



Competitive impropriety

Retired judges should not accept a Parliament seat lest it be seen as a political reward

The President's nomination of former Chief Justice of India, Ranjan Gogoi, as a Rajya Sabha member so soon after his retirement will be seen as a crass example of a regime rewarding a member of the judiciary for meeting its expectations during his tenure. It will be futile to argue that it is a well-deserved recognition for an eminent jurist. The gap of four months between his retirement and nomination, and the fact that a series of decisions in his court were in seeming conformity with the present government's expectations militate against such a justification. The second argument, that there have been instances of retired Chief Justices being nominated to the Upper House or appointed Governors, does not cut ice either, as it is nothing more than a dubious claim to the same level of impropriety. In fact, references to the late CJI Ranganath Mishra and Justice Baharul Islam as valid precedents reflect quite poorly on the executive, and amount to competitive impropriety. There continues to be a perception that these were lapses in propriety. Justice Mishra's commission of inquiry absolved the Congress from any organisational responsibility for the 1984 anti-Sikh riots. Justice Islam exonerated a Congress Chief Minister of wrong-doing in a financial scandal in Bihar. The party had helped Justice Islam move both ways between Parliament and the judiciary. He quit the Upper House in 1972 to take office as a High Court judge. In 1983, he quit as a Supreme Court judge to contest an election.

Mr. Gogoi's appointment cannot be seen, as he has sought to project, as a way of ensuring cohesion between the judiciary and the legislature. He no longer represents the judiciary, and his contribution will be limited to the expertise and knowledge he can bring to debates in Parliament. Any attempt to create 'cohesion' between the two wings would necessarily encroach on the judiciary's role as a restraining force on the executive and legislature. He should have rejected the offer, considering not only the nature of the judgments that Benches headed by him had delivered in the Ayodhya dispute and Rafale investigation, and the administrative decisions he had made in prioritising some cases above matters such as the validity of electoral bonds and Kashmir's altered status. These will be coloured, in retrospect. Also, he ought to have followed the example of his former colleagues who had declared that they would not accept any post-retirement work from the government. And one cannot forget that his tenure was clouded by an employee's complaint of sexual harassment, which acquired greater credibility after she was reinstated following his exoneration by a committee of judges. All of the government's conduct, both an official response and a judicial one, reflected an unmistakable, alarming intention to undermine judicial authority so