

PRE-RETIREMENT JUDGMENTS AND POST-RETIREMENT JOBS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Former Chief Justice of India Ranjan Gogoi takes oath as Rajya Sabha MP during the ongoing Budget Session of Parliament, in New Delhi, on Thursday, March 19, 2020. | Photo Credit: [PTI](#)

The Constitution has been conceived to provide a pride of place to the judiciary. Constitutional appointees to the Supreme Court have been guaranteed several rights in order to secure their independence. Chapter 4 of Part V of the Constitution deals with the Supreme Court, and Chapter 5 of Part VI deals with the High Courts. The salaries of judges and their age of retirement are all guaranteed in order to secure their independence. They cannot be easily removed except by way of impeachment under Articles 124(4) and 217(1)(b). They have the power to review legislation and strike it down. They can also question the acts of the executive. All this makes it clear that the framers of the Constitution envisaged an unambitious judiciary for which the only guiding values were the provisions of the Constitution.

It was thought that on retirement from high constitutional office, a judge would lead a retired life. Nobody ever expected them to accept plum posts. But the clear demarcation between the judiciary and executive got blurred as many judges over the years began to accept posts offered by the government. A few years ago, a former Chief Justice of India (CJI) was made a Governor by the ruling BJP government. Now, we have the case of a former CJI, [Ranjan Gogoi, being nominated](#) by the President to the Rajya Sabha and [taking oath as Member of Parliament](#). During his tenure as CJI, Justice Gogoi presided over important cases such as Ayodhya and Rafale where all the decisions went in favour of the government. This gave rise to the impression that his nomination was a reward for these 'favours'. Thus his appointment — and that too within a few months of his retirement — not only raised eyebrows but came in for severe condemnation from varied quarters.

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People are fast losing confidence in the so-called independent judiciary. In 2013, former Union Minister Arun Jaitley, who was also a senior Advocate, ironically said on the floor of Rajya Sabha: "I think, we are going a bit too far now, in every legislation, in creating post-retirement avenues for Judges. Almost everyone, barring a few notable, honourable men, who are an exception, wants a job after retirement. If we (Parliament) don't create it, they themselves create it. The desire of a post-retirement job influences pre-retirement judgments. It is a threat to the independence of the Judiciary and once it influences pre-retirement judgments, it adversely impacts on the functioning of our Judiciary." It is in this context that the appointment of Mr. Gogoi has to be perceived.

An interview that Justice Gogoi gave after assuming office as member of the Rajya Sabha made the situation worse. When asked whether his nomination was a quid-pro-quo for his having delivered judgments in favour of the Central government, his answer, that he was not the only judge but there were other judges too, was damaging. His view that membership of the Rajya Sabha was not a job but a service, and that once the President nominated him the call of duty required him to accept it, only created the impression that the judiciary is pliant. A bare reading of Article 80(3) of the Constitution only envisages the President to nominate "persons having special knowledge... in literature, science, art and social service" as members to the Rajya

Sabha. It is difficult to imagine that the Constitution-makers had in mind a retired CJI when framing this provision.

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Therefore, appointments of persons who have held constitutional office will undermine the very constitutional values of impartiality in the dispensation of justice. It will also go against the clear demarcation of separation of powers. It is true that there are no rules which stood in Justice Gogoi's way of being appointed to the Rajya Sabha. But such matters cannot be left to the individual vagaries of judges. If post-retirement appointments are going to undermine confidence in the judiciary and in constitutional democracy, it is time to have a law in place either by way of a constitutional amendment or a parliamentary enactment barring such appointments. This is the only way to secure the confidence of the people and prevent post-retirement appointments. Judges can be compensated by being given their last drawn salary as pension. Also, the age of retirement for judges can be increased by a year or two. This will undo the damage caused by post-retirement jobs. It is important to remember that judges are constitutional servants, not government servants.

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