CJI appears before panel probing sexual harassment charge

Bobde Committee had sent a 'letter of request' as is the case with high constitutional office-holders; complainant has declined to attend hearing without lawyer

In an unprecedented development, Chief Justice of India Ranjan Gogoi has appeared before the Justice S.A. Bobde in-house inquiry committee examining sexual harassment allegations levelled against the top judge by a former Supreme Court

A letter of request was issued to the Chief Justice of India and he responded to it and met the panel, a highlyrated source told *The Hindu* on Wednesday.

High constitutional officeholders like the CJI are not issued summons as is the usual case. They are sent a 'letter of request' to participate in the proceedings. The development has

come to light a day after the complainant declined to participate in the in-house proceedings. "She declined to participate following which the committee conveyed to her that the consequences of her decision would be that the committee would have to continue the hearings ex parte. She agreed," the

Not known

source said.

The source however refused to divulge when exactly, what day, the CJI participated in the proceedings.

The committee also comprises Justices Indira Banerjee and Indu Malhotra as members, while Justice Bobde is the chair.

It has been holding the hearings on a daily basis from Monday. On the third hearing on April 30, the complainant had refused to further participate in the 'informal' proceedings.

She had issued a press

statement citing that one of the reasons for her withdrawal was that the panel allegedly refused her request to have a lawyer or a support person accompany her dur-

ing the hearings. "I was compelled to walk out of the committee proceedings today (April 30) because the committee seemed not to appreciate the fact that this was not an ordinary complaint but a complaint of

The source said that it was a sensitive issue and gave no

a press release.

sitting CJI," she had stated in

deadline by which the committee would submit its report. The report, when done, would likely be placed before a Full Court and vetted by all the Supreme Court

The crisis in the Supreme Court began when a clutch of

websites published the wosexual harassment against a man's allegations against the CII on Easter Day morning.

Within an hour of the articles coming online on April 20, the Chief Justice Ranjan Gogoi held an "extraordinary and unusual hearing" in the Supreme Court, during the course of which he claimed the allegations were part of a larger plot to "deactivate the office of the Chief Justice of



'There is a need for immediate remedial steps to deliver justice to victim'

"Supreme Court must heed its own judgments in the CJI sexual harassment hearings; It should also be fair to the judge concerned, and restore public confidence"

Four centuries ago, Chief Justice Sir Edward Coke during King James I's reign demolished the theory that "the king can do no wrong". He held that the "king should be under god and the law". Thus was established the supremacy of the law or the rule of law.

Yet, the Supreme Court of India appears to think that it is above the law as an institution on its administrative side. It is acting clearly as if the judges and not the law is supreme. The 'in-house procedure' committee of three honourable and distinguished judges is proceeding post-haste to complete its task. In the process, it is negating everything that the Supreme Court has stood for on its judicial side. Irrespective of the report it submits, the conduct of the in-house inquiry by the committee raises extremely disturbing and far reaching questions.

'Constitutional mandate' The Supreme Court has consistently prided itself as "a

court which stands as a 'sentinel of the qui vive' over the rights of the people of this country". In the celebrated Indra Sawhney vs. Union of India in 1992, a Constitution Bench of nine judges held: "therefore, judges who are entrusted with the task of fostering an advance social policy in terms of the constitutional mandates cannot afford to sit in ivory towers keeping Olympian silence unnoticed and uncaring of the storms and stresses that affect the Society".

"When societal conditions and factual situations demand the judges to speak,

they, without professing the tradition of judicial lockjaw,

must speak out..... The court unhesitatingly spoke in Visakha against sexual harassment at workplaces and commanded that till the time Parliament enacted the law, its judgment laying down guidelines to prevent sexual harassment and to punish those guilty, must hold the field. Years later, parliament stepped in and enacted the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,

Yet, the Supreme Court has singularly failed to apply that law to itself and prohibit sexual harassment in its own workplace. By excluding the employees and themselves from its purview, the victim's complaint against Chief Justice Ranjan Gogoi is therefore left at the whims of the judges. In the absence of a defined procedure for redressal, the judges have followed the in-house procedure in a stereotypical fashion.

True, this procedure to inquire against a judge of the Supreme Court provides for constituting 'a Committee consisting of three judges of the Supreme Court' while in respect of the judges of the High Court and the Chief Justice of the High Court, the committee comprises 'two Chief Justices of High Courts other than the High Court to which the judge belongs and one High Court judge' or 'a judge of the Supreme Court or two Chief Justices of other

High Courts' respectively. dure to inquire into a complaint against a judge of the Supreme Court is defective and not free from prejudices and bias. The Supreme Court in Addl. District & Sessions Judge 'X' v. High Court of M.P. speaking through Justice J.S. Khehar and Justice Arun Mishra, when they justified the constitution of a committee excluding judges of the same court, stated: ...The exclusion of judges of the same court from the investigative process, was also well thought out. In certain situations it may be true, as pointed out by the learned counsel for the petitioner, that judges of the same court being colleagues of the judge concerned, would endeavour to exculpate him from his predicament. It is not as if the position could not be otherwise. Animosity amongst colleagues is not

COMMENT

unknown. Reasons of competitiveness, jealousy and the like are known amongst colleague judges, especially from the same High Court..."

While declining to go into the contention of the petitioner that inquiry by the two-judge committee constituted by the Chief Justice of the High Court cannot be expected to arrive at a fair conclusion, the Justices yet went ahead and responded for it being 'just and proper' and 'for future reference'.

"There can be no doubt, that an investigation, would lead to consequences. The judge concerned may be found remiss, or alternatively, he may be exculpated of the charges. Whilst in the former eventuality, the judge findings are recorded, would be the obvious sufferer, in

the latter eventuality, the ad-

verse consequences would be against the complainant, for it would be assumed that she had levelled unfounded allegations. It is therefore imperative that the procedure adopted for the investigative process is absolutely fair for all concerned. The procedure should be such as would ensure, that it would be shorn of favouritism, prejudice or bias. Presence of any one of the above would vitiate the entire investigative process. Recording of statements of individuals, who are subservient to Respondent 3 Justice A, irrespective of whether the statements are recorded on behalf of the complainant or the judge concerned, would most definitely render the investigative process unsustainable in law. The influence of the judge concerned, over the witnesses to be produced, either by the complainant or by the judge concerned himself, will have to be removed. It will be for the complainant to raise a grievance of the nature referred to above.....

Accordingly the Supreme Court held "that the Investigative Process under In-House Procedure must take into account the Rights of the Complainant, the judge concerned by adopting a fair procedure and safeguards, the integrity of the Institution". In that judgment the Supreme Court ordered, "to make the process 'fair and just', it is imperative to divest the judge concerned (against whom allegations have been nistrative and supervi-

sory authority

contro

And whenever necessary, re-

medial steps will be taken".

Therefore the Supreme Court should have appointed a fiercely independent committee. All this is singularly forgotten by the committee presided by Hon'ble Justice Bobde. The victim's statement to the press published widely in newspapers demonstrates that the committee's constitution, its procedure and its functioning are far from being fair and just. The very constitution of the committee raises serious question marks even if it be under the declared procedure. The law declared as above makes this legal position abundantly clear. Justices should have been mindful

of their own law. The Chief Justice, during the fateful hearing on April 20 proclaimed from a judicial dais his innocence, described the victim as a criminal and spoke of a conspiracy against himself and the judiciary. Equally relevant is that following the alleged incidents of sexual harassment on October 11, 2018, the victim has been visited with inhuman treatment beginning with a series of transfers within the court's precincts from one desk to another, in-



600

400

200

over Dushyant Dave.

MAOIST TERROR INCIDENTS, INDIA (2010-18)

Incidents (Left-axis)

itiation of inquiry, suspension and ultimate dismissal in the most bizarre manner, followed by suspension of her husband and his brother and initiation of departmental enquiries against them, summoning of the victim and the husband by the SHO, Tilak Marg Police Station, registration of FIR on absurd charges, arrest of the victim and her husband and inhuman treatment including hand cuffing, are all serious pointers at a possible conspiracy by the officials of the Supreme Court Registry, the police and those in power to protect the Chief Justice.

In such circumstances.

the committee was expected to allow the victim to be represented by a lawyer irrespective of a procedure adopted by them. Lord Denning in Pett vs. Greyhound Racing Association Ltd. made a profound statement on the law as to the representation of a lawyer in a domestic enquiry, "....when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth, he also has a right to speak by prisoner can have his friend". He observed that "a domestic Tribunal is not at liberty to lay down an absolute Rule: "We will never allow a lawyer to appear for him". The Tribunal must be ready in a proper case to al-

In Port of Bombay Vs Dilip Kumar Nadkarni, the Supreme Court justified representation by a lawyer declaring, "Now examine the approach of the Chairtwo of his law officers to conduct the enquiry as prosecutor, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the 1st respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action? Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting officer...'

Procedural safeguards

Pertinently in Nandlal Bajaj vs State of Punjab, the SC held that "the history of personal liberty is largely the history of procedural safeguards" and held: "Fundamental Right in Article 21 carries with it the inherent right to legal assistance".

The committee consisted of three of the most respected jurists and judges with vast knowledge and experience in law. Could the victim have got a fair chance before the committee without being represented by a lawyer? She asked for it and the committee declined it. One aspect must be re-

membered: the status of women in this country is still not equal to that of men. As a result more often than not sexual harassment victims suffer more than the perpetrators. The committee should have been mindful of realities prevailing in the society. The victim has every reason to demand greater fairness from the committee. Sadly, the committee failed to respond. The victim made the complaint at the end of the road, when she and her family were pushed to the ten the incidents of October 11, but successive and continuous acts of oppression

which are nothing short of sexual harassment compelled her to make the complaint on April 19.

Can she be doubted for this? Let me remind the nation what the Supreme Court itself speaking through Justice Nariman in Assam Sanmilita Mahasangha v. Union of India, to which Justice Ranjan Gogoi was party, has held, "Given the contentions raised specifically with regard to pleas under Articles 21 and 29, of a whole class of people, namely, the tribal and non-tribal citizens of Assam and given the fact that agitations on this score are ongoing, we do not feel that petitions of this kind can be dismissed at the threshold on the ground of delay/lach es. Indeed, if we were to do so, we would be guilty of shirking our constitutional duty to protect the lives of our own citizens and their culture. In fact, the time has come to have a relook at the doctrine of laches altogether when it comes to violations of Articles 21 and 29".

Sceptics must remember right to life includes right to reputation, right to life without fear, right to employment, right to fair treatment and of course right to dignity. — Its expansion by the Supreme Court is historical. Let us hope the committee and the justices of the Supreme Court rethink the whole issue and take remedial steps so as to deliver justice to the victim, while being fair to the judge concerned, and restore public confidence and faith.

vocate and the former President of Supreme Court Bar Association.)

IN BRIEF



against HC order

PUDUCHERRY Lt. Governor Kiran Bedi has not ruled out the possibility of appealing against the Madras High Court order restricting her interference in the day-to-day administration of the Union Territory. When asked by The Hindu whether she had planned to go for an appeal, she said, "Right now I can only say the matter is being closely examined."

Goa court summons Minister in cheating case

A Panaii court has summoned Union Ayush Minister Shripad Y. Naik to depose as a witness on June 3 in a cheating case filed against his former staff Vinod Desai. The case relates to a cheque that bounced given by Mr. Desai in 2014 to one Mervin Fernandes, who was seeking a government job and had paid ₹2 lakh as advance

Indo-French naval exercise begins

The first part of the Indo-French joint naval exercise, Varuna 19.1, began off the Goa coast on Wednesday and will continue till May 10. The exercise aims at developing interoperability between the two navies and mutual cooperation

Ambushed jawans ignored protocol

The road recce was not done, nor did they wait for the arrival of anti-landmine vehicle

SHARAD VYAS

The Gadchiroli police have come under criticism for their failure to enforce standard operating procedures (SOPs) which would have prevented the killing of 15 men of the Quick Response Team in a Maoist ambush on Wednesday.

The men travelling in a private mini truck were ambushed and killed in an Improvised Explosive Device (IED) blast. They were heading out of

the Kurkheda police station. Ignoring the protocol of sending an area domination unit to recce the road ahead – which is the usual practice – the QRT unit did not also wait for an anti-landmine vehicle to arrive before deciding to travel in a private vehicle. They were headed

to Dadpur village where the

Maoist hotbed The Wednesday's attack in Gadchiroli is the deadlist strike carried out by Maoists



In the past 10 years, attack many times in Gadchiroli. Three ecent incidents:

2010 Mar. 27, 2012: 12 commandos of the

Aug. 20, 2011 CRPF were killed and 28 others injured as Maoists triggered a landmine on

Three security personnel, including two troopers of the CRPF were killed in an en-

Fatalities 2012 2014 2016 2018 May 19, 2011 Maoists killed four police personnel of a patrol party in Bejurphata and Nargonda

naxals had the previous night torched 36 vehicles meant to assist the road construction work, eyewitness-

"This was nothing but hubris and a complete failure of intelligence since the men did not follow the basic protocol. I have seen so many ambushes but fail to understand what was the hurry for them to reach the spot (Dadpur) when such an incident had taken place on Tuesday night," said Dr. Charanjeet Singh Saluja, who this year received a President's Medal for his services to the jawans

serving in the highly sensi-

tive zone.

The 40-year-old doctor, hailing from Punjab, has participated in crucial encounters in the region including the attack on May 4, 2017 in the Bhamaraghad tehsil.

Locals involved in the torching of vehicles last year at the Etapalli taluka said the

attacks were well planned, coordinated and had managed to fox the pol-

"This has been in the works for a year and not incidental to any events of the recent past. They (naxals) have been waiting to strike at an opportune moment," said local activist Manohar Borkar, who had participated in protests against the district administration last year.

Police version

The white-coloured vehicle (MH33T0483) was blown up into pieces in the attack. The blast left a deep hole on the Kurkheda-Korchi road, eyewitnesses said. The police officials denied lapses on the part of the forces. "It is not true. We took all the necessary precautions," said Additional Superintendent of Police, Gadchiroli, Hari Balaji.

An act of cowardice and desperation: Rajnath Singh

SPECIAL CORRESPONDENT

Soon after the Naxal attack on policemen in Gadchiroli on Wednesday, Union Home Minister Rajnath Singh spoke to Maharashtra Chief Minister Devendra Fadnavis promising all help and calling the attack an "act of cowar-

dice and desperation." "Spoke to Maharashtra navis regarding the tragic incident in Gadchiroli and expressed my grief at the loss of brave police personnel. The MHA is in constant touch with the State administration," the Minister said. Mr. Fadnavis said all help

Chief Minister Devendra Fad-

will be provided to the families of the jawans. "I strongly condemn this

menace with even more and stronger efforts in the future," he said. The latest attack takes the total death toll of security forces in naxal-related violence in Maharashtra to 166 since 1991. In 2015, an internal secur-

curity threat as 'low' after

attack and we will fight this

ity report of the Maharashtra Police had assessed the se-

pared to 11 in the previous year, asking the forces to concentrate on the Southern parts of Gadchiroli. "It is observed the naxal

activities have shifted from North to the South. Hence the redeployment of security forces is towards southern side," the report reads.

However, a senior police

official said enough intelligence inputs were available of a possible strike in the Northern parts during the Lok Sabha elections, sources

failure, Director General of Police Subodh Kumar Jaiswal said the attack was 'indigenous' and was not supported from external organisations

Denying any intelligence

'Despite talk, govt. learnt no lessons from Pulwama'

Congress seeks accountability for 'failure'

PRESS TRUST OF INDIA MUMBAI/ NEW DELHI

The Congress on Wednesday attacked the BJP-led Central government over the Naxal attack and said that despite its "tall talk" no lessons from Pulwama have been learnt. Senior Congress leader

Ahmed Patel said the country needs preventive action, accountability for this failure and not 'jumlas' (rhetoric) and lectures. "We condemn the brutal terror attack on our jawans in Maharashtra. India stands firmly behind their families, well wishers & friends in this hour of grief," Mr. Patel tweeted. Chief spokesperson of Congress Randeep Surjewala, tweeted. "Strongly condemn the attack on C-60 Commandos in Gadchiroli. My condolenc-

es. Their sacrifice would not go in vain." Meanwhile, Nationalist Congress Party president Sharad Pawar demanded the resignation of Maha rashtra Chief Minister Devendra Fadnavis following the IED blast by Naxals in Gadchiroli in which 15 poli-

their lives Mr. Fadnavis holds the Home portfolio and "he should step down imme-

diately", Mr. Pawar tweeted. "Those who feel shame of

cemen and a civilian lost

conscience if not shame of public opinion would have resigned. But the people who are in power today are not going to do so," Mr. Pawar added.

Prime Minister Narendra Modi condemned the attack saying perpetrators of such violence will not be spared. He tweeted, "Strongly condemn the despicable attack on our security personnel in Gadchiroli, Maharashtra. I salute all the brave personnel. Their sacrifices will never be forgotten.'

Meanwhile, Union Minister of State for Home Hansraj Ahir said the government will ensure that such incidents do not recur. Mr. Ahir is the MP from Chandrapur which borders Gadchiroli in eastern Maharashtra.

"We have yet to get com-

plete information about the incident. "We will definitely give a befitting reply," the Minister said. Rahul's version

Citing terror attacks such as

Wednesday's blast by Naxals, Congress president Rahul Gandhi hit out at Prime Minister Narendra Modi's remarks that since 2014 the sounds of blasts can't be heard in India, saying the Prime Minister Narendra Modi needs to open his ears and listen.

those in Pulwama, Uri, and