

IN UPPER HOUSE NOMINATION, A FALL FOR 'ALOOFNESS'

The nomination of a former Chief Justice of India to the Rajya Sabha is a blow against the judiciary's independence

Within five months of his retirement as Chief Justice of India, Justice Ranjan Gogoi has been nominated to the Rajya Sabha by the government. Shortly before his retirement from the Supreme Court of India, he delivered several important verdicts with far-reaching political consequences that left the government pleased, including the Ayodhya judgment. Before that, Justice Gogoi dismissed a review of the Rafale fighter aircraft deal without substantially dealing with the grounds on which the original judgment, negating an independent investigation, had been challenged. The original judgment relied upon several pieces of false and misleading information, conveyed to the Supreme Court by the government, in an unsigned note and handed over in a sealed cover.

Key judgments handled

During his tenure, Justice Gogoi also presided over and pushed through the National Register of Citizens (NRC) in Assam, an exercise that has excluded more than 19 lakh people from the final version of the citizenship register, and which has been widely criticised on several grounds. In short, the exercise presided over by him led to a huge humanitarian crisis, but fed into the government's narrative and methods by which it now seeks to undertake a nation-wide NRC exercise, and further a divisive politics.

Then there was the Sabarimala temple review. A Constitution Bench judgment of the Supreme Court held that excluding menstruating women from entering the temple was discriminatory, and therefore against "constitutional morality". A Bench headed by Justice Gogoi gratuitously referred these issues to a larger Bench, much to the delight of the government.

One could multiply the cases which Justice Gogoi decided during his tenure as the Chief Justice of India or in the run-up to it, and it would be safe to say that his judgments left the government pleased, with scarcely any politically-sensitive case being decided against the government's wishes. His tenure, especially as the Chief Justice of India, only left many observers puzzled about him — he was a judge who had participated in a press conference held on January 2018, criticising the then Chief Justice of India (and his predecessor), Dipak Misra, and accusing him of abusing his powers as master of roster to fix politically-sensitive cases before convenient benches.

There was also the occasion when he delivered the Ramnath Goenka lecture, in 2018, just before his elevation as the Chief Justice of India, where he eloquently declared that the country needs not only noisy journalists and independent judges but even independent journalists and noisy judges. One expected thus as the Chief Justice of India, that he would be robustly independent in the interests of justice and equity and uphold the rule of law.

A turning point

So what led to the virtual collapse of his independence after becoming the Chief Justice of India? Allegations of sexual harassment against him give us a good insight into this. A female staffer who was asked by him to work at his residence, accused him in an affidavit of detail, of harassment soon after he became the Chief Justice of India. The action taken against her was astounding. Not only was she dismissed from service in an ex-parte hearing on frivolous grounds, but her brother-in-law, who was inducted to the Supreme Court staff under Justice Gogoi's discretionary quota, was also terminated without assigning any reasons. Soon after, the Delhi Police suspended her husband and his brother — again on baseless charges. A fabricated case was registered against the staffer by a complainant who was thereafter untraceable; she was harassed by the police on the basis of this. She was then taken by the station house officer of the Tilak Marg police station to the Gogoi residence and made to apologise; she submitted herself to this only because of the terror of her harrowing experience at the hands of the Delhi police.

Immediately after her ordeal (that was detailed in the affidavit to the judges) was published by news portals, Justice Gogoi called for an extraordinary hearing, on Saturday (along with Justice Arun Mishra), where he accused the woman staffer of being a criminal. Justice Gogoi sat as a judge in his own

cause in a case he titled “In Re: A Matter of Great Public Importance Touching Upon the Independence of the Judiciary”. However, the disrepute that this brought upon India’s highest judiciary and the furore caused by the hearing, forced him to appoint an in-house committee headed by the present Chief Justice of India, which quickly absolved Justice Gogoi in extraordinary ex-parte hearings. In these hearings, the woman’s request for being allowed a lawyer, cross-examination of witnesses and recording of proceedings were all refused, forcing her to walk out.

The report absolving Justice Gogoi, was put out by the Supreme Court registry as a press release, but a copy of and substance of the report has not been made available even to the complainant.

It is not possible for the Delhi police to have embarked upon acts of malafide harassment of the woman staffer and her family, without the influence of Justice Gogoi himself. In fact, one of the complaints on the basis on which her husband was suspended and disciplinary proceedings initiated against him was a complaint by Justice Gogoi’s Secretary.

I am privy to the fact that just before his retirement, Justice Gogoi used several channels to get the woman to withdraw her complaint against him. These channels included staffers of the Supreme Court registry as well as senior government officials. In the end, the staffer’s termination was withdrawn by the Supreme Court on the orders of the present Chief Justice of India with retrospective effect and with payment of full back wages, after Justice Gogoi retired. She was also given her due of maternity leave for six months. This is truly extraordinary given that Justice Gogoi had accused her of being a criminal in open court and the present Chief Justice of India who restored her job and benefits, had disbelieved her complaint in the in-house committee.

It is against this background that we need to look at Justice Gogoi’s nomination to the Upper House, on March 16.

A forgotten code

The 16-point code of conduct for judges or as it was called the “Restatement of Values of Judicial Life” (adopted at a Chief Justices Conference in May 1997) states: “6. A judge should practice a degree of aloofness consistent with the dignity of his office”; 7. A judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned”.

Explained | How is a Supreme Court judge to be probed?

Obviously this “aloofness” is a most essential trait needed from politicians or functionaries of the government. Unfortunately these values seem to have been forgotten by judges who invite politicians to their personal functions, eulogise them in public or call them for personal favours. One can understand that there could be some in the political class who may be long-standing personal friends of judges, but then it is incumbent on such judges not to hear and decide cases of those politicians who are their personal friends. Judges can also interact with functionaries of the government in their official capacity for official work. But we now see the repeated spectre of judges hearing and deciding cases of politicians with whom they have a personal camaraderie.

This code of conduct also lays the basis of how post-retirement conduct ought to be. For example if a judge after deciding politically sensitive cases involving particular political parties or politicians, soon after retirement seeks and gets a plum post such as a Rajya Sabha nomination by those very politicians or parties, it would obviously raise serious questions about his or her independence as a judge when he or she had decided those cases.

Justice Gogoi and the government’s actions in the sexual harassment case and the offer of a Rajya Sabha seat by the government, raise serious doubts about the fairness of many critical judgments, including the ones mentioned above that were under Justice Gogoi’s watch. The precedent that he has set strikes a blow against the independence of the judiciary. I hope that this shameful act will lead to public opprobrium which will deter other judges from emulating such conduct.

Meanings of difficult words:

- ❖ **fall for** (phrasal verb) - to be tricked/deceived by something/someone.
- ❖ **aloofness** (noun) – introvert behaviour; reserved character; the state/quality of being remote/distant from others.
- ❖ **a blow against** (phrase) – something in opposition to.

- ❖ **far-reaching** (adjective) – important, major, significant.
- ❖ **consequence** (noun) – outcome, ramification, repercussion.
- ❖ **pleased** (adjective) - happy, satisfied.
- ❖ **substantially** (adverb) – considerably, significantly, largely
- ❖ **ground** (noun) – reason, factor, basis.
- ❖ **negate** (verb) – invalidate, nullify, cancel out.
- ❖ **rely upon** (phrasal verb) – depend on; resort to, have recourse to.
- ❖ **unsigned** (adjective) - unattributed, unattested, uncredoted.
- ❖ **tenure** (noun) – incumbency, term of office, period in office.
- ❖ **preside over** (verb) - be in charge of, be responsible for, manage/organize.
- ❖ **push through** (phrasal verb) – succeed in passing a law accepted by the people who oppose it.
- ❖ **in short** (phrase) – briefly, in a nutshell; in conclusion/summary.
- ❖ **humanitarian crisis** (noun) – it is also called as humanitarian disaster; a situation with high levels of human suffering in which basic human welfare is in danger on a large scale.
- ❖ **feed into** (phrasal verb) – have an effect/influence on something; help to make something happen.
- ❖ **narrative** (noun) – a representation of a particular situation; portrayal/account
- ❖ **seek** (verb) try, attempt, aim.
- ❖ **undertake** (verb) – begin, start, embark on, launch into.
- ❖ **further** (verb) - promote, advance, forward.
- ❖ **divisive** (adjective) – alienating/isolating, disharmonious, discordant.
- ❖ **menstruating** (age) (adjective) – relating to period, menstrual cycle; relating to the flow of blood that comes from a woman’s body each month from puberty to menopause, except during pregnancy.
- ❖ **discriminatory** (adjective) – prejudicial, biased, unfair, inequitable.
- ❖ **constitutional morality** (noun) – the principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner.
- ❖ **gratuitously** (adverb) – unjustifiably.
- ❖ **much to the delight of someone** (phrase) - used to say that something has provided someone a feeling of very great pleasure.
- ❖ **run-up to** (noun) – a period of time just before an important event.
- ❖ **scarcely** (adverb) – hardly, barely; rarely.
- ❖ **puzzle** (verb) – perplex, confuse, bewilder/mystify.
- ❖ **predecessor** (noun) – previous holder of the post; forerunner, precursor, antecedent.
- ❖ **Master of the Roster** (noun) – it refers to the privilege of the Chief Justice to constitute Benches to hear cases; In November 2017, when a Constitution Bench, led by the Chief Justice of India Dipak Misra, declared that “the Chief Justice is the master of the roster and he alone has the prerogative (privilege/right) to constitute the Benches of the Court and allocate cases to the Benches constituted.
- ❖ **roster** (noun) – a list of the people of a tam/organisation.
- ❖ **elevation** (noun) – promotion, upgrading, advancement.
- ❖ **eloquently** (adverb) – expressively, revealingly, significantly, indicatively.
- ❖ **noisy** (adjective) - vociferous, clamorous, tumultuous, talkative.
- ❖ **robustly** (adverb) - strongly, sturdily, resolutely, ruggedly.
- ❖ **in the interest of** (phrase) – for the benefit of, for the sake of, considering.
- ❖ **uphold** (verb) – confirm, endorse/approve, vindicate/validate.
- ❖ **rule of law** (phrase) – it is described as “a principle of governance in which all persons institutions and entities, public and private, including th State itself, are accountable to laws that are publicly promulgated equally enforced and independently adjudicated, and which a consistent with international human rights norms and standards.
- ❖ **virtual** (adjective) – effective, practical, implied.
- ❖ **allegation** (noun) – charge, accusation, indictment.
- ❖ **harassment** (noun) – persecution, persistent annoyance, coercion/intimidation.

- ❖ **insight** (noun) – understanding, revelation, realization/recognition.
- ❖ **affidavit** (noun) – sworn statement, self attestation, self declaration (of a person).
- ❖ **astounding** (adjective) – shocking, surprising, bewildering.
- ❖ **ex parte** (adjective) – Latin meaning “for one party only”.
- ❖ **frivolous** (adjective) – relating to something which is having no serious, sensible, useful purpose or value and it will also be a waste of time; valueless, insignificant, silly.
- ❖ **induct** (verb) - admit to, allow into, introduce to.
- ❖ **discretionary** (adjective) – optional, voluntary, up to the individual.
- ❖ **assign** (verb) - give, convey, specify.
- ❖ **fabricated** (adjective) – manufactured, trumped-up, mad-up, not genuine, fake.
- ❖ **complainant** (noun) - opponent, petitioner, respondent, appellant.
- ❖ **submit** (verb) - agree, consent, accede, accept, comply.
- ❖ **harrowing** (adjective) – (extremely) distressing, disturbing, upsetting.
- ❖ **at the hands of** (phrase) – as a consequence of actions (suffer, get hurt & be treated badly by someone).
- ❖ **ordeal** (noun) – trouble, difficulty, painful experience, nightmare.
- ❖ **call for** (phrasal verb) – require, publicly ask/necessitate, demand.
- ❖ **disrepute** (noun) - dishonour, disgrace, ill repute.
- ❖ **bring upon** (phrasal verb) - cause to happen, give, deal out (something bad/unpleasant).
- ❖ **furor** (noun) - agitation, disturbance, turmoil.
- ❖ **absolve** (verb) – discharge acquit, exonerate, vindicate
- ❖ **cross-examination** (noun) - interrogation, cross-questioning, probing.
- ❖ **proceedings** (noun) – legal action, legal proceedings.
- ❖ **walk out** (phrasal verb) – depart, leave, get out (suddenly).
- ❖ **put out** (phrasal verb) – publish, release, publicize/circulate.
- ❖ **substance** (noun) – significant subject, important matter/content, valid message.
- ❖ **embark upon** (phrasal verb) – start, begin, initiate/commence.
- ❖ **malafide** (adjective) – Latin phrase meaning “with or in bad faith”; dishonest, illegal.
- ❖ **privy to** (adjective) – aware of, acquainted with, informed of (a secret thing).
- ❖ **channel** (noun) – method, means, system (for communication).
- ❖ **retrospective** (adjective) – backdated, retroactive, backward looking/ex post facto.
- ❖ **maternity** (adjective) – motherhood; the state of being a mother.
- ❖ **disbelieve** (verb) - not believe, not credit, doubt, distrust, have no faith in.
- ❖ **look at** (phrasal verb) – regard, consider, view/see; check out, analyse, appraise.
- ❖ **code of conduct** (noun) – a set of rules outlining the norms rules, and responsibilities or proper practices of an individual party or an organisation.
- ❖ **consistent with** (verb) – in tune with, in line with; agreeing, accordant, compatible.
- ❖ **trait** (noun) – characteristic, attribute, feature.
- ❖ **functionary** (noun) – official, administrator bureaucrat.
- ❖ **eulogise** (verb) - praise enthusiastically, express delight over, enthuse over, acclaim/extol.
- ❖ **long-standing** (adjective) – well established; persistent, prevailing, continuing (for a long time).
- ❖ **incumbent on** (adjective) – necessary, compulsory, required, obligatory.
- ❖ **spectre** (noun) – threat menace, danger/peril.
- ❖ **camaraderie** (noun) friendship, brotherhood, solidarity, togetherness, mutual support.
- ❖ **ought to** (modal verb) – must, should.
- ❖ **plum** (adjective) - desirable/choice; very good, best, excellent.
- ❖ **watch** (noun) – shift, stint, spell/period.
- ❖ **precedent** (noun) – model, exemplar, example, pattern; previous example/instance, prior instance.
- ❖ **strike a blow against** (phrase) – do something in opposition to.
- ❖ **opprobrium** (noun) – condemnation, criticism, censure.
- ❖ **deter** (verb) – prevent, stop, halt.
- ❖ **emulate** (verb) – imitate, follow, take as an example.