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EDITORIAL ANALYSIS

Clearing the Backlog – Article 224A and the Limits of Ad Hoc Justice

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GS2

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MAINS RELEVANCE: GS Paper 2



INTERVIEW ANGLE

"Should India institutionalise Article 224A appointments as a regular mechanism, or would this undermine the independence and quality of the judiciary?"

WHY IN NEWS

The Supreme Court Collegium approved appointment of five retired judges as ad hoc judges in the Allahabad High Court under Article 224A of the Constitution — the most underused provision in India's judicial toolkit — to address a backlog that has swelled to over 6 crore pending cases across all courts.

THE SCALE OF THE CRISIS

India's judicial backlog is not a new problem — it is a structural one. As of early 2026, over **6 crore cases** remain pending across the Supreme Court, 25 High Courts, and the district/subordinate judiciary. The Allahabad High Court alone — the largest in the country — carries a pendency of nearly **1 million cases**, compounding year after year as new filings outpace disposals.

The causes are well-documented:

Sanctioned vs. actual strength gap: India has approximately 21 judges per million population against a recommended 50. The gap between sanctioned positions (roughly 1,108 in High Courts) and actual sitting strength (around 770) means courts are permanently understaffed.

Appointment delays: The collegium-government tug of war over appointments has left benches short for extended periods. The MoP (Memorandum of Procedure) dispute between the executive and judiciary remains unresolved.

Filing surge: Litigation is rising as legal awareness spreads, without corresponding capacity additions.

Adjournment culture: India's courts suffer from chronic adjournments — procedural continuances that inflate docket sizes without advancing cases.

ARTICLE 224A — THE PROVISION INDIA FORGOT

Article 224A of the Constitution is a remarkably targeted solution to one aspect of this crisis. It reads:

“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 a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court.”

Three elements make this provision distinctive:

Initiative lies with the Chief Justice of the HC — not the collegium, not the government.

Presidential consent is required — which involves the Union executive.

The retired judge must also consent — it cannot be imposed.

This three-way consent requirement explains why Article 224A was virtually unused for decades despite the backlog crisis being chronic. The provision was enacted in 1956 but remained dormant — a legal instrument with no institutional champion.

THE 2021 REVIVAL AND THE ALLAHABAD PUSH

The Supreme Court itself changed this in **2021**, when it issued guidelines actively encouraging High Courts to utilise Article 224A appointments. The apex court recognised that constitutional provisions must be operationalised, not merely recited. The 2026 Collegium approval of five ad hoc appointments to the Allahabad HC represents a concrete implementation of this renewed emphasis.

The related provisions deserve mention for comparison:

Article 127: Allows the Chief Justice of India to request an HC judge to sit as an ad hoc SC judge when a SC bench cannot be constituted for lack of quorum.

Article 128: Allows the CJI to request any retired SC judge (or a retired HC judge qualified for SC) to sit as an SC judge.

Article 224A is the HC-specific analog — addressing the chronic shortage at the high court level, where most original writ jurisdiction cases under Articles 226 and 227 are heard.

WHAT AD HOC JUDGES CAN AND CANNOT DO

What they can do:

Hear and decide pending cases on a temporary basis

Clear backlog in specific categories (commercial, criminal bail, writ petitions)

Be assigned to specially constituted benches for expedited disposal

What they cannot do:

Provide a permanent solution — their tenure is limited

Replace the need for regular appointments

Address root causes: procedure reform, case management systems, infrastructure

The appointment of retired judges is by definition a stopgap. A judge who has served their term brings experience and efficiency — they need no orientation period — but they are also not available indefinitely, and the backlog will regenerate if inflows are not reduced.

THE STRUCTURAL REFORM GAP

Article 224A appointments are a symptom management tool, not structural reform. Three reform pathways deserve sustained policy attention:

1. Increasing Judicial Strength

The **Law Commission's 245th Report (2014)** recommended increasing judge-population ratio to 50 per million within 5 years. In 2026, India is still at ~21. Expanding the sanctioned strength of High Courts requires political will and sustained budget allocation.

2. Process Reform

The **Code of Civil Procedure (Amendment) Act, 2002** attempted to streamline civil trials. The **Commercial Courts Act, 2015** created dedicated commercial benches with strict timelines. The **Mediation Act, 2023** creates a framework for pre-litigation mediation. Each of these is directionally correct but insufficiently implemented.

3. Technology and Case Management

The **eCourts Mission Mode Project (Phase III)** aims to digitise all court records and enable virtual hearings. The National Judicial Data Grid (NJDG) already provides real-time pendency data. The gap is in using this data to drive active case management — flagging old cases, identifying patterns, setting disposal targets by bench.

THE COLLEGIUM'S DUAL ROLE

The Supreme Court Collegium's decision to approve Article 224A appointments reveals a tension in India's judicial architecture: the apex court is simultaneously the employer and the oversight body for the HC judiciary. When the Collegium acts to address HC pendency, it performs an administrative function —

allocating human resources — that in most democracies would be handled by a judicial appointments commission with broader representation.

The **NJAC judgment (2015)** — which struck down the National Judicial Appointments Commission — preserved collegium primacy but also preserved its administrative bottlenecks. The debate over an independent appointments body with executive and civil society participation remains live.

UPSC RELEVANCE

Article 224A (ad hoc retired HC judges; CJ initiative + President's consent + judge's consent); Article 127 (ad hoc SC bench, CJI request); Article 128 (retired SC/HC judge sits as SC judge); NJDG (National Judicial Data Grid); eCourts Phase III; Commercial Courts Act 2015; Mediation Act 2023; Law Commission 245th Report; sanctioned vs actual strength gap.

Judicial reforms and pendency; Article 224A as a short-term fix; collegium system and accountability; structural reforms needed (judge strength, process reform, ADR); comparison with judicial appointments in other democracies; NJAC case and its aftermath.

★ FACTS CORNER — KNOWLEDGEPEDIA

JUDICIAL PENDENCY — INDIA (2026):

- Total pending cases: **over 6 crore** (all courts combined)
- Allahabad HC pendency: **~1 million cases** (largest HC)
- HC sanctioned strength: **~1,108 judges**
- HC actual working strength: **~770 judges**
- India's judge-population ratio: **~21 per million** (recommended: 50 per million)

ARTICLE 224A — AD HOC HC JUDGES:

- Constitution Article: **224A**
- Who initiates: **Chief Justice of the High Court**
- Consent required: **President of India + the retired judge**
- Eligible persons: Retired judge of **that HC or any other HC**
- Status while sitting: Has all jurisdiction/powers of a judge; NOT deemed a permanent judge
- SC guidelines: **2021** — Supreme Court encouraged HCs to use this provision
- Latest use: **5 appointments** to Allahabad HC (Feb 2026)

RELATED CONSTITUTIONAL ARTICLES — JUDGES:

- Article 127:** CJI requests HC judge to sit as **ad hoc SC judge** (when SC quorum unavailable)
- Article 128:** CJI requests **retired SC/HC judge** to sit as SC judge
- Article 216:** Deals with **strength of High Courts** (President determines number of judges)
- Article 217:** Appointment of HC judges (President + CJI + Governor + HC CJ consultation)
- Article 226:** HC original writ jurisdiction (fundamental rights + other legal rights)

JUDICIAL REFORM MILESTONES:

- Law Commission 245th Report: **2014** — recommended 50 judges per million within 5 years
- Commercial Courts Act: **2015** — dedicated benches for commercial disputes
- NJAC judgment: **2015** — SC struck down National Judicial Appointments Commission (5-4)
- eCourts Phase III: Digitisation of court records + virtual hearings
- Mediation Act: **2023** — pre-litigation mediation framework
- NJDG (National Judicial Data Grid): Real-time pendency data across courts

OTHER RELEVANT FACTS:

- India has **25 High Courts** (Allahabad being the largest by caseload)
- Most cases are pending at **district/subordinate court level** (~5.5 crore of 6 crore)
- First-appeal jurisdiction: HC hears appeals from district courts
- Original jurisdiction: HC hears writ petitions under Article 226 directly
- SC hears writ petitions only for fundamental rights under Article 32 (Dr. B.R. Ambedkar called it “soul of the Constitution”)
- Fast Track Courts: Government scheme; ~1,000+ functional; handle POCSO, heinous crimes
- Gram Nyayalayas Act, 2008: Village courts; only ~300 functional against target of 11,000+

Sources: The Hindu, PIB

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