

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

**RAJYA SABHA**

**UNSTARRED QUESTION NO. 2188**

**TO BE ANSWERED ON THURSDAY, THE 04.08.2022**

**Selection procedure of judges**

**2188. SHRI ANIL DESAI:**

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

- (a) the total vacant posts of judges in higher/lower judiciary during the last five years, year-wise;
- (b) the selection procedure for these judges;
- (c) whether Government and judges are satisfied with the merit of this selection procedure; and
- (d) whether there is any demand/need arose to revisit the selection criteria, if so, the details thereof?

**ANSWER**

**MINISTER OF LAW AND JUSTICE**

**(SHRI KIREN RIJJU)**

(a) and (b): The total vacant posts of Judges in the Supreme Court and High Courts and Judicial Officers in District & Subordinate Courts during the last five years as under:-

<b>Court</b>	<b>Vacant post of Judges/Judicial Officers during 2018 to2022</b>				
	2018 (as on 01.01.2018)	2019 (as on 01.01.2019)	2020 (as on 01.01.2020)	2021 (as on 01.01.2021)	2022 (as on 01.08.2022)
<b>Supreme Court</b>	04	01	04	01	03
<b>High Courts</b>	398	392	401	411	380
<b>District &amp; Subordinate Courts</b>	5925	5647	5208	4929	5345

Appointment of Judges of the Supreme Court and High Courts is made under Articles 124, 217 and 224 of the Constitution of India. As per the procedure laid down in the Memorandum of Procedure (MoP) prepared in 1998 pursuant to the Supreme Court Judgment of October 6, 1993 (Second Judges case) read with their Advisory Opinion of October 28, 1998 (Third Judges case), the initiation of proposal for appointment of Judges in the Supreme Court vests with the Chief Justice of India, while initiation of proposal for appointment of Judges in the High Courts vests with the Chief Justice of the concerned High Court. Chief Justice of the High Court is required to initiate the proposal to fill up vacancy of a High Court Judge six months prior to the occurrence of vacancy.

Under Article 235 of the Constitution of India, the administrative control over the members of district and subordinate judiciary in the States vest with the concerned High Court. Further, in exercise of powers conferred under proviso to Article 309 read with Articles 233 and 234 of the constitution, the respective State Government, in consultation with the High Court, frames the Rules and Regulations regarding the issue of appointment, promotion, reservations and retirement of Judicial Officers in the State Judicial Service. Hence, in so far as recruitment of judicial officers in the States is concerned, respective High Courts do it in certain States, whereas the High Courts do it in consultation with the State Public Service Commissions in other States.

(c) and (d): In order to change the Collegium system of appointments of Judges of the Supreme Court and High Courts and to make it more broadbased and transparent, the Government brought into force the Constitution (Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 w.e.f. 13.04.2015. However, both the Acts were challenged in the Supreme Court. The Supreme Court vide Judgment dated 16.10.2015 declared both the Acts as unconstitutional and void. The Collegium system as existing prior to the enforcement of the Constitution (Ninety-Ninth Amendment) Act, 2014 was declared to be operative.

The Union Government does not have a role under the Constitution in the selection and appointment of judicial officers in District/ subordinate judiciary. The Supreme Court, in its orders of 04<sup>th</sup> January, 2007 in Malik Mazhar case, has devised a process and time frame to be followed for the filling up of vacancies in subordinate judiciary which stipulates that the process for recruitment of judges in the subordinate courts would commence on 31<sup>st</sup> March of a calendar year and end by 31<sup>st</sup> October of the same year. The Supreme Court has permitted State Governments / High Courts for variations in the time schedule in case of any difficulty based on the peculiar geographical and climatic conditions in the State or other relevant conditions.

Further, in compliance of the above directions of the Supreme Court, Department of Justice forwarded a copy of the Malik Mazhar judgement to Registrars General of all High Courts for necessary action. Department of Justice is writing from time to time to Registrars General of all High Courts to expedite the filling up of vacancies in subordinate judiciary mandated by Malik Mazhar case.

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