

STRENGTH IN NUMBERS: ON JUDGE VACANCIES

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

The list of alarming numbers and figures relating to the depleting numbers in India's higher judiciary has a new addition. On December 10, the Supreme Court of India said that 213 names recommended for appointment to various High Courts are pending with the government. Data show that 38% of all sanctioned posts for High Court judges are lying vacant as of December 1, with the High Courts of some States including Andhra Pradesh and Rajasthan functioning at below half their actual capacity. The court has [fixed a time period of six months to appoint as judges](#) at least those whose names the Supreme Court collegium, the High Courts and the Government have agreed upon. At each level of the appointment process of judges to the higher judiciary, prior to the names reaching the Prime Minister and President for final approval, there are time periods specified. The Memorandum of Procedure states that appointments should be initiated at least six months before a vacancy arises and six weeks of time is then specified for the State to send the recommendation to the Union Law Minister, after which the brief is to be sent to the Supreme Court collegium in four weeks. Once the collegium clears the names, the Law Ministry has to put up the recommendation to the Prime Minister in three weeks who will in turn advise the President. Thereafter no time limit is prescribed and the process, seemingly, comes to a standstill.

The Supreme Court's recommendation now of a time limit to these appointments is welcome. It is no secret perhaps, that the equation between the court and the Union Government has been strained by the former's decision to strike down as unconstitutional in 2015 the move to set up a National Judicial Appointments Commission which would have been responsible for appointments and transfers to the higher judiciary in place of the Supreme Court collegium. Since then, reports of delays in appointments have become increasingly commonplace, with both sides testy over procedure. Last week, the same Bench of the Supreme Court chastised the government for not acting on another set of nominations on which the government had sent back objections. If the collegium reiterates the names, the court said, the government has no option but to appoint the judges. Such standoffs are now inevitable. As grievous as it is for the government to disrupt the process through delays, it is for the court to take an increasingly firm hand to ensure that the collegium system that it fought so hard to protect, despite flaws, actually functions effectively. Doing so would be in its best interests. Vacancies in the higher judiciary threaten every aspect of the justice delivery system and it is the courts, and very seldom the government, that always take the blame for any shortfall in justice.

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