

Inadmissible: Exonerating Judiciary of Ethical Responsibility

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Abstract

In this article the main idea resonates on the theme of professional ethics to be followed by the Judiciary as against the onus of following ethics subjugated on the advocates heavily. It is the duty of both the judiciary as well as the advocates to uphold the code of conduct and commensurate with the idea of fair and just trial. To emphasize on the gross instances of violations of ethics on the part of judiciary one of the major recent happening has been discussed with respect to our ex-CJI turned member of Rajya Sabha, Shri Ranjan Gogoi.

Introduction

The course of professional ethics mainly focuses on the question of lawyers' accountability to her/his clientele as against enforcing one's moral interests and walking on the idealistic path of Gandhian ideology: the pursuit of truth. Time and again, there have been several instances in courts where the question of ethics was in limelight due to the actions or inactions of the 'just' judges. The fallacy herein lies in not determining if they are actually 'just'. Thus, in the words of "Former Chief Justice Verma, he recognized that, *"these days we (Judges) are telling everyone what they should do but who is to tell us? We have task of enforcing the rule of law, but does not exempt and even exonerate us from following it"*¹

Judicial Ethics

In a democracy the question that should be posed now than ever before is on the subject of judicial accountability. "[I]n India, time has now come to ensure judicial accountability, perhaps through the constitution of a

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¹ V.G.Ranganath, Ethics of Judges and Judicial Accountability, (2013)<<http://www.legalservicesindia.com/article/214/Ethics-of-Judges-&-Judicial-Accountability.html>> accessed 20 April 2020.

National Judicial Commission and formation for forum of redressal of grievances of common man. Judicial independence and judicial accountability are neither incompatible nor mutually exclusive concepts. Rather Judicial accountability concept increases the legitimacy of the judiciary amongst the people and vis-à-vis it discharges its duties more effectively and efficiently.”²

Due to its relative nature there’s existence of non-consensus on the subject as to what professional ethics means when it comes to a lawyer’s role, but the same is distinct from the role of a judge. To compare both the roles, first and the foremost distinction between the two is that the lawyer has to carry out or work for some other person’s interest by exercising her/his ‘limited friendship’ role whereas a judge has to remain neutral to the cases before her/him and give a fair judgement on the basis of the judicial scrutiny of substantial evidence just like the lawyer by not letting her/his personal moral standard coming in the way of the order. Secondly, the dilemma an advocate faces is how to prove the point for their client as their knowledge and tactics used for achieving their client’s results can be categorized as flawed at times when they delve into harming their opponent’s individuality (2nd criticism Charles Fried focused on). The judge has the responsibility of studying, comparing and examining the evidence in order to seek the truth and falsity from the evidence and give an unbiased meticulous order. These are the main distinctions with respect to the role of the lawyers and judges.

However, the underlying questions which remain untouched are: the qualifications of the judges who are sitting at the apex court, insufficient expertise but priority status offered due to family name in the existing law field, influence of the biases, political associations, ideologies and connections with the power players in giving judgements, favorable status enjoyed by family members in the lower courts, no man can be the judge in his own case, vindictiveness faced by people calling out on the wrong doings of the judges/bench, prolonging of cases in collusion with the senior advocates, formation of a state with the state by the higher court et cetera.

The long forgotten Socrates saying, “*on the four things belong to a Judge; to hear courteously, to answer wisely, to consider soberly and to decide impartially.*”³ Once again believing that the idea should be resonated in the court halls and judge chambers, is the need of the hour. Additionally, a mechanism should be developed by the senior judges where they can have a monthly rendezvous and discuss the emerging ethical concerns and the new standards the society is pushing towards. Resulting into achieving two

² Ibid.

³ Ibid.

goals simultaneously, i.e. keeping abreast with nouveau thinking of citizenry and keeping a check on ethical standards being followed & to be followed.

Some of the general code of ethics which is expected to be followed by the judges are: decision has to be honest, administer justice without fear, parties to the dispute to be treated equally with principles of law and equity, not to provide supportive stool to their relation, acquaintances, and lawyer friends, media publicity to be avoided, no one man be the judge in his own case – this principle is of utmost importance as it means not only that the judge cannot preside over a case he is a party to but also in any other case wherein he has an interest etc. The same has been streamlined and chartered under 16 point code which the judges in both Supreme Court and High Courts (exception: Guj HC) follow known as, “The Restatement of Values of Judicial Life”.

Case Study Analysis: Unimaginable CJI Incident Which Shook the Country

To discuss one of the most significant case in the Indian Supreme Court lately, is of retired Chief Justice Ranjan Gogoi- the path from being accused for sexual harassment to becoming a member of the Rajya Sabha in short span of time after his retirement. With respect to the former controversy as aforementioned, there was stir in the SC after a female apex court employee levelled allegations against him for sexual harassment. The issue led to the two questions, firstly “did the Chief Justice of India (CJI) become a judge in his own cause by being part of the Bench? After all, the allegations directly pertain to him and secondly, is there a formal procedure to deal with allegations of sexual harassment against the CJI?”⁴ Concurring with Senior advocates like Indira Jaising and Vrinda Grover who spoke out against the whole controversy, this very act of the ex-CJI to chair in a matter against himself amounted to an absolute violation of the principle of natural justice and the code of ethics to be followed by person holding the highest judicial office of the country. He should have been held liable in contempt of court for violating the principle of natural justice. Being the CJI he should have known better. Not only this, he went onto the trail of handpicking the bench members to hear the matter as

⁴ Krishnadas Rajagopal, Sexual harassment allegation: CJI Ranjan Gogoi's presence on Bench raises eyebrows, 21 April 2019 <<https://www.thehindu.com/news/national/sexual-harassment-allegation-cji-ranjan-gogoi-presence-on-bench-raises-eyebrows/article26900497.ece> >accessed 20 April 2020.

well as starkly denied the allegations quoting all this to a bigger plot and character assassinating the complainant as being previously indulged in criminal activities, with two cases against her.

We are to observe the aforementioned issue from the parameters on which the authority of the SC rests: the cogency of its reasoning and integrity of its judges. Thus, through the same it can be said that “Justice Gogoi’s track record as justice was to a wrecking ball to the Indian Constitution and smash it into smithereens. It is so spoken of because he made redundant important constitutional lodestars: habeas corpus, non-discriminatory citizenship, the evidence act, federalism and freedom of speech.”⁵ He was more executive minded than the executives in corruption cases.” He assigned cases to the benches in ways that seem to rig the game. Basically, he made a mockery out of transparency and trust that the citizens had on SC. “His reasoning in the Ayodhya case was infinitely worse than that of the Allahabad HC. His ad hominem remarks were fit for authoritarian memes.”⁶

Last but not the least right after his retirement on 17th November 2019, he was offered to become a Rajya Sabha candidate, which he shamelessly accepted. Perhaps, in toto smashing the reputation of the SC and opening the floodgate to distrust amongst the citizens putting the independence of judiciary as a whole in question.

All in all, the most important issue that is latently highlighted is with regard to the crisis prevalent in the judicial system in relation to handling of sexual harassment cases. Currently, there is not any guidelines in specific as to how to deal with the problem wherein if the accused is CJI herself/himself how to proceed with such a scenario. Even though, we have in existence the precedent of Vishakha Guidelines and *Addl. District & Sessions Judge ‘X’ v. High Court of M.P* (2015) 4 SCC 91, in which the SC had ordered to specifically follow the designed method of ‘in-house procedure’ in cases of allegation of sexual harassment against sitting judges in court. However, the paradox lies in this particular situation is that, as per the in-house procedure it is under the CJI’s power “to constitute a three-member panel of Supreme Court judges to enquire into a complaint of misconduct received by the CJI against a sitting judge”⁷, whereas herein the complaint has been made against the CJI in particular.

⁵ Pratap Bhanu Mehta, The Gogoi Betrayal, (19 March 2020)

<<https://indianexpress.com/article/opinion/columns/ranjan-gogoi-supreme-court-rajya-sabha-6320869/>>accessed on 20 April 2020.

⁶ *Ibid.*

⁷ SC must follow procedure on inquiry into allegation against CJI, say women lawyers

Apr 26, 2019,<<https://scroll.in/latest/921426/full-text-sc-must-follow-procedure-on-inquiry-into-allegation-against-cji-say-women-lawyers>>_accessed 20 April 2020.

Thus, there is no mechanism designed for such a scenario. Not only this, even the 2013 Regulations read with POSH Act will not be applicable in this case. What needs to be done is to setup an ad-hoc committee whilst endeavoring to follow the established and accepted principles under the in-house committee procedure with certain changes simultaneously with POSH act read with the 2013 Regulations of the most important being is to have an external member in place who has knowledge in the subject of sexual harassment instance against women and to divest the respondent (alleged) judge of his/her administrative and supervisory powers to keep the whole investigatory process free from any prejudice or bias.

But then again the other school of thought, would like to defend the arguments against Ex-CJI by stating the fact that this is not for the first time a judge has been appointed as an MP by a political party on giving the example of Justice Baharul Islam and Raganath Mishra. Then again the flaw lies in comparison of these past happenings to the current situation. To charter out the parameters as to why these cannot be compared are, firstly, Baharul Islam was appointed by the Congress Party under Indira Gandhi's reign for favoring and delivering a judgement for congress CM back then who was accused of scamming a bank. Secondly, in case of Justice Mishra, though he was awarded for favoring the Congress Govt, but during that time the PM was Shri Atal Bihari Vajpayee. In comparison to the former cases, the judgements delivered by now Rajya Sabha MP Ranjan Gogoi were the most favorable judgements for the cases in which the ruling party BJP had a huge stake- especially Ayodhya and Rafael. Then, there are other petitions on which the govt. wanted him to preside such as the constitutionality of abrogation of Article 370, legality of electoral bonds (bonds unanimously bought were funneled into the ruling party- interestingly, the matter is still pending rather it should have been taken up as a matter of higher importance), the blockade of communications and mass arrests in J&K. Taking all into consideration it can be observed that Gogoi's nomination has shook the conscience of the judiciary and the worst result of all this is that instead of condemning these practices and formulating rules against the repetition of these unhealthy tactics, this has rather transformed into a habit or a norm as the government is dictating the open pillar which was expected to survive on morality and free from executive influence. In our country, democracy rests on three pillars namely: the executive, the legislature and the judiciary. These pillars are to work independently of each other as separation of power is one of the vital aspects of the basic structure of the Indian Constitution.

Therefore, through the discussion of the aforementioned controversial issue it can be unfortunately brought to light that the judges have by far lost the confidence of the people to an extent by now as this is just an addition to the many other foul is fair game played by the judiciary. *“And India’s rulers value Gogoi more than they do elementary principles of justice. And India’s judiciary seems not to want to cross swords with the political establishment.”*⁸

Conclusion

The aforementioned discussion only on the case of CJI Ranjan Gogoi is just the case of an elephant in the room. Recent case of overnight transfer of Justice S. Muralidhar raises eyebrows too as against such untimely transfer as it came hours after he ordered the Delhi Police to take urgent action on BJP politicians who indulged in hate speeches. Such an untimely transfer to Punjab and Haryana HC from Delhi HC was clearly malafide and serves as an exemplary of government’s vendetta against ‘a few good men’.

To conclude, all this has diminished the moral stature of the judiciary as well as collaterally damaged its significant aspect of independence from the executive is harrowing. Thus, rendering such activities as inadmissible behavior in violation of the 16 pointer code of conduct making it an offence. Hence, *“it need not be emphasized that a judiciary that enjoys the confidence of its people can be a great source of stability in a vibrant democracy such as ours and continue to play a pivotal role in the maintenance of rule of law. In the current Indian polity, the judiciary is called upon to control and regulate new areas of law every day and is thus under constant scrutiny. Therefore, preserving the highest standards of judicial ethics is critical to the judiciary’s continued legitimacy and public acceptance”*⁹.

⁸ Siddharth Varadarajan, BeyondTheHeadlines: Ranjan Gogoi, Former Chief Justice, in Contempt of Court? <<https://thewire.in/law/watch-beyond-the-headlines-ranjan-gogoi>> accessed 22 April 2020.

⁹ Justice Y.K Sabarwal, Canons of Judicial Ethics, <<http://tnsja.tn.gov.in/article/Cannons%20of%20Jud%20Ethics.pdf>> accessed 20 April 2020.