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IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

CONTEMPT PETITION (Crl.) NO. 10 OF 2009

IN THE MATTER OF:

AMICUS CURIAE .....PETITIONER

VERSUS

PRASHANT BHUSHAN AND ANR. ...RESPONDENTS

INDEX OF PAPERS

S.N.	PARTICULARS	TRUE COPIES	COURT FEE
1.	WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1 ON ISSUE FRAMED IN ORDER OF 10.08.2020	.....	Nil
2.	**Annexure A to B**	.....	Nil
		TOTAL	

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ADVOCATE FOR THE RESPONDENT NO. 1

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WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1 ON ISSUE FRAMED IN ORDER OF 10.08.2020

1. This Hon'ble Court, vide order dated, 10.08.2020 has stated as under:

> *"Before reaching to any finding whether the statement made as to 'Corruption' would per se amount to Contempt of Court, the matter is required to be heard."*

2. Firstly, The respondent has stated in his affidavits as well in the explanation given to the court on 4.08.2020 that he had used the word corruption in a wide sense to include any act of impropriety other than merely financial corruption. Therefore, to examine whether imputing corruption to a judge would amount to per se contempt, one would first need to examine as to what the word corruption has been normally understood to include. The word corruption has been defined, discussed and elaborated in several critical documents such as the Prevention of Corruption Act, 1988, the UN Convention Against Corruption, in various judgments of this Hon'ble Court as well as British and American courts, Law Commission reports, etc. *Secondly*, it needs to be understood that discussion of corruption in the judiciary or

vis a vis a particular judge (as a facet of 'misbehavior') is necessary for the process of impeachment and removal of judges, this being a constitutional remedy. *Third*, allegations of corruption cannot be per se contempt because truth is a defense to contempt proceedings under S. 13 (b) of the Contempt of Courts Act, 1971. Various judgments, reports, and statement of judges have also discussed corruption in the judiciary. In this note, the respondent makes submissions on the issues mentioned above.

(I) What does corruption mean and include

Corruption under Prevention of Corruption Act, 1988

2. The Scheme of Prevention of Corruption Act, 1988, particularly Sections 2(d), 7, 8, 9, 11, & 13, makes it clear that an expansive definition is to be attributed to the meaning of corruption in public life.

3. **S. 2 (c) (iv)** of the Act defines **"public servant"** to include a judge. The section reads as follows:

> *"(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;"*

4. That **Section 7 (b)** defining gratification and **Section 7(d)** explaining the meaning of "*a motive or reward for doing*" make the parliamentary scheme extremely clear in so far as that corruption is not restricted to 'pecuniary gratifications' alone. Section 7 is reproduced as under:

> ***7. Public servant taking gratification other than legal remuneration in respect of an official act.***—*Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for*

himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than [1][three years] but which may extend to [2][seven years] and shall also be liable to fine.

5. **Section 11** further provides that if any Public Servant accepts or obtains or attempts to obtain any 'undue advantage' for improper consideration that also falls within the ambit of a corrupt act. Further, **Section 2(d)** defining Undue Advantage again clearly specifies that it is not restricted to pecuniary gain alone. The relevant Sections are reproduced as under:

Section 2(d): *"undue advantage" means any gratification whatever, other than legal remuneration.*

a. *Explanation.—For the purposes of this clause,—*
(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money
(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the

Government or the organisation, which he serves, to receive.]

11. Public servant obtaining [undue advantage], without consideration from person concerned in proceeding or business transacted by such public servant.—*Whoever, being a public servant, accepts or obtains or attempts to obtain for himself, or for any other person, any 13[undue advantage] without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the 14[official functions or public duty] of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.*

6. That corruption has been broadly defined under Prevention of Corruption Act. It includes more than just giving or receiving of pecuniary benefit. This has been so held in the case of **Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193** wherein this Hon'ble Court observed that the ambit of Sections 8 and 9 is wider than that of Section 13 and not restricted to pecuniary gratification or gratifications estimable in money as under:

56. .....<u>The offences under Section 13(1)(d) and the offences under Sections 8 and 9 of the Act are different and separate.</u>

Assuming, Section 13(1)(d)(i) covers public servants who obtain for "himself or for any other person" any valuable thing or pecuniary advantage by corrupt or illegal means, that would not mean that he would not fall within the scope of Sections 8 and 9. The ingredients are different. If a public servant accepts gratification for inducing any public servant to do or to forbear to do any official act, etc. then he would fall in the net of Sections 8 and 9. In Section 13(1)(d) it is not necessary to prove that any valuable thing or pecuniary advantage has been obtained for inducing any public servant.

57. Another difference is that Section 13(1)(d) envisages obtaining of any valuable thing or pecuniary advantage. On the other hand Sections 8 and 9 are much wider and envisage taking of "any gratification whatever". Explanation (b) of Section 7 is also relevant.

58. The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money. Thus, Sections 8 and 9 are wider than Section 13(1)(d) and clearly constitute different offences.

7. Sections 8, 9, & 13 are reproduced as under for reference:

8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.—

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act,

or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than [1][three years] but which may extend to [2][seven years] and shall also be liable to fine.

9. Taking gratification, for exercise of personal influence with public servant.—*Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than [1][three years] but which may extend to [2][seven years] and shall also be liable to fine.*

13. Criminal misconduct by a public servant*.—(1) A public servant is said to commit the offence of criminal misconduct,—*

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d)ifhe,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing

or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

United Nations Convention on Corruption

8. That in May, 2011, India ratified the United Nations Convention on Corruption which recognizes corruption in Judicial Systems, defines corruption as inclusive but not exhaustive of merely pecuniary corruption, obligates states to protect individuals, NGOs and Civil Society who exercise their freedom of speech (subject to reasonable restrictions) to tackle corruption, and does not provide contempt as a reasonable restriction in exercise of such freedom of speech to tackle corruption. This Hon'ble Court has in many cases (***Gramaphone Company of India Ltd. Vs Birendra Bahadur Pandey & Ors (1984 SCC (2) 534), Vishaka & Ors. Vs. State of Rajasthan (1997 6 SCC 241)*** held, that international conventions and norms may be accommodated in domestic law provided they do not run into conflict with Acts of Parliament. India is thus under an obligation to interpret domestic law in the light of its obligations under these conventions.

9. Clause 1 of Article 11 recognizes need to combat judicial corruption:

> ***Article 11. Measures relating to the judiciary and prosecution services***
>
> *1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the funda- mental principles of its legal system and without prejudice to judicial independ- ence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.*

10. Importantly, Article 13 casts a duty on the States to ensure effective public participation of individuals, NGOs, Civil Society in the fight against corruption and provides for their protection of freedom of speech as under:

> ***Article 13. Participation of society***
>
> *1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organiza- tions, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:*

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non- tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the re- porting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

11. Further, Chapter III on Criminalization and Law Enforcement provides for check on corruption over and above simply receiving pecuniary benefits i.e. a wide meaning is ascribed to definition of corruption and corrupt acts as under:

Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other meas- ures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19. Abuse of functions

Each State Party shall consider adopting such legislative and other meas- ures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Other definitions of corruption

12. ***Blacks Law Dictionary*** defines corruption as follows:

CORRUPTION. *Illegality; a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives. State v. Barnett, 60 Okl.Cr. 355, 69 P.2d 77, 87.*

An act done with an intent to give some advantage inconsistent with official duty and the rights of others. Johnson v. U. S., C.C.A.Alaska, 260 F. 783, 786.

The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. U. S. v. Johnson, C.C.Ga., 26 F. 682; Worsham v. Murchison, 66 Ga. 719; U. S. v. Edwards, C.C.Ala., 43 F. 67.

13. **Webster's Third New International Dictionary (1961)** defines 'corruption' as:

'inducement by means of improper considerations to commit a violation of duty'.

14. **Law Commission of India (Report No. 230)** dated 05.08.2009 on Reforms in the Judiciary, at page 20, states,

"Anti-corruption

1.33 Corruption in reference to public office has been defined as the abuse of power for purposes of private gain."

15. **Civil Law Convention on Corruption**, European Treaty Series - No. 174, Article 2, defines corruption as under:

Article 2 – Definition of corruption

For the purpose of this Convention, "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.
https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/174

Factum of corruption in Judiciary

16. The **Parliamentary report of Committee on Prevention of Corruption**, as early as in 1964 observed as under on the factum of corruption in Judiciary,

> *"we were informed by responsible persons including Vigilance and Special Police Establishment Officers that corruption exists in the lower ranks of the judiciary all over India and in some places it has spread to the higher ranks also. We were deeply distressed at this information. We, therefore, suggest that the Chief Justice of India in consultation with the Chief Justices of the High Courts should arrange for a thorough inquiry into the incidence of corruption among the judiciary, and evolve, in consultation with the Central and State Governments, proper measures to prevent and eliminate it. Perhaps the setting up of vigilance organisation under the direct control of the Chief Justice of every High Court coordinated by a Central Vigilance Officer under the Chief Justice of India may prove to be an appropriate method."*

17. This position has remained unchanged. In June, 2013, then Chief Justice of India, **Justice P. Sathasivam** observed as follows on corruption in the Judiciary in an interview to ***The Hindu***:

> *Q. During your tenure did you ever feel that corruption is a major issue in the judiciary? If so, do you have any solution and how would you deal with it?*
>
> *A. I should fairly admit that the judiciary is not untouched by corruption. When we take the oath as judge, we swear to be fair and impartial in all our judicial functions. However, on some occasions in the past, few judges have wilfully dishonoured the oath by adopting to corrupt practices. The solution for eliminating this disorder lies in the hands of the litigants. The litigants must take the responsibility for bringing into light such occurrence by making a grievance petition before the Chief Justice of respective High Courts and also to the Chief Justice of India. If a prima facie case is made out through the preliminary enquiry, then the judge should not feel hesitant to adopt the prescribed procedure under the mandate of Constitution.* A Copy of interview of Justice Sathasivam published in *The Hindu* on 30.06.2013 is annexed herewith and marked as **ANNEXURE-A (Pages No. 35 to 39) (https:// www.thehindu.com/ opinion/ interview/ judiciary-not-untouched-by-corruption/ article4866406.ece)**

18. Former **CJI Justice Bahrucha** is reported to have remarked that 20% of the Judges were corrupt. When a lawyer filed a petition in the

Rajasthan high court praying that either Justice Baharucha be asked to give names of corrupt judges or contempt action be inititaited against him, the High Court reportedly dismissed the case observing as regards prayer for contempt that,

> "*courts were not supposed to be too sensitive to stretch the law of contempt too far.*" https://www.indiatoday.in/magazine/indiascope/story/20020325-rajasthan-hc-dismisses-petition-relating-to-cji-bharucha-795646-2002-03-25 Indian Express: https://www.financialexpress.com/archive/judge-for-thyself/38086/

19. In an article published in ***Outlook* Magazine** on 17.10.2015, **Justice M. Katju** stated,

> "*Today my estimate is that about 50% or more of the higher judiciary (High Court and Supreme Court) has become corrupt.*"
>
> A copy of article by Justice Katju published in *Outlook* Magazine on 17.10.2015 is annexed herewith and marked as **ANNEXURE – B (Pages 40 to 45)** http://www.outlookindia.com/website/story/a-judiciary-beyond-redemption/295629s

LAW ON MEANING OF CORRUPTION AND CORRUPTION IN THE JUDICIARY

20. The malaise of corruption having inflicted the judiciary has been taken note of by the Supreme Court in the case of ***High Court of***

Judicature of Bombay v. ShirishkumarRangrao Patil, (1997) 6 SCC 339, wherein Justice K Ramaswamy observedas follows:

> *"16. Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stink of corruption. Corruption, thy name is depraved and degraded conduct. Dishonesty is thine true colour; thine corroding effect is deep and pervasive; spreads like lymph nodes, cancerous cells in the human body spreading as wild fire eating away the vital veins in the efficacy of public functions. It is a sad fact that corruption has its roots and ramifications in the society as a whole. In the widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office. The root of corruption is nepotism and apathy in control on narrow considerations which often extend passive protection to the corrupt officers. The source and succour for acceptability of the judgment to be correct, is upright conduct, character, absolute integrity and dispassionate adjudication as hallmarks. Corruption in judiciary cannot be committed without some members of the Bar becoming privy to the corrupt. The vigilant watch by the High Court, and many a time by the members of the Bar, is the sustaining stream to catch the corrupt and to deal with the situation appropriately. At the same time the High Court is the protector of the subordinate judiciary. Often some members of the Bar, in particular, in Muffasil Courts, attempt to take undue advantage of <u>The conduct displayed on and off the Bench becomes centre stage of</u>*

the judicial officer. Fallen standard of rectitude is the bane for lost faith of the people, tending to defeat the constitutional scheme of conferment of the powers of judicial review or decision according to law unless checks and corrective measures are applied and enforced. The conferment of exclusive power of judicial review on the judiciary may become a means to personal gain or advantage. The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection. What is most necessary is to root out the proclivity of the corrupt conduct rather than catch when the corrupt demands made and acceptance of illegal gratification.their long standing at the Bar and attempt to abuse their standing by bringing or attempting to bring about diverse forms of pressures and pinpricks on junior judicial officers or stubborn and stern and unbendable officers. If they remain unsuccessful, to achieve their nefarious purpose, some members of the Bar indulge in mud-slinging without any base, by sending repeated anonymous letters against the judicial officers questioning their performance/capacity/integrity. The High Court should, therefore, take care of the judicial officers and protect them from such unseeming attempts or pressures so as to

maintain their morale and independence and support the honest and upright officers."

21. ***H.M Seervai in Constitutional Law of India (At page 737)*** opines that given the cumbersome process of impeachment, interest of justice requires that there should public criticism of the conduct of the judge, if such conduct throws in the doubt is impartiality while adjudicating matters.

> "*"10.71 ….Scurrilous or abusive attacks on a judge would shake the public confidence, and would interfere with the administration of justice. But a judge who makes public pronouncements which throw a grave doubt on his impartiality, himself becomes an offender against the administration of justice. And since there is no way of setting such a judge right except by impeachment, a cumbrous procedure seldom resorted to, the interest of justice itself requires that there should be public criticism of the impropriety of marking such public pronouncement. A judge who makes extra judicial pronouncements which show that he lacks impartiality, departs from the line of conducted dictated by his office.*" (emphasis supplied)

22. In this vein, allegation of corruption per se cannot be contempt because the same pertains to criticism of a judge for a biased dispensation of justice and would in all cases require further investigation before such allegations are brushed aside at the threshold. In this context, it is pertinent to refer to the decision of the Supreme Court in the case of ***Hari Singh Nagra v Kapil Sibal (2010) 7 SCC 502*** wherein the Court was considering whether a

speech given by Mr Kapil Sibal, lamenting about the corruption in judiciary and failure of the Court to deal with it, would be contempt of Court. The Supreme Court, having regard to the fact that the said statement was made in the context of improvement of the legal field, found no contempt.

> "*12. A fair analysis of the message sent by Mr Sibal makes it clear that he was concerned with the public image of the legal community which according to him was at its nadir. He was of the view that influx of large numbers into the profession, deterioration of moral standards of the legal community, questionable integrity of some of those who were in the judiciary and the sheer economic cost of starting as a professional and sustaining oneself had contributed to these falling standards. He expressed his firm opinion that the judiciary despite the above, provided a glimmer of hope for the common man and though there were tainted Judges, the institution had not yet lost all credibility. He called upon all concerned to unite together to refurbish the image of the legal fraternity.*
>
> *15. He was of the opinion that lawyers must refrain from shouting at each other, speaking in anger, threatening Judges, threatening colleagues and the like and expressed his strong feeling by stating that procedures must be devised to ensure adherence to these norms. He was of the further opinion that entry into the profession should be limited to those who passed an examination which should be conducted by the Bar Council of India.*

Having addressed the drawbacks then prevailing in the legal profession, he proceeded to discuss the malaise affecting the judiciary. Having practised in the Supreme Court for a pretty long time, he perceived that Judges had started disciplining lawyers. He, therefore, mentioned that Judges themselves needed to be disciplined. In his message, he noted with pain that the judiciary had failed in its efforts to eradicate the phenomenon of corruption which included receiving monetary benefits for judicial pronouncements, rendering blatantly dishonest judgments, kowtowing with political personalities and favouring the Government and thereby losing sense of objectivity.

13. In order to make out his point Mr Sibal first of all concentrated on the plight of junior members of the Bar. After emphasising that senior colleagues owe it to the profession to bring up the Junior Bar and that the junior members of the Bar must have access to the chambers of the senior lawyers, he appealed to the members of the Bar to devise a voluntary access scheme in terms of which the Supreme Court Bar Association would rotate junior members of the Bar amongst the chambers of senior lawyers who voluntarily want to participate in the scheme

14. Mr Sibal was of the view that access should be provided to at least one if not two junior members of the Bar to each senior on the basis of rotation for at least six months which according to him was likely to give the

junior members the advantage of having worked with a variety of seniors. He also emphasised that a minimum payment schedule to the junior members of the Bar must be part of this scheme. He called upon those concerned to draw up a code of conduct applicable to the members of the Bar which would lay down norms not only in relation to their conduct with each other but also with reference to their conduct qua the Bench.

16. Mr Sibal had noticed that the legal community was assailing and belittling the judicial system publicly, which was harmful. He, therefore, urged the legal community to desist from criticising the judicial system publicly and asked them to come forward with proposed legislation to deal with this issue and advised a committee to be set up by the Supreme Court Bar Association to look into the modalities of bringing about such legislation in the context of the then prevalent constitutional framework which according to him provided complete protection to the judiciary.

17. He also emphasised in his message the necessity of legal education by the legal fraternity in cooperation with institutions providing legal education in India and expressed a point of view that funding should be provided for studies to be conducted in such aspects of the law as required urgent attention. Mr Sibal further stressed on the necessity of having greater interaction between the various Bar Associations in the country to exchange information which in turn would enable all

concerned to attend urgently to the needs of the members of the legal profession.

18. As mentioned earlier, only a part of the message was published in the newspaper wherein sentences were torn out of context and an impression was given that Mr Sibal had made a frontal attack on the judiciary. A fair reading of the message quoted above makes it explicit that the sending and/or publication of the message in Mehfil did not scandalise or tend to scandalise, or lower or tend to lower the authority of any court nor prejudiced, or interfered or tended to interfere with the due course of any judicial proceedings; or interfered or tended to interfere with or obstructed or tended to obstruct, the administration of justice in any other manner, within the meaning of "criminal contempt" as defined in Section 2(c) of the Contempt of Courts Act, 1971." (emphasis supplied)

23. ***In Re: Publication made in the "Times of India" and "The Hindu", 2012 SCC Online Cal 12796***, a speech by the Chief Minister where she stated that corruption has made inroads into the judiciary and democracy as a whole, was held to not amount to contempt of court. The court held:

"*22. We must therefore test the imputations in question in the backdrop of the entire speech to satisfy ourselves as to whether contempt proceedings ought to be initiated. The speech essentially deals with the impact of corruption on the role of the various institutions including judiciary. It does not*

appear to be promoted by the desire to denigrate the institution in the eyes of society. It is the nature of an exasperated lament of the speaker to her perceived erosion of morals in every public institution before an august gathering of legislators and other dignitaries in a seminar organized by West Bengal Legislative Assembly. Under such circumstances, to call upon the speaker to explain as to whether she had any malafide intention of denigrating the judiciary, when no such intention ex facie appears from a plan reading of the transcript of her entire speech, would amount to fishing and roving enquiry which we are unwilling to embark upon."

24. This extract is taken from ***United States v. Aguilar 515 U.S. 593 (1995)*** (https://www.law.cornell.edu/supct/html/94-270.ZS.html)

Justice Scalia:

"Finally, respondent posits that the phrase " `corruptly . . . endeavors to influence, obstruct, or impede' " "may be unconstitutionally vague," in that it fails to provide sufficient notice that lying to potential grand jury witnesses in an effort to thwart a grand jury investigation is proscribed. Brief for Respondent 22, n. 13. Statutory language need not be colloquial, however, and the term "corruptly" in criminal laws has a long standing and well accepted meaning. It denotes "[a]n act done with an intent to give some advantage inconsistent with official duty and the rights of others. . . . ***It includes bribery but is more comprehensive;*** *because an act may be corruptly done though the advantage to be derived from it be not offered by another."* United States *v.* Ogle, *613 F. 2d 233, 238 (CA10) (internal quotation marks omitted), cert.*

denied, 449 U.S. 825 (1980). See also Ballentine's Law Dictionary 276 (3d ed. 1969); Black's Law Dictionary 345 (6th ed. 1990). As the District Court here instructed the jury:

"An act is done corruptly if it's done voluntarily and intentionally to bring about either an unlawful result or a lawful result by some unlawful method, with a hope or expectation of either financial gain or other benefit to oneself or a benefit of another person."

Moreover, in the context of obstructing jury proceedings, any claim of ignorance of wrongdoing is incredible. Acts specifically intended to "influence, obstruct, or impede, the due administration of justice" are obviously wrongful, just as they are necessarily "corrupt." See Ogle, supra, *at 239;* United States *v.* North, *910 F. 2d 843, 941 (Silberman, J., concurring in part and dissenting in part), modified, 920 F. 2d 940 (CADC 1990);* United States *v.* Reeves, *752 F. 2d 995, 999 (CA5), cert. denied, 474 U.S. 834 (1985).*

25. This extract is taken from **State of A.P. v. V. Vasudeva Rao, (2004) 9 SCC 319 : 2004 SCC (Cri) 968**

at page 323

"3. Corruption as such has reached dangerous heights and dangerous potentialities. The word "corruption" has a ***wide connotation*** *and embraces almost all the spheres of our day-to-day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations. Avarice is a common frailty of mankind, and while Robert Walpole's*

observation that every man has a price, may be a little generalized, yet it cannot be gainsaid that it is not far from the truth. Burke cautioned "Among a people generally corrupt, liberty cannot last long."

(II) ALLEGATIONS OF CORRUPTION IN IMPEACHMENT PROCEEDINGS UNDER THE CONSTITUTION AND THE JUDGES INQUIRY ACT

26. H.M Seervai in Constitutional Law of India (At page 780) has analyzed the defense of truth and opined that such a defense has to be made available in order for operation of Articles 124(4) and 125(5) of the Constitution of India (relating to removal of judges), otherwise the said provisions would be rendered unworkable. He further opines that if this is the proposition, then the sequitur is that allegation of corruption per se cannot be contempt.

"10.166 (l) This raises the question whether truth is a defense to an alleged contempt of Court if a person, or Press allege and publish proofs of the misbehavior of a judge. The Judgment of the Supreme Court are not in a tidy state. But a careful analysis of our Supreme Court judgments, and judgments of English and Australian Courts, shows that truth is, must be a complete defense to allegation of bribery, corruption, bias and other misbehavior of judge. To hold otherwise would nullify the provisions of Article 124(4) and (5) in a practical sense, for few people would expose themselves to being committed for contempt in order to bring a corrupt judge to book. Secondly, as to hold is to put the judges above

the Constitution which expressly provides for the removal of judge for proved misbehavior."

"10.83 Biographies of eminent lawyers and judges contain comments on judicial misbehavior or shocking bias of judges in the discharge of their judicial duties; and history has branded a number of judges as infamous. But no one has thought of hauling up those authors for contempt. That some judges will be biased at times, that some judges may be corrupt or may misbehave does not shake the confidence of the public in respect of judge generally. The provision in our constitution for the removal of a judge for proved misbehavior shows that the framers were aware that in a few cases human infirmity will lead judges to be corrupt or to misbehave.

27. **Article 124(4)** states that a judge can be removed by order of President passed after an address by each House of Parliament, for removal of the judge on the ground of proved misbehavior or incapacity.

124(5) provides that Parliament may by law regulate the procedure for presentation of an address and for "an investigation and proof of misbehavior or incapacity of a judge".

28. Without the allegations (of corruption) against a judge being documented and investigated in the manner further provided under

the Judges Inquiry Act, to establish the veracity, the allegation per se cannot amount to contempt in so far as it would nullify the constitutional provisions and statutory procedures for impeachment of a judge on grounds of misbehavior including corruption.

Section 3 of the Judges Inquiry Act provides as under:

Investigation into misbehaviour or incapacity of Judge by Committee.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case maybe, the Chairman shall keep the motion pending and constitute, as soon as may be, for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom—

(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court;

(b) one shall be chosen from among the Chief Justices of the High Courts, and

(c) one shall be a person who is, in the opinion of, the Speaker or, as the case may be, the Chairman, a distinguished jurist:

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a statement of the grounds on which each such charge is based shall be

communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Committee."

29. The cases of Justice Dinakaran and Justice Soumitra Sen are illustrations of how allegations of corruption made against them, were investigated under the constitutional machinery and their removal recommended, following which however, they both resigned from office.

30. In the case of Justice Dinakaran, who was the Chief Justice of the Karnataka High Court at the relevant time, senior members of the Bar such as Mr. Fali Nariman, Mr. Jethmalanai and Mr. Shanti Bhushan had made representations to the collegiums against his elevation to the Supreme Court which included details of serious acts of corruption and land grab by him. A motion for his removal was admitted by the Rajya Sabha Chairman who constituted a committee to examine the allegations. The motion seeking his removal became infructuous on Justice Dinakaran's resignation.

31. Similarly, Justice Soumitra Sen of the Calcutta High Court was accused of corruption in the misappropriation of several lakhs when he was appointed as receiver by the Court. Chief Justice Balakrishnan acting upon the report of in-house inquiry panel, wrote to the Prime Minister seeking his removal. The in-house inquiry committee constituted by the Chairperson of the Rajya Sabha, found his guilty of misbehaviour on the charges of corruption. Following the motion being presented in the Lok Sabha, Justice Sen tendered his resignation.

32. In the case of ***C. Ravichandran Iyer vs Justice A.M. Bhattacharjee & Ors, 1995 SCC (5) 457***, this Hon'ble Court had indicated that members of the bar and others should not speak in public but use only the inhouse procedure which has been devised for receiving complaints against judges . It is however now clear that the internal procedure is inadequate and ineffective; and the impeachment procedure is too complex and political. Therefore, at present there is no effective procedure to deal with corruption in the judiciary other than the public and particularly through lawyers who know from experience the extent of corruption in the judiciary or vis a vis a particular judge. Any exercise of alleging corruption in the public interest must therefore squarely lie within the domain of freedom of speech under Article 19 (1) (a) and the duty of lawyers in particular to the institution of the judiciary.

33. ***H.M Seervai in Constitutional Law of India (At page 742)*** also discusses why, in any case, there cannot be any contempt of court with respect to comments made regarding a retired judge.

> *10.82 As to para 10.77 the proposition that there could be contempt of court of a retired judge could be supportedon the special facts of Gupta Casse(C.KDaphtary v. O.P Gupta). But the general proposition that there can be contempt of court by scandalizing a retired judge because it would shake the confidence of people in the administration of justice is too wide. Scurrilous or abusive language falsely attributing dishonesty, bias, or corruption to a sitting judge shakes the confidence of people, because no one would feel safe in appearing before him. And punishing the contemnor is a mode of establishing to the public that the allegations made are false and/or insulting. None of these considerations applies to*

a retired judge, because he has ceased to be a part of the administration of justice. Further, the retired judge is not without a remedy. A civil action or a criminal prosecutionfor libel is available to him.

(III) TRUTH AS A DEFENCE IN CONTEMPT

34. For another reason, allegations of corruption cannot be per se contempt. It is because truth is a defense to contempt proceedings. Given that the defense/ justification of truth is a statutory right (approved by the Supreme Court) available to an alleged contemnor, the Court cannot hold the alleged contemnor guilty of contempt 'per se' in case the contemnor invokes the said defense/truth. When such truth/defense is invoked, the Court, to Court to hold the alleged contemnor guilty of contempt, the Court will have to necessarily return a finding that (a) such defence is not in public interest; and (b) the request for invoking such defence is not bona-fide.

35. **In *Subramanian Swamy v. Arun Shourie*, (2014) 12 SCC 344** a Constitution Bench of the Supreme Court recognised the availability of defence of truth in contempt proceedings. The relevant portion of the judgment is as follows:

"10.2. Whether truth can be pleaded as defence in contempt proceedings?

11. We shall take up the second question first. Some of the common law countries provide that truth could be a defence if the comment was also for the public benefit. Long back the Privy Council in Ambard held that reasoned or legitimate

criticism of judges or courts is not contempt of court. The Privy Council held: (AC P.335)

"The path of criticism is a public way; the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

12. In Wills the High Court of Australia suggested that truth could be a defence if the comment was also for the public benefit. It said,

"...The revelation of truth - at all events when its revelation is for the public benefit - and the making of a fair criticism based on fact do not amount to a contempt of court though the truth revealed or the criticism made is such as to deprive the court or judge of public confidence...".

14. Section 13(b), now expressly provides that truth can be valid defense in contempt proceedings. Section 13, which has two clauses (a) and (b), now reads as follows:

"13. Contempts not punishable in certain cases- Notwithstanding anything contained in any law for the time being in force,--

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends 9 substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide."

The Court may now permit truth as a defence if two things are satisfied, viz., (i) it is in public interest and (ii) the request for invoking said defence is bona fide.

15. A two Judge Bench of this Court in R.K. Jain had an occasion to consider Section 13 of the 1971 Act, as substituted by Act 6 of 2006. In para 39 (page 311 of the report), the Court said (SCC P.311)

".....The substituted Section 13 represents an important legislative recognition of one of the fundamentals of our value system i.e. truth. The amended section enables the court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. In our view, if a speech or article, editorial, etc. contains something which appears to be contemptuous and this Court or the High Court is called upon to initiate proceedings under the Act and Articles 129 and 215 of the Constitution, the truth should ordinarily be allowed as a defence unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice. Since, the petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the respondent has presented a distorted version of the facts, there is no warrant for discarding the respondent's assertion that whatever he has written is based

on true facts and the sole object of writing the editorial was to enable the authorities concerned to take corrective/remedial measures."

Thus, the two Judge Bench has held that the amended section enables the Court to permit justification by truth as a valid defence in any contempt proceedings if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. We approve the view of the two Judge Bench in R.K. Jain. Nothing further needs to be considered with regard to second question since the amendment in contempt law has effectively rendered this question redundant."

36. In summary, the respondent had made the following propositions:

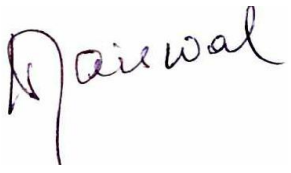
a. **Corruption in public life has a wide and expansive definition.** Corruption is not restricted to pecuniary gratification alone but various instruments identify its particular forms such as bribery, embezzlement, theft, fraud, extortion, abuse of discretion, favoritism, nepotism, clientelism, conduct creating or exploiting conflicting interests. The instruments include the Prevention of Corruption Act, 1988 which defines a public servant to include judges, the United National Convention against Corruption which recognizes corruption in Judicial Systems and obligates states to protect individuals, NGOs and Civil Society who exercise their freedom of speech (subject to reasonable restrictions) to tackle corruption and does not provide contempt as a reasonable restriction in exercise of such freedom of speech to tackle corruption.

b. **The factum of corruption** in the judiciary has been stated in Parliamentary Committee reports on Prevention of Corruption, has been commented upon by former judges of this Hon'ble Court, has been taken note of in various judgements of this Hon'ble court and High Courts in the country and courts in foreign jurisdictions and commented upon by Constitutional experts.

c. Allegations of corruption and their investigation become essential in impeachment proceedings under the Constitution and the Judges Inquiry Act. Therefore the **allegation of corruption per se cannot be contempt.**

d. Allegations of corruption cannot be per se contempt because **truth is a defense to contempt proceedings**. Given that the defense/ justification of truth is a statutory right (approved by the Supreme Court) available to an alleged contemnor, the Court cannot hold the alleged contemnor guilty of contempt 'per se' in case the contemnor invokes the said defense/truth.

Submitted by



Ms. KAMINI JAISWAL
ADVOCATE FOR THE RESPONDENT NO. 1

Filed On: 16.08.2020

ANNEXURE -A

INTERVIEW

'Judiciary not untouched by corruption'

Justice P. Sathasivam, who takes over as the next Chief Justice of India on July 19, told *The Hindu* on June 28 that a few members of the judiciary have dishonoured their oath of office but that the solution lies in the hands of litigants.

Sir, you are going to take over as the Chief Justice of India shortly. From humble beginnings you have risen to the top post in the judiciary. You will be the first Judge from Tamil Nadu to adorn this highest office after Justice Patanjali Sastri, who represented the entire Madras Presidency. Are you satisfied with your overall performance?

I am very satisfied and in fact proud [of reaching] this position. [I am] from a farmer's family. As a practising lawyer, I was mediocre but I worked hard as a Law Officer of the State government and on the private side. After becoming a Judge, I maintained a low profile in other activities and concentrated only on judicial work. I am happy that I am the first person from Tamil Nadu in this high office. Though my period is short, I hope that I will fulfil the expectations of our countrymen and the people of Tamil Nadu, in particular.

What will your priorities be?

[With] more awareness among our citizens, various fresh legislation like Domestic Violence Act, Dowry Prohibition Act, Juvenile Justice Act, Right of Children to Free and Compulsory Education Act, 2009, Section 138 cases (under the Negotiable Instruments Act), more cases are being filed and more litigations are bound to come before Courts.

We can bring down the arrears by creation of separate courts for offences against women and children; special Magistrate Courts exclusively for Section 138 of the Negotiable Instruments Act cases — the courts have been created, the numbers to be increased — and

creation of Evening Courts and Holiday Courts for certain types of cases particularly for matrimonial matters; five or 10-year-old cases [will] be identified and entrusted to one court exclusively; fix[ed] time frame for completion of pleadings, argument by counsel: filling up all posts of Judicial Officers and supporting staff then and there and better utilisation of Alternate Dispute Resolution methods. At the subordinate court level, at the High Court and Supreme Court levels, filling up of vacancies are to be done in a time bound manner.

You have a short tenure of nine months. Are you confident that you can do something concrete for the judiciary?

All Judicial Officers from junior division to the level of Supreme Court must adhere to punctuality. All must utilise the full court timings for disposal of cases.

In the Supreme Court, more referred matters are pending. After identifying those matters, appropriate Benches will be constituted. By this, more cases from the Supreme Court and High Court would be cleared. Selection of judges must be on merit. At the same time, it must be ensured that all sections of people (OBC, SC, ST and minority communities) are duly represented if they satisfy the required norms.

There is much criticism about the procedure for appointment of judges. There is no transparency in the collegium system. The Union Law & Justice Minister, Kapil Sibal, recently said this procedure should be changed to give more say to the Executive. Do you subscribe to this view? Will the setting up of a National Judicial Commission solve the problem?

According to me, the present collegium system works well. The current Judicial Appointment mechanism, [being followed] since 1993, is based on two Constitutional rulings of the Supreme Court, viz. 1993 and 1998.

The appointment of Judges to the Supreme Court and the High Courts is made by the President and is, therefore, ultimately an executive act. The judiciary's role is limited to making recommendations. The power to make recommendations is not absolute. It is always open to the Government to seek reconsideration of the recommendation made by the Collegium, for strong reasons or adverse material in their possession. In fact, in the recent past, the Government has exercised its power to keep a check and prevent the appointment of persons considered to be unsuitable.

In view of [this], it cannot be claimed that the government (State and Central) has no role in the appointment of judges and the setting up of a National Judicial Commission will not solve the problem. On the other hand, if the time schedule is strictly followed by all the authorities, according to me, the present system will solve the problem.

Is there any move to appoint a senior lawyer as Supreme Court Judge. Till now only three lawyers have been elevated to the Supreme Court bench.

We may consider appointing one from the Bar to the Supreme Court. The Supreme Court Bar Association President M.N. Krishnamani has requested that some senior lawyers may be considered for appointment as High Court Judges. We may consider this request also.

Do you feel there is a need for creating Supreme Court Benches in four regions and a Constitutional Court in the capital?

This issue came up before the Full Court on seven occasions. It was also discussed twice in the All India Chief Justices Conference. On all these occasions, the Full Court of the Supreme Court and Chief Justices Conference did not favour the creation of regional Benches. Further, because of the development of Information Technology, computers, e-filing, online facilities, there is no difficulty in reaching

the Supreme Court through these methods. Even among the regions, there may not be any acceptable place/State capital for location of the regional Benches.

Sir, Honour killings are taking place in many parts of the country. Do you feel that a separate law is necessary to deal with such crimes?

The spate of honour killings is a glaring illustration of culture crimes, which has outraged the country over many decades. The root cause of the crime is the thriving caste system in India. It is unfortunate that women are most frequently the victims in this feudal practice. It is time to stamp out this barbaric, uncivilized behaviour, which is a disgrace on our nation.

A special legislation in this regard will certainly be a welcome effort, as it will help in generating additional protection to these victims. I say this because; though the prevailing penal law punishes the act of homicide it does not directly punishes the members gathering for such purpose.

During your tenure did you ever feel that corruption is a major issue in the judiciary? If so, do you have any solution and how would you deal with it?

I should fairly admit that the judiciary is not untouched by corruption. When we take the oath as judge, we swear to be fair and impartial in all our judicial functions. However, on some occasions in the past, few judges have wilfully dishonoured the oath by adopting to corrupt practices. The solution for eliminating this disorder lies in the hands of the litigants. The litigants must take the responsibility for bringing into light such occurrence by making a grievance petition before the Chief Justice of respective High Courts and also to the Chief Justice of India. If a prima facie case is made out through the preliminary enquiry, then the judge should not feel hesitant to adopt the prescribed procedure under the mandate of Constitution.

There is a provision in the Judicial Accountability Bill to prevent judges from making oral observations and the former Chief Justice of India, S.H. Kapadia, had expressed certain reservations about it. Do you think the Executive is trying to curb the independence of the judiciary by incorporating such a provision?

Full details of the proposed Judicial Accountability Bill are not known. However, I strongly oppose the Bill. There cannot be any control in the administration of justice. In other words, the executive cannot curb the independence of judiciary by bringing any provision to interfere with court proceedings. No doubt, no court is expected to make unnecessary comments de hors to the issue before it.

Your views on what is described as "judicial activism" or "overreach"?

There are checks and balances and broad separation of powers under the Constitution. Each organ of the State, i.e. the legislature, the executive and the judiciary, must have respect for the others and not encroach into each other's domain.

However, the doctrine of separation of powers cannot curtail the power of judicial review conferred on the constitutional Courts especially in situations where the fundamental rights are sought to be abrogated or abridged under the garb of these doctrines. Violation of Fundamental Rights cannot be immunised from judicial scrutiny under Article 226 or under Article 32 of the Constitution on the touchstone of doctrine of separation of powers between the Legislature, Executive and the Judiciary.

https://www.thehindu.com/ opinion/ interview/ judiciary-not-untouched-by-corruption/ article4866406.ece

Rajiwal

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ANNEXURE – B

OPINION

A Judiciary Beyond Redemption

What difference will it make whether we have the NJAC or Collegium? So far as the public is concerned, is it not a difference between Tweedledum and Tweedledee?

I have been asked my opinion by several people about the recent verdict of the Supreme Court quashing the NJAC Constitutional Amendment Act. The verdict only restores the Collegium system created by Judges themselves in the second and third Judges cases, which, apart from having no Constitutional basis whatsoever (there is no mention of any Collegium in Article 124 of the Constitution), has set up a mechanism by which Judges appoint Judges.

This is a system totally lacking in transparency, as Justice Chalameshwar, the sole dissenting Judge has pointed out in his judgment, and as had earlier been said by Lord Cooke in his article 'Where Angels Fear To Tread' in which he called it a 'sleight of hand'(see the book 'Supreme but not Infallible'). Also by Justice Krishna Iyer, Justice Ruma Pal (who said the Collegium decisions were often reached by 'trade-offs', i.e.' You agree to my man, and I will agree to yours') and which often resulted in undeserving persons being appointed.

In fact some of the undeserving persons who were appointed as Supreme Court Judges on recommendation of the Collegium, or were recommended by the Collegium but found in the nick of time having committed serious improprieties and so not appointed, were

mentioned by name by some counsels during the arguments before the Supreme Court.

My own opinion is that it matters little whether we have the NJAC or the Collegium system or any other system, as the Indian judiciary is beyond redemption.

Consider the facts. In Allahabad High Court (my parent High Court) criminal appeals filed in the High Court in 1985 are coming up for hearing today, that is, after 30 years of being filed. The lawyer who filed it is usually dead, and the accused in the criminal case is also often dead or untraceable. The same is the position regarding civil appeals. Is this a judiciary or a joke?

I am informed by Allahabad High Court lawyers that if a case is adjourned after the first date (because the opposite party or government counsel wants to file a reply or for some other reason) the case will never be listed again unless huge bribes are given in the High Court Registry. Similar may be the position in many other High Courts.

The present Chief Justice of India, Justice (HL) Dattu, said soon after being appointed CJI last year that cases in the Supreme Court would ordinarily be disposed off in 2 years, and criminal trials in 5 years. Almost every CJI makes similar tall claims. Justice (RM) Lodha, a former CJI made the nonsensical remark that Judges will work 365 days in a year.

There are 33 million cases pending in the law courts of India, and by

one estimate even if no new case is instituted it will take 360 years to clear the arrears. While many people talk of clearing the arrears, no one is really serious about it. Arrears, including arrears in the Supreme Court, have kept mounting.

When I was in the Supreme Court a bench of which I was a member heard a case in 2007, Moses Wilson vs. Kasturiba (see online) which had been instituted in 1947, that is after 60 years of its institution.

Another case, Rajendra Singh (Dead) thru. Lrs. & Ors. Vs. Prem Mai, which was decided by a Bench of the Supreme Court, of which I was a member, took 50 years to decide finally, since it was initiated in 1957 in the trial court, and was finally decided on appeal in 2007 by the Supreme Court.

This decision observed:

> “We may quote a passage from the novel 'Bleak House' written in Charles Dickens' inimitable style:

Jarndyce vs. Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises.

Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made

parties in Jarndyce vs. Jarndyce, without knowing how or why; whole families have inherited legendry hatreds with the suit. The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce vs. Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality.

There are not three Jarndyces left upon the earth perhaps, since old Tom Jarndyce in despair blew his brains out at a coffee house in Chancery Lane; but Jarndyce vs. Jarndyce still drags its dreary length before the court, perennially hopeless.

Is this not descriptive of the situation prevailing in India today?"

I am informed that in the Bombay High Court original suits have been pending for 25 years or more. The situation is like that in the case Jarndyce vs. Jarndyce depicted at the beginning of Charles Dickens' novel ' Bleak House '.

I doubt whether the lawyer community seriously wants any reform, and as for Supreme Court Judges they mostly have a term of only a few years to seriously attempt it (despite the tall talk of almost every CJI).

A person who gets involved in litigation is usually weeping and crying after some time as date after date (tareekh par tareekh) is given by the Court but the case is not heard.

The Allahabad High Court had set a norm that no judge of the subordinate judiciary should have at one time more than 300 cases pending before him. When I was a Judge of the Allahabad High Court a judge of the U.P. subordinate judiciary (the CJM Kanpur Nagar) came to meet me, and I asked him how many cases were pending in his court alone. He said 30,000. Another subordinate judiciary judge (CJM Ghaziabad) told me he had 21,000. Yet another said 15,000. Now if a man can carry 100 pounds weight but an elephant is put on his head what will happen? He will collapse. And that is precisely what has happened to the Indian judiciary.

And this is apart from the massive corruption which has crept into the Indian judiciary.

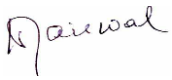
When I started law practice in the Allahabad High Court in 1971 there was no corrupt judge in the High Court, and perhaps in no High Court in India nor in the Supreme Court (though corruption had started in the lower judiciary).

Today my estimate is that about 50% or more of the higher judiciary (High Court and Supreme Court) has become corrupt. Shanti Bhushan, a very senior lawyer of the Supreme Court, and former Union law Minister, had filed an affidavit in the Supreme Court several years back stating that half of the previous 16 Chief Justices of India were definitely corrupt (he named them in a sealed envelope which he gave to the Court), and he was uncertain about 2 more. Since then more Chief Justices of India who retired had serious allegations of corruption against them.

What difference then will it make whether we have the NJAC or Collegium? So far as the public is concerned, is it not a difference between Tweedledum and Tweedledee?

Justice Markandey Katju is a former Judge of the Supreme Court.

http://www.outlookindia.com/website/story/a-judiciary-beyond-redemption/295629s



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