

# POST-RETIREMENT APPOINTMENTS: A DANGER TO JUDICIAL INDEPENDENCE

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Justice S. Abdul Nazeer. | Photo Credit: The Hindu

Within a month of [retiring from the Supreme Court of India](#), Justice [S. Abdul Nazeer has been appointed Governor of Andhra Pradesh](#). Like many others, I believe it is no coincidence that he was a part of the Constitution Bench that decided the Ayodhya Ram Mandir land issue. In the tenure of the Narendra Modi-led government since 2014, he is the third Supreme Court judge who has received a high-profile political appointment soon after retirement, the other two being Justice P. Sathasivam (who was appointed Governor of Kerala), and Justice Ranjan P. Gogoi (who was appointed member of the Rajya Sabha).

These appointments are all signalling on the part of the government, letting the members of the higher judiciary know that they will be suitably rewarded if they issue favourable decisions. Dangling such a proverbial carrot is akin to corrupting the judges, and encouraging a culture of sycophancy even, as we are increasingly seeing among some judges in the apex court. Worse, this also makes the public have less faith in the judiciary itself. In 1980, Justice V. D. Tulzapurkar had said that “if judges start sending bouquets or congratulatory letters to a political leader on his political victory, eulogising him on assumption of high office in adulatory terms, the people’s confidence in the judiciary will be shaken.”

While a Governor’s position may seem largely ceremonial, it is in fact a squarely political appointment. In any event, this appears to be a part of the ruling party’s strategic mission — a long game, if you will — to destabilise the judiciary, chipping away in small and big ways at various aspects of its functioning. If you step back and observe, the judiciary is slowly but surely being subtly weakened.

To be fair, this is not the first government that has ventured so far as to corrupt the judges in this fashion. Congress-led governments, notably under Indira Gandhi and Rajiv Gandhi, have done it too. But it is a cowardly defence that the Opposition party was equally guilty, and past precedent does not justify present transgressions. The larger objective, for any reasonable executive, should be to ensure the independence of the other arms of the governing mechanism, and that democratic values are preserved in all circumstances. However, a conclusively majoritarian mandate can make one heady with power, and compel the exploration of creative ways in which that power can be maintained and consolidated further. This is entirely the case with the Indian

government today.

The government's behaviour is also hypocritical for it is deliberately paying no heed to its own manifesto articulated by its late leader, Arun Jaitley, that such post-retirement judicial appointments should be avoided. In fact, 'inducing the judges' by such appointments was a specific allegation directed by the Bharatiya Janata Party (BJP) against the Congress-led coalition.

The judiciary is no less culpable in this situation. Ideally, I would like to believe that Indian judges are made of stronger stuff, and not ones to be seduced thus. Judges should show moral responsibility and character, as Justice Akil Kureishi most recently did. After being unceremoniously disregarded for elevation, and shoved across the country to various High Courts, upon retirement, he said that the government's stated 'negative perceptions' about him were a 'certificate of independence', and he was leaving the judiciary with 'his pride intact'.

Judges must recognise that handouts from the government, in the form of such political appointments, are not one-way: there is a giver and there is a receiver. The Indian judiciary must distinguish between political favours and other post-retirement employment opportunities.

There needs to be a demarcation between roles where the presence of a judicial authority is clearly valuable and even necessary, such as in a tribunal or a commission, and where it is not. Justice Gogoi, upon his appointment to the Rajya Sabha, had famously proclaimed that he intended to bridge the gap between the judiciary and the legislature, but his attendance record and public participation in parliamentary affairs suggest nothing of the sort. Similarly, Justice Sathasivam had said he had wanted to serve the people in his role as Governor, but surely, he could have achieved the same objective through other appointments, that would be more befitting of someone who had held the office of the Chief Justice of India.

Ideally, the judicial community should take a concerted decision on this, say, in the Chief Justices' conference. The plenary should agree that judges should not take up any appointments upon retirement stemming from political patronage (with the nature of such appointments being clearly defined). Additionally, a cooling period of about two years should be considered a mandatory minimum before a judge agrees to take on any post-retirement adjudicatory role, in any case.

Justice Y.V. Chandrachud had said that the greatest danger to the judiciary lies within. Members of the judiciary cannot compromise judicial independence by trading it for a plum post-retirement sinecure. When one becomes a judge, one signs up to fulfil a promise of ensuring a fair and independent judiciary; this promise cannot be compromised at any cost. Our judges need to be gently reminded of this unwritten contract they have with the Indian people.

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