

Topic: Worrisome backlog

Topic  
Introduction

The **Indian Judiciary** administers a **common law system** of legal jurisdiction, in which customs, precedents and legislation, all codify the law of the land. It has in part, inherited the legacy of the legal system established by the **then colonial powers and the princely states since the mid-19th century**, and has partly retained characteristics of practices from the ancient and medieval times.

There are various levels of judiciary in India – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the **Supreme Court of India at the top**, followed by **High Courts of respective states** with **district judges** sitting in **District Courts** and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. Courts hear criminal and civil cases, including disputes between individuals and the government. The judiciary is **independent of the executive and legislative branches** of government according to the Constitution of India.

#### Appointment of Judges:

As per the Constitution, as held by the court in the **Three Judges' Cases - (1982, 1993, 1998)**, a **judge is appointed to the Supreme Court and the High Courts by the President of India** from a list of names recommended by the *collegium* — a closed group of the **Chief Justice of India and the most senior judges of the Supreme Court**, for appointments to the Supreme Court, and they, together with the Chief Justice of a High Court and its senior-most judges, for appointments to that court. This has resulted in a Memorandum of Procedure being followed, for the appointments.

#### Appointments at halt:

Despite the best efforts to speed up disposal of cases, pendency in the high courts may spiral to a monstrous one crore cases by the end of this year from the present (Jan 2016) **45 lakh cases as 24 HCs are functioning at present with 43% vacancies with only 599 judges as against a sanctioned strength of 1044.**

The disposal of cases suffered as the process for appointment of judges came to a standstill for almost a year because of the **Constitutional tug-of-war between the Legislature and Judiciary over the validity of National Judicial Appointments Commission**, which was scrapped by the Supreme Court.

The SC has a pendency of around **60,000 cases**, HCs have **45 lakh cases** and trial courts around **2.75 crore cases** making it a total of around **3.25 crore cases**. Judges fear that it might touch **4 crore cases by the end of this year** because of large number of vacancies.

#### Situation at Present:

Breaking down several times in his **half-hour speech** addressed directly at Prime Minister Narendra Modi present on the dais at the Annual **Chief Ministers and Chief Justices Conference on 24<sup>th</sup> April**, **Chief Justice of India, Tirath Singh Thakur**, launched a scathing attack on government inaction, squarely **blaming the Centre for stalling appointment of judges to the High Courts.**

He also blamed the **Centre of doing nothing to increase the number of courts and judges** in the country, thus denying the poor man and under trial prisoners their due of justice. He referred to how the **Law Commission in 1987** had recommended **40,000 judges** in the country to tide over the problem of pendency of that time. Its report had said that there were only **10 judges to a million people**, when there should be at least **50 judges per 10 lakh population**. Noting that **population has increased by over 25 crore** since 1987, Chief Justice Thakur said the only solution to this “extraordinary situation” was to bring back proven judges from retirement in a bid to dispose of cases which are more than five years old.

WITH FRESH appointments of judges at the Supreme Court and high courts stuck at the government level, **Chief Justice of India Justice T S Thakur** said the services of **retired judges** would now be used in high courts on an ad hoc basis as an “exceptional and extraordinary” measure to reduce pendency of cases. A decision has been taken in the joint conference to appoint ad hoc judges under **Article 224-A** of the Constitution. Under Article 224-A, a retired judge can be requested to hold the office of a judge in certain circumstances.

On the delay in processing files sent by the Collegium, Law Minister D V Sadananda Gowda said the process is such and that it would take some time. He added that the criticism was unnecessary because **145 appointments have been cleared** by the government after the **NJAC verdict** (The ability of the two ‘eminent persons’ to veto any appointment flowed not from the 99th Constitutional Amendment but the NJAC Act. Therefore, it defied logic to render the entire amendment invalid solely because of this provision).

But Justice T.S. Thakur remained unimpressed with the Law Minister’s answer. He pointed out that of the **145 appointments; more than 90 were such where additional judges**, already working in a high court, were made permanent while the **number of fresh appointments was meager**. Although the continuing growth of pending cases in courts has been stemmed in the last three years, the mountain of **more than three crore pending case** still remains as a **worrisome backlog**.

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