



CURRENT AFFAIRS



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JUDGES IN POLITICS

THIS ARTICLE COVERS 'DAILY CURRENT AFFAIRS' AND THE TOPIC DETAILS OF "JUDGES IN POLITICS". THIS TOPIC IS RELEVANT IN THE "POLITY AND GOVERNANCE" SECTION OF THE UPSC CSE EXAM.

WHY IN THE NEWS?

The topic of judges assuming official positions post-retirement has sparked discussions, especially following a recent incident involving a former Calcutta High Court judge from West Bengal who joined a political party shortly after leaving the judiciary, prompting inquiries into judicial ethics.

CONSTITUTIONAL PROVISIONS RELATED TO RETIRED JUDGES IN INDIA

- **Article 124(7)** of the Constitution prohibits a retired judge of the Supreme Court from practising before any court or authority within India. This provision upholds the independence and impartiality of the judiciary. Nonetheless, the Constitution does not explicitly prohibit retired judges from taking on assignments or appointments after their retirement.
- **Article 128** grants authority to the Chief Justice of India, with the President's approval, to invite a retired Judge of the Supreme Court, Federal Court, or High Court, who is qualified for Supreme Court appointment, to serve and function as a Supreme Court Judge.
- **Article 220** prohibits High Court judges from pleading before any authority in India except the Supreme Court and other High Courts.

CASES AND RECOMMENDATIONS REGARDING JUDGES JOINING POLITICS

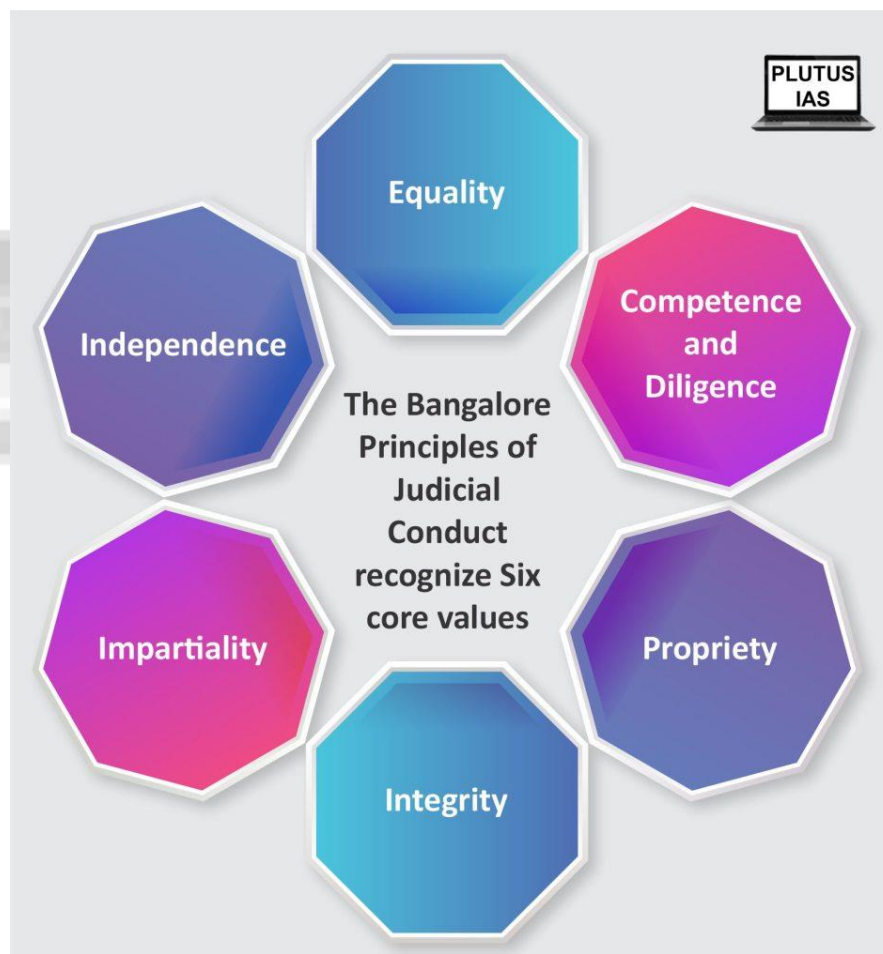
- In the case of **Bombay Lawyers Association v. Union of India**, the **Supreme Court rejected a public interest litigation (PIL) petition that sought to enforce a mandatory cooling-off period of two years for retired judges** before they could accept post-retirement appointments. The highest court **emphasised that it did not have the authority to impose such a cooling-off period**, indicating that this matter falls outside its jurisdiction.
- **The 14th Law Commission**, chaired by MC Setalvad, suggested that judges should refrain from taking up post-retirement positions offered by the government and **proposed the implementation of a cooling-off period after retirement**. However, there exists no explicit rule that prohibits judges from accepting such positions.

CONCERNS ARISING FROM JUDGES ENTERING POLITICS

- **Contradiction with Constitutional Value:** The Indian Constitution's third Schedule, which pertains to oath-taking, mandates judges to pledge to execute their duties without partiality.

However, their involvement in politics raises concerns regarding their impartiality and propriety.

- **Erosion of Public Trust:** Judges' participation in politics can undermine public trust in the judiciary as a whole. In the case of *C. Ravichandran Iyer vs Justice A.M. Bhattacharjee* (1995), the Supreme Court emphasised the necessity of judges possessing impeccable integrity and unwavering character to maintain the purity of justice.
- **Breach of Judicial Impartiality:** The entry of judges into the political arena raises doubts about the neutrality of the decisions made during their tenure. Judicial officers are expected to remain impartial and base their judgments solely on factual evidence and legal principles.
- **Contravention of Checks & Balances Principle:** The Indian Constitution operates on the principle of checks and balances among different branches of government. An independent judiciary acts as a check on both the executive and legislative branches. However, judges' involvement in politics could upset this balance.
- **Undermining Judicial Independence:** Judges' foray into politics undermines judicial independence and introduces the risk of political influence affecting the judiciary's functioning. Judicial independence is crucial for upholding the rule of law.
- **Conflict of Interest Concerns:** Judges' entry into politics, especially following controversial statements or rulings during their tenure, raises concerns about potential conflicts of interest. Judges are expected to avoid such conflicts and uphold their integrity.
- **Ethical Conduct of Judges:** Judges' involvement in politics goes against the ethical conduct expected of them. Judges are expected to uphold the dignity, independence, impartiality, integrity, decency, and diligence both inside and outside the courtroom to enhance public confidence in the judiciary.



ARGUMENTS IN SUPPORT

- **Utilisation of Expertise:** Advocates posit that judges possess invaluable expertise and experience that could significantly benefit the government and public service sectors. By accepting official roles post-retirement, judges can contribute to policymaking and governance based on their profound understanding of legal principles and judicial procedures.
- **Upholding Integrity in Official Positions:** Supporters of post-retirement appointments contend that judges are held to elevated standards of integrity throughout their careers, which are likely to persist in their roles in official positions. Appointing retired judges to key positions ensures the maintenance of ethical standards and impartiality in decision-making processes.
- **Addressing Vacancies Requiring Specialised Knowledge:** Certain official positions demand specific expertise or comprehension of legal intricacies, areas in which retired judges are well-versed. By appointing retired judges to such roles, there's a guarantee that critical positions are occupied by individuals with profound insights into legal matters, thereby contributing to effective governance and administration.
- **Preservation of Talent Pool:** Offering post-retirement appointments ensures the retention of the knowledge and skills of seasoned jurists within the country. It facilitates the continued contribution of judicial veterans to public service endeavours beyond their active tenure on the bench.

WAY FORWARD

- **Enactment of Legislation Establishing a 'Cooling-off Period':** In accordance with the Supreme Court's recommendation, the Parliament should enact legislation mandating a cooling-off period of at least two years before judges can join political parties or be appointed to political positions by the government.
- **Extension of Judges' Retirement Age:** Consideration should be given to increasing the retirement age of judges from 60 to 70 years. This extension would help mitigate the risk of conflicts of interest arising from post-retirement employment opportunities for judges.
- **Implementation of Conditions for Tribunal Appointments:** Clear conditions should be prescribed for the appointment of judges to tribunals. Factors such as expertise in constitutional matters or Public Interest Litigations (PILs), years of legal practice, research proficiency, and previous experience on benches handling similar cases need to be considered before making post-retirement appointments.
- **Promotion of Self-regulation among Constitutional Office Holders:** Individuals occupying constitutional positions should adopt self-regulation as a guiding principle. For instance, retired justices like Chelameswar and Kurian Joseph, along with former Chief Justices of India Kapadia, Lodha, and Thakur, have set an example by refraining from pursuing post-retirement involvement in politics or accepting nominations to political positions.

PRELIMS PRACTISE QUESTION

Q1. With reference to the Indian judiciary, consider the following statements:

1. The Chief Justice of India, with the President of India's prior consent, has the authority to invite any retired Supreme Court judge to serve and function as a judge of the Supreme Court of India.
2. A High Court in India possesses the authority to review its own judgment, similar to the Supreme Court.

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

Answer: C

MAINS PRACTISE QUESTIONS

Q1. What economic implications arise from retired judges joining political parties or accepting governmental appointments, particularly in terms of potential conflicts of interest and influence on regulatory decisions?

Q2. How does the entry of judges into politics impact the political landscape, including the balance of power between the judiciary and the executive and the public's confidence in the democratic process?

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