



Cooling-off Period For Judiciary

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Recently, President Ram Nath Kovind has **nominated former Chief Justice of India (CJI), Ranjan Gogoi to the Rajya Sabha**. Former CJI has presided over politically sensitive cases (**Assam NRC, Sabarimala, Ayodhya, Rafale, CBI**) in which the government was a party.

The nomination to the Rajya Sabha, just four months after his retirement, raises the question that, should judges stop accepting post-retirement jobs offered by the government, at least for a few years after retiring, because accepting such posts could **undermine the independence of the judiciary**.

Independence of Judiciary

- The edifice of constitutional governance rests on **the separation of powers**.
- The legislature is popularly elected where the sovereignty of the people resides; the executive is accountable to the legislature; and the judiciary is the upholder of the Constitution and, along with its other duties, provides a check against executive excesses, arbitrariness, and unlawful steps.
- Being Guardian of Constitution, the judiciary has to be independent — insulated from pressures and inducements.
- This independence of the judiciary is ensured by many constitutional provisions. For example:
 - Judges do not hold their offices at the **“pleasure” of the President**. In other words, they cannot be arbitrarily removed by the government once they are appointed, and can only be impeached by a special majority of both houses (Article 124(4)) of Parliament only **“on the ground of proved misbehaviour or incapacity”**.
 - This impeachment process is a very difficult one and never in the history of independent India has a judge been impeached, though attempts have sometimes been made to do so. Judges, therefore, enjoy security of tenure while holding office, which is essential for maintaining judicial independence.

Should Judges be barred from Post-retirement appointments?

- In the Constituent Assembly, **K T Shah**, suggested that High Court and Supreme Court judges should not take up an executive office with the government, “so that no temptation should be available to a judge for greater emoluments, or greater prestige which would in any way affect his independence as a judge”.
- However, this suggestion was rejected by **B R Ambedkar**. According to him “judiciary decides cases in which the government has, if at all, the remotest interest, in fact no interest at all”.
 - Immediately after independence, the judiciary was engaged in deciding private disputes and rarely did cases arise between citizens and the government.
 - Consequently, B R Ambedkar held that, “the chances of influencing the conduct of a member of the judiciary by the government are very remote”.
- However, this reasoning no longer holds today because the government is one of the largest litigants in the courts

Instances of Post-Retirement Appointment of Judges

- Retired judges have been appointed to political office since independence.
- In 1952, Justice Fazl Ali was appointed the Governor of Orissa, shortly after retiring from the Supreme Court.
- In 1958, Chief Justice M C Chagla resigned from the Bombay High Court in order to become India’s Ambassador to the US at Prime Minister Nehru’s invitation.
- In April 1967, Chief Justice Subba Rao resigned from the Supreme Court to contest elections for President.
- In more recent times, Chief Justice P Sathasivam was appointed the Governor of Kerala.

Associated Issues

Undermining Independence of Judiciary

- **Article 124(7) of the Indian Constitution** provides that a retired Supreme Court judge cannot “plead or act in any court or before any authority within the territory of India”. However, this provision only restricts post-retirement appointments in Judiciary itself, but not in posts of president, governor, member of parliament, etc.
- Thus, the post-retirement appointment of judges may threaten or undermine judicial independence. This is because some judges — not all — are offered post-retirement employment by the government.
- It is often feared that a judge who is nearing retirement could decide cases in a manner that pleases the government in order to get a favourable post-retirement position.

Loss of Constitutional Proprietary

If a judge decides highly controversial and contested cases in favour of the government and then accepts a post-retirement job, even if there is no actual quid pro quo, would this not lead to the public perception that the independence of the judiciary is compromised.

Denial of Law Commission Recommendation

- **In its 14th report in 1958, the Law Commission** noted that retired Supreme Court judges used to engage in two kinds of work after retirement:
- Firstly, **“chamber practice”** (a term which would, today, mean giving opinions to clients and serving as arbitrators in private disputes) and secondly, **“employment in important positions under the government”**.
- The Law Commission frowned upon chamber practice, but did not recommend its abolition.
- However, it strongly **recommended banning post-retirement government employment** for Supreme Court judges because the government was a large litigant in the courts.
- The Commission’s recommendations were never implemented.

Opinion of Several Former Chief Justices of the Supreme Court

In the 1980s, it is believed that post-retirement employment with the government was undermining the independence of the judiciary.

- **Chief Justice Y V Chandrachud** felt that some judges were looking for post-retirement positions and writing judgments with that in mind.
- **Chief Justice R S Pathak** believed that judges with short tenures at the Supreme Court tended to be more pro-government in their approach since they were looking for a suitable position after retirement.

Way Forward

- Several appointments to administrative bodies require a cooling-off period for individuals so as to eliminate the possibility or suspicion of a conflict of interest or quid pro quo. This **cooling-off period** must be extended to Indian Judiciary.
Former CJI R M Lodha recommended a cooling-off period of at least 2 years.
- In this context, the example of **former CJI-Mohammad Hidayatullah** is worth emulating.

Cooling-off period

- Officials who retire from sensitive positions are barred from accepting any other appointment for a period of time, normally two years.
- These cooling-off periods in posts are premised on the snapping off of the nexus between previous incumbency and new appointment by the interposition of a sufficient time gap.

Mohammad Hidayatullah

- In 1970, Mohammad Hidayatullah was hearing the highly political privy purses case, in which he would deliver his last judgment as CJI.
- In that case, the Supreme Court held that the **Indira Gandhi** government's decision to abolish the "privy purses" paid to former Indian princes (who had agreed to join the Indian Union after the British left India) was illegal.
- While the hearings were going on, it was reported that Hidayatullah was being considered by the government for the World Court or for the position of Lokpal after he retired.
- However, Justice Hidayatullah made it very clear that even if he were offered any of these positions, he would not accept them.
- Also, Justice Hidayatullah was appointed vice-president nine years after his tenure as CJI ended.

Drishti Mains Question

Post-retirement appointments in Judiciary undermines the doctrine of Separation of powers. Discuss.