
JUMPING BETWEEN THE LINES OF DEMOCRACY: EXAMINING POST-RETIREMENT ROLES OF JUDGES IN INDIA

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ABSTRACT

The separation of the judiciary from the executive is a foundational principle in democratic legal systems worldwide, ensuring the judiciary's independence as a safeguard against potential abuses of power by the executive and legislature. Judges must conduct themselves in ways that inspire public confidence in the judicial system. However, the growing trend of appointing retired judges from the Supreme Court and high courts to various legislative, political, or quasi-judicial bodies raises concerns about the impact of such appointments on judicial independence. These post-retirement roles are seen as compromising the impartiality and integrity of the judiciary, which is a key constitutional value. This paper examines how such appointments undermine the principle of judicial independence, potentially tainting the judiciary's reputation and principles, and proposes mechanisms to ensure that vacancies in high offices like commissions and tribunals are filled transparently. It argues that preventing judges from immediately accepting lucrative post-retirement positions is essential to preserving the judiciary's integrity and maintaining public trust in democratic institutions.

INTRODUCTION

After retiring from the Indian Supreme Court in November 2019, Ranjan Gogoi, the 46th Chief Justice of India (CJI), was nominated to the Rajya Sabha, the Upper House of Parliament¹, by the Narendra Modi government. His appointment ignited widespread criticism², with accusations of judicial impropriety and potential corruption. Critics raised two main concerns. The first group claimed Gogoi compromised judicial independence, delivering judgments favoring the government³ in exchange for a post-retirement position, essentially accusing him of classic corruption—misusing public office for personal gain. Gogoi, in response, dismissed these allegations⁴, arguing that decisions were made collectively by multiple judges and mocking the idea that a Rajya Sabha nomination, with modest perks, was sufficient motivation for such actions.

The second group focused on the broader issue of judicial integrity, arguing that although Gogoi's judgments may have been lawful and impartial, his acceptance of a political position after retirement undermined public trust in the judiciary⁵. This group did not question Gogoi's decisions but expressed concern that such post-retirement appointments eroded confidence in the independence of the judicial system⁶.

This article explores the broader issue of post-retirement appointments for judges, highlighting how this practice has become common in India, with a majority of retired Supreme Court judges taking government jobs. This "revolving door" between the judiciary and government positions raises concerns about institutional corruption, where the lure of post-retirement

¹ Arunachalam Vaidyanathan, 'Former Chief Justice Ranjan Gogoi Nominated To Rajya Sabha By President', NDTV (online, 17 September 2024) <www.ndtv.com/india-news/former-chief-justice-ranjan-gogoi-nominated-to-rajya-sabha-bypresident-kovind-2195802>

² TNN, 'Ranjan Gogoi takes Rajya Sabha Oath amid "shame on you" chant from opposition', The Times of India (online, 20 September 2024) <www.timesofindia.indiatimes.com/india/ranjan-gogoi-takes-rajya-sabha-oath-amid-shame-on-youchant-from-opposition/articleshow/74721236.cms>

³ The Wire Staff, 'In Unprecedented Move, Modi Government Sends Former CJI Ranjan Gogoi to Rajya Sabha', The Wire (online, 16 September 2024) <<https://thewire.in/law/cji-ranjan-gogoi-rajya-sabha-nomination>>.

⁴ Raj Chengappa and Kaushik Deka, 'If I wanted a sinecure for my judgments, why would I ask for just a Rajya Sabha seat?', India Today (online, 27 September 2024) <www.indiatoday.in/magazine/interview/story/20200406-if-i-wanted-asinecure-for-my-judgments-why-would-i-ask-for-just-a-rajya-sabha-seat-1660091-2020-03-27>.

⁵ Liz Mathew, 'Ex CJI Gogoi has "compromised principles of independence, impartiality of judiciary": Justice Kurian Joseph', The Indian Express (online, 22 September 2024) <<https://indianexpress.com/article/india/ex-cji-ranjan-gogoi-rajyasabha-kurian-joseph-6318957/>>.

⁶ Y K Kalia, 'Why post retirement jobs for judges is a bad idea?', Tehelka (online, 20 September 2024) <<http://tehelka.com/why-post-retirement-jobs-for-judges-is-a-bad-idea/>>.

opportunities could influence judges' decisions before retirement. The paper traces the roots of these concerns in India's Constituent Assembly and argues that these practices risk undermining judicial independence and public trust in the legal system, with potential lessons for broader theories of institutional corruption.

SEPARATION OF POWERS IN POST-RETIREMENT APPOINTMENTS

The doctrine of Separation of Powers⁷ deals with the division of responsibilities among the three branches of government: the legislature, executive, and judiciary⁸. Its origins trace back to Plato and Aristotle, but it was Montesquieu in the 18th century who formalized the principle. Montesquieu argued that combining legislative, executive, and judicial powers in one person or body leads to tyranny. He emphasized that each branch should operate independently and exercise checks and balances over the others.⁹ Ideally, there must be an independent judiciary, with no interference from the executive.¹⁰

In the UK, the doctrine is not strictly applied. The executive (the King and ministers) is part of the legislature, and the judiciary operates independently but has overlapping functions with other branches. The doctrine is also not a rigid feature of the British Constitution due to the integration of powers in Parliament and the Cabinet system. In contrast, the US Constitution adopts a clearer separation of powers, with legislative, executive, and judicial powers assigned to Congress, the President, and the Supreme Court¹¹, respectively. Montesquieu famously championed this principle, advocating for the division of powers between the legislature, executive, and judiciary to avoid excessive centralization¹². In the U.S., the doctrine is central to the Constitution, as seen in *Northern Pipeline Co. v. Marathon Pipeline Co.*¹³, which stressed that any bias or external influence undermines judicial independence.

Once appointed to a high court or the Supreme Court, judges are bound by principles and self-imposed restrictions to uphold the dignity of their office. They must maintain public confidence

⁷ Ken Freeland, Theory of Separation of Power, Political Science (Sept. 26, 2021), <https://www.politicalscienceview.com/theory-of-separation-of-power/>.

⁸ I.P. Massey : Administrative Law, Edn. 1970

⁹ 3 Carleton K. Allen: Law and Orders, Edn. 1965, p. 10,19.

¹⁰ Hossain, S. (n.d.). Separation of Judiciary from Executive. The Lawyers & Jurists Foundation. October 1, 2024, <https://www.lawyersjurists.com/article/separation-of-judiciary-from-executive/>

¹¹ 5 Bernard Schwartz: American Constitution of Law, 1955 p.99.

¹² Binod K. Das, Law and Political Science Exploring Relationship, 5.1 NLUJ REV. 21 (2012).

¹³ 458 U.S. 50 (1982), para 74.

in the judiciary and avoid actions that could damage its reputation. Justice Learned Hand famously cautioned against judges being swayed by political or external considerations. He emphasized that judges should avoid involvement in political matters and resist assuming roles similar to legislators, as such actions could compromise judicial independence and the public's trust in the judiciary. Justice Hand stated,

“If an independent Judiciary seeks to fill them from its own bosom, in the end it will cease to be independent. And its independence will be well lost, for that bosom is not ample enough for the hopes and fears of all sorts and conditions of men, nor will its answers be theirs; it must be content to stand aside from these fateful battles. There are two ways in which the Judges may forfeit their independence if they do not abstain. If they are intransigent but honest, they will be curbed; but a worse fate will befall them if they learn to trim their sails to the prevailing winds. A society whose Judges have taught it to expect complaisance under the pretense of interpretation is rottenness”¹⁴

However, India's Constitution does not strictly enshrine the separation of powers. In Delhi Laws Act, 1912¹⁵, the Supreme Court ruled that the doctrine does not strictly apply to India. Nonetheless, in *Kesavananda Bharti v. State of Kerala* and *Indira Nehru Gandhi v. Raj Narain*, the Court recognized it as part of the Constitution's basic structure, though strict separation in practice remains difficult. Scholars like Bradley and Ewing also argue that strict separation is unattainable in modern governance. While India follows the British parliamentary system where separation of powers is not rigid, the judiciary's independence must remain intact. Judges accepting post-retirement jobs risk compromising this independence, creating biases that affect rulings. To maintain public confidence in the judiciary, norms must be established for judges post-retirement. The judiciary, as a protector of democracy, rights, and the Constitution, must resist external pressures, ensuring its role in combating corruption and upholding democratic principles.

Article 50 of the Indian Constitution mandates the separation of the judiciary from the executive, a constitutional requirement to ensure judicial independence. While Articles 148 and 319 restrict post-retirement roles for certain officials, no such restriction exists for judges, though they are expected to maintain their independence. Offering post-retirement roles to

¹⁴ LEARNED HAND, THE SPIRIT OF LIBERTY 162-165 (Dillard, ed., 1953).

¹⁵ AIR 1951 SC 332, para 31.

judges undermines this principle, as it may create a perception of favoritism¹⁶. The 14th Law Commission¹⁷, led by Mr. Setalvad, recommended that judges refrain from accepting such positions, a stance supported by several prominent judges, including Justices Chelameshwar, Khehar, and Kapadia.

RETIREMENT CAREERS AND THE CONSTITUTION

India's judicial system is unitary, with the Supreme Court and 26 High Courts at its apex, issuing writs and punishing for contempt¹⁸, while trial courts, civil courts, and tribunals form the subordinate judiciary¹⁹. This analysis focuses on post-retirement careers of Supreme Court judges, although similar trends apply to judges of lower courts and High Courts. Upon retirement, a wide array of career options awaits Supreme Court judges.

Many retired judges pursue academic careers amongst a wide array of career options²⁰, becoming authors, teaching in law universities, or working with judicial training institutions like the National Judicial Academy²¹. They often write legal commentaries and monographs, though only a few contribute significantly to legal scholarship. Other retired judges remain connected to the judiciary. Under Article 128 of the Indian Constitution, the Chief Justice of India (CJI), with the President's consent, can invite retired judges to return on an ad hoc basis²², though this provision is rarely used today. Instead, the Court appoints retired judges to resolve legal disputes or serve on committees providing policy advice²³, such as in matters concerning

¹⁶ General issues: Judicial Independence as a Fundamental Value of the rule of law and of Constitutionalism, UNODC, available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module/-14/key-issues/1--general-issues--judicial-independence-as-a-fundamental-value-of-the-ruleof-law-and-of-constitutionalism.html> (last visited 17 September., 2024).

¹⁷ Law commission of India, 14th Report on Reforms of Judicial Administration (1958) available at: <https://lawcommissionofindia.nic.in/1-50/Report14Vol2.pdf> (last visited 17 September., 2024)

¹⁸ *Indian Constitution* (n 2) art 32(1).

¹⁹ *Ibid*, art 227(1)

²⁰ A version of this typology was first presented in Shubhankar Dam, 'Commissions of Untruth: The Politics of India's ad-hoc Judicial Inquiries', *The Caravan* (online, 1 August 2021) <<https://caravanmagazine.in/politics/judicialcommission-inquiry-judges-independence>> ('Commissions of Untruth').

²¹ Examples include Rajendra Babu (MK Nambiar Chair on Constitutional Law, National Law School of India University, Bengaluru); Ruma Pal (Ford Foundation Chair Professor on Human Rights, National University of Juridical Sciences, Kolkata).

²² *Indian Constitution* (n 2) art 128

²³ *Okhla Enclave Plot Holders Welfare Association v Union of India* (2016) SCC OnLine SC 1844. See also *Okhla Enclave Plot Holders Welfare Association v Union of India* (2019) 9 SCC 572; *S. Rajasekaran v Union of India* (2014) 6 SCC 36

road safety or environmental issues²⁴. A significant number of retired judges engage in lucrative private consulting²⁵, providing chamber advice or serving as arbitrators in commercial disputes²⁶. Rates for their opinions vary widely, with former CJIs commanding higher fees²⁷. However, this practice has sparked concerns, particularly when litigants use these opinions to influence sitting judges, prompting the Court to restrict such practices.

Retired judges also take up roles in various tribunals, which have been set up to relieve the burden on courts by handling specialized disputes. However, governments closely monitor appointments to tribunals²⁸, raising concerns about judicial independence. Despite this, nearly 40% of retired Supreme Court judges between 2000 and 2020 resettled in tribunals. Some retired judges pursue political careers or take up high-level constitutional or advisory positions, a trend initiated by Prime Minister Nehru in the early 1950s. Positions such as governors, ambassadors, and heads of commissions have been filled by retired judges. Finally, a small number of retired judges, like former CJI K. Subba Rao, have ventured into electoral politics, though with mixed success²⁹.

Constitutional morality refers to upholding both the form and spirit of the Constitution³⁰, ensuring that principles such as judicial independence are maintained. The Supreme Court in *Indian Young Lawyers Association v. Union of India* emphasized that constitutional morality must be enduring, not influenced by temporary changes in society³¹. Dr. B.R. Ambedkar briefly mentioned it during the Constitutional Assembly debates, stressing that constitutional morality must permeate society to ensure stable governance³². Judicial independence, an essential

²⁴ Krishnadas Rajagopal, 'Stubble Burning | Former Supreme Court Judge Madam Lokur, Aided by Students, to Save Delhi — NCR', *The Hindu* (online, 16 October 2020) <<https://www.thehindu.com/news/national/sc-appoints-exjudge-mb-lokur-as-one-man-panel-to-prevent-stubble-burning/article32870489.ece>>.

²⁵ Apex Court Upset at Former Judges Giving Opinion on Matters', *Deccan Herald* (online, 29 January 2012) <<https://www.deccanherald.com/content/222885/apex-court-upset-former-judges.html>>.

²⁶ Panel of Arbitrators-As on 27.09.2021', *Indian Council of Arbitration*, (Web Page) <<https://www.icaindia.co.in/oct-15-2021/New-JUDGES.pdf>>.

²⁷ . Dhananjay Mahapatra, 'A Retired SC Judge Can Get Paid More in 2 Hours Than a Serving One in One Month', *The Times of India* (online, 11 July 2021) <<https://timesofindia.indiatimes.com/india/a-retired-sc-judge-can-get-paid-more-in-2-hours-than-a-serving-one-in-a-month/articleshow/84307245.cms>>.

²⁸ For an introduction to the tribunal system in India, see VIDHI Centre for Legal Policy, *Reforming the Tribunals Framework in India: An Interim Report* (Report, 11 June 2018) <<https://vidhilegalpolicy.in/research/2018-6-11-reforming-the-tribunals-framework-in-india-an-interim-report-1/>>.

²⁹ Gadbois, 'Judges 1950–1989' (n 59) 22; Dam, 'Second Innings' (n 7) 57; Gadbois, 'Judges 1950–1989' (n 58) 77 8.

³⁰ Latika Vashist, *Re-Thinking Criminalisable Harm in India: Constitutional Morality as a Restraint on Criminalisation*, 55 *JILI* 73, 71-85 (2013).

³¹ (2019) 11 SCC 1, para 215.

³² S. Pal, *INDIA'S CONSTITUTION-ORIGIN AND EVOLUTION* 255 (2005).

element of constitutional morality³³, is not explicitly protected in terms of post-retirement appointments. Though constitutionally permitted, such appointments can compromise the principle of judicial impartiality. The case of former Chief Justice of India (CJI) Ranjan Gogoi, who was appointed to the Rajya Sabha shortly after delivering landmark judgments favorable to the government³⁴, illustrates this concern. Justice Gogoi's appointment was heavily criticized by both the legal community³⁵ and his peers, including Justice Kurian Joseph, who argued it undermined judicial integrity.

Several historical examples demonstrate how post-retirement appointments can raise doubts about judicial independence. For instance, Justice Koka Subba Rao resigned from the Supreme Court to run for President of India, and Justice Baharul Islam became a Rajya Sabha member after his retirement. Similarly, Justice P. Sathasivam was appointed Governor of Kerala after his retirement, following a favorable ruling in a high-profile case involving Amit Shah³⁶. The presence of external influences through political or advisory roles can compromise a judge's impartiality, as judicial aloofness is critical for maintaining public confidence in the judiciary. Judges³⁷, bound by their oath to act "without fear or favor," are expected to uphold this independence even after retirement. However, post-retirement appointments can create an impression of quid pro quo, undermining the noble principles of constitutional morality and judicial integrity.³⁸

BIAS & POLITICAL ANXIETY IN PRE-RETIREMENT

The rule of law and judicial independence are based on the principle that there is no master-servant relationship between judges and the government³⁹, as judges must remain free from governmental influence⁴⁰. This was famously articulated by Lord Denning, who emphasized

³³ Ronald Dworkin, *TAKING RIGHTS SERIOUSLY* 137-149 (1977)

³⁴ *M. Siddiq (D) through Lrs v. Mahant Suresh Das and Others*, (2020) 1 SCC 1; *Yashwant Sinha and Others v. Central Bureau of Investigation*, (2020) 2 SCC 338

³⁵ Seema Chisthi, *Ranjan Gogoi's RS nomination: Has last bastion fallen, asks Justice Lokur*, *THE FINANCIAL EXPRESS* (17 September, 2024), available at: <https://indianexpress.com/article/india/ranjangogoi-madan-b-lokur-rajya-sabha-6317871/>.

³⁶ *Amithbhai Anilchandra Shah v. CBI & Anr.*, (2013) 6 SCC 348.

³⁷ *A.G. of Australia v. Reginman*, [1957] 2 All ER 45, para 15.

³⁸ *Independence of The Judiciary: A Constitutional Response*, <https://legalserviceindia.com/legal/article-1681-independence-of-the-judiciary-a-constitutional-response.html>.

³⁹ *Chetak Construction Ltd v. Om Prakash*, AIR 1998 SC 1855, para 16.

⁴⁰ *Supreme Court Advocates on Record Association v. UOI*, (1993) 4 SCC 441, para 424; *State of Bihar v. Bal Mukund Shah*, (2000) 4 SCC 640, para 76.

that no government official has the right to interfere in a judge's decision-making⁴¹. However, post-retirement appointments for judges raise concerns about biased judgments influenced by the prospect of future rewards. These appointments can undermine natural justice, which requires judges to be impartial and free from bias.

The legal principle *nemo judex in re sua*, meaning "no one should be a judge in their own cause," underscores that a judge must not only be neutral but also appear unbiased to the public. The perception of bias is enough to undermine judicial impartiality, as seen in the case of Justice Sunil Gaur, who, shortly after rejecting a plea for interim protection by former Finance Minister P. Chidambaram, was appointed as chairperson of the Prevention of Money Laundering Appellate. While no direct evidence links his appointment to the ruling, it raises suspicions due to the timing, illustrating the potential for conflicts of interest in such appointments⁴². The *T. Fenn Walter v. Union of India*, case highlighted the risks of appointing sitting judges to executive or administrative posts, as it could create a "master-servant" relationship, jeopardizing judicial independence⁴³. Although sitting and retired judges may differ in power, both are expected to uphold the integrity of the judiciary. Justice H.R. Khanna exemplified this principle by refusing to lead an inquiry commission into the 1975 National Emergency, despite the prestige of the position, maintaining his commitment to judicial integrity.

The controversy over post-retirement appointments dates back to the early years of India's Constitution. In 1954, litigant Hira Lal Dixit was charged with contempt of court for suggesting that judges who ruled against the government were denied high appointments, while those who ruled in its favor were rewarded⁴⁴. Though Dixit was punished, his sentiments foreshadowed concerns that judges' decisions could be influenced by the prospect of future government appointments. These fears were echoed by opposition members in Parliament in 1956, who criticized the Nehru administration for appointing retired judges to executive roles, arguing that this practice corrupted public perception of the judiciary.

Several MPs argued that retired judges accepting executive posts, such as governorships or

⁴¹ Lord Denning, Independence of Judiciary-Presidential Address (Feb. 25, 1950), in OX. J.L.S., July 1988, at 227, 222-248

⁴² *Union of India v. B.N. Jha*, (2003) 4 SCC 531.

⁴³ AIR 2002 SC 2679, para 16.

⁴⁴ *Re Hira Lal Dixit v Unknown* (1955) 1 SCR 677, [2].

ambassadorships, compromised judicial integrity. Frank Anthony, an MP, argued that even honest judges might appear to favor the government if they were later appointed to high offices. Thakur Das Bhargava of the Congress Party similarly warned that public confidence in the judiciary would be eroded if judges were seen as seeking government favors. Other MPs noted that judges were already seeking post-retirement jobs, further fueling concerns about bias⁴⁵.

Despite these concerns, Nehru's government dismissed calls for reform, claiming that such appointments were rare and did not justify general alarm. However, in 1958, the Law Commission of India, chaired by Attorney General Motilal Setalvad, submitted a report expressing similar concerns about the potential for bias when judges are offered government positions after retirement⁴⁶. The Commission recommended banning such appointments, citing the risk of undermining public trust in the judiciary. Ironically, one of the Commission's members, Chief Justice M.C. Chagla accepted an ambassadorship to the U.S. shortly after the report was finalized, sparking criticism of his own actions⁴⁷. The debate over post-retirement appointments continues to highlight the tension between judicial independence and the influence of future career prospects. While some argue that retired judges should not be barred from public service, others warn that such appointments can create the appearance of bias, undermining public confidence in the judiciary's impartiality and integrity.

WHAT DOES THE DATA SAY?

By 1960, there was growing consensus among Indian constitutional framers, MPs, litigants, lawyers, and jurists that post-retirement appointments for judges were undermining judicial integrity. This sentiment was echoed in the 1970s and 1980s when judges themselves started acknowledging the issue. In interviews with George Gadbois, former Chief Justices of India (CJIs) Y.V. Chandrachud and P.N. Bhagwati admitted that some judges rendered pro-government judgments to secure post-retirement jobs⁴⁸. Another CJI, R.S. Pathak, linked such decisions to judges with shorter tenures, pointing out that their eagerness for post-retirement posts influenced their rulings. Justice H.R. Khanna observed a similar pattern, noting how

⁴⁵ The Constitution (Ninth Amendment) Bill 1956 (India) Bill No 29 of 1956 <http://164.100.47.4/billtexts/lbills/asintroduced/29_1956_Eng_LS.pdf>.

⁴⁶ 'LCI 14th Report' (n 139).

⁴⁷ M C Chagla, *Roses in December: An Autobiography* (Bharatiya Vidya Bhavan, 2nd ed, 1974) 248 ('Roses in December').

⁴⁸ Abhinav Chandrachud, *Supreme Whispers: Conversations with Judges of the Supreme Court of India, 1980-1989* (Penguin Random House, 2018) 172 ('Supreme Whispers')

courts had shifted towards favoring the government in certain decisions during his time⁴⁹. Financial pressures played a significant role in this trend⁵⁰. Many judges found it challenging to live comfortably on their pensions, and post-retirement appointments restored the perks they lost upon leaving the bench. These benefits, especially for those without a home in Delhi, made government-appointed posts highly desirable. For instance, CJI Chandrachud admitted to seeking government assistance in securing housing after retirement⁵¹. These pressures created a demand for post-retirement jobs, with judges often looking to remain relevant in public life while also securing their financial stability.

Retired Supreme Court judge V.R. Krishna Iyer noted that the government used post-retirement appointments as "carrots" to influence judges⁵². He emphasized that this practice compromised judicial integrity, particularly in the latter stages of a judge's career. Former CJI J.S. Verma also warned that the executive exploited judges' vulnerabilities by offering them post-retirement positions, which could influence their impartiality⁵³. Verma advocated for constitutional safeguards to prevent judges from succumbing to these temptations. Similarly, Kerala High Court judge Kemal Pasha argued that judges nearing retirement might be reluctant to rule against the government to avoid jeopardizing their chances of securing post-retirement jobs.⁵⁴

Furthermore, the issue gained public attention when Arun Jaitley, former Minister of Law and Justice, remarked that the prospect of post-retirement appointments could influence a judge's pre-retirement decisions⁵⁵. He even distinguished between judges who knew the law and those who knew the law minister, underscoring the perceived link between judicial decisions and post-retirement appointments⁵⁶. Although Jaitley voiced these concerns as an opposition leader

⁴⁹Hans Raj Khanna, *Neither Roses Nor Thorns* (Eastern Book Company, 1986) 65.

⁵⁰ Despite hikes in recent years, pay and pension for Supreme Court judges, compared to market rates, remain meagre. These matters are regulated by the Supreme Court Judges Salaries and Conditions of Service Act 1958 (India) Act No 41 of 1958.

⁵¹ Shekhar Gupta, 'Judges cannot be fully absolved from the responsibility for delays: Y.V. Chandrachud', *India Today* (online, July 31, 1985) <<https://www.indiatoday.in/magazine/interview/story/19850731-judges-cannot-be-fully-absolved-from-the-responsibility-for-delays-y-v-chandrachud-770278-2013-12-26>>.

⁵² V R Krishna Iyer, *Justice at Crossroads* (Deep & Deep, 1992) 60 ('Crossroads').

⁵³ J S Verma, 'Judicial Independence: Is It Threatened?', *Outlook* (online, 23 February 2010) <<https://www.outlookindia.com/website/story/a-set-of-honest-men/264422>> ('Memorial Lecture').

⁵⁴ TNM Staff, 'Only Competent Judges Should be Elevated: Kerala HC's Justice Slams Collegium', *The News Minute* (online, 25 May 2018) <<https://thenewsminute.com/article/only-competent-judges-should-be-elevated-kerala-hc-s-justice-pasha-slams-collegium-81890>>.

⁵⁵ N G R Prasad and K K Ram Siddhartha, 'Pre-Retirement Jobs and Post-Retirement Judgments Jobs', *The Hindu* (online, 23 September 2024) <<https://www.thehindu.com/opinion/op-ed/pre-retirement-judgments-and-post-retirement-jobs/article31408953.ece>>.

⁵⁶ 'BJP for "Cooling Period" Before Judges Head Tribunals' *Outlook*, (online, 30 September 2024) <<https://www.outlookindia.com/newswire/story/bjp-for-cooling-period-before-judges-head-tribunals/776850>>.

in 2012, his own government later appointed several retired judges to tribunals and other posts. Recent econometric studies support these concerns. Research conducted on Supreme Court decisions from 1999 to 2014 shows that judges who retired long before general elections were more likely to favor the central government in important cases. These judges were also more likely to secure post-retirement jobs, suggesting a cognitive bias towards government-friendly rulings⁵⁷. Conversely, judges who retired closer to elections were more inclined to rule against the government. This analysis aligns with the intuition of many within the legal community, who believe that post-retirement opportunities may indeed influence judicial decision-making.

In the case *Ananga Udaya Singh Deo v. Ranga Nath Mishra*⁵⁸, the Supreme Court of India interpreted Article 124(7) of the Constitution⁵⁹, which bars retired judges from practicing before any court or authority. The case challenged the nomination of a retired Supreme Court judge as a member of Parliament, arguing that it violated Article 124(7). The Court rejected this argument, holding that the terms "plead or act" referred only to legal practice before an authority and did not extend to functioning as a member of Parliament. The Court compared the language of Article 124(7) with Article 220⁶⁰, which restricts judges from practicing law after retirement.

However, critics argue that the Court's interpretation did not fully reflect the legislature's intent. The intent, they assert, was to prevent retired judges from engaging in activities that could tempt them or compromise their judicial independence. The word "authority" in Articles 124(7) and 220, they argue, should be interpreted similarly to "other authorities" under Article 12 of the Constitution, which includes Parliament⁶¹. This would align with precedents like *Rajasthan State Electricity Board v. Mohan Lal*⁶², where quasi-governmental powers were treated as part of the "State." This reasoning suggests that post-retirement parliamentary roles should be restricted to preserve judicial impartiality.

Therefore, the problem of post-retirement appointments for judges has long been recognized as a potential threat to judicial independence. Financial pressures and the lure of government-

⁵⁷ Madhav S Aney, Shubhankar Dam and Giovanni Ko, 'Jobs for Justice(s): Corruption in the Supreme Court of India' (2021) 64(3) Journal of Law and Economics 479.

⁵⁸ 59 AIR 2001 Ori 24.

⁵⁹ Constitution of India, 1950, art 124(7).

⁶⁰ Constitution of India, 1950, art 220.

⁶¹ Central Inland Water Transport Corporation Ltd. v. Brojo Nath, (1986) 3 SCC 156, para 21

⁶² 68 AIR 1967 SC 1857, para 5.

appointed positions create an environment where judges may be tempted to favor the government in their rulings. Despite widespread acknowledgment of this issue, efforts to implement effective reforms or constitutional safeguards have remained limited.

A COMPARATIVE STUDY

In India, the Constitution does not explicitly prevent retired judges from accepting post-retirement appointments. However, in the United Kingdom and Canada, there are distinct approaches that emphasize judicial independence and could offer valuable insights for India. In the UK, Supreme Court judges retire at the age of 70⁶³, and an express bar exists preventing them from becoming members of the House of Commons, as per the House of Commons Disqualification Act⁶⁴. This highlights the importance of maintaining judicial independence. Although there is no formal prohibition against judges accepting other roles post-retirement, no judge has taken up any such appointment, reflecting a strong tradition of self-restraint. UK judges recognize the importance of upholding the integrity of the judiciary as an institution. Lord Hewart's statement emphasizes that judges must possess high moral standards, ethical fairness, and avoid conduct that could undermine public confidence in the judiciary's impartiality. A judge's behavior, both official and personal, must adhere to the highest standards of propriety and probity, even more than that expected of other professions, including advocates.

In Canada, the retirement age for federally appointed judges is 75⁶⁵, and there is no prohibition against them returning to legal practice. However, concerns have been raised about this practice, and in response, the Federation of Law Societies of Canada reviewed its Model Code of Professional Conduct. In 2019, the Canadian Judicial Council conducted a public review on whether retired judges should return to legal practice, revealing that 75% of the population opposed such post-retirement roles for judges⁶⁶. The review emphasized that the judiciary should avoid actions that could erode public confidence. Consequently, a revised Ethical Principles Document for federally appointed judges is expected to be released, addressing these concerns.

⁶³ Constitutional Reform Act 2005

⁶⁴ House of Commons Disqualification Act 1975, CHAP 24

⁶⁵ The role of judges, <https://cjc-ccm.ca/en/resources-centre/understanding-your-judicial-system/role-judges>.

⁶⁶ Harris, K. (n.d.). Canadians want limits on post-retirement work for judges, survey finds. CBC News. <https://www.cbc.ca/news/politics/judges-post-retirement-1.5248512>

The legal frameworks in the UK and Canada highlight a broader moral code that discourages judges from accepting post-retirement roles. This code preserves the appearance of an independent judiciary, which is critical for public trust. In contrast, in India, the debate around post-retirement appointments suggests that while such appointments are legally permissible, they risk undermining judicial independence and public confidence, an issue that remains contentious in the country.

RECOMMENDATION

The "Restatement of Values of Judicial Life," adopted by the Supreme Court of India⁶⁷, serves as a moral code for judicial conduct, reinforcing principles of independence and fairness. Among its key provisions are that justice must not only be done but also be perceived as impartial. Judges must avoid any actions that could undermine public confidence in the judiciary. Furthermore, they should refrain from running for or holding elective office outside legal associations, accepting gifts, or hearing cases where they have a financial interest without disclosure.

Despite these principles, the Indian Constitution does not explicitly prevent retired judges from accepting post-retirement appointments from the government. This raises concerns about whether judges, while still in office, might be influenced by the prospect of future career opportunities, which could compromise their impartiality. The code's principles emphasize maintaining an independent judiciary, free from political influences, but the absence of a strict constitutional ban on post-retirement jobs allows the potential for bias or favoritism to creep in. The recommendation is that the "Restatement of Values" should be revisited to expand its guidance, including a firm resolution that judges should avoid post-retirement jobs offered by the government. Additionally, a constitutional amendment is suggested to entirely restrict judges from accepting such positions, ensuring that politics does not interfere with the judiciary. This is critical to preserving public trust in the judiciary, as judges seeking post-retirement roles may erode confidence in their impartiality and fairness. The judiciary must remain above political controversies to maintain its integrity.

⁶⁷ RESTATEMENT OF VALUES OF JUDICIAL LIFE, Full Court Meeting of the Supreme Court of India, 7th of May, 1997

CONCLUSION

The credibility of the judiciary relies on the fairness and impartiality of its judges, which is compromised when they accept post-retirement jobs. While retired judges bring valuable experience that could benefit various commissions and tribunals, a proper mechanism is needed to ensure transparent and fair appointments. To avoid political influence, a committee comprising government representatives, opposition leaders, subject experts, and renowned social workers could evaluate a judge's rulings during their tenure before filling vacancies. This process, though not flawless, would reduce the risk of compromising judicial independence.

Certain roles, like those of Lokpal, Lokayukta, and chairpersons of commissions, may require retired judges. However, such appointments should be rare and handled with care, particularly when made by the executive. To uphold judicial independence, the concept of a "cooling-off" period is crucial, as demonstrated by ex-CJI Mohd. Hidayatullah, who only accepted the Vice-President role nine years after retiring.

Lower tribunal posts could be filled by lawyers using an objective criterion, such as a written exam similar to that for district judges. A common service could also be established for managing multiple tribunals, including tax tribunals and administrative tribunals, allowing members to be promoted to appellate positions. This system would ensure a longer tenure for tribunal members, fostering commitment and preserving judicial independence. By exploring this approach, the reliance on retired judges for tribunal appointments could be reduced, helping maintain the judiciary's integrity.