

# A TRAVESTY OF JUSTICE

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

On May 6, the “in-house” panel of the [Supreme Court gave a clean sheet to the Chief Justice of India](#) (CJI), Ranjan Gogoi, after an allegation of sexual harassment was levelled against him by a former female staffer of the court.

Let us assume, for example, that an average employee in a government department is accused of sexual harassment at the workplace. If at the outset reasonable material is found in favour of the complaint, the accused is suspended from employment pending an inquiry. This is considered necessary in administrative law to ensure that the accused does not tamper with evidence or intimidate or influence witnesses. Usually, an independent inquiry will follow which will give both parties an opportunity to present evidence and arguments and to examine and cross-examine witnesses. If the allegations are found to be true and grave, the accused’s employment is terminated; if not, other forms of departmental penalties are imposed.

Prisoner of procedure: on CJI sexual harassment case

So why does the entire body of procedural safeguards and legal principles disappear when the accused is the CJI? It was on April 19 that the complainant sent affidavits to the judges of the Supreme Court accusing Justice Gogoi of sexual harassment. The complaint is specific, detailed and supported by documentary and other forms of evidence. The account seems, prima facie, consistent, warranting an inquiry.

The first reaction was by the court’s Secretary General quickly discarding the complaint as one by “mischievous forces”. The second was unprecedented in the constitutional history of India. The [CJI himself constituted an extraordinary hearing](#) in the Supreme Court, along with two other judges, on a non-working day in a case titled “Matter of great public importance touching upon the independence of the judiciary”. The complainant, in her absence, was defamed and her motives questioned. The highest law officers of the country, the Attorney General and the Solicitor General, joined this judicial proceeding. Within no time, an allegation of sexual harassment turned into a matter of judicial independence.

The third development was the constitution of an “in-house” panel comprising three judges of the Supreme Court. It did not seem to be of concern that to ensure independence of the inquiry and check for bias, members other than judges should have constituted the committee. How can judges inquire into allegations against a colleague, no less the CJI, who is the ‘master of roster’ assigning cases to fellow judges and, most significantly, the highest judicial authority in the country, wielding an enormous amount of power and influence?

A miscarriage of justice

The constitution of the “in-house” panel was not in compliance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, a special legislation to curb harassment. Nor was not in accordance with any requirements under the existing framework of law. Thereafter, the complainant was forced to abstain from the panel, citing various reasons such as the refusal of the panel to allow the presence of her lawyer, refusal to record the proceedings or to inform her of the procedure followed and prohibition on conveying the details of the proceedings to anybody else, including her lawyer. The panel continued the proceedings in her absence and then met the CJI. Now, the panel has concluded

that the allegations are without “substance”.

The finding of the panel that the allegations are baseless is the final blow in a process that has violated all principles of fairness, due process and impartiality. The panel’s report is not available to the public on reasons of confidentiality. What grounds did the panel cover to reach its conclusion? What evidence did it examine and rely on? The public have been kept in the dark, having no access to and no knowledge of what transpired in the proceedings. This has happened at a time when the Right to Information Act, 2005 has revolutionised access to information by the public.

The institution of the judiciary has a strong counter-majoritarian character. It is considered neutral — free from self-interests. It is supposed to protect individual rights and adjudicate freely and fairly. But the current episode points to a larger problem in Indian democracy: the emergence of judicial oligarchy. An allegation against a sitting judge is inquired into by three other judges of the court, the accused is exonerated, the panel report is made available only to the CJI and the seniormost judge of the court, and this secrecy is justified by relying on a judgment of the Supreme Court itself. The judges must not reduce the institution to a private club where certain interests are privileged at the cost of judicial integrity.

The Chief Justice of India is not above the law.

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