

## Conspiracy Against Judiciary: RSTV – The Big Picture

**Anchor:** Frank Rausan Pereira

**Guests:** P K Malhotra, Former Secretary, Ministry of Law and Justice, GoI

Satya Prakash, Legal Editor, The Tribune

Desh Ratan Nigam, Advocate Supreme Court

### Larger Background:

- Recently, the Supreme Court called the Directors of the Intelligence Bureau (IB), the Central Bureau of Investigation (CBI) and the Delhi Police Commissioner to look into the material furnished by lawyer Utsav Bains in support of his allegations in the framing of Chief Justice Ranjan Gogoi in a false sexual harassment case.
- A bench comprising Justice Arun Mishra, Justice Rohinton Fali Nariman and Justice Deepak Gupta met all the three officers in their chambers.
- The Apex Court asked Bains to file an additional affidavit to substantiate his allegation that three disgruntled employees of the Supreme Court conspired along with corporate lobbyists to frame sexual harassment allegations against the CJI.
- After the hearing, Justice Mishra dictated the order, asking for another affidavit by Bains regarding his allegations against the sacked employees.
- The Court also said that it will decide the issue if privilege can be claimed over the communications between Bains and the alleged conspirators.
- The bench also clarified that this will not affect the pending inquiry by the in-house panel.
- On this edition of the Big Picture we will analyse if there is a conspiracy against the judiciary.

### Analysis by the Experts:

#### Your thoughts on everything that has transpired and the entire controversy?

P K Malhotra, Former Secretary, Ministry of Law and Justice, GoI, weighed in with his arguments here.

I believe that amongst all the three organs of the Government, i.e. the Executive, the Judiciary and the Legislature, even after whatever has happened recently, the Judiciary commands more respect as compared to the other two organs. Further, it is the faith of the common man in the judiciary which is making faith of the democracy as such among the people more important for all of us. If such kind of allegations have been made against the senior officers, and there is an evidence on record to that effect, there is a mechanism in place. Further, without proper investigation, the issue should not be highlighted in the press in the manner in which it is being done so now. This is because, in the absence of a material which is proved on the basis of record, it definitely puts a dent on the image of the Judiciary. To maintain the image of the Judiciary, certain

things must be kept under guard and it must come in the public domain only if there is a definite evidence available on record. The evidence will come only when there is a proper enquiry that is conducted. That enquiry has already been initiated. Institutional integrity needs to be maintained, and for maintaining institutional integrity, if certain new procedures need to be established, without compromising on the basic principles of natural justice, that should be encouraged. We have to evolve these principles so that institutions can enjoy the reputation which they are supposed to enjoy.

### **Is there a conspiracy against the CJI? How do you see it?**

Satya Prakash, Legal Editor, The Tribune, weighed in with his arguments.

Well, it is very difficult to say whether there is a conspiracy or not? However, Justice Ranjan Gogoi is the third CJI, against whom certain allegations have been levied. Before him, Justice JS Khehar, and Justice Dipak Mishra had witnessed circumstances where allegations were hurled against them. Thus, there are two parts to it:

1. One, the nature of allegations made by a dismissed Supreme Court employee against Justice Ranjan Gogoi. This is being dealt with by a committee headed by Justice S.A. Bobde.
2. Second is the larger conspiracy that has been alleged by advocate Utsav Bains, in his affidavit filed before the Supreme Court. Bains appeared before the court and he told the court that he has some additional material, which he would be filing in the form of an affidavit. What the Court has clarified is that these proceedings have nothing to do with the ongoing enquiry which is being headed by Justice S.A. Bobde. The Court is going to ascertain whether or not there was actually an attempt or conspiracy to force the Chief Justice of India to resign and whether there was an attempt to bribe Bains (who has claimed to have been offered to receive 1.5 Crores); and whether there was some conspiracy between some lawyers, some disgruntled, dismissed employees, and some corporates to frame the CJI in a sexual harassment case. The Court said that it would get to the bottom of the case and that it would take it to its logical conclusion.

Further, Attorney General, Mr. K.K. Venugopal and Solicitor General, Mr. Tushar Mehta have attempted to suggest to the Court that there should be an SIT probe. The Court has denied an SIT probe at this stage. The Court has indicated that they would get to the bottom of the case- they spoke about the institution and why the institution is important. Utsav Bains has also claimed to know about some information which he claims as privileged communication, and he does not want to disclose it to the Court. The Court has also said that it would examine whether one can disclose certain things and withhold certain things from the Court in such an important matter. The Supreme Court has asked the Supreme Court Bar Association President and the Attorney General to assist the Court on this legal point.

### **How messy is the affair really?**

Desh Ratan Nigam, Advocate Supreme Court, weighed in with his arguments here.

The Supreme Court is going about its business as usual. The CJI's Court and Justice Bobde's Court is also functioning normally. One thing which I fully appreciate is that Justice Gogoi has himself offered to be investigated. Therefore, the due process started then and there itself. However, one must be very careful on not politicizing the whole issue. Mr. Bains must be very careful on not politicizing the whole issue. There shouldn't be a doubt coming into the minds of the people that he is taking sides politically. This is where the Supreme Court has to be very careful in so far as not allowing the politicization of this particular issue.

It is important to note that the present CJI is dealing with some very sensitive issues. These issues have been in the limelight and have been connected with political parties. Further, if there is an iota of truth in what Mr. Bains is saying, then the same needs to be investigated. One has to reach to the bottom of the entire issue. But, this case should not be result in a trial by the media. This case involves the respect and dignity of

the judiciary. The media has to be very sensible and responsible about it.

### **Is there a procedure while dealing with complaints of criminal misconduct concerning the higher judiciary or the CJI or a top judge?**

P K Malhotra, Former Secretary, Ministry of Law and Justice, GoI, weighed in with his arguments here.

- Yes, there is an in-house mechanism already in existence, which is that whenever a complaint is received against a judge, it should be investigated by a committee and a report is to be submitted to the Chief Justice of India. After this the Chief Justice of India takes a call in consultation with the other judges as well as to what further action has to be taken. Currently, the Constitution of India provides only for impeachment. No other punishment is prescribed. So, far in none of the cases, one has succeeded in impeaching a judge. This is because, either the judge has resigned or he has retired, thus the impeachment process wasn't concluded. But as far as the Chief Justice of India himself/herself is concerned, there is no separate mechanism prescribed. Therefore, in this particular case, the decision taken and investigated by the three judges of the Supreme Court is a well thought of decision. The Court took a decision that if there exists no mechanism prescribed for the investigation of against a complaint registered against the Chief Justice of India.
- The Court in its wisdom thought it wise to investigate the matter through the three judges of the Court itself. Prima facie, I don't see anything wrong in this.

### **Several people have said that there should be an independent enquiry. Is that a justified claim?**

P K Malhotra, Former Secretary, Ministry of Law and Justice, GoI, weighed in with his arguments here.

- I don't see anything wrong with the option that has been taken as of now. Yes, although the judges who have been tasked to look into the matter all ultimately report into the administrative structure of the Supreme Court which the Chief Justice of India heads—if this argument is taken, then it would be virtually impossible to conduct an enquiry against the Chief Justice of India.
- Another thing to be kept in mind is that the Chief Justice of India is the administrative head of the Supreme Court of India.
- However, as far as the judicial work is concerned, and so far as investigation is concerned, the committee is independent and does not take any direction from the Chief Justice of India.
- Thus, to that extent, I think that this is the best mode which was available to the Supreme Court. Further, it is a good thing that the Chief Justice of India himself has agreed for the complaint to be investigated, and for this investigation, the best course of action available before the Supreme Court has been chosen.

### **Has the media become a tool to question the judiciary and to question the judgements made by the judiciary?**

Satya Prakash, Legal Editor, The Tribune, weighed in with his arguments.

Before I answer that, I would like to highlight that in a verdict in the K. Ramaswamy case of 1991, the Honourable Supreme Court clarified the legal position on criminal cases against judges. The Court maintained that judges are holding constitutional positions and thus there cannot be any criminal cases filed against them. They would first have to be removed (procedure for which is available). However, if there is some case to be registered against a judge of a High Court or a High Court Chief Justice, or a Supreme Court judge, then one has to take the consent of the Chief Justice of India. This is the prescribed procedure under the K. Ramaswamy case verdict, 1991. However, if the case pertains to the CJI himself, then the Government is required to consult the senior-most judge or judges and then the future course of action can be decided.

Coming back to the media, in this case, there is a marked distinction. Currently, we are in a bit of a transition phase of the media where the print media (and one can possibly also add the electronic media as well), act in a different manner. The online media, i.e. the news portals- they have perhaps a different standard. The reason as to why I am suggesting this is because when this particular story was published by news portals, to my knowledge and understanding, some newspapers were also approached, however, they refused to publish it because of various reasons and also because they have their own standards of checks and balances in terms of verifying facts, etc.

I am not saying that the news portals have acted irresponsibly. But in my opinion, there is a difference between the traditional media and the new media. By new media, I am referring to the news portals, and in particular the online media. I believe that the two have different yardsticks. In this case, the news portals chose to publish and publicize the story, while the traditional media chose to exercise restraint.

When it comes to wild allegations against the head of the judiciary, there are ways and means to ascertain that. I am not saying that what they did was outright right or wrong- in their judgement, it was fine and fair. However, the traditional media still maintains restraint in such manners.

Some of the newspapers and news portals publish the entire details of the allegations, while some choose to limit it just to the allegations of sexual harassment. They do not get into the graphic details of the allegations. Thus, some editors decide to take a personal call on these matters as well.

It is important to note that so far as the Supreme Court of India is concerned, the Supreme Court of India has acted very liberally and in a very magnanimous manner, wherein, despite this being a case related to the Supreme Court, it left it to the media to decide as to how far they can go in terms of publishing the allegations.

### **Is there an attempt being made to denigrate the integrity of the institution itself?**

Desh Ratan Nigam, Advocate Supreme Court, weighed in with his arguments here.

As I pointed out earlier, the CJI and the Supreme Court of India are hearing some very sensitive matters. And, without commenting on the merits of the case, when I see certain portals such as The Wire, etc. who promote a particular ideology, then some kind of a doubt appears in my mind. Although the investigations are still underway, but I follow these portals very carefully and I see if a particular ideology is being promoted, and therefore there comes a doubt of whether or not there is some sort of an element of politicization being done. However, at the end of the day, it is for the investigation to prove whether or not it is an assault on the judiciary.

### **Concluding Remarks:**

- The independence of the judiciary is not under threat. The judiciary itself exercises restraint when it comes to exercising its power with regard to these type of allegations. We must also understand that in case the allegations are proven to be true, then what other process can be adopted other than impeachment? One possible view can be that the Judicial Standards and Accountability Bill, which was introduced in the Parliament a number of times, but could not be passed, should be considered so that people also get the confidence that the judicial officers are also accountable in case they are proven of misconduct, and there are procedures laid down for the same.
- Today, the reason as to why we see problems surfacing is because we don't have procedures laid down. Also, the procedures are laid down in such an Ad-hoc basis, that when the conduct of the judges themselves come up for hearing, they are done in such an Ad-hoc manner which is not regulated by law of the Parliament. Thus, if procedures that are regulated by law are enforced then both the print media as well as the new media can possibly exercise greater restraint. They would also think twice before publishing reports and check for the authenticity of such reports.

- It is hard for the judiciary and judges to insulate themselves from threats and false accusations. However, what can be done is the enforcement of some kind of a procedure to deal with such issues and situations. This case should be made to be an example of how cases should be dealt with. If the allegations are false and if there is a genuine attempt to falsely implicate the CJI, then those involved must be taken to task. In case in future, there are some allegations against a sitting judge or a CJI, then there should be some mechanism to deal with that. After all, we are dealing with institutions. Individuals may come and go. However, the institutions remain. The credibility of the institution would get enhanced if there is a credible mechanism to deal with such situations.
- The Honourable Supreme Court is handling this situation in a very controlled manner, and at the same time, we have seen some restraint in the media as well. This is very encouraging. At the same time we need to understand that at the genesis of why such issues are even coming up, we find that there is a churning happening in the area of governance. There is a paradigm shift in the way the government was functioning then and now. The people who wanted the status-quo feel slightly disenfranchised with the change in the status-quo. Hence, these issues should not be politicized and should be viewed on the merits of the case.