

A MISCARRIAGE OF JUSTICE

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

Finally, the in-house committee has spoken: "[No substance in the allegations contained in the Complaint dated 19th April, 2019 of a former Employee of the Supreme Court.](#)" In the absence of any known procedure, the non-observance of the principles of natural justice and the absence of effective representation of the victim, the report, even though not for the public, is *non-est* and *void ab initio*.

The complaint made by the victim of sexual harassment to the judges of the Supreme Court had two equally serious facets. One related to sexual harassment, a very serious charge. The other related to the victimisation of the complainant and her family "at the hands of the Chief Justice of India [CJI]", as claimed by her. It is this latter charge to which the nation needs to pay equal, if not greater, attention. The charge on this count, as per her affidavit, involves the following: after the alleged incident on October 11, 2018, her transfer to the Centre for Research and Planning on October 22, change of position to "Admin, Material Section" on November 16, issuance of a memorandum on November 19 by Deepak Jain, Registrar, accusing the victim of violating conduct rules and seeking an explanation, her third transfer to the Library Division on November 22, the issuance of a memorandum on November 26 rejecting her explanation and proposing further action, her suspension on November 27, and the communication of December 18 from the Registrar that the charges against her stood proved. On December 21, she was dismissed from service.

Meanwhile, according to her affidavit, on November 27, her husband, a head constable with the Delhi Police, Crime Branch Division, was transferred to the Third Battalion. On December 8, her husband, and the latter's brother, also a constable with the Delhi Police, were suspended over telephone, and the orders followed the next day. On January 2, 2019, an inquiry was initiated by a Deputy Commissioner of Police against her husband on the ground that "unsolicited calls were made to the Office of the Hon'ble Chief Justice amounting to official misconduct". On January 11, the victim and her husband were summoned to Delhi's Tilak Marg police station by Station House Officer (SHO) Naresh Solanki. In their presence, the SHO called the Registrar, Mr. Jain, to discuss ways to reach the residence of CJI Ranjan Gogoi. The SHO, the victim and the husband went there, and in the presence of Mr. Jain, the victim was forced to fall at the feet of the CJI's wife.

In his own cause: On complaint against CJI Ranjan Gogoi

Upon their return to the police station, the SHO had a long conversation with the victim and her husband. On January 14, the disabled brother-in-law of the victim, who had been appointed temporary Junior Court Attendant under the orders of the CJI himself on October 9, 2018, was removed from service. On March 3, an FIR was registered on a complaint by a person named Naveen Kumar at the Tilak Marg police station in respect of an alleged demand made by the victim in June 2017 for a bribe of 10 lakh for getting him a job in the Supreme Court and his payment of 50,000 as advance. Based on this FIR, the victim and her husband were arrested from their village in Rajasthan, hand-cuffed and subjected to cruel and inhuman treatment. The victim was remanded for a day on March 10. She was released on bail on March 12.

The affidavit in support of the complaint appears truthful and honest. The details are heart-rending and extremely troubling, and reflect a deep malaise that appears to have set in in high offices. These incidents are all corroborated by official records. Collectively, they establish

beyond doubt the victimisation of the woman, her husband and other family members at the hands of the state machinery, including the Registry of the Supreme Court.

Each of these actions is either unconstitutional or illegal or criminal in nature. Clearly, they establish a well-designed conspiracy to victimise the victim beyond redemption so as to ensure that neither she nor her husband and her family members could raise their heads again to seek justice in respect of the complaint made against the CJI. Together, they constitute gross violations of the constitutional and fundamental rights of the victim and her family members, including those guaranteed under Articles 14 and 21. Clearly, the motive behind ensuring grossly inhuman, illegal, unconstitutional and disproportionate punishment to the victim and her family members seems to be to suppress her will and spirit so that she does not raise any charge about the incident of October 11, 2018.

One thing is clear: complainant Naveen Kumar, who alleged that the victim demanded a bribe and willingly offered, according to his own case, 50,000, has made himself an accomplice to the alleged bribery to secure public employment. He must therefore face the rigour of the law. The case on its own showing appears to be concocted and its timing raises serious questions about its authenticity. If the bribe was demanded in June 2017, it is a curious coincidence that the complainant from Jhajjar, Haryana surfaces in March 2019 and that too in Tilak Marg police station to make the complaint. It activates the entire police machinery against the victim and her family.

This was the final nail in the coffin, as the proverb goes, pushing the victim and her family to the wall and igniting in them the courage to stand up against the CJI and make the complaint on April 19. Those who have doubts about the so-called delay in the complaint must be prepared to put themselves in the shoes of the victim, a Class III employee pitted against the Chief Justice of India, one of the highest and the most powerful constitutional functionaries. Her approaching lawyers who are widely respected as human rights activists was natural and cannot be viewed with suspicion under any circumstances.

The Constitution Bench of the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation* recognised procedural safeguards as necessary and said they have “historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities”. In *Uma Shankar Sistani v. Commissioner of Police, Delhi* (1996), the Supreme Court ordered the Central Bureau of Investigation to investigate the circumstances under which a false complaint was registered against the petitioner, leading to his arrest. The FIR against the victim in this case needs the same treatment. Equally, the punishment of dismissal imposed on her is grossly disproportionate, even assuming that the charges against her were proved. The Supreme Court has consistently frowned upon such punishments. In *Ranjit Thakur v. UOI* (1987), the court interpreted the doctrine of proportionality “as part of the concept of judicial review” to ensure that if the sentence is an outrageous defiance of logic, then it can be corrected.

Irrationality and perversity are recognised grounds of judicial review. The court has held that if the punishment is outrageously disproportionate and the court considers it arbitrary in that it is wholly irrational or “a punishment is so excessive or disproportionate to the offence as to shock the conscience of the Court the same can be interfered with”. On each one of these counts the punishment of dismissal imposed upon the victim is completely arbitrary and perverse. It must go.

Where can she and her family members get justice if the police at the highest level is pitted against them? Will they ever get a fair investigation and fair reports in the criminal cases? It is doubtful. Can she and her family get justice at all at the hands of the judiciary, considering the

respondents would be the CJI and the Supreme Court? Only time will tell. But certainly for the present, the picture is dark for them.

All these raise extremely troubling and discomfoting thoughts in the minds of many. Is it the Supreme Court as an institution that is responsible for what has happened, or is it the CJI? The dichotomy will emerge only when other Justices act independently, uphold the majesty of the law and steer the institution out of troubled waters. If they fail, the institution is doomed to serious loss of face and credibility. It is time the collective conscience of the Justices prevails.

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