

SC Moots Appointment of Retired Judges for High Court

April 13, 2021

The Supreme Court said that it was intending to lay down guidelines for the appointment of ad-hoc judges in the High Courts under Article 224A. The court asked a group of senior advocates to consider the mechanism for appointment of ad-hoc judges, to reduce the backlog of cases.

In news: Will Lay Down Rules For Appointment Of Ad-Hoc Judges: Supreme Court

Placing it in syllabus: Law & Policy

Dimensions:

- Article 224 A
- Problem of Pendency of Cases
- Reasons for Pendency
- Suggestions

Content:

Article 224 A:

The Article 224 delineates the circumstances for appointment of **additional and acting Judges** for High Courts.

It states that:

- If by reason of any temporary increase in the business of High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify
- When any Judge of a High Court other than the Chief

Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties

- No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty two years

However, the appointment of **ad-hoc judges** was provided for in the Constitution under **Article 224A**.

- Under the Article, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of judge of that court or of any other High Court to sit and act as a judge of the High Court for that State.
- Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the High Court.
- But, he will not otherwise be deemed to be a judge of the High Court.

Article 224-A was introduced by a constitutional amendment via The Constitution (Fifteenth Amendment) Act, 1963 ('Fifteenth Amendment').

The constitutional amendment intended to reintroduce the original provision of Article 224 which had been repealed by the Seventh Amendment, as a separate provision in addition to Article 224 (as substituted by the Seventh Amendment).

Article 224-A empowers the Chief Justice of a High Court for any state to appoint a 'retired' High Court Judge to 'sit' and 'act' as a judge of that High Court.

There are two necessary prerequisites for appointment under Article 224-A:

- first, the consent of the retired Judge is mandatory; and
- second, the consent of the President of India has to be previously obtained by the Chief Justice.

The 'ad-hoc' judge appointed under this provision can be from the same High Court or a different High Court. Moreover, while an ad-hoc judge shall have all the jurisdiction, powers and privileges of a regular judge of the High Court, they shall not be otherwise 'deemed' to be a judge (member) of that High Court (i.e. they shall not be treated as a 'sitting' judge under Article 217 of the Constitution).

An 'ad-hoc' judge is also entitled to allowances determined by the President of India. Notably, the text of Article 224-A does not mention either a 'time limit' or a limit for the number of times a retired judge can be appointed as an ad-hoc judge to a High Court.

Moreover, there is no upper ceiling on the 'age' of a retired judge who can be appointed under Article 224-A.

Problem of Pendency of Cases:

- India faces a huge problem as far as access to timely justice is concerned, as cases in courts seem to hang on inordinately without a resolution.
- This impacts not just the administration of justice, but it has tremendous consequences for the economy and the functioning of businesses across India as well.
- India ranks in the bottom few countries in enforcement of contracts, as per **World Bank data**.

The **Ministry of Law and Justice** in its reply to the Rajya Sabha in September 2020, said that:

- Around 62,000 cases are pending in the Supreme Court.
- Around 51 lakh cases are pending in different High Courts.
- Around 3.45 crore cases pending in District and Subordinate Courts.

The lower courts have a lot of catching up to do, in fact, worryingly, their performance on this front has worsened year on year. As per the reply of Ministry of Law and Justice:

- Nearly 87.5% of all pending cases in India come from our lower courts which are the district and subordinate courts.
- These courts dispose of more than half the new cases filed (56%) within a year, which looks good on paper.
- However, such a result is mostly achieved by either dismissing cases without trial (21%), transferring them to another court (10%) or simply settling the case outside of the court (19%).

Reasons for Pendency:

Shortage of judges

- The most prominent reason for the pendency of cases is the inadequate representation of judges in the Indian Judiciary.
- As of 2020 – the number of Judges per million population in India works out to be 20.91. For perspective, the figure stood at 19.78 in 2018, 17.48 in 2014 and 14.7 in 2002.
- The Law Commission report in 1987 recommends at least 50 to 1 million. Population has increased by over 25 crore since 1987.
- The same figure stands at 107 for the USA, 75 in Canada and 41 in Australia.

Low Appointment to Sanctioned positions:

- In India, the number of positions sanctioned and the number of judges appointed differs vastly.
- For example, the sanctioned strength of Judicial Officers in District and Subordinate Courts is 24,204 while their actual, working strength is 19,172!
- This leads us to the fact that the number of judges per million in India, while already dismal, is in reality worse than what the headline figures suggest.
- There is a conflict between Judiciary and Executive regarding the appointment of Judges to the Supreme Court and various High Courts.

Litigations by & against Government:

- The Indian government is the largest litigant of the country. It is responsible for nearly half the pending cases.
- These cases involve minor issues like one department suing the other. This leads to a further backlog of cases.
- Also, in most of the cases, when the government files a case, it is seen that the government side fails to prove the point.

Insufficient Resources and Infrastructure:

- Another cause of the litigation pendency is lack of infrastructure for the judges, litigants and court staff.
- Indian judiciary has insufficient resources. Both Center and States are not interested in increasing spending with respect to the judiciary.
- Budgetary allocations for the whole judiciary are a pathetic 0.1% to 0.4% of the whole budget.
- Subordinate courts lack basic facilities like proper washroom facilities, canteen facilities, parking, library for advocates, sitting facilities for advocates and drinking water facilities.

- If we look at the trial rooms in district or subordinate courts, they are so small that 5-6 people can not stand in it.

Increase in Litigation:

- The recent socio-economic advances and the resultant awareness of legal rights, has given courage to common people to approach courts of law for justice.
- As the government explicitly made legislation for new rights like 'Right to Information' and 'Right to Education', aggrieved parties started to increasingly knock the doors of justice.
- Also, active judiciary has invented new devices like Public Interest Litigation which again resulted in more cases.

Lengthy Process of Law:

- The time taken in proceedings of a case is so lengthy that people sit for years outside the courtroom waiting for the court to deliver justice.
- There are a lot of hearings in a case, a number of adjournments in a case, victims become frustrated of fighting for justice.

Low judicial quality in lower courts

- The Indian Judicial system has miserably failed to attract the best brains and the talented students.
- As the quality of judges in lower courts is not always up to the mark, appeals are filed against the decisions in higher courts, which again increases the number of cases.
- Judges lack specialization and they have turned less efficient

Other Reasons:

- The archaic laws that fill up the statute books, faulty

or vague drafting of laws and their multiple interpretations by various courts are also reasons for prolonged litigation.

Suggestions:

Increasing Judicial Appointments:

- If the government of India really wants to solve the problem of litigation pendency, then the government has to fill all the vacant posts of the judges in the high court and the subordinate judges.
- The government needs to double the number of judges and create **All India Judicial Service**.
- The number of judges (vacancies) should be immediately raised to at least 50,000 from the current 21,000.

Appointing Ad-hoc Judges Under Article 224A:

- Some measures like appointing ad hoc judges under Article 224A of the Constitution can be done for immediate solution.
- Notably, the 124th Law Commission Report had recommended greater invocation of Article 224-A to prevent pendency of judicial work.
- Moreover, given the impact of COVID-19 pandemic, India would surely benefit if experienced ad-hoc judges are appointed to deal with pending judicial work at the High Courts.
- A benchmark like red or yellow colour shall be made to denote that pendency of cases. If it turns red, it will indicate to the Chief Justice of the high court to initiate the process of appointment.

Increasing Budget Allocation

- Judicial Infrastructure needs to be given equal importance as well because even if the 20,502 posts of judges in the subordinate judiciary are filled, we'll

need almost 4000 extra courtrooms to accommodate them.

- The infrastructure problems of the courts can be solved by increasing the budget allocation for modernising courts.

Increasing the rate of Clearance:

- Setting up E-courts and fast track courts can escalate the process of clearing out pending cases.

Popularising Alternate Dispute Resolution Mechanisms:

- The use of methods such as mediation, conciliation or arbitration to resolve a dispute without resorting to litigation is called Alternative Dispute Resolution (ADR).
- Out of the cases pending in India, 50% are of civil nature.
- The petitions which are compoundable can be easily resolved through ADR. Through it Pendency in litigation can be resolved.

Concept of Plea Bargaining:

- In 2005, a new chapter XXI A was inserted in Criminal Procedure Code, 1973 on plea Bargaining.
- Plea Bargaining means a pre-negotiation between the accused and the prosecution where the accused pleads guilty in exchange for certain concession by the prosecution.
- The main objective of the plea bargaining is to reduce the time in criminal trial and give the accused a lesser punishment. It helps in fast disposal of cases.

Mould your thought: What are the reasons for the high pendency of cases in Indian courts? Suggest measures to alleviate these challenges.

Approach to the answer:

- Introduction
- Discuss the pendency of cases in India (Briefly)
- Highlight the reasons for the pendency of cases
- Give Suggestions for improving the situation
- Conclusion