

[25th July, 2000]

RAJYA SABHA

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*Tuesday, 25th July, 2000/3 Sravana, 1922 (Saka)*

The House met at eleven of the clock, MR. CHAIRMAN *in the Chair*.

## ORAL ANSWERS TO QUESTIONS

### **Vacancies of Judges in the Supreme Court and High Courts**

\*21. SHRI K.M. KHAN:

SHRI ANANTRAY DEVSHANKER DAVE:†

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

(a) the details of vacancies of judges in the Supreme Court and High Courts, court-wise till date;

(b) since when these vacancies have been lying; and

(c) what steps are being taken by Government to fill up these vacancies at the earliest?

THE MINISTER OF STATE OF THE MINISTRY OF INFORMATION AND BROADCASTING AND MINISTER OF STATE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): (a) to (c) As on 20.7.2000 there were 2 vacancies of judges in the Supreme Court of India. These arose on 5.5.2000 and 1.7.2000.

As on 20.7.2000 there were 167 vacancies of Judges/Additional Judges (including 27 posts which have been agreed to be created) in various High Courts of the country. A statement indicating High Court wise break up is enclosed (*See below*).

These vacancies arose, from time to time, due to retirement, resignation and elevation etc. of the judges, as also the creation of new posts.

The filling up of vacancies in the Supreme Court of India and the High Courts is a Consultative process among the Constitutional authorities. Every effort is made to fill up the existing vacancies expeditiously.

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†The question was actually asked on the floor of the House by Shri Anantray Devshanker Dave.

## Statement

Sl. No.	High Court	Vacancies in the sanctioned strength	Newly agreed posts	Total vacancies
1	Allahabad	17	5	22
2	Andhra Pradesh	12	-	12
3	Bombay	14	-	14
4	Calcutta	18	2	20
5	Delhi	4	2	6
6	Gauhati	6	1	7
7	Gujarat	2	8	10
8	Himachal Pradesh	2	-	2
9	Jammu and Kashmir	5	-	5
10	Karnataka	6	1	7
11	Kerala	5	1	6
12	Madhya Pradesh	8	1	9
13	Madras	10	-	10
14	Orissa	3	1	4
15	Patna	9	2	11
16	Punjab and Haryana	8	3	11
17	Rajasthan	10	-	10
18	Sikkim	1	-	1
		140	27	167

श्री अनन्तराय देवशंकर दवे: सभापति जी, माननीय मंत्री जी ने अपना ब्यौरा सभा पटल पर रखा है लेकिन इन्होंने लोक सभा में दिनांक 6 मार्च 2000 को मिनिस्टर ऑफ लॉ, जस्टिस एंड कम्पनी एफेयर्स की ओर से जो जवाब दिया था, मैं उसकी ओर माननीय मंत्री जी का ध्यान आकर्षित करना चाहता हूँ। वहां इन्होंने बताया था—

"Periodical review of strength of Judges of the High Courts is undertaken once in three years and on the basis of review in 1998, it has been decided to create more posts of Judges in the High Courts." मैं यह भी मानता हूँ कि इन्होंने संख्या

में बढ़ोत्तरी की हुई है। लेकिन जो जवाब इन्होंने दिया है उसमें करीब 140 वैकेंसीज अब हाई कोर्ट्स में हैं, पहले जो जवाब दिया था उसमें 123 जगह खाली थीं। मेरा कहना यह है कि आप स्ट्रेंथ की बढ़ोत्तरी कर रहे हैं लेकिन जगह फिलअप नहीं हो रही हैं। मैं मानता हूँ कि देश में हर जगह, हर प्रांत में कई लोग रिटायर हो गए हैं और किसी ने रेजिगनेशन भी दे दिया। लेकिन जो पहले पद 123 खाली थे उनमें संख्या बढ़कर अब 140 हो गई है। मैं मानता हूँ कि आपने कुछ प्रयास भी किए होंगे, लेकिन एक ओर यदि सुप्रीम कोर्ट, हाई कोर्ट्स और लेअर कोर्ट्स में, एवरी वेहार केसों की संख्या बढ़ती जा रही है तो स्थिति वही है। मैं आपसे यह जानना चाहता हूँ कि आपने इस बारे में क्या प्रयत्न किए हैं और ये जगह कब तक फिलअप होंगी क्योंकि कई सालों से कोर्ट में केसेज कोर्ट में पेंडिंग पड़े हैं। हर प्रांत में खाली जगह बढ़ती जा रही है, आप इनको कब तक भरेंगे? आपके पास कोई ठोस सुझाव पार्लियामेंट को देने के लिए है या नहीं?

श्री अरुण जेटली: सभापति जी, माननीय सदस्य ने ठीक कहा है कि 140 स्थान अभी भी रिक्त हैं और 27 एडिशनल वैकेंसीज किएट की गई हैं, आवश्यकताओं को महसूस करते हुए, वे भी अब खाली हैं इस संबंध में जो नियुक्तियों की प्रक्रिया है उसमें 167 में से 85 केसेज ऐसे हैं जो प्रोसेस हो रहे हैं। जहां हाई कोर्ट के चीफ-जस्टिस ने रेकमेंडेशन्स कर दी हैं उनमें नियुक्तियां करने की प्रक्रिया चल रही है। इसके अतिरिक्त 82 ऐसे केसेज हैं जिनके लिए अभी भी प्रोसेस के लिए सुझाव नहीं आया है। इसलिए मेरे learned predecessor, Shri Ram Jethmalaniji, had written to the Chief Justices of all the High Courts to kindly initiate the process at the earliest so that these vacancies could be taken up.

श्री अनन्तराय देवशंकर दवे: मान्यवर, मैंने यह जानने की कोशिश की है कि आपके पास देश में बहुत से केसेज पेंडिंग हो गए हैं और जजों की नियुक्ति नहीं हो रही है, आपने कहा है कि कांस्टीट्यूशनल प्रोसेस में हैं, हम समझ गए हैं। आपने जब जवाब दिया था तब और अब तक कितने महीने हो गए हैं, आज के दिन तक वही प्रोसेस चल रहा है? मैं यह जानना चाहता हूँ कि इतने महीने का समय हो गया है अब जल्दी से जल्दी कब यह प्रोसेस खत्म होगा, यह बताइये?

श्री अरुण जेटली: इसकी कोई समय सीमा नहीं बांधी जा सकती क्योंकि यह एक संवैधानिक प्रक्रिया है।

श्री अनन्तराय देवशंकर दवे: नहीं-नहीं वह प्रक्रिया तो हो गई है। 30 नवम्बर 1999 को इसी हाउस में आपने जवाब दिया था कि एज अल्वे एज फोसिबल इसे खत्म करेंगे लेकिन आज इतना समय हो गया है और स्थिति वही की वही है।

श्री अरुण जेटली: यह प्रक्रिया संवैधानिक प्रक्रिया है जिसमें कि कांस्टिट्यूशनल अथॉरिटीज की रिकमेंडेशन्स और कंसल्टेशन्स का प्रावधान है। एक प्रोसेस इनिशियेट होता है हाई कोर्ट के चीफ

जस्टिसस से, चीफ मिनिस्टर्स, गवर्नर्स, केन्द्रीय सरकार, उसके बाद चीफ जस्टिस ऑफ इण्डिया, यह कंसल्टेशन का प्रोसेस है। 85 नियुक्तियां ऐसी हैं जिनकी कार्रवाई चल रही है। उन्हें भरने की प्रोसेस हम शीघ्र करेंगे। अन्य के संबंध में, जैसा मैंने कहा कि जेठमलानी जी ने पत्र लिखा था हाई कोर्ट के जस्टिससेस को कि जो प्रोसेस अभी इनिशियेट नहीं हुए उन्हें वे शीघ्रता से इनिशियेट करें। इस प्रकार की रिक्वेस्ट हम दोबारा भी चीफ जस्टिससेस से करेंगे।

SHRI PRANAB MUKHERJEE: Sir, as the hon. Minister himself has admitted that out of 167 vacancies—140 old vacancies; additional 27; taken together 167- in 85, process has been initiated 82 process is yet to be initiated. This is one side of the picture in the High Courts. The other side of the picture in the High Courts is that more than one crore cases are pending. We are primarily concerned that people must get justice immediately because justice delayed is justice denied. My question is very limited. The Minister has assured that 'we are trying our best' and I do appreciate that. But there is a Constitutional problem. In view of that, I would like to know from the hon. Minister. Shri Ram Jethmalani had also given some sort of an assurance that he was trying his best. The Minister may try his best, but the fact remains that the procedure which had been evolved in the selection of judges of High Courts and Supreme Court, specially from 1991 onwards, through the judgment of the Supreme Court, is such that it would appear to a layman like me that the judges themselves have assumed the power of appointing themselves, which was not contemplated in the Constitution earlier. In view of that, how is the Government going to address the problem at the root? In 82 cases, the Chief Justices of 18 High Courts have not responded even to the letter of Mr. Ram Jethmalani, the then Law Minister, by initiating the process. Where the process has been initiated, even if you agree to consultation which has been interpreted as concurrence, even if you agree to that aspect, you can do it only in the case of 85 vacancies. But in the case of remaining vacancies 82, where despite the requests of the Law Minister, who is accountable to the Parliament no Chief Justice of any High Court or Supreme Court is accountable to Parliament and through Parliament to the people—since there is no response, when a question is put in Parliament, the man who is accountable to the House, his hands are tied, because he can only repeat whatever he is told in the process of information. My question to the hon. Minister is whether the Government is contemplating to address the problem at the root and make a serious effort to remove the distortions in my mind, which has taken place since 1991.

SHRI ARUN JAITLEY: The hon. Member has made several points in the course of his question. I may just clarify that the total number of pendency of cases in the various High Courts is about 33.65 lakhs, in all the High Courts taken together. As far as the High Court Chief Justices are concerned, requests have been made by my predecessor to them. In a number of cases, recommendations have been made even thereafter. It is not as though that the procedure is at a standstill. A continuous effort is undertaken by the Government. We keep requesting the Chief Justices to initiate the process. The hon. Chief Justice of India has also written to the Chief Justices of the High Courts that the procedure may be expedited.

At present, within the framework of the existing Constitutional provisions, there is no proposal pending for changing the procedure of the Government.

श्री जनेश्वर मिश्र: सभापति महोदय, अपने स्टेटमेंट में मंत्री जी ने जो जवाब दिया है उसमें पढ़ा कि इलाहाबाद हाई कोर्ट में 17 जगहें खाली हैं। सभापति महोदय यह सवाल थोड़ा पेचीदा है। मैं आपसे सुरक्षा की मांग करूंगा। समाज में बहुत सी कुरीतियां हैं और इन रिक्तियों को भरने में ये कुरीतियां काम करती रहती हैं। एक हाई कोर्ट के बारे में मुझे रिपोर्ट है, सरकार को भी होगी, यह मंत्री जी बतायेंगे कि 16 जजों के लिए हाई कोर्ट से नामों की सिफारिश की गई और उन 16 में 13 नाम केवल एक ही जाति के लोगों के हैं। अब समाज की कुरीतियां न्यायपालिका की रिक्तियों को भरने में कामयाब हो रही हैं। इन कुरीतियों को दूर करने के लिए बहुत पहले हमारे महामहिम राष्ट्रपति महोदय ने इस पर ऐतराज किया था कि और कहा था कि समाज के कमजोर वर्ग के लोगों को भी न्यायपालिकाओं में स्थान मिलना चाहिए। इस पर न्यायपालिका ने सख्त रुख ले लिया। मैं जानना चाहता हूँ कि सरकार इस के बारे में क्या कार्यवाही कर रही है? महोदय, यह मेरी निजी पीड़ा है। मैंने जब एल्-एल्बी का इम्तिहान पास किया था तो मेरी बड़ी तमन्ना थी कि मैं वकालत करूँ लेकिन उसी समय शीतलवाड कमेटी की रिपोर्ट आ गई और वह अखबार में छप गई कि नेपोटिज्म, फेवरिटिज्म, पालिटिकल कंसीडरेशन और कास्टिज्म जजों की नियुक्ति में काम करते हैं और मैंने काला कोट नहीं पहना। थोड़ा भावनाओं में बह गया था, लड़का था। मैं जानना चाहता हूँ कि इन रिक्तियों को भरने में जो दूसरी तरह के कंसीडरेशन्स हो रहे हैं उस बारे में सरकार क्या कार्यवाही कर रही है? मैंने जानबूझकर हाई कोर्ट का नाम नहीं लिया जहां से 16 नाम आए थे और उनमें 13 एक ही जाति के हैं। हाई कोर्ट को बदनाम करने का मेरा मकसद नहीं है। मैं जानना चाहता हूँ कि इन कुरीतियों को जानकारी क्या सरकार के पास है और उनको दूर करने के लिए वह प्रयास कर रही है?

श्री अरुण जेटली: माननीय मिश्र जी ने इस हाई कोर्ट का जिक्र किया वहां पर कंसलटेशन की प्रक्रिया नियुक्तियों के संबंध में अभी जारी है। केंद्रीय सरकार इस विषय को भेददेनजर रखते हुए

कई बार मुख्यमंत्रियों और हाई कोर्टों के चीफ जस्टिसेज को लिख चुकी है कि जब वे अपनी रेकमन्डेशन भेजें तो इसमें हर वर्ग के लोगों को शामिल किया जाये इस बात का वे ख्याल रखें, विशेषकर शैड्यूल्ड कास्ट और शैड्यूल्ड ट्राइब्स, बैकवर्ड क्लास और माइनोरिटी के संबंध में कई बार केंद्र सरकार मुख्य न्यायाधीशों को लिख चुकी है।

**श्री जनेश्वर मिश्र:** जो 16 में से 13 एक विशेष जाति के नामों की सिफारिश हाई कोर्ट ने की है क्या इसकी जानकारी आपको है कि नहीं? अगर है तो इस बारे में आप क्या कार्यवाही कर रहे हैं?

**श्री अरुण जेटली:** इस हाई कोर्ट में अभी कंसल्टेशन की प्रक्रिया जारी है और अभी नियुक्तियां नहीं हुई हैं। इसलिए इस बारे में कुछ कह पाना संभव नहीं होगा। इस संबंध में अभी सरकार और हाई कोर्ट में कंसल्टेशन की प्रक्रिया जारी है।

**श्रीमती सरोज दुबे:** इसमें एक भी महिला का नाम नहीं है।

**श्री एम्. वेंकैया नायडु:** चेयरमैन साहब, महिला का नाम भी होना चाहिए। Mr. Chairman, Sir, I think, the Minister should also keep this in mind. What is more important is this. This question had also come up before the House during the last Session. People are really disturbed about it because we are all observing that the courts are giving directions, from time to time, to the Government and to various other agencies to expedite inquiries or to expedite action, etc. That being the case, not filling up these many important posts in High Courts and the Supreme Court is not a good thing for the system itself. I also understand the reason given by the Minister. There is Constitutional process. The consultations have to be done at the High Court level.

**SHRI NILOTPAL BASU:** What is the question?

**SHRI M. VENKAIAH NAIDU:** I am putting my question.

**SHRI NILOTPAL BASU:** Okay

**SHRI M. VENKAIAH NAIDU:** Thank you very much. Sir, if he follows the system from tomorrow onwards, I can even withdraw my supplementary. If he is going to follow the rules from tomorrow, I will be the happiest man. I am very happy that wisdom has prevailed upon him and his Benches.

मैं बहुत खुश हूँ, अगर जरूरत पड़े तो मैं सदन के हित में क्वेश्चन भी वापिस ले सकता हूँ। Sir, keeping in view the sentiments expressed by the hon. Members, and also the enormous difficulty that will be caused to the people on account of delay in filling up the posts, I would like to know what additional steps or special efforts are going to be made in this regard. Will the hon. Minister meet the

Chief Justice of India in person and convey to him the feelings of the House and also the feelings of the people and see to it that these posts are filled up in a particular time limit without any further delay?

SHRI ARUN JAITLEY: Sir, I am conscious of the feelings and the concern of the House that the vacancies cannot be left unfilled for an unduly long period of time. In fact, under the procedure, which has been prescribed, the process of appointment has to normally start six months prior to the occurrence of a vacancy. Keeping in view the sentiments of the House, I would take all possible steps, in continuation of what Mr. Jethmalani and the Chief Justice of India had done by writing to the Chief Justices of High Courts, to make sure that efforts are made to expedite the process and the recommendations of the Chief Justices of the High Courts are obtained at the earliest.

SHRI HANSRAJ BHARDWAJ: Sir, I have listened to the hon. Minister's reply that he would take steps in continuation of his predecessor's correspondence with the Chief Justice of India. I wish all the best for Arun. But it would not be a sound beginning, particularly in view of the fact that he has taken over only today, because you will find that there was an inner conflict between your predecessor and the judiciary. I had said during the last session also that you should have a Minister who knows his responsibility to the judiciary and the country. The hon. Prime Minister was also present here. These inner conflicts are responsible for creating all these delays. I said that the Minister was directly recommending the names to the High Courts and the Supreme Court. He agreed to it and he said, "Yes, I have done so, and the judges are agreeing with me." There is a Memorandum of Procedure for appointment of judges, agreed to between the President of India and the Chief Justice of India. I would request you to kindly adhere to it. If you want any change in the Memorandum of Procedure, you do so after proper consultation. But once you agree that this is the Memorandum of Procedure, there is no reason for a Minister to give his own suggestions. He can always raise objections and he had successfully done so. Today, the vacancies are not because the Chief Justices of the High Courts have not recommended names. Recommendations have come, but they have been kept under the table. For one month the Law Minister was missing from the country, keeping the appointment of a Chief Justice of a very big court—where a lot of vacancies are concerned—pending, for his confirmation. That would not be a very good beginning for you. You kindly look into the files. Wherever recommendations have been received, they should be processed post-haste, without going into

who is mine and who is not mine. You have received recommendations from the Allahabad High Court, not only 17 but much more vacancies of serving judges from the Bar.

SHRI B.P. SINGHAL: Sir, is it a question or a sermon? (*Interruptions*) I would like that the tradition of the House be maintained.

SHRI HANSRAJ BHARDWAJ: Sir, I am putting the question—question for MPs and not sermon for retired police officers. Sir, I don't think I have given any bad advice to him. I gave this advice to Shri Ram Jethmalani also. But he, in his eloquence, wasted that. Arun is here I am just telling him the inside story that he should follow the Memorandum of Procedure and give the details where the judiciary had not made recommendations in time, and where the executive had not done its work. Therefore, the point is that the recommendations are lying in your Minister. You kindly expedite them and get recommendations, much before these vacancies arise. This has not been done. Will you kindly give the details, at any time, where the Ministry had received recommendations, but nothing had happened thereafter. You may not be able to give these details today because you are a new Minister.

SHRI ARUN JAITLEY: Sir, I am very grateful to Bhardwaji for the suggestions he has given, but let me tell him that within the frame work of the Memorandum of Procedure that are absolutely no issues which are pending. Some of the reasons he has mentioned, for the delays, do not actually exist.

As far as the Ministry of Law is concerned, on the day I took over, there were ten recommendations which were pending. They will be cleared at the earliest. Therefore, to assume that the delay has occurred because there is anything pending in the Ministry for some reason or the other, is not correct. These will be processed at the earliest and are being recommended to the appropriate constitutional authority. In fact, Shri Ram Jethmalani, as also the Chief Justice of India, have written to the Chief Justices of the High Courts separately, in order to expedite those 82 recommendations which have not yet been made by the Chief Justice of the respective other High Courts.

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### WELCOME TO THE CAMEROON PARLIAMENTARY DELEGATION

MR. CHAIRMAN: Hon. Members, I have an announcement to make. We have with us, seated in the Special Box, Members of a Parliamentary Delegation from Cameroon, currently on a visit to our country, under the distinguished



leadership of his Excellency, Mr. Cavaye Yeguie Djibril, President of the National Assembly of Cameroon.

On behalf of the Members of the House and on my own behalf, I take pleasure in extending a hearty welcome to the Leader and other Members of the Delegation and wish our distinguished guests an enjoyable and fruitful stay in our country. We hope that during their stay here, they would be able to see and learn more about our parliamentary system, our country and our people, and that their visit to this country will further strengthen the friendly bonds that exist between India and Cameroon. Through them, we convey our greetings and best wishes to the Parliament and the friendly people of Cameroon.

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### ORAL ANSWERS TO QUESTIONS—*Contd.*

SHRI S. VIDUTHALAI VIRUMBI: Sir, when the question was raised by Shri Janeshwar Mishra, he had mentioned about an important issue that is agitating the entire nation. Sir, in India, social justice has to be ensured in every field. We, in our State, are working for that. Recently, in the Public Service Commission, one person from an important community in our state was appointed because we wanted to see to it that every community is included. So, it should apply to the judicial arena also. Therefore, I want to know from the hon. Minister whether there is any proposal to implement the reservation policy in the appointment of judges in order to ensure social justice. If so, what action has been taken in this regard? If not, the reasons therefor? I would like to know whether the Government would concede the request of the majority of the people in order to ensure social justice in the judicial arena and implement the reservation policy. This is part (a) of my question. Part (b) of my question is: Whether the Government of India received any proposal from Tamil Nadu for appointment of High Court judges in Chennai, that is, the Madras High Court? If so, when are you going to accept the proposal given by them?

SHRI AURN JAITLEY: As far as the first part of the question is concerned, I have already answered, in response to an earlier supplementary, that the Central Government has been writing to the Chief Ministers and the Chief Justices of various High Courts that while making recommendations, appropriate consideration must be given to see that members of the Scheduled Castes, the Scheduled Tribes, minorities, and other backward classes are represented. (*Interruptions*).

SHRI S. VIDUTHALAI VIRUMBI: You are talking about the obligatory part. I want know whether it will become mandatory or not.

SHRI ARUN JAITLEY: Under the present constitutional scheme, the procedures which have been prescribed and interpreted by the Supreme Court, there is no such mandatory provision. But the Central Government, as I said, has been repeatedly requesting the Chief Ministers and the Chief Justices to take this factor into consideration when the recommendations are being made. As far as the figures for Tamil Nadu are concerned, I will check them up because, in the list before me, there seem to be no proposal for filling up any other vacancy.

SHRI S. VIDUTHALAI VIRUMBI: But I was told that some proposal has already been sent to the Government of India. That is the information I have received. You can verify it and send it.

SHRI ARUN JAITLEY: As per the records available with me, there is no such proposal. But I will again check up and inform the Member, if there is any.

SHRI CHO S. RAMASWAMY: It is a general impression that pendency of cases is directly proportional to the vacancies existing in the High Courts. I feel that with more judges, there would be more adjournments. So I would like to know from the hon. Minister as to which High Court in India has the least number of vacancies. And what is the position of pendency of cases in that High Court? I am not asking about the High Courts which have no vacancies, because I know that no such High Court exists.

SHRI ARUN JAITLEY: Sir, the question is not directly related to the number of vacancies in each High Court. But these figures are available with me. I would certainly send the figures relating to pendency of cases to the hon. Member. I think you wanted to know the figures of pendency.

SHRI CHO S. RAMASWAMY: I want to know the pendency of cases in the High Court which has the least number of vacancies.

SHRI ARUN JAITLEY: I am having with me the figures relating to vacancies of judges. But I will certainly send you the figures relating to pendency of cases.

SHRI CHO S. RAMASWAMY: Please do find it out as a large number of cases are pending.