

GRAFT TALK AND THE TOP COURT'S INEXPLICABLE SILENCE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

December 10, 2021, was a dark day in the history of the Indian judiciary, particularly the Supreme Court of India's. [In a televised interview](#), where the pointed question was on whether there is corruption in the Supreme Court of India, the former Chief Justice of India, [Justice Ranjan Gogoi](#), said: "Corruption is as old as society. Corruption has become an acceptable way of life and judges don't fall from heaven."

Justice Gogoi's attack was against the entire Supreme Court and scandalised the entire institution of the Supreme Court, which demands immediate redress. Wilmut, C.J. in *R. vs Almon*, had as early as 1765 observed: "...and whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which King's Justice is conveyed to the people."

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The Constitution Bench of the Supreme Court in *Brahma Prakash Sharma vs State of U.P.* (1953) said: "It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges, personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened."

The Supreme Court found advocate Prashant Bhushan guilty of contempt of court, in 2020, "for shaking the confidence of the public in the institution as a whole" and for creating an "impression that ... Judges who have presided in the Supreme Court in the period of last six years have a particular role in the destruction of Indian democracy". The Court found that the attending circumstance to be taken into consideration was about the "person who makes the statement"; it held that "it is not expected of a person who is a part of the system of administration of justice and who owes a duty to the said system, to make such tweets which are capable of shaking the confidence of general public," the judgment read.

A bench presided by the now former CJI, Justice Gogoi, had in fact initiated contempt proceedings against a former Supreme Court judge, Justice Markandey Katju for similar utterances (against judges in a blog), but these were dropped after his unconditional apology.

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So what happens when a scurrilous attack is made and the Court is scandalised by a former CJI?

Justice Gogoi's conduct raises serious questions. During his tenure as CJI, as many as eight cases of a particular business group were assigned to the Benches presided by Justice Arun Mishra, former judge of the Supreme Court. These cases were all decided in favour of the said

business house, giving it relief running into thousands of crores of rupees. Interestingly, in one such case, C.A. No. 11133/2011, the said business house has settled the matter with the Gujarat Urja Vikas Nigam Limited recently, according to reports, forgoing a claim of 11,000 crore but only after a five-judge Bench of the Supreme Court decided to rectify the judgment in favour of the business house under an extraordinary curative power.

Sadly, other States or authorities have not come forward with similar curative petitions for the Court to act. One gets the impression that States or authorities are happy to accept even decisions against them running into crores of rupees which are made in questionable circumstances. Thus, what they could not do directly they are allowing it to be done indirectly — by their silence.

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Interestingly, this case — C.A. No. 11133/2011 was taken up during the summer vacation in 2019.

Another matter of the same business group (C.A. No. 9023/2018), which was also not an urgent vacation matter, was listed on May 21, 2019 when the following order was made: “Heard the arguments of Mr. Ranjit Kumar, learned Senior Counsel appearing for the appellant. List tomorrow, i.e. Wednesday, the 22nd May, 2019 for further arguments.”

On May 22, the matter was concluded and judgment reserved with the following order: “Heard Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant and Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the respondent. Arguments concluded. Judgment reserved.”

Where is the sentinel guarding our rights?

Pertinently, on April 8, 2019, the Registrar Judicial of the Supreme Court had passed the order stating that “regular hearing matters will be taken up as per guidelines and norms approved by the Hon’ble The Chief Justice of India”, that was, CJI Gogoi. So, has he self-incriminated himself?

On this issue, I had addressed a letter on August 16, 2019 to the then CJI, Justice Gogoi, and other judges of the Supreme Court pointing out the gross abuse of the judicial process, with this request: “I do hope and trust that you would look into the matter and take corrective steps as deemed appropriate to protect this institution.” Sadly, my letter though received was not even acknowledged.

A Constitution Bench of Supreme Court, to which Justice Arun Mishra was a party has held in 2018 “that the Chief Justice is the Master of the Roster; he alone has prerogative to the constitute Benches of the Court and allocate cases to the Benches so constituted”, and that, “In view of the aforesaid, any order passed which is contrary to this order be treated as ineffective in law and not binding on the Chief Justice of India.”

Why would the now former CJI, Justice Gogoi, allow matters of one business group to be heard by a Bench presided by a particular judge? Why would he not take any action after his attention was drawn to the irregularities? At his book launch on December 8, 2021, the now former CJI welcomed the industrialist concerned and his family as guests.

Sexual harassment allegation: CJI Ranjan Gogoi’s presence on Bench raises eyebrows

It has happened only once in the history of the Supreme Court when a Bench presided by (now former) CJI Justice K.N. Singh had heard and decided matters pertaining to a particular business group giving it substantial relief. But then perhaps following the outcry from Members of the Bar and the then Attorney General, the (now former) CJI H.J. Kania acted swiftly and decisively to recall those orders and restore the image and the reputation of the Supreme Court, thereby sub serving the rule of law.

Crony capitalism is a curse on this nation. The Supreme Court itself has come down heavily on corruption in public life and has directed time and again that action be taken against bureaucrats and politicians found guilty of corruption. Corruption is indeed a bane as far as our democracy is concerned. The judiciary must be fiercely independent and free from any kind of influence. It is indeed so, generally and by and large. It has served the nation well. The former CJI, Justice Gogoi, has done great disservice to the institution that he purportedly served. So, one wonders why there is an absolute silence on the part of this great institution. Surely, actions are needed against the former CJI, Justice Gogoi, and his actions or inactions. The Court has itself held that in such a situation, it must act on its own without waiting for the Attorney General or any person to move the Court. If not done, citizens' faith in the integrity of the institution will be seriously eroded — perhaps irreparably.

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Growing populations and unrestricted use of natural resources must push nations to have an efficient food value chain

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