

Is Judiciary Compromised Or Is Justice Denied?

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Abstract— The Article mainly revolves around the Post Retirement jobs offered to Supreme Court and High Court Judges of India. Many allegations came in front regarding the independence of Judiciary by accepting such posts. Many news channels made allegations against judges that they give judgements in favour of government to get better jobs after retirement. The Post Retirement Nomination of Chief Justice of India Mr. Ranjan Gogoi came to limelight and he was highly criticised for accepting the nomination as Rajya Sabha Member. I have Justified the Post Retirement jobs and tried to answer the allegations made against Justice Gogoi for some of his landmark judgements.

Index Terms— Contempt of Court, Supreme Court of India, Chief Justice of India, Scandalise, Contempt Powers, Judgement, Justice .

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1 INTRODUCTION

“The Judiciary’s quest towards compromising its independence - “Bar & Bench , 16th February 2021 by Senior Advocate Dushyant Dave

“This is the justification ex-CJI Ranjan Gogoi is giving for accepting Rajya Sabha seat - “The , Print 20th March by 2020 Apoorva Mandhani

***“The destruction of India’s judicial independence is almost complete ”
-The Washington , Post 24th March by 2020 Rana Ayyub***

Ex - CJI “Gogoi s Rajya Sabha Nomination Disturbs Public Faith in Judiciary Live - “Law, 17th March by 2020 Manu Sebastian

These types of news, even if they are opinions still hinders the public confidence in the judiciary and it is said to be the basic criterion of judging the justice delivery system in India. In *Rupa Ashok Hurra v. Ashok Hurra*, AIR 2002 SC 1771: 2002 AIR SCW 1730: (2002) 4 SCC 368 it was observed the same. Contempt of Court Act 1971 talks about both civil and criminal contempt and it also talks about scandalising the court. Section 2(c) of Contempt of Court Act, 1971 says *Criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matters or the doing of any other act whatsoever which*

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any Court; or

- (ii) *prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
- (iii) *interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;*

Soon after independence, the Supreme Court held that "if an impression is created in the minds of the public that judges in the highest court in the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined." In succeeding years, the court handed down a series of judgments that effectively equated scandalising with the threat of the breakdown of justice, through the assumption that if people were to believe the scandalous statements, they would be encouraged to disobey court orders.

In the conviction of Arundhati Roy for contempt of court, the court noted that the image of the court could not be tarnished at any cost, the bench held that it is not permitted "to cast an injury to the public by creating an impression in the mind of the people of this backward country regarding the integrity, ability, and fairness of the institution of the judiciary".

It went on to observe that one had to keep in mind "the ground realities and prevalent socio-economic system in India, the vast majority of whose people are poor, ignorant, uneducated, easily liable to be misled. But who has the tremendous faith in the dispensers of justice".

Because of this, the court held, there was no need to establish that a particular speech or statement had contributed to a breakdown of law and justice: "the well-known proposition of law is that it punishes the archer as soon as the arrow is shot no matter if it misses hitting the target. The respondent is proved to have shot the arrow, intended to damage the institution of the judiciary and thereby weaken the faith of the public in general and if such an attempt is not prevented, disastrous consequences are likely to follow destroying rule of law, the expected norm of any civilized society".

The need the Contempt of Court Act 1971 rose when it was found that the independence of the judiciary might be hampered. The Independence of the Judiciary is one of the basic structures of the Constitution. Independence of judges means they should be free from political, social, or economic influences. Fearlessness implies that they should not be afraid of the consequence of their judicial decisions and they should not be susceptible to any temptation or intimidation. Above all the monster of corruption that has already polluted the Indian democracy, should not be allowed to enter the

judiciary, else people's confidence in the independence of the judiciary is bound to be shattered.

Inre: 5)2001(,Bineet Kumar Singh SCC :501 AIR 2001 SC 2001 :2018 AIR SCW

1950 a forged/ fabricated order of Supreme Court was used to confer some benefit on a group of persons. Supreme Court took a strict view of the matter and observed as under:

"The law of contempt of court is essentially meant for keeping the administration of justice pure and undefiled. It is difficult to rigidly define contempt. While on the one hand, the dignity of the court has to be maintained at all costs, it must also be borne in mind that the contempt jurisdiction is special and should be sparingly used. The Supreme Court is the highest court of record and it is charged with duties and responsibilities of protecting the dignity of the court. To discharge its obligation as the custodian of the administration of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, It is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, justice is delivered without fear or favor. To discharge this obligation, Supreme Court has to take cognizance of the deviation from the path of Justice. The sole object of the court wielding its power to punish for contempt is always for the course of administration of justice." This was the reason and need was observed by Supreme Court that why the Contempt of Court is so important for its working and maintaining its independence in the country.

After the enactment of the Contempt of Court Act 1971, a Law Commission was made in 2018 headed by Justice B.S Chauhan to Review the Act. The commission submitted its report and examined that whether there is any need to amend the act and it was concluded in the report that there was no requirement to amend the act and to support their conclusion stated some reasons. The reasons are:

- **High Number of Contempt Cases:** The Commission observed that there were a high number of civil (96,993) and criminal (583) contempt cases pending in various High Courts and the Supreme Court. The Commission observed that the high number of cases justify the continuing relevance of the Act. It stated that amending the definition of contempt may reduce the overall impact of the law and lessen the respect that people have for courts and their authority and functioning.
- **International Comparison:** About the offence of 'scandalizing the Court', the Commission noted

that the United Kingdom had abolished the offence in its contempt laws. However, it noted that there were two differences in circumstances in India and the United Kingdom, which warranted a continuation of the offence in India. First, India continues to have a high number of criminal contempt cases, while the last offence of Scandalising the Court in the UK was in 1931. Second, the offence of Scandalising the Court continues to be punishable in the UK under other laws. The Commission observed that abolishing the offence in India would leave a legislative gap.

- **Source of Contempt Power:** The Commission observed that the superior courts derive their contempt powers from the Constitution. The Act only outlines the procedure about investigation and punishment for contempt. Therefore, deletion of the offence from the Act will not impact the inherent constitutional powers of the superior courts to punish anyone for its contempt. These powers will continue to remain, independent of the 1971 Act.
- **Impact on subordinate courts:** The Constitution allows superior courts to punish for their contempt. The Act additionally allows the High Court to punish for contempt of subordinate courts. The Commission argued that if the definition of contempt is narrowed, subordinate courts will suffer as there will be no remedy to address cases of their contempt.

When **Former Chief Justice Of India Mr. Ranjan Gogoi** was nominated as Rajya Sabha Member only after 4 months of his retirement. His tenure as CJI and his nomination for Rajya Sabha member was questioned and criticised. Not Only his tenure was questioned but his well-known and renowned judgment were questioned too, many said that all those judgments were specifically given in favor of the Government of India so that he can get a good after retirement job.

When Ranjan Gogoi himself was asked about his nomination in an interview of India Today, he replied that it is *quid pro quo* that he is nominated and if he wanted a sinecure for his judgments then why would he ask for just a Rajya Sabha seat. He also told that when the president of the country makes an offer under Article 80 you don't refuse it. When the nation want your services, you don't refuse them. He said it's not a job but rather it's a recognition and an expectation that you will contribute to your field of expertise.

As his judgments were questioned so I would like to point out the reasoning on which the judgment

was given, since a judge is expected not to give his personal views on the judgement and decide by the evidence and facts are presented before him/her. Firstly I will be talking about the famous *Ramjanmabhoomi Case or M Siddiqi (D) Thr Lrs vs Mahant Suresh Das & Ors*. On 9th November 2019, the final verdict was given on the case on which the whole nations eyes were upon. The Supreme Court ordered to give the disputed land to the Respondents which was of 2.77 Acres and a separate land of 5 acres to be given to the Petitioners wherever they feel comfortable except the disputed land.

The reasoning or the crux of the judgment (which is taken from the original Supreme Court Judgment) is that the court said that the title of the land cannot be decided based on faith or belief but rather on evidence and there is clear evidence that both the inner and outer courtyard was used by Hindus to worship but there was no evidence offered by Muslims to show the same. There was evidence to indicate that the namaz was offered within the precincts. When the case was filed for the title of the disputed land, during the pendency the structure of the mosque was destroyed and the Muslims have been wrongly deprived of a mosque which has been constructed well over 450 years ago.

Division of land in three parts the decision of which was given by High Court was legally unsustainable and didn't subserve the interest of either of the parties. On Balance of Probabilities allotment of land to the Muslims is necessary and also the evidence in respect of the possessory claim of the Hindus over disputed property stands on a better footing than the evidence adduced by the Muslims. Under Article

142 of the constitution, Supreme Court without depriving either party gave the following judgment to allot a separate 5 Acres land to the Muslims and disputed property of 2.77 Acres to Hindus. By giving such judgment Supreme Court was successful in satisfying both the parties.

The second case which also raised questions on Supreme Court and also on CJI Ranjan Gogoi was PIL on *Rafael case*. There was an allegation on the Government of India of giving double the amount of money for each Rafael jet than its actual cost. Since it was a matter of national security its hearing and its judgment were seal covered but its decision was made public.

In an interview with **India Today** when Justice Gogoi was questioned on accusations of favoring the government in the Rafael deal, he said "We took the view that an arms acquisition contract was different from the award of a building contract. This is not to say that we would close our eyes if we

found evidence of corruption. In the original order, all three judges unanimously felt the evidence of corruption was a long shot. That's why when the review asked for the registration of an FIR by the CBI, Justice

S.K Paul and I did not see the need for FIR registration as the corruption charges were a long shot. Justice K.M Joseph took a slightly different view and wrote a separate order."

Talking about the price of aircraft he said, "One was a base aircraft and the other was a fully loaded aircraft. India got the fully loaded aircraft. How can you explain to the public what fully loaded aircraft means? It will reveal all the specifications related to arms and equipment and Pakistan will have a big laugh and they will equip the aircraft better." That is the reason Rafael deal was not made public and the government paid more than decided in the initial deal.

The Third Case which is the most essential and also which allegations were made to tarnish the image of Supreme Court and Justice Ranjan Gogoi was of sexual harassment allegations made by a former junior Court Officer on 19th April 2019 that she was sexually harassed by the Chief Justice of India, Ranjan Gogoi. On 23rd April 2019 Advocate *Utsav Bhains* alleges and submits an affidavit in the court that the advocate was offered a bribe of **Rs 1.5 Crores** to frame the current Chief Justice of India, Mr. Ranjan Gogoi in the sexual harassment case, and the next day, on 24th April 2019, he presented the court with material evidence in a sealed cover.

Seeing all this Court directed Retired Justice A.K Patnaik to conduct an inquiry into the conspiracy allegations and he will receive assistance from the Director of the CBI, the Chief of the IB, and the Commissioner of the Delhi Police. Court also directed for a separate in-house panel committee to look into the sexual harassment allegations made against the Chief Justice of India, Mr. Ranjan Gogoi.

The Judges Inquiry Act, 1968, has been enacted for that purpose and for the same reason an "in-house procedure" has been evolved by the Supreme Court. In India, the removal of a judge of the Supreme Court or a high court can only be by recourse to the procedure prescribed by Article 124(4) of the Constitution, popularly described as impeachment. Experience has shown that this cumbersome procedure has not achieved its intent.

The "in-house procedure" is in reality a peer review wherein the sitting judges will examine the complaint to find out if it has any substance. This envisages an informal procedure of examining the complainant and also the material which may be produced by the complainant. The objective of the "in-house procedure" is to preserve the independence of the judiciary by having the allegations

against the concerned judge examined in the first instance by his peers, and not by an outside agency. The nature of inquiry is fact-finding, where the judge would have his say. It is settled law that the inquiry would not be a formal judicial inquiry. It would not involve the examination and cross-examination of witnesses. The committee can devise its procedure consistent with the principles of natural justice.

If the allegations are found to be substantiated, then further steps will be taken as provided in the Constitution. Otherwise, the matter is closed. Reports of the Peer Committee are not made public and are to be kept confidential, as laid down by the Supreme Court in Indira Jaising's case (2003) 5 SCC 494.

The committee duly followed the established in-house procedure, which has existed for the last 20 years, and multiple inquiries have been held under it. **The in-house procedure expressly states that no lawyers shall be permitted to participate and contemplates only sitting judges to be members of the inquiry committee. The committee, therefore, did not accede to the request of the complainant for a lawyer. The complainant appeared and was examined on three separate dates. She was permitted to produce documents and also examine documents.**

The in-house committee procedure evolved by the Supreme Court in 1999 was followed. The objective is not to protect or absolve any judge of misconduct but to preserve the independence of the judiciary and to ensure fearless discharge of duties by judges. For the same reason, the Peer Committee must comprise only sitting judges. Peers cannot include retired judges, lawyers, politicians even academics.

That is the reason why the complainant was not provided any lawyer during the inquiry or video or audio recording of the session and to maintain the independence and integrity of the Supreme Court the committee final report was neither made public nor provided to the complainant.

My personal views upon all these news and allegations made against Supreme Court and Retired CJI Mr. Ranjan Gogoi were baseless and made to tarnish the integrity and hurt the independence of the Judiciary. This step was taken as Mr. Ranjan Gogoi in his tenure gave many landmark judgments

which might have hurt those who had an interest in those cases. Also, the sexual harassment allegation which was made were also not proved and also the Advocate Mr. Utsav Bhains himself claimed that he was bribed to frame CJI Ranjan Gogoi in this allegations.

Mr. Ranjan Gogoi himself is a remarkable judge and he deserves the Rajya Sabha Nominations. Mr. Gogoi solved a historical dispute upon which the eyes of the wholenation were upon. Lawyers tried their dirty tactics to postpone the proceedings but still, he tried and managed to held the court proceeding and after listening to the case for straight 40 days, he gave a remarkable judgement which fully satisfied both the parties in the dispute.

Many MPs and Rajya Sabha members have criminal cases pending against them but we people don't question their integrity but when such an eminent judge is nominatedwe question his integrity and question his judgments. First of all, a person cancriticize a judgment and by referring to evidence on record, can say that the judgmentwas factually and legally incorrect. But no one can criticise a judge without pointing out any illegality in his judgment. Giving an impression that the judge was not impartial, in deciding a case, amounts to scandalisation of the judiciary. It may create fear in the mind of judges while deciding a case of national importance. and secondly,it is morally wrong too as he has done so much for the people and now also willing todo more. When such an intelligent and remarkable judge holds such posts in Rajya Sabha then we should get happy and not question him. At last, I would like to end this article by saying a famous saying that "One May Criticise the Judgment but not the Judge" as a Judge gives judgement upon the basis of evidence and facts presented before him and not upon the basis of what he thinks morally is correct. Yes, when the opinion of the judge is required then it is given but still his/her opinion is not bounding upon anyone, so it's never correct to criticise a judge for the judgment passed without any factual evidence or any illegality in the judgment given.

BIBLIOGRAPHY

- Paranjape, N. V. (2016). *Studies in jurisprudence and legal theory*. Central Law Agency.
- Chauhan, B. S. (2016). *Miscellaneous law referencer*. Universal Law Publishing.
- Chengappa, R., & Deka, K. (2020). *If i wanted a sinecure for my judgments, why would i ask for just a Rajya Sabha seat?* other. www.indiatoday.in/magazine/interview/story/20200406-if-i-wanted-a-sinecure-for-my-judgments-why-would-i-ask-for-just-a-Rajya-Sabha-seat-1660091-2020-03-27.
- Mandhani, A., -, A. M., -, K. S., & -, S. D. (2020, March 20). *This is the justification ex-CJI Ranjan Gogoi is giving for accepting Rajya Sabha seat*. ThePrint. <https://theprint.in/india/this-is-the-justification-ex-cji-ranjan-gogoi-is-giving-for-accepting-rajya-sabha-seat/384643/>.
- Ayyub, R. (2020, March 24). *Opinion | The destruction of India's judicial independence is almost complete*. The Washington Post. <https://www.washingtonpost.com/opinions/2020/03/24/destruction-indias-judicial-independence-is-almost-complete/>.
- Dave, D. (2021). *The judiciary's quest towards compromising its independence*. Bar and Bench - Indian Legal news. <https://www.barandbench.com/columns/litigation-columns/the-judiciarys-quest-towards-compromising-its-independence>.
- Sebastian, M. (2020, March 17). *Ex-CJI Gogoi's Rajya Sabha Nomination Disturbs Public Faith In Judiciary*. Live Law. <https://www.livelaw.in/columns/ex-cji-gogois-rajya-sabha-nomination-raises-questions-on-judicial-independence-153934>.
- Sorabjee, S. J. (2019, May 14). *Court's in-house procedure, by which allegations against CJI were examined, has stood the test of time*. The Indian Express. <https://indianexpress.com/article/opinion/columns/supreme-court-ranjan-gogoi-sexual-harassment-allegations-ranjan-gogoi-5725918/>.
- Sinha, R. (2018, June 29). *Review of the Contempt of Courts Act, 1971*. PRSIndia. <https://www.prsindia.org/report-summaries/review-contempt-courts-act-1971>.

- *M. Siddiq v. Suresh Das*, (2019) 4 SCC 656
- Ramasubramanian, V., Bopanna, A. S., & Kaul, S. K. (2019). *Supreme Court Observer - Summary of sexual harassment case against CJI*. Sexual Harassment & the CJI. <https://www.scob-server.in/court-case/sexual-harassment-allegations-against-cji>.

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