

IN THE SUPREME COURT OF INDIA

Contempt Petition (Cr) No. 10/09  
In  
Interlocutory Application No. 1324,1474,2134/2007  
In  
Writ Petition (Civil) No. 202/95

In the matter of:

Amicus Curiae  
Vs.  
Prashant Bhushan and Anr.

**Further Supplementary Affidavit on behalf of respondent No. 1**

1. I, Prashant Bhushan, son of Mr. Shanti Bhushan, resident of B-16, Sector 14, Noida, do hereby solemnly state and affirm as under:
2. That I am the respondent No. 1 in this case and am fully acquainted with the facts and circumstances of this case.
3. That subsequent to the last hearing in this matter, some additional relevant facts have come to light which need to be brought to the notice of the court. I am therefore seeking liberty to place those facts on record by means of this affidavit.
4. In the issue of Feb 26-Mar 12, 2011 of Frontline Magazine, Justice V. R. Krishna Iyer has written an article titled "Time for change". The article makes out a strong case for an independent Appointments Commission (for appointments to the higher judiciary), a performance Commission and an anti corruption commission to keep a constant watch over judges in view of the falling standards of performance and integrity in the higher judiciary. A copy of this article is annexed as Annexure A. He has also written a short piece on July 1, 2011, emphasizing the need to bring the higher judiciary within the investigative ambit of an independent Lokpal. He says, "The greatest menace before India today is that the judiciary itself is corrupt and no action is being taken. There must be a militant, active nationwide movement against corruption." A copy of this statement as published in the Hindu Newspaper is annexed as Annexure B.
5. That recently there have been a spate of media revelations (with fairly comprehensive documentation) about disproportionate assets in the hands of the brother and sons in law of the former Chief Justice of India, Justice K.G.

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Balakrishnan. Facts have also emerged about other kinds of misconduct that have been committed by him during his tenure as Chief Justice of India. As a result of these revelations, the respondent on behalf of the Campaign for Judicial Accountability has sent a representation to the President of India seeking that the government should make a reference to the Supreme Court under Section 5 (1) of the Human Rights Act for an inquiry for the purpose of his removal as Chairman of the National Human Rights Commission. A copy of this representation is annexed as Annexure C. Subsequently, there have also been some other related revelations and articles in the media on the issue, including by the Amicus Mr. Harish Salve. These are collectively annexed as Annexure D colly.

Deponent

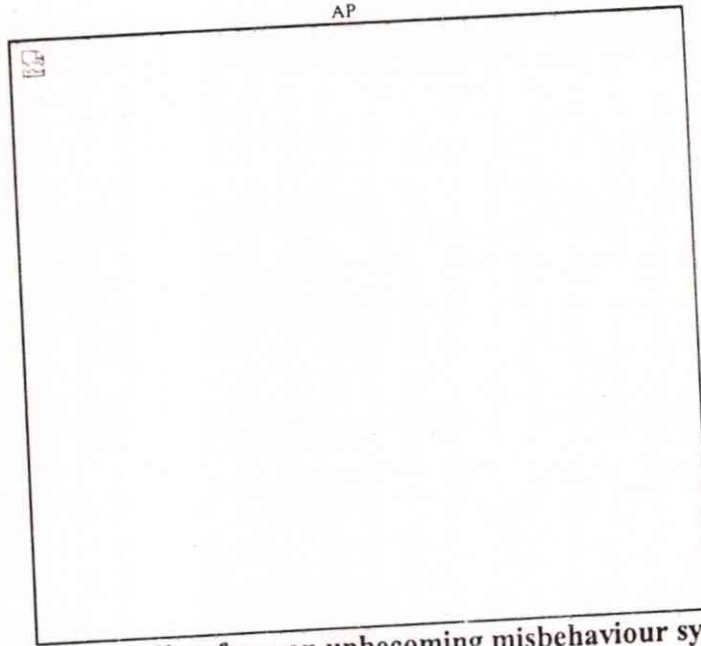
**Verification:** I the deponent abovenamed do hereby verify that the contents of the above affidavit are true to my knowledge and nothing material has been concealed therefrom. Verified at New Delhi on this the 13<sup>th</sup> day of July 2011.

Deponent

**Time for change**

V.R. KRISHNA IYER

**The time has come for a democratic revolt against the judiciary and for the appointment of a performance commission for judges.**



**The judiciary suffers from an unbecoming misbehaviour syndrome.**

DELINQUENCY of judges must be rooted out. They should be socialist, secular and democratic by conviction, simple in life and straightforward in behaviour. Judges correct the executive's aberrations. When legislatures violate the Constitution by unconstitutional actions, courts quash such actions. But the egregious exaggeration that shocks the public is the terrible catastrophe of judicial corruption.

To quote Felix Frankfurter in *Bridges vs California*, 314 U.S. 252, 289 (1941):

“Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candour however blunt.”

Even High Court and Supreme Court judges are suspected of bribery and delinquency. Today, the judiciary suffers from an unbecoming misbehaviour syndrome. The most respected and sublime sector of public service, namely, the judiciary, is losing its credibility. I quote Winston Churchill and Lord Scrutton to prove the poor credentials of the judges.

The Secretary of State for the Home Department (W.S. Churchill) on the second reading of the Trade Unions (No.2) Bill, 1911 (26 H.C. Deb. col. 1922) said:

“The courts hold justly a high, and I think unequalled pre-eminence in the respect of the world in criminal cases, and in civil cases between man and man, no doubt, they deserve and command the respect and admiration of all classes of the community, but where class issues are involved, it is impossible to pretend that the courts command the same degree of general confidence. On the contrary, they do not, and a very large number of our population have been led to the opinion that they



are, unconsciously, no doubt, biased.

(Honorary Members: 'No, no', 'Withdraw' and interruption.)

Lord Justice Scrutton in an address delivered to the University of Cambridge Law Society on November 18, 1920 (1 *Cambridge Law Journal*, page 8):

"The habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas of such a nature that, when you have to deal with other ideas, you do not give as sound and accurate judgments as you would wish. This is one of the great difficulties at present with Labour. Labour says 'Where are your impartial judges? They all move in the same circle as the employers, and they are all educated and nursed in the same ideas as the employers. How can a labour man or a trade unionist get impartial justice?' It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class."

We require a performance commission to eliminate the robed brethren who are guilty of goofiness and gross culpability. We require a constitutional code of conduct and good behaviour for judges. When they are guilty, a commission of high integrity and critical incisiveness must investigate into charges against them, and if found guilty they shall be removed without impeachment.

David Pannick in his delightful book (*Judges*, 1987) has observed:

"Mr. Justice Jackson of the U.S. Supreme Court observed in 1952 that 'men who make their way to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance and other weaknesses to which human flesh is heir'. It would be surprising, indeed alarming, if some of the eminent legal minds that constitute the English judiciary did not, on their rare off days, act injudiciously. This was recently recognised by Lord Chancellor Hailsham. Those who sit in judgment occasionally become subject to what he called 'judges' disease', that is to say a condition of which the symptoms may be pomposity, irritability, talkativeness, proneness to *obiter dicta* [that is, statements not necessary for the decision in the case], a tendency to take short-cuts. A judge may grow unfit for his office in many ways. It is therefore important to consider what sanctions exist in relation to judges who are unable to act in a judicial manner."

In short, mountebanks, though few, creep into the Bench, and their judgments bind even though absurd. To secure sound balanced pronouncements, we may require a performance commission to eliminate such mountebanks after due inquiry. In the U.S. at the state level there are performance commissions. Even David Pannick has supported such an institution. We must have one in India too.

SATISH H.

