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Rtd. Judges & Executive Posts

What is the issue?

- Many judges over the years have begun to accept posts offered by the government.
- Due to this, the clear demarcation between the judiciary and executive has been blurred.

How does the Constitution secure judges' independence?

- Chapter 4 of Part V of the Constitution deals with the Supreme Court.
- Chapter 5 of Part VI of the Constitution deals with the High Courts.
- The **salaries** of judges and their **age of retirement** are guaranteed in order to secure their independence.
- The judges 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 also have the power to **question the executive acts**.
- **Why?** - All these make it clear that the framers of the Constitution wanted an unambitious judiciary.

What does the Gogoi example reveal?

- The President of India nominates the former CJI Ranjan Gogoi to the Rajya Sabha (RS) as a Member of Parliament (MP).
- During his tenure as CJI, Justice Gogoi presided over important cases and all the decisions went in favour of the government.
- This gave an impression that his nomination was a reward for these favours.

In what context Gogoi's appointment should be seen?

- The desire of a post-retirement job influences pre-retirement judgments.
- It is a threat to the independence of the Judiciary.
- It is in this context that the appointment of Mr. Gogoi has to be seen.
- **Article 80** - The President can nominate persons having special knowledge in literature, science, art and social service as Rajya Sabha MP.

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

What is the problem with such appointments?

- Post-retirement appointments will undermine the constitutional values of impartiality in the dispensation of justice.
- These appointments will undermine confidence in the judiciary.
- It will also go against the clear demarcation of separation of powers.
- It is true that there are no rules that stood in Justice Gogoi's appointment to the Rajya Sabha.
- But such matters cannot be left to the individual vagaries of judges.

What could be done?

- It is time to have a law in place barring post-retirement appointments.
- This is the only way to secure the confidence of the people.
- Judges can be compensated by being given their last drawn salary as pension.
- The age of retirement for judges can be increased by a year or two.

Source: The Hindu



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