

The case for increasing the retirement age of judges

The issue of increasing the age of retirement for judges featured in the Venkatachaliah Report (Report of the National Commission to review the working of the Constitution) as early as 2002. A half-hearted attempt was made in 2010 to bring in the Constitution (114th Amendment) Bill to raise the retirement age of High Court judges to 65 from 62 years. The amendment never came through. The idea of increasing the age of retirement, which has gained traction in recent times, has now been brought into sharp focus by Justice Kurian Joseph of the Supreme Court.

A retirement age of around 70 for judges is commonplace in most Western liberal democracies. Some of them even opt for tenures for life. In the Supreme Court of the United States, and in constitutional courts in Austria and Greece, judges are appointed for life. In Belgium, Denmark, Ireland, the Netherlands, Norway and Australia, the retirement age for judges is 70 years. Judges in Canada and Germany retire at 75 and 68, respectively.

For good reasons, the time has come for India to consider increasing the retirement age for judges of the High Courts and the Supreme Court to 70. This will have significant benefits. Senior serving judges will bring with them years of experience.

The judge-population ratio in India is among the lowest in the world at 19.66 judges per million (10 lakh) people as of today. In 2016, the U.K. had 51 judges per million people, the U.S. had 107, Australia had 41, and Canada had 75.

It is also necessary to increase the number of judges in the pool to enable the judiciary to deal with the enormous pendency of cases. The Chief Justice of India, Dipak Misra, recently expressed concern over the backlog touching 3.3 crore cases. According to National Judicial Data Grid data, more than 2.84 crore cases are pending in the subordinate courts, 43 lakh cases are pending before the High Courts, and 57,987 cases are pending before the Supreme Court. The fact that judges in India are retiring at 62 and 65 years is not helping alleviate this problem either. We are losing judges who are trained by time and experience well before their prime. If legislations provide for retired High Court and Supreme Court judges to man tribunals till the age of 70, there is no reason why these judges should be retired so early.

One aspect which has not been factored in is that as the Indian economy grows, the ratio of litigation to population will increase exponentially. Advanced economies such as Australia, Canada, France, the U.S., the U.K., and Japan have much higher litigation-to-population ratios.

The issue of increasing the retirement age of judges thus requires serious and immediate consideration and must necessarily move beyond partisan politics. The time has come to deal with the lakhs of cases pending as arrears before the 24 High Courts in India for periods as long as 10-20 years. Pendency does not only debilitate the justice redress system; it also makes the rule of law a distant dream. More and more litigants now enter the justice redress system without the faintest hope of seeing closure in their lifetimes.

Increasing the age of retirement for Supreme Court and High Court judges has significant advantages. One, it will ensure the continued presence of a strong talent pool of experienced judges. Two, new judges can be appointed without displacing existing judges. Three, it will address the problem of mounting arrears. Four, it will be a buffer against impending litigation explosion. Five, it will render post-retirement assignments unattractive and, as a consequence, strengthen the rule of law and the independence of the judiciary, both of which are crucial to sustain democracy.

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