.V. Nayak
13. Shri Vincent H. Pala
14. Dr. A. Sampath

SECRETARIAT

Dr. D. B. Singh, *Secretary*

Shri K. P. Singh, *Joint Secretary*

Shrimati Sunita Sekaran, *Director*

Shri Ashok K. Sahoo, *Joint Director*

Shrimati Niangkhanem Guite, *Assistant Director*

WITNESSES

I. Representatives of Bar Council of India

Shri B.C. Thakur, Co-Chairman.

II. Representatives of Non-Official Witnesses

1. Shri Harish Salve, Senior Advocate, Supreme Court of India.
2. Shri K. Parasaran, Member, Rajya Sabha and Senior Advocate, Supreme Court of India.

3. Shri Dushyant A. Dave (Sr.), President, Supreme Court Bar Association.
4. Shri Fali S. Nariman, Senior Advocate, Supreme Court of India;
5. Shri Subhash C. Sharma, Advocate.
6. Ms. Indira Jaising, Senior Advocate, Supreme Court of India.

(iii) Department of Justice, Ministry of Law and Justice

Shri Rajender Kumar Kashyap, Joint Secretary;

2. At the outset, the Chairman welcomed Members of the Committee and apprised them that Bar Council of India, eminent jurists, i.e, Shri Fali Nariman, Shri K. Parasaran, Shri Dushyant Dave, Shri Harish Salve, Ms. Indira Jaising and Shri Gopal Subramaniam have been invited to share their views on the subject "Inordinate delay in filling up of the vacancies in the Supreme Court and High Courts". Shri Gopal Subramaniam, gave written submissions and the others were present in person. The Chairman took note of the absence of Secretary, Department of Justice from the meeting despite being asked to be present.

3. In his opening observation the Chairman mentioned that the judiciary is besieged with twin problem of vacancy of judges and pendency of cases which is a concern for both the executive and judiciary as around 42 per cent vacancy exists in higher judiciary. He thereafter requested the witnesses to give their valuable suggestions to resolve the problem of vacancies of judges and the stand-off between the executive and the judiciary over the Memorandum of Procedure (MoP).

4. Co-Chairman, BCI, submitted that independence of Judiciary and strong Bar Associations are non-negotiable and opined that Bar Council of India regulates the legal profession, and therefore, should be associated with the appointment process of the higher judiciary. He also submitted that the whole process of appointment of judges in the higher judiciary is very secretive in nature and functioning of collegium is opaque.

5. Shri Harish Salve, Senior Advocate, stated that the appointment process is opaque and has led to a sense of disconnect between judiciary and general public. Therefore, the yardstick applied by the collegiums to assess suitability of candidate should be made available in black and white and it should be open to public scrutiny. He also submitted that there is no accountability for wrong appointments in the judiciary and there should be clearly laid out guidelines for appointment and transfers and that institutional procedures should not change with the change of people in control. He also added that the exit/removal of judges is cumbersome. Therefore, he felt that the entry of judges to the Bench should be flawless giving due importance to impartiality and probity of candidates selected for the sake of independence of judiciary. By giving example of present Canadian Chief Justice, who is junior to other pusine judges, he added junior-senior compartmentalisation attitude of judiciary, unwillingness of large number of bright young lawyers to join the Bench due to age barriers, arbitrary transfers' etc. should be done away with and merit and competency should be awarded. He further submitted that the formulation of Memorandum of Procedure (MoP) between judiciary and Government was shrouded in secrecy and subjectivity. He further submitted that zone of consideration for appointment should be enlarged and there should be transparency in the elevation of judges to the Supreme Court.

6. Shri Fali S. Nariman, Senior Advocate, submitted that the appointment of judges should be in conformity with the Basic Structure Doctrine as enunciated in the Keshavananda Bharti (1973) judgement. He shared that the balance between secrecy and confidentiality might be maintained and balance between rights of general public to scrutiny and individual's rights to privacy need to be maintained. He further added that the appointment procedure and process followed in the USA and UK might not be conducive in our country and the process of selection by nomination in our country happened to be better. He added that there should be timeline for appointment of judges and fixed tenure of more than one year for the Chief Justice of Supreme Court and High Courts and age of retirement should be increased. He expressed that ad-hoc judges might be appointed and the procedure for their appointment need not be *de novo* and they should be given the same status and position enjoyed by him while in office. He apprised that the Judicial Commission envisaged in Venkatchiliah Report (2001) has given dominance to judiciary which was ignored in National Judicial Appointment Commission Act, 2014.

7. Shri K. Parasaran. Member of Parliament & Senior Advocate, submitted that the sovereignty lies with the people, which is exercised by three organs of the State. However, the area provided to the three organs are subjected to checks and balance, even though they might overlap in certain spheres in the Constitution. He stated that the power of judicial review does not mean judicial sovereignty, rather it is a means to check and balance the other two organs of the State. He apprised that the word 'concurrence' in the relevant Articles relating to judicial appointments was rejected by the Constituent Assembly upon the reasoning given by Dr. B.R. Ambedkar as per which concurrence of Chief Justice of India may allow the latter to veto practically while making the appointment. He submitted that many retired Chief Justices of India and judges of Supreme Court have also expressed their dissatisfaction with the working of Collegium system due to its opacity and nepotism. He added that Hon'ble Judges in Fourth Judges case have themselves recognised that the collegium system lacks transparency, accountability and objectivity and suggested amendment of the Memorandum of Procedure to strengthen the method of selection of judges by the collegium.

8. Shri Dushyant Dave submitted that, Parliamentary democracy happened to be greater Basic Structure of the constitution than judicial independence and, therefore, judiciary cannot rob the Parliament of its powers. Parliament should, therefore, enact a law to streamline method of selection, procedure and criteria for appointment of judges. He added that vacancies in the Subordinate Courts due to disagreement between High Courts and State Governments are serious concern. He further added that inefficiency and corruption in the judiciary has led to large scale vacancies of Judges, pendency of cases and poor justice delivery system. He submitted that judges are unable to manage case load, ignorant of latest administrative reforms and management techniques. Therefore, independent management experts, including foreign experts should be appointed to manage case-load to clear arrears/backlog in the country.

9. Smt. Indira Jaising, Senior Advocate highlighted the presence of high nepotism in judiciary. There are brilliant people, in the District and High Courts Bar who never make it to higher Judiciary. She also advocated for representation of marginalised sections, including women in the higher judiciary keeping in view the diversity in the country. She also suggested that age of retirement needs to be increased in higher judiciary.

10. The Chairman and Members of the Committee endorsed the need for inclusive representation within the judiciary, including the need for more women judges in the higher judiciary, increase in retirement of judges age and a timeline with regard to recommendations and appointments in the judiciary.

(The witnesses withdrew)

11. Verbatim record of meeting of the Committee was kept.

12. The meeting adjourned at 6.26 P.M. to meet again on Tuesday, the 2nd November, 2016.

V
FIFTH MEETING

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 11:30 A.M. on Wednesday, the 2nd November, 2016 in Committee Room G-074, Parliament Library Building, New Delhi.

MEMBERS PRESENT

1. Shri Anand Sharma — *Chairman*

RAJYA SABHA

2. Shri Dilipbhai Pandya
3. Shrimati Rajani Patil
4. Shri D. Raja
5. Shri Sukhendu Sekhar Roy
6. Shri Tiruchi Siva

LOK SABHA

7. Shri Tariq Anwar
8. Adv. Joice George
9. Choudhary Mehboob Ali Kaiser
10. Shri B.V. Nayak
11. Shri Vincent H. Pala
12. Dr. A. Sampath

SECRETARIAT

Dr. D. B. Singh, *Secretary*
Shri K. P. Singh, *Joint Secretary*
Shrimati Sunita Sekaran, *Director*
Shri Ashok K. Sahoo, *Joint Director*
Shrimati Niangkhanem Guite, *Assistant Director*

WITNESSES

I. High Court Bar Association of Madras

1. Shri Vijay Narayan, Sr. Advocate; and
2. Shri Manuraj, Advocate

II. High Court Bar Association of Allahabad;

1. Shri Sashi Sekhar Tiwari, Vice President; and
2. Shri Suresh Chandra Pandey, Secretary.

III. High Court Bar Association of Bombay

Dr. Virendra Saraf, Hon. Secretary.

IV. Department of Justice, Ministry of Law and Justice

1. Shri Rajender Kumar Kashyap, Joint Secretary; and
 2. Shri A.K. Saxena, Deputy Secretary
2. At the outset, the Chairman welcomed Members of the Committee and informed that High Court Bar Associations of Bombay, Madras, Allahabad and Delhi have been invited to apprise the Committee of their views on the "Inordinate delay in filling up of the vacancies in Supreme Courts and High Courts". He thereafter, apprised the Members of the information sought on various issues, including stand-off between Government and Judiciary on the supplemental MoP, from the Department of Justice so that the Report on the subject could be prepared. He apprised the Members of very low representation of marginalized sections and women in the Bench and was of view that the overall character of judiciary should be inclusive and should reflect the social composition and diversity of the country and of the Bar.
 3. The Chairman thereafter, welcomed representatives of Madras Bar Association, Bombay Bar Association and High Court Bar Association of Allahabad and other officers of Department of Justice to the meeting of the Committee. He further apprised the witnesses of the large number of vacancies in higher and subordinate judiciary, despite twenty-seven million pending cases in the country and requested them to express their views on the issue of pendency, vacancy, appointment process including the Memorandum of Procedure and other allied issues like All India Judicial Service, reservation/representation for women and marginalized sections in Judiciary, etc.
 4. Shri Vijay Narayan, Senior Advocate, Madras Bar Association in addition to written submission, submitted that the problem of vacancies of judge has been plaguing the judiciary for last twenty to thirty years and a large number of vacancies in higher judiciary is a single gravest threat to the efficiency of justice delivery system, which in turn affects the litigants as well as image of the country abroad. He also averred that owing to inordinate delay in justice delivery many organizations have been preferring arbitrations outside India. He further added that timelines for judicial appointment, laid down in the MoP have not been adhered to by the Constitutional authorities. He also emphasized the present practice of sending names in bunch to Union Government by the High Court Collegium might not be resorted to; rather individual vacancies should be processed without waiting for further vacancies to occur in a year. The Government might bring the appointment procedures/timelines in the Constitution itself, by amending Articles 214 and 217 to complete the appointment procedure well before the occurrence of the vacancy as is the position in the case of President, Vice-President and Legislature including Panchayati Raj Institutions. He further added that when none of the judges of the High Court Collegium are from the State where the High Court is located, two other judges from the same State may be co-opted in the Collegium.
 5. Shri Birendra Saraf of Bombay Bar Association submitted that short tenures and vacancy of Chief Justice of High Courts hampered appointment of judges and added that there should be continuity in the tenure of Chief Justice in High Courts as acting Chief Justice did not take vital decisions of the

Collegium. He also added that retired judges, even competent lawyers could be appointed as ad-hoc judges to address the mounting problem of pendency. Acting Chief Justice may recommend for continuing retired judges as ad-hoc judges. He further added that judges from Subordinate judiciary should be trained in advance so that they could adopt to the working of High Court.

6. Shri Suresh Chandra Pandey, of Allahabad High Court Bar Association, submitted that out of 160 sanctioned posts, 83 posts in High Court are vacant. He apprised the Committee of the nepotism in the appointment of judges and submitted that Bar Associations should have a role in the appointment of judges. He cited that many judges appointed had no knowledge of the subjects which they decide. He further added that most of the District Judges appointed to High Courts are not competent to handle cases as the nature of work is quite different in High Courts.

(The witnesses withdrew)

7. Verbatim record of meeting of the Committee was kept.

8. The meeting adjourned at 1.15 P.M. to meet again on Thursday, the 10th November, 2016.

VI
SIXTH MEETING

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 11:00 A.M. on Thursday, the 10th November, 2016 in Committee Room G-074, Parliament Library Building, New Delhi.

MEMBERS PRESENT

1. Shri Anand Sharma — *Chairman*

RAJYA SABHA

2. Shri Dilipbhai Pandya
3. Shri D. Raja
4. Shri Sukhendu Sekhar Roy
5. Shri Tiruchi Siva

LOK SABHA

6. Shri Tariq Anwar
7. Adv. Joice George
8. Choudhary Mehboob Ali Kaiser
9. Shri Santosh Kumar
10. Dr. A. Sampath
11. Shri Varaprasad Rao Velagapalli
12. Dr. Anshul Verma

SECRETARIAT

Dr. D. B. Singh, *Secretary*

Shri K. P. Singh, *Joint Secretary*

Shrimati Sunita Sekaran, *Director*

Shri Ashok K. Sahoo, *Joint Director*

Shrimati Niangkhannem Guite, *Assistant Director*

2. At the outset, the Chairman welcomed Members to the internal meeting of the Committee. The Chairman apprised Members that while examining the subject "Inordinate delay in filling up of the vacancies in the Supreme Court and High Courts", eminent legal luminaries had been consulted by the Committee and to broaden the consultative process, press release seeking views of other stakeholders had also been issued in the print/electronic media on 3rd November, 2016.

3. The Chairman informed that a draft outline of the Report had also been prepared for giving a direction to the discussion on the subject in hand. The Chairman requested Members to go through the broad contours of the Report and send their written views to the Secretariat, so that those could be

reflected in the Report and the Committee could present the Report in the first week of the ensuing Winter Session of Parliament. Referring to the stand off between the Judiciary and the Government on the issue of supplemental MoP, Chairman expressed concern that Government appeared reluctant to supply the documents, in spite of the fact that some of the related information had already been selectively leaked to the media and directed the Secretariat to ask the Department of Justice to supply the same. The Chairman also pointed out that Collegium quite often could not meet the timelines in the MoP which happened to be contravention of the Judgment of Supreme Court in Second Judges case. He averred that in case of elevation of Chief Justice of High Court to Bench of Supreme Court his/her successor needed to be simultaneously appointed to avoid delay. Strict adherence of the MoP timelines, fixed tenure of Chief Justice of High Courts and a permanent Secretariat to ensure transparency, might be stressed. The Collegium might be impressed upon to make public the selection process and names of candidates to be considered for appointment.

4. The Chairman suggested that a dedicated cell or wing might be created in the existing Registry of the Court, which would collect and collate data about eligibility of legal practitioners in the Bar and judicial officers in the subordinate Judiciary and obtain views/comments of their suitability, caliber, antecedents, standing, etc. from Bench, Bar, State Government. etc and place the same before the Collegium. He also suggested that the Collegium should also revisit the qualifying criteria for broadening the zone of consideration. The Chairman stressed on the need of appointment of ad-hoc Judges till the time regular appointments are made. He further suggested that the process of appointment of ad-hoc Judges should not be initiated *de novo*. Some Members, however, suggested that some kind of appraisal of latest Judgments of the retired Judges be considered for appointment of ad-hoc judge in higher judiciary and they should be given same status and position, which they happened to enjoy prior to their retirement.

5. On the issue of preparation of the Report on the subject, Members stated that a draft report on the subject should be circulated among them so that suggestions could be made on the draft. Members also suggested that Benches of Higher Judiciary should be inclusive, which was seconded by the Chairman who stated that they should reflect the composition of Indian society and its diversity in general and of Bar in particular. Some Members also suggested that the Committee could have evidence from some of the retired Judges, on which the Chairman suggested that they may furnish their views in response to our press release. It was also suggested that the minimum age to enter Bench of High Court needed to be lowered to 35 in view of talented professionals being produced by the National Law Schools. Members also suggested for making appointment from eminent jurists, for which provision is already there in the Constitution. Members also raised their concerns on the transparency aspect of Judges appointment. Some of them asserted that unless the Committee is informed of the areas of conflict between the Government and the Judiciary on MoP, the Committee would be unable to address the issue. Thus, they stressed that the Department should be urged to furnish the same at the earliest. The Chairman also suggested that once the recommendations are made, the candidate whose names have been rejected, grounds of rejection should be informed to the candidate for the sake of natural justice.

6. Members also expressed concern over inadequate legal assistance to undertrials languishing in jails who mostly belonged to the marginalized sections of the society, SCs/STs and minorities. The Chairman

assured that the Committee has sought data on this issue from the Government and issue might be adequately reflected in the Committee's Report.

7. * * *
8. Verbatim record of meeting of the Committee was kept.
9. The meeting adjourned at 12.22 P.M. to meet again on Thursday, the 21st November, 2016.

VII
SEVENTH MEETING

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3.00 P.M. on Monday, the 21st November, 2016 in Room No. '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shri Anand Sharma — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Dilipbhai Pandya
4. Shrimati Rajani Patil
5. Shri D. Raja
6. Shri Sukhendu Sekhar Roy
7. Shri Ram Chandra Prasad Singh
8. Shri Tiruchi Siva
9. Shri K.T.S. Tulsi

LOK SABHA

10. Shri Tariq Anwar
11. Shri Idris Ali
12. Shri Vincent H. Pala
13. Dr. A. Sampath

SECRETARIAT

Shri K.P. Singh, *Joint Secretary*

Shri Ashok K. Saho, *Joint Director*

Shrimati Niangkhanem Guite, *Assistant Director*

WITNESSES

Department of Justice, Ministry of Law and Justice

1. Smt. Snehlata Shrivastava, Secretary;
2. Shri Rajender Kumar Kashyap, Joint Secretary;
3. Shri A.K. Gulati, Joint Secretary; and
4. Shri Arvind Saxena, Deputy Secretary.
2. The Chairman welcomed the Members to the meeting. Thereafter, he informed that the Committee had sought certain information from the Department of Justice regarding processing of recommendations

for appointment of Judges which has not been furnished completely by the Department. Delay in obtaining of the requisite information was hampering the preparation and presentation of the Report on the matter. Accordingly, the Secretary, Department of Justice has been called to offer her explanation for not furnishing in time the complete information required by the Committee for its work. The Chairman also sought information on grounds/reasons for returning of 43 recommendations for appointment as High Court Judges of the Supreme Court Collegium for its reconsideration. Information pertaining to present status of finalization of MoP and reasons for denial of draft MoP to the Committee was also sought.

3. Secretary, Department of Justice in her submission stated that owing to shortage of manpower in the Department, paucity of time and ongoing PIL case in the Supreme Court on the same matter, they could not provide the information on time and regretted the same. She further informed that there still remained some issues on which there were some differences between the Government and the Judiciary on finalization of the MoP. The committee was also informed that the Department had received approval from the authorities concerned in the Government for sharing the draft MoP with the Committee and the information sought would be furnished completely.

4. The Chairman and some members expressed their concern on turning down of recommendations by the Government on the pretext of national security, public interest, adverse reports from the IB, etc., in an arbitrary manner. The Chairman while referring to the fact that rejection of recommendations, on the grounds of national security might tantamount to giving sweeping veto to the Government. Accordingly, he sought the breakup of grounds of rejections of these 43 recommendations.

5. In a reply to queries of some Members, the committee was informed that until the supplemental MoP was finalized, the appointments in the higher judiciary were being made on the basis of the existing MoP. The Secretary further informed that in the year 2016, only three cases had been referred to the Supreme Court Collegium for reconsideration on the basis of adverse IB reports. Information regarding High Court-wise break up of 43 names returned was also sought by the Committee.

6. In the end, the Chairman thanked Secretary (Justice) and her team for making submissions before the Committee and asked the Secretary to furnish the requisite information to the Committee without any further delay.

7. The meeting was adjourned at 4.09 P.M.

VIII
EIGHTH MEETING

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 12.00 Noon on Tuesday, the 6th December, 2016 in Room No. '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shri Anand Sharma — *Chairman*

RAJYA SABHA

2. Shri Dilipbhai Pandya
3. Shrimati Rajani Patil
4. Shri Sukhendu Sekhar Roy
5. Shri Tiruchi Siva
6. Shri K.T.S Tulsi

LOK SABHA

7. Shri Idris Ali
8. Adv. Joice George
9. Shri B.V. Nayak
10. Dr. A. Sampath
11. Dr. Anshul Verma
12. Shrimati Meenakshi Lekhi
13. Shri Pralhad V. Joshi

SECRETARIAT

Shri K. P. Singh, *Joint Secretary*

Shri Ashok K. Sahoo, *Joint Director*

Shrimati Niangkhanem Guite, *Assistant Director*

2. The Chairman welcomed the Members to the meeting. The Committee then took up the consideration and adoption of the draft Eighty-seventh Report on the subject "Inordinate delay in filling up of the vacancies in the Supreme Court and High Courts". Members deliberated on the issues contained in the Report, and thereafter, the Report was adopted with minor changes.

3. The Committee decided to present the Report to both Houses of Parliament on the 8th December, 2016. The Committee authorized the Chairman and in his absence, Shri Dilipbhai Pandya and Smt. Rajani Patil to present the Report to Rajya Sabha and Dr. A. Sampath and in his absence, Shri Idris Ali to lay the same in Lok Sabha.

4. The meeting adjourned at 1.50 P.M.

ANNEXURES

**Memorandum showing the procedure for appointment of the Chief Justice of
India and Judges of the Supreme Court of India**

The Chief Justice of India and the Judges of the Supreme Court are appointed by the President under clause (2) of Article 124 of the Constitution.

Chief Justice of India

2. Appointment to the office of the Chief Justice of India should be of the seniormost Judge of the Supreme Court considered fit to hold the office. The Union Minister of Law, Justice and Company Affairs would, at the appropriate time, seek the recommendation of the outgoing Chief Justice of India for the appointment of the next Chief Justice of India.

2.1 Whenever there is any doubt about the fitness of the seniormost Judge to hold the office of the Chief Justice of India, consultation with other Judges as envisaged in Article 124 (2) of the Constitution would be made for appointment of the next Chief Justice of India.

2.2 After receipt of the recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs will put up the recommendation to the Prime Minister who will advise the President in the matter of appointment.

Judges of the Supreme Court

3. Whenever a vacancy is expected to arise in the office of a Judge of the Supreme Court, the Chief Justice of India will initiate proposal and forward his recommendation to the Union Minister of Law, Justice and Company Affairs to fill up the vacancy.

3.1 The opinion of the Chief Justice of India for appointment of a Judge of the Supreme Court should be formed in consultation with a collegium of the four seniormost puisne Judges of the Supreme Court. If the successor Chief Justice of India is not one of the four seniormost puisne Judges, he would be made part of the collegium as he should have a hand in selection of Judges who will function during his term as Chief Justice of India.

3.2 The Chief Justice of India would ascertain the views of the seniormost Judge in the Supreme Court, who hails from the High Court from where the person recommended comes, but if he does not have any knowledge of his merits and demerits, the next seniormost Judge in the Supreme Court from that High Court should be consulted.

3.3 The requirement of consultation with a Judge of the Supreme Court would not be confined to that Judge only who has that High Court as a parent High Court and, therefore, would not exclude Judges who have, on transfer, occupied the office of a Judge or Chief Justice of that High Court.

3.4 The opinion of members of the collegium in respect of each of the recommendations as well as the seniormost Judge in the Supreme Court from the High Court, from which a prospective candidate comes, would be made in writing and the Chief Justice of India, in all cases, must transmit his opinion as also the opinion of all concerned to the Government of India as part of record. If the Chief Justice

of India or the other members of the Collegium elicit views, particularly those from the non-Judges, the consultation need not be in writing but he, who elicits the opinion, should make a memorandum thereof and its substance in general terms which should be conveyed to the Government of India.

3.5 After receipt of the final recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs will put up the recommendations to the Prime Minister who will advise the President in the matter of appointment.

4. As soon as the appointment is approved, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India and obtain from the person selected a certificate of physical fitness signed by a Civil Surgeon or a District Medical Officer. The Medical Certificate is to be obtained from all persons selected for appointment whether they are at the time of appointment in the service of the State or not. The certificate should be in the form annexed.

5. As soon as the warrant of appointment is signed by the President, the Secretary to the Government of India in the Department of Justice will announce the appointment and issue the necessary notification in the Gazette of India.

Appointment of Acting Chief Justice

6. Appointment of acting Chief Justice is to be made by the President under Article 126 of the Constitution. Vacancy in the office of the Chief Justice must be filled whatever the period of vacancy. In such an eventuality, the seniormost available Judge of the Supreme Court will be appointed to perform the duties of the office of the Chief Justice of India. As soon as the President has approved the appointment, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India or in his absence the Judge concerned of the Supreme Court, and will announce the appointment and issue the necessary notification in the Gazette of India.

Appointment of Ad Hoc Judges

7. Article 127 of the Constitution provides that if at any time there should not a quorum of Judges of the Supreme Court available to hold or continue any session of the Court the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned request, in writing, a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to attend, for such period as may be necessary, the sittings of the Supreme Court. Whenever the necessity for such an appointment arises, the Chief Justice of India will consult the Chief Justice of the High Court concerned whether a Judge is available to attend the sittings of the Supreme Court. The Chief Justice of the High Court will communicate his consent to the release of a particular Judge after consulting the Chief Minister of the State in which the High Court is situated. The Chief Justice of India will then communicate to the Union Minister of Law, Justice and Company Affairs the name of the Judge and the period for which he will be required to attend the sittings of the Supreme Court, certifying that the release of the Judge has been agreed to by the Chief Justice of the High Court concerned and the Chief Minister of the State. The Union Minister of Law, Justice and Company Affairs will put up the recommendation to the Prime Minister, who will advise the President as to the person to be appointed to attend the sittings of the Supreme Court. As soon as the President gives his consent

to the appointment, the Secretary to the Government of India in the Department of Justice will (i) inform the Chief Justice of India, who will formally request the Judge concerned, in writing, to attend the sittings of the Supreme Court as an ad hoc Judge and (ii) announce the appointment and issue the necessary notification in the Gazette of India.

Attendance of Retired Judges at sittings of the Supreme Court

8. Under Article 128 of the Constitution, the Chief Justice of India may, at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court. Whenever, the necessity for such an appointment arises, the Chief Justice of India will informally sound the retired Judge, whom he proposes to recommend, as to the latter's willingness to serve and will there upon communicate to the Union Minister of Law, Justice and Company Affairs the name of the Judge and the period for which he will be required to sit and act as a Judge of the Supreme Court. If the Union Minister of Law, Justice and Company Affairs considers it desirable to bring any point to the notice of the Chief Justice of India or to suggest some other name, he may by personal correspondence convey his suggestions to the Chief Justice of India. On obtaining the views of the Chief Justice of India finally the Union Minister of Law, Justice and Company Affairs will put up the proposal to the Prime Minister who will advise the President as to the person to be appointed to sit and act as a Judge of the Supreme Court. As soon as the President gives his consent to the appointment, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India and will announce and issue the necessary notification in the Gazette of India.

FORM OF MEDICAL CERTIFICATE

(Please see paragraph 4)

I hereby certify that I have examined Shri Justice.....and
can not discover that he has any disease (communicable or otherwise), constitutional
weakness or bodily infirmity, which would disqualify* him for employment as Judge
of the Supreme Court exceptI do not
consider this a disqualification* for employment as Judge of the Supreme Court.

Sd/-
Signature:
Designation:

Dated.....

Signature of Candidate.....

*Note: This certificate should take into account the fact that a Supreme Court Judge retires at the age of 65 years.

**Memorandum of procedure for appointment and transfer of
Chief Justices and Judges of High Court**

Appointment of Chief Justice

The Government have, in consultation with the Chief Justice of India, decided as a matter of policy to appoint the Chief Justice of all High Courts from outside.

2. In case of initial appointment of a Chief Justice of a High Court, the provisions of Article 217 will have to be followed. In the case of Jammu & Kashmir High Court, appointment of Chief Justice shall be made in accordance with section 95 of the Constitution of Jammu & Kashmir. Transfer of Chief Justice from one High Court to another will be governed by the provision of Article 222. Transfer of a Chief Justice to and from Jammu & Kashmir High Court shall be made in accordance with clause (1) of Article 222 of the Constitution of India read with Article 222(1A) of the Constitution (Application to Jammu & Kashmir) Order, 1954.

3. For purposes of elevation as Chief Justices the *inter-se* seniority of puisne Judges will be reckoned on the basis of their seniority in their own High Courts and they will be considered for appointment as Chief Justices in other High Courts when their turn would normally have come for being considered for such appointment in their own High Courts.

4. A puisne Judge in a High Court who has one year or less to retire when his turn for being considered for elevation as Chief Justice arrives may be considered for appointment as Chief Justice in his own High Court if vacancy is to occur in the office of the Chief Justice in that High Court during that period.

5. Initiation of the proposal for the appointment of Chief Justice of a High Court would be by the Chief Justice of India. The process of appointment must be initiated well in time to ensure the completion at least one month prior to the date of anticipated vacancy for the Chief Justice of the High Court. The Chief Justice of India would ensure that when a Chief Justice is transferred from one High Court to another simultaneous appointment of his successor in office should be made and ordinarily the arrangement of appointment of an acting Chief Justice should not be made for more than one month.

5.1 The Chief Justice of India would send his recommendation for the appointment of a puisne Judge of the High Court as Chief Justice of that High Court or of another High Court, in consultation with the two senior-most Judges of the Supreme Court. He would also ascertain the views of the seniormost colleague in the Supreme Court who is conversant with the affairs of the High Court in which the recommendee has been functioning and whose opinion is likely to be significant in adjudging the suitability of the candidate. It is of no consequence whether the Judge of the Supreme Court, so consulted, had that High Court as Parent High Court or was transferred there from any other High Court.

5.2 The views of the Judges of the Supreme Court thus consulted would then be sent by the Chief Justice of India alongwith his proposal, to the Union Minister of Law, Justice and Company Affairs.

6. After receipt of the recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs would obtain the views of the concerned State Government. After receipt

of the views of the State Government, the Union Minister of Law, Justice and Company Affairs, will submit proposals to the Prime Minister, who will then advise the President as to the selection.

7. As soon as the appointment is approved by the President, the Department of Justice will announce the appointment and issue necessary notification in the Gazette of India.

Appointment of Acting Chief Justice

8. Appointment of Acting Chief Justices is to be made by the President under Article 223 of the Constitution. Intimation from the Chief Justice about his proceeding on leave or being unable to perform the duties of the Office of Chief Justice must be sent to all concerned well in advance to make arrangement for appointment of Acting Chief Justice.

9. When it is proposed to appoint the seniormost puisne Judge on duty, as Acting Chief Justice, as soon as above intimation is received, the Union Minister of Law, Justice and Company Affairs in the Central Government would appoint the seniormost puisne Judge and the Secretary to the Government of India in the Department of Justice will, inform the Chief Minister and announce the appointment and issue the necessary notification in the Gazette of India.

10. Where, however, it is proposed to appoint an Acting Chief Justice, other than the seniormost puisne Judge the procedure for appointment of a regular Chief Justice as prescribed above will have to be followed.

Appointment of Permanent Judges

11. The Chief Justice and Judges of the High Courts are to be appointed by the President under clause (1) of Article 217 of the Constitution. The Judges of the Jammu & Kashmir High Court are to be appointed by the President under section 95 of the Constitution of Jammu & Kashmir. Appointments to the High Court should be made on a time bound schedule so that the appointments are made well in advance preferably a month before the occurrence of the anticipated vacancy.

12. When a permanent vacancy is expected to arise in any year in the office of a Judge, the Chief Justice will as early as possible but at least 6 months before the date of occurrence of the vacancy, communicate to the Chief Minister of the State his views as to the persons to be selected for appointment. Full details of the persons recommended, in the format given in **Appendix-I** should invariably be sent. Before forwarding his recommendation, the Chief Justice must consult two of his seniormost colleagues on the Bench regarding the suitability of the names proposed. All consultation must be in writing and these opinions must be sent to the Chief Minister along with the recommendations.

13. The Chief Justice while sending his recommendation for appointing an additional Judge as a permanent Judge, must along with his recommendation furnish statistics of month-wise disposal of cases and judgments rendered by the Judge concerned as well as the number of cases reported in the Law Journal duly certified by him. The information would also be furnished regarding the total number of working days, the number of days he actually attended the court and the days of his absence from the Court during the period for which the disposal statistics are sent.

14. The proposal for appointment of a Judge of a High Court shall be initiated by the Chief Justice

of the High Court. However, if the Chief Minister desires to recommend the name of any person he should forward the same to the Chief Justice for his consideration. Since the Governor is bound by the advice of the Chief Minister heading the Council of Ministers, a copy of the Chief Justice's proposal, with full set of papers, should simultaneously be sent to the Governor to avoid delay. Similarly, a copy thereof may also be endorsed to the Chief Justice of India and the Union Minister of Law, Justice and Company Affairs to expedite consideration. The Governor as advised by the Chief Minister should forward his recommendation along with the entire set of papers to the Union Minister of Law, Justice and Company Affairs as early as possible but not later than six weeks from the date of receipt of the proposal from the Chief Justice of the High Court. If the comments are not received within the said time-frame, it should be presumed by the Union Minister of Law, Justice and Company Affairs that the Governor (*i.e.* Chief Minister) has nothing to add to the proposal and proceed accordingly.

15. The Union Minister of Law, Justice and Company Affairs would consider the recommendations in the light of such other reports as may be available to the Government in respect of the names under consideration. The complete material would then be forwarded to the Chief Justice of India for his advice. The Chief Justice of India would, in consultation with the two seniormost Judges of the Supreme Court, form his opinion in regard to a person to be recommended for appointment to the High Court. The Chief Justice of India and the collegium of two Judges of the Supreme Court would take into account the views of the Chief Justice of the High Court and of those Judges of the High Court who have been consulted by the Chief Justice as well as views of those Judges in the Supreme Court who are conversant with the affairs of that High Court. It is of no consequence whether that High Court is their parent High Court or they have functioned in that High Court on transfer.

15.1 After their consultations, the Chief Justice of India will in course of 4 weeks send his recommendation to the Union Minister of Law, Justice and Company Affairs. Consultation by the Chief Justice of India with his colleagues should be in writing and all such exchange of correspondence with his colleagues would be sent by the Chief Justice of India to the Union Minister of Law, Justice and Company Affairs. Once the names have been considered and recommended by the Chief Justice of India, they should not be referred back to the State Constitutional authorities even if a change takes place in the incumbency of any post. However, where it is considered expedient to refer back the names, the opinion of Chief Justice of India should be obtained. The Union Minister of Law, Justice and Company Affairs would then put up as early as possible, preferably, within 3 weeks, the recommendation of the Chief Justice of India to the Prime Minister who will advise the President in the matter of appointment.

16. The correspondence between the Chief Justice and the Chief Minister and the correspondence between the Chief Minister and the Governor, if any, should be in writing and copies of the correspondence should invariably be forwarded along with the Chief Minister's recommendations.

17. As soon as the appointment is approved by the President, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of the High Court, who will obtain from the person selected (i) a certificate of physical fitness as in Appendix-II signed by a Civil Surgeon or District medical officer, and (ii) a certificate of date of birth as in Appendix-III. A copy of the communication will also be sent simultaneously to the Chief Minister of the State. The medical certificates should be

obtained from all persons selected for appointment whether they are at the time of appointment in the service of the State or not. When these documents are obtained, the Chief Justice will intimate the fact to the Secretary to the Government of India in the Department of Justice and also forward these documents to him.

18. As soon as the warrant of appointment is signed by the President, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice and a copy of such communication will be sent to the Chief Minister. He will also announce the appointment and issue necessary notification in the Gazette of India.

Appointment of Permanent Judges in a High Court having jurisdiction over more than one State

19. For appointments in these High Courts, the Chief Justice would initiate proposal in a manner prescribed in para 12 above and forward his recommendations to the Governor of the State where the seat of High Court is situated, and in the case of High Court of Punjab & Haryana, to the senior of the two Governors of these States, who would do the coordination and obtain the views of other Governor and Chief Ministers concerned in writing and forward the same along with the recommendations of the Chief Justice of the High Court to the Union Minister of Law, Justice and Company Affairs for further appropriate action as prescribed in para 15 above. In case, any of the State authorities wishes to recommend a name different from the one recommended by the Chief Justice of the High Court, he should send the same to the Chief Justice of the High Court concerned for his consideration. The initiation of a recommendation for filling up of a vacancy would be made only by the Chief Justice of the High Court concerned.

Appointment of Additional Judges

20. Additional Judges can be appointed by the President under clause (1) of Article 224 of the Constitution. When the need for this arises, the State Government should first obtain the sanction of the Central Government for the creation of such additional posts. The correspondence relating to this should be in the normal official form. After the post is sanctioned the procedure to be followed for making the appointment will be same as given in paragraphs 12 to 18 for the appointment of a permanent Judge, except that a medical certificate will not be necessary from the person being appointed as an Additional Judge.

21. When an Additional Judge is being considered for confirmation as an Additional Judge for a fresh term, the relevant documents as mentioned in para 13 above also must be sent by the Chief Justice of the High Court concerned along with such recommendation.

22. The Chief Justice of the High Court, however, should not make a recommendation for appointment of an Additional Judge when a vacancy of a permanent Judge is available in that High Court.

Appointment of Acting Judges

23. Acting Judges can be appointed by the President under clause (2) of Article 224 of the Constitution. Such appointments will not, however, be made for periods of less than three months unless there are

special reasons for doing so. When occasion arises for making such an appointment, the same procedure will be followed, as given in paragraphs 12 to 18 for the appointment of a permanent Judge, except that a medical certificate will not be necessary from the person appointed as Acting Judge.

Ordinarily, members of the Bar should for obvious reasons not be suggested for appointment as Acting Judges.

Attendance of Retired Judges at Sitzings of High Courts

24. Under Article 224A of the Constitution, the Chief Justice of a High Court may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that court or of any other High Court to sit and act as a Judge of the High Court of that State. Whenever the necessity for such an appointment arises, the Chief Justice will after obtaining the consent of the person concerned, communicate to the Chief Minister of the State the name of the retired Judge and the period for which he will be required to sit and act as Judge of the High Court. The Chief Minister will, after consultation with the Governor, forward his recommendation to the Union Minister of Law, Justice and Company Affairs. The Union Minister of Law, Justice and Company Affairs would then consult the Chief Justice of India in accordance with the prescribed procedure. On receipt of CJI's advice, the same would be put up to the Prime Minister, who will then advise the President as to the person to be appointed to it and act as a Judge of the High Court. As soon as the President gives his consent to the appointment, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of the High Court and the Chief Minister(s) and will issue the necessary notification in the Gazette of India.

Transfer of a Judge (including Chief Justice) from One High Court to another High Court

25. Article 222 of the Constitution makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court. The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India whose opinion in this regard is determinative. Consent of a Judge for his first or subsequent transfer would not be required. All transfers are to be made in public interest *i.e.* for promoting better administration of justice throughout the country.

25.1 In the formation of his opinion for the transfer of a Judge, other than the Chief Justice, the Chief Justice of India is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred, as also the Chief Justice of the High Court to which the transfer is to be effected. The Chief Justice of India should also take into account the views of one or more Supreme Court Judges who are in a position to offer his/their views which would assist in the process of deciding whether or not a proposed transfer should take place.

25.2 In the case of transfer of a Chief Justice, only the views of one or more knowledgeable Supreme Court Judges need to be taken into account.

25.3 The views on the proposed transfer of a Judge or a Chief Justice of a High Court should be expressed in writing and should be considered by the Chief Justice of India and the four seniormost Judges of the Supreme Court. The personal factors relating to the concerned Judge, including the Chief

Justice, and his response to the proposal, including his preference of places, should invariably be taken into account by the Chief Justice of India and the first four puisne Judges of the Supreme Court before arriving at conclusion on the proposal.

25.4 The proposal for transfer of the Judge, including the Chief Justice should be referred to the Government of India alongwith the views of all those consulted in this regard.

26. After the recommendation of a transfer is received from the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs would submit the recommendation alongwith relevant papers to the Prime Minister who will then advise the President as to the transfer of the Judge concerned. After the President approves the transfer, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of the High Courts and the Chief Ministers of concerned States and will announce the transfer and issue the necessary notification in the Gazette of India.

27. Transfer of Judge to or from Jammu and Kashmir High Court shall be made in accordance with clause (1) of Article 222 of the Constitution of India read with Article 222 (1A) of the Constitution (Application to Jammu and Kashmir) order, 1954. Therefore, when it is proposed to transfer a Judge from or to the Jammu and Kashmir High Court, the Minister of Law and Justice in the Central Government will consult the Governor (Chief Minister) of Jammu and Kashmir for his views before putting up the relevant papers to the Prime Minister for advising the President. In case there is a difference of opinion, the Union Minister of Law, Justice and Company Affairs will consult the Chief Justice of India again before putting up the papers to the Prime Minister for advising the President on the matter of Transfer. On approval of the President, the transfer will be announced in the usual manner.

1. Full Name.....
2. Sex
3. Date of Birth.....
4. Family background.....
5. Marital status.....
6. Educational qualifications (Mention award of prize, scholarship, fellowship or any other distinction)
7. Practice:
 - (a) Date of enrolment
 - (b) Actual number of years of practice
 - (c) Places and/or the courts before whom practised and the period
 - (d) Nature of practice - Civil, Criminal, Constitutional, Taxation, Labour, Company, Service etc.
 - (e) The field of specialization, if any —
 - (f) (i) Professional income for the last three years - gross and taxable
(ii) Year in which first assessed to Income Tax - gross professional income in that year be furnished
 - (g) Reported judgments of Supreme Court and High Courts, for the last five years, in which argued independently (give citations).
 - (h) Unreported judgments of Supreme Court and High Courts, for the last five years, in which argued independently (annex certified/attested copies)
8. Association, if any, with any political party
 - (a) Name of the party
 - (b) Period of association
 - (c) Whether held any organizational office and, if so, period.
 - (d) Whether held elective office in any legislative or local authority and, if so, the period.
9. Whether held any position in the Bar Council and the Bar Association(s) and the period.
10. Whether member of any club or educational, cultural or social organization (give particulars).
11. Whether held any office as Advocate General, Government Advocate or Standing Counsel for the State or Union or any statutory authority or public undertakings (give particulars).
12. In the case of a Judicial Officer, details of the posts held during the last ten years with dates, any departmental inquiry held or contemplated, with particulars as to the nature of charges and period or periods involved and the outcome thereof, should be indicated.*
13. Whether spouse or any blood relation is practising in this High Court or any Court subordinate to it. If so, give particulars.

* Confidential Reports of last 15 years, to the extent written, should invariably be annexed by the High Court.

14. Whether spouse or any blood relation is working with a law firm having office(s) within the jurisdiction of this High Court. If so, give particulars.
15. Whether spouse or any blood relation practising in this High Court or a Court subordinate to it or working with a law firm having its office(s) within the jurisdiction of this High Court is living with you. If so, give particulars.
16. Whether you consent for transfer to a High Court other than this High Court, for a cooling off period of two years or till your spouse or any of your blood relation is practising in this High Court or a Court subordinate to it or is working with a law firm having office(s) within the jurisdiction of this High Court.
17. Whether related to any sitting Judge of High Court/Supreme Court. If so, state relationship.
18. Whether party to any civil, criminal or other litigation. If so, the nature of involvement.
19. Whether employed at any time either on part-time or full-time basis. If so, give status and period and the reasons for leaving.
20. whether appointed as Receiver/Commissioner/ Observer/Court Officer in any case. If so, give full particulars thereof.
21. Whether investigated and/or prosecuted for any criminal offence. If so, details thereof.
22. In case of a Judicial Officer, whether committed breach of any Conduct-Rule. If so, give particulars.
23. Whether any proceedings were initiated or are pending against you before Bar Council of India or State Bar Council. If so, particulars thereof.
24. General state of health.
25. Name of the High Courts (other than this High Court) for which there is preference for appointment. **

** Preference indicated, however, would not restrict appointment/transfer to any other High Court.

1. Age
2. Academic attainments
3. Standing and experience
4. Specialisation, if any
5. Gross Professional Income for last 3 years.
6. Competence:
 - (i) Equipment in law
 - (ii) Perception
 - (iii) Ability to deal with complex legal problems
 - (iv) Grasping capacity
 - (v) May be treated as :
(Excellent, Very Good, Good, Average)
7. Judicial Potential
 - (a) Maturity
 - (b) Poise and equanimity of temperament
 - (c) Does he subscribe to the Constitutional values
 - (d) Capacity to persuade and to be persuaded
 - (e) Patience
 - (f) Team Spirit
 - (g) Objectivity
 - (h) Analytical mind
 - (i) Fairness(May be rated as: Excellent; Very Good; Good; Average)
8. Integrity and Character
 - (a) Reputation
 - (i) In legal fraternity
 - (ii) In Society
 - (b) Antecedents
 - (c) Any affiliation/association which renders him unsuitable for the office of a Judge
 - (d) Any habits or aberrations which render him unsuitable for the office of a Judge.

9. Need of the court of a Judge in any specialised branch against the background of the present composition
10. Need to maintain the conventional ratio between Bar and Service Judges and Appellate and Original side Judges.
11. Any other matter to be borne in mind having regard to the peculiar circumstances of the court/person under consideration.

Sd/-

(Chief Justice of the High Court)

FORM OF MEDICAL CERTIFICATE
(Please see paragraph 17)

I hereby certify that I have examined Shri..... and cannot discover that he has any disease (communicable or otherwise); constitutional weakness or bodily infirmity, which would disqualify* him except..... I do not consider this disqualification* for employment as Judge of a High Court.

Sd/-

Signature:

Date:

Designation:

Sd/-

Signature of Candidate:

* Note: This certificate should take into account the fact that a High Court Judge retires at the age of 62 years.

I hereby certify that my date of birth is (here enter date of birth according to the English calendar) and in support thereof, I enclose the following documents:-

I shall submit separately.

A certified extract from:-

- (a) the Birth Register;
- (b) the School Register;
- (c) the College Register; and
- (d) the Service Book.

Sd/-

Signature of candidate

Date:

Note: If any of the documents is not available, please say so against it.

Case-load and judge-population ratio State/UT-wise

Sl. No.	Name of States/ Union Territories	Population of the States/UTs as per 2011 Census.	Pendency of Cases in District and Subordinate Courts and High Courts as on 31.12.2015 and Supreme Court as on 03.08.2016	Sanctioned Strength of Judicial Officers of District and Subordinate Courts as on 30.06.2016 and Supreme Court / High Courts as on 31.10.2016	Judges -Population Ratio <i>i.e.</i> Sanctioned Strength Judges per One Million (Ten Lakhs) of Population
1	2	3	4	5	8
1	Andhra Pradesh and Telengana	84665533	1031515	1034	12.21
2	Arunachal Pradesh	1382611	8776	17	12.30
3	Assam	31169272	242503	424	13.60
4	Bihar	103804637	2073303	1825	17.58
5	Chhattisgarh	25540196	285962	395	15.47
6	Goa	1457723	39615	57	39.10
7	Gujarat	60383628	2142011	1953	32.34
8	Haryana	25353081	524281	644	25.40
9	Himachal Pradesh	6856509	162553	155	22.61
10	Jammu and Kashmir	12548926	124763	245	19.52
11	Jharkhand	32966238	324357	671	20.35
12	Karnataka	61130704	1268966	1294	21.17
13	Kerala	33387677	1345127	466	13.96
14	Madhya Pradesh	72597565	1191799	1461	20.12
15	Maharashtra	112372972	2994074	2094	18.63
16	Manipur	2721756	6885	44	16.17
17	Meghalaya	2964007	7493	57	19.23
18	Mizoram	1091014	4671	63	57.74
19	Nagaland	1980602	3862	33	16.66
20	Odisha	41947358	1064039	804	19.17

1	2	3	4	5	8
21	Punjab	27704236	504028	674	24.33
22	Rajasthan	68621012	1479173	1199	17.47
23	Sikkim	607688	1299	18	29.62
24	Tamil Nadu	72138958	1082793	1032	14.31
25	Tripura	3671032	129789	106	28.87
26	Uttar Pradesh	199581477	5574490	2394	12.00
27	Uttarakhand	10116752	166618	280	27.68
28	West Bengal and Andaman and Nicobar Island	91727680	2628308	1022	11.14
29	Chandigarh	1054686	36322	30	28.44
30	Dadra and Nagar Haveli, Daman and Diu	585764	5626	7	11.95
31	Delhi	16753235	539601	793	47.33
32	Lakshadweep	64429	380	3	46.56
33	Puducherry	1244464	24973	26	20.89
	Supreme Court of India	—	60946	31	
	All High Courts		3870373	1079	
	TOTAL	1210193422	30951274	22430	18.53

Retirement age of Superior Court Judges of Other Countries

Name of Countries	Retirement age
USA	On turning 70 and having served 10 uninterrupted years as a judge
UK	From 1993 70 years, extendable to 75 years for both High Courts and Court of Appeal.
Australia	Hold office during "good behavior" and subject to compulsory retirement at 75 years.
Canada	Mandatory retirement at 75 years of age.
Switzerland	Judges of the Federal Tribunal elected for six years. In practice, however, they can be "re-elected" as long as they are alive and don't wish to discontinue. In reality, most judges resign on turning 70 years.
Germany	Appointed for 12 years term with mandatory retirement at 68 years.
South Africa	Appointed for 12 year non-renewable terms or until 70 years. Hold office until discharged from active service by an Act of Parliament.
Afghanistan	Appointed to serve single 10 years terms.
Bangladesh	67 years.
Argentina	Mandatory retirement at 75 years.
Brazil	Appointed for life with mandatory retirement at 75 years.
Austria	Appointed for life.
Belgium	Appointed for life with mandatory retirement at 70 years.
Albania	Appointed to serve single 9 year terms with one-third of the membership renewed every 3 years.
Burma	Mandatory retirement at 70 years
Denmark	Appointed for life with retirement at 70 years
Russia	Appointed for life.
Bhutan	10 year terms or until 65 years of age.
Bulgaria	Mandatory retirement at 65 years of age.
Finland	Mandatory retirement at 65 years of age.
France	Non-renewable 9 years terms.
Hong Kong	Appointed until normal retirement at 65 years of age.
Hungary	12 year terms with mandatory retirement at 70 years of age.
Indonesia	Mandatory retirement at 70 years of age.

Name of Countries	Retirement age
Iraq	Retirement nominally at 63 years of age
Ireland	Judges can serve until at 70 years of age.
Italy	Judges serve upto 9 years.
Kenya	Judges serve till 70 years of age.
Korea, North	5 years terms
Korea, South	Retirement at 65 years of age.
Malaysia	Mandatory retirement at 65 years of age.
Mauritius	Judges serve until retirement at 62 years of age.
Nepal	Judges serve until 65 years of age.
Netherlands	Judges appointed for life or until mandatory retirement at 70 years of age.
Nigeria	Judges serve until 65 years of age.
Norway	Judges retirement mandatory at 70 years of age.
Pakistan	Judges can serve until 65 years of age.
Philippines	Judges serve until 70 years of age.
Poland	Judges appointed until retirement usually at 65 years of age, but tenure can be extended.
Puerto Rico	Judges serve until compulsory retirement at 70 years of age.

A Statement indicating pendency of Cases in High Courts

Sl. No.	High Court	Case Type	Opening balance Institution as on 01.01.2015	Disposal	Pendency As on 31.12.2015	
1	2	3	4	5	6	7
1	Allahabad	Civil	552302	144815	137618	559499
		Criminal	348547	138463	127680	359330
		Total	900849	283278	265298	918829
2	Andhra Pradesh	Civil	216157	63004	47100	232061
		Criminal	33544	19257	14590	38211
		Total	249701	82261	61690	270272
3	Bombay	Civil	189946	70588	60632	199902
		Criminal	42869	24847	21177	46539
		Total	232815	95435	81809	246441
4	Calcutta	Civil	186391	52716	57763	181344
		Criminal	40052	17371	17485	39938
		Total	226443	70087	75248	221282
5	Delhi	Civil	51464	31578	30080	52962
		Criminal	15525	14401	14104	15822
		Total	66989	45979	44184	68784
6	Gujarat	Civil	57670	29731	30701	56700
		Criminal	30330	30746	30704	30372
		Total	88000	60477	61405	87072
7	Gauhati	Civil	20410	12694	11935	21169
		Criminal	4848	2187	2256	4779
		Total	25258	14881	14191	25948
8	Himachal Pradesh	Civil	27118	10622	16816	20924
		Criminal	4707	3393	2491	5609
		Total	31825	14015	19307	26533
9	Jammu and Kashmir	Civil	49660	14214	11766	52108
		Criminal	3492	1848	995	4345
		Total	53152	16062	12761	56453
10	Karnataka	Civil	196677	128304	107346	217635
		Criminal	17443	16981	14605	19819
		Total	214120	145285	121951	237454

1	2	3	4	5	6	7
11	Kerala	Civil	109392	71815	59901	121306
		Criminal	36514	21100	21551	36063
		Total	145906	92915	81452	157369
12	Madras	Civil	228914	97889	76670	250133
		Criminal	34655	64124	64484	34295
		Total	263569	162013	141154	284428
13	Madhya Pradesh	Civil	166958	70487	65592	171853
		Criminal	91755	62487	52268	101974
		Total	258713	132974	117860	273827
14	Odisha	Civil	163119	35175	67546	130748
		Criminal	38963	37300	37558	38705
		Total	202082	72475	105104	169453
15	Patna	Civil	81256	27073	29227	79102
		Criminal	56995	62944	70303	49636
		Total	138251	90017	99530	128738
16	Punjab and Haryana	Civil	209167	68635	68958	208844
		Criminal	70532	59985	51010	79507
		Total	279699	128620	119968	288351
17	Rajasthan	Civil	170222	51034	38755	182501
		Criminal	58131	45820	41586	62365
		Total	228353	96854	80341	244866
18	Sikkim	Civil	68	144	131	81
		Criminal	40	63	70	33
		Total	108	207	201	114
19	Uttarakhand	Civil	16669	9999	8108	18560
		Criminal	6436	7272	5588	8120
		Total	23105	17271	13696	26680
20	Chhattisgarh	Civil	28209	16996	14069	31136
		Criminal	16868	13930	11823	18975
		Total	45077	30926	25892	50111
21	Jharkhand	Civil	42490	9700	9620	42570
		Criminal	38325	21218	21694	37849
		Total	80815	30918	31314	80419

1	2	3	4	5	6	7
22	Tripura	Civil	3772	2197	3484	2485
		Criminal	693	747	888	552
		Total	4465	2944	4372	3037
23	Manipur	Civil	2903	1843	1567	3179
		Criminal	120	60	44	136
		Total	3023	1903	1611	3315
24	Meghalaya	Civil	497	579	500	576
		Criminal	20	73	72	21
		Total	517	652	572	597
All High Courts Total civil			2771431	1021832	955885	2837378
All High Courts Total criminal			991404	666617	625026	1032995
GRAND TOTAL of all High Courts			3762835	1688449	1580911	3870373

**Statement indicating State and UT wise details of Pending Cases in
District/Subordinate Courts for the year 2015**

Sl. No.	States	Case Type	Opening balance as on 01.01.2015	Institution	Disposal	Pendency As on 31.12.2015
1	2	3	4	5	6	7
1	Andhra Pradesh and Telagana	Civil	491099	255324	247744	498679
		Criminal	523273	420532	410969	532836
		Total	1014372	675856	658713	1031515
2	Arunachal Pradesh	Civil	551	1662	756	1457
		Criminal	5344	4807	2832	7319
		Total	5895	6469	3588	8776
3	Assam	Civil	68650	45026	46301	67375
		Criminal	171947	229418	226237	175128
		Total	240597	274444	272538	242503
4	Bihar**	Civil	305934	72008	41966	335976
		Criminal	1617595	370444	250712	1737327
		Total	1923529	442452	292678	2073303
5	Chhattisgarh	Civil	63662	30622	29563	64721
		Criminal	215225	171627	165611	221241
		Total	278887	202249	195174	285962
6	Goa	Civil	20355	14848	10758	24445
		Criminal	14646	24531	24007	15170
		Total	35001	39379	34765	39615
7	Gujarat	Civil	648560	180098	170828	657830
		Criminal	1531419	875598	922836	1484181
		Total	2179979	1055696	1093664	2142011
8	Haryana	Civil	233247	158801	160518	231530
		Criminal	260521	414152	381922	292751
		Total	493768	572953	542440	524281
9	Himachal Pradesh	Civil	66801	36288	33012	70077
		Criminal	109354	144913	161791	92476
		Total	176155	181201	194803	162553

1	2	3	4	5	6	7
10	Jammu and Kashmir	Civil	44944	17657	17174	45427
		Criminal	75079	74770	70513	79336
		Total	120023	92427	87687	124763
11	Jharkhand*	Civil	67111	19694	21044	65761
		Criminal	248113	108284	97801	258596
		Total	315224	127978	118845	324357
12	Karnataka	Civil	652773	330786	308745	674814
		Criminal	573339	921195	900382	594152
		Total	1226112	1251981	1209127	1268966
13	Kerala	Civil	421261	316119	305656	431724
		Criminal	910297	1035893	1032787	913403
		Total	1331558	1352012	1338443	1345127
14	Madhya Pradesh	Civil	268943	119107	126533	261517
		Criminal	912516	964817	947051	930282
		Total	1181459	1083924	1073584	1191799
15	Maharashtra	Civil	1044236	365995	328278	1081953
		Criminal	1824528	1408502	1320909	1912121
		Total	2868764	1774497	1649187	2994074
16	Manipur	Civil	4494	2627	3589	3532
		Criminal	4368	2791	3806	3353
		Total	8862	5418	7395	6885
17	Meghalaya	Civil	2070	1917	1918	2069
		Criminal	5054	7667	7297	5424
		Total	7124	9584	9215	7493
18	Mizoram	Civil	1798	5383	4915	2266
		Criminal	1932	5913	5440	2405
		Total	3730	11296	10355	4671
19	Nagaland	Civil	1192	1946	1495	1643
		Criminal	2361	3189	3331	2219
		Total	3553	5135	4826	3862
20	Odisha	Civil	245295	68715	50131	263879
		Criminal	825082	333208	358130	800160
		Total	1070377	401923	408261	1064039

1	2	3	4	5	6	7
21	Punjab	Civil	251974	166763	173911	244826
		Criminal	255689	408283	404770	259202
		Total	507663	575046	578681	504028
22	Rajasthan	Civil	457335	244132	228471	472996
		Criminal	997231	1152237	1143291	1006177
		Total	1454566	1396369	1371762	1479173
23	Sikkim	Civil	324	558	479	403
		Criminal	675	1467	1246	896
		Total	999	2025	1725	1299
24	Tamil Nadu	Civil	614752	335867	298922	651697
		Criminal	424068	859455	852427	431096
		Total	1038820	1195322	1151349	1082793
25	Tripura	Civil	9428	6830	5626	10632
		Criminal	105781	199831	186455	119157
		Total	115209	206661	192081	129789
26	Uttar Pradesh	Civil	1422894	544080	500052	1466922
		Criminal	4094110	2826830	2813372	4107568
		Total	5517004	3370910	3313424	5574490
27	Uttarakhand	Civil	29603	25979	24700	30882
		Criminal	115723	196260	176247	135736
		Total	145326	222239	200947	166618
28	West Bengal	Civil	563430	142735	137687	568478
		Criminal	1993031	1011424	954120	2050335
		Total	2556461	1154159	1091807	2618813
29	Andaman and Nicobar Islands	Civil	2854	1070	643	3281
		Criminal	6376	7131	7293	6214
		Total	9230	8201	7936	9495
30	Chandigarh	Civil	17520	12389	14755	15154
		Criminal	22894	129509	131235	21168
		Total	40414	141898	145990	36322
31	Dadra and Nagar Haveli	Civil	823	878	213	1488
		Criminal	2279	1396	1260	2415
		Total	3102	2274	1473	3903

1	2	3	4	5	6	7
32	Daman and Diu	Civil	862	795	719	938
		Criminal	753	1163	1131	785
		Total	1615	1958	1850	1723
33	Delhi	Civil	132862	88477	82915	138424
		Criminal	326228	604587	529638	401177
		Total	459090	693064	612553	539601
34	Lakshadweep	Civil	170	70	109	131
		Criminal	263	157	171	249
		Total	433	227	280	380
35	Puducherry	Civil	12252	7569	7101	12720
		Criminal	12179	13382	13308	12253
		Total	24431	20951	20409	24973
GRAND TOTAL of Civil cases			8170059	3622815	3387227	8405647
GRAND TOTAL of Criminal cases			18189273	14935363	14510328	18614308
GRAND TOTAL of all Subordinate Courts			26359332	18558178	17897555	27019955

*Figures were modified by Judgeship of Deoghar and Jamtara during the year 2015.

** 20 Criminal cases transferred during the year 2015 making total pendency to 2073303 as on 31.12.2015

**Communities and Caste-wise Disaggregated data of undertrials as furnished by National Crime Records Bureau
State/UT-wise and Caste-wise Undertrial Prisoners lodged in different jail at the end of 2015**

Sl. No.	States/UTs	SC		ST		OBC		Others		Total						
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female					
1	Andhra Pradesh	880	52	932	882	40	922	1742	77	1819	1137	95	1232	4641	264	4905
2	Arunachal Pradesh	0	0	0	60	3	63	0	0	0	72	1	73	132	4	136
3	Assam	986	29	1015	1275	52	1327	1341	56	1397	1882	75	1957	5484	212	5696
4	Bihar	4785	169	4954	1397	39	1436	9979	332	10311	6528	195	6723	22689	735	23424
5	Chhattisgarh	2423	109	2532	2756	163	2919	2883	165	3048	1290	81	1371	9352	518	9870
6	Goa	45	1	46	43	1	44	103	9	112	53	8	61	244	19	263
7	Gujarat	1227	65	1292	1294	72	1366	2580	92	2672	2222	66	2288	7323	295	7618
8	Haryana	2066	96	2162	232	17	249	2541	98	2639	5247	192	5439	10086	403	10489
9	Himachal Pradesh	356	16	372	59	1	60	166	1	167	570	17	587	1151	35	1186
10	Jammu and Kashmir	222	11	233	206	13	219	63	1	64	1335	55	1390	1826	80	1906
11	Jharkhand	2142	140	2282	3777	213	3990	4093	217	4310	2861	145	3006	12873	715	13588
12	Karnataka	921	12	933	687	9	696	333	11	344	7048	293	7341	8989	325	9314
13	Kerala	845	40	885	30	3	33	2061	65	2126	1473	50	1523	4409	158	4567
14	Madhya Pradesh	4563	169	4732	4659	161	4820	6117	217	6334	5243	171	5414	20582	718	21300
15	Maharashtra	4116	161	4277	3564	99	3663	4387	280	4667	8649	411	9060	20716	951	21667
16	Manipur	11	0	11	138	13	151	329	2	331	20	20	40	498	35	533
17	Meghalaya	60	0	60	620	7	627	109	0	109	65	1	66	854	8	862
18	Mizoram	16	0	16	495	72	567	25	0	25	0	0	0	536	72	608

19	Nagaland	96	4	100	253	3	266	9	0	9	15	0	15	383	7	390
20	Odisha	2703	130	2833	2730	82	2812	3924	222	4146	2697	96	2793	12054	530	12584
21	Punjab	3645	220	3865	1571	88	1659	1740	104	1844	5498	180	5678	12454	592	13046
22	Rajasthan	2689	95	2784	2645	77	2722	5352	154	5506	3078	135	3213	13764	461	14225
23	Sikkim	10	0	10	25	2	27	88	8	96	7	0	7	130	10	140
24	Tamil Nadu	2712	149	2861	159	10	169	4057	263	4320	499	1	500	7427	423	7850
25	Telangana	889	74	963	418	30	448	1255	121	1376	716	19	735	3278	244	3522
26	Tripura	104	6	110	115	4	119	66	5	71	149	9	158	434	24	458
27	Uttar Pradesh	13476	607	14083	1906	96	2002	24883	1028	25911	19906	767	20673	60171	2498	52669
28	Uttarakhand	541	23	564	278	14	292	477	24	501	906	29	935	2202	90	2292
29	West Bengal	3355	216	3571	1052	66	1118	1678	121	1799	8216	638	8854	14301	1041	15342
	TOTAL (States)	55884	2594	58478	33336	1450	34786	82381	3673	86054	87382	3750	91132	258983	11467	270450
30	Andaman and Nicobar Islands	0	0	0	2	0	2	0	0	0	74	5	79	76	5	81
31	Chandigarh	42	2	44	0	0	0	72	4	76	213	6	219	327	12	339
32	Dadra and Nagar Haveli	3	0	3	43	1	44	7	0	7	100	12	112	153	13	166
33	Daman and Diu	3	1	4	6	0	6	8	1	9	12	0	12	29	2	31
34	Delhi	2521	66	2587	130	7	137	2509	76	2585	5305	265	5570	10465	414	10879
35	Lakshadweep	0	0	0	23	0	23	0	0	0	0	0	0	23	0	23
36	Puducherry	23	0	23	1	0	1	76	2	78	4	1	5	104	3	107
	Total (UTs)	2592	69	2661	205	8	213	2672	83	2755	5708	289	5997	11177	449	11626
	Total (All-India)	58476	2663	61139	33541	1458	34999	85053	3756	88809	93090	4039	97129	270160	11916	282076

Source: Prison Statistics India

State/UT-wise and religion-wise undertrial prisoners lodged in different jail at the end of 2015

Sl. No.	States/UTs	Hindu		Muslim		Sikh		Christain		Others		Total									
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female								
1	Andhra Pradesh	3637	228	3865	431	20	451	30	0	30	0	30	517	16	533	26	0	26	4641	264	4905
2	Arunachal Pradesh	43	0	43	17	0	17	0	0	0	0	0	58	4	62	14	0	14	132	4	136
3	Assam	2862	115	2977	1986	73	2059	49	0	49	0	49	458	18	476	129	6	135	5484	212	5696
4	Bihar	18728	592	19320	3915	140	4055	2	0	2	0	2	23	3	26	21	0	21	22689	735	23424
5	Chhattisgarh	8313	478	8791	489	21	510	94	7	101	7	101	377	12	389	79	0	79	9352	518	9870
6	Goa	105	10	115	47	5	52	5	0	5	0	5	53	4	57	34	0	34	244	19	263
7	Gujarat	5494	248	5742	1661	45	1706	74	0	74	0	74	44	0	44	50	2	52	7323	295	7618
8	Haryana	8295	324	8619	1029	22	1051	619	46	665	30	33	30	3	33	113	8	121	10086	403	10489
9	Himachal Pradesh	1049	30	1079	52	4	56	33	0	33	0	33	8	0	8	9	1	10	1151	35	1186
10	Jammu and Kashmir	705	27	732	1033	48	1081	62	5	67	16	10	16	10	0	10	0	10	1826	80	1906
11	Jharkhand	8330	485	8815	2604	111	2715	59	2	61	1212	74	1286	74	1286	668	43	711	12873	715	13588
12	Karnataka	7378	269	7647	1289	44	1333	6	0	6	297	11	308	11	308	19	1	20	8989	325	9314
13	Kerala	1810	110	1920	1149	32	1181	0	0	0	1450	16	1466	16	1466	0	0	0	4409	158	4567
14	Madhya Pradesh	17645	579	18224	2677	81	2758	82	6	88	82	8	90	8	90	96	44	140	20582	718	21300
15	Maharashtra	11356	608	11964	6275	223	6498	262	6	268	351	25	376	25	376	2472	89	2561	20716	951	21667
16	Manipur	287	12	299	66	2	68	0	0	0	138	13	151	13	151	7	8	15	498	35	533
17	Meghalaya	123	0	123	100	1	101	3	0	3	608	7	615	7	615	20	0	20	854	8	862
18	Mizoram	20	0	20	17	0	17	1	0	1	496	72	568	72	568	2	0	2	536	72	608
19	Nagaland	48	1	49	45	2	47	0	0	0	290	4	294	4	294	0	0	0	383	7	390
20	Odisha	9169	413	9582	1058	38	1096	239	13	252	1262	45	1307	45	1307	326	21	347	12054	530	12584

21 Punjab	4157	170	4327	445	22	467	7186	353	7539	424	25	449	242	22	264	12454	592	13046
22 Rajasthan	10826	397	11223	2210	44	2254	576	16	592	41	2	43	111	2	113	13764	461	14225
23 Sikkim	99	8	107	10	0	10	0	0	0	8	2	10	13	0	13	130	10	140
24 Tamil Nadu	5196	332	5528	1252	38	1290	0	0	0	959	53	1012	20	0	20	7427	423	7850
25 Telangana	2153	180	2333	940	50	990	28	0	28	135	12	147	22	2	24	3278	244	3522
26 Tripura	331	21	352	75	3	78	0	0	0	21	0	21	7	0	7	434	24	458
27 Uttar Pradesh	43541	2023	45564	16164	449	16613	350	16	366	97	7	104	19	3	22	60171	2498	62669
28 Uttarakhand	1059	49	1108	776	25	801	298	11	309	52	4	56	17	1	18	2202	90	2292
29 West Bengal	7287	583	7870	6731	450	7181	28	0	28	132	6	138	123	2	125	14301	1041	15342
TOTAL (States)	180046	8292	188338	54543	1993	56536	10086	481	10567	9639	446	10085	4669	255	4924	258983	11467	270450
30 Andaman and Nicobar Islands	39	4	43	4	1	5	0	0	0	25	0	25	8	0	8	76	5	81
31 Chandigarh	163	6	169	42	2	44	115	4	119	7	0	7	0	0	0	327	12	339
32 Dadra and Nagar Haveli	138	8	146	15	5	20	0	0	0	0	0	0	0	0	0	153	13	166
33 Daman and Diu	15	2	17	12	0	12	1	0	1	1	0	1	0	0	0	29	2	31
34 Delhi	7703	306	8009	2335	68	2403	212	17	229	195	23	218	20	0	20	10465	414	10879
35 Lakshadweep	0	0	0	23	0	23	0	0	0	0	0	0	0	0	0	23	0	23
36 Puducherry	90	2	92	9	1	10	0	0	0	5	0	5	0	0	0	104	3	107
TOTAL (UTs)	8148	328	8476	2440	77	2517	328	21	349	233	23	256	28	0	28	11177	449	11626
TOTAL (All-India)	188194	8620	196814	56983	2070	59053	10414	502	10916	9872	469	10341	4697	255	4952	270160	11916	282076

Source: Prison Statistics India

List of Legal Luminaries and other Stakeholders who submitted written views

Sl. No.	Name of individuals/Experts/Organisations
1.	Shri Gopal Subramaniam, Senior Advocate, Supreme Court of India
2.	Shri F.S. Nariman, Senior Advocate, Supreme Court of India
3.	Shri K. Parasaran, Member, Rajya Sabha and Senior Advocate, Supreme Court of India
4.	Shri R. Shunmugasundaram, President, The Madras Bar Association
5.	Shri Rajiv Dahiya, Chairman, Suraz India Trust, Rajasthan
6.	Shri Mathews J. Nedumpara, President, National Lawyers Campaign, Mumbai
7.	Shri Kishor Kunal, Bihar
8.	Shri C. Brahmarajan, Chennai
9.	Shri Nirmalendu Ganguly, Advocate, Calcutta High Court, Kolkata
10.	Shri Milap Choraria, New Delhi
11.	Shri Gururaja Rao B.K., Ballari
12.	Shri Swaraj Kumar Mohanty, Orissa
13.	Shri A.C. Philip, Advocate, New Delhi
14.	Shri Mahesh Prasad Advocate, Kolkata
15.	Shri D.G. Prabhakaran, Advocate, Gudiyattam
16.	Dr. H.C. Sharatchandra
17.	Professor Y.C. Bhatnagar (Retired)
18.	Shri Ran Dheer Singh, Special Secretary Law and Add. L.R., Government of Uttar Pradesh
19.	Shri Vishar Singh Batra, Advocate, Uttar Pradesh
20.	Dr. Ajay Nathani, Principal, Government Law College, Mumbai
21.	Shri Angkina Saika, Advocate, Assam
22.	Shri J. V. Raj, District Judge, Madras
23.	Shri Surendera Pal Advocate, Haryana
24.	Shri Shekhar Bhatt
25.	Shri Challa Radha Krishna Reddy, Hyderabad
26.	Prof. Dr. Geeta Oberoi, Professor, National Judicial Academy
27.	Prof. N. Gunachandran
28.	Dr. Lokesh Kumar, New Delhi
29.	Shri P.S. Sundaram, Advocate, Tuticorin

Sl. No.	Name of individuals/Experts/Organisations
30.	Shri Mvsingh, Bhopal
31.	Shri Prabhat Kumar Srivastawa, Advocate
32.	Shri David Annoussamy, Emeritus Member of The Internation Academy of Comparative Law
33.	Shri Sudeep
34.	Shri Nischal P., Bengaluru
35.	Shri Sumit Khanna, Advocate, Mumbai
36.	Sarveshchander Divedi, Lucknow
37.	Ms. Indira Unninar, Advocate, Supreme Court & Delhi High Court, Gurgaon
38.	Shri Naveen K. Kashyap, Vice President, Delhi Judicial Services Association (Regd.), Delhi
39.	Shri Aditya Manubarwala and Shardool Kulkarni, Uttar Pradesh
40.	Shri Chander Parkash Koshik, National President, Akhil Bharat Hindu Mahasabha
