
POST-RETIREMENT OPPORTUNITIES AND CHALLENGES FOR JUDGES IN THE HIGHER JUDICIARY OF INDIA

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ABSTRACT

This paper examines the opportunities and challenges associated with post-retirement jobs for judges in India's higher judiciary. It explores the relevant constitutional provisions, analyzes arguments for and against such positions, and provides examples of common post-retirement appointments. The paper concludes by highlighting the ongoing debate regarding the potential impact of these opportunities on judicial independence and proposes avenues for further discussion.

Keywords: Higher Judiciary, India, Post-Retirement Jobs, Judicial Independence, Conflict of Interest, Legal Expertise

“Pre-Retirement judgments are Influenced By Post Retirement Jobs” - Arun Jaitley.**Introduction:**

India's higher judiciary, comprising High Courts and the Supreme Court, boasts of esteemed judges who dedicate their careers to upholding the law. Upon retirement, these judges, with their wealth of experience and legal acumen, enter a new phase. This paper explores the landscape of postretirement opportunities available to them, while also examining the potential challenges that may arise.¹

On the one hand, retirement presents a chance to pursue intellectual interests, contribute further to the legal system, and even embark on new ventures. Delving into the various avenues judges can explore, ranging from arbitration and mediation to commissions of inquiry and tribunals. We will shed light on the potential benefits these opportunities offer, both to the judges themselves and to the wider legal community.²

However, this transition is not without its complexities. A key challenge lies in ensuring the independence of the judiciary. Concerns exist regarding the potential for post-retirement appointments to be influenced by past judgments. This paper will critically examine these concerns and explore possible solutions, such as transparent appointment processes and clear guidelines for eligibility.

By examining both the opportunities and challenges of post-retirement life for judges, this page aims to provide a comprehensive understanding of this crucial aspect of India's judicial system. It will contribute to a vital discussion on maintaining judicial independence and ensuring the continued contribution of retired judges to the nation's legal landscape.³

The vast experience and legal acumen accumulated by judges in the higher judiciary present a valuable resource for the Indian legal system. However, upon retirement, these judges face a

¹ Garg, Harshita, Post Retirement Appointment of Judges in India, 11 Nirma U. L.J. 115 (2021-2022)

² Id at 117.

³ Poddar, U. (2022, September 3). *Could post-retirement benefits for Supreme Court judges hamper judicial independence?* Scroll.in. <https://scroll.in/article/1031816/can-post-retirement-benefits-forsupreme-court-judges-hamper-judicial-independence>

significant transition. While some may choose to completely disengage from legal matters, others seek to leverage their expertise in post-retirement roles.⁴

The Constitution and the Crossroads of Retirement: Opportunities and Challenges for India's Higher Judiciary

The Indian Constitution, the bedrock of the nation's legal framework, plays a significant role in shaping the post-retirement landscape for judges in the higher judiciary (Supreme Court and High Courts). While it doesn't explicitly outline a plethora of opportunities, it does establish certain guardrails that influence the choices available and the potential challenges that emerge.⁵

Safeguarding Independence: A Constitutional Imperative

The Constitution prioritizes the independence of the judiciary. Article 124(7) embodies this principle by barring retired Supreme Court judges from practicing in any court or before any authority within India. This restriction aims to eliminate any perception of bias or influence peddling in the legal system. Similarly, Article 220 restricts retired High Court judges from pleading before any authority except the Supreme Court and other High Courts, upholding impartiality at the state level.⁶

The Indian Constitution does not explicitly bar retired judges from accepting post-retirement positions. However, certain articles pertaining to judicial independence and separation of powers are relevant to this discussion. Article 50 emphasizes the separation of judiciary from the executive, while Article 124 ensures the independence of judges. These principles raise questions about the potential for compromised independence if retired judges accept government-appointed positions.

While the Constitution doesn't dictate post-retirement pursuits, it does create a framework for certain avenues. Article 128 empowers the Chief Justice of India, with the President's consent, to call upon a retired judge of the Supreme Court, or a qualified High Court judge to sit and act as a judge in the Supreme Court. This provision allows for the utilization of experienced judges to address specific situations. Additionally, commissions of inquiry and tribunals, established

⁴ Id.

⁵ Ghose, S. (2024, March 4). *The Constitutional Silence On Judges In Politics*. [Www.livelaw.in](https://www.livelaw.in).

<https://www.livelaw.in/articles/independence-of-judiciary-and-judges-post-retirement-appointment->

⁶ M.P.Singh, Securing the Independence of the Judiciary – The Indian Experience, *Ind. Int'l and Comp. L. Review*, Vol 10:2, 245-292

under various legal provisions, often seek expertise from retired judges, leveraging their extensive knowledge.

Challenges and Considerations: Navigating the Gray Areas

The very act of availing post-retirement opportunities can present challenges. The aforementioned restrictions on practicing law can be seen as a limitation on utilizing legal expertise. Furthermore, concerns exist regarding the potential for appointments to tribunals or commissions to be influenced by past judgments, creating an appearance of quid pro quo. This can undermine public trust in the judiciary's neutrality.

Striking a Balance

Addressing these challenges requires a multi-pronged approach. Firstly, transparent appointment processes for tribunals and commissions can mitigate concerns about influence. Secondly, clear eligibility guidelines for post-retirement appointments, considering the nature of past judgments and timeframes, can be established. Finally, encouraging retired judges to pursue academic pursuits, contribute to legal scholarship, or engage in public service endeavors that don't conflict with judicial independence can be fostered.⁷

In conclusion, the Indian Constitution, while not an exhaustive guide to post-retirement opportunities, lays the foundation for upholding judicial independence.⁸ Recognizing the potential challenges and implementing transparent measures can ensure that retired judges continue to contribute to the legal system while safeguarding the integrity of the judiciary.

Arguments for and Against Post-Retirement Jobs:

Arguments in Favor:

Continued Contribution and Expertise:

- **Experience and Knowledge:** Retired judges possess a wealth of experience and legal

⁷ Concerned over meagre pension to retired district judicial officers, SC asks Centre to find solution. (2024, February 26). The Indian Express. <https://indianexpress.com/article/india/supreme-court-centremeagre-pension-judicial-officers-9182536/>

⁸ Shah, A. P. (2023, February 15). Post-retirement appointments: a danger to judicial independence. *The Hindu*. <https://www.thehindu.com/opinion/op-ed/post-retirement-appointments-a-danger-to-judicialindependence/article66512025.ece>

knowledge accumulated over decades on the bench. Post-retirement jobs allow them to leverage this expertise for the benefit of the legal system. They can contribute to complex legal issues in arbitration, mediation, or tribunals, bringing valuable perspective and seasoned judgment.⁹

- **Mentorship and Guidance:** Retired judges can serve as mentors to younger lawyers and judges, imparting valuable lessons and fostering a culture of excellence within the legal profession.

Strengthening the Legal System:

- **Efficiency and Expertise:** Retired judges, with their familiarity with legal procedures and court systems, can help resolve disputes faster and more efficiently in arbitration and mediation settings. This can reduce the burden on already overcrowded courts.¹⁰
- **Policy Development and Law Reform:** Their experience positions them well to contribute to law commissions and advisory bodies, shaping legal policies and reforms based on their practical understanding of the legal system.

Personal and Professional Benefits:

- **Intellectual Stimulation:** Retirement can lead to a sense of stagnation. Post-retirement jobs offer intellectual stimulation and keep judges engaged with the legal field they are passionate about.
- **Financial Security:** For some judges, pensions may not be sufficient to maintain their desired lifestyle. Post-retirement jobs can provide a source of additional income and enhance their financial security.
- **Sense of Purpose:** Meaningful work provides a sense of purpose and fulfillment. Continuing their legal careers post-retirement allows judges to maintain a sense of

⁹ Can't stop retired judges from taking assignments, says SC. (2023, September 7). Hindustan Times. <https://www.hindustantimes.com/india-news/supreme-court-calls-for-law-to-regulate-post-retirementassignments-for-judges-in-constitutional-courts-101694026271756.html>

¹⁰ Aney, Madhav., Dam, Shubhankar, Ko, Giovanni, The politics of post-retirement appointments: Corruption in the Supreme Court? Ideas for India. Retrieved April 10, 2024, from <https://www.ideasforindia.in/topics/governance/the-politics-of-post-retirement-appointments-corruptionin-the-supreme-court.html>

purpose and contribute to society.

Arguments Against:

While there are undeniable benefits to retired judges continuing their legal careers, there are also significant arguments against allowing or encouraging them to take on post-retirement jobs. Here are some key concerns to consider:

- **Compromised Judicial Independence:** The primary concern is that accepting postretirement jobs, particularly from the government, can undermine the perception of judicial independence. Judges might be seen as making rulings that favor the appointing authority in the hope of securing a lucrative position later. This can erode public trust in the judiciary's impartiality. When retired judges take on positions in government-appointed tribunals or commissions, it creates the perception that they might have ruled favorably on certain cases in anticipation of such appointments.¹¹ This undermines public trust in the judiciary's neutrality. Retired judges taking on government positions, especially those related to past rulings, can directly create a perception of bias. This can lead to judges making rulings that favor the government in anticipation of a lucrative post-retirement job. The judiciary is perceived as compromised, its legitimacy as a check on executive power is undermined. This can have a cascading effect on India's democratic framework.¹²
- **Conflict of Interest:** There's a high risk of conflict of interest when retired judges take on jobs related to cases they might have presided over during their tenure. This raises questions about fairness and creates the appearance of judges using their position for personal gain.¹³
- **"Revolving Door" Effect:** A system where judges frequently move into post-retirement government jobs can create a "revolving door" effect. This discourages lawyers from challenging government actions for fear of jeopardizing their own future

¹¹ Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in JUDICIAL

INDEPENDENCE: THE CONTEMPORARY DEBATE 594 (Shimon Shetreet & Jules Deschanes eds., 1985)

¹² Chowdhury, S. (2023, February 19). *We Can't Have Independent Judiciary If Judges Look For PostRetirement Appointments : Ex-SC Judge Deepak...* Livelaw.in; Live Law. <https://www.livelaw.in/topstories/independent-judiciary-post-retirement-appointments-ex-sc-judge-deepak-gupta-221936>

¹³ Indulia, B. (2021, February 13). *Rewarding retirement: Post-retirement opportunities to ensure preretirement independence*. SCC Times. <https://www.scconline.com/blog/post/2021/02/13/retirement/>

career prospects. Further raising concerns about pre-retirement judgments being influenced by the prospect of lucrative or prestigious positions after stepping down.

- **Limited Opportunities for Younger Lawyers:** An abundance of post-retirement opportunities for judges can limit opportunities for younger lawyers. This can hinder the development of a strong and diverse legal community.
- **Potential for Abuse and Corruption:** In the absence of clear guidelines and transparent appointment processes, there's a risk that post-retirement jobs can be used for patronage or political favors. This can further erode public trust in the legal system.¹⁴
- **Financial Implications:** If the primary motivation for post-retirement jobs is financial security, it raises questions about the adequacy of judicial salaries and benefits. Addressing these issues can help ensure judicial independence and discourage judges from seeking outside employment.

Examples of Post-Retirement Jobs:

- **National Human Rights Commission (NHRC):** Retired judges frequently head the NHRC, leveraging their expertise in human rights and constitutional law.
- **Tribunals:** Specialized tribunals dealing with taxation, consumer disputes, and the armed forces often benefit from the experience of retired judges.
- **Law Commission of India:** Retired judges contribute significantly to the Law Commission's work of legal reform and development.
- **Arbitration and Mediation:** Judges' experience in resolving disputes makes them well-suited for arbitration and mediation roles in private disputes. This is a good option as it leverages their legal expertise without directly influencing government or public matters.
- **Legal Academia and Research:** Retired judges can contribute their knowledge and

¹⁴ Krishna, V. (2022, July 21). *The Constituent Assembly on Retired Judges Taking Up Executive Office*. SCObserver. <https://www.scoobserver.in/journal/the-constituent-assembly-on-retired-judges-taking-up-executive-office/>

experience by teaching law at universities or conducting legal research for institutions or publications.

- **Independent Commissions and Public Interest Groups:** Serving on independent commissions or advisory boards of public interest groups allows judges to apply their expertise to social issues without direct government involvement.

Real life examples of Judges obtained post-retirement jobs:

- **Justice M.C. Chagla (Former Chief Justice of Bombay High Court):** After retirement, Justice Chagla served as Indian Ambassador to the United States (1958-1961) and later as Indian High Commissioner to the U.K (1962-1963). This instance highlights concerns about judges potentially influencing rulings for such prestigious appointments.
- **Justice S. Abdul Nazeer (Former Supreme Court Judge):** More recently, Justice Nazeer's appointment as Governor of Andhra Pradesh after his retirement on the Ayodhya land dispute case bench sparked debate about the "revolving door" effect.
- **Justice Ranjan Gogoi:** After serving as the Chief Justice of India, Gogoi's nomination to the Rajya Sabha (upper house of parliament) just months after retirement sparked significant controversy. Critics argued this raised questions about the impartiality of his judgments during his tenure.
- **Justice K.G. Balakrishnan (Former Chief Justice of India):** Justice Balakrishnan opted for a more independent path after retirement. He served as the Chairperson of the National Human Rights Commission (NHRC), a role that utilizes his legal expertise while focusing on human rights issues.
- **Justice A.R. Lakshmanan (Former Judge, Madras High Court):** Justice Lakshmanan transitioned to the field of legal academia after retirement. He currently serves as the Vice Chancellor of a prestigious law university, sharing his knowledge with future generations of lawyers.
- **Justice A.K. Goel:** Justice Goel was appointed chairman of the National Green Tribunal on the same day he retired from the Supreme Court. This sudden appointment

raises questions about pre-determined selection.

- **Justice P.S. Sadasivan:** After retirement, Justice Sadasivan served as the President of the Board of Control for Cricket in India (BCCI), a prominent sports body. This is an example of a non-government role that utilizes his leadership skills without a direct government connection.
- **Justice Leila Seth:** Following retirement, Justice Seth became a prominent voice for women's rights in India. She authored books and actively participated in social activism. This path highlights leveraging one's experience for public good outside the government sphere.
- **Justice V.R. Krishna Iyer:** Justice Krishna Iyer, known for his progressive judgements, became a Professor of Law after retirement. He continued to contribute to legal scholarship and social justice causes. This path showcases using legal expertise for academic pursuits.
- **Justice Abhijit Gangopadhyaya (2024)** resigned and contesting in Lok Sabha Election .

Conclusion:

The debate surrounding post-retirement opportunities for judges in India's higher judiciary remains ongoing. While utilizing their expertise offers clear advantages, potential concerns regarding judicial independence and conflict of interest necessitate careful consideration. Possible avenues for further discussion include:

- Implementing a cooling-off period between retirement and accepting government positions.
- Establishing a transparent selection process for post-retirement appointments.
- Openly addressing public concerns about the potential for compromised independence.
- Instead of selecting the retired Judges , it is worth enough to choose among the senior advocates who has got specialized interest in the particular field for the various panels, commissions and Tribunals.

By fostering a transparent and well-defined framework for post-retirement opportunities, India can ensure that the valuable experience of retired judges is utilized while safeguarding the integrity and independence of the judiciary.