

CJI appears before panel probing sexual harasssment 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

KRISHNADAS RAJAGOPAL
NEW DELHI
In an unprecedented development, Chief Justice of India Ranjan Gogoi has appeared before the Justice S.A. Bobde in-house inquiry committee examining sexual harasssment allegations levelled against the top judge by a former Supreme Court employee.
A letter of request was issued to the Chief Justice of

India and he responded to it and met the panel, a highly-rated source told *The Hindu* on Wednesday.
High constitutional office-holders 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 pro-

ceedings. “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 source said.
Not known
The source however refused to divulge when exactly, what day, the CJI participat-

ed 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 during 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

sexual harassment against a sitting CJI,” she had stated in a press release.
The source said that it was a sensitive issue and gave no 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 judges.
The crisis in the Supreme Court began when a clutch of

websites published the woman’s allegations against the CJI 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 India.”



Ranjan Gogoi

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

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

DUSHYANT DAVE
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 *Indira 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”.
It also reminded itself: “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, 2013’.
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.
Fundamentally, the procedure 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 concerned against whom the 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..... And whenever necessary, remedial steps will be taken”.
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 levelled), of his administrative and supervisory authority and control over

witnesses”.
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-



Dushyant Dave.

IN BRIEF



Bedi could appeal 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
PANAJI
A Panaji 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
PANAJI
The first part of the Indo-French joint naval exercise, Varuna 191, 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
MUMBAI
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

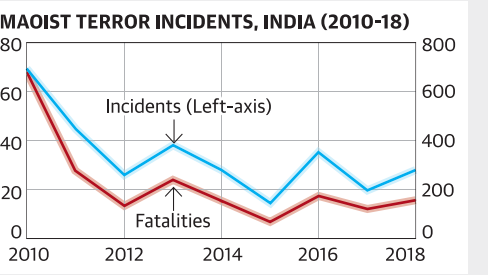
The Wednesday’s attack in Gadchiroli is the dead-list strike carried out by Maoists since 2017

In the past 10 years, the security forces have come under attack many times in Gadchiroli. Three recent incidents:

Mar. 27, 2012: 12 commandos of the CRPF were killed and 28 others injured as Maoists triggered a landmine on a convoy in Dhanora

Aug. 20, 2011 Three security personnel, including two troopers of the CRPF were killed in an encounter in Makadchua

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, eyewitnesses said.
“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 sensitive 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

losing only two jawans, compared 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

naxal attacks were well planned, coordinated and had managed to fox the police.
“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.
official said enough intelligence inputs were available of a possible strike in the Northern parts during the Lok Sabha elections, sources said.
Denying any intelligence failure, Director General of Police Subodh Kumar Jaiswal said the attack was ‘indigenous’ and was not supported from external organisations.

‘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 condolences. Their sacrifice would not go in vain.”
Meanwhile, Nationalist Congress Party president Sharad Pawar demanded the resignation of Maharashtra Chief Minister Devendra Fadnavis following the IED blast by Naxals in Gadchiroli in which 15 policemen and a civilian lost their lives.
Mr. Fadnavis holds the Home portfolio and “he should step down immediately”, Mr. Pawar tweeted. “Those who feel shame of

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 complete information about the incident. “We will definitely give a befitting reply,” the Minister said.
Rahul’s version
Citing terror attacks such as those in Pulwama, Uri, and 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.