

# Allegations against CJI of Sexual Harassment and lack of mechanism to deal with it

May 2, 2019

## Manifest Pedagogy

Sexual violence and harassment has been a topic in public discourse after the #Me too movement. The issue now has knocked the doors of Judiciary as well. This year this topic has a high probability of being asked in Prelims.

## In news

Allegations against CJI of Sexual Harassment

## Placing it in the syllabus

Structure, organization and functioning of the Judiciary

## Static dimensions

- Background of In-house panel of Supreme Court
- Lacunae in procedure

## Current dimensions

- About the issue
- CJI was part of bench and problems with it

## Content

### What Is the issue about?

A former Court employee made allegations against CJI of making sexual advances towards her while she was working as a junior

court assistant. But the CJI participated to in the con

### **CJI was part of bench and problems with it**

- The Chief Justice of India Ranjan Gogoi participated in the constitutional bench which was hearing allegations related to sexual harassment made against the CJI himself. Many senior advocates opined as follows;
  - Senior advocate Indira Jaising said that the CJI should have “absolutely not” been part of the Bench.
  - The senior lawyer Vrinda Grover said that it was the “cardinal and basic rule of fair play that a person cannot be the judge in his own cause”.
- A reading of the in-house procedure applicable to Supreme Court and High Court judges, the **Sexual Harassment of Women at the Workplace** (Prevention, Prohibition and Redressal) Act and the guidelines formed under the Supreme Court Sexual Harassment Regulations **do not contemplate a public hearing on the judicial side**, that too, without due notice to the complainant
- The presence of CJI on the judicial side of the bench to hear allegations against him raised the concern regarding the interest of .
- The charges are unprecedented and have shown up the court machinery to deal with such charges like never before. Any complaint regarding corruption against any judge can be referred to the CJI who sets up an in-house panel of peers to examine it. But **there's no parallel mechanism to deal with sexual harassment charges** against judges sitting or retired let alone the CJI.

### **Lacunae in procedure**

#### **Background**

- The idea of self-regulation as a method by which allegations of misconduct against judges can be

approached came up first in a 1995 case concerning the then Chief Justice of the Bombay High Court.

- A five-judge committee was formed to devise the procedure. The report of the committee was adopted by a resolution of the Full Court on December 15, 1999. This procedure has been adhered to since then.
- However, the in-house procedure was not in the public domain for many years. In 2014, a Supreme Court Bench directed the court's registry to make the in-house procedure public for the sake of transparency. The court was then dealing with a serious allegation made by a woman district and sessions court judge that she faced harassment from a sitting judge of the Madhya Pradesh High Court.

### **The lacunae in procedure**

- Though there is earlier precedents in which such charges have been enquired into by in-house panels, the **mechanism lacks public credibility** as it **lacks external representation** and hence seen by the public as lacking in objectivity and independence.
- The allegations of misconduct against judges of Supreme Court are dealt by in house procedure through a committee of judges and no external agencies are involved in it.
- Another lacunae in the in-house procedure for dealing with complaints against Supreme Court and High Court judges, it is the CJI who "examines" whether a particular complaint is frivolous. There is no word in it on how to deal with a complaint against the CJI.
- In the present case, In the absence of a credible mechanism that would provide a forum of inquiry to the former employee complainant, she had no option but to appeal to the Justices of the Supreme Court to create a Special Inquiry Committee comprising of retired judges of the Supreme Court.

- The present Supreme Court Internal Complaints Committee mechanism or the 2014 judgment in Additional District and Sessions Judge 'X' vs Registrar General High Court of Madhya Pradesh, are inadequate for an inquiry into the alleged misconduct by the CJI himself.
- Under the Gender Sensitisation and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations of 2013, it is again the CJI who sets up the Gender Sensitisation and Internal Complaints Committee.