



## 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.

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# 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 **99<sup>th</sup> 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



## 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: (c)**

### **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)**