

NOT JUSTICE

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

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The three-member panel probing charges of sexual harassment against Chief Justice [Ranjan Gogoi](#) had a task much broader and more critical than its stated remit. Given that it was investigating allegations levelled against the highest office of the country's apex court, the panel needed to answer questions that pertained, inevitably, to the integrity of the institution itself. Upon it also lay the onus of instituting procedures that mitigated the unequal power relations in a case where a former junior employee of the court was ranged against the CJI. In a report submitted on Monday, the panel has given a clean chit to CJI Gogoi. It has "found no substance" in the charges. But this denouement — an ex parte report, which will not be made public — raises more questions than it answers.

The committee comprising Justices S A Bobde, Indira Banerjee and [Indu Malhotra](#) wrapped up the inquiry in sittings over four days, three of which were devoted to questioning the complainant. On the third day, the complainant withdrew from the probe alleging that the panel did not adopt "a procedure that would ensure fairness and equality". She accused the committee of not informing her about its procedures, denying her legal help, not recording its proceedings and not providing her with a copy of her depositions before it. Each of these four points raises issues of power asymmetry. The committee's task was, no doubt, complicated by the fact that the SC's "in-house procedures" do not have provisions to deal with charges against the CJI. But the apex court has, over the years, also interpreted and re-interpreted Articles 14, 15, 19 and 21 of the Constitution to lay down the rights of working women. The probe was a chance to extend such jurisprudence to a situation inside the institution of the court.

The panel's recourse to an ex-parte investigation is problematic. Aside from the fact that such a probe is against the principles of natural justice, the apex court has, in February this year, ruled that an ex parte verdict can be set aside under the Code of Civil Procedure. And by not making its report public, the panel has come up short on the requirement of transparency that should have been fundamental in a case of such gravity. It has argued that the verdict in *Indira Jaising vs Supreme Court of India* does not enjoin placing in public "the report of a committee constituted as a part of the In-House Procedure". But surely a probe into an issue where the institutional propriety of the SC is in question cannot hearken to pre-RTI jurisprudence — which *Indira Jaising* is. The panel's verdict goes against the Court's tradition of interpreting the law creatively for the sake of upholding and strengthening constitutional morality. The Court has corrected itself in the past. It should do so again.

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