

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

CrI.M.P. NO. _____ OF 2020

IN

SUO MOTU CONTEMPT PETITION (CRL.) NO. 1 OF 2020

IN THE MATTER OF:

ARUNA ROY & ORS

...Applicants/ Proposed Respondents

AND IN THE MATTER OF:

IN RE. PRASHANT BHUSHAN & ANR

...Alleged Contemnors

CrIIMP. No. _____ of 2020 - APPLICATION FOR

IMPLEADMENT/INTERVENTION

WITH

**CrIIMP. No. _____ of 2020 – APPLICATION FOR EXEMPTION
FROM FILING A DULY ATTESTED AFFIDAVIT**

PAPER BOOK

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ADVOCATE FOR APPLICANTS:

Mr. PRASANNA S.

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**IN THE SUPREME COURT OF INDIA
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Crl.M.P. NO. _____ OF 2020

IN

SUO MOTU CONTEMPT PETITION (CRL.) NO. 1 OF 2020

IN THE MATTER OF:

1. ARUNA ROY

2. JAYATI GHOSH

3. SHANTHA SINHA

4. E A S SARMA

5. P. SAINATH

6. TM KRISHNA

7. JAGDEEP S. CHHOKAR

8. ANJALI BHARDWAJ

9. PRABHAT PATNAIK

10.BEZWADA WILSON

11.NIKHIL DEY

12.DEB MUKHARJI

13.SANGAYYA RACHAYYA HIREMATH

14.PAUL DIVAKAR NAMALA

15.WAJAHAT HABIBULLAH

16.SYEDA HAMEED

...INTERVENTION APPLICANTS/PROPOSED
RESPONDENTS/INTERVENORS

AND IN THE MATTER OF:

IN RE PRASHANT BHUSHAN & ANR.

... ALLEGED CONTEMNORS

APPLICATION FOR IMPLEADMENT/INTERVENTION

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF

THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE APPLICANTS ABOVE
MENTIONED

MOST RESPECTFULLY SHOWETH:

1. The Applicants are citizens of India. The people of India declared in the Preamble of the Constitution, which they gave unto themselves, their resolve to secure to all the citizens liberty of thought and expression. This resolve is reflected as a fundamental right of a citizen in Article 19(1)(a)

found in part III of the Constitution. The Applicants herein contend that the initiation of the instant contempt proceedings against the Alleged Contemnor No.1 Mr. Prashant Bhushan for expression of an opinion relating to the functioning of this Hon'ble Court, that a reasonable person can legitimately hold, is manifestly unjust and unconstitutional for violation of rights under Article 19(1)(a) of the Constitution – not just of the Alleged Contemnor Mr. Bhushan, but also of the wider public – insofar as it causes a chilling effect on the exercise of the right to free expression. The proper functioning and administration of courts, especially the higher judiciary, is crucial to maintain the Rule of Law and to protect and enforce the Fundamental Rights of the people guaranteed under our Constitution. The order of this Hon'ble Court dated 22.07.2020, issuing notice on the Suo Motu Contempt proceedings to the Attorney General for India and to the Alleged Contemnor Mr. Prashant Bhushan is annexed herewith and marked as **ANNEXURE-A-1 (from Page 30 – 31)**

2. The Applicants herein are members of civil society of varying backgrounds of fields of work. They are interested in the administration of justice and independent judiciary, and are of the considered view that the instant contempt proceedings would stifle the right of free speech and expression of not just the Alleged Contemnor No.1 but also of many citizens of this country. This Application for Impleadment/Intervention is filed in order to assist this Hon'ble Court on the questions of law and fact that arise in the instant case. This Application is an earnest and *bona-fide* attempt to sustain the perception & tradition of this Hon'ble Court as a progressive, deliberative and democratic institution.
3. This Hon'ble Court in *Indirect Tax Practitioners Association v. R.K. Jain* (2010) 8 SCC 281, observed that

“Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties

gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons. Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution.”;

and further quoted in approval the observations in *Baradakanta Mishra v. Registrar of Orissa High Court* (1974) 1 SCC374, that

“We are not subjects of a king but citizens of a republic and a blanket ban through the contempt power, stifling criticism of a strategic institution, namely, administration of Justice, thus forbidding the right to argue for reform of the judicial process and to comment on the performance of the judicial personnel through outspoken or marginally excessive criticism of the instrumentalities of law and justice, may be a tall order. For, change through free speech is basic to our democracy, and to prevent change through criticism is to petrify the organs of democratic Government. The judicial instrument is no exception. To cite vintage rulings of English Courts and to bow to decisions of British Indian days as absolutes is to ignore the law of all laws that the rule of law must keep pace with the Rule of life.” (Emphasis Supplied)

4. Brief profiles of the Applicants herein is as follows.

- i. That the Applicant no. 1, Aruna Roy, is a social & democratic activist. She was a part of the Indian Administrative Services from 1968 to 1975. She resigned to work directly with people not merely for their rights to access services, but to claim the constitutional rights of equality and justice. Led by Aruna Roy in 1987, after two intense local struggles for land and minimum wages, the workers and peasants formed the Mazdoor Kisan Shakti Sangathan in 1990. The MKSS and its collective campaigning helped ensure the passage of the Right to Information (RTI) Law and National Rural Employment Guarantee Act (NREGA, now MGNREGA) by the Indian Parliament in 2005. From 2004 – 2006, she was a member of the National Advisory Council (NAC), set up by the UPA Government, chaired by Sonia Gandhi. She joined the second NAC set up in 2010, as a member from 2010-2013. Apart from her

involvement with campaigns for the rights to information and work she has spoken out against attacks on religious minorities and the right to free speech and expression. She was a member of the ‘Concerned Citizens Tribunal’, which investigated the organized violence and killing of innocent people in the state of Gujarat, India in 2002. She has published extensively on the rights to information, right to work, civil liberties, minority rights, free speech and the right to dissent.

- ii. That the Applicant no. 2, Jayati Ghosh, is Professor of Economics at Jawaharlal Nehru University, New Delhi. Her research areas include globalization, international trade and finance, employment patterns, macroeconomic policy, gender issues, poverty and inequality. She has authored and/or edited 18 books and nearly 200 scholarly articles, most recently *Informal Women Workers in the Global South* (Routledge, forthcoming 2020); *Demonetization Decoded: A critique of India’s monetary experiment* (with CP Chandrasekhar and Prabhat Patnaik, Routledge 2017); the *Elgar Handbook of Alternative Theories of Economic Development* (co-edited with Erik Reinert and Rainer Kattel, Edward Elgar 2016); and *India and the International Economy*, (Oxford University Press 2015). Her research output has been recognized through several national and international prizes, including the M. Adisheshaiah Award for distinguished contributions to the social sciences in India in 2015; the International Labour Organization’s Decent Work Research Prize for 2010; the NordSud Prize for Social Sciences 2010 of the Fondazione Pescarabruzzo, Italy; and Prizes from the Asiatic Society, Kolkata. She has co-chaired the Scientific Committee of the World Social Science Congress in 2018. She has advised governments in India and other countries at different levels. She was the Chairperson of the Andhra Pradesh Commission on Farmers’

Welfare in 2004, and Member of the National Knowledge Commission reporting to the Prime Minister of India (2005-09). She has consulted for several international organizations including ILO, UNDP, UNCTAD, UN-DESA, UNRISD and UN Women. She writes regularly for popular media like newspapers, journals and blogs.

- iii. That the Applicant no. 3, Shantha Sinha, is the founder Secretary of MVFoundation that withdrew over a million children from the labour force and mainstreamed them into schools. Over 30000 children were rescued from bondage and 20000 child marriages were stopped under her leadership. She retired as a Professor in Dept. of Political Science, University of Hyderabad. Being the first Chairperson of the National Commission for Protection of Child Rights, she served it for two terms. Among other awards she is the recipient of Padmashri in 1998 and Ramon Magsaysay Award for Community Leadership in 2003.
- iv. That the Applicant no. 4, E A S Sarma, is a former Secretary to Government of India in the Ministries of Power and Finance. He is also the former Principal Adviser (Energy), Planning Commission. He also held the positions of Secretary in the Departments of Tribal Welfare, Energy and Environment in the erstwhile State of Andhra Pradesh. He opted for voluntary retirement from the government in the year 2000. After retirement, he was the Principal of Administrative Staff College of India (ASCI), Hyderabad for three years. For more than 15 years, he has been actively involved in a grass-root electoral reform campaign in the low-income colonies of Visakhapatnam and its surroundings and promoting public awareness on the Right to Information Act. He has been associated with the efforts of the civil society in promoting public

- awareness of the rights and responsibilities of the citizens in safeguarding the environment.
- v. That the Applicant no. 5, P. Sainath, is a journalist of 40 years' experience in which time he worked with news agencies, dailies, weeklies and in the digital space. He was the only Rural Affairs Editor of The Hindu for a decade- a post not in existence before or since in any national publication. Known for his work on India's agrarian crisis and farmer suicides, he was the only working journalist ever to have addressed members of both houses of parliament under the Speaker's Lecture series. A Ramon Magsaysay Prize winner, he presently reports for and runs The People's Archive of Rural India, a non-profit multimedia digital journalism website wholly dedicated to rural India.
- vi. That the Applicant no. 6, TM Krishna, is a Carnatic music vocalist, writer and public intellectual who speaks and writes about issues affecting the human condition and about matters cultural. Krishna received the prestigious Ramon Magsaysay Award in 2016 in recognition of 'his forceful commitment as artist and advocate to art's power to heal India's deep social divisions'.
- vii. That the Applicant no. 7, Mr. Jagdeep S. Chhokar, is former Professor, Dean, and Director In-charge of the Indian Institute of Management, Ahmedabad (IIM-A), and is one of the founders & Trustees of the '*Association for Democratic Reforms*' (ADR), an organization which has been working on Electoral and Political Reforms for over two decades now. ADR has been responsible for some path-breaking judgements such as in *Union of India vs Association for Democratic Reforms* and another [(2002) 5 SCC 294, AIR 2002 SC 2112]. He is also

the founding chairperson of Aajeevika Bureau, an organization which works on domestic or internal migrants.

viii. That the Applicant no. 8, Anjali Bhardwaj, is a social activist and is the Co-Convenor of the National Campaign for Peoples' Right to Information (NCPRI), which advocates for transparency and accountability in government functioning. She has been closely associated with the Right to Information movement in India since the year 2000 and has worked extensively on issues related to transparency, RTI Act and anticorruption for the last two decades. As part of the NCPRI, Anjali Bhardwaj was involved in drafting and giving suggestions to the government for the enactment of an effective Right to Information Act, Lokpal and Lokayuktas Act and the Whistleblowers Protection law. She has co-authored various national studies on the implementation of the RTI Act. Anjali is a founding member of Satark Nagrik Sangathan, which works on issues of food security, pensions and social justice in the slums in Delhi. She is also a member of the national Right to Food Campaign and a founding member of the Delhi Rozi Roti Adhikar Abhiyan, an association of individuals and groups engaged in advocating for the realization of the fundamental right to food of the vulnerable and marginalized communities of Delhi.

ix. That the Applicant no. 9, Prabhat Patnaik, is currently Professor Emeritus at the Jawaharlal Nehru University where he held the Sukhamoy Chakravarty Chair at the Centre for Economic Studies and Planning at the time of his retirement. Earlier he was a member of the Faculty of Economics and Politics of the University of Cambridge and a Fellow of Clare College, He holds a D.Phil in Economics from the University of Oxford, having joined Balliol College and later Nuffield College as a Rhodes Scholar. He has an Honorary Doctorate from the

University of London (School of Oriental and African Studies). He was the Vice-Chairman of the Kerala State Planning Board between 2006 and 2011 and a member of the interactive panel of experts set up by the President of the UN General Assembly after the economic crisis of 2008. He is the author of several books and articles in Economics.

- x. That the Applicant no. 10, Bezwada Wilson, is an Indian activist and one of the founders and National Convenor of the Safai Karmachari Andolan (SKA), an Indian human rights organization that has been campaigning for the eradication of manual scavenging, the construction, operation and employment of manual scavengers which has been illegal in India since 1993. His work at SKA, a community-driven movement, has been recognized by the Ashoka Foundation which has nominated him a Senior Fellow. On 27 July 2016, he was honoured with the Ramon Magsaysay Award.

- xi. That the Applicant no. 11, Nikhil Dey, is a social activist. He, along with many others helped found the Mazdoor Kisan Shakti Sangathan (MKSS). Since 1990, he has been a full-time worker of the MKSS, and has been involved in struggles of the poor for justice, including grass root struggles for land and the payment of minimum wages. He has been a founding member of people's platforms like National Campaign for People's Right to Information (NCPRI), and the Soochana Evam Rozgaar Adhikar Abhiyan (SR Abhiyan) who put together "peoples drafts" of the Right to Information and Employment Guarantee Bills, and have consistently worked for their effective implementation. Nikhil Dey is also part of the effort by peoples movements to build institutions of participatory democracy. He has been integrally involved in large state wide campaigns for peoples monitoring of education (Shiksha Ka

Sawaal) in Rajasthan in 2016, and the SR Abhiyan is currently planning a Swasthya Ka Sawaal Campaign in Rajasthan. To make progress in the journey from transparency to accountability, the MKSS and SR Abhiyan are currently in the midst of a campaign for the enactment of a “social accountability” legislation at the State and National level. He has been a member of the Central Employment Guarantee Council (CEGC) and of the State Employment Guarantee Council of Rajasthan. He is a Co-convener of the NCPRI, and is currently a member of the Rajasthan State Audit Advisory Board. He was a member of the Steering Committee of the Multilateral Open Government Partnership (OGP) from 2011 to 2014. He is currently an OGP Envoy.

- xii. That the Applicant no. 12, Deb Mukharji, is retired from IFS and former High Commissioner to Bangladesh and former Ambassador to Nepal, and has been associated with the Constitutional Conduct Group since its founding in June 2017, an organization that advocates the constitutional spirit of pluralism and non-violence, and have participated in its activities. Otherwise participated in public events concerning major social issues and causes. Contributed articles in some of the major national dailies on challenges facing the nation.
- xiii. That the Applicant no. 13, SR Hiremath, is the Founder President of Samaj Parivartana Samudaya (SPS), Dharwad in Karnataka. Involved in Environmental and Social Justice issues for about forty years including grass-root work with rural poor and SC/ST communities to successful PILs in Supreme Court like Iron ore-scandal in Ballari (WP No.562 of 2009) and Malik Makbuja scandal in Bastar area (IA No. 60/1997 in WP No 202 of 1995):Godavarman:Forest case) and Tungabhadra pollution in High Court of Karnataka in the 1980s. Received the Karnataka

Rajyotsava Award in 1987 from Govt of Karnataka and Samaj Parivartana Samudaya (SPS) received the Indira Gandhi Paryavaran Puraskar in 1992 from Govt of India and the Jap Van Praag prize of HIVOS, in Holland in 1982 for rural development.

- xiv. That the Applicant no. 14, Paul Divakar, is a Human Rights defender and activist for Development Justice. Paul Divakar has worked on numerous issues and causes concerning the SC/ST communities, which includes – working with SC and ST organizations on access to justice; strengthening the Criminal Justice Administration system; capacitation of the Dalit Human Rights Defenders; Analysis of SC ST Union Budget allocations and expenditure from the perspective of development justice; Dalit and Adivasi women’s strengthening to address violence against SC/ST Women, elimination of the practice of manual scavenging, Dalit Children’s rights, strengthening Dalit and Adivasi CSOs - for the past 38 years.
- xv. That the Applicant no. 15, Wajahat Habibullah, Wajahat Habibullah is a former civil servant from the Indian Administrative Service. He has served on the staff of two Indian prime ministers—Indira Gandhi and Rajiv Gandhi as Director and Joint Secretary respectively and held the post of minister in the Embassy of India, Washington DC, and Director, Lal Bahadur Shastri National Academy of Administration. After retiring from the service, Habibullah served as India’s first Chief Information Commissioner. He is the author of ‘My Kashmir: The Dying of the Light’. He retired as Chairman National Commission of Minorities in 2014.

xvi. That the Applicant no. 16, Ms. Syeda Hameed Dr.Syeda Saiyidain Hameed is a feminist writer & activist who is recognised for her passionate engagement in public & social issues relating to women, minorities and piece. She has been a member of the Planning commission of India. She is the co-founder of the Muslim Women’s Forum and an author of books on subjects such as Islam, Sufism, gender, development, and modern Indian History. She is a recipient of the Padma Shree award in 2007.

FACTUAL BACKGROUND

5. The Alleged Contemnor No1. Mr. Prashant Bhushan through two ‘tweets’ (short published posts on the social media website twitter.com) expressed criticism of the functioning of the Supreme Court. The said tweets which are the subject matter of the contempt proceedings are reproduced below:
 - i. *“CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access Justice!”*; (dated 29.06.2020)
 - ii. *“When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs”* (dated 27.06.2020)

6. As far as the tweet dt. 29.06.2020 of the Alleged Contemnor is concerned, it is based ostensibly on a tweet dated 28.06.2020 by twitter handle one @SaketGokhale which stated that the bike/motorcycle bearing registration no. CG07BP0015 on which the Hon’ble Chief Justice of India, Justice S.A.Bobde was photographed, without a mask or helmet, is said to be

registered to Rohit Sonbaji Musale, s/o Sonba Musale and the latter is a Bharatiya Janata Party's (BJP) leader in Nagpur and was also their 2014 general elections nominee from Soaner.

A true copy of the tweet dated 28.06.2020 by twitter handle @SaketGokhale is annexed herewith and marked as **ANNEXURE-A-2 (from Page 32 – 33)**

7. In so far as the second tweet is concerned, the Applicants submit that in the past few years, legitimate concerns have been raised about the reluctance of the Hon'ble Supreme Court to play its constitutionally mandated role as a check on governmental excesses and violations of fundamental rights of people by the State. These have been raised by all sections of society - media, academics, civil society organizations, members of the legal fraternity and even by sitting and retired judges of this Hon'ble Court. Most recently, this Court's reluctance to intervene in a timely manner to avert the migrant crisis during the lockdown came under intense public scrutiny. Concerns have also been raised regarding the decision of the court to not resume physical hearings, even in a limited manner, despite passage of five months since the onset of the COVID pandemic.
8. The statements made by the Alleged Contemnor in his tweets had articulated some of these concerns and therefore, it is respectfully submitted, are to be considered as an expression of opinion that a reasonable person may legitimately hold in light of the given circumstances, and many, including the applicants, share the concerns surrounding the functioning of the higher judiciary, more so during the Covid-19 pandemic – irrespective of the Applicants' agreement or

disagreement with the form and content of those tweets *per se*. It is in essence criticism which ought to be considered constitutionally protected speech, and in any case the expression therein cannot under any circumstances be treated as an issue of contempt of court under the law.

9. That, on 27.07.2020, 131-persons from civil society – former judges, activists, political leaders, academicians etc., including many of the Applicants herein – had issued a statement in solidarity with the Alleged Contemnor Mr. Prashant Bhushan. As the article dated 30.07.2020 that appeared on the website Bar & Bench titled “*Suo Motu contempt case: Eight more retired Supreme Court and High Court judges pledge support for Prashant Bhushan*” indicates, ten former judges of the Supreme Court and High Courts have endorsed a statement in support of the Alleged Contemnor. The statement is now signed by the following retired judges:
- Justice M.B.Lokur, former judge of the Supreme Court of India
 - Justice Ruma Pal, former judge of the Supreme Court of India
 - Justice G.S.Singhvi former judge of the Supreme Court of India
 - Justice Ashok K Ganguly, former judge of the Supreme Court of India
 - Justice Gopala Gowda, former judge of the Supreme Court of India
 - Justice Aftab Alam, former judge of the Supreme Court of India
 - Justice Jasti Chelameswar, former judge of the Supreme Court of India
 - Justice Vikramjit Sen, former judge of the Supreme Court of India
 - Justice A.P.Shah, former Chief Justice of the Delhi and Madras High Courts
 - Justice BA Khan, former Chief Justice of J&K High Court
 - Justice NK Sodhi, former Chief Justice of Kerala High Court

- Justice Anjana Prakash, former judge of the Patna High Court

A true copy of the said Statement dt. 27.07.2020 is annexed herewith and marked as **ANNEXURE-A-3 (from Page 34 – 37)**

is annexed herewith and marked as **ANNEXURE-A-4 (from Page 38 – 41)**

10. That prominent citizens, with respectable standing in the society, including the former judges of this Hon'ble Court and of various High Courts, have expressed their opinions/ criticism on the manner and way the instant Suo Motu Contempt proceedings have been initiated against the respondent no.1 for his impugned tweets; as well as on the handling of the matters concerning fundamental rights of the citizens. An inexhaustive list is as follows. The Applicants crave liberty to file/ produce more material in support of this at a later stage in the proceedings.

- i. By Justice A.P. Shah, former Chief Justice of the Delhi High Court, in his article dated 27.07.2020 published in The Hindu:

“For the Supreme Court of India, identifying priority cases to take up first (in a pandemic-constricted schedule) ought not to be very difficult: there are dozens of constitutional cases that need to be desperately addressed, such as the constitutionality of the Citizenship (Amendment) Act, the electoral bonds matter, or the issue of habeas corpus petitions from Jammu and Kashmir. It is disappointing that instead of taking up matters of absolute urgency in these peculiar times, the Supreme Court chose to take umbrage at two tweets. It said that these tweets “brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the institution... and the office of the Chief Justice of India in particular...” Its response to these two tweets was to initiate suo motu proceedings for criminal contempt against the author of those tweets, the lawyer and social activist, Prashant Bhushan. ...On the face of it, a law for criminal contempt is completely asynchronous with our democratic system which recognises freedom of speech and expression as a fundamental right.

An excessively loose use of the test of ‘loss of public confidence’, combined with a liberal exercise of suo motu powers, can be dangerous, for it can amount to the Court signalling that it will not suffer any kind of critical commentary about the institution at all, regardless of how evidently problematic its actions may be. In this manner, the judiciary could find itself at an uncanny parallel with the executive, in using laws for chilling effect.”

A true copy of the article dated 27.07.2020 published in The Hindu written by Justice A.P. Shah, former Chief Justice of the Delhi High Court annexed herewith and marked as **ANNEXURE-A-5 (from Page 42 – 46)**.

- ii.* By Mr. Sriram Panchu, Senior advocate of the Madras High Court, in his article dated 27.07.2020 published The Hindu:

“Across international jurisdictions, a far more liberal view is taken, with courts preferring to display broad shoulders and rest their protections on the surer moorings of public confidence rather than seek cover under the law of contempt.

Is this about being protected from criticism or genuinely wanting to examine the serious complaints about the functioning of former judges? If some allegations do pass a threshold test, will the Court go the whole way of inquiry and strong action, or will it just sweep them under the carpet and deposit the carpet in a Pandora’s box? Will the latter be readily accepted, given that there is a general perception that integrity levels have markedly declined in the last score of years.

Is this the right Bench size, composition and leadership for this set of cases? The issue of corruption infecting the topmost judiciary is as serious as can be. Should not a larger Bench, with more senior judges, hear these matters? Justice Mishra and Mr. Bhushan have had frequent confrontations in Court, and in a 2019 contempt case relating to appointment of the Director of the Central Bureau of Investigation, Mr. Bhushan has even petitioned that this Judge should not hear the matter.

...Is this the right time for these issues to be taken up? COVID-19 has brought forth a standstill of the courts, which even before this were grappling with a gargantuan mass of cases. Salvaging and securing the administration of justice ought to be uppermost in minds of the apex judiciary, and there is no shortage of urgent and pressing issues which desperately cry out for the Court’s attention. Why this now?

How will the Bar respond? It will be carefully watching whether one of its own is receiving fair treatment from the Bench. Lawyers have ideological and personal divides, but the Bar has an astonishing capacity

to join ranks against authority that exceeds bounds; it is after all in the DNA of the common lawyer to keep arbitrary state authority in its place, for which this country must be ever grateful.

Will the Court's international institutional standing be enhanced or lowered if it takes up this case in this manner at this time?"

A true copy of the article dated 27.07.2020 published in The Hindu written by Mr. Sriram Panchu, Senior advocate of the Madras High Court annexed herewith and marked as **ANNEXURE-A-6 (from Page 47 – 51)**

- iii. Former judge of this Hon'ble Court, Justice M.B. Lokur in his article dated 28.05.2020 titled "*Justice Madan Lokur: Supreme Court Deserves an 'F' Grade For Its Handling of Migrants*" published by The Wire, has severely criticized the handling of the migrant crisis and the functioning of the Supreme Court during the pandemic, as:

"Given the circumstances, was it not the constitutional obligation, not duty, of the Supreme Court – a court for the people of India and not a court of the people of India – to ascertain that a few lakhs (not thousands) of migrants are well taken care of, physically and emotionally? It is not that the court was expected to disbelieve or distrust the establishment represented by no less than the solicitor general, the court was only required to ensure through the principle of continuing mandamus that the solemn assurances given to it are faithfully carried out. Sorry, the court completely failed in this – forgot what public interest litigation is all about. If a grading is to be given, it deserves an F.

...

Over the past few months, constitutional rights and remedies were overlooked and socio-economic justice, a cornerstone in the preamble of our constitution, was disregarded. Some eminent members of the legal fraternity have already expressed dissatisfaction with the present-day functioning of the Supreme Court. Isn't that tragic or is it farcical?"

A true copy of the article dated 28.05.2020 titled "*Justice Madan Lokur: Supreme Court Deserves an 'F' Grade For Its Handling of Migrants*" published in The Wire by Justice M.B. Lokur, Former

Second, there is the matter of how the Court is treating such public interest litigations. PILs are a specific instrument designed to ensure the protection of the rights of the poor, downtrodden and vulnerable, and “any member of the public” can seek appropriate directions on their behalf. This lies at the heart of the PIL. The concept of a PIL is to be non-adversarial, but the Court is treating these as adversarial matters against the government. PILs, in fact, ought to be a collaborative effort between the court and all the parties, where everyone comes together in seeking a resolution to the problem. Today, we find ourselves with a Supreme Court that has time for a billion-dollar cricket administration, or the grievances of a high-profile journalist, while studiously ignoring the real plight of millions of migrants, who do not have either the money or the profile to compete for precious judicial time with other litigants.”

A true copy of the article dated 25.05.2020, titled “Failing to perform as a constitutional court”, published in The Hindu by Justice A.P. Shah, Former Chief Justice of the High Courts at Delhi and Madras is annexed herewith and marked as **ANNEXURE-A-8 (from Page 63 – 67)**

11. That the citizens have a right to express *bonafide* opinions on the performance of any institution, including of the Judiciary, in public interest, as has been observed and upheld by this Hon’ble Court on many occasions, such as:

i. In *RBI v. Jayantilal N. Mistry*, (2016) 3 SCC 525, this Hon’ble Court observed that

“...an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better...” (Para 74) and further that, “The ideal of “Government by the people” makes it necessary that people have access to information on matters of public concern. The free flow of information about the affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for “open governance” which is the foundation of democracy.” (Para 75).

ii. In *Arundhati Roy, In Re*, (2002) 3 SCC 343, it was observed:

“28. As already held, fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself. Litigant losing in the court would be the first to impute motives to the Judges and the institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic set-up i.e. judiciary....”

iii. In *C.S. Karnan, In re*, (2017) 7 SCC 1, 7-Judge Constitutional Bench observed:

“70. In a judgment rendered almost a decade back, one of us (Gogoi, J.) sitting in the Gauhati High Court held [*Lalit Kalita, In re*, (2008) 1 Gau LT 800]:

“14. Judiciary is not oversensitive to criticism; in fact, bona fide criticism is welcome, perhaps, because it opens the doors to self-introspection. Judges are not infallible; they are humans and they often err, though, inadvertently and because of their individual perceptions. In such a situation, fair criticism of the viewpoint expressed in a judicial pronouncement or even of other forms of judicial conduct, is consistent with public interest and public good that Judges are committed to serve and uphold..... Such a realization which would really enhance the majesty of the Rule of Law, will only be possible if the doors of self-assessment, in the light of the opinions of others, are kept open by Judges...

16. ...A contemptuous action is punishable on the touchstone of being a wrong to the public as distinguished from the harm caused to the individual Judge. Public confidence in the judicial system is indispensable. Its erosion is fatal. Of course, Judges by their own conduct, action and performance of duties must earn and enjoy the public confidence and not by the application of the rule of contempt. Criticism could be of the underlying principle of a judicial verdict or its rationale or reasoning and even its correctness. Criticism could be of the conduct of an individual Judge or a group of Judges....”

12. It is pertinent to invite attention to the observations made by Justice Untwalia, former Judge in *Union of India vs. Sankalchand Himatlal Sheth* reported in (1977) 4 SCC 193, regarding the crucial role of the Judiciary:

“129. In a democratic set-up of our country, as enshrined in the Constitution, the judiciary, in one sense is not a structure of a very big magnitude, but surely **it is like a watching tower above all the big structures of the other limbs of State. From the top of its respective towers, the highest judiciary either be it in the State or in the Centre keeps a watch like a sentinel on the functions of the other limbs of the State as to whether they are working in accordance with the law and the Constitution, the Constitution being supreme.**” (Emphasis supplied).

13. It is urged that this Hon’ble Court as an institution, described as the *sentinel on the qui vive*, ought to allow debate and discussion regarding its functioning and must not appear to stifle such expression through invocation of its power of contempt. It is further urged that this Hon’ble Court ought to be open to public discussion about its functioning without those expressing their honest opinion fearing retribution or action of criminal contempt. The initiation of contempt proceedings against the expression of legitimate concerns in the Alleged Contemnor’s tweets, will have a chilling effect on honest critical expression, not just by him but by all members of the general public who have an interest in the country’s democracy and the Rule of Law.

14. It is also worth pointing out that *criminal contempt* as an offence has been circumscribed and made redundant in many modern democracies, including the USA and the UK. The most distinguished lawyer David Pannick, Queen’s Counsel, leading barrister in the United Kingdom had aptly commented on contempt law, in *Judges, 1987*, as “*In the absence of an allegation of bias, or other improper motive, the offence of scandalizing*

the judiciary is obsolete in England". In November 2012 the Law Commission of England and Wales published a summary of its conclusions, namely that they consider that the retention of the offence serves no practical purpose and accordingly they support its abolition. Their final report in December 2012 confirmed this recommendation. Subsequently on 10.12.2012, the House of Lords abolished this offence of contempt by way of an amendment to the Crime and Courts Bill, and accepted by the House of Commons on 31.01.2013, which now forms section 33 of the Contempt and Courts Act 2013.

15. As a modern democracy such as India's moves from a "culture of authority to a culture of justification", it is clear that criminal contempt as defined under Section 2(c) of the Contempt of Courts Act, 1971, the provision under which the captioned Contempt Petition arises, has to be interpreted and/or read down in keeping with the times and the 'march of the law'.

16. That, regardless of the position of law of contempt in US or UK, the impugned acts do not meet the prevailing legal standard even under the law of contempt. The principle that criticism of the judiciary should not be stifled by the indiscriminate use of the power of contempt has been recognized by this Hon'ble Court as well as by academics and advocates of repute, such as the late Senior Advocate Shri Vinod A. Bobde, who in *Scandals and Scandalising*, (2003) 8 SCC Jour 32, stated that

"We cannot countenance a situation where citizens live in fear of the Court's arbitrary power to punish for contempt for words of criticism on the conduct of judges, in or out of court."

17. Furthermore, this Hon'ble Court in *State of U.P. v. Lalai Singh Yadav*, reported in (1976) 4 SCC 213, observed that the fighting faith of our founding fathers respected Mills' famous statement and Voltaire's inspired assertion –

“If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind. (Mill in his essay ‘On Liberty’, pp. 19-20: Thinkers' Library Ed., Watts)

“I disapprove of what you say, but I will defend to the death your right to say it.” (Attributed to Voltaire in S.G. Tallentyre: *The Friends of Voltaire*, 1907)”

18. That the initiation of contempt proceedings against the Alleged Contemnor - Mr. Bhushan who had expressed his opinion regarding the prevailing circumstances, and the manner of it, will have the effect of stifling legitimate criticism not just by him but by members of the general public; and has a “chilling effect” on the citizens’ right to free speech.

19. Therefore, in the interest of justice and fairness and to maintain the dignity of this Hon'ble Court, we urge the Court to dismiss instant criminal contempt petition against the Alleged Contemnor. The Applicants therefore pray that this Hon'ble Court allows them to be impleaded as Party Respondents along with the Alleged Contemnor. The Applicants herein are aware that in the event that the Hon'ble Court allows them to be made Party Respondents and proceeds to find that the utterances/tweets constitute criminal contempt punishable under the law, they may themselves be liable

to face all consequences thereof including being proceeded against similarly for contempt.

20. The Applicants are aware that a Writ Petition has been filed before this Hon'ble Court of which the Alleged Contemnor Mr. Bhushan is a Petitioner, that has challenged the vires of Section 2(c) of the Contempt of Courts Act, 1971 which defines criminal contempt- *inter alia* on the grounds that the same is unconstitutionally vague and that it causes a chilling effect on the right to free speech. The Applicants share that view and are in the process of filing an appropriate Application in that Writ Petition. However, the submissions and averments hereinabove or without prejudice any submission that may be advanced therein.

PRAYER

In view of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Allow the present application and direct that the Applicants be impleaded as Party Respondents in Suo Motu Contempt (crl.) Petition no. 1 of 2020; or in the alternative be pleased to allow this Application and grant permission to intervene in Suo Motu Contempt (crl.) Petition no. 1 of 2020; and

b) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANTS AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Applicants

Through

Mr. PRASANNA S

Advocate-on-Record for the Applicants/Proposed Respondents.

Filed on: 04.08.2020

New Delhi

ITEM NO.16 Virtual Court 3 SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SCM (CRL.) No. No(s). 1/2020

IN RE PRASHANT BHUSHAN & ANR. Petitioner(s)

VERSUS

Respondent(s)

Date : 22-07-2020 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
 HON'BLE MR. JUSTICE B.R. GAVAI
 HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) By Courts Motion, AOR

For Respondent(s) Mr. Sajjan Poovayya, Sr. Adv.
 Mr. Manu Kulkarni, Adv.
 Mr. Priyadarshi Banerjee, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This petition was placed before us on the administrative side whether it should be listed for hearing or not as permission of the Attorney General for India has not been obtained by the petitioner to file this petition. After examining the matter on administrative side, we have directed the matter to be listed before the Court to pass appropriate orders. We have gone through the petition. We find that the tweet in question, made against the CJI, is to the following effect :-

“CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!”

Apart from that, another tweet has been published today in the

Times of India which was made by Shri Prashant Bhushan on June 27, 2020, when he tweeted, "When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

We are, *prima facie*, of the view that the aforesaid statements on Twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the Institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of public at large.

We take *suo motu* cognizance of the aforesaid tweet also apart from the tweet quoted above and *suo motu* register the proceedings.

We issue notice to the Attorney General for India and to Mr. Prashant Bhushan, Advocate also.

Shri Sajan Poovayya, learned senior counsel has appeared along with Mr. Priyadarshi Banerjee and Mr. Manu Kulkarni, learned counsel appearing on behalf of the Twitter, and submitted that the Twitter Inc., California , USA is the correct description on which the tweets were made by Mr. Prashant Bhushan. Let the reply be also filed by them.

List on 05.08.2020.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(R.S. NARAYANAN)
COURT MASTER

← Search Twitter



Saket Gokhale
@SaketGokhale



Merely a coincidence:

The bike which Hon'ble Chief Justice is riding has registration number CG05BP0015.

The bike is registered to Rohit Sonbaji Musale, son of Sonba Musale who is a BJP leader from Nagpur & was their nominee in the 2014 Assembly polls from Saoner.

Small world.

Vehicle Details Showing in Registering Authority

1. Registering Authority: Durg RTO, Chhattisgarh

Registration No:

CG07BP0015

Registration Date:

25-Jul-2019

Chassis No:

5HD1KRPC4KB6****3

Engine No:

KRPK6****3

Owner Name:


ROHIT SONBAJI
MUSALE

Vehicle Class:

M-
Cycle/Scooter(2WN)

Fuel:

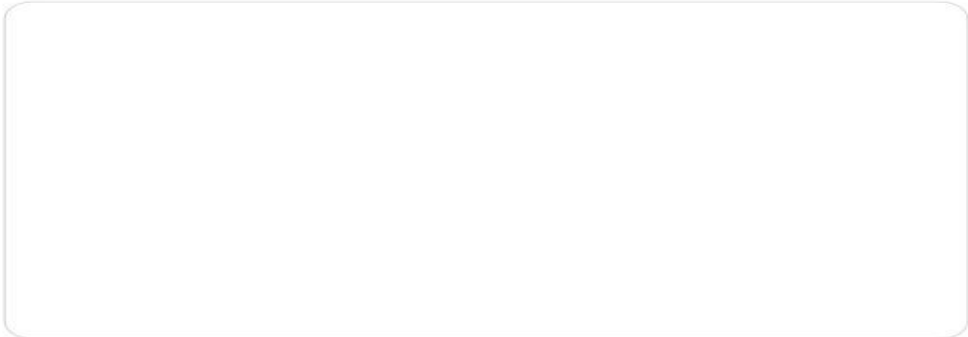
PETROL



 **Saket Gokhale** @SaketGokhale · Jun 28
Merely a coincidence:


The bike which Hon'ble Chief Justice is riding has registration number CG05BP0015.





The bike is registered to Rohit Sonbaji Musale, son of Sonba Musale who is a BJP leader from Nagpur & was their nominee in the 2014 Assembly polls from Saoner.


Small world.

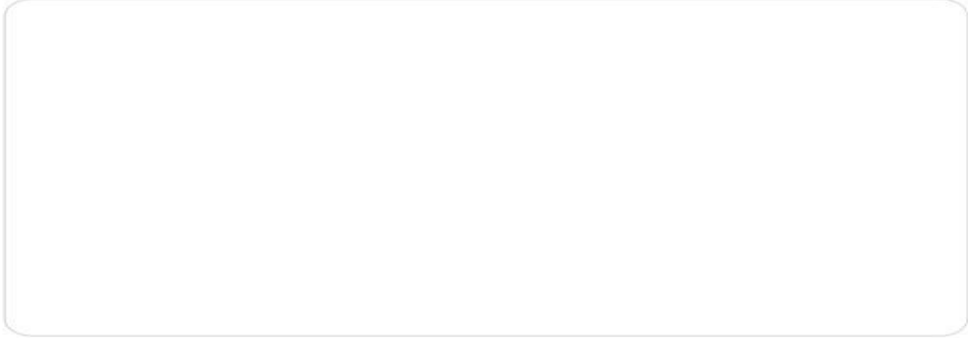






 **Utkarsh Anand**  @utkarsh_aanand · Jun 28
Chief Justice of India (#CJI) SA Bobde and his love for bikes:




 396  4.4K  8.4K 

 **Saket Gokhale** @SaketGokhale · Jun 28
Pic from another angle where the registration number is clearly visible if you zoom in.







 51  547  2.1K 

 **Saket Gokhale** @SaketGokhale

Sorry it's CG07. I misspelt it as CG05 in my tweet text. The registration is correct though.

10:58 PM · Jun 28, 2020 · [Twitter for iPhone](#)

281 Retweets and comments **1.8K** Likes

S. J. Gokhale

// TRUE COPY //

Dated: July 27, 2020

Statement in solidarity with Mr. Prashant Bhushan on the initiation of Criminal Contempt Proceedings against him

We the undersigned citizens of the country, express our concern with the initiation of contempt proceedings against human right activist and advocate, Mr. Prashant Bhushan, by the Supreme Court of India, in respect of two of his tweets. Mr. Bhushan has been a relentless crusader for the rights of the weakest sections of our society and has spent his career in pro bono legal service to those who do not have ready access to justice. He has fought cases at the Apex Court on issues ranging from environmental protection, human rights, civil liberties, corruption in high places and has been an outspoken champion for judicial accountability and reforms, especially in the higher judiciary.

In the past few years, serious questions have been raised about the reluctance of the Supreme Court to play its constitutionally mandated role as a check on governmental excesses and violations of fundamental rights of people by the state. These questions have been raised by all sections of society—media, academics, civil society organisations, members of the legal fraternity and even by sitting and retired judges of the Supreme Court itself. Most recently, the Supreme Court’s reluctance to intervene in a timely manner to avert the migrant crisis during the lockdown came under intense public scrutiny. Concerns have also been raised regarding the decision of the court to not restart physical hearings, even in a limited manner, despite passage of five months since the onset of the COVID pandemic.

We urge the Hon’ble judges of the Supreme Court to take note of these concerns and engage with the public in an open and transparent manner. The initiation of contempt proceedings against Mr. Bhushan who had articulated some of these concerns in his tweets, appears to be an attempt at stifling such criticism, not just by Prashant Bhushan but by all stakeholders in the Indian democratic and constitutional setup. We believe the institution must address these genuine concerns.

An institution as important as the Supreme Court of a country must be open to public discussion without the fear of retribution or action of criminal contempt. Indeed, criminal contempt as an offence has been circumscribed and made redundant in most functioning democracies, such as the USA and the UK. In the landmark U.S. Supreme Court judgement in *New York Times v. L.B. Sullivan* 11 L’ed (2nd) 686, with respect to contempt of court and the freedom of speech and expression it was held: *“Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. This is true even though the utterance contains “half-truth” and misinformation”*.

Even in India, the principle that criticism of the judiciary should not be stifled by the indiscriminate use of the power of contempt has been recognized by the Supreme Court as well as by academics and advocates of repute, such as the late Senior Advocate Shri Vinod A. Bobde who had stated [“Scandals and Scandalising”, (2003) 8 SCC Jour 32], *“We cannot countenance a situation where citizens live in fear of the Court’s arbitrary power to punish for contempt for words of criticism on the conduct of judges, in or out of court.”*

Therefore in the interest of justice and fairness and to maintain the dignity of the Supreme Court of India, we urge the Court to reconsider its decision to initiate suo-moto contempt proceedings against Mr. Prashant Bhushan and to withdraw the same at the earliest.

Endorsed by:

1. Justice Madan B. Lokur, Former judge of the Supreme Court of India

2. Justice AP Shah, Former Chief Justice of the Delhi High Court
3. A. Selvaraj, IRS (Retd.), Former Chief Commissioner, Income Tax, Chennai, Gol
4. Aakar Patel
5. Achin Vanaik, writer and social activist, former professor at the University of Delhi
6. Admiral Ramdas, Former Chief of Naval Staff
7. Ajit Ranade, economist
8. Alok Perti, IAS (Retd.), Former Secretary, Ministry of Coal, Gol
9. Alope B. Lal, IPS (Retd.), Former Director General (Prosecution), Govt. of Uttarakhand
10. Amit Bhaduri, former Professor Emeritus at Jawaharlal Nehru University
11. Amit Singh Chadha, Senior advocate
12. Amitabha Pande, IAS (Retd.), Former Secretary, Inter-State Council, Gol
13. Anand Grover, Senior advocate
14. Anjali Bhardwaj, Social activist
15. Annie Namala, Social activist
16. Annie Raja, NFIW
17. Ardhendu Sen, IAS (Retd.), Former Chief Secretary, Govt. of West Bengal
18. Aruna Roy, Social activist
19. Arundhati Dhuru, NAPM
20. Arundhati Roy, Author
21. Ashok Khosla, environmentalist
22. Ashok Kumar Sharma, IFoS (Retd.), Former MD, State Forest Development Corporation, Govt. of Gujarat
23. Ashok Kumar Sharma, IFS (Retd.), Former Ambassador to Finland and Estonia
24. Bezwada Wilson, Safai Karamchari Andolan
25. Bobby Ramakant, Socialist Party (India)
26. Brinda Karat, CPI(M)
27. C. U. Singh, senior advocate
28. Chandrashekhar Balakrishnan, IAS (Retd.), Former Secretary, Coal, Gol
29. D. Raja, General Secretary CPI
30. Deb Mukharji, IFS (Retd.), Former High Commissioner to Bangladesh and former Ambassador to Nepal
31. Deepak Nayyar, Emeritus Professor of Economics, Jawaharlal Nehru University, New Delhi
32. Devika Singh, Social Activist
33. Dipa Sinha, Right to Food Campaign
34. Dr Dharamvira Gandhi,, Punjab Manch and former Lok Sabha member from Patiala
35. EAS Sarma, Former Secretary to GOI
36. Enakshi Ganguly, Co- Founder and Advisor, HAQ Centre for Child Rights
37. Fabian K.P
38. Fr. Cedric Prakash SJ, human rights activist
39. G. Balachandhran, IAS (Retd.), Former Additional Chief Secretary, Govt. of West Bengal
40. G.G. Parikh, Freedom Fighter
41. Ganesh Devy, National President, Rashtra Seva Dal
42. Gopal Sankaranarayanan, Senior advocate
43. Gopalan Balagopal, IAS (Retd.), Former Special Secretary, Govt. of West Bengal
44. Harsh Mander, social activist
45. Henri Tiphagne, Executive Director, People's Watch and National Working Secretary, Human Rights Defenders' Alert – India (HRDA)
46. Hindal Tyabji, IAS (Retd.), Former Chief Secretary rank, Govt. of Jammu & Kashmir
47. Indira Jaising, senior advocate
48. Jagdeep Chhokar, former Professor, Indian Institute of Management, Ahmedabad
49. Javed Anand, Journalist and civil rights activist

50. Jayati Ghosh, Professor, Jawaharlal Nehru University
51. Jean Dreze, Economist
52. Julio Ribeiro, IPS (Retd.), Former Adviser to Governor of Punjab & former Ambassador to Romania
53. K. John Koshy, IAS (Retd.), Former State Chief Information Commissioner, West Bengal
54. K. Saleem Ali, IPS (Retd.), Former Special Director, CBI, Gol
55. Kalyani Chaudhuri, IAS (Retd.), Former Additional Chief Secretary, Govt. of West Bengal
56. Kamal Jaswal, Former Secretary to Govt of India, Department of Information Technology
57. Kamayani Swami, NAPM, Bihar
58. Kamla Bhasin, Social Activist
59. Kavita Krishnan, AIPWA
60. Kavitha Kuruganti, social activist
61. Lalita Ramdas, Peace, Human Rights anti-nuclear Activist
62. Lubna Sarwath, Socialist Party (India)
63. M.G. Devasahayam, IAS (Retd.), Former Secretary, Govt. of Haryana
64. M.Y. Rao, IAS (Retd.)
65. Madhu Bhaduri, IFS (Retd.), Former Ambassador to Portugal
66. Mahadev Vidrohi, President, Sarva Seva Sangh
67. Manoj Mitta, Author & Journalist
68. Martin Macwan, Dalit human rights activist
69. Medha Patkar, Social activist
70. Meena Gupta, IAS (Retd.), Former Secretary, Ministry of Environment & Forests, Gol
71. Meera Sanghamitra, Member, National Convening Committee, NAPM
72. Mihir Desai, Senior advocate
73. Mrinal Pande, Journalist and author
74. N. Ram, former Editor-in-Chief, The Hindu
75. N.C. Saxena, IAS (Retd.), Former Secretary, Planning Commission, Gol
76. Nagalsamy, IA&AS (Retd.), Former Principal Accountant General, Tamil Nadu & Kerala
77. Najeeb Jung, IAS (Retd.), Former Lieutenant Governor, Delhi
78. Navrekha Sharma, IFS (Retd.), Former Ambassador to Indonesia
79. Neeraj Jain, Lokayat, Associate Editor, Janata
80. Nikhil Dey, Social activist
81. Noor Mohammad, IAS (Retd.), Former Secretary, National Disaster Management Authority, Gol
82. P. Sainath, Journalist and author
83. P.K. Lahiri, IAS (Retd.), Former Executive Director, Asian Development Bank
84. P.R. Dasgupta, IAS (Retd.), Former Chairman, Food Corporation of India, Gol
85. Pamela Philipose, Journalist
86. Paranjyot Guha Thakurta, Author & journalist
87. Paul Divakar, National Campaign on Dalit Human Rights
88. Prabhat Patnaik, Emeritus professor, Jawaharlal Nehru University
89. Prabir Purkayastha
90. Pradeep K. Deb, IAS (Retd.), Former Secretary, Deptt. Of Sports, Gol
91. Prakash Singh, former Police Chief, DG BSF, DGP UP & DGP Assam
92. Pranab S. Mukhopadhyay, IAS (Retd.), Former Director, Institute of Port Management, Gol
93. Prof. Alok Rai, Allahabad
94. Prof. Manoj Kumar Jha, Member of Parliament, Rajya Sabha
95. R. Poornalingam, IAS (Retd.), Former Secretary, Ministry of Textiles, Gol
96. Rahul Khullar, IAS (Retd.), Former Chairman, Telecom Regulatory Authority of India
97. Rajeev Bhargava, Professor, CSDS, Delhi
98. Rajmohan Gandhi, Historian and Professor

99. Rajni Bakshi, Journalist and author
100. Raju Sharma, IAS (Retd.), Former Member, Board of Revenue, Govt. of UP
101. Ramachandra Guha, Historian and writer
102. Ravi Chopra, People's Science Institute
103. Ravi Vira Gupta, IAS (Retd.), Former Deputy Governor, Reserve Bank of India
104. Reetika Khera, economist
105. S.R. Hiremath, Founder President, Samaj Parivartana Samudaya (SPS), Dharwad
106. Sandeep Pandey, Socialist Party (India)
107. Sanjay Bhasin
108. Sanjay Hegde, Senior advocate
109. Satish Deshpande, Professor of Sociology, Delhi University
110. Sevanti Ninan, Journalist and researcher
111. Shafi Alam, IPS (Retd.), Former Director General, NCRB, GoI
112. Shailesh Gandhi, Former Information Commissioner of CIC
113. Shantha Sinha, Former Chairperson NCPCR
114. Sharad Behar, IAS (Retd.), Former Chief Secretary, Govt. of Madhya Pradesh
115. Sonalini Mirchandani, IFS (Resigned), GoI
116. Subhasis Bandyopadhyay, IEST, Shibpur
117. Subodh Lal, IPOS (Resigned), Former Deputy DG, Ministry of Communications, GoI
118. Sudhir Nandrajog, Senior advocate
119. Sundar Burra, IAS (Retd.), Former Secretary, Govt. of Maharashtra
120. Surabhi Agarwal, Socialist Party (India)
121. Suresh K. Goel, IFS (Retd.), Former Director General, ICCR, GoI
122. Syeda Hameed, Former member, Planning Commission
123. Teesta Setalvad, Civil rights activist
124. V.P. Raja, IAS (Retd.), Former Chairman, MERC
125. Vandana Shiva, Scientist, RFSTE
126. Vijaya Latha Reddy, IFS (Retd.), Former Deputy National Security Adviser, GoI
127. Vipul Mudgal, Activist and media scholar
128. Vivek Mukherjee, Assistant Professor & Faculty Coordinator, NALSAR
129. Vrinda Grover, Advocate
130. Wajahat Habibullah, Former Chief Information Commissioner of CIC
131. Yogendra Yadav, Swaraj India



Judges supporting Prashant Bhushan against contempt proceedings

NEWS

Suo Motu contempt case: Eight more retired Supreme Court and High Court judges pledge support for Prashant Bhushan

Earlier, 131 persons from civil society including former judges, activists, political leaders, academicians, had issued a statement in solidarity with Prashant Bhushan.

Shruti Mahajan

Jul 30, 2020, 1:12 PM IST



Eight more retired judges of the Supreme Court and the High Courts have expressed their solidarity for Advocate **Prashant Bhushan**, against whom *suo motu contempt proceedings* have been initiated by the Apex Court.

The total number of former judges supporting Bhushan now stands at ten.

Earlier, 131 persons from civil society including former judges, activists, political leaders, academicians etc. had issued a statement in solidarity with Bhushan.



Contempt case against Prashant Bhushan appears to be attempt to stifle criticism: Ex-Judges, activists, lawyers issue solidarity statement

Among these were former Supreme Court judge, Justice **Madan Lokur** and former Delhi High Court Judge Justice **AP Shah**.

The statement is now signed by the following retired judges:

- *Justice **Ruma Pal**, former judge of the Supreme Court of India*
- *Justice **GS Singhvi**, former judge of the Supreme Court of India*
- *Justice **Ashok K Ganguly**, former judge of the Supreme Court of India*
- *Justice **Gopala Gowda**, former judge of the Supreme Court of India*
- *Justice **Aftab Alam**, former judge of the Supreme Court of India*
- *Justice **Jasti Chelameswar**, former judge of the Supreme Court of India*
- *Justice **Vikramjit Sen**, former judge of the Supreme Court of India*
- *Justice **Anjana Prakash**, former judge of the Patna High Court*

The Supreme Court recently issued notice to Bhushan, Twitter as well as Attorney General for India **KK Venugopal** on a complaint filed against the lawyer for publishing tweets which allegedly “*brought disrepute*” to the institution of the Supreme Court. Initiation of these proceedings appears to be an attempt to stifle criticism of the judiciary, the statement says.



BREAKING: Supreme Court initiates suo motu Contempt of Court proceedings against Prashant Bhushan and Twitter India

The signatories of this statement have urged the Supreme Court to reconsider initiation of contempt proceedings against Bhushan. The statement adds that criticism against the judiciary must not be stifled and this principle is well recognized by the Supreme Court itself. As such, the statement reads,

“In the interest of justice and fairness and to maintain the dignity of the Supreme Court of India, we urge the Court to reconsider its decision to initiate suo-moto contempt proceedings against Mr. Prashant Bhushan and to withdraw the same at the earliest.”

An institution like the Supreme Court must be open to public discussion without the people fearing retribution or criminal proceedings against them, the statement reads. It is also highlighted that *criminal contempt of Court*, as an offence, has been rendered redundant in many democracies including the USA and the UK.

The tweets in question, which had led to the contempt proceedings against Bhushan, raise genuine concerns which are echoed by many people, the statement notes. The signatories add that the Court should, in fact, address the grievances raised therein.

“We urge the Hon’ble judges of the Supreme Court to take note of these concerns and engage with the public in an open and transparent manner. The initiation of contempt proceedings against Mr. Bhushan who had

articulated some of these concerns in his tweets, appears to be an attempt at stifling such criticism, not just by Prashant Bhushan but by all stakeholders in the Indian democratic and constitutional setup. We believe the institution must address these genuine concerns.”

Bhushan, in his individual capacity, has been a “crusader” for many causes, the signatories go on to say. They add that the reluctance of the Court to undertake its constitutionally mandated role in the recent *migrant worker crisis* issue is something that was felt not only by Bhushan, but many others. Retribution meted out to Bhushan is a way of stifling criticism and this action must be reconsidered, the statement says.



"We will give time but know our responsibility", Supreme Court to hear 11-year-old contempt case against Prashant Bhushan on August 4

In addition to the ten retired judges, many lawyers, academicians, activists, former bureaucrats, and members of civil society have signed this statement.



thehindu.com

The chilling effect of criminal contempt

A.P. Shah July 27, 2020 00:02 IST Updated: July 27, 2020 00:45 IST

8-9 minutes

These are strange times we are going through right now. The pandemic has brought all activities to a virtual standstill. Even as workplaces and institutions are slowly and tentatively getting back on their feet, the focus is on ensuring that the more important things get done first. Priorities are being identified accordingly. For the Supreme Court of India, identifying priority cases to take up first (in a pandemic-constricted schedule) ought not to be very difficult: there are dozens of constitutional cases that need to be desperately addressed, such as the constitutionality of the Citizenship (Amendment) Act, the electoral bonds matter, or the issue of *habeas corpus* petitions from Jammu and Kashmir. It is disappointing that instead of taking up matters of absolute urgency in these peculiar times, the Supreme Court chose to take umbrage at two tweets. It said that these tweets “brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the institution... and the office of the Chief Justice of India in particular....” Its response to these two tweets was to initiate *suo motu* [proceedings for criminal contempt](#) against the author of those tweets, the lawyer and social activist, Prashant

Bhushan.

This need to “respect the authority and dignity of the court” has monarchical origins from when the King of England delivered judgments himself. But over the centuries, with this adjudicatory role now having been handed over to judges, showing extreme deference to judges does not sit well with the idea of a democracy. The U.K. Law Commission in a 2012 report recommending the abolition of the law of contempt said that the law was originally intended to maintain a “blaze of glory” around courts. It said that the purpose of the offence was not “confined to preventing the public from getting the wrong idea about judges... but that where there are shortcomings, it is equally important to prevent the public from getting the right idea”.

Editorial | [Scandalising as contempt](#)

A wide field in India

The objective for contempt is stated to be to safeguard the interests of the public, if the authority of the Court is denigrated and public confidence in the administration of justice is weakened or eroded. But the definition of criminal contempt in India is extremely wide, and can be easily invoked. *Suo motu* powers of the Court to initiate such proceedings only serve to complicate matters. And truth and good faith were not recognised as valid defences until 2006, when the Contempt of Courts Act was amended. Nevertheless, the Delhi High Court, despite truth and good faith raised as defences, proceeded to sentence the employees of *Mid-Day* for contempt of court for portraying a retired Chief Justice of India in an unfavourable light.

It comes as no surprise that Justice V.R. Krishna Iyer famously termed the law of contempt as having a vague and wandering jurisdiction, with uncertain boundaries; contempt law, regardless of public good, may unwittingly trample upon civil liberties. It is for us to determine what is the extent of such trampling we are willing to bear. On the face of it, a law for criminal contempt is completely asynchronous with our democratic system which recognises freedom of speech and expression as a fundamental right.

An excessively loose use of the test of 'loss of public confidence', combined with a liberal exercise of *suo motu* powers, can be dangerous, for it can amount to the Court signalling that it will not suffer any kind of critical commentary about the institution at all, regardless of how evidently problematic its actions may be. In this manner, the judiciary could find itself at an uncanny parallel with the executive, in using laws for chilling effect.

Besides needing to revisit the need for a law on criminal contempt, even the test for contempt needs to be evaluated. If such a test ought to exist at all, it should be whether the contemptuous remarks in question actually obstruct the Court from functioning. It should not be allowed to be used as a means to prevent any and all criticism of an institution.

Obsolete abroad

Already, contempt has practically become obsolete in foreign democracies, with jurisdictions recognising that it is an archaic law, designed for use in a bygone era, whose utility and necessity has long vanished. Canada ties its test for contempt to real, substantial

and immediate dangers to the administration, whereas American courts also no longer use the law of contempt in response to comments on judges or legal matters.

In England, too, from where we have inherited the unfortunate legacy of contempt law, the legal position has evolved. After the celebrated *Spycatcher* judgment was delivered in the late 1980s by the House of Lords, the British tabloid, the *Daily Mirror*, published an upside-down photograph of the Law Lords with the caption, “You Old Fools”. Refusing to initiate contempt action against the newspaper, one judge on the Bench, Lord Templeton, reportedly said, “I cannot deny that I am Old; It’s the truth. Whether I am a fool or not is a matter of perception of someone else.. There is no need to invoke the powers of contempt.” Even when, in 2016, the *Daily Mail* ran a photo of the three judges who issued the Brexit ruling with the caption “Enemies of the People”, which many considered excessive, the courts judiciously and sensibly ignored the story, and did not commence contempt proceedings.

Also read | [Reviewing the Contempt of Courts Act](#)

But Indian courts have not been inclined — or at least, not always — to display the same maturity and unruffled spirit as their peers elsewhere. An exception lay in Justice S.P. Bharucha’s response to Arundhati Roy’s criticism of the Supreme Court for vacating the stay for constructing a dam: although holding that Ms. Roy had brought disrepute to the Court, nothing further was done, for “the court’s shoulders [were] broad enough to shrug off [these] comments”. But this magnanimity was sadly undone when contempt proceedings were initiated against the author for leading a demonstration outside the court, and filing an affidavit, where she said “it indicates a disquieting inclination on the part of the

Court to silence criticism and silence dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm”. For “scandalising its authority with mala fide intentions”, she was punished for contempt of court, and sentenced to a day’s imprisonment, with fine.

It is regrettable that judges believe that silencing criticism will harbour respect for the judiciary. On the contrary, surely, any efforts to artificially prevent free speech will only exacerbate the situation further. As was pointed out in the landmark U.S. case of *Bridges v. California* (1941), “an enforced silence would probably engender resentment, suspicion, and contempt for the bench, not the respect it seeks”. Surely, this is not what the Court might desire.

Two observations and a link

Simultaneous with the Indian Supreme Court’s decision to commence contempt proceedings against Mr. Bhushan, the Pakistan Supreme Court hinted at banning YouTube and other social media platforms, for hosting what it termed ‘[objectionable content](#)’ that ‘incited hatred’ for institutions such as the army, the judiciary, the executive, and so on. The eerie similarity between the two sets of observations raises concerns about which direction the Indian Supreme Court sees itself heading. One can only hope that these fears are unwarranted.

Justice A.P. Shah is retired Chief Justice, Delhi and Madras High Courts, and former Chairperson, Law Commission of India

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A motorcycle and the art of court management

Sriram Panchu July 27, 2020 00:02 IST Updated: July 27, 2020 11:28 IST

6-8 minutes

Mr. Prashant Bhushan, senior lawyer and indefatigable campaigner for public causes cum thorn in the flesh for the other side, recently put out a tweet with a photograph where he criticised Mr. Justice S.A. Bobde, the current Chief Justice of India (CJI), for riding an expensive motorcycle at a time when the Court is under lockdown.

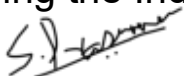
No one can accuse Mr. Bhushan of moderation, and clearly he was off the mark here. The Courts are shut because the world is in lockdown; the Chief Justice of India is hardly to blame for this. And the photograph only showed him, clad in casual wear, sitting on a stationary motorcycle to get the feel of it. It was no doubt an unusual sight, since we are so used to seeing the head of the judiciary only in the most formal settings and attire. But for that same reason, it was refreshing to see an august personage in a rather human light. Many of us have pleasant recollections of our motorcycle days with the wind at our face and the world at our feet; perhaps the CJI was going back down memory lane to happier days. He could be forgiven for this brief respite from the cares of his office, even if he was unmasked momentarily. And

who knows – if you remember Robert M. Pirsig's *Zen and the Art of Motorcycle Maintenance*, a motorcycle may give you some insights into how to navigate through the fog and treacherous roads that now lie before us.

Series of actions

If matters had been left alone, this picture and tweet would have merited a two-minute attention in this current chaotic and fast-moving world. However, on Wednesday last, the Supreme Court of India upended the frame, picture, narrative and discourse. A three Judge Bench, headed by Justice Arun Mishra, took *suo motu* notice of it and [issued notice of contempt of Court to Mr. Bhushan](#) “for undermining the dignity and authority of the Institution of Supreme Court in general, and the office of the Chief Justice of India in particular”. The Bench coupled to this another tweet of Mr. Bhushan in which he says that in the last 6 years, democracy has been destroyed in India, and that historians will mark the role of the Supreme Court in this, especially the last 4 CJIs. It followed it up on Friday by [listing yet another citation of contempt](#) against Mr. Bhushan, this time in a 11-year-old case where he allegedly said in 2009 that half of India's last 16 Chief Justices were corrupt.

So now we have *causes célèbres*, given the issues and the players. Going by his record, Mr. Bhushan will not back down. Indeed, he may well welcome the centre stage he is now getting, and one can be sure he will train his guns on the narrative of corruption within the judiciary. We may be in for a slugfest of mammoth proportions, leaving the Indian Premier League far



// TRUE COPY//

behind.

For the judiciary to consider

But let us Pause. The Wise say that that should be done before taking momentous steps and treading on troublesome paths. And ask a few (six) questions: Is the Court being needlessly reactive? Across international jurisdictions, a far more liberal view is taken, with courts preferring to display broad shoulders and rest their protections on the surer moorings of public confidence rather than seek cover under the law of contempt.

Editorial | [Scandalising as contempt](#)

Is this about being protected from criticism or genuinely wanting to examine the serious complaints about the functioning of former judges? If some allegations do pass a threshold test, will the Court go the whole way of inquiry and strong action, or will it just sweep them under the carpet and deposit the carpet in a Pandora's box? Will the latter be readily accepted, given that there is a general perception that integrity levels have markedly declined in the last score of years.

Is this the right Bench size, composition and leadership for this set of cases? The issue of corruption infecting the topmost judiciary is as serious as can be. Should not a larger Bench, with more senior judges, hear these matters? Justice Mishra and Mr. Bhushan have had frequent confrontations in Court, and in a 2019 contempt case relating to appointment of the Director of the Central Bureau of Investigation, Mr. Bhushan has even petitioned that this Judge should not hear the matter. Memories still exist of an unprecedented press conference held in 2018 by the four

seniormost Justices of the Court expressing their unhappiness at assignment of sensitive cases to Justice Mishra. There are perceptual difficulties in thinking that this is the best Bench for this case.

Is this the right time for these issues to be taken up? COVID-19 has brought forth a standstill of the courts, which even before this were grappling with a gargantuan mass of cases. Salvaging and securing the administration of justice ought to be uppermost in minds of the apex judiciary, and there is no shortage of urgent and pressing issues which desperately cry out for the Court's attention. Why this now?

How will the Bar respond? It will be carefully watching whether one of its own is receiving fair treatment from the Bench. Lawyers have ideological and personal divides, but the Bar has an astonishing capacity to join ranks against authority that exceeds bounds; it is after all in the DNA of the common lawyer to keep arbitrary state authority in its place, for which this country must be ever grateful.

Will the Court's international institutional standing be enhanced or lowered if it takes up this case in this manner at this time?

Think and act

Contempt of court cases are usually between Court and Contemnor. Others do not have much of a say where an order has been disobeyed; there is little to do beyond establishing the fact, and enforcing punishment. But when it comes to a charge of scandalising the Court and interfering with the administration of justice, and when such charge proceeds on the expression of an opinion, on a matter which is undoubtedly one of public interest,

matters are not quite so simple. One must tread carefully, or not at all. Or, perhaps, even more apt in the present context is the following quote oft ascribed to an anonymous source: “When you are standing at the edge of a cliff, progress is a step backwards.”

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OPINION LAW

Justice Madan Lokur: Supreme Court Deserves an 'F' Grade For Its Handling of Migrants

After humanitarian law died a million deaths, the Supreme Court finally took suo motu cognizance of the plight of the workers forced to set out for distant rural homes because of the lockdown.



By addressing the plight of the migrant workers suo motu, as the court has now done, will the situation on the ground change? Illustration: Reuters/The Wire



Madan B. Lokur



LABOUR LAW 28/MAY/2020

News has come in that on May 26, 2020 the Supreme Court *took suo motu cognizance* of the problems and miseries of migrant labourers stranded in different parts of the country.

While taking cognizance, reference was made to newspaper and media reports of the

“unfortunate and miserable conditions of migrant labourers walking on-foot and cycles from long distances. They have also been complaining of not being provided food and water by the administration at places where they were stranded or in the way i.e. highways from which they proceeded on-foot, cycles or other modes of transport.”

Will some good come out of this? Better late than never? Is it a face-saving attempt to atone for past follies? Is it an indictment of the state that has dealt (or not dealt) with the tragedy? You be the judge.

The first among many petitions pertaining to the migrants was filed by Alakh Alok Srivastava, a practicing lawyer. The petition was in public interest and *the Supreme Court recorded in its order of March 31, 2020* that it “highlighted the plight of thousands of migrant labourers who, along with

their families, were walking hundreds of kilometres from their work-place to their villages/towns.”

By way of an example, the averment in the petition was noted to the effect that thousands of migrant labourers left Delhi to reach their homes in the states of Uttar Pradesh and Bihar, by walking on the highways. The petitioner’s concern pertained to their welfare and a direction was sought to the authorities “to shift the migrant labourers to government shelter homes/accommodations and provide them with basic amenities like food, clean drinking water, medicines, etc.”

On the request of the solicitor general, the court took on record a status report of March 31 and noted that it dealt with steps taken to prevent the spread of coronavirus, measures taken by the Central government in providing basic amenities like food, clean drinking water, medicines etc. to the ‘lower strata’ of society. A reference is also made to a relief package under the Pradhan Mantri Garib Kalyan Yojana and other schemes to ensure that persons in need are taken care of.

The report recorded that the initial reaction of the state governments and Union territories to the thousands of migrant labourers leaving Delhi was to transport them from their borders to their villages. But, on March 29, **the Ministry of Home Affairs issued a circular** “prohibiting movement as transportation of migrant labourers in overcrowded buses would cause more damage than help to the migrant labourers. The very idea of lock down was to ensure that the virus would not spread. It was felt that transportation of migrant labourers would aggravate the problem of spread of the virus.”

Also Read: Migrant Worker Crisis: The Supreme Court Has Abdicated All Responsibility

The circular worked like a magic wand and abracadabra, the solicitor general stated that as per information received by the control room more than 21,000 relief camps had been set up in which more 6.5 lakh persons (migrant labour) had been provided shelter and more than 22.8 lakh persons had been provided food and other basic amenities like medicines, drinking water, etc. **He further stated on instructions that as at 11.00 am** “there is no person walking on the roads in an attempt to reach his/her home towns/villages.”

What triggered the migration? According to the status report, panic was caused by fake news that the lockdown would last for more than three months. So, the migrant labourers chose to believe fake news rather than the hon’ble prime minister who had announced, a few days earlier, only a three week lockdown. Fake news had circulated despite an advisory by the Government of India on March 24 to the authorities to effectively deal with rumour mongering. Obviously, the authorities failed in the discharge of their duty. Therefore, the court expected all concerned to “faithfully comply with the directives, advisories and orders issued by the Union of India in letter and spirit in the interest of public safety.” As far as the media was concerned, **the court expected the print, electronic and social media** to “maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated.” Scapegoating had started.

Additionally, the court recorded the statement of the solicitor general that “within 24 hours the Central government will ensure that trained counsellors and/or community group leaders belonging to all faiths will visit the relief camps/shelter homes and deal with any consternation that the migrants might be going through. This shall be done in all the relief camps/shelter homes wherever they are located in the country.”

Two features clearly stand out. First, the Supreme Court accepted what it was told – hook, line and sinker. True, there was nothing on March 31 to doubt the correctness of the statement that no person was walking on the roads at 11.00 am but is the court so naïve as to seriously believe such a statement? Is the court also naïve enough to believe that a circular issued by the Central government could work wonders and ensure that a few lakh persons (not thousands) actually stayed off the roads? If a statutory order issued by the National Disaster Management Authority and the Ministry of Home Affairs acting in exercise of powers conferred by the Disaster Management Act could not ensure the implementation of a complete lockdown, could a mere circular prevent migrants from hitting the road? Really?

Also Read: [How Nepal's Supreme Court Upheld Dignity of Migrant Workers Without Diluting COVID Fight](#)

Subsequent hearings in the case on April 3 and 7 confirm that as on March 31, the Supreme Court did not even bother to question the statement made or hold the Central government to account, despite more than enough evidence available everywhere. Newspaper and media reports were ignored.

Second, did the Central government fulfil its commitment that “trained counsellors” would visit the camps and deal with the “consternation of the migrants”? Even this was not questioned by the court during the hearings on April 3 and 7. This is very important since the court was aware that “panic can severely affect mental health. We are informed that the Union of India is conscious of the importance of mental health and the need to calm down those who are in a state of panic.”

Given the circumstances, was it not the constitutional obligation, not duty, of the Supreme

Court – a court for the people of India and not a court of the people of India – to ascertain that a few lakhs (not thousands) of migrants are well taken care of, physically and emotionally? It is not that the court was expected to disbelieve or distrust the establishment represented by no less than the solicitor general, the court was only required to ensure through the principle of continuing mandamus that the solemn assurances given to it are faithfully carried out. Sorry, the court completely failed in this – forgot what public interest litigation is all about. If a grading is to be given, it deserves an F.

True, the events were unprecedented as far as the government is concerned, but the events were also unprecedented as far as the migrants are concerned. Unfortunately, the lack of interest and compassion shown by the court was also unprecedented. Here was an opportunity handed over on a platter to the court to be more proactive and assertive keeping the interest and constitutional rights of the hapless people in mind.

The initial failure of March 31 and in two subsequent hearings was compounded in the final hearing on April 27, when the Court passed a rather tepid order to the effect that the solicitor general had agreed that the interim directions passed on March 31 would be continued [actually no interim directions had been passed] and the suggestions made would be examined and appropriate action taken. On this basis, the petition was disposed of. On that day, humanitarian law died a million deaths.

Also Read: [The Supreme Court Is Locked Down and Justice Is in 'Emergency' Care](#)

Surely, but surely, the court could not have been oblivious to the continuing migration to rural areas during this period in April. If the court was aware

of the migrant crisis (as it should and must have been) why did it not act? Did the court feel helpless and if so, why? Leaving the migrants – men, women, children and infants to their uncertain fate was certainly not a policy decision that necessitated a hands-off attitude from the court; and if it was a policy decision, it was a perverse policy decision that should have been set aside in less than a minute.

What could the court have done? Public interest litigation is all about public interest. Well-meaning persons approach the Supreme Court for the enforcement of constitutional and statutory rights of those who have no access to justice. This is precisely what the petitioner (and others) did. The Supreme Court was approached on behalf of migrant labourers on the road for a do-something direction. Sadly, the court let them down, badly. The court could have asked pointed questions to the state. It could have asked if the Central government had a plan of action for the “unforeseen development” (an expression used in the status report); it could have asked for the steps taken and proposed to be taken to mitigate the hardships that the migrants faced; it could have asked if the state governments were geared up for the massive influx of migrants whose presence “would aggravate the problem of spread of the virus.” Issues of socio-economic justice and constitutional rights are vital and raise a whole host of questions, but not one was asked in a public interest litigation, and the issue buried ten fathoms deep. If any event ever shook the collective conscience of the nation, the travails of the migrant labourers did.



A migrant workers' scarred feet. Photo: Shome Basu

Why do I say that the court could not have been unaware of the migrant labourers issue? **A second petition filed by Harsh Mander and Anjali Bhardwaj** came up before the Supreme Court on April 3. They had asked for a direction to the Central government and state governments to ensure payment of wages/minimum wages to all migrant workers within a week. It was contended that despite governmental measures, thousands of labourers still lack access to basic facilities, and that studies conducted by NGOs indicate that there are several areas where the aid is not reaching the migrant workers.

On April 7, a status report was presented to the court on behalf of the state. Annexure B to this report gave some startling figures. The status report of March 31 stated that there were 21,604 relief camps and 6,66,291 persons had been provided shelter while 22,88,279 persons had been provided food. As per the report of April 7, the number of relief camps and shelters (including those of NGOs) had gone up to 26,476; shelter had been provided to 10,37,027 persons and food provided to 84,26,509. In addition, 15,05,107 workers were said to have been given shelter and food by employers/industry where they were working. Given this massive increase in numbers within a week, how could the court be unaware of the problem facing the country

and how could the court not do anything about it? It seems to me that after the migrant workers, empathy and compassion were the next casualties.

The status report goes on to debunk newspaper reports by stating: “The petition as well as further Affidavit filed is bereft of any facts and is based on some newspaper reports.” The newspaper reports that the Supreme Court has now referred to are also not worthy of credence? The status report trashes the studies relied on by the petitioners by not even bothering to refer to them. Unfortunately, nor does the Supreme Court.

And then what happened? The petition filed by these two social activists was adjourned to April 21, and the following order passed: “Taking into consideration the material placed before us, we call upon the respondent – Union of India – to look into such material and take such steps as it finds fit to resolve the issues raised in the petition.” Excuse me? What about payment of wages? Executivization of constitutional justice?

Also Read: [Feel a Little Shame for the Lost Soul of the Nation](#)

The status report points out, interestingly, that “when the country is facing such unprecedented crisis, filing of such petitions and attempting to sit in appeal over all actions taken by the respective governments by few individual needs to be discouraged as it diverts energy and attention of the statutory functionaries which ought to have been utilised to its optimum in discharging their duties on ground.” The Supreme Court can very well be similarly told at the next hearing in the *suo motu* proceedings – don’t interfere since you are diverting our energy and attention and effectively preventing us from utilising them from discharging our duties on the ground.

A third opportunity came the way of the Supreme Court **when Jagdeep Chhokar filed a petition** for a direction to the Government of India to allow migrant workers across the country to return to their hometowns and villages after conducting necessary testing for COVID-19 and to arrange for their safe travel by providing necessary transportation to this effect.

It was noted by the court on May 5 that an order of the government issued on April 29 allowed movement of migrant workers, pilgrims, tourists and students stranded at different places. All state and Union territory governments were required to designate nodal authorities and develop standard protocols for receiving and sending such stranded persons. “The main relief which was sought in the writ petition, thus, stood substantially satisfied by the aforesaid order.” QED. Shouldn’t questions of this nature have been asked on March 31? Any follow-up steps?

The **court also noted** that on May 1, an order was issued by the Ministry of Railways to run “Shramik Special” trains to move migrant workers, tourists, students and other persons stranded at different places due to lock down. A grievance was made by Prashant Bhushan appearing for the petitioner that the migrants were required to pay 15% of the fare, which they could not afford. Remember, the court had earlier declined to pass any order for payment of wages to the migrant labour. What was the answer now? “Insofar as charging of 15% of Railway tickets’ amount from workers, it is not for this court to issue any order under Article 32 regarding the same, it is the concerned State/Railways to take necessary steps under the relevant guidelines.” The petition stands disposed of.

One thing is clear – the migrant workers, women (some of them pregnant), children and infants will remember these dark days till the very end. Images

that have haunted us for two months and the horrific struggles of millions will remain etched in our psyche and many will long remember that when it came to the crunch, the Supreme Court did not see those images or read those stories. Over the past few months, constitutional rights and remedies were overlooked and socio-economic justice, a cornerstone in the preamble of our constitution, was disregarded. Some eminent members of the legal fraternity **have already expressed dissatisfaction** with the present-day functioning of the Supreme Court. Isn't that tragic or is it farcical?

The facts speak for themselves. Can the court redeem itself and reimage its brand as a court for the people of India and not of the people of India? By addressing the plight of the migrant workers *suo motu*, as the court has now done, will the situation on the ground change? Will the Supreme Court change? You be the judge.

Madan B. Lokur is a former judge of the Supreme Court of India

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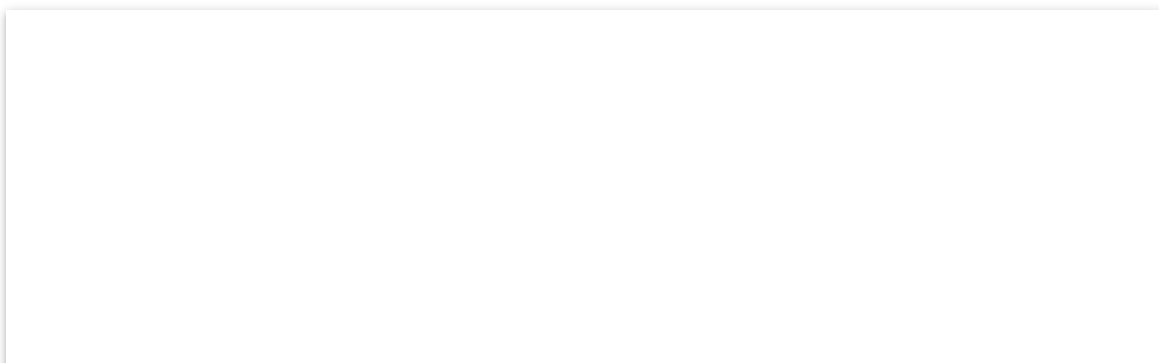
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Failing to perform as a constitutional court

Ajit Prakash Shah May 25, 2020 00:15 IST Updated: May 24, 2020 23:40 IST

7-9 minutes

As India, along with the rest of the world, grapples with the public health crisis caused by COVID-19, it faces many unique challenges. The most acute problem is faced by migrant labourers: they have no work, no source of income, no access to basic necessities, no quality testing facilities, no protective gear, and no means to reach home. Every day, we hear of migrant labourers walking hundreds of miles, many dying in the process. The saddest is the apathy shown by the institutions meant to look out for their interests. I refer here to the Supreme Court, which has failed to satisfactorily acknowledge that the fundamental rights of migrant labourers have been violated, and ignored these workers when they most needed protection.

[Full coverage: Lockdown displaces lakhs of migrants](#)

Undeniably, the state must ensure that adverse consequences of this pandemic are minimised. But any duty performed by the arms of the state, even during emergency, must always be bounded by constitutional propriety, and respect fundamental rights. The judiciary becomes the all-important watchdog in this situation.

No relief for workers

In this lockdown, enough and more evidence points to fundamental rights of citizens having been grossly violated, and especially those of vulnerable populations like migrant labourers. But instead of taking on petitions questioning the situation, the Supreme Court has remained ensconced in its ivory tower, refusing to admit these petitions or adjourning them. By effectively not granting any relief, the Court is denying citizens of the most fundamental right of access to justice, ensured under the Constitution. In doing so, it has let down millions of migrant workers, and failed to adequately perform as a constitutional court.

Also read: [Migrant workers in U.P. find meagre solace in shovels](#)

In one of the strictest lockdowns in modern India, the Centre issued many directives, but designated the States as the implementing authorities. But the issue of migrant labourers is inherently an inter-State issue, and States have had to tackle it both internally as well as inter-se. Who will guarantee safe transport for the return of migrant workers? When in quarantine, who will grant them a sustenance allowance, or look after their health issues, or look after needs besides food? Who will ensure job loss compensation? Who will conduct regular and frequent testing? Only the Supreme Court can enforce accountability of the Centre in these matters.

In rejecting or adjourning these petitions, the Court has made several questionable remarks: the condition of migrant labourers is a matter of policy and thus, does not behove judicial interference; or, governments already provide labourers with two square meals a day, so what more can they possibly need (surely, 'not wages');

or, incidents like the horrific accident where migrant labourers sleeping on railway tracks were killed cannot be avoided because 'how can such things be stopped'. Equally, lawyers have been castigated for approaching the Court 'merely' on the basis of reports. But the Court has rarely insisted on such formality: its epistolary jurisdiction (where petitions were entertained via mere letters) is the stuff of legend, so its reaction here, during an emergency, seems anomalous.

Also read: [Coronavirus package | Will migrant workers benefit from the Centre's measures?](#)

Many of the so-called excuses of the Court have been tackled by previous judgments, notably the question of policy and non-judicial interference. There are numerous judgments where it has laid out matters of policy: for instance, the Vishaka guidelines on sexual harassment in the workplace; the right to food; and various environmental protection policies. In these cases, the Court formulated policies and asked the States to implement them. Today, there is an unfortunate presumption discernible in the Court's response that the government is the best judge of the situation. In believing thus, the Court seems to have forgotten that the Constitution does not fall silent in times of crises. Similarly, nothing prevents the Court from monitoring the situation itself directly, especially regarding the state's obligations: it could easily direct bureaucrats to collect empirical data on the ground, as it has done before.

One is struck immediately by the lack of compassion or judicial sensitivity in handling this situation, and it prompts two observations. First, the Court is not merely rejecting or adjourning these petitions; it is actively dissuading petitioners from

approaching the courts for redress because the Court determines that it is the executive's responsibility. Ordinarily, the Court would have at least nudged petitioners towards the High Courts, but here, even that choice is not available — the Court is practically slamming the door shut.

Second, there is the matter of how the Court is treating such public interest litigations. PILs are a specific instrument designed to ensure the protection of the rights of the poor, downtrodden and vulnerable, and “any member of the public” can seek appropriate directions on their behalf. This lies at the heart of the PIL. The concept of a PIL is to be non-adversarial, but the Court is treating these as adversarial matters against the government. PILs, in fact, ought to be a collaborative effort between the court and all the parties, where everyone comes together in seeking a resolution to the problem. Today, we find ourselves with a Supreme Court that has time for a billion-dollar cricket administration, or the grievances of a high-profile journalist, while studiously ignoring the real plight of millions of migrants, who do not have either the money or the profile to compete for precious judicial time with other litigants.

Role of High Courts

At this stage, I must acknowledge the stellar role being played by some High Courts, even though governments have tried to discourage them on grounds that since the Supreme Court is not interfering, High Courts need not do so either. At least four High Courts (Karnataka, Madras, Andhra Pradesh and Gujarat) have started asking questions about migrant rights. This is almost a replay of what happened during Emergency, where High Courts boldly stood up and recognised violations, but were overruled

eventually by the Supreme Court. The Madras High Court, for example, has quashed criminal defamation cases against media houses, stating that democracy cannot be throttled this way. Contrast this with the Supreme Court's reaction to the bizarre claim of the Solicitor-General who argued that the exodus of workers was due to fake news: the Court seemed to have accepted this, and media houses were advised to report more responsibly.

In such times, High Courts come across as islands of rationality, courage and compassion. However, in truth, the subject matter of migration is inherently an inter-State issue, not an intra-State one. This is a time when the apex court must intervene and monitor the calamitous situation, instead of taking the government's word as gospel. Justice Brandeis' words quoted by Justice H.R. Khanna in *ADM Jabalpur* ring especially true in these times: "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent ... [the] greatest danger to liberty lies in insidious encroachment by men of zeal, well-meaning but lacking in due deference for the rule of law."

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