



Ad hoc Judges in High Court

For Prelims: [Supreme Court \(SC\)](#), [High Court](#), [Article 224A](#), [President](#), [Chief Minister](#), [Chief Justice of India](#), [Collegium System](#), [NITI Aayog](#), [District Courts](#), [Wide Area Network \(WAN\)](#), [Alternate Dispute Resolution \(ADR\)](#), [Arbitration](#), [Mediation](#), [Lok Adalats](#), [Mediation Act, 2023](#), [Arbitration and Conciliation \(Amendment\) Act, 2015](#), [Special Leave Petitions \(SLPs\)](#), [Malimath Committee](#), [National Judicial Infrastructure Authority of India \(NJIAI\)](#).

For Mains: Role of ad hoc judges in addressing pending cases before judiciary, Reasons behind pendency and Way Forward to reduce pendency of cases.

Source: [IE](#)

Why in News?

The [Supreme Court \(SC\)](#) suggested temporarily appointing retired judges on an ad hoc (as required) basis to address the growing backlog of pending criminal cases before several [High Courts](#).

- The SC suggested revising its 2021 ruling limiting ad hoc judge appointments to specific cases.

What are Key Points Regarding Ad hoc Judges in HC?

- **About:** Ad hoc judges are temporary judges appointed to a court, typically to address specific needs such as reducing case backlogs or filling gaps when permanent judges are unavailable.
- **Constitutional Basis:** [Article 224A](#) of the Indian Constitution allows the **Chief Justice of a High Court**, with the [President's approval](#) (along with the consent of the retired judge), to appoint retired High Court judges to serve temporarily.
- **Procedure:** The procedure is outlined in the [Memorandum of Procedure \(MOP\) 1998](#), created after the collegium system for appointing High Court judges.
 - The MOP states that after the retired judge has consented to the appointment, the **Chief Justice** must forward her name and details on the duration of the appointment to the state's [Chief Minister \(CM\)](#).
 - The CM will pass this recommendation to the **Union Law Minister**, who will consult the [Chief Justice of India](#) (CJI) before forwarding the recommendation and the CJI's advice to the **Prime Minister of India**.
 - The PM will advise the President on whether to give her approval.
 - In the [Lok Prahari v. Union of India case, 2021](#), the Supreme Court ruled that recommendations for appointing retired judges must go through the **Supreme Court's collegium**.
 - Under the collegium system, for appointment of high court judges, the CJI should consult a collegium of two senior-most judges of the Supreme Court.
- **Initiation of Process:** In the [Lok Prahari v. Union of India case, 2021](#), the SC laid down the following requirements to initiate the appointment process.
 - **Vacancy Thresholds:** More than 20% of the sanctioned strength of judges is vacant.

- **Pending Cases: More than 10%** of the backlog of pending cases is **over 5 years old**.
- **Regular Appointments First:** Ad hoc appointment process can only be initiated after the **process for regular judicial appointments** has been triggered.
- **Process for Selection:** Each High Court's Chief Justice should create a **panel of retired or soon-to-retire judges** for ad hoc appointments.
 - The appointment process can **bypass the [Intelligence Bureau](#) check** since the nominees are **former judges**, shortening the process.
- **Tenure:** Ad-hoc judges typically serve for **two to three years**, with the number ranging from **two to five** based on the backlog and vacancies in the High Court.
- **Role and Duties:** Ad-hoc judges may hear cases **over five years old** and are **prohibited from other legal work**, such as advisory, arbitration, or client representation.
- **Emoluments and Allowances:** Ad-hoc judges will receive **emoluments and allowances equivalent to a permanent judge of that High Court**, excluding pension.
- **Previous Appointments: Only three ad hoc judges** have been appointed under Article 224A, with the Supreme Court calling it a "**dormant provision**."
 - **Justice Suraj Bhan to Madhya Pradesh HC in 1972** for one year to hear election petitions,
 - **Justice P. Venugopal to Madras HC in 1982**, with a one-year renewal in 1983,
 - **Justice O.P. Srivastava went to Allahabad HC in 2007** to hear the Ayodhya title suit.

Ad hoc Judge in SC (Article 127)

- When there is a **lack of quorum of the permanent judges** to hold or continue any session of the Supreme Court, the **Chief Justice of India** can appoint a **judge of a High Court as an ad hoc judge of the Supreme Court** for a temporary period.
- He can do so only after **consultation** with the **chief justice of the High Court** concerned and with the **previous consent of the president**.
- The judge so appointed should be **qualified for appointment as a judge of the Supreme Court**.
- It is the duty of the judge so appointed to **attend the sittings** of the Supreme Court, in priority to other duties of his office.
- While attending, he enjoys **all the jurisdiction, powers and privileges** (and discharges the duties) of a judge of the Supreme Court.



Collegium System



- System of appointment and transfer of judges
- Evolved through judgments of the Supreme Court, and not by an Act of Parliament

Constitutional Provisions Related to Appointment of Judges

- **Articles 124 (2) and 217**- Appointment of judges to the Supreme Court and High Courts
 - **President makes appointments after consulting with "such judges of the Supreme Court and of the High Courts"** as s/he may deem necessary.
- But the Constitution **does not lay down any process** for making these appointments.

Evolution of the System

First Judges Case (1981)

- SC held that in the appointment of a judge of the SC or the HC, the word **"consultation"** in Article **124 (2)** and in Article **217** of the Constitution does not mean "concurrence"
- Gave the **executive primacy** over the judiciary in judicial appointments

Second Judges Case (1993)

- SC overruled the First Judges Case
- Gave birth to the **Collegium System (Primacy to the Judiciary)**
- Collegium included the Chief Justice of India and the **2** most senior judges of the SC

Third Judges Case (1998)

- SC expanded the Collegium to include the CJI and the **4** most-senior judges of the court after the CJI

Current Structure



Supreme Court Collegium: CJI and the **4** senior-most judges of the SC



High Court Collegium: CJI and **2** senior most judges of the SC

Criticism

- Opaqueness
- Scope for Nepotism
- Exclusion of Executive
- No Predetermined Procedure of Appointment

National Judicial Appointments Commission (NJAC)

- It was an **attempt to replace the Collegium System**. It prescribed the procedure to be followed by the Commission to appoint judges
- NJAC was established by the **99th Constitutional Amendment Act, 2014**
- But the **NJAC Act was termed unconstitutional** and was struck down, citing it as having affected the independence of the judiciary



Drishti IAS



What is the Status of Pendency of Cases in India?

- **Pending Cases:** As of 2024, there are over **51 million (5.1 crore)** pending cases across various courts in India, including both **district and high courts**.
 - This backlog includes over **169,000 cases** that have been pending for more than **30 years**.
 - The majority of the cases (approximately **87%**, or **4.5 crore**) are in **district courts**.
- **Rate of Disposal:** A 2018 **NITI Aayog** report projected it would take **over 324 years** to clear the pending cases, which then stood at **29 million**.
 - **Judicial delays** cost the economy an estimated **1.5% to 2% of India's GDP**.
- **Impacts:** Delays in the judicial system **deny timely justice and erode public confidence** in the judicial system.
 - India ranks **111th in civil justice and 93rd in criminal justice** in the **Rule of Law Index, 2023** highlighting global concerns about its delayed judicial processes.
- **Causes of Case Pendency:**
 - **Shortage of Judges:** As of January 2024, India's **25 High Courts have 783 out of 1,114 sanctioned judges**, and over **5,000 district-level vacancies** remain as of early 2023.
 - **Infrastructure Gaps:** A study of 20 district courts in 10 states found that only **45% of judicial officers** have electronic **display facilities**, and **32.7% lack video conferencing** in court complexes.
 - **Lack of Judicial Accountability:** The **impeachment process** for removing judges is **rarely used** and inadequate provisions for **addressing minor issues** not amounting to impeachment.
 - Alleged **corruption and post-retirement appointment** controversies have increased calls for transparency in the judiciary.
 - **Access to Justice Barriers:** By 2022, **76% of India's prison population were undertrials**, largely from disadvantaged communities, due to **high costs, complex procedures, and language barriers**.

What Initiatives have been Taken to Reduce Pendency of Cases?

- **National Mission for Justice Delivery and Legal Reforms:** Launched in **August 2011**, the initiative aims to **reduce judicial delays and arrears** by improving infrastructure and leveraging technology.
- **e-Courts Mission Mode Project:** It leverages **Information and Communication Technology (ICT)** to enable court processes and enhance transparency. Key components include:
 - **Wide Area Network (WAN)** connectivity in court complexes
 - Establishment of **virtual courts** etc.
- **Tele-Law Programme:** Launched in **2017**, the program aims to provide legal advice to disadvantaged communities through **video conferencing, phone, and mobile apps**.
- **ADR Mechanisms:** The Government has strengthened **Alternate Dispute Resolution (ADR)** mechanisms such as **Arbitration, Mediation**, and **Lok Adalats**.
 - E.g., **Mediation Act, 2023, Arbitration and Conciliation (Amendment) Act, 2015** etc.
- **Fast Track Courts:** They were established to speed up trials for specific cases, including **heinous crimes, crimes against women and children**, and offenses involving MPs/MLAs.

Way Forward

- **National Court of Appeal for SLPs:** In the case of **Bihar Legal Support Society v. Chief Justice of India (1986)**, the Supreme Court suggested the establishment of a **National Court of Appeal to hear Special Leave Petitions (SLPs)**.
 - This would **limit** the SC to hearing only **constitutional and public law-related issues**,

significantly reducing the Court's workload and addressing the backlog more efficiently.

- **Constitutional and Legal Divisions:** The **Tenth Law Commission 1981** of India proposed dividing the SC into two divisions: a **Constitutional Division** for constitutional matters and a **Legal Division** for other legal issues.
 - It would **streamline the judicial process** by assigning constitutional issues to a specialized bench, ensuring **faster disposal** of these cases.
- **Increasing the Number of Workdays:** The **Malimath Committee** recommended the Supreme Court work for **206 days** and **reduce vacation by 21 days** to address case pendency.
 - The **2009 Law Commission's 230th report** recommended **reducing** court vacations by **10-15 days** at all judicial levels to help reduce case backlogs.
- **Dedicated Authority for Judicial Infrastructure:** Former **Chief Justice of India NV Ramanna** proposed the establishment of a **National Judicial Infrastructure Authority of India (NJIAI)** to address the critical infrastructure gaps in India's judicial system.

Drishti Mains Question:

Examine the causes behind the massive pendency of cases in India. Discuss key reforms needed to address the pendency of cases.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. With reference to the Indian judiciary, consider the following statements:

1. Any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with the prior permission of the President of India.
2. A High Court in India has the power to review its own judgement as the Supreme Court does.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (a)

Mains

Q. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to the appointment of judges of higher judiciary in India. (2017)