

JUDGES PRO TEM: THE HINDU EDITORIAL ON APPOINTMENT OF AD HOC JUDGES IN HIGH COURTS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Supreme Court's decision to invoke a "dormant provision" in the Constitution to [clear the way for appointment of retired judges as ad hoc judges](#) to clear the mounting arrears in the various High Courts is an indictment of the extraordinary delay in filling up judicial vacancies. Whether the fault lies with the Collegium system or the Centre's tardiness, there is little doubt that the unacceptable delay in the appointment process in recent times has caused huge vacancies in the High Courts. Therefore, it is definitely not unwelcome that the Court has chosen to activate [Article 224A of the Constitution](#), which provides for appointment of *ad hoc* judges in the High Courts based on their consent. A Bench headed by CJI S.A. Bobde has made it clear that "the challenge of mounting arrears and existing vacancies requires recourse to Article 224A". The numbers both in respect of pendency of cases and vacancies in the High Courts are quite concerning — a backlog of over 57 lakh cases, and a vacancy level of 40%. Five High Courts account for 54% of these cases. Interestingly, official data suggest that there need not be a correlation between the number of vacancies and the large backlog. The Madras High Court has 5.8 lakh cases against a relatively low level of vacancy at 7%. As many as 44% of the posts in the Calcutta High Court are vacant, but the cases in arrears stand at 2.7 lakh.

As the provision has been utilised only sparingly in the past, and for the limited purpose of disposing of particular kinds of cases, the endeavour to appoint *ad hoc* judges will have to come with some guidelines. The Court has made a beginning by directing that the trigger point for such an appointment will be when the vacancies go beyond 20% of the sanctioned strength, or when more than 10% of the backlog of pending cases are over five years old; when cases in a particular category are pending for over five years, or when the rate of disposal is slower than the rate of institution of fresh cases. The Bench has ruled that the current Memorandum of Procedure be also followed for appointing *ad hoc* judges, a process initiated by the Chief Justice of a High Court, with a suggested tenure of two to three years. The Court has clarified that this is a "transitory methodology" and does not constrain the regular appointment process. The government, which did not oppose the proposal, but wanted the vacancies to be filled up first, would do well to expedite the regular appointment process from its end, and give up its propensity to hold back some recommendations selectively. As for the judiciary, it should ensure that only retired judges with experience and expertise are offered the temporary positions, and there is no hint of favouritism.

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