

## **THE SUPREME COURT MUST UPHOLD THE RULE OF LAW TO PROTECT ITS INDEPENDENCE**

*WSS demands an independent inquiry as per law into sexual harassment complaint against CJI, not reprisals against the complainant and illegal detentions of protestors*

On May 7, 2019 the “informal in-house committee”, comprising Justices Bobde, Indira Banerjee and Indu Malhotra, returned a finding that the sexual harassment complaint against the sitting CJI Ranjan Gogoi by his former employee carried “no substance”. The Committee has not made its report public or furnished a copy to the complainant. This not only violates due process, but thwarts the complainant’s right to appeal. The complainant was not afforded a reasonable opportunity of being heard, and upon her withdrawal, the proceedings were conducted *ex-parte*. The complainant withdrew from the proceedings on 01 May 2019 citing “fear, anxiety and trauma”.

The process adopted by the Supreme Court in addressing this complaint of sexual harassment has been illegal and unethical right from the beginning, reflecting a shocking abuse of power by the sitting Chief Justice and a grave subversion of the independent judicial process. The complainant’s “Me Too” disclosure against the CJI, furnished in a signed affidavit to twenty-two Judges of SC, providing extensive details of her experience of sexual harassment, intimidation and victimisation, against herself and her family, was met with an extraordinary hearing on the morning of 20 April 2019 regarding a matter of great public importance affecting the independence of the judiciary. The CJI sat as a judge in his own case (though his name did not appear in the order sheet of the proceedings), offered opening remarks on his honour and reputation, and passed disparaging comments against the complainant, in the presence of two other Supreme Court justices and the Solicitor General. The Supreme Court, it appears, finds the CJI above the very laws that it is constitutionally bound to uphold. The SC has turned inward to protect one of its own, which has come at the cost of the integrity of the highest judicial body of this country.

This was followed by the constitution of the Justice Bobde Committee as an informal in-house panel, *ad hoc* in nature, in complete violation of the Vishaka Guidelines laid down by the same Supreme Court in 1997, and encoded in the POSH Act 2013. The law requires the presence of external members on the committee to ensure independence and impartiality of the process, particularly since the complaint was against the senior-most Judge in the country. We condemn the manner in which this ad-hoc committee conducted its enquiry into the charges of the former employee of the SC. This committee not only refused to let the complainant bring her advocate/support person to the hearing, but also adopted procedures that deny the complainant the right to fair redressal. The refusal to provide the complainant a copy of her own statements, and proceed with the enquiry *ex-parte* even when the complainant gave her reasons in writing for withdrawing, is evidence of the ways in which the rule of law were bent to suit the “distinguished” perpetrator. Further, the Supreme Court’s denial to provide a copy of the final report wherein this committee has given a clean-chit to the CJI renders the complainant unable to ascertain on what grounds her complaint was dismissed, the ability to appeal any such decision. Additionally, the conduct of those in power, particularly the Bar Council of India and other state Bar Associations, against one complainant actively discourages complainants from accessing the legal redressal and works to silence those who dare to speak up.

Each of these are due process guarantees that have been won on the backs of arduous struggles by women’s movements to legislate against sexual violence and challenge the patriarchies of law and legal processes. This includes the struggles since the cases of Mathura and Bhanwari Devi, which led to the formation of Vishakha Guidelines, and the widespread civil society protests post December 2012, culminating in the Justice Verma Committee Report, the Criminal Law (Amendment) Act, 2013, and the Sexual Harassment Act, 2013. There were repeated calls by lawyers, women’s and other progressive groups for the Supreme Court, as well as a sitting judge, to abide by the rule of law, more so when its own independence and reputation is at stake.

It bears mentioning that the Supreme Court's treatment of sexual harassment allegations against their own "brother" judges in the past has also not inspired faith. Complaints against former Justice Ashok Ganguly in 2013, and against Justice Swatanter Kumar in 2014, were also met with *ad hoc* in-house proceedings, gag orders and defamation suits. Repeatedly, the Supreme Court is failing to hold their own to the highest morals deserving of their office.

Furthermore, efforts have been made to conflate the personal integrity of the CJI with the independence and honour of the Supreme Court. We believe that any individual irrespective of the office they hold, cannot be above the law when charged with sexual harassment, a cognisable offence. This was in fact an opportunity for the Supreme Court to show that the institution can constitute a free and fair inquiry against the highest judicial officer of the country. An inquiry which would have followed the rule of law set up and upheld in the past by the SC would have reposed faith in the public of this country.

Exceptionally, in the present case, the CJI is enjoying further protection of the central government, whose complicity in the matter should raise alarms for all those concerned about the independence of the judiciary. Not only was the extraordinary hearing on 20 April 2019 called on a mentioning by the Solicitor General, but Arun Jaitley, sitting Rajya Sabha MP and Finance Minister, wrote an extensive blog post on April 20, 2019, shielding the CJI and trying to co-opt the sexual harassment complaint into its propaganda of "conspiracies" by human rights activists and movements. It is the same propaganda that has now invited judicial proceedings against leading human rights lawyers and activists supporting the complainant and demanding accountability, namely, Indira Jaising, Anand Grover, Kamini Jaiswal, Prashant Bhushan, Vrinda Grover, Shanti Bhushan, Neena Gupta Bhasin and Dushyant Dave. It is important to note that the CJI, as the master of the roster, continues to exercise authority over all such retributive cases through his power to assign cases. Combined with his presence on the bench on the 20 May extraordinary hearing, it is evident that in order to ensure a completely free and impartial redress to this complaint, it is imperative that CJI Ranjan Gogoi step down from juridical and administrative work, pending a fair process.

The same government's repressive tactics were in action again on 7 May and 8 May, when the police summarily detained and physically abused more than 70 peaceful protestors on two consecutive days of protests, majority women, who were protesting the grave violation of due process in the Bobde Committee's proceedings. The complicity of the present government in shielding the CJI, and distorting the narrative of the complainant as a "conspiracy" against the Supreme Court, needs to be addressed frontally by all democratic-minded citizens, as this is a government, which has systematically undermined constitutional institutions of the country through excessive interference, including in the Supreme Court.

The independence of the judiciary is not secured by subverting fundamental due process guarantees, vitiating the environment through baseless allegations of "conspiracy", questioning the character of the complainant, and taking retributive action against her and those standing in solidarity with her. It is served by abiding by the rule of law, ensuring impartiality in judicial proceedings, and delivering accountability for all those abusing their constitutional powers.

**WSS demands that:**

- The Supreme Court hold an independent and impartial inquiry into sexual harassment complaint against the CJI as per the Vishaka Guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;
- The Supreme Court ensure that the complainant gets adequate legal support, witness protection, and is shielded from intimidation and reprisals during and beyond the proceedings;
- The Bobde Committee release a copy of the Report to the complainant;
- CJI should step down from active juridical and administrative work until the inquiry is under way;
- Accountability for illegal detentions and manhandling of protestors on 7 and 8 May 2019.