

**Chief Injustices.
Excerpts from a milestone affidavit**



RUDIMENTARY LOGIC demands that the highest chairs must have the soundest legs. By that measure, judges ought to have impeccable moral character. But in India, judges are protected less by their sterling reputations than by an arcane law: the “contempt of court” act, which prohibits raising any questions about judges or their actions. This has reduced talk of judicial corruption to a sullen whisper rather than a democratic debate.

Supreme Court lawyer Prashant Bhushan has fought this unhealthy immunity for 20 years. In September 2009, partly as a result of his relentless campaigns, the judiciary finally agreed to declare their financial assets. It was a big first step. Much remained to be done. Soon after, in an interview with TEHELKA, Bhushan outlined other mechanisms needed to make judges more accountable and spoke of various forms of judicial corruption. Among other things, he asserted that “half of the last 16 Chief Justices have been corrupt.”

Based on this interview, lawyer Harish Salve slapped a contempt of court case against Bhushan and TEHELKA editor Tarun J Tejpal. At first Bhushan argued his right as a citizen to voice his perceptions. But the court insisted on pursuing the matter further, saying the ramifications of the case for the credibility of the Supreme Court were far greater than those that had been under consideration in either “Duda’s case or Bal Thackeray’s case”. (The former had called the Supreme Court a haven of FERA violators, bride-burners and racketeers; the latter had said, “I piss on the Supreme Court.”)

Pushed to demonstrate that his views were not just reckless assertions, Bhushan has now filed a supplementary affidavit with evidence backing his statement about corrupt judges. In the affidavit, Bhushan reiterates the difficulty in getting documentary evidence of corruption in the higher judiciary because no investigation is allowed against judges, there is no disciplinary authority one can turn to, and

even FIRs require prior permission from the Chief Justice of India.

Despite this, his affidavit casts chilling light on the apparent misconduct of many judges. A week earlier, in a historic move, constitutionalist and former law minister Shanti Bhushan also filed an affidavit, seeking to implead himself in the case. Like his son, he asserted eight out of the last 16 Chief Justices have been corrupt and submitted their names in a sealed envelope to the bench. He would consider it a “great honour”, he said, “to spend time in jail for making an effort to get for the people of India an honest and clean judiciary.”

Truth, in India, has only recently become defence. But if the court pursues these courageous affidavits and tasks the Bhushans to prove their allegations with evidence, it could become a unique moment in history. Retired justice VR Krishna Iyer has already said this is a historic opportunity for public cleansing. The first step is to share information in public interest. Here, therefore, are edited excerpts from Prashant Bhushan’s affidavit.

RANGANATH MISHRA

25.09.1990 - 24.11.1991



CHIEF JUSTICE Ranganath Mishra as a judge of the Supreme Court presided over a Commission of Inquiry on the genocide of Sikhs in 1984. He conducted the inquiry proceedings in a highly biased manner and went on to give a clean chit to the Congress party, despite there being considerable evidence implicating senior leaders of the party.

After conducting inquiries into the 1984 riots, he became a Congress Rajya Sabha MP

The evidence against the Congress leaders and party has come out in subsequent official inquiry reports as well as in the subsequent CBI investigations.

He went on, after his retirement, to agree to become a Rajya Sabha MP of the Congress. Such actions, to my mind, clearly smack of corruption. Corruption, as I have mentioned earlier, is not used in a narrow sense of taking bribe alone, but in a wider sense of being morally culpable or blameworthy

KN SINGH

25.11.1991 - 12.12.1991



CHIEF JUSTICE KN Singh who followed Justice Rangnath Mishra, passed a series of unusually benevolent orders in favour of Jain Exports and its sister concern Jain Shudh Vanaspati. Several of these were passed during his 18-day tenure as Chief Justice, and many of these cases were ordered to be listed before him by oral mentioning.

This became such a talked about scandal in the corridors of the Court that eventually in a hearing on 9 December 1991, the counsel for the Union of India was forced to object to the manner in which the cases came to be listed before Justice KN Singh’s bench. He was forced to give a laboured explanation about how and why he ordered the matter to be listed before him when it was before another bench.

All these judgments came to be reviewed and reversed later by a series of subsequent benches, in some of which, the review petitions were heard in open court, in a departure from the normal procedure.

Passed a series of orders in favour of Jain Shudh Vanaspati. These were later set aside

On 1 April 1991 and 9 September 1991, Justice KN Singh allowed two Civil Appeals of Jain Exports regarding the import of caustic soda and reduced the import duty payable by the company from 92 percent to 10 percent. Both these orders were subsequently reviewed and set aside. On 28 November 1991, (during his 18 day tenure as CJI) Justice Singh dismissed the appeal of Union of India against Jain Shudh Vanaspati in a case involving the import of edible oil in stainless steel containers (the import of which was banned), which were fraudulently painted over to disguise them as mild steel containers. This order was reviewed and set aside on 16 July 1993 by a bench of Justice JS Verma and PB Sawant.

All these orders of Justice KN Singh in the Jain Exports and Jain Shudh Vanaspati cases were widely understood and regarded as having been passed for corrupt considerations. They became a much talked about scandal in the Court, even while he was Chief Justice.

AM AHMADI

25.10.1994 - 24.03.1997



CHIEF JUSTICE AM Ahmadi, who succeeded Justice Venkatachalaiah (who was widely respected and regarded as a judge of great integrity), went on to quash the charge of culpable homicide in the criminal case arising out of the Bhopal Gas leak. Seven benches were changed during the hearing of this case, the only common judge in all these benches was Justice Ahmadi who was Chief Justice and constituting the benches.

This judgment of quashing the charge of culpable homicide before the trial not only delayed the trial but led to such miscarriage of justice, that the Supreme Court has thought it fit to issue notice on a

curative petition filed by the CBI even 14 years after that judgment.

Justice Ahmadi then went on to deal with and pass several orders in the Union Carbide case involving the setting up of a hospital from the sale proceeds of Union Carbide India Limited's shares held by Union Carbide Corporation, USA.

In fact, he passed the orders releasing the amount of Rs. 187 crore for the construction of the hospital from the attached funds of Union Carbide. Quite remarkably, after having dealt with these cases of Union Carbide, Justice Ahmadi (soon after his retirement) went on to become the lifetime Chairman of the same hospital trust whose case he had extensively dealt with as Chief Justice.

A Supreme Court bench headed by Justice Kuldip Singh had, on 10 May 1996, passed an order staying all construction within 5 km of Badkal and Surajkund lakes in Faridabad for environmental reasons. This order prevented any construction in plots in a development called Kant Enclave, which is adjoining Surajkund lake and on land which had been notified as Forest Land under S4 of the Punjab Land Preservation Act.

Being forest land, no construction was permissible on this land without the prior permission of the Union Ministry of Environment and Forests, and also without the permission of the Supreme Court by virtue of the orders of the Court in the Godavarman case.

Despite this, however, Justice Ahmadi, who was at this time the Chief Justice of the Court, went on to purchase plots in this development around this time and also went on thereafter to construct one of the first houses on this (a palatial house where he has lived since his retirement) in violation of the orders of the Court and the Forest Conservation Act.

He bought land, built a house in Kant Enclave in Surajkund. The court had ruled it illegal

Soon after the original order of Justice Kuldip Singh, Justice Ahmadi as Chief Justice set about reconstituting these benches and urgently listing review petitions filed by Kant Enclave and others against these orders, where these orders came to be successively modified.

The order prohibiting construction within 5 km of the lakes was modified to 1 km by the order dated 11 October 1996. This order was further modified in the review petitions filed by Kant Enclave and others by order dated 17 March 1997, to obviate the need to no-objection certificates from the Pollution Control Boards for construction. This was further modified by even allowing construction even within 1 km of Surajkund lake by an order dated 13 April 1998 by a bench headed by the then Chief Justice MM Punchhi.

The fact that the construction of Justice Ahmadi's house in Kant Enclave is completely illegal and in violation of the Supreme Court's judgments, as well as the Forest Conservation Act, has now been emphatically stated by the Supreme Court itself in its order dated 14 May 2008 on the clarification application on behalf of Kant Enclave.

The Centrally Empowered Committee of the Court has found the violations of those who constructed their houses in Kant Enclave so egregious, that they have recommended the demolition of these constructions which includes that of Justice Ahmadi in their report dated 13 January 2009. I regard Justice Ahmadi's actions in all this as morally culpable and indeed corrupt. They had become a much talked about scandal in the corridors of the court as well as among judges at that time.

MM PUNCHHI

18.01.1998 - 09.10.1998



JUSTICE PUNCHHI had a short tenure of 10 months. He succeeded Justice Verma, who is widely regarded as one of the finest and most upright Chief Justices of the Supreme Court. The Committee on Judicial Accountability had prepared an impeachment motion against Justice Punchhi, which had been signed by more than 25 members of the Rajya Sabha, but did not get the requisite number of signatures since he went on to become Chief Justice of India. The six extremely serious charges in the impeachment motion are detailed below:

1. As a Judge of the Supreme Court, while deciding an appeal of Shri KN Tapuria against a judgment of the Bombay High Court, dated 10.12.93 by which he was sentenced to two years rigorous imprisonment, Justice Punchhi allowed the Appeal and acquitted Shri Tapuria on the basis of a purported compromise entered into between Shri Tapuria and the alleged representative of M/s Turner Morrison & Co, and thereby remitted his prison sentence. This was done despite the fact that the offence of criminal breach of trust for which Shri Tapuria had been convicted cannot be compounded in law and thus could not have been allowed to be compromised by the complainant. The order passed by Justice Punchhi was on extraneous considerations.

2. As a Judge of the Punjab & Haryana High Court, Justice Punchhi heard and dismissed a Writ Petition of the Vice Chancellor of the Rohtak University, Dr Ram Gopal, containing serious allegations of malafides against the then Chief Minister of Haryana Bhajan Lal. That while he decided this case dismissing allegations against Bhajan Lal, two of his unmarried daughters residing with him, Madhu and Priya, applied for and got allotment of two valuable house plots in Gurgaon from the discretionary quota of the Chief Minister. The plots were allotted on 1.5.86, the same day Justice Punchhi dismissed Ram Gopal's Writ Petition against Bhajan Lal. The judgment of

Justice Punchhi dismissing the Writ Petition was obviously given on extraneous considerations.

3. As Inspecting Judge of the Punjab & Haryana High Court, Justice Punchhi made an adverse inspection report questioning his integrity, against KS Bhullar, Sub-Judge-cum- Judicial Magistrate of Punjab, for the reason that Bhullar had refused to decide a case before him involving Justice Punchhi's co-brother in his favour.

4. As a Judge of the Supreme Court, Justice Punchhi attempted to hear and decide a case involving the validity of section 8 (a) of the Capital of Punjab (Development and Regulation) Act, 1952 though he was personally interested in the outcome of the case.

He decided on a case about a law when he was personally interested in the outcome

5. That Justice Punchhi attempted to browbeat officials of the Registry of the Punjab & Haryana High Court when they came to take inventory of items of furniture at the residence of the then Chief Justice of the Punjab & Haryana High Court, Justice V Ramaswami. He ordered them to mention in the inventory report that all the items had been found in order even when these had not been verified and this was not true. Thereafter, when this matter became subject of the impeachment proceedings and was put in issue in Writ Petitions filed in the Supreme Court, Justice Punchhi attempted to hear and decide that case, though in view of his role in the matter, he was clearly disentitled from doing so.

6. That as Judge of the Supreme Court, Justice Punchhi, kept pending with him a matrimonial proceeding involving one Ashok and Rupa Hurra from Gujarat, even after it had become infructuous. The matter was kept pending in order that a fresh petition to be filed by the husband also come before him. These proceedings were finally decided by him for extraneous

considerations in a manner which was contrary to law.

AS ANAND

10.10.1998 - 01.11.2001



JUSTICE ANAND, who succeeded □ Justice Punchhi, too enjoyed a very controversial tenure as Chief Justice of India. During his tenure, evidence of several acts of very serious misconduct came to light and came to the possession of the Committee on Judicial Accountability. As a result of this, an impeachment motion was also prepared by the Committee on Judicial Accountability against Justice Anand, which contained four serious charges which are detailed below:

1. That AS Anand, when he was the Chief Justice of the High Court at J&K, heard and passed favourable interim orders in the case of one Krishan Kumar Amla, soon after he had accepted gratification from Amla in the form of a 2 Kanal plot of land at Ganderbal, Srinagar. That Anand accepted this gratification from Amla even though he had been as a judge hearing and dealing with the cases of the companies owned by Krishan Amla and his father Tirath Ram Amla. These acts constitute gross misconduct and misbehaviour on the part of a Judge.

2. That AS Anand abused his office and influence as a judge and Chief Justice of the J&K High Court to hold on to the ownership of agricultural land which should have been vested in the government under the J&K Agrarian Reforms Act of 1976.

He passed an order favouring a person from whom he had received a plot of land

3. That AS Anand while he was a judge of the Supreme Court abetted his wife and mother-in-law in filing a suit based on false averments in a civil court in Madhya Pradesh. During the proceedings before the civil court, he abused his influence and authority to get the revenue authorities to suppress from the trial court the record of the proceedings before the revenue court. That he subsequently used his influence to get the State Government of MP to withdraw the Special Leave Petition filed by the State against his wife.

4. That Anand abused his office and influence as Chief Justice of the J&K High Court to get from the government of J&K a 2-kanal plot of land at Gandhinagar in Jammu for a price which was a small fraction of the market price. That in doing so, he gave a false and misleading affidavit that he owned no land or immovable property in Jammu.

Despite the fact that there was documentary evidence of serious charges of corruption against Justice Anand it was not possible to get the impeachment motion signed by the requisite number of MPs against a sitting Chief Justice of the Supreme Court. MPs are very reluctant to sign an impeachment motion against a sitting judge of the Supreme Court or a sitting Chief Justice of a High Court, even if one has documentary evidence of serious charges of misconduct against the judge concerned. This is because of a fear of judicial backlash against the MP or his political party, most of whom have cases pending in the courts.

YK SABHARWAL

01.11.2005 - 14.01.2007



ON 3 AUGUST 2007, the Campaign □ for Judicial Accountability had issued a press release detailing several serious

charges against Chief Justice YK Sabharwal. The most serious among these charges was that he passed a series of orders for sealing commercial properties in Delhi, operating in residential areas.

The immediate consequence of his orders was to force shops and offices to shift to shopping malls and commercial complexes being constructed by builders and developers, which resulted in increasing their prices enormously almost overnight. At precisely the time when Justice Sabharwal passed these orders of sealing, his sons entered into partnerships with some of the largest shopping mall and commercial complex developers and thus made huge profits. Moreover, the registered offices of his sons' companies were at the official residence of Justice Sabharwal at this time.

While he heard the Amar Singh tapes case, his sons got land allotments in Noida

Apart from this, his sons were allotted huge commercial plots by the Mulayam Singh government of Uttar Pradesh in Noida at highly concessional rates, at a time when Justice Sabharwal was dealing with the case of Amar Singh's tapes, the publication of which he had stayed.

As a result of these transactions, the sons of Justice Sabharwal, who till he started dealing with the sealing case, were small traders having a turnover of less than Rs. 2 crore went on to purchase a property of Rs. 15.43 crore in Maharani Bagh in March 2007 and more recently a property at 7 Sikandra Road for Rs. 122 crore (in partnership with their builder friends) in April 2010.

The property at Sikandra Road was purchased by Justice Sabharwal's sons for Rs.122 crore with the help of a number of unconscionable judicial orders of single judges of the Delhi High Court, at a time when the property was worth well over Rs.150 crore.

Despite complaints to the CBI and the CVC, however, no FIR appears to have

been registered nor any investigation done
by the CBI.