

## BY ESTABLISHED LAW AND PROCEDURE

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

A well-publicised case of a complaint by a former employee of the Supreme Court of India against the Chief Justice of India (CJI) has raised questions about legal provisions, procedural propriety and different facets of what could be categorised as principles of natural justice. As a constitutional institution, the Supreme Court had to respond to the same. In my view the response will satisfy the requirements of the law, though I have seen that several opinions have been published to the contrary.

A travesty of justice

The procedure that was being followed cannot be criticised as being either illegal or otherwise arbitrary. A procedure had to be devised as the circumstances were unique, without any precedent. The only guidance available was a 'Report of the committee on in-house procedure (in brief "procedure")', drawn up by a meeting of the full court of the Supreme Court on December 15, 1999. The procedure adopted is a public document available on the court website. It deals with situations involving a High Court judge, a Chief Justice of a High Court and a judge of the Supreme Court separately. The procedure specifically states that even in the case of an inquiry into a complaint received against a judge of the Supreme Court, the committee shall hold an inquiry on the same pattern as the committee constituted to examine a complaint against a judge of the High Court. The procedure does not expressly deal with the case of the CJI but it definitely would be applicable to the case of the CJI as well because the CJI is also a judge of the Supreme Court. Thus, the procedure does not contemplate the participation of a legal practitioner because it would not be a formal judicial inquiry involving the examination and cross-examination of witnesses by lawyers. It has to be remembered that the committee was bound by the rules under which it has come into being, and though as per the report it is entitled to devise its own procedure (where certain parameters have been laid down in the in-house procedure), the same cannot be deviated from.

Prisoner of procedure: on CJI sexual harassment case

The complainant did appear before the committee three times, as newspaper reports would show. It seems she did ask for permission to engage a lawyer, but it was denied. It also seems that she decided to stay away. It is her choice. But it is difficult to countenance an opinion that the complainant felt intimidated by three Supreme Court judges being present, to hear and consider her version. We would do well to remember the obvious. The members of the committee are Supreme Court judges, comprising the seniormost judge of the Supreme Court and two women judges. Is not the fact that two of the members of the committee are women, one which would serve to make the complainant give her version in a more relaxed atmosphere? Is it right on our part to be sceptical about the propriety and correctness of the procedure followed by three Supreme Court judges, persons with unblemished reputations, in their character, conduct and integrity? A trust deficit would be counterproductive in these circumstances.

A claim for a copy of the inquiry report will have to be turned down going by the law laid down by the Supreme Court in *Indira Jaising v. Supreme Court of India & Anr* [(2003) 5 SCC 494]. The report in the said case was made to the CJI and the report was confidential and discreet, only for the purpose of his information and not for disclosure to any other person. Because the inquiry in the present case was into the allegations made against the CJI, the report has advisedly been

given to the next seniormost judge (next in seniority to Justice S.A. Bobde and Justice N.V. Ramana).

The Supreme Court belongs to everyone

The procedure laid down in the in-house procedure has been adhered to in the present case. The law in *Indira Jaising* has also been adhered to. The complainant does have remedies in law. The principles of natural justice which are alleged to have been violated in the present case, by the refusal on part of the committee to afford the complainant a right of legal representation and the decision not to publish the report of the committee, do not and cannot have a straightjacketed approach. What has been done by the committee is in accordance with the procedure that is laid down. In doing so, it cannot be said that there is a violation of natural justice for the simple reason that what is involved is not a judicial inquiry but a fact-finding one. A right of legal representation is not inherent in such an inquiry.

The higher judiciary of this country is an institution to be cherished and its reputation is a matter dear to every citizen of this country. Some of us are more vocal than the rest, but all of us are stakeholders. The Supreme Court and the High Courts are constitutional institutions and the men and women who occupy positions in the higher judiciary are required to be persons of impeccable integrity. But men and women are not infallible, and why should judges alone be an exception thereto? The founding fathers of the Constitution were wise persons and constitutional protection is afforded to the judges to see that they are able to discharge their duties for the benefit of the citizens of the country, without fear or favour, but this is not to say that there can be no complaint against a judge of the Supreme Court or the CJI. When such complaint is made, it has to be inquired into in accordance with the procedure that is laid down by the full court of the Supreme Court itself, and the said in-house procedure has been laid down keeping in mind the constitutional ethos. The said in-house procedure has all the attributes of law. It is a law governing such situations. Where the law is adhered to, claims for deviation therefrom or complaints of adherence to it cannot be countenanced.

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