



Debate on Post-Retirement Appointments for Judges

For Prelims: [Supreme Court](#), [High Court](#), [Chief Justice of India](#), [Collegium System](#)

For Mains: Ethical Implications of Resignation of a Sitting Judge, Evolution of the Collegium System and its Criticism.

[Source: TH](#)

Why in News?

The practice of [judges accepting official posts after retirement](#) has become a subject of debate, particularly in light of recent events where a former judge joined a political party shortly after resigning from the judiciary raised questions about judicial conduct.

What are the Constitutional Provisions Related to Retired Judges in India?

▪ Constitutional Provisions:

- [Article 124\(7\)](#): It prohibits a retired judge of the Supreme Court from practising before any court or authority in India.
 - This restriction is aimed at maintaining the independence and impartiality of the judiciary.
 - However, the Constitution does not explicitly prohibit retired judges from accepting post-retirement assignments or appointments.
- **Article 128:**
 - The **Chief Justice of India**, with the President's consent, may request a **retired Judge of the Supreme Court, Federal Court, or High Court** qualified for Supreme Court appointment to sit and act as a Supreme Court Judge.
- **Article 220:**
 - It bars High Court judges from pleading before “any authority in India except the Supreme Court and the other High Courts.”

▪ Related Cases and Recommendations:

- **Bombay Lawyers Association v. Union of India:** The Supreme Court dismissed a [public interest litigation \(PIL\)](#) petition seeking a **mandatory cooling-off period of two years** for retired judges before accepting post-retirement appointments.
 - The apex court stated that it was not within the court's jurisdiction to mandate a cooling-off period.
 - While dismissing the PIL, the court underscored the importance of enacting **legislation to regulate post-retirement appointments for judges**, thereby leaving the matter to the discretion of the concerned judge or legislative intervention.
- **14th Law Commission:** The 14th Law Commission, headed by **MC Setalvad**, had recommended that judges should not take up post-retirement jobs from the government; it also recommended setting the [Cooling-off Period after retirement](#).
 - However, there is no specific rule that prevents judges from accepting such

positions.

What are the Arguments Related to Post-Retirement Appointments for Judges?

▪ Arguments in Favour:

- **Utilisation of Expertise:** Proponents argue that judges possess valuable expertise and experience that can be **beneficial to the government and public service sectors**.
 - By accepting official posts post-retirement, judges can contribute to **policy making and governance** based on their deep understanding of legal principles and judicial processes.
- **Ensuring Integrity in Official Positions:** Supporters of post-retirement appointments argue that judges are held to **high standards of integrity throughout their careers**, and this integrity is likely to carry over into their roles in official positions.
 - By appointing retired judges to key positions, there's an assurance of upholding ethical standards and impartiality in decision-making.
- **Fulfilling Vacancies Requiring Specialised Knowledge:** Certain official positions require specific expertise or understanding of legal intricacies, which retired judges are well-equipped to provide.
 - These appointments ensure that crucial positions are filled by individuals with deep insights into legal matters, contributing to effective governance and administration.
- **Maintaining a Pool of Talent:** Offering post-retirement appointments ensures that the **country retains the knowledge and skills of seasoned jurists**.
 - It allows for the continued contribution of judicial veterans to public service beyond their tenure on the bench.

▪ Arguments Against Post-Retirement Appointments:

- **Risk of Compromising Judicial Independence:** Critics argue that accepting official posts after retirement may compromise judicial independence, as it could create perceptions of **favouritism towards the appointing authority**.
 - This **quid pro quo** undermines public trust in the judiciary and raises questions about the impartiality of judicial decisions made during their tenure.
 - The **Restatement of Values of Judicial Life** emphasises the importance of impartiality in judicial conduct. Judges must not only deliver justice but also ensure that their actions uphold public confidence in the judiciary's impartiality.
 - The [Supreme Court of India](#) **adopted the Restatement of Values of Judicial Life in 1997**, which outlines ethical standards for judges.
 - It emphasises the importance of impartiality, avoiding conflicts of interest, refraining from seeking financial benefits, and being conscious of public scrutiny.
- **Potential for Conflict of Interest:** There's a concern that post-retirement appointments may create **conflicts of interest**, especially if the former judge's decisions or rulings during their **tenure benefit the appointing authority**.
 - This could erode public confidence in the judiciary and raise doubts about the motivations behind judicial decisions.
- **Destabilising the Judiciary:** These appointments are seen as part of a larger strategy to undermine the **judiciary's independence by gradually eroding its authority and integrity**.
 - By enticing judges with political appointments, the government risks compromising the judiciary's ability to act as a check on executive power.

Position	Appointment Procedure
Chief Justice of India (CJI)	<ul style="list-style-type: none">▪ Article 124 (2), vests power on the President to appoint judges of the Supreme Court including the CJI, by warrant under his hand and seal.▪ The outgoing CJI recommends his successor, typically based on seniority.
Supreme Court Judges	<ul style="list-style-type: none">▪ They are also appointed by President.▪ The proposal is initiated by the CJI. The CJI consults other Collegium members and the senior-most judge of the court from the relevant High Court, Opinions are recorded in writing.

	<ul style="list-style-type: none">▪ The recommendation is forwarded to the Law Minister, who advises the Prime Minister to advise the President.
Chief Justice of High Courts	<ul style="list-style-type: none">▪ The Chief Justice and Judges of the High Courts are to be appointed by the President under clause (1) of Article 217 of the Constitution after consultation with: The CJ and the Governor of the state concerned.

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Collegium System



- System of appointment and transfer of judges
- Evolved through judgments of the Supreme Court, and not by an Act of Parliament

Constitutional Provisions Related to Appointment of Judges

- **Articles 124 (2) and 217**- Appointment of judges to the Supreme Court and High Courts
 - **President makes appointments after consulting with "such judges of the Supreme Court and of the High Courts"** as s/he may deem necessary.
- But the Constitution **does not lay down any process** for making these appointments.

Evolution of the System

First Judges Case (1981)

- SC held that in the appointment of a judge of the SC or the HC, the word **"consultation"** in Article **124 (2)** and in Article **217** of the Constitution does not mean "concurrence"
- Gave the **executive primacy** over the judiciary in judicial appointments

Second Judges Case (1993)

- SC overruled the First Judges Case
- Gave **birth to the Collegium System (Primacy to the Judiciary)**
- Collegium included the Chief Justice of India and the **2** most senior judges of the SC

Third Judges Case (1998)

- SC expanded the Collegium to include the CJI and the **4** most-senior judges of the court after the CJI

Current Structure



Supreme Court Collegium: CJI and the **4** senior-most judges of the SC



High Court Collegium: CJI and **2** senior most judges of the SC

Criticism

- Opaqueness
- Scope for Nepotism
- Exclusion of Executive
- No Predetermined Procedure of Appointment

National Judicial Appointments Commission (NJAC)

- It was an **attempt to replace the Collegium System**. It prescribed the procedure to be followed by the Commission to appoint judges
- NJAC was established by the **99th Constitutional Amendment Act, 2014**
- But the **NJAC Act was termed unconstitutional** and was struck down, citing it as having affected the independence of the judiciary



Way Forward

- **Legislative Action:** The government should prioritise the enactment of a **comprehensive law to regulate post-retirement assignments** for judges of constitutional courts.
 - This legislation should establish clear guidelines, including provisions for cooling-off periods and restrictions on certain appointments, to uphold judicial independence.
- **Consultation with Judiciary:** Before drafting the law, the government should engage in meaningful consultations with the judiciary, legal experts, and stakeholders to ensure that the proposed regulations are balanced and effective.
- **Implementing Cooling-Off Periods:** Consideration can be given to implementing a cooling-off period, as recommended by the Law Commission of India.
 - This period would provide a buffer between a judge's retirement and any potential post-retirement appointments, minimising the risk of conflicts of interest.
- **Judicial Ethics and Code of Conduct:** The judiciary should reinforce its commitment to upholding ethical standards and maintaining the integrity of the judicial system.
 - Clear guidelines and a code of conduct should be established for judges regarding post-retirement engagements to prevent any perception of impropriety.
- **Learning from International Best Practices:** Drawing upon international best practices and experiences, India can learn from other countries' approaches to regulating post-retirement assignments for judges.
 - In the **United States, Supreme Court judges do not retire lifelong** to prevent conflict of interest.
 - In the United Kingdom, Supreme Court judges retire at the age of 70. There is no law preventing judges from taking post-retirement jobs, but no judge has done so.
 - Comparative studies and engagement with global legal experts can provide valuable insights for refining domestic regulations.

Drishti Mains Question:

Q. How can legislative measures, judicial input, and cooling-off periods bolster judicial integrity amidst post-retirement appointments for judges in India?

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. With reference to the Indian judiciary, consider the following statements: (2021)

1. Any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with the prior permission of the President of India.
2. A High Court in India has the power to review its own judgement as the Supreme Court does.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: c

Mains

Q. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act,

2014' with reference to appointment of judges of higher judiciary in India. **(2017)**

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