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RESEARCH ARTICLE

From Mythic Saviours to #MeToo at the Indian Supreme Court

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Abstract

The Indian Supreme Court has long enjoyed an almost mythic reputation for progressive and creative jurisprudence, but a series of recent scandals is beginning to erode this well-settled authority. One of the most troubling of these incidents has been an allegation of sexual harassment and intimidation by a Court staffer against then sitting Chief Justice of India (CJI) Ranjan Gogoi. This article draws on media analysis and ethnographic research conducted in the immediate aftermath of the "CJI Scandal" to explore what it means for judges and judging in contemporary India. I argue that the justices' response to the allegations are part of a broader shift in Indian judging. Far from being the product of an institution imbued with mythic qualities, judging in India is increasingly coming to represent an example of *mythos*, or "an assertive discourse of power and authority . . . something to be believed and obeyed."

Keywords: Indian Supreme Court; #MeToo; Ranjan Gogoi; judicial autonomy; sexual harassment

1. Introduction

For many years now, the Indian Supreme Court has traded heavily on its reputation as a bastion of progressive authority—one that is willing and able to right the wrongs of faulty government and harmful social practices alike.[1] Justices on the Court cultivate images as towering, mythic figures through the language they use, the analysis they conduct, and the values they stand in protection of.[2] (Their multivolume opinions don't hurt, either.) Much of this awe-inspiring reputation is justifiable given the efforts of various justices at various times to look beyond their own intuitions and the technicalities of law toward a higher good.

But times are difficult for the Indian Court, inasmuch as it has been beset by successive scandals involving individual justices as well as long-standing power struggles with the central government. One of the most recent and more striking of these troubles is an allegation of sexual harassment and intimidation issued by a Court staffer against then sitting Chief Justice of India (CJI) Ranjan Gogoi. The Court's response—a closed-door, no-counsel, dubiously documented inquiry, in which Gogoi himself sat on the initial panel hearing the complaint—has prompted repeated protests and public criticism.

This article draws on media analysis as well as conversations and observations conducted in the immediate aftermath of the inquiry to explore what the "CJI Scandal" means for judges and judging in contemporary India. I argue that the inquiry as well as the justices' overall treatment of the episode form part of a possible broader shift in

[1] Thiruvengadam (2013), p. 519; Robinson (2009a), pp. 3–4.
[2] Kennedy (1997), p. 3.

Indian judging. Far from being the product of an institution imbued with mythic qualities, judging (especially the Court's power to judge *itself*) is increasingly coming to represent an example of *mythos* speech, or "an assertive discourse of power and authority … something to be believed and obeyed."[3]

The ongoing transformation from mythic to *mythos* in Indian judging, although neither exact nor complete, is especially significant right now. India is struggling with rising Hindu nationalism and the centralization of power under Prime Minister Narendra Modi's second term. The recent passing of the Citizenship Amendment Bill (now Act) and the strong probability that it will be used in conjunction with other measures to render Indian Muslims stateless have triggered widespread protests and worries for the survival of democracy in India.[4] In this context, among those who oppose Modi's politics, judges and judging at once carry the aura of a last, best hope *while also* increasingly representing another potential chink in the armour of Indian democracy.[5] Moreover, although the CJI Scandal is far from the most serious reputational blow the Court has experienced in recent years, it combines assertions of both power and victimhood within a masculinist framework in a way that eerily resembles the ruling Bharatiya Janata Party's long-standing approach to electoral politics.

Section 2 draws on literatures as varied as critical legal studies, anthropology, and classics to explain the contrast between mythic and *mythos* as the terms are used here. Section 3 documents the transformation of the Indian judge—by which I largely mean the Indian Supreme Court justice—into a figure of mythic proportions, arguably peaking in the 1980s and 1990s. Section 4 turns to the last 20 years of Indian Supreme Court history to show how judging has—slowly and inconsistently, but nonetheless definitely—edged away from being the act of a mythic figure. Instead, judging is increasingly presented and experienced as a discourse of authority—an instance of *mythos* speech that is powerful rather than mystical. Finally, Section 6 turns to the allegations against Chief Justice Gogoi (and the Court's response to them) as a particularly acute example of the broader shift being described here.

2. Mythic qualities versus *mythos* speech

This section will briefly distinguish between *myths*, things *mythic*, and the Greek term (now a term of art in certain scholarly disciplines) *mythos*. To be sure, all of these terms are related and, moreover, they have all generated considerable bodies of scholarship in fields that are in some instances quite distant from law. For my purposes, however, it is worth drawing boundaries between them now, since later on I will only be concerned with the mythic and *mythos*.

Myths are narratives and cultural artefacts; they are part of the "stories we tell ourselves about ourselves" that make up culture as a whole.[6] Although myths tend to be associated with the achievements of supernatural beings—Arthurs and Krishnas—they are not necessarily beyond history or humanity.[7] Nevertheless, the truth described by a myth is something different from the truth captured by a tape recorder or documented during a lab experiment; it is a truth about how things *really* are and how they *should* be. In other words, a myth offers descriptive information that is not the same as the

[3] Lincoln (1999), p. 17.

[4] See e.g. TheWire.in (2020).

[5] Bhatia (2019b). See also *infra* notes 178 and 179.

[6] Geertz's original formulation is "a story they [the Balinese] tell themselves about themselves." Geertz (1973), p. 448. The more popular paraphrasing appears to come from Inglis (1993), p. 206.

[7] Engel (1993), pp. 790–1; *pace* Doniger O'Flaherty (1975), p. 19. (arguing that "myths are about gods, rather than about men or ideas").

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description offered by a historian or journalist, even if we acknowledge that historical and journalistic accounts are inescapably partial (in both senses of the term). Scholarship on myths has ranged from anthropology (e.g. Tylor, Frazer, Lévi-Strauss, Malinowski) to psychology (Freud, Jung) but its most well-known recent exponents have been concentrated in religious studies and classics (Eliade, Lincoln).[8] As part of a broader interest in the interaction between narrative and law, myth has also featured in work by scholars in the critical legal studies and law-and-society traditions (e.g. Kennedy, Delgado, Engel), but the concept's influence there has been limited.[9]

The adjective *mythic* has fared somewhat better in the scholarly study of law, particularly of Euro-American law, because it references a quality that is easily and appealingly applied to things legal. Law is mythic because its "quality of being in time . . . but also out of time" renders it "self-totaliz[ing]."[10] Similarly, "[t]he Judge is a mythic figure" because of the way he is "supposed to 'submit' to something 'bigger' and 'higher'" than himself and consequently must "struggle to achieve his (or her) own constraint."[11] Mythic, here, does not refer to a distinct-if-related universe whose happenings can tell us something about ourselves—what we are and what we should be. Rather, it signals that things and people in *our* world carry some overtones of that other place. Put differently, the mythic is otherworldly (awe-some, idealized) and consequently it is not *inherently* positive or negative in a this-worldly way, although it can be one or the other.

For some considerable time, *mythos* and *logos* were understood to be in opposition to one another: *mythos* (much like the modern English usage of "myth") represented speech that was imaginative, deceptive, irrational, and unverifiable, while *logos* speech was accurate, truthful, reasoned, and knowable.[12] The transition from *mythos* to *logos*, from speech that is broadly symbolic to speech that is broadly rational, from "anthropomorphism to abstraction, and religion to philosophy," is commonly dubbed the Greek Miracle.[13]

Although *mythos* and *logos* are still largely held to be contrasting concepts, classicists have more recently begun to dispute which term denoted which kind of speech for the Greeks themselves, as well as the stability and timing of that assignation. In particular, some scholars have argued that Homer and Hesiod—whose *mythos* is conventionally described as being supplanted by the *logos* of Heraclitus and Plato—viewed *mythos* speech in a way that had nothing to do with modern "myth."[14] Instead, for them, *mythos* represents the candid, assertive, and (usually) upright speech of men made in the context of war or assembly, while *logos* is the wily, pleasing, often deceitful speech associated with women.[15]

Out of this far-from-exhaustive account of the complex relationship between myth, mythic, and *mythos*, I want to highlight two archetypes that are useful for understanding ongoing developments in Indian judging. The first is Duncan Kennedy's concept of "the judge" as a mythic figure. Kennedy describes judging as "one of the domains in which

[8] Tylor (1958); Frazer (1922); Lévi-Strauss (1978); Malinowski (1992 [1948]); Freud (1919); Jung (1998); Eliade (1957); Lincoln, *supra* note 3.

[9] Kennedy, *supra* note 2; Delgado (1989); Engel, *supra* note 7.

[10] Greenhouse (1989), p. 1641. A different strain of writing on law as something mythic comes from Walter Benjamin, who argues that legal violence is like mythical violence because of the way in which both are arbitrary and ambiguous, and encode power differentials. The use of *mythical* instead of *mythic* may be a translator's choice but it is nonetheless telling, since Benjamin's examples draw specifically on Greek myths and characterize mythical violence as violence that exists within that kind of universe (but bears resemblance to legal violence, which exists in our kind of universe). Ross (2014).

[11] Kennedy, *supra* note 2, p. 3.

[12] Fowler (2011); Lincoln (1997).

[13] Fowler, *supra* note 12, p. 45; Lincoln, *supra* note 12, p. 341.

[14] Lincoln, *supra* note 12, p. 353.

[15] *Ibid.*, pp. 352–6; Martin (1989), p. 12.

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we recognize the possibilities of talent, greatness, and genius" and the judge as a figure characterized by "religious or monastic struggle … [a] wielder of trained moral intuition and … the scourge of corruption."[16] Individual judges may be female, but the judge "is one of the multiple archetypes of virtuous male power" whose role models are "God, the good Father of a large family, the King, and Solomon."[17] In other words, the judge is a mythic figure precisely because he attempts to embody other-worldliness and to the extent that he succeeds in doing so.[18]

The second is Bruce Lincoln's reinterpretation of *mythos* speech (pl. *mythoi*). Lincoln argues that the *mythoi* of Homer and Hesiod was not "*mythos*" at all (in the sense of being myth-like) and that different types of *mythos* speech have distinct relationships to goodness and power. One of these variants is *mythoi* spoken in the assembly, "the unvarnished assertions of men who believe their strength, position in society, and/or the justice of their cause entitles them to prevail."[19] This type of *mythos* speech is most often uttered by a "powerful male [who] either gives orders or makes boasts" and the speech itself "forces consent from those to whom it is addressed."[20] Less commonly, "crooked" *mythoi* are represented by "acts of perjury and corrupt judgments … they permit the worse sort of case and the worse sort of man to prevail; that is, within legal contexts, they function much as *logoi* do elsewhere."[21] As a result, *mythos* (crooked or straight) is emphatically this-worldly because it is enabled by and confirms the authority of the speaker vis-à-vis his (and it is *his*) audience.

Both mythic speakers and *mythos* speech are strongly masculine—a commonality that is neither surprising nor, for the purposes of the discussion below, insignificant. Conversely, but just as importantly, they represent different relationships to power. Mythic figures like the judge are worthy of the authority they possess because they try to wield it according to defined parameters. By contrast, *mythoi* are not necessarily uttered by deserving or conventionally good authority figures even if the candid nature of "straight" *mythoi* imbues them with some positive overtones.[22] Consequently, the transition from mythic to *mythos* that I will argue is beginning to take shape in Indian judging is one that is fraught with implications for both speaker and audience. As demonstrated by the CJI Scandal that is discussed in Sections 4 and 5, one important aspect of the transition from myth to *mythos*—both cause and effect—has been the empowerment of male judges when accused of sexual misconduct.

3. On the infallibility of the supremes

It has become surprisingly difficult, in an even more surprisingly short space of time, to imagine that justices of the Indian Supreme Court ever inspired reverence. Personal and professional failings, institutional cowardice, and a tendency towards petulance in the face of criticism have largely dominated recent media coverage and popular discussion of the Court. Nevertheless, and although this was not always the case, for a significant portion of

[16] Kennedy, *supra* note 2, p. 3.

[17] *Ibid.*, p. 3.

[18] Of course, Kennedy's project is to dispute the very idea that the judge can live up to this obligation; consequently, his description of the judge as mythic figure, although not self-evidently negative, is in fact deeply critical.

[19] Lincoln, *supra* note 12, p. 356.

[20] *Ibid.*, p. 362.

[21] *Ibid.*, p. 356.

[22] Lincoln uses the example of the hawk and the nightingale to illustrate the way in which *mythos* speech is often "raw and crude, but true." As the hawk clutches the weeping nightingale in his talons, he reprimands her with the following *mythos*: "Good lady, why do you screech? One who is far your better has you. You will go where I take you, you who are a singer. I will make you my dinner or let you go if I wish." Lincoln, *supra* note 12, p. 355.

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the twentieth century, the Court and its justices represented something much more positive: a commitment to an innovative, agile, and socially progressive democratic polity as imagined in the nation's charter.

India's first several Supreme Court justices were markedly patrician. Two of the Court's most well-known historians, Granville Austin and George Gadbois, describe the men who sat on the Court roughly through the end of Jawaharlal Nehru's inaugural prime ministership (1947–64) as having immense "strength of character" and coming from "a socially prestige-ful and economically advantaged family."[23] Justices in this period were quite likely to have "received some part of their higher education in England" and to have had fathers or grandfathers who were Sanskrit scholars or lawyers, or who had been knighted by the British monarch.[24] While their integrity and legal acumen were rarely questioned, neither was their commitment to an understanding of the Constitution that was more conventionally liberal and decidedly more conservative than the reformist impulses of Nehru's administration. Most notably, Supreme Court opinions during India's first 15 years stymied legislative efforts to restrict the freedom of expression in the furtherance of the state's reformist agenda (as in *Romesh Thappar*[25]) and to curtail the right to property (as in various cases and constitutional amendments surrounding the nationalization and redistribution of property).[26] Put simply, "Nehru, his ministry, and the Parliament had their views; the judiciary had its interpretation of the Constitution, and the two branches disagreed sharply during the years of getting started."[27]

The justices' reputation did not fare better in the 15 or so years following Nehru's prime ministership. This period is usually dominated by their spectacular failure, in the mid-late 1970s, to withstand the anti-democratic impulses and actions of Indira Gandhi's government. In *ADM Jabalpur v. Shivkant Shukla* (1976), the justices ruled that habeas corpus did not survive the proclamation of a national state of Emergency.[28] It is hard to overstate the negative impact *ADM Jabalpur* has had on the Court's reputation. Over 60 years later, the case is still referred to as "The Darkest Hour in Indian Judicial History"[29] and its eventual official overturning in 2017 was widely portrayed in the Indian media as an intergenerational acknowledgement of wrongdoing, insofar as the opinion that officially overturned it—*Puttaswamy v. Union of India*[30]—was authored by the son of one of the *ADM Jabalpur* justices.[31] *ADM Jabalpur* gave rise to two fears that have haunted discussions of the Indian judiciary ever since: that the Supreme Court would become beholden to the federal government (in the way that the Chief Justice during *Jabalpur*, A. N. Ray, was obliged to Indira Gandhi for his unorthodox elevation to the chief's seat) and that the Court would not stand guard on behalf of the people against the failings—malicious or otherwise—of the other branches.

All of this changed with the development of public-interest litigation (PIL), which in India describes "a distinct way of articulating a legal complaint" rather than "legal work or advocacy done for the greater good or for those who cannot afford representation."[32]

[23] Austin (1999), p. 125 (referring specifically to the Chief Justices of this period); Gadbois (1969), p. 317.

[24] Gadbois, *supra* note 23, p. 325.

[25] (1950) SCR 594.

[26] For an extended discussion of these efforts and the back-and-forth they generated between Parliament and the Supreme Court, see Austin, *supra* note 23, Chapters 2–4, pp. 38–122. See also Sathe (2002), p. 60 (arguing that "During the first two decades of the Constitution, judicial activism rarely took up cudgels against the legislature except on the question of right to property").

[27] Austin, *supra* note 23, p. 38.

[28] *ADM Jabalpur v. Shivkant Shukla* (1976) 2 SCC 521.

[29] Pandey (2016).

[30] *Puttaswamy v. Union of India* (2017) 10 SCC 1.

[31] Abraham (2019); Krishnan (2019a).

[32] Das Acevedo (2017), p. 5.

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PIL complaints are not subject to traditional standing requirements (like personal harm) or briefing requirements (like formal writ petitions), and courts hearing PIL matters often take *suo motu* cognizance of issues, conduct independent fact-finding, act as quasi-arbitrators, and require progress reports from the parties involved.[33] Because they concern the violation of fundamental rights, PIL complaints are filed directly with the Supreme Court and high courts in their capacities as courts of original jurisdiction under Articles 32 and 226.[34]

This form of litigation represented a powerful turning point in the history of the Indian Court, both domestically and internationally. With its arrival, as the conventional narrative goes, "leading Supreme Court Justices apologized, in word and deed, to the people of India for judicial abdication during the 1975–77 Emergency period" and the Court signalled that it was "at long last becoming, after thirty two years of the Republic, the Supreme Court for Indians."[35] That narrative arguably derives in part from the fact that PIL's sudden appearance on the Indian judicial scene did not follow any abrupt shift in personnel on the Court; indeed, the two Supreme Court justices most associated with the early development of PIL, P. N. Bhagwati and V. R. Krishna Iyer, were both appointed to the Court in 1973 (two years before the start of the Emergency) and, moreover, Bhagwati was one of the four justices who affirmed the suspension of habeas corpus in *ADM Jabalpur*. And although *inside* India PIL appeared to be nothing so much as a judicial *mea culpa*, *outside* the country, it arguably become the Indian judiciary's claim to fame because of its compelling mix of legal innovation, progressive politics, and judicial independence.

For nearly 30 years, PIL enjoyed a virtually unblemished—and considerably deserved—reputation as a means of extending the promise of India's democracy to *all* its citizens: "early PIL cases forced negligent town councils to provide slum dwellers with basic sanitation facilities, released individuals whose pre-trial detentions exceeded the maximum penalty for their alleged crimes, and compensated women raped by on-duty Indian soldiers."[36] The justices who developed and furthered this body of jurisprudence were described in glowing, often heroic terms. They were individuals whose "[j]udicial creativity ... has enabled realisation of the promise of socio-economic justice made in the Preamble to the Constitution of India,"[37] "[who] recognised the possibility of providing access to justice to the poor and the exploited people,"[38] and who gave rise to a "distinctly Indian" legal phenomenon.[39] Indeed, "[n]o area of Indian law has been written about as extensively (and almost entirely hagiographically) as PIL" and "[t]here are more American law review articles on PIL than on any other area of Indian law."[40] PIL has, perhaps more than any other single factor, contributed to the transformation, both domestically and internationally, of the Indian Supreme Court justice into a figure of mythic proportions.

Alongside the rise of PIL, the justices' reputations have been bolstered by an expansive approach to Article 21 of the Constitution, which provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law."[41] Beginning

[33] *Ibid.*, p. 5; Galanter (2014), p. 73.

[34] Divan (2016), p. 664.

[35] Baxi (2000), p. 157; Baxi (1985), p. 107. See also Balakrishnan (2008) (stating that PIL "has come to be recognized as a characteristic feature of the higher judiciary in India").

[36] Das Acevedo, *supra* note 32, p. 9. The cases referenced here are *Ratlam v. Vardhichand* (1981) 1 SCR 97, 105–06, 113 (1980); *Khatoon v. Bihar* (1979) 3 SCR 169; *Delhi Domestic Working Women's Forum v. Union of India* (1994) 4 SCR Supp. 528.

[37] Anand (2004), p. 383.

[38] George (2005).

[39] Vandenhole (2002), p. 155.

[40] Bhuwania (2017), p. 1.

[41] Constitution of India, Part III: Fundamental Rights, Art. 21.

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with the 1978 case *Maneka Gandhi v. Union of India*, the Court began to read "life" broadly, to the degree that there is now an established body of Article 21 jurisprudence that "extends from the prohibition against torture to the right to sleep."[42] By introducing unenumerated rights into Indian constitutional jurisprudence, Article 21 played a significant role in many of the Court's more progressive and celebrated opinions. In *Unni Krishnan*, the Court held that Article 21 requires the state to provide free and compulsory primary education (this case was eventually followed by a constitutional amendment to that effect).[43] In *National Legal Services Authority*, the Court's mandate that the state must recognize a third gender rested on the idea that Article 21 "protects the dignity of human life" and that gender-identity expression is "integral to a life with dignity."[44] And in *Puttaswamy*, Justice Chandrachud explored four decades of jurisprudence to find that the right to privacy inheres in Article 21's guarantee of life and personal liberty.[45] One of the "Grand Advocates" of Indian litigation has gone so far as to say that Article 21—"the Grand Personal Liberty Clause in our Constitution"—"has helped the Apex Court in its new role—as the institutional Ombudsman of Human Rights in India."[46]

Impressive as they may be, the development of PIL and the expansion of Article 21 would not have by themselves built a reputation for the justices as a "last resort for the oppressed and the bewildered"[47] if the Court on which they sit had not been so accessible. A good part of this accessibility is intentional and was baked into the structure of the Court by the Constitution's framers, who designed an entity that would have "wider jurisdiction than any other superior court in any part of the world."[48] In its capacity as a constitutional court, the Indian Court not only advises the president, interprets the Constitution, and adjudicates disputes between the states and the union; it also enforces, as a court of original jurisdiction under Article 32, citizens' fundamental rights.[49] Similarly, under Article 127, the Court has the power to review its own decisions in light of new evidence, apparent error, or any other sufficient reason.[50]

At the same time, both these and other features have been transformed by the justices so that the Court's customary practices produce even more accessibility than what is mandated or even expressly authorized by the Constitution.[51] Even the chief architect of the Constitution, B. R. Ambedkar, only envisioned Article 32 as allowing the justices to grant interim relief in cases involving the violation of fundamental rights, rather than enabling them to conduct the full hearings that have become commonplace in Article 32 cases.[52] Although the actual number of these Article 32 hearings remains small and the number that are filed as PIL suits is even smaller, this part of the justices' activities occupies an

[42] *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, discussed in Surendranath (2016), p. 756.

[43] *Unni Krishnan v. State of Andhra Pradesh* (1993) 1 SCC 645; see also the discussion in Surendranath, *supra* note 42, p. 769.

[44] *National Legal Service Authority v. Union of India* (2014) 5 SCC 438, ¶¶ 67–68.

[45] *Puttaswamy*, *supra* note 30, Part H, ¶ 91. Justice Chandrachud wrote the plurality opinion on behalf of himself and three other justices, while the other five justices on the nine-judge bench wrote concurrences.

[46] Galanter & Robinson (2013); Nariman (2013), pp. 14, 17.

[47] *State of Rajasthan v. Union of India* (1977) 3 SCC 634, at 70 (Goswami J.), discussed in Baxi (1985), *supra* note 35, p. 107, n. 2.

[48] This statement comes from Alladi Krishnaswamy Ayyar, who was a lawyer and a member of the Constitution's Drafting Committee. Vakil (2016), p. 367, n. 2.

[49] *Ibid.*, p. 367.

[50] *Ibid.*, p. 379.

[51] Das Acevedo (2020a), p. 74 (noting that, like the US Supreme Court, the Indian Court "is a court of both original and appellate jurisdiction, although both by mandate and by custom the Indian Court exercises its original jurisdiction far more often").

[52] Robinson (2013b), p. 179, n. 30.

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outsize role in defining public perception of the Court as an approachable authority.[53] Similarly, although the justices have been stringent in allowing review petitions under Article 127, they have "judicially created the remedy of a 'curative petition', or a 'second review petition'" using their powers to do complete justice under Article 142.[54] In the long-running litigation over women's access to the Sabarimala temple, for instance, former Chief Justice Gogoi allowed over 60 review petitions—seemingly despite the lack of any grounds for review—thereby responding to the severe backlash that greeted the Court's original decision by drawing more parties into the litigation.[55]

Finally, it must be said that the Court's reputation for accessibility and concern for the common citizen is at least in part a function of how regularly the justices engage with those citizens. Indian justices simply "appear far more days in court than their counterparts in most other countries;"[56] for instance, "the [Indian] Supreme Court heard arguments for 190 days in 2007, while the U.S. Supreme Court sat for only 38 days."[57] Between 2000 and 2010, the number of new admission matters filed with the Court increased by *97%*, while the number of regular hearing matters admitted by the Court increased by an almost-equal *96%*.[58] Indeed, the history of the Court's docket has been one of unceasing and at times exponential growth, and notwithstanding long-running power struggles between the Court and Parliament, legislators have rarely suggested that the Court's jurisdiction be limited or its case-load be reduced. Instead, legislators have overwhelmingly preferred to add more justices to the Court (although not enough to be proportional with docket increase).[59] Whether for reasons of ethical obligation, institutional self-interest, or sheer population size, justices on the Indian Supreme Court work—and are worked—very hard.

As this quick sketch suggests, Indian Supreme Court justices have cultivated and often merited a reputation for heroic intervention. Their doctrinal innovations have earned them accolades among domestic practitioners and international observers, just as their catholic approach to case selection and their intense workload have led the Court on which they sit, despite its apex position and immense authority, to be frequently and quite reasonably called a "people's court."[60] Moreover, the justices' positive image has only been heightened by the always-implicit comparison between the Court and the other branches of Indian government. In 2019, 233 of 539 sitting Lok Sabha members were individuals who have faced criminal charges, while India's ranking on the 2018 Transparency International Corruption Perception Index *improved* to 78 out of a total of 180 countries surveyed.[61] In contrast to these elected officials, the Supreme Court's enthusiastic adoption of PIL, its expansion of Article 21 jurisprudence, and its accessibility have won it an aura of dignified and erudite populism. Set against this background, the Indian Supreme Court justice has not simply been a legal innovator or an enlightened jurist, but a vital ally of the underserved and marginalized who are forsaken by the very legislators they elected—in other words, a truly mythic figure. However, this admirable reputation has begun to tarnish over the last 20 years.

[53] Robinson (2013a), pp. 582–3 (discussing drop in Art. 32 writ petitions) and 572 (noting that PIL, "which is often the focus of substantial media attention, accounts for only about 1 percent of the Court's workload").

[54] Vakil, *supra* note 48, p. 379.

[55] For criticism of the Court's willingness to hear the petitioners, see Das Acevedo (2020b) and Sengupta (2019b).

[56] Robinson (2009b).

[57] *Ibid.*

[58] Robinson, *supra* note 53, p. 571.

[59] In 1950, the first year of its operation, around 1,000 cases were filed with the Supreme Court, which then consisted of eight justices. In 2010, 48,677 cases were filed while the Court's maximum allowed strength was 31 judges. *Ibid.*, p. 571, Robinson, *supra* note 52, pp. 180–2.

[60] Robinson, *supra* note 52, p. 176.

[61] Patel (2019); Transparency International (2018).

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4. Supreme decline

Observers of the Indian Court have criticized a range of practices and moments from its recent history, many of which were celebrated not too long ago. PIL, once one of the most widely recognized features of the Indian legal system and proof of the Indian Court's progressive credentials, is now increasingly viewed as having been co-opted by urban elites. Article 21 jurisprudence, once viewed as a promising avenue for pursuing social goods that do not fit easily within the parameters of constitutional text, is now increasingly perceived as unwieldy and incoherent. The docket overload that has sometimes been a testament to the justices' work ethic and the accessibility of the legal system is now increasingly seen as an impediment to realizing the goals of the Constitution. Beyond all this, a number of other long-percolating issues have reached sufficient intensity, maturity, or frequency as to become significant concerns in their own right: the relative lack of transparency and accountability in the judicial appointments process, the changing and mostly growing authority of the Chief Justice, as well as several well-publicized instances of corrupt or unethical judicial behaviour involving the apex court. This section outlines a few of these developments that have, collectively, eroded the Court's reputation as the heroic guardian of the average Indian citizen.

Most commentary regarding the transformation of PIL has the flavour of a "romance gone wrong."[62] After an extended early phase in which PIL seemed to function in exactly the way it was intended to, namely by providing the marginalized and their advocates with a way to hold the state accountable for its shortcomings, later PIL cases seemed to favour both elite individuals and elite interests.[63] The exact timing of this shift is subject to some dispute, but it is widely believed to have begun in the early 1990s—roughly alongside India's economic liberalization in 1991—and to have become clearly visible in the nature and outcomes of PIL cases by the early 2000s.[64] As one commentator put it:

> In the first seven to eight years of PIL, there was ... clarity that where PIL was employed the court's constituency would be the affected people .... By the time the decade of the 1990s got under way, the court ... was confronted with conflicting interests, and with having to decide which interest ought to prevail. The right of over 30 per cent of the residents of Delhi to their shelter in the slum settlements was pitted against the need to "clean up" the city. The right to a relatively unpolluted environment by means of the relocation of industries was pitted against the right of the working classes to their livelihood .... Even the right of the victims of the Bhopal gas disaster to receive compensation was pitted against the bureaucratic imperative of winding up the processing of claims.[65]

In other words, justices of the 1990s and 2000s were more likely to support the state's efforts at economic development than to sympathize with those whom it left behind.

[62] Bhuwania, *supra* note 40, p. 12. However, Bhuwania himself does not subscribe to this view, and instead characterizes the overall arc of PIL as "a tragedy to begin with [that] has over time become a dangerous farce." *Ibid.* Relatedly, Thiruvengadam, *supra* note 1, pp. 519–20, states that "Some other scholars have questioned whether such a turn has occurred in the way that is asserted" but does not name specific scholars. One example might be Chandra, Hubbard, & Kalantry (2017). See also the citations in Das Acevedo, *supra* note 32, pp. 6–8, nn. 24–30, describing this perceived shift and its characterization in much of the relevant literature.

[63] Gauri (2009), p. 13 (conducting a quantitative analysis and finding that, in terms of both *beneficiary inequality* and *policy area inequality*, there is "a prima facie validation of the concern that judicial attitudes are less favorably inclined to the claims of the poor than they used to be").

[64] Cf. Thiruvengadam, *supra* note 1, pp. 519–23 (using "the 1990s" to mark the change in the Court's approach to PIL) with Gauri, *supra* note 63 (drawing on data beginning in 2000 to show a likely change in PIL causes and outcomes).

[65] Ramanathan (2002).

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This change in attitude was made starkly apparent by shifts in the language used in PIL opinions, as when Justice Kirpal likened slum dwellers to pickpockets or Justice Kaul referred to pavement dwellers as encroachers.[66] Although court watchers remain divided on how to respond to this perceived loss of interest in the plight of those individuals who were the original intended beneficiaries of PIL, there is considerable agreement that Supreme Court justices can no longer be relied on to intervene, *ex machina*, in the lives of India's most disadvantaged citizens.[67]

Whereas PIL has shifted in a relatively uncomplicated way from empowering the poor and marginalized to empowering urban elites, Article 21 jurisprudence has morphed, absorbed, and expanded with abandon. In the 1963 opinion in *Kharak Singh*,[68] the Supreme Court introduced a "dignity-based conception of the 'right to life'" by drawing on a US Supreme Court case that described the right to life as extending to something "more than mere animal existence."[69] Since then, the Indian Court has made enthusiastic use of dignity as a basis for adjudication under Article 21 without ever really defining the boundaries of dignity violations.[70] Similarly, since the 1980s, the Court has interpreted Article 21 to encompass positive rights (such as the right to education) without developing a normative framework for the scope, content, and coverage of those rights.[71] Indeed, in one of the earlier Article 21 cases to gain traction outside India, *M.C. Mehta v. Union of India*,[72] the Court "seemingly found the right to life in an inanimate object"—namely, the Taj Mahal.[73]

What began as a largely, if not uniformly, admired effort at introducing unenumerated rights and a due process clause into the Indian Constitution is now frequently described using words like "indeterminate,"[74] "confused,"[75] "unclear,"[76] or, more sarcastically, "cornucopia" and "supermarket."[77] Even commentators who are sympathetic to the progressive outcomes that have often been achieved via Article 21 jurisprudence (like those who appreciate some of the early Article 21 cases that were decided as PIL suits) now increasingly characterize Article 21 as "a provision that has come to mean everything to everyone in recent years, but which seems to mean nothing when it actually matters"—hardly the stuff of heroic intervention.[78]

The docket overload and expense of Supreme Court litigation have also served to place the justices increasingly beyond reach. Around ten years ago, the Court's backlog was approximately 50,000 cases and 17% of regular hearing matters had been pending for more than five years.[79] A 2019 study reports that the overall backlog remains roughly the same

[66] *Almitra Patel v. Union of India* (1998) 2 SCC 416. This case consists of a series of petitions stretching over a decade; the comment by Justice B. N. Kirpal that is referenced here was made in an order dated 15 February 2000. *Okhla Factory Owners v. GNATCD*, 108 (2002) DLT 517 (S. K. Kaul J.).

[67] Bhan (2009), pp. 134–6 (discussing various examples of the Court's shifting tone with regard to marginalized populations).

[68] *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

[69] *Munn v. Illinois*, 94 US 113, 142 (1876).

[70] Surendranath, *supra* note 42, p. 761. For a contrasting and more precisely defined use of "dignity," see e.g. Atuahene (2014), p. 21 (defining a dignity taking as an instance when "a state directly or indirectly destroys or confiscates property rights from owners or occupiers whom it deems to be sub persons without paying just compensation and without a legitimate public purpose").

[71] Surendranath, *supra* note 42, p. 768.

[72] (1997) 2 SCC 353.

[73] Robinson, *supra* note 1, p. 41.

[74] Abeyratne (2014), p. 66.

[75] Surendranath, *supra* note 42, p. 761.

[76] Chandrachud (2016), p. 778.

[77] Sood (2008), p. 857.

[78] Bhatia (2019c).

[79] Robinson, *supra* note 56; Robinson, *supra* note 53, p. 571.

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(close to 56,000 cases) and that if "the rate of incoming cases remains constant ... it will take 20 years to clear the docket of the Supreme Court of India (SCI) *at ideal efficiency*."[80] Beyond this, the expense of pursuing litigation in the nation's apex court and capital city means that a significant plurality of cases that are appealed to the Supreme Court come from two to three high courts that are geographically close to Delhi or are situated in wealthy states.[81] All of this has meant that "social policy groups have tended to shy away from the courts" in large part "because of resource considerations" and "because of the extraordinary delay present within the courts."[82] Since much of the Court's positive reputation is due to its engagement with precisely the kinds of causes that are espoused by these groups, its growing marginalization in the fight for social reform and rights vindication is particularly significant.

As if all of this were not enough, the Supreme Court has, over the last 20 years, been damaged by several scandals or fraught circumstances of the justices' own making. It is not possible to exhaustively survey all of these events, nor even those that have occurred in the last five years.[83] However, in the rest of this section, I will use a few events as exemplars of broader trends within and involving the Court that have contributed to its reputational decline.

A 2015 opinion, usually called the *NJAC Case*,[84] captures both the essence and the severity of the first of these trends: the Court's increasing unwillingness to tolerate any governmental influence on its operations and especially on its appointments process. Article 124 of the Constitution provides that justices of the Indian Supreme Court are appointed by the president in consultation with the CJI, but it offers little guidance regarding the particulars of this process.[85] The first few decades after independence passed with the justices being selected via a consensus-building process involving the Chief Justice, the president, and the Union Ministry of Law and Justice; however, Indira Gandhi's interventions to secure a subservient Chief Justice during the Emergency disrupted that pattern.[86] Three landmark cases concerning the relationship between the CJI and various other governmental actors eventually produced the current "collegium system" in which the Chief Justice recommends a candidate for elevation to the Supreme Court after conferring with the four most senior justices on the Court as well as the most senior justice acquainted with the high court on which the candidate sits.[87]

Importantly, the collegium system (which applies in slightly modified form to high court appointments as well) involves no formal mechanism for investigating candidate backgrounds and no instructions for handling a potential Supreme Court justice against whom allegations of wrongdoing have been made.[88] The enormity of these deficiencies has been made apparent via painful experience: in 2009–10, the collegium attempted to elevate to the Supreme Court a judge of the Madras High Court against whom, as it turned out, there were considerable and credible allegations of corruption. When the judge would

[80] Hemrajani & Agarwal (2019), pp. 125, 141, emphasis added.

[81] Robinson, *supra* note 53, p. 585.

[82] Krishnan (2003), p. 121.

[83] Major instances of judicial corruption that are *not* discussed in this article include the following: in 1991, V. Ramaswami became the first Supreme Court justice against whom a motion of impeachment was filed; in 2011, Soumitra Sen became the first judge (high court or Supreme Court) to be impeached by one house of Parliament but resigned before the process could be completed; and also in 2011, P. Dinakaran (discussed *infra* notes 88–90) similarly avoided impeachment by resigning. The Hindu (2017).

[84] *Supreme Court Advocates-on-Record Association v. Union of India* (2016) 5 SCC 1 (henceforth "*NJAC*").

[85] *Constitution of India*, Part V: The Union, Art. 124.

[86] Sengupta (2019a), p. 19. The Chief Justice she appointed, A. N. Ray, is discussed in Section 3, nn. 28–31.

[87] Sengupta, *supra* note 86, pp. 22–37 (discussing the First Judges' Case, the Second Judges' Case, and the Third Judges' Case).

[88] *Ibid.*, pp. 37–46 (discussing the Dinakaran episode). See also Das Acevedo (2020a), pp. 77–8 (comparing vetting processes for American and Indian Supreme Court justices).

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not relinquish his high court post, the only discipline he did—indeed, *could*—receive was a transfer to a less prestigious high court whose judges and lawyers were understandably displeased by this choice of punishment.[89] Because of this incident and others like it, "there is a seeming consensus amongst academics, lawyers, political commentators and a large section of the judiciary that the collegium system has proved counterproductive" because its goal of protecting judicial integrity by guarding against outside influence has resulted in a decline in judicial integrity through the protection of bad apples.[90]

Against this backdrop, the Supreme Court's decision to invalidate a constitutional amendment to reform its appointment process generated significant controversy. In 2015, the Court determined that the 99th Amendment to the Constitution violated the independence of the judiciary and, by extension, the "basic structure" of the Constitution; the Amendment had been passed to address the shortcomings of the collegium system by creating a National Judicial Appointments Commission (NJAC).[91] The Commission would have consisted of six members: the Chief Justice, the two senior-most justices of the Supreme Court, the union minister for law and justice, and two eminent laypersons (who in turn would have been selected by a committee consisting of the Chief Justice, the prime minister, and the leader of the opposition in the lower house of Parliament).[92]

Ever since the *NJAC* decision, the judicial appointments process has been caught up in an antagonistic and unproductive exchange—now stretching over the tenure of several Chief Justices—between a Court that has been weakened by the scandals described in this article, and a central government that has been emboldened by a definitive victory at the polls in 2019. The response to *NJAC* among lawyers and academics has been divided, with some remarking that the decision proves the collegium "function[s] as *imperium in imperio*, and are accountable to none,"[93] while others have decried the invalidated Commission "an ugly compromise strengthening the government and political elements."[94] Nevertheless, the collegium system itself remains almost universally disliked for its opacity and lack of accountability.[95] Even former justice Kurian Joseph, who had sided with the majority in *NJAC*, has been public about his regret at having ruled against the proposed Commission.[96]

For those who were troubled by the invalidation of the NJAC and the persistence of the collegium system, the past few years have not provided much reason for optimism. This is in great part due to the plethora of controversies that have surrounded recent Indian Chief Justices, which is especially significant given the primacy of the Chief Justice in the collegium system and his ability to assign cases to specific benches. Indeed, of the four Chief Justices to hold office since *NJAC* was decided, three have been dogged, to varying degrees, by allegations of corruption or improper use of authority. None, however, has generated complaints as numerous and as varied in substance as Dipak Misra.[97] In the remainder of this section, I will outline two episodes that occurred during Misra's tenure as Chief Justice

[89] Sengupta, *supra* note 86, pp. 41–2.

[90] *Ibid.*, p. 37.

[91] *Kesavananda Bharati Sripadagalvaru v. State of Kerala* (1973) 4 SCC 225 (establishing the basic structure doctrine); see also Krishnaswamy (2009) (discussing the doctrine).

[92] Sengupta, *supra* note 86, p. 47.

[93] Dave (2019).

[94] Dhavan (2019).

[95] *Ibid.* (saying "We need a new system without the faulty NJAC ... we also need a judicial accountability complaint system to ensure that complaints against judges are dealt with as they are in other countries").

[96] LiveLaw.in (2019).

[97] Dev (2019) (noting that "In early 2017, a suicide note allegedly written by a former chief minister of the north-eastern state of Arunachal Pradesh was circulated on WhatsApp. It claimed that the sons of two sitting Supreme Court judges, Chief Justice Jagdish Singh Khehar and Justice Dipak Misra, were seeking bribes to predetermine cases their fathers presided over"). See also Dhavan (2017).

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(28 August 2017–2 October 2018) that exemplify the increasingly authoritarian and insular behaviour associated with Indian Chief Justices and, by extension, with the other justices and the Court at large. The extension is not gratuitous: although much of the troubling behaviour by Chief Justice Misra (and, in Section 4, by Chief Justice Ranjan Gogoi) could only have come from someone occupying the Chief Justice's seat, not all of it falls into that category and there is a strong overlap between Misra's approach to adjudication before and after his elevation to the chief's role.

In the case of the "Judge Loya affair," Misra ensured that a politically sensitive PIL would be heard by a junior Supreme Court justice who would presumably rule in favour of a powerful defendant. What made the case stand out was the high-profile nature of the issues and personnel involved: Loya served on a special tribunal responsible for matters involving the Central Bureau of Investigation (CBI)[98] and he is widely believed to have been killed while hearing a murder-in-custody case in which the president of the nationally ruling Bharatiya Janata Party, Amit Shah, was a primary defendant.[99] The junior Supreme Court justice to whom Misra assigned the investigation of Judge Loya's death eventually asked to be recused, and Misra reassigned the matter to a bench consisting of himself, Justice Chandrachud, and Justice Khanwilkar.[100] That bench found that Loya's death had been natural.[101] Going further, the bench criticized the lawyers who had acted on behalf of Judge Loya's family for casting aspersions against both the Supreme Court and the Bombay High Court (which had also been involved in the matter) and for forgetting to "maintain institutional civility towards judges."[102]

In what is often called the "medical-admission scam," Misra again exercised his authority to assign cases to troubling effect. The case involved a medical college that had been temporarily banned from admitting students by the Medical Council of India and that was alleged to have subsequently bribed a high court judge (and perhaps even Supreme Court employees) in order to restart operations ahead of schedule.[103] Misra allowed the college to withdraw a petition in the Supreme Court and to instead approach the high court judge who was allegedly bribed later on; the judge promptly granted the college interim relief (allowing it to resume admissions), while Misra forbade the CBI from engaging in steps to catch the judge red-handed as he returned a portion of his bribe.[104] Later on, a watchdog organization, the Campaign for Judicial Accountability and Reforms (CJAR), filed a petition in the Supreme Court asking for an independent investigation into the entire matter and asking that the Chief Justice not be involved in deciding whether the investigation was itself necessary. Misra redirected this petition to himself even though it concerned him *and* even though it had already been assigned through the Court's automated system to a senior colleague *and* that colleague was on the verge of assembling a bench to decide whether an investigation was appropriate. When the colleague chose to press ahead with his order, Misra assembled a different bench to hear the order and the order was annulled.[105] CJAR, meanwhile, was slapped with "exemplary costs" (punitive damages) of ₹2,500,000 (approximately $35,000 USD).[106]

Because of these and other incidents, Misra's tenure as Chief Justice was further marked by two events that were, at the time, astonishing in the insular and rigorously tight-lipped

[98] The CBI is comparable to the American Federal Bureau of Investigation.
[99] TheWire.in (2017a).
[100] Balaji (2018).
[101] First Post (2018).
[102] *Ibid.*
[103] Dutta (2017).
[104] Bhushan & D'souza (2018).
[105] Dutta, *supra* note 103.
[106] TheWire.in (2017b). This estimate is based on the conversion rate for 12 January 2019, according to which ₹2,500,000 is approximately $35,327.32 USD.

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world of India's legal elite. First, on 12 January 2018, four senior justices—Chelameswar, Gogoi, Lokur, and Joseph—held a press conference to air their grievances about the Court and about Misra. "This is an extraordinary event in the history of the nation," said Justice Chelameswar, adding that "[i]t is with no pleasure that we are compelled to call this press conference. But the administration of the Supreme Court is not in order and many things which are less than desirable have happened in the last few months."[107] Although the justices were circumspect in articulating their concerns, their comments largely went to the manner in which Misra assigned cases: assigning important matters to junior justices, assigning matters arbitrarily, and acting unilaterally in assembling benches.[108] The justices' public airing received mixed reactions. While a former Chief Justice said that Misra should have "addressed and solved" the grievances and a senior advocate expressed "a sense of agony" that the four justices should have been driven to such extreme measures, a former Attorney General said he wished the justices had not acted as they did and a former Supreme Court justice declared that the four justices should be impeached.[109] All observers agreed, though, that the spectacle of sitting Supreme Court justices publicly critiquing their Chief Justice was unprecedented and spoke volumes about the internal dynamics of the Court, to say nothing of impacting its broader reputation.

Second, in the aftermath of the Loya affair, opposition parties submitted notice to the vice president and chair of the upper house of Parliament that they would be initiating impeachment proceedings against Misra.[110] The motion was signed by over 70 parliamentarians, which, even accounting for a few signatories who had retired and could no longer be officially counted, was well above the 50 signatures required to initiate proceedings in the upper house. This too was unprecedented: Misra was the first Chief Justice against whom a motion of impeachment had been filed.[111] The motion was dismissed by the vice president, but not before speculation began to grow that Misra was somehow beholden to the central government.[112]

It is possible that the troubles of Chief Justice Misra's tenure were simply unusually well publicized, thanks to recent changes in legal reporting in India.[113] Nevertheless, Misra's term is emblematic of a broader trend whereby judges of the Indian Supreme Court and high courts display a heavy-handedness towards the judicial process and judicial authority. For instance, the CJI has *always* had absolute control of the Court's roster, which amounts to considerable authority over the Court itself: the Chief Justice "can override the automated system of distributing cases and explicitly assign cases to his own or another bench" and he can "speed up the hearing of cases or holdup a politically sensitive matter for years."[114] He can also punish colleagues by exercising his power to constitute benches, either by placing

> a non-conforming judge on a two judge bench where he or she is the junior judge (meaning that he or she will rarely be speaking for the bench) or not seat that judge on the larger and more powerful constitution benches of five or more judges.[115]

[107] Bagriya (2019).
[108] *Ibid*.
[109] Scroll.in (2019d).
[110] Scroll.in (2018).
[111] Yamunan (2018).
[112] Times of India (2018); Mishra (2018) (arguing that "The government is using him to get cases managed"). Note that Bhushan was the lead attorney representing CJAR in the medical-admission scam.
[113] Interview with Sruthisagar Yamunan, journalist, 13 May 2019, New Delhi.
[114] Robinson, *supra* note 52, p. 187.
[115] *Ibid*., p. 187.

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However, Misra regularly used this prerogative for reasons that, whatever they may have actually been, seemingly had little to do with ensuring the highest possible quality of analysis or fit.

At the same time as Misra asserted the power of the Chief Justice, he and other justices also established that the Court is an authority meant to be "believed and obeyed" rather than one that inspires, rescues, or leads by virtuous example. Indeed, in each one of the events described in this section, the justices have collectively demonstrated a heightened sensitivity towards limitations on their authority as well as towards any indications that the litigating parties or the general public are unwilling to unquestioningly accept their positions. The *NJAC* ruling, the disapproval of Judge Loya's attorneys ("institutional civility towards judges"), the exemplary costs assigned to CJAR, and even the Court's responses to criticisms of the Chief Justice's case allocation—all of these exemplify the increasing sense in which judicial speech is *mythos* speech.[116] Similarly, Shanti Bhushan and Prashant Bhushan—a father–son duo of Supreme Court lawyers who carry weighty records of public and non-partisan service—have both received contempt citations for simply suggesting that various past Chief Justices were corrupt.[117]

In other words, it is increasingly not possible to question the Chief Justice's or even the Court's behaviour without inviting censure for endangering the sole governmental champion of the average Indian citizen. However, in espousing this position, the justices of the Supreme Court have furthered a second transformation—one in which the goal of the judge is less and less that of being "[a] wielder of trained moral intuition and ... the scourge of corruption" and more that of being, quite simply, "believed and obeyed." In the final section of this article, I draw on ethnographic research conducted during the tenure of Misra's successor, Ranjan Gogoi, to demonstrate the shift from mythic to *mythos* in greater detail.

5. *Mythos* in the making: Ranjan Gogoi and the 2019 sexual-harassment scandal

As Section 3 has made clear, the "CJI Scandal" is something of a misnomer for the events of 2019, since there have been *several* scandals involving recent Chief Justices of India. Nevertheless, I will continue to use the term because it provides a useful shorthand for referencing the allegations of sexual harassment against Ranjan Gogoi as well as the Court's responses to those allegations. This section will begin by providing a quick overview of the sequence of events that led to the CJI Scandal by drawing on media analysis and my own experiences conducting interviews and engaging in participant observation in April-May 2019, while I was in Delhi working on a related project.[118] Importantly, I do not speak to the truthfulness of the allegations against Gogoi: not only is truthfulness *often* difficult to establish in sexual-harassment cases and *especially* difficult to establish with respect to the CJI Scandal (in large part because of the procedural features described below); it is irrelevant to the focus of this article.[119] Instead, my goal is to show how the response to the CJI Scandal, from both the Court and from Chief Justice Gogoi himself, exemplify the new turn towards "mythos" in Indian judging, or "an assertive discourse of power and authority ... something to be believed and obeyed."[120]

[116] Following the Loya affair, the Court reiterated three times in eight months that the chief is the undisputed master of the roster. Krishnan (2018).

[117] Bhushan (2010).

[118] For administrative information regarding this research, see the "Acknowledgements" section of this article.

[119] See Section 5.2. I also do not discuss other aspects of the complaint and scandal, including that the complainant alleged that her husband and brother-in-law lost their jobs in the Delhi police as part of a campaign to intimidate her. Those jobs were later restored following Gogoi's exoneration. TheWire.in (2019).

[120] Lincoln, *supra* note 3.

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5.1 CJI-scandal timeline

On 19 April 2019, a former staff clerk of the Supreme Court filed a complaint of sexual harassment against then sitting Chief Justice Ranjan Gogoi and sent the complaint to the home addresses of 22 sitting justices.[121] On 20 April, the Chief Justice and a two-judge bench that he had constituted called a special Saturday hearing to discuss the allegations.[122] The Attorney General and Solicitor General were present at this hearing but the complainant herself was not.[123] Gogoi "denied all charges and said that 'there [was] a larger conspiracy to destabilise the judiciary.'"[124] The hearing lasted approximately 30 minutes, during which (in addition to denying the charges and alleging that there was a larger conspiracy afoot) the Chief Justice observed that the complainant had two criminal complaints pending against her, while the Solicitor General suggested that the complaint reflected an attempt to blackmail the judiciary.[125] At the conclusion of the hearing, the bench issued an order stating that it would *not* yet issue a *judicial* order in the matter, prompting speculation as to what kind of order it was that the Court had just issued.[126] Still more confusingly, the "non-order" was only issued under two names: those of the two justices selected by Gogoi, Arun Mishra and Sanjiv Khanna, even "though CJI Ranjan Gogoi was very much a part of the Bench."[127]

The secrecy and inconclusiveness of this initial hearing combined with the fact that Gogoi sat on a panel that was hearing a complaint against himself (and later seemingly attempted to erase his presence by redacting his name from the order) led to calls for a second hearing. Between 23 and 25 April, a three-judge bench was constituted and its composition adjusted, following which this panel held two in-house hearings, on 26 and 29 April, with the complainant present. She was not permitted to have an attorney with her. Indeed, at the 26 April hearing, one of the justices allegedly told the complainant to not even *speak* with any attorneys,[128] while the bench collectively appears to have suggested that the complainant was goaded into action by the various high-profile attorneys who were advising her pro bono.[129] She was also not allowed to have a support person with her during either of the hearings, which she had requested both for morale and for legal assistance, and because she was hard of hearing and wanted assistance in understanding what was being said.[130] At the 26 and 29 April hearings, the complainant also made several other requests besides those for an attorney or support person, all of which were similarly denied. She asked for the hearings to follow the "Vishaka Guidelines" for workplace sexual-harassment inquiries and, failing that, for information about the procedures that would be followed in her particular case.[131] Likewise, she asked for video-recording of the

[121] This chronology triangulates being various sources, including Business-Standard (2019); Saheli Women's Resource Center et al. (2019); Complainant (2019); Yamunan & Chakravarty (2019).

[122] Business-Standard, *supra* note 121; Saheli et al., *supra* note 121.

[123] Saheli et al., *supra* note 121; Complainant, *supra* note 121.

[124] India Today (2019b).

[125] Business Line (2019); India Today, *supra* note 124.

[126] Krishnan (2019b).

[127] *Ibid*.

[128] Yamunan & Chakravarty, *supra* note 121 (noting that the justice in question was Indu Malhotra).

[129] *Ibid.* (quoting the complainant as stating that "They were saying: 'Oh, you filed it [the complaint against Justice Gogoi] after meeting Prashant Bhushan sir, after meeting Vrinda Grover, so they must have made the suggestion to file all these things.' That is not correct at all").

[130] *Ibid.* ("I told them I cannot hear with my right ear, sometimes I cannot hear from my left ear .... That was one of the reasons I was asking for a support person .... Sometimes it happens that you don't understand the legal language ... this was another reason why I wanted to have somebody").

[131] "Vishaka Guidelines" emanate from a landmark Supreme Court decision, *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011, in which the Court developed procedural standards for investigating workplace sexual harassment. The case was later superseded by an Act of Parliament, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (often called the POSH Act), but many people continue to

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hearings; for a written record of her statements as transcribed by a staff member who was present during the hearings; for the right to call and cross-examine witnesses; and for the messaging and call records of two relevant mobile numbers.[132] All of these requests were denied.

On 27 April, the complainant filed a letter with the Court declaring that, on her way home from the 26 April hearing, her car had been followed by two men on a motorcycle; she provided a partial licence-plate number for the motorcycle so that its owner could be identified.[133] On 30 April, which was scheduled to be a third day of hearings, the complainant reiterated many of her requests and noted that, on her way home from the 29 April hearing, she was once again followed, this time by four men on two motorcycles.[134] When her requests were once again denied, she read from a prepared statement that articulated her unwillingness to participate any longer in the hearings.[135] The bench warned her that they would continue without her, and she left.[136] On the following day, 1 May, the Chief Justice appeared before the bench.[137]

For a few days immediately following the complainant's 30 April exit from the hearings, there was little in the way of formal developments and, unsurprisingly, media speculation ran rampant. Finally, on 6 May, the Secretary-General of the Supreme Court issued a three-sentence public announcement that is reproduced in its entirety here:

> The In-House Committee has submitted its Report dated 5.5.2019, in accordance with the In-House Procedure, to the next senior Judge competent to receive the Report and also sent a copy to the Judge concerned, namely, the Chief Justice of India.
>
> The In-House Committee has found no substance in the allegations contained in the Complaint dated 19.4.2019 of a former employee of the Supreme Court of India. Please take note that in case of **Indira Jaising v. Supreme Court of India & Anr. (2003) 5 SCC 494**, it has been held that the Report of a Committee constituted as a part of the In-House Procedure is not liable to be made public.[138]

Negative responses were swift and vehement. A journalist whom I was scheduled to meet for coffee on 7 May told me that he would be reporting on a protest that had been scheduled for that day in front of the Supreme Court; he suggested that I attend since I was interested in the Court's recent history. I did, and—in keeping with what others have reported regarding that protest[139]—was struck by the overwhelming show of force on display.[140] Water cannon, Delhi police personnel, and RAF (Rapid Action Force) personnel stood on the Court-side of the street facing a few dozen (overwhelmingly female) protesters, who were still milling around and chatting when I arrived at around 10:30AM. A handful of observers, many of whom were lawyers or law students, stood against a fence behind

use "Vishaka Guidelines" as a shorthand for the idea that workplace sexual-harassment inquiries be conducted according to fixed and specialized procedures that are sensitive to the unique power dynamics at play.

[132] Complainant, *supra* note 121; Yamunan & Chakravarty, *supra* note 121.

[133] *Ibid.*

[134] *Ibid.*

[135] *Ibid.*

[136] *Ibid.*

[137] Scroll.in (2019b).

[138] Secretary-General (2019), emphasis in original.

[139] Lalwani (2019); Barton (2019) (noting that "When protestors arrived outside the Supreme Court on Tuesday morning, a large number of women police personnel and water cannons were waiting for them").

[140] At the time, I estimated the ratio of Delhi police personnel (not including RAF) to protesters as 2:1 or even 3:1. Several observers around me remarked on the number of police and army personnel, and expressed their disbelief that the justices were afraid of "a few old women." While the leaders of the protest were likely in their 50s, I saw many protesters who appeared to be in their 20s or 30s. Fieldnotes, 7 May 2010, New Delhi.

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the protesters. After speaking with a few of the women who seemed to be in positions of leadership, I stationed myself in front of the fence alongside the other observers. The fence would prove significant: just a few minutes into the peaceful chanting, the protesters were herded onto the first of two police buses and I—after quickly weighing up the complications of being a pregnant foreign national in an Indian jail against my anthropological desire to learn through experience—slid pre-emptively behind the fence into safer, clearly "observer" territory.[141] As I later discovered from conversations and media reports, over four dozen protesters, including several relatively senior women, had been detained that morning.[142]

This is not the story of police or military brutality in modern India—that story exists, has been told, and needs to be told even more often in light of the many ways the Indian state exercises brute force against its own citizens.[143] Despite the heavy-handedness of the state's reaction and the fact that some protesters suffered minor injuries, the demonstrations on 7 May—and, it seems, on other days and in other cities[144]—were comparatively unproblematic as far as police behaviour is concerned. The problem with the state's response during the protests, as with the Court's response during the inquiry itself, was that it positioned the law—and, in particular, the judge—as a power that "forces consent" rather than one that wields a "trained moral intuition." The extent to which Supreme Court justices have come to embody the former over the latter became clear as conversations around the CJI Scandal coalesced around particular themes. In the second half of this section, I will take up four of these themes: the absence of disciplinary procedures, the Court's lack of interest in self-regulation, its attempt at historical erasure, and its preoccupation with reputational harm.

5.2 Modelling mythos *at the Supreme Court*

There is no identifiable procedure for dealing with allegations of sexual harassment against the CJI. There is barely a procedure for dealing with allegations of sexual harassment against the *other* judges of either the high courts or the Supreme Court. To the extent that there is an "in-house procedure" for dealing with these individuals, that procedure does not apply to the Chief Justice. Indeed, the Chief Justice is the one responsible for initiating and leading the in-house process:

> When the complaint is received by the CJI directly or it is forwarded to him by the President of India the CJI will examine it .... After considering the complaint in the light of the response of the judge concerned and the comments of the Chief justice of the high court, the CJI, if he is of the opinion that a deeper probe is required into the allegations contained in the complaint, shall constitute a three member Committee consisting of two Chief justices of High Courts other than the High Court to which the Judge belongs and one High Court Judge. The said Committee shall hold an inquiry into the allegations contained in the complaint. The inquiry shall be in the nature of a fact finding inquiry wherein the Judge concerned would be entitled to appear and have his say. But it would not be a formal judicial inquiry involving the examination and cross-examination of witnesses and representation by lawyers.[145]

[141] The entirety of the morning's events likely took around 20 minutes; in my fieldnotes, I estimate that the protest began in earnest at around 10:40am and that news teams—including the journalist I had been scheduled to have coffee with—were departing by 11:05.

[142] Lalwani, *supra* note 139 (noting that "55 protestors—52 women, three men" were detained).

[143] Jauregui (2013) (discussing the circumstances and processes of police de-legitimation in India). For an example, consider the recent detainment of the historian Ramachandra Guha, during protests against the Citizenship Amendment Act. TheHindu.com (2019).

[144] Scroll.in (2019a).

[145] *Addl. District & Sessions Judge "X" v. High Court of M.P* (2015) 4 SCC 91.

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Because there is no formal mechanism for processing complaints against the Chief Justice himself, the Court was technically correct to imply that it was not obliged to follow any procedure in particular. It is less clear that the procedure it *did* follow—the "in-house" process used for allegations involving all other judges—did not mandate public disclosure of the final report exonerating Gogoi. As many commentators have argued, the Court's reliance on the 2003 *Indira Jaising* case to justify non-disclosure seems misplaced: not only was that case decided before India's legislature passed the Right to Information Act in 2005 (under which the findings of a judicial committee would certainly be discoverable),[146] but *Indira Jaising* speaks only to interim findings (whereas the report that was announced on 6 May was, as the announcement strongly implied, a final report).[147]

The CJI Scandal is by no means the first time the Indian judiciary has been caught unable or unwilling to impose rules upon itself. As Section 3 showed, the history of the appointments process has long been one of hope—hope that aspiring judges will not misbehave and hope that when they do, they will accept and be chastened by the few forms of indirect punishment that are provided for via custom and statute.[148] However, in the aftermath of the CJI Scandal, the Court's unwillingness to allow any external oversight of its members as well as the justices' seeming complaisance with the gaping holes in their internal disciplinary methods took on new salience. For instance, during a book launch two days after the Supreme Court protests—for a book discussing the "independence and accountability" of the judiciary, no less[149]—speakers debated the extent to which either the judiciary or the executive and legislative branches needed to act as a check on one another's authority. One speaker declared that "this jurisprudence of hope has no place in a democracy."[150] She was, at the moment, speaking of the judiciary's optimism that the *executive* would not overreach its authority, and the way that this expectation had been articulated through various prominent cases where the Supreme Court showed deference to the executive branch.[151] Nevertheless, both she and some of the other speakers went on to suggest that the current Court's belief in "judicial exceptionalism" was reflected in the thorough absence of mechanisms for the justices or anyone else to step in when the Chief Justice was accused of inappropriate behaviour. Put differently, the "jurisprudence of hope" now referenced the Court's aspirations for itself rather than for the other branches.

Despite this absence of a formal procedure that was relevant to the occasion, the Supreme Court might have voluntarily adopted procedural standards as a way of demonstrating that it was interested in meaningfully regulating itself. This would have signalled that the Court wished to reappropriate the aura of benevolent and erudite integrity it had

[146] Right to Information Act, Act No. 22 of 2005. In November 2019, the Supreme Court—via a bench headed by Ranjan Gogoi—held that the office of Chief Justice is also subject to RTI requests. *Central Public Information Officer v. Subash Chandra Agarwal*, 2019 SCC OnLine SC 1459 at ¶ 14 (13 November 2019) (holding, in part, that the office of Chief Justice is subject to RTI demands because "The Supreme Court of India, which is a 'public authority', would necessarily include the office of the Chief Justice of India and the judges in view of Article 124 of the Constitution").

[147] *Indira Jaising v. Supreme Court of India*, W.P. (C) No. 218 of 2003 (noting that the report in question was "purely preliminary in nature, ad hoc and not final" and was commissioned by the Chief Justice "only to get information from peer Judges"). See also Women in Criminal Law Association (2019) (discussing the Indira Jaising ruling in the context of the CJI Scandal).

[148] See e.g. *supra* notes 83–90, discussing the "Dinakaran episode."

[149] Sengupta, *supra* note 86.

[150] Chandra (2019). Note that both Chandra and I are using the phrase "jurisprudence of hope" in a way that is very distinct from another well-known usage. Lambert (1966), p. 131 (discussing "the nondelegable duty of our profession, lawyers and judges, as custodians of our legal culture to insure the continuity between stability and change and the reciprocity between law and morals").

[151] For instance, *ADM Jabalpur*, *supra* note 28 and the Aadhaar litigation, *Puttaswamy v. Union of India* (2019) 1 SCC 1.

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once possessed. But it did none of this. The Court's first response was that special Saturday hearing to which the complainant was not invited, and at which five of the most powerful men in India's legal infrastructure (including the alleged wrongdoer) took turns in speculating as to her motives and character. Only after their response triggered outrage did the justices adopt the "in-house" procedure and hold hearings involving the complainant herself, but even then they by-passed plenty of opportunities for transparency and self-regulation. First, the Court initially declined to voluntarily follow the Vishaka Guidelines' directive that workplace sexual-harassment committees should include at least one external member and be at least half female.[152] Likewise, it declined to permit the complainant an attorney or support person, did not allow her to call witnesses or access relevant evidence (like cellphone records), and—perhaps most egregiously—it declined to give her a written copy of the transcript from each day's hearings while she was still participating in the process. It is hard to say that any one of these measures was legally required of the justices, but the fact that almost none of them was adopted by the Court (and not one was adopted *voluntarily*) gave the impression that the justices believed themselves to be engaging in a series of bothersome formalities.

Few things better conveyed the justices' lack of enthusiasm for submitting to any authority besides their own than the erasure of Ranjan Gogoi's name from the record of the Saturday hearing. The Indian news media repeatedly decried the Chief Justice's willingness to "be a judge in his own cause" as well as the willingness of the other judges and lawyers who were present to implicitly approve of his choices.[153] Nevertheless, the Court appeared unconcerned. Even more troubling was the Court's attempt to hide the fact that the Chief Justice had, quite literally, been "a judge in his own cause." The order the Court issued that day was, by virtue of what it did *not* contain, an example of *mythoi* spoken in the assembly: it was an "unvarnished assertion" of how events *should* be understood by "men who believe their strength, position in society, and/or the justice of their cause entitles them to prevail."[154] Likewise, other documents connected to the inquiry displayed a similar type of assertive opacity. For instance, an order authorizing investigation into whether the sexual-harassment complaint was part of a larger conspiracy to personally target Gogoi proceeded under sealed cover, so that neither the affidavits asserting the existence of a conspiracy nor the reasoning behind the order authorizing the investigation were made available to the public.[155] In other words, the erasure of Gogoi's name from the record of the Saturday hearing simply crystallized, into two jarringly absent words, a more broadly applicable attitude among members of the Court regarding the relationship between judges and the people who are subject to their judgment.

[152] The Court later switched out Justice Ramana for Justice Malhotra, which resulted in the committee being two-thirds female, but it did not at any point include an external member.

[153] See e.g. Jagtiani (2019); Chhibber (2019); Rajagopal (2019). In the aftermath of the CJI Scandal, criticism also came from a former justice of the Supreme Court who, along with Gogoi, had been one of the four who had staged a press conference during Dipak Misra's tenure. He stated that "either the news reporters were seeing and hearing the equivalent of Banquo's ghost in Court No 1 or the record of proceedings was incorrect." Lokur (2019).

[154] Lincoln, *supra* note 12, p. 356.

[155] In response, a prominent commentator on India's courts took the somewhat cheeky approach of posting an analysis of the order on his blog that contained the following two sections: "Analysis: [Regrettably, no analysis can be conducted of the order in In Re: Matter of Great Public Importance Touching Upon the Independence of the Judiciary, as all the affidavits have been placed before the Supreme Court in sealed covers.]" and "Conclusion: [Regrettably, no conclusion can be drawn about the Court's order in In Re: Matter of Great Public Importance Touching Upon the Independence of the Judiciary, as no reasons are available from which to draw conclusions.]" Bhatia (2019a). See also Times of India (2019) (noting Gogoi's statement that "As the forces did not find anything against me, they have used this unscrupulous woman to level charges against me"); Mahapatra (2019) (for a discussion of this parallel inquiry).

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That attitude has increasingly been defined by a judicial expectation of unstinting support that, when it is thwarted, turns into extreme defensiveness. The Supreme Court's transformation into "a court of good governance" via PIL, Article 21 jurisprudence, and the norms and practices of accessibility described in Section 2 have allowed the Court to position itself as a last, best hope for citizens who receive little care from their elected representatives.[156] The price for that hope is collective agreement that "an independent judiciary is a sine qua non"[157] of Indian democracy and that this judicial independence is a thing of rare and fragile beauty. "To me," a retired justice declared recently, "I always equate it to the chastity of a virgin."[158] Following this script, Gogoi asserted in the early moments of the CJI Scandal that the allegations were part of a larger attempt to destabilize the judiciary and damage its independence.[159] "Reputation is the only thing we have," he said during the Saturday hearing, adding that no judge would be willing to decide cases "if this is the kind of attack we get."[160] Indeed, the very justification for the Saturday hearing—as articulated by the Supreme Court Registrar's office—was not the alleged harassment of a Court employee but "A Matter of Great Public Importance Touching Upon the Independence of Judiciary."[161]

6. Gender and the judge

No conversation about the CJI Scandal is complete—although many have been completed—without an acknowledgement that conversations about gender rarely pierce the armour of India's higher judiciary. I do not simply mean that allegations of gender bias or violence are infrequently articulated against Indian judges, although this seems unarguably true. Rather, except for a few stray moments in which especially bad acts or good decisions bring together "gender" and the "judge," the deeply masculine ethos of Indian judging rarely surfaces in the reams of commentary that are regularly published on the Indian higher judiciary.

In part this is because there have been so few female Indian jurists to discuss. As of 23 March 2018, there were 73 (of 670) female judges in India's high courts—a considerable increase from the 17 (of 514) who were serving in 2003.[162] On a global scale, this places India in a relatively poor (though, sadly, not unusual) position: India is comparable to countries like the UK, but considerably below the US and Canada, among others, and far below world leaders like Latvia and Slovenia, where over 50% of apex court judges are women.[163] Of the 248 justices who have served or are currently serving on the Supreme Court, only eight have been women. Moreover, the first of these female Supreme Court justices—Fathima Beevi—was only appointed in 1989, 42 years after independence and 39 years after India's Constitution came into effect.[164] Many of the most influential studies of Indian Supreme Court justices were written before she was even appointed to the Court.[165]

However, much of the commentary that has been written after Beevi's elevation simply disregards gender even when the topic at hand is ostensibly the composition of the Court. For instance, a relatively recent study examines Supreme Court appointments along the

[156] Robinson, *supra* note 1.
[157] Srikrishna (2016), p. 349.
[158] Joseph (2019).
[159] Times of India, *supra* note 155.
[160] Scroll.in (2019c).
[161] *Ibid.* (reproducing an image of the notice announcing the Saturday hearing).
[162] The Economic Times (2019); National Resource Center for Women (n.d.).
[163] Valdini & Shortell (2016), p. 868.
[164] Former chief Justices and judges, https://main.sci.gov.in/chief-justice-judges (accessed 7 March 2020).
[165] See e.g. Gadbois, *supra* note 23; Dhavan (1977).

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axes of "Age of Appointment/Tenure," "Regional Representation," whether an appointee had been a "High Court Chief Justice," and even the existence on the Court of "Minority Seats," but nonetheless omitted any discussion of gender.[166] It mentioned Justice Beevi only to note that she had "the shortest high court tenure (six years) and the shortest natural Supreme Court tenure (two years)," was "one of the rare judges" to be appointed after retiring from a lower court, and that she was "a second Muslim judge" during the early days of the practice of having two Muslims sitting on the Court at any given time.[167] Even a critical review of this study failed to mention gender as a worthwhile axis of analysis, despite faulting the original study for failing to "develop an institutional sociology of the court or a realist understanding of its adjudication practices" *and* for not helping to "assess particular institutional devices—say, the manner of appointment—from a perspective of institutional governance and reform."[168] Gender is simply not on the radar of most Indian Supreme Court watchers, save when it surfaces in judicial opinions or the occasional controversy, because of the strongly masculine ethos of India's legal elite.

To be sure, a masculine ethos is not the same as a misogynistic one. But Indian society is often faulted for its deep misogyny, and rightfully so: in 2018, India ranked 129 out of 165 countries according to the United Nations' Gender Inequality Index (in between Nicaragua and Namibia) and placed in the lowest of five possible groups in the Gender Development Index (alongside, for instance, South Sudan and Iran, but below Malawi and Bahrain).[169] Although the #MeTooIndia movement that emerged in 2018 started with a series of high-profile accusations and triumphant narratives of overdue justice, in the end, it nowhere approximated the breadth or longevity of its American counterpart.[170] Commentators have been divided as to whether this was caused by the pervasiveness of gender bias within Indian society or by a lack of synergy between social media and conventional media in the task of keeping the campaign alive, but there is little debate as to the way #MeToo claims were received in India.[171] Indeed, two of the male public figures who were accused of sexual misconduct during the campaign—Nana Patekar and M. J. Akbar—filed or threatened to file defamation claims against their accusers.[172]

But beyond simply revealing misogynistic tendencies that extend outside India's legal elite, the CJI Scandal underscored the extent to which the Supreme Court has been and continues to be defined by masculinity. The patrician Supreme Court of the early post-independence period, the heroic Supreme Court of the late twentieth and early twenty-first centuries, and the simultaneously defensive and assertive Supreme Court of recent years exemplify models of authority that are explicitly male. The mythic figure of the judge who saves, no less than the "unvarnished assertions" of *mythos* speech, is male. They are both *so* male, in fact, that commentary on the structure and functioning of the Supreme Court, although it is wide-ranging in its topical focus and often biting in its criticism, rarely identifies the Court's identity and authority as being defined by gender at all.

This underlying characteristic of the Court—its masculine ethos, its gendered assertion of authority—remains constant even as the Court constructs a different, more forceful, and more unilateral relationship to power. Moreover, although the Court's increasingly authoritarian, *mythos*-driven persona is shaped by the past prevalence of male bodies in judicial seats, it is not *dependent* on the gender identity of specific judges, as evidenced by the fact that two of the justices on the panel that ultimately absolved Gogoi, Indu

[166] Chandrachud (2011).
[167] *Ibid*.
[168] Krishnaswamy & Khosla (2011), p. 71.
[169] United Nations (2019a); United Nations (2019b).
[170] Datta, Punj, & Sinha (2018).
[171] Compare Jayaram (2019) with Sreedharan, Thorsen, & Gouthi (2019).
[172] Joshi (2019), p. 11.

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Malhotra and Indira Banerjee, were women.[173] Instead, the CJI Scandal signals the ascension of a new attitude towards judging in India—one that is concerned less with "virtuous male power" and more with "unvarnished assertions" from those "who believe their strength, position in society, and/or the justice of their cause entitles them to prevail."

In its very first public response to the complainant's allegations—the announcement of the Saturday session—the Court reframed the circumstances surrounding the allegations into being "A Matter ... Touching Upon the Independence of Judiciary"[174]; the discourse of *mythos* made it possible to hold an inquiry about sexual misconduct and reframe it as an attack on the institution of the judiciary itself. In the "non-order" order issued after the Saturday session, Gogoi's name was redacted from the record in an effort to baldly assert what the Court and the country knew to be false—namely that the Chief Justice had not sat as a judge in his own cause.[175] At each moment when the complainant made a request for something that would facilitate her participation and, perhaps, also contribute to the ostensible goal of holding the Chief Justice accountable to the very laws he was committed to uphold, the Court demurred. In no way would either the Court or the Chief Justice "'submit' to something 'bigger' and 'higher'" than themselves because, as the Court has affirmed time and time again, it is, at least theoretically, the biggest and the highest legal authority in India.[176] Taken together, the CJI Scandal displayed, in a spectacularly overdetermined way, how judging in India is shot through with gendered overtones—and, indeed, how it remains that way despite the transition from mythic to *mythos*-driven approaches.

7. Conclusion

During conversations with me in the immediate aftermath of the CJI Scandal, Indian journalists who regularly report on law and the courts expressed a range of concerns about the higher judiciary. Sruthisagar Yamunan, who writes for *Scroll.in*, worried that the Supreme Court's tendencies toward isolationism and defensiveness would make it too powerful for its own good.[177] Not only would an overly powerful Court weaken its own credibility as a bulwark against the authoritarianism or incompetence of the other branches; it would also exacerbate the legitimacy deficit that has long plagued the executive and legislature. Yamunan speculated that these branches would either permit the Court to continue taking on their "good governance" functions or they would seek backdoor channels (including blackmail) in order to reappropriate that power from the Court—or both. Atul Dev, who writes for *Caravan*, argued that the power balance between the executive and the Supreme Court had already begun to tilt towards the executive in around January 2017, towards the end of J. S. Khehar's tenure as Chief Justice.[178] Justices—perhaps especially Chief Justices—are vulnerable and prone to Parliament-pleasing towards the ends of their careers, as they face the task of protecting their legacies and safeguarding their relatives' prospects, since in many cases the descendants of Supreme Court justices (and Chief Justices) go on to become justices (and Chief Justices) themselves.[179]

These concerns, which are growing among India's legal elite, predate and exceed the CJI Scandal. Indeed, set against the backdrop of the Court's recent history, nothing that

[173] India Today (2019a).
[174] Scroll.in, *supra* note 160.
[175] Krishnan, *supra* note 126.
[176] Kennedy, *supra* note 2, p. 3.
[177] Interview, *supra* note 113.
[178] Interview with Atul Dev, journalist, 14 May 2019, New Delhi.
[179] For instance, Dipak Misra is the nephew of Ranganath Misra (CJI from September 1990 to November 1992); D. Y. Chandrachud (who is due to become CJI in November 2022) is the son of India's longest-serving Chief Justice, Y. V. Chandrachud (February 1978 to July 1985).

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happened in April and May of 2019 was particularly out of the ordinary. The Court's lack of transparency and accountability, the expanding authority of the Chief Justice, and the nagging suspicions of unethical judicial behaviour that characterized the CJI Scandal have, along with the co-opting of PIL, the inaccessibility of the courts, and the over-expansion of Article 21 jurisprudence, defined the Court's reputation in recent years writ large. Collectively, they signal a marked shift in the nature and purpose of judging in India, at least as these are imagined by judges themselves. Judging and judges have moved far from the Supreme Court's early days of urbane (if conservative) erudition, or its post-Emergency stature as a heroic champion of the legislatively-forsaken masses. In this new era, judging is increasingly marked by a rhetoric of authority and entitlement; it is a process that demands consent and obedience rather than eliciting these things through admiration or awe. The CJI Scandal merely epitomizes this transformation, capturing in the space of a few days and fewer events a shift that has weighty consequences for the Court and country alike.

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References

Abeyratne, Rehan (2014) "Socioeconomic Rights in the Indian Constitution: Toward a Broader Conception of Legitimacy." 39 *Brooklyn Journal of International Law* 1–71.

Abraham, Rohan (2019) "Chandrachud vs Chandrachud: SC judge Confident His Father Would Have Concurred on ADM Jabalpur Verdict," *Economic Times*, 24 October.

Anand, A. S. (2004) "Judicial Review––Judicial Activism—Need for Caution," in S. Sorabjee, ed., *Law & Justice: An Anthology*, New Delhi: Universal Law Publishing, 377.

Atuahene, Bernadette (2014) *We Want What's Ours: Learning from South Africa's Land Restitution Program*, Oxford & New York: Oxford University Press.

Austin, Granville (1999) *Working a Democratic Constitution: A History of the Indian Experience*, New Delhi: Oxford University Press.

Bagriya, Ashok (2019) "A Year After Landmark Press Conference, Little Has Changed in Supreme Court's Running," *Hindustan Times*, 12 January, https://www.hindustantimes.com/india-news/a-year-after-landmark-press-conference-little-has-changed-in-supreme-court-s-running/story-ZtTyvwIyFTCJLDxngrOQuL.html (accessed 27 February 2020).

Balaji, R. (2018) "Arun Mishra Pulls Out of Loya Case," *The Telegraph*, 17 January, https://www.telegraphindia.com/india/arun-mishra-pulls-out-of-loya-case/cid/1332810 (accessed 27 February 2020).

Balakrishnan, K. G. (2008) "Growth of Public Interest Litigation in India" Presented at the Fifteenth Annual Lecture, Singapore Academy of Law, 8 October 2008.

Barton, Naomi (2019) "In Photos | Women Protest Supreme Court Panel's Clean Chit to CJI Ranjan Gogoi," *The Wire*, 7 May, https://thewire.in/women/in-photos-women-protest-supreme-court-panels-clean-chit-to-cji-ranjan-gogoi (accessed 27 February 2020).

Baxi, Upendra (1985) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India." 4 *Third World Legal Studies* 107–32.

Baxi, Upendra (2000) "The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]Justice," in S. K. Verma & Kusum, eds., *Fifty Years of the Supreme Court of India: Its Grasp and Reach*, New Delhi: Oxford University Press, 156–209.

Bhan, Gautam (2009) "'This Is No Longer the City I Once Knew': Evictions, the Urban Poor and the Right to the City in Millennial Delhi." 21 *Environment and Urbanization* 127–42.

Bhatia, Gautam (2019a) "An Analysis of the Supreme Court's Order in 'In Re: Matter of Great Public Importance Touching Upon the Independence of the Judiciary'," *Indian Constitutional Law and Philosophy*, 25 April, https://indconlawphil.wordpress.com/2019/04/25/an-analysis-of-the-supreme-courts-order-in-in-re-matter-of-great-public-importance-touching-upon-the-independence-of-the-judiciary/ (accessed 27 February 2020).

Bhatia, Gautam (2019b) "Decoding Ranjan Gogoi's Legacy," *Hindustan Times*, 18 November.

https://doi.org/10.1017/als.2021.20 Published online by Cambridge University Press

Bhatia, Gautam (2019c) "The NRC Case and the Parchment Barrier of Article 21," *Indian Constitutional Law and Philosophy*, 26 April, https://indconlawphil.wordpress.com/tag/article-21/ (accessed 27 February 2020).
Bhushan, Prashant, & Cheryl D'souza (2018) "The Curious Saga of How the Chief Justice of India Handled Two Medical College Cases," *The Wire*, 2 February, https://thewire.in/health/curious-saga-chief-justice-india-handled-two-medical-college-cases (accessed 27 February 2020).
Bhushan, Shanti (2010) "Eight of the Last Sixteen Chief Justices of India Were Definitely Corrupt," *Outlook India*, 16 September, https://www.outlookindia.com/website/story/eight-of-the-last-sixteen-chief-justices-of-india-were-definitely-corrupt/267128 (accessed 27 February 2020).
Bhuwania, Anuj (2017) *Courting the People: Public Interest Litigation in Post-Emergency India*, Delhi: Cambridge University Press.
Business-Standard (2019) "Chronology of Events in Sexual Harassment Allegations against CJI," 6 May, https://www.business-standard.com/article/pti-stories/chronology-of-events-in-sexual-harassment-allegations-against-cji-119050601233_1.html (accessed 27 February 2020).
Business Line (2019) "Justice Gogoi Refutes Allegations, Says 'Bigger Force' Wants to Deactivate CJI's Office," 20 April, https://www.thehindubusinessline.com/news/supreme-court-to-hold-special-hearing-on-matter-of-great-public-importance/article26894876.ece (accessed 27 February 2020).
Chandra, Aparna (2019) "Commentary" of Book Launch for Independence and Accountability of the Indian Higher Judiciary, India International Centre, New Delhi, 9 May 2019.
Chandra, Aparna, William H. J. Hubbard, & Sital Kalantry (2017) "The Supreme Court of India: A People's Court?" 1 *Indian Law Review* 145–81.
Chandrachud, Abhinav (2011) "An Empirical Study of the Supreme Court's Composition." 46 *Economic & Political Weekly*, January 1–7, 71–77.
Chandrachud, Chintan (2016) "Constitutional Interpretation," in S. Choudhry, M. Khosla, & P. B. Mehta, eds., *The Oxford Handbook of the Indian Constitution*, Oxford: Oxford University Press, 73–93.
Chhibber, Maneesh (2019) "Recusal Has Become a Selective Call of Morality for Supreme Court Judges," *The Print*, 9 October, https://theprint.in/opinion/recusal-supreme-court-judges-gautam-navlakha-kashmir-cji-gogoi/303036/ (accessed 27 February 2020).
Complainant (2019) "Press Release by Former Supreme Court Employee and Complainant in Sexual Harassment against CJI," 30 April, http://images.assettype.com/barandbench/import/2019/04/press-release.pdf (accessed 27 February 2020).
Das Acevedo, Deepa (2017) "Sovereignty and Social Change in the Wake of India's Recent Sodomy Cases." 40 *Boston College International & Comparative Law Review* 1–26.
Das Acevedo, Deepa (2020a) "A Tale of Two Courts." 105 *Cornell Law Review Online* 67–80.
Das Acevedo, Deepa (2020b) "Just Hindus." 45 Law & Social Inquiry *965–994.*
Datta, Damayanti, Shwweta Punj, & Chinki Sinha (2018) "#MeToo hits home," *India Today*, 12 October, https://www.indiatoday.in/magazine/cover-story/story/20181022-metoo-hits-home-1360419-2018-10-12 (accessed 13 October 2021).
Dave, Dushyant (2019) "Give and Take: The Supreme Court's Way of Business," *The Wire*, 16 May, https://thewire.in/law/supreme-court-judiciary-collegium-njac (accessed 27 February 2020).
Delgado, Richard (1989) "Storytelling for Oppositionists and Others: Plea for Narrative." 87 *Michigan Law Review* 2411–41.
Dev, Atul (2019) "India's Supreme Court Is Teetering on the Edge," *The Atlantic*, 29 April, https://www.theatlantic.com/international/archive/2019/04/india-supreme-court-corruption/587152/ (accessed 27 February 2020).
Dhavan, Rajeev (1977) *The Supreme Court of India: A Socio-Legal Critique of Its Juristic Techniques*, Bombay: M Tripathi.
Dhavan, Rajeev (2017) "Why JS Khehar Was Arguably One of the Worst Chief Justices of India," *DailyO.in*, 21 August, https://www.dailyo.in/politics/chief-justice-of-india-js-khehar-dipak-mishra-supreme-court-prashant-bhushan/story/1/19081.html (accessed 27 February 2020).
Dhavan, Rajeev (2019) "NJAC Was an Ugly Compromise that Strengthened the Government and Political Elements," *ThePrint.in*, 10 May, https://theprint.in/talk-point/is-former-sc-judge-kurian-joseph-right-in-regretting-striking-down-the-njac-act/233898/ (accessed 27 February 2020).
Divan, Shyam (2016) "Public Interest Litigation," in S. Choudhry, M. Khosla, & P. B. Mehta, eds., *The Oxford Handbook of the Indian Constitution*, Oxford: Oxford University Press, 662–79.
Doniger O'Flaherty, Wendy (1975) *Hindu Myths: A Sourcebook Translated from the Sanskrit*, London & New York: Penguin.
Dutta, Prabhash K. (2017) "How a Medical Admission Scam Led to Clash between Top Two Judges of Supreme Court," *India Today*, 10 November, https://www.indiatoday.in/india/story/supreme-court-dipak-misra-j-chelameswar-medical-admission-mci-scam-1083840–2017–11–10 (accessed 27 February 2020).

https://doi.org/10.1017/als.2021.20 Published online by Cambridge University Press

Economic Times, The (2019) "Only 73 Women Judges in High Courts: Govt Tells Parliament Panel," 13 January, https://economictimes.indiatimes.com/news/politics-and-nation/only-73-women-judges-in-high-courts-govt-tells-parliament-panel/articleshow/67512881.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (accessed 7 March 2020).
Eliade, Mircea (1957) *Myths, Dreams, and Mysteries: The Encounter between Contemporary Faiths and Archaic Realities*, New York & Evanston: Harper & Row.
Engel, David M. (1993) "Origin Myths: Narratives of Authority, Resistance, Disability, and Law." 27 *Law and Society Review* 785–826.
First Post (2018) "Supreme Court Rules Judge BH Loya's Death Natural, Expresses Anguish over 'Scandalous' PILs Maligning Judiciary," 19 April, https://www.firstpost.com/india/supreme-court-rules-judge-bh-loya-death-natural-expresses-anguish-over-scandalous-pils-misusing-maligning-judiciary-4437779.html (accessed 27 February 2020).
Fowler, Robert L. (2011) "Mythos and Logos." 131 *Journal of Hellenic Studies* 45–66.
Frazer, Sir James George (1922) *The Golden Bough: A Study in Magic and Religion*, New York: Touchstone.
Freud, Sigmund (1919) *Totem and Taboo: Resemblances Between the Psychic Lives of Savages and Neurotics*, New York: Moffat, Yard and Company.
Gadbois, George H. Jr (1969) "Indian Supreme Court Judges—A Portrait." 3 *Law & Society Review* 317–36.
Galanter, Marc (2014) "Snakes and Ladders: Suo Motu Intervention and the Indian Judiciary." 10 *Florida International University Law Review* 69–83.
Galanter, Marc, & Nick Robinson (2013) "India's Grand Advocates: A Legal Elite Flourishing in the Era of Globalization." 20 *International Journal of the Legal Profession* 241–65.
Gauri, Varun (2009) *Public Interest Litigation in India: Overreaching or Underachieving?* World Bank Policy Research Working Paper No. 5109, World Bank.
Geertz, Clifford (1973) "Deep Play: Notes on the Balinese Cockfight," in *The Interpretation of Cultures*, New York: Basic Books, 412–53.
George, Jasper Vikas (2005) "Public Interest Litigation: Social Change and Public Interest Litigation in India," *NGOS India*, 3 August, http://www.ngosindia. com/resources/pil_sc.php (accessed 27 February 2020).
Greenhouse, Carol J. (1989) "Just in Time: Temporality and the Cultural Legitimation of Law." 98 *Yale Law Journal* 1631–51.
Hemrajani, Rahul, & Himanshu Agarwal (2019) "A Temporal Analysis of the Supreme Court of India's Workload." 3 *Indian Law Review* 125–58.
India Today (2019a) "CJI Ranjan Gogoi Gets Clean Chit in Sexual Harassment Case, SC Panel Dismisses Charge," 6 May, https://www.indiatoday.in/india/story/cji-ranjan-gogoi-gets-clean-chit-in-sexual-harassment-case-sc-panel-dismisses-charge-1518425–2019–05–06 (accessed 27 February 2020).
India Today (2019b) "CJI-Led Bench Holds Hearing on Sexual Harassment Charges against CJI Ranjan Gogoi," 20 April, https://www.indiatoday.in/india/story/cji-led-supreme-court-bench-hold-unusual-hearing-on-matter-of-great-public-importance-1506092–2019–04–20 (accessed 27 February 2020).
Inglis, Fred (1993) *Cultural Studies*, Oxford, UK & Cambridge, MA: Basil Blackwell.
Jagtiani, Haresh (2019) "Judge in His Own Cause," *Deccan Herald*, 28 April, https://www.deccanherald.com/opinion/main-article/judge-in-his-own-cause-731165.html (accessed 27 February 2020).
Jauregui, Beatrice (2013) "Beatings, Beacons, and Big Men: Police Disempowerment and Delegitimation in India." 38 *Law & Social Inquiry* 643–69.
Jayaram, Rahul (2019) "How the News Cycle Killed #MeToo in India," *NewsLaundry.com*, 21 January, https://www.newslaundry.com/2019/01/21/how-the-news-cycle-killed-metoo-in-india (accessed 13 October 2021).
Joseph, Kurian (2019) "Commentary" at Book Launch for Independence and Accountability of the Indian Higher Judiciary, India International Centre, New Delhi, 9 May 2019.
Joshi, Shareen (2019) "#MeToo in India: What's Next," 5 *Georgetown Journal of Asian Affairs* 11–5.
Jung, Carl G. (1998) *Jung on Mythology*, R. A. Segal, ed., Princeton: Princeton University Press.
Kennedy, Duncan (1997) *A Critique of Adjudication (fin de siècle)*, Cambridge, MA: Harvard University Press.
Krishnan, Jayanth K. (2003) "Social Policy Advocacy and the Role of the Courts in India." 21 *American Asian Review* 91–124.
Krishnan, Murali (2018) "Breaking: For the Third Time in Eight Months, SC Reiterates CJI Is Master of Roster," *Bar and Bench*, 6 July, https://www.barandbench.com/news/supreme-court-reiterates-cji-master-roster-third-time-eight-months (accessed 27 February 2020).
Krishnan, Murali (2019a) "Burying ADM Jabalpur: Ten Fathoms not Deep Enough?," *Bar and Bench*, 27 August, https://www.barandbench.com/columns/burying-adm-jabalpur-ten-fathoms-not-deep-enough (accessed 27 February 2020).

https://doi.org/10.1017/als.2021.20 Published online by Cambridge University Press

Krishnan, Murali (2019b) "The Bizarre Order in the Sexual Harassment Allegations against CJI Ranjan Gogoi," *Bar and Bench*, 20 April, https://www.barandbench.com/columns/bizarre-order-sexual-harassment-allegations-cji-ranjan-gogoi (accessed 27 February 2020).
Krishnaswamy, Sudhir (2009) *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine*, New Delhi: Oxford University Press.
Krishnaswamy, Sudhir & Madhav Khosla (2011) "Understanding Our Supreme Court." 46 *Economic & Political Weekly*, 29 January–4 February, 71–2.
Lalwani, Vijayta (2019) "'Anti-judicial': Activists, Lawyers Protesting against SC and CJI Ranjan Gogoi Detained by Police," *Scroll*, 7 May, https://scroll.in/article/922602/anti-judicial-activists-lawyers-protesting-against-sc-and-cji-ranjan-gogoi-detained-by-police (accessed 27 February 2020).
Lambert, Thomas F. Jr (1966) "The Jurisprudence of Hope." 1 *Portia Law Journal* 131–42.
Lévi-Strauss, Claude (1978) *Myth and Meaning*, New York: Schocken Books.
Lincoln, Bruce (1997) "Competing Discourses: Rethinking the Prehistory of 'Mythos' and 'Logos.'" 30 *Arethusa* 341–67.
Lincoln, Bruce (1999) *Theorizing Myth: Narrative, Ideology, and Scholarship*, Chicago: The University of Chicago Press.
LiveLaw.in (2019) "'I Regret NJAC Decision After Seeing Things Now': Former SC Judge Justice Kurian Joseph," 31 December, https://www.livelaw.in/top-stories/i-regret-njac-decision-after-seeing-things-now-former-sc-judge-justice-kurian-joseph-151183 (accessed 27 February 2020).
Lokur, Madan B. (2019) "A One-Sided Justice," *The Indian Express*, 22 May, https://indianexpress.com/article/opinion/columns/justice-ranjan-gogoi-sexual-harrassment-case-clean-chit-supreme-court-5741244/ (accessed 27 February 2020).
Mahapatra, Dhananjay (2019) "Plan in Place to Find Truth about Bench Fixing Claim: Patnaik," *Times of India*, 28 April, https://timesofindia.indiatimes.com/india/confident-of-finding-truth-in-bench-fixing-allegations-cji-case-justice-patnaik/articleshow/69077639.cms (accessed 27 February 2020).
Malinowski, Bronislaw (1992 [1948]) *Magic, Science and Religion, and Other Essays*, Long Grove, IL: Waveland.
Martin, Richard P. (1989) *The Language of Heroes: Speech and Performance in the* Iliad, Ithaca: Cornell University Press.
Mishra, Soni (2018) "INTERVIEW: Govt is Blackmailing CJI Misra, Says Prashant Bhushan," *The Week*, 28 January, https://www.theweek.in/theweek/cover/government-is-blackmailing-dipak-misra.html (accessed 27 February 2020).
Nariman, Fali S. (2013) "Fifty Years of Human Rights Protection in India—the Record of 50 Years of Constitutional Practice." *National Law School of India Review* 13–26.
National Resource Center for Women (n.d.) "Women in Judiciary," https://web.archive.org/web/20081223174826/http:/nrcw.nic.in/index2.asp?sublinkid=478 (accessed 7 March 2020).
Pandey, Anshul Kumar (2016) "The Darkest Hour in Indian Judicial History—When the Supreme Court Surrendered Its Autonomy during Emergency," *India Times*, 28 May.
Patel, Anand (2019) "Nearly 50 per cent MPs in New Lok Sabha Have Criminal Records," *India Today*, 25 May.
Rajagopal, Krishnadas (2019) "Sexual Harassment Allegation: CJI Ranjan Gogoi's Presence on Bench Raises Eyebrows," *The Hindu*, 21 April.
Ramanathan, Usha (2002) "Of Judicial Power," 19 *Frontline*, 16–29 March.
Robinson, Nick (2009a) "Expanding Judiciaries: India and the Rise of the Good Governance Court." 8 *Washington University Global Studies Law Review* 1–70.
Robinson, Nick (2009b) "Too Many Cases," 26 *Frontline*, 3–16 January.
Robinson, Nick (2013a) "A Quantitative Analysis of the Indian Supreme Court's Workload." 10 *Journal of Empirical Legal Studies* 570–601.
Robinson, Nick (2013b) "Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts." 61 *American Journal of Comparative Law* 173–208.
Ross, Alison (2014) "The Distinction between Mythic and Divine Violence: Walter Benjamin's '*Critique of Violence*' from the Perspective of '*Goethe's* Elective Affinities.'" 41 *New German Critique* 93–120.
Saheli Women's Resource Center et al. (2019) "Supreme Injustice," 7 May, https://www.livelaw.in/pdf_upload/pdf_upload-360632.pdf (accessed 27 February 2020).
Sathe, S. P. (2002) *Judicial Activism in India*, New Delhi: Oxford University Press.
Scroll.in (2018) "Opposition Moves Motion to Impeach Chief Justice of India Dipak Misra," 20 April, https://scroll.in/latest/876311/opposition-moves-motion-to-impeach-chief-justice-of-india-dipak-misra (accessed 27 February 2020).
Scroll.in (2019a) "CJI Case: Protests Held in Major Cities against SC Inquiry Panel's Decision to Exonerate Gogoi," 9 May, https://scroll.in/latest/922913/cji-case-protests-held-in-major-cities-against-sc-inquiry-panels-decision-to-exonerate-gogoi (accessed 27 February 2020).

https://doi.org/10.1017/als.2021.20 Published online by Cambridge University Press

Scroll.in (2019b) "CJI Ranjan Gogoi Appears before Inquiry Committee Probing Sexual Harassment Allegations: Reports," 2 May, https://scroll.in/latest/922034/cji-ranjan-gogoi-appears-before-inquiry-committee-probing-sexual-harassment-allegations-reports (accessed 27 February 2020).
Scroll.in (2019c) "Judiciary Is under Threat, Says Chief Justice after Reports of Harassment Allegations against Him," 20 April, https://scroll.in/latest/920710/sc-suddenly-constitutes-special-bench-on-independence-of-judiciary-including-chief-justice-gogoi (accessed 27 February 2020).
Scroll.in (2019d) "'This Casts a Shadow on CJI': Supreme Court Judges' Press Conference Evokes Mixed Reactions," 12 January, https://scroll.in/latest/864800/this-casts-a-shadow-on-cji-lawyers-react-to-top-supreme-court-judges-press-conference (accessed 27 February 2020).
Secretary-General (2019) Notice of Inquiry, 6 May (on file with author).
Sengupta, Arghya (2019a) *Independence and Accountability of the Indian Higher Judiciary*, New Delhi: Cambridge University Press.
Sengupta, Arghya (2019b) "Much Is Legally Incorrect about the Sabarimala Judgment," *Telegraph India*, 21 November, https://www.telegraphindia.com/opinion/much-is-legally-incorrect-about-the-sabarimala-temple-judgment/cid/1720713 (accessed 27 February 2020).
Sood, Avani Mehta (2008) "Gender Justice through Public Interest Litigation: Case Studies from India." 41 *Vanderbilt Journal of Transnational Law* 833–906.
Sreedharan, Chindu, Einar Thorsen, & Ananya Gouthi (2019) "Time's Up: Or Is It? Journalists' Perceptions of Sexual Violence and Newsroom Changes after #MeTooIndia." 14 *Journalism Practice* 132–49.
Srikrishna, B. N. (2016) "Judicial Independence," in S. Choudhry, M. Khosla, & P. B. Mehta, eds., *The Oxford Handbook of the Indian Constitution*, Oxford: Oxford University Press, 349–66.
Surendranath, Anup (2016) "Life and Personal Liberty," in S. Choudhry, M. Khosla, & P. B. Mehta, eds., *The Oxford Handbook of the Indian Constitution*, Oxford: Oxford University Press, 756–76.
TheHindu.com (2017) "List of Judges Who Faced Impeachment Proceedings," 25 May, https://www.thehindu.com/news/national/list-of-judges-who-faced-impeachment-proceedings/article18578156.ece (accessed 27 February 2020).
TheHindu.com (2019) "Citizenship Act Protests: Ramachandra Guha Detained in Bengaluru," 19 December, https://www.thehindu.com/news/cities/bangalore/citizenship-act-protests-ramchandra-guha-detained-in-bengaluru/article30346178.ece (accessed 27 February 2020).
TheWire.in (2017a) "Death of a Judge: What We Know, What We Don't Know," 27 November, https://thewire.in/politics/judge-loya-death-questions (accessed 27 February 2020).
TheWire.in (2017b) "Imposition of Exemplary Costs on Petitioner Reignites Controversy Over Supreme Court's Role," 3 December, https://thewire.in/law/imposition-exemplary-costs-reignites-controversy-supreme-courts-role (accessed 27 February 2020).
TheWire.in (2019) "Delhi Police Reinstate Husband, Kin of Woman Who Alleged Sexual Harassment by CJI Gogoi," 20 June, https://thewire.in/rights/cji-ranjan-gogoi-delhi-police-supreme-court-sexual-harassment (accessed 7 March 2020).
TheWire.in (2020) "CAA-NRC Protests Live Updates: Protests Rage, PM Modi Says People Being Misguided on Act," 12 January, https://thewire.in/rights/caa-nrc-protests-live-updates (accessed 26 February 2020).
Thiruvengadam, Arun K. (2013) "Swallowing a Bitter PIL? Reflections on Progressive Strategies for Public Interest Litigation in India," in O. Vilhena, U. Baxi, & F. Viljoen, eds., *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa*, Pretoria: Pretoria University Law Press, 519–31.
Times of India (2018) "10 Reasons Why Venkaiah Naidu Rejected the Impeachment Notice against CJI Dipak Misra," 23 April, https://timesofindia.indiatimes.com/india/10-reasons-why-venkaiah-naidu-rejected-the-impeachment-notice-against-cji-dipak-misra/articleshow/63881915.cms (accessed 27 February 2020).
Times of India (2019) "Independence of Judiciary under Serious Threat: CJI Ranjan Gogoi," 20 April, https://timesofindia.indiatimes.com/india/independence-of-judiciary-under-serious-threat-cji-ranjan-gogoi/articleshow/68963738.cms (accessed 27 February 2020).
Transparency International (2018) "Corruption Perceptions Index," https://www.transparency.org/cpi2018 (accessed 27 February 2020).
Tylor, Sir Edward Burnett (1958) *The Origins of Culture*, New York & Evanston: Harper and Row.
United Nations (2019a) "Human Development Report: Table 4 (Gender Development Index)," 312–5, http://hdr.undp.org/en/content/gender-development-index-gdi (accessed 7 March 2020).
United Nations (2019b) "Human Development Report: Table 5 (Gender Inequality Index)," 316–9, http://hdr.undp.org/en/content/gender-inequality-index-gii (accessed 7 March 2020).

https://doi.org/10.1017/als.2021.20 Published online by Cambridge University Press

Vakil, Raeesa (2016) "Jurisdiction," in S. Choudhry, M. Khosla, & P. B. Mehta, eds., *The Oxford Handbook of the Indian Constitution*, Oxford: Oxford University Press, 367–85.
Valdini, Melody E., & Christopher Shortell (2016) "Women's Representation in the Highest Court: A Comparative Analysis of the Appointment of Female Justices." 69 *Political Research Quarterly* 865–76.
Vandenhole, Wouter (2002) "Human Rights Law, Development, and Social Action Litigation in India." 3 *Asia Pacific Journal on Human Rights & the Law* 136–210.
Women in Criminal Law Association (2019) "Why Is Nobody Allowed to Question the Inquiry into Allegations against CJI Gogoi?," *The Wire*, 8 May, https://thewire.in/law/supreme-court-cji-gogoi-sexual-harassment-women (accessed 27 February 2020).
Yamunan, Sruthisagar (2018) "One of India's Most Controversial Judges Has Retired," *Quartz India*, 2 October, https://qz.com/india/1409917/dipak-misra-indias-controversial-chief-justice-retires/ (accessed 27 February 2020).
Yamunan, Sruthisagar, & Ipsita Chakravarty (2019) "Interview: 'I've Lost Everything. Financially, Mentally, Everything,' Says Ex-SC Staffer in CJI Case," *Scroll*, 9 May, https://scroll.in/article/922751/interview-ive-lost-everything-financially-mentally-everything-says-ex-sc-staffer-in-cji-case (accessed 27 February 2020).

Cases and statutes

Addl. District & Sessions Judge "X" v. High Court of M.P (2015) 4 SCC 91
ADM Jabalpur v. Shivkant Shukla (1976) 2 SCC 521
Almitra Patel v. Union of India (1998) 2 SCC 416
Central Public Information Officer v. Subash Chandra Agarwal, 2019 SCC OnLine SC 1459
Delhi Domestic Working Women's Forum v. Union of India (1994) 4 SCR Supp. 528
Indira Jaising v. Supreme Court of India, W.P. (C) No. 218 of 2003
Kesavananda Bharati Sripadagalvaru v. State of Kerala (1973) 4 SCC 225
Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295
Khatoon v. Bihar (1979) 3 SCR 169
Maneka Gandhi v. Union of India (1978) 1 SCC 248
M.C. Mehta v. Union of India (1997) 2 SCC 353
Munn v. Illinois, 94 US 113 (1876)
National Legal Service Authority v. Union of India (2014) 5 SCC 438
Okhla Factory Owners v. GNATCD, 108 (2002) DLT 517
Puttaswamy v. Union of India (2017) 10 SCC 1.
Puttaswamy v. Union of India (2019) 1 SCC 1
Ratlam v. Vardhichand (1981) 1 SCR 97 (1980)
Right to Information Act, Act No. 22 of 2005
State of Rajasthan v. Union of India (1977) 3 SCC 634
Supreme Court Advocates-on-Record Association v. Union of India (2016) 5 SCC 1
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
Unni Krishnan v. State of Andhra Pradesh (1993) 1 SCC 645
Vishaka v. State of Rajasthan, AIR 1997 SC 3011

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