



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

MEMORANDUM OF PROCEDURE: A CONUNDRUM ON JUDICIAL APPOINTMENTS (AN UNSOLVED MYSTERY)

Siddhant Singh¹

ABSTRACT

The Supreme Court Bar Association (SCBA) has written to Chief Justice of India B R Gavai and Law Minister Arjun Ram Meghwal seeking finalisation of the memorandum of procedure (MoP) and institution of a "transparent, equitable, and merit-driven" framework for appointment of judges in the top court and high courts.

On the issue of marginalisation of briefing lawyers, the SCBA president said the existing process focuses almost exclusively on arguing counsels while ignoring briefing lawyers and juniors, who are often the "unseen architects" of litigation.

"To elevate only the visible face is to perpetuate a flawed understanding of competence," he wrote to the CJI.

At last it can be seen that though lot of time has passed since the fourth judges case but still the finalisation of memorandum of procedure for judicial appointments in higher judiciary is pending and need to be seen by the executive which is against the spirit of independent judiciary and useful for the free and fair judicial appointments in the country which is the need of the hour, though there has been a demand for a better and independent judicial transparency in the judicial appointments which need is the cornerstone of a healthy democracy in the country, India is the sole country where judges themselves appoint their successors which is against the spirit of checks and balances principle and healthy democratic principles

¹ Author is presently an Assistant Professor and pursuing Ph.D. can be reached at siddhants1204@gmail.com

INTRODUCTION

The Supreme Court Bar Association (SCBA) has written to Chief Justice of India B R Gavai and Law Minister Arjun Ram Meghwal seeking finalisation of the memorandum of procedure (MoP) and institution of a "transparent, equitable, and merit-driven" framework for appointment of judges in the top court and high courts.

SCBA president and senior advocate Vikas Singh wrote to the CJI and Meghwal on September 12, 2025 flagging structural flaws in the existing collegium system and said the delays in reform were undermining both judicial integrity and public confidence.

He said while the collegium system was created to safeguard judicial independence, it inadvertently gave rise to serious challenges. Singh said the collegium routinely overlooked qualified lawyers from the Supreme Court bar for elevation to high courts in their respective states, despite their extensive exposure to national jurisprudence.

"The prevailing Collegium mechanism, while designed to preserve judicial independence, has inadvertently created significant challenges. Its structural flaws demand urgent and comprehensive correction.

"First, it arbitrarily ignores the vast talent pool within the Supreme Court Bar for elevation to their respective home state High Courts. These practitioners, whose exposure to national jurisprudence should be viewed as a superior qualification, are being systematically overlooked. This not only wastes valuable judicial talent but also undermines the core principle merit-based selection," he said.

He also flagged "troubling" under-representation of women in judiciary and referred to official data.

"This is not an abstract concern but a reality borne out by hard data. As of February 2024, women constituted merely 9.5% of the sanctioned strength in High Courts and a stark 2.94% in the Supreme Court. This is a glaring indictment of systemic exclusion, where the tyranny of a presumed meritocracy masks a deeper reliance on informal networks and patronage," he said.

He also flagged "troubling" under-representation of women in judiciary and referred to official

data.

"This is not an abstract concern but a reality borne out by hard data. As of February 2024, women constituted merely 9.5% of the sanctioned strength in High Courts and a stark 2.94% in the Supreme Court. This is a glaring indictment of systemic exclusion, where the tyranny of a presumed meritocracy masks a deeper reliance on informal networks and patronage," he said.

On the issue of marginalisation of briefing lawyers, the SCBA president said the existing process focuses almost exclusively on arguing counsels while ignoring briefing lawyers and juniors, who are often the "unseen architects" of litigation.

"To elevate only the visible face is to perpetuate a flawed understanding of competence," he wrote to the CJI.

The Supreme Court, he said, had already laid down a reform blueprint for revising the MoP.

Singh stressed these directions were not merely aspirational but actionable, and any further delay in implementing them was "indefensible".

Proposing reforms in the MoP, the SCBA said permanent secretariats be set up in every High Court and in the Supreme Court to maintain data on candidates and vacancies, and to ensure institutional memory.

He also batted for transparent application-based process and said, "The current informal system must be replaced with a formal process where applications are invited publicly. This ensures every deserving candidate, including those from the Supreme Court Bar, is considered on demonstrable merit through a structured mechanism."

The MoP should contain the provision to publish objective criteria, covering minimum age, years of practice, reported judgments, and pro bono work, for evaluating candidates before their elevation to higher judiciary, he added.²

²<https://economictimes.indiatimes.com/news/india/judges-appointment-sc-bar-association-urges-cji-law-minister-to-finalise-mop-calls-for-transparent-system/articleshow/124090832.cms?from=mdr>

The Supreme Court Bar Association (SCBA) urging the finalisation of the [Memorandum of Procedure \(MoP\)](#) for appointment of judges to the Supreme Court and High Courts.

Fourth Judges Case (2015) – *The SC struck down the National Judicial Appointments Commission (NJAC) Act and the 99th Constitutional Amendment, which executive a final say in the appointment of judges in HC and the SC, which revived the collegium system.*

- The MoP for appointing judges to the Supreme Court and High Courts is a crucial **agreement** between the **Indian judiciary and the executive**.
- The MoP governs the collegium system, a **judicial innovation** not explicitly written into the Constitution.
- It contains a **set of guidelines** for making appointments to the Supreme Court and High Court.
- For High Courts, proposals for appointments are initiated by the **Chief Justice of the High Court**, sent to the Supreme Court Collegium (SCC) for recommendations, and then approved by the President.
- For transfers, the Chief Justice of India (CJI) leads the consultation with senior Supreme Court judges and considers views from relevant Chief Justices and personal factors of the judge being transferred.
- **Proposed reforms in the MoP –**
 - **Establishment of Permanent secretariats** – To be set up in every High Court and in the Supreme Court to maintain data on candidates and vacancies, and to ensure institutional memory.
 - **Implementing Transparent application-based process** - Replacing the informal system with a formal, open application process so that every deserving candidate, including from the Supreme Court Bar, can be considered.
 - **Publishing eligibility Criteria** - Codification of verifiable eligibility benchmarks such as years of practice, reported judgments, academic contributions, and pro bono work, against which candidates must be assessed.
 - **Creating grievance redressal mechanism** – To address complaint process to address grievances and uphold integrity in appointments.³

³ <https://www.shankariasparliament.com/current-affairs/judicial-appointments-memorandum-of-procedure-mop>

CONCLUSION

At last it can be seen that though lot of time has passed since the fourth judges case but still the finalisation of memorandum of procedure for judicial appointments in higher judiciary is pending and need to be seen by the executive which is against the spirit of independent judiciary and useful for the free and fair judicial appointments in the country which is the need of the hour, though there has been a demand for a better and independent judicial transparency in the judicial appointments which need is the cornerstone of a healthy democracy in the country, India is the sole country where judges themselves appoint their successors which is against the spirit of checks and balances principle and healthy democratic principles.