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The Permanent Mission of India to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to communication AL IND 1/2025 dated 25 February 2025 from the Special Rapporteur on the independence of judges and lawyers.

The Permanent Mission of India has the honour to submit the information in this regard in the enclosed Annexure.

The Permanent Mission of India to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Office of the High Commissioner for Human Rights
(Kind Attn: [REDACTED] Officer in Charge, Special Procedures Branch)
Geneva, Switzerland

Inputs of India on the communication from the Special Rapporteur on the independence of judges and lawyers

Appointment of Judges

Appointment of Judges to the Supreme Court and High Courts is made under Articles 124, 217 and 224 of the Constitution of India. The responsibility for initiation of proposals for appointment of Judges in the Supreme Court vests with the Chief Justice of India, while the responsibility for initiation of proposals for appointment of Judges in the High Courts vests with the Chief Justice of the concerned High Court. Constitution of India stipulates the qualifications for appointment of Judges to the Supreme Court and High Courts.

Only those persons who are recommended by the Supreme Court Collegium are appointed as Judges of the Supreme Court and High Courts. Appointment of Judges in the higher judiciary is a continuous, integrated and collaborative process between the executive and the judiciary. It requires consultation and approval from various Constitutional Authorities both at State and Central level. In the usual course, the process is initiated and completed well in time. In order to ensure that these High Offices are occupied by only deserving persons, the Supreme Court of India has held that "Merit and integrity shall be the prime criteria for appointment of a Judge in the High Court. As far as possible, representation shall be given to women and marginalized sections of society". The Government has also been requesting the Chief Justices of High Courts that while sending proposals for appointment of Judges, due consideration be given to suitable candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities and Women to ensure social diversity in the appointment of Judges in High Courts. The process of recommendation and appointment involves a detailed examination of the capability of the persons recommended whether they are Judicial Officers or Advocates.

As would be apparent from the above, the process of appointment of Judges to the Supreme Court and High Courts involves a Constitutional mandate, which is merit based and focussed on facilitating diversity.

The proposal for transfer of High Court Judges is initiated by the Chief Justice of India in consultation with four seniormost puisne Judges of the Supreme Court. The Chief Justice of India is also expected to take into account the views of the Chief Justice of High Court from which the judge is to be transferred, as also the Chief Justice of the High Court to which the transfer is to be effected, besides taking into account the views of one or more Supreme Court judges who are in a position to offer views. The views on the proposed transfer of a Judge or a Chief Justice of a High Court should be expressed in writing and should be considered by the Chief Justice of India and the four senior most Judges of the Supreme Court. The personal factors relating to the concerned Judge and his response to the proposal, including his preference of places, are taken into account by the Chief Justice of India and the first four puisne Judges of the Supreme Court before arriving at conclusion on the proposal.

All transfers are to be made in public interest i.e. for promoting better administration of justice throughout the country. All transfers are done as per constitutional provisions and various judicial pronouncements.

Post-retirement roles undertaken by judges

Article 124(7) of the Constitution of India prohibits a retired Judge of the Supreme Court to plead or act in any Court or before any authority within the territory of India. Similarly, Article 220 of the Constitution prohibits a retired Judge of a High Court to plead or act in any Court or before any authority in India except the Supreme Court and the other High Courts. These restrictions are based on legal ethics, i.e. a person who has held office of a Judge in Supreme Court or High Court shall not plead or act before any authority where he is capable of influencing decisions.

Article 128 of the Constitution provide for utilizing the services of the retired judges of the Supreme Court allowing them to sit in the respective Court after retirement as per the exigencies. Further, Article 224A of the Constitution provides for utilizing the services of the retired judges of the High Courts, allowing them to sit in the respective Court after retirement as per the exigencies.

There are series of Parliamentary enactments in which provisions have been made that the post of Chairman of Tribunal/Commission can be filled up either by appointing a sitting Judge or a person qualified to be judge of the Supreme Court/High Court or by Judges retired from Supreme Court, High Court and the State Judicial Services. The retired Judges represent a pool of talent, well versed in the art of adjudication and conversant with the process of delivering justice. Therefore, their services are often utilized by the Union/State Governments by appointing them to various Tribunals, Commissions of Inquiries, etc.