Challenges of Post Retirement

Why in news?

Recently a Calcutta High Court judge and a senior IPS officer in West Bengal resigned from their posts and joined political parties.

What are the Constitutional provisions that ensure the independence of judiciary?

- **Article 50-** The State is directed to take measures to ensure the separation of the judiciary from the executive within the public services of the State.
- **Independent judiciary**- The Constitution has made various provisions to make the judiciary independent as the Supreme Court is
    - A federal court, the highest court of appeal
    - The guarantor of the fundamental rights of the citizens and the guardian of the Constitution.
- **Security of tenure**- Judges are not appointed on the pleasure of the President, they can't be removed from office without any reasonable cause that too on the ground of misbehaviour and incapacity.
- **Financial independence**- The judge's salaries are fixed and charged on the Consolidated Fund of India and Consolidated Fund of State in the case of Supreme Court judges and High Court judges respectively, which can't be reduced or altered until and unless an emergency arises like a financial crisis.
- **Punish for contempt**- Supreme Court (Article 129) and High Court (Article 215) have the power to punish for their contempt either civil or criminal contempt.
- **3rd Schedule**- It deals with the ***"Forms of Oaths and Affirmations"*** of various constitutional posts which demands that judges perform their duties 'without fear or favour, affection or ill-will'.
- **Article 32**- Supreme Court has the power to issue writs, the Parliament can't abridge the power of issuing a writ in any case.
- **Ban on practice post retirement**-
    - The Supreme Court judge is not allowed to practice in any court of India after his retirement, but he can be appointed in tribunals, review panels or committees.
    - A High Court judge is allowed to practice in the Supreme Court and other High Courts (excluding the lower courts and the High Court in which he was a judge.)

Bangalore Principles of Judicial Conduct, 2002

- It gained international acceptance as indicated by the *Judicial Integrity Group,* emphasize the importance of independence, impartiality, integrity, and propriety in judicial behavior.
- Judges are expected to maintain the dignity of their office and conduct themselves

in a manner consistent with judicial norms and values.
- Judges should avoid comments that could affect case outcomes and must disqualify themselves if they cannot be impartial.

Restrictions placed on senior government officials

- **Independence of Constitutional bodies-** Election Commission, Public Service Commission, and Comptroller and Auditor General (CAG) perform their constitutional duties without interference from the government, thereby ensuring transparency and accountability in governance.
- **Post retirement**- The CAG and the chairman/members of the Public Service Commission cannot take up any other employment with Central or State governments after demitting office.

Whether Constitution has placed restrictions on joining politics?
• There are no constitutional restrictions on former judges or senior government officials joining political parties or contesting elections. • Two Supreme Court judges have resigned to contest elections • A former Chief Election Commissioner became a Rajya Sabha member and Minister. • A retired Chief Justice of India was nominated to the Rajya Sabha shortly after retirement, highlighting a trend of such appointments. • Many bureaucrats have entered politics by joining political parties and contesting elections post-retirement.

What are the suggestions recommended for judges and senior bureaucrats from joining political party?

Election Commission recommendation

- **Cooling-off period**- In 2012 Election Commission suggested a cooling off period for top bureaucrats post-retirement before joining political parties or contesting elections.
- **Government stand**- The recommendation was rejected by the government citing Constitutional provisions and democratic values.
- **Democratic right**- The government said that the right to contest election is the fundamental aspect of democracy which can't be restricted.
- **Avoid conflict of interest-** The government argued that the existing rules prevent senior bureaucrats from taking up private jobs for at least a year after retirement.
- **Supreme Court's stand**- It dismissed a writ petition seeking a law for a cooling off period stating that it's the role of legislature to decide on such matters.

Discussion in Constituent Assembly

- **Judicial independence**- A member of the Constituent Assembly, K.T. Shah, had suggested that judges of constitutional courts should be legally barred from occupying executive posts.
- The Constituent Assembly did not favour this as implementing external rules to control the judicial behaviour of judges would be antithetical to the idea of judicial independence.

Supreme Court stand on judicial conduct

- **C. Ravichandran Iyer vs Justice A.M. Bhattacharjee (1995)-** The Court emphasised the importance of a judge's character, integrity, and behaviour in maintaining the purity of justice
- **All India Judges' Association vs Union of India (1991)-** The Court highlighted the high expectations society holds for the conduct and performance of judicial officers.

What lies ahead?

- The principle of visible justice, "Justice should not only be done but should also be seen to be done" should extend beyond the tenure of office to maintain public trust.
- A cooling off period can be recommended for at least 2 years before joining political parties or accepting political nominations post-retirements, to reinforce public confidence in judiciary and senior government offices.
- It is imperative for the Supreme Court for clear prohibition against judges entering politics post-resignation.
- Such actions should be viewed as a violation of the oath taken by judges, considering Indian precedents and established norms regarding judicial conduct.

References

1. The Hindu- Time to prohibit judges from joining politics
2. The Hindu- Judges and bureaucrats joining politics

