

7th May 2019

## **SUPREME INJUSTICE**

**No Justice without a Fair Hearing for Victim of Sexual Harassment in the Supreme Court!**

### **PRESS RELEASE**

We are activists from women's groups and civil society members, who have, since the late 1970s, engaged with issues of justice, rights, and law reforms, specifically those related with women, sexual violence and Sexual Harassment of Women at Workplace.

Today we are facing an unprecedented crisis of credibility vis-à-vis the Supreme Court. In dealing with a complaint of sexual harassment against the Chief Justice, the court has failed to give the complainant a fair hearing. Disregarding her request for a 'special enquiry committee', the Supreme Court instead set up an in-house Committee comprising three judges who are junior to the Chief Justice. Not surprisingly, on May 6, 2019, it declared that there is "no substance in the allegation contained in the complaint."

We stand in solidarity with the complainant. We vehemently reject this conclusion as it has been arrived at without adherence to norms of a fair and independent enquiry. The procedure followed in this case not only stands in utter violation of principles of natural justice, but also in contravention with both, the letter and spirit of Vishakha Judgment and the Sexual Harassment of Women at Workplace Act 2013 (henceforth POSH Act) that seek to recognise and mitigate disbalances of power at the workplace.

In spite of these gross violations, and completely ignoring the complainant's appeals as well as protests from various sections of civil society as also from a sitting judge of the Supreme Court, the Committee has given a clean chit to Chief Justice of India.

We are utterly dismayed and shocked by this blatant abuse of power exercised by the highest constitutional authority, the Supreme Court of India.

We are also aware and would like to bring this to the notice of citizens of India that the complainant and her family are under threat and intimidation.

We are proponents of independence of the judiciary and understand and respect that **completely**. However, we also believe that pointing out any lapses in the system of justice so that it may be rectified is in fact protecting this independence and not interference in procedures.

**We are aghast that twenty two years after the Vishakha judgment and six years after the passing of the Act, there are no clear procedures laid down to address complaints of sexual harassment against the CJ, sitting and retired Judges of the Supreme Court.** The assumption that this does not happen at this level has been belied by the recent complaints that have come up against sitting judges across the country. In any case the judicial system needs to follow the law and lay down appropriate procedures. And in the absence of such laid out procedures, they must adhere to the spirit of the law in force. That is where the Supreme Court has currently failed itself, and the nation.

**Today is a dark and sad day. The Supreme Court has told us that when it comes to one of its own, imbalances of power don't matter, due process doesn't matter, and basic norms of justice don't matter. The ripple effect that this will now have across the board can well be imagined: if the guardian of the rule of law, and the institution that is supposed to be a moral exemplar to the nation, acts in this way, then why should anyone else act differently? And with what face can a court tell them to act differently, given its own conduct?**

**As women and other marginalized sections of society,** we do not have access to any societal power and turn to Courts expecting that we can get a fair hearing there. Khap panchayats and other mechanisms that function on ideas of "social morality of the powerful" are not where we seek justice. We have kept our faith in the judicial constitutional mechanisms for access to justice.

**We urge the Supreme Court to correct its own course and undo the gross injustice done to this complainant. Moreover this case has exposed the urgent need for just, transparent and fair procedures to be laid down as soon as possible. So that the highest judicial powers may also be brought into the framework of accountability to the laws of the land.**

**As women's rights groups and activists we are also issuing an open letter to retired judges appealing to them to *"speak out on the side of justice and fairness. What is at stake is not only the rights of women, but also credibility of the Supreme Court. It is to protect this system that has been painstakingly created by the diligence of many members of the judiciary."* (Statement attached as annexure)**

*Endorsed by about 350 feminists and feminist organisations*

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**Brief timeline of the case:**

- On 18th April 2019, a 29 page affidavit was submitted by a woman employee of Supreme Court to the 22 judges of the Hon'ble Supreme Court, detailing allegations of the sexual harassment faced by her from none less than the Chief Justice of India.

- The Supreme Court called a special hearing on Saturday, 20th April 2019, through a bench consisting of two Judges besides the Chief Justice of India, against whom the allegation of sexual harassment was made. With no notice given to the aggrieved woman, CJI not only declared the allegations false but further stated that these allegations threaten independence of judiciary. He also declared that the complainant had a criminal background. The Attorney General of India and Solicitor General of India, the highest legal officers of the State were also present at this hearing and supported the allegations against the complainant without even hearing the complainant. The bench further asked media to show restraint to protect the independence of judiciary. None of these observations/opinions were based on any investigation by any competent authority.
- This was a shocking breach of procedure, wherein the person against whom the allegations were leveled, was in fact presiding over the ex-parte hearing. Through this hearing the Supreme Court acted in no way different from the many accused powerful men who resort to maligning the complainant by citing past histories and by imputing ulterior motives.
- After much public protest, an in-house Committee was formed of three judges of Supreme Court headed by Justice Bobde. The constitution of this committee itself was in contravention of the spirit of the 2013 POSH Act and the guidelines laid down by the Vishakha Judgment of 1997 by the Supreme Court itself, as it neither had any external member nor was it headed by a woman. In spite of this the complainant participated hoping to get a fair hearing.
- When this committee started the hearing, it denied the aggrieved woman right to be represented by legal person of her choice, completely ignoring unequal balance of power not only between the parties, but also between the complainant and the Committee itself.
- The complainant had also asked for someone to accompany her because she has a hearing disability but was denied even that. This is in complete violation of rights of people with disability enabling whose participation is critical to any imagination of a just procedure.
- After two 'informal' hearings with this Committee on 26th and 29th of April, the complainant withdrew from the enquiry on the 30th of April, citing that neither was she allowed representation, nor was she informed of the procedures to be followed by the committee. There was no audio or video recording of the proceeding and further she was not even provided minutes of the proceeding. Irrespective of these submissions the committee proceeded to hold the enquiry ex-parte.
- Finally on May 4, 2019, she was provided with the transcripts of her statements which she returned with corrections in the morning of May 6, 2019. However, the response

of the CJJ has not been shared with her and she is also completely unaware of the remaining process that the committee followed to arrive at their findings.

- Then on May 6, 2019, the Committee has gone ahead and declared that there is “no substance in the allegation contained in the complaint”. Further, in full violation of her right as a complainant, she has been denied a copy of the report with a reference made to a judgment that dates back to before the RTI Act and the POSH Act.

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### Statement issued by:

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2. National Federation of Indian Women
3. All India Progressive Women’s Association (AIPWA)
4. Forum Against Oppression of Women, Mumbai
5. Nari Ekta Shakti Sangathan, Delhi
6. Women Against Sexual Violence and State Repression
7. Nirantar, A Center for Gender and Education, New Delhi
8. North East Network, Assam, Meghalaya, Nagaland
9. Labia - A Queer Feminist LBT Collective Mumbai
10. Bebaak Collective
11. People’s Union for Civil Liberties (PUCL), Maharashtra
12. National Alliance of People’s Movements
13. Nari Samata Manch, Pune
14. Indian Christian Women’s Movement (ICWM) - Mumbai
15. Sandhya Gokhale, Forum Against Oppression of Women, Mumbai
16. Kalpana Kannabiran, Hyderabad
17. Veena Gowda, Advocate, Mumbai
18. Adv Vasudha Nagaraj, Lawyer, High Court of Telangana, Hyderabad
19. Chayanika Shah, Queer Feminist Researcher and Activist, Mumbai
20. Nisha Biswas, Scientist and WSS, Kolkata
21. Dr. Veena Shatrughna, Former Director, National Institute of Nutrition, Hyderabad
22. Vyjayanti Vasanta Mogli, Transgender RTI activist, Telangana
23. Meera Sanghamitra, National Alliance of People’s Movements, Telangana
24. Kavita Srivastava, PUCL
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27. Flavia Agnes, Advocate
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36. Hasina Khan, Mumbai
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43. Nityanand Jayaraman, Writer, Social activist. Chennai.
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