



## 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?

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- 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

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### 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 14<sup>th</sup> 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

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- 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.