

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WP (CIVIL) NO. 1236 OF 2019

IN THE MATTER OF:

LOK PRAHARI

... PETITIONER

VERSUS

UNION OF INDIA

... RESPONDENT

**SUMMARY OF DISCUSSIONS AT THE VIRTUAL MEETING HELD
FROM 4.30 TO 6.00 PM ON APRIL 10, 2021 AND 4.30 TO 5.30 PM ON
APRIL 13, 2021**

1. On April 09, 2021, this Hon'ble Court directed that a virtual meeting to be convened of all parties so that the viewpoint on different aspects can be placed before this Hon'ble Court for further orders, while implementing Article 224A.
2. In the background of the observations made by this Hon'ble Court and the submissions of the learned counsel on April 8, 2021, a note was circulated setting out important aspects/topics relating to Article 224A on which the views of various parties can be summarized and placed before this Hon'ble Court.
3. On an examination of the website of the National Judicial Data Grid, it shows that the pendency in all the High Courts put together is 57,51,312, as

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on April 4, 2021. The website further shows that five High Courts alone have 54% of the total arrears and these are:

Allahabad	:	7,86,168
Punjab & Haryana	:	6,71,634
Madras	:	5,81,425
Bombay	:	5,51,181
Rajasthan	:	5,40,083
Total	:	31,30,491

The NJDG website also gives the total pendency for various periods in the High Courts and these are shown in the table below:

Particulars	Civil	%	Criminal	%	Total	%
0 to 1 Years	622267	15.09%	333345	20.49%	955612	16.62%
1 to 3 Years	1054504	25.57%	427302	26.27%	1481806	25.76%
3 to 5 Years	676249	16.4%	221226	13.6%	897475	15.6%
5 to 10 Years	870536	21.11%	296231	18.21%	1166767	20.29%
10 to 20 Years	716419	17.37%	289887	17.82%	1006306	17.5%
20 to 30 Years	109517	2.63%	41916	2.63%	151433	2.63%
Above 30 Years	75047	1.82%	16866	1.04%	91913	1.6%

The table shows that 56.4% cases are within the 5 year period but almost 40% of the cases are pending for 5 to 20 years.

4. The website of the Department of Justice (DoJ) has also given the details of sanctioned strength, working strength and vacancies in High Courts. However, the percentages have been calculated for the purpose of this Note and this is attached as **Annexure-A** to this Note.

(a) It is important to note that the contents of this Note are not necessarily the views of the individual High Courts. During the discussion, counsel expressed their individual viewpoints as well. Due

to shortage of time, it was not possible to bifurcate the views of the High Court and the views presented at the virtual meetings. In view of the importance of the matter and the urgency involved, it was felt that all the points discussed may be summarized and placed before this Hon'ble Court;

- (b) It is also necessary to emphasize that the views expressed in this Note need not necessarily have been expressed by all the High Courts;
- (c) Shri R.S. Suri, learned ASG, also participated in the discussions. He made it clear that the views of the Union of India are restricted to those mentioned in the first affidavit dated April 7, 2021 and in the additional affidavit dated April 13, 2021. Reference to the views of the participants in this Note will not necessarily include the views of the Union of India and the stand of the Union is based on what is stated in both these affidavits. (It is submitted that the summary of the suggestions made by the Union of India are set out in Para 24 at pages 16 to 23 of the additional affidavit. All references to views of Union of India in this Note is based on this/additional affidavit dated April 13, 2021); and
- (d) The sole objective of this additional affidavit was to assist this Hon'ble Court on the various issues and no adversarial stand is being taken by the Union of India in this regard-para 3, page 2.

5. In this Note, retired judges who may be appointed under Article 224A⁴ are sometimes referred to as *ad hoc* judges, although the expression is applicable only to Article 127. Further, Article 224A does not refer to “appointments” but to a “request”. For convenience, the words “request” and “appointments” are used interchangeably in this Note.

I. **TRIGGER POINT FOR IMPLEMENTING ARTICLE 224A**

6. The majority of the participants adopted the view expressed by Shri A.K.Sinha that the “trigger point” should be when 20% of the backlog in any individual High Court is pending for more than ten years.

7. Some participants felt that the above period should be five and not ten years.

8. A third view was that the “trigger point” should be a mix based on the pendency of cases and the vacancies in individual High Courts. The view expressed was that the trigger point could be where cases were more than 10% of the backlog or pending for five to ten years OR more than 10% to 20% of the sanctioned strength is vacant.

9. The fourth view was that the trigger point should be entirely left to the respective High Courts as the collegium of each High Court was best suited to decide whether appointment should be made under Article 224A.

10. Shri Vikas Singh, President, SCBA, in a written note, expressed the view that no recommendation/request should be made under Article 224A unless all the vacancies are filled up or all the names for existing vacancies have been recommended by the respective collegium. However, the majority felt

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that this view may not be feasible, as in several High Courts, the vacancies are very high and pending filling of these vacancies, requests/recommendations can also be made under Article 224A. Further, if the vacancy is high, it may not be possible for the concerned collegium to identify, within a short period, suitable candidates for all such vacancies. However, it was the view of all the parties that Article 224A should be in addition to appointments under Article 217 and Article 224; Article 224A is not to be used *in lieu* of either Article 217 or Article 224.

11. **Union of India:**

- (i) In para 24(i) at page 16, the Union has emphasized that the High Courts should have initiated necessary steps for filling up the vacancies on a regular basis before the proposal under Article 224A are considered;
- (ii) In addition, the Union has made the following suggestions regarding “trigger points”:
 - a. The appointment should be on a case-to-case basis and the criteria should be the cases pending for more than *two years* – para 24(ii) of page 17;
 - b. Retired judges should be requested when the gap between the sanctioned strength and the working strength is more than 20%-para 24(iii), page 7; and

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- c. Appointments under Article 224A should not be *in lieu* of regular appointment- para 24(i), pp 16-17.

II. STAGE FOR MAKING REQUEST UNDER ARTICLE 224A

12. The majority of the participants were of the view that once a High Court has reached the trigger point, its collegium should start the process of making requests and obtaining the previous consent of the President from amongst the judges who are to retire in the near future. As suggested by Ms. Meenakshi Arora, the process under Article 224A should be 'seamless' and there should preferably be no gap.
13. Judges who have retired may also be requested/recommended for appointment. The Allahabad High Court, however, expressed the view that there should be a cooling off period of one year.

Union of India:

- (i) In para 24(iv) at page 17, the Union has stated that it is desirable to ensure that persons who are retiring are appointed. If a sitting judge is recommended, then, several procedural formalities (as pointed later in para 24(xii), page 20) can be eliminated and the process of appointment can be expedited.

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- (ii) If sufficient number of eligible judges are not available or do not give consent, then, request can be made to those who have retired in the preceding two years, but not beyond that-para 24(v), page 18.
- (iii) If retiree judges belonging to that particular High Court are not available, then, judges from other High Courts may be considered/requested-para 24(vi), page 18.

III. APPROVAL BY SUPREME COURT COLLEGIUM:

14. The view of several participants was that the approval of the Supreme Court collegium is not necessary for request/recommendation made under Article 224A.
15. The retired judges, who are to be recommended/requested, have already been approved at the time of their initial appointment and their suitability to function as judges is no longer in doubt. To refer the recommendations once again to the Supreme Court collegium will not only be unnecessary but will lead to considerable delay and defeat the purpose of Article 224A.
16. The majority view was also that the collegium of the individual High Courts are best suited to take a decision on who should be recommended/requested under Article 224A and thereafter it is only the consent of the President (Executive) that is necessary under the Constitution.
17. Union of India

In the additional affidavit, the following points were made:

- (i) Appointment of retired judges under Article 224A should be a collaborative process between the Executive and the Judiciary-para 14, page 9.
- (ii) The procedure laid down in para 24 of the MoP has to be followed under Article 224A unless the MoP is amended-para 17,pp 11-12.

IV. **MEMORANDUM OF PROCEDURE – PARA 24:**

18. Most of the participants felt that para 24 of the MoP requires to be modified. Para 24 has erroneously adopted the same procedure as applicable to appointments under Article 217 and Article 224 to the request/recommendation that has to be made under Article 224A.
19. The learned Senior Counsel for Meghalaya pointed out that Article 224A has a *non-obstante* clause and the request under Article 224A stands on a different footing.
20. It was also suggested that although the word used is “*previous consent*”, the procedure could begin with a request/recommendation made by the collegium of the High Court which can be forwarded to the Ministry of Law Justice for consent by the Prime Minister/Cabinet and then the formal consent of the President.
21. Any objection of the Executive to a particular appointment can be sent to the collegium of the individual High Court for their response.

22. **Union of India:**

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As mentioned earlier, the Union of India emphasized the need to follow para 24 of the MoP.

V. **ROLE OF JUDGES APPOINTED UNDER ARTICLE 224A**

23. The majority view was that the retired judges who are requested/appointed under Article 224A should preferably deal only with old cases as this is the main purpose for their appointment.
24. The majority also felt that the names recommended should have a nexus or relation with the kind of cases that are pending before the individual High Court. Thus, if there are a large number of criminal cases pending in a particular High Court, then, retired judges with special experience or knowledge in criminal law should be requested.
25. Shri RavindraSrivastava expressed the view that their role should not be confined to old cases alone. He pointed out that in some High Courts, there is a large backlog of even bail applications/anticipatory bail applications. However, at this stage, a number of participants felt that the appointee under Article 224A should not deal with admissions/fresh matters.
26. Finally, another view was that the Chief Justice of each High Court is the “master of the roster” and it should be his sole discretion to allot cases to the retired judges in any manner he thinks fit.

27. The Gujarat and Rajasthan High Courts have suggested that at least three retired judges should be appointed so that two can function as Division Bench and one as a single judge, to dispose of the old cases.

28. **Union of India:**

Role of judges appointed under Article 224A has been summarized in paras 24(xiv) to (xviii). In brief, it is said:

(i) Such judges should be utilized exclusively for disposal of arrears and not for current cases. They should not be burdened with administration/fresh admissions.

(ii) They should not be allowed to take up trial work or other private work which will defeat the purpose of Article 224A.

VI. **TENURE OF APPOINTMENT:** FOR THE PEOPLE. OF THE PEOPLE

29. There were divergent views on what should be the maximum age. This varied from an upper limit of 65 years to 70 years. The Gujarat High Court suggested that the maximum should be 68 years with two terms to three years' each.

30. It was also felt that the High Court Collegium should go through the procedure once again if an extension/second term is to be granted. The minority view was that the High Court collegium should have the right to give an extension for a second term. The judges under Article 224A should be appointed for a two-year period as this was the term prescribed for Additional Judge under Article 224 also.

31. **Union of India:** //

In para 24(xvii) at page 22, the Union has suggested a maximum limit of 18 months.

VII. **TIME TO COMPLETE THE PROCESS:**

32. The unanimous view was that the appointment under Article 224A should be made expeditiously and preferably within three months. It was felt that as the appointments will be only from retired judges who have already served their High Courts for several years, the procedural formalities of appointments under Articles 217 and 224 can be dispensed with.

33. The very purpose of a request under Article 224A is to deal with the huge problem of arrears. Any delay in the appointment process will defeat the objective of Article 224A. Finally, the unanimous view was that the outer limit to complete appointment process should be six months.

34. **Union of India:**

The Union has also emphasized the need for expeditious appointments:

- (i) In para 24(xi) at page 20, it is pointed out that any delay in the process of appointment would defeat the object of Article 224A;
- (ii) To reduce the time for appointments under Article 224A, sitting judges who are going to retire within six months should be considered first-para 24(ii), page 20; and
- (iii) Although there is a need to expedite the process, the President cannot be bound by any timeline-para 24(xiii), page 11.

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VIII. **SCRUTINY BY THE EXECUTIVE:**

35. The majority were of the view that if a sitting judge has to be considered on the basis of his knowledge, efficiency, competence and integrity, there would be no need for the scrutiny by IB or compliance with other formalities.
36. One view was that although the IB report may not be necessary, some scrutiny or check was necessary. A third view was that the collegium of the High Court must be trusted to make the proper recommendation. It is expected that the request/recommendation will be made only based on the suitability, competence and integrity of the concerned retired judge.
37. Further, since the name will be recommended by the Collegium and not the Chief Justice alone, there will be sufficient checks and balances at the High Court stage itself.
38. Another view was also expressed that the Chief Justices are usually from other States; but with the consultation with J1 and J2, the possibility of the proper candidate being chosen is very high and there is no need for further scrutiny.
39. A view was also expressed that if a retired judge is going to be subject to IB report, etc., it would be against the dignity of the office.
40. **Union of India:**

The suggestions of the Union of India on this important issue are as follows:

- (i) If a sitting judge is being recommended, there will be no need to carry out vetting by other agencies like IB, which is a time consuming process-para 24(xii) of page 20;
- (ii) A number of complaints are received against sitting judges. When the proposal for appointment of a serving judge is being made, the High Court must share information about complaints about the appointee;
- (iii) If there is a gap between the superannuation of a judge and his/her appointment under Article 224A, then, enquiry has to be conducted and inputs from IB would necessarily be required-para 24(ix), page 19;and
- (iv) If the retired judge submits a certificate of physical fitness, the procedure will be simpler and the procedural formalities as in the case of fresh appointment can be dispensed with-para 24(xii), page20.

IX. ALLOWANCES UNDER ARTICLE 224A:

41. Article 221 refers to salaries of High Court Judges and these are mentioned in the Second Schedule to the Constitution and suitable legislation is made by Parliament. There is no statutory provision for salaries or allowances payable to appointments under Article 224A which merely states that such judges will be "*entitled to such allowance as the President may by order determine*".

42. It was the unanimous view that whatever emoluments/salaries/allowances are determined, it should be uniform throughout the country.
43. It was also felt that the Executive must decide the “allowances” since this will be a charge on the Consolidated Fund of India and the Government has to bear the financial burden.
44. The majority view was that the word “allowances” should be interpreted to mean the same “salary and allowances / perquisites” that are payable to sitting judges.
45. Where a retired judge is requested before his retirement and continues as a “judge” under Article 224A, he/she should get the same emoluments that he/she was entitled to at the time of his/her retirement.
46. Ms. Preetika Dwivedi suggested that if a request is made to a retired judge who had already retired a few years earlier, his “allowances” should be what is payable to sitting judges on the date on which he assumes office under Article 224A.
47. The general consensus was that if Article 224A is to be effectively implemented, then there should be parity between what is payable to these judges and to the sitting judges of the High Courts.
48. It was also felt that judges under Article 224A will normally not exceed the sufficient strength of that High Court. Therefore, there will be no extra burden on the *exchequer*.

49. The majority took the view that wherever housing is available, the retired judge may be given housing accommodation. If that is not possible, suitable housing allowance may be paid to him/her.
50. The other suggestion was that in the latest judgment of the Supreme Court in *Madras Bar Association v. Union of India* dated November 27 2020, a three-judge bench held that Tribunal Members who are retired judges must get housing allowances depending on the city involved. Accordingly, it is suggested that the same housing allowance can be given to a retired judge under Article 224A.
51. It was the unanimous view that the pension that is payable to a retired judge should be deducted from his salary/allowance. This was also the practice if a retired judge assumed the post of Chairman of any Tribunal.

52. **Union of India:**

In para 24(xviii) at page 22, the Union has stated that there was a need to lay down the entitlements and perks, including housing accommodation for such retired judges appointed under Article 224A. Further, the State Government is an important stake holder as creation of judicial infrastructure is its primary responsibility, it is, therefore, necessary to consult the State Government.

X. **MISCELLANEOUS:**

53. The Calcutta High Court expressed the view that there was no need for finalising the procedure under Article 224A at the current juncture. A view was expressed that as this involved interpretation of Article 224A, the matter

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must be referred to a bench of five-judges. It was further submitted that the procedure for appointment under Article 224A should not be done in a hurried manner but after careful deliberation.

54. The procedure when drafted must also provide for removal of a person appointed under Article 224A. As he is not a judge in the common sense, impeachment process does not apply to him. Therefore, a procedure for terminating his appointment should be devised.
55. While some expressed the view that such judges should be permitted to take up arbitration work, the majority felt that they should not be permitted to take up any other personal work. The retired judge is being requested to clear the backlog and arrears and if he is permitted to do arbitration, the very purpose of Article 224A would be defeated.
56. The majority took the view that the word "Chief Justice" in Article 224A should be read as the "Chief Justice and J1 and J2". However, a few participants submitted that Article 224A stood on a different footing, and the word "Chief Justice" should not include J1 and J2.
57. Shri Romy Chacko pointed out that Justice K. Jayachandra Reddy was appointed after retirement, under Article 128 in 1994. The "allowances" paid to him may be examined as this appointment was after the "*Second Judges*" case.
58. **Union of India:**

In addition to what has been stated under specific headings above, the following other suggestions of the Union of India may be noted:

- (i) The past performance of the recommendees should be a factor-para 24(vii), page 18;
- (ii) The appointment should be on performance-based criteria including disposal of the cases in the last two years. Certain other factors have also been set out in this paragraph;
- (iii) In addition to determining whether these judges can be part of the Bench, the question as to who should head the Bench has also to be decided-para 24(xv), page 21;
- (iv) A mechanism/procedure for removal of judges appointed under Article 224A would have to be laid down-para 24(xx), page 23;
- (v) Appointments under Article 224A will require the consultation and approval of various authorities both at the State and at the Centre-para 4, page 2. These require the involvement of the High Court collegium, State Government, Central Government and the Supreme Court collegium-para 16, page 11;
- (vi) At para 18, it is mentioned that only one retired judge was appointed under Article 224A. It is submitted that this may be not correct as Justice Venugopal was appointed for two terms in the Madras High

Court¹ and Justice Surajbhan was appointed for two terms in the Madhya Pradesh High Court². It is not clear whether other such appointments were made in other High Courts; and

- (vii) In para 20 at page 17, reference is made to a resolution passed at the Chief Justices' conference on 22nd and 24th April, 2014, emphasizing the need to implement Article 224A to clear large pendency of civil and criminal cases. The then Chief Justice of India, Justice C.S. Thakur also stated that approval had been received for appointment of 19 judges from four High Courts, but no appointments were made.

April 14, 2021.



Sibo Sankar Mishra

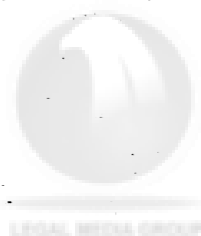
Advocate for the High Court of Orissa

Statement showing Sanctioned strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts (As on 01.04.2021) 19

Sl. No.	Name of the Court	Sanctioned Strength			Working Strength			Vacancies							
														% Vacancy (Pmt. + Addl.)	
A.	Supreme Court of India	34			29			05						15%	
B.	High Court	Pmt.	Addl	Total	Pmt.	Addl	Total	Pmt.	Addl	Total	% Vacancy (Pmt.)	% Vacancy (Addl.)	% Vacancy (Pmt. + Addl.)		
1	Allahabad	120	40	160	92	11	103	28	29	57	23%	73%	36%		
2	Andhra Pradesh	28	09	37	19	0	19	09	09	18	32%	100%	49%		
3	Bombay	71	23	94	47	15	62	24	08	32	34%	35%	34%		
4	Calcutta	54	18	72	30	02	32	24	16	40	44%	89%	56%		
5	Chhattisgarh	17	05	22	13	03	16	04	02	06	24%	40%	27%		
6	Delhi	45	15	60	31	0	31	14	15	29	31%	100%	48%		
7	Gauhati	18	06	24	17	03	20	01	03	04	6%	50%	17%		
8	Gujarat	39	13	52	30	0	30	09	13	22	23%	100%	42%		
9	Himachal Pradesh	10	03	13	10	0	10	0	03	03	0%	100%	23%		
10	High Court for UTs of J & K and Ladakh	13	04	17	11	0	11	02	04	06	15%	100%	35%		
11	Jharkhand	19	06	25	16	0	16	03	06	09	16%	100%	36%		
12	Karnataka	47	15	62	30	19	49	17	-04	13	36%	-27%	21%		
13	Kerala	35	12	47	29	11	40	06	01	07	17%	8%	15%		
14	Madhya Pradesh	40	13	53	25	0	25	-15	13	28	38%	100%	53%		
15	Madras	56	19	75	52	10	62	04	09	13	7%	47%	17%		
16	Manipur	04	01	05	04	01	05	0	0	0	0%	0%	0%		
17	Meghalaya	03	01	04	04	0	04	-01	01	0	-33%	100%	0%		
18	Orissa	20	07	27	15	0	15	05	07	12	25%	100%	44%		

19	Patna	40	13	53	21	0	21	19	13	32	48%	100%	60%
20	Punjab & Haryana	64	21	85	36	11	47	28	10	38	44%	48%	45%
21	Rajasthan	38	12	50	23	0	23	15	12	27	39%	100%	54%
22	Sikkim	03	0	03	03	0	03	0	0	0	0%	0%	0%
23	High Court for the State of Telangana	18	06	24	14	0	14	04	06	10	22%	100%	42%
24	Tripura	04	01	05	04	0	04	0	01	01	0%	100%	20%
25	Uttarakhand	09	02	11	06	01	07	03	01	04	33%	50%	36%
Total		815	265	1080	582	87	669	233	178	411	29%	67%	38%

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