



Time to raise the bar

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The judiciary needs a mechanism to regulate post-retirement government appointments

- Justice A.K. Sikri, a well-regarded judge of the Supreme Court of India, found himself in the eye of a storm arising from accepting a post offered by the government, last year, while being a judge of the court.
- By later turning down the offer after the controversy erupted, he substantially redeemed the judiciary's and his own honour.
- However, this is an issue that recurs frequently.
- Even titans in the legal field have had to face stinging rebuke from respected members of the fraternity for similar lapses.

The case of M.C. Chagla

- For example, take the case of the late Justice M.C. Chagla. Both he and the former Attorney General of India, M.C. Setalvad, were members of the First Law Commission. Speaking as members of the Law Commission they had categorically denounced the proclivity of judges accepting post-retirement jobs sponsored by governments and called for an end to it. Unfortunately, in his post-retirement assignments, Justice Chagla violated the very same principle he had supported.
- After retirement, he accepted a government appointment to serve as Indian Ambassador to the U.S. (1958-61) and later as Indian High Commissioner to the U.K (1962- 1963). Soon after this he was asked to be minister for education in Nehru's cabinet, which he again accepted.
- On the other hand, by declaring in 1965 that the Aligarh Muslim University could not claim minority status conferred under Article 30(1) of the Constitution, he even earned the collective ire of his cabinet members.
- However, the shrill denunciations of the Law Commission on judges accepting post-retirement posts and Setalvad's repeated calls to honour the principle merit acceptance even today.

Striking a balance

- At the same time, it is also true that the valuable experience and insights that competent and honest judges acquire during their period of service cannot be wasted after retirement.
- Unlike abroad, a judge of the higher judiciary in India retires at a comparatively young age and is capable of many more years of productive work.
- However, government-sponsored post-retirement appointments will continue to raise a cloud of suspicion over the judgments the best judges delivered while in service.
- Though clichéd, it is true that in law justice must not only be done but also be seen to be done.
- Therefore, the viable option is to expeditiously establish, through a properly enacted statute, a commission made up of a majority, if not exclusively, of retired judges to make appointments of competent retired judges to tribunals and judicial bodies.
- In these times, the attacks on the fabric of independence of the judiciary will not be through engulfing flames but through small corrosive doses.
- Therefore, it is in the judiciary's own interests to resolve this issue as expeditiously as it can.

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