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BEFORE THE HON'BLE PRESIDENT OF INDIA

Case No. PRSEC/E/2018/17291

To,

1. THE HON'BLE PRESIDENT OF INDIA
2. HON'BLE CHIEF JUSTICE OF INDIA,
SUPREME COURT OF INDIA, NEW DELHI.

Applicant : ADV. VIJAY KURLE

Maharashtra State President,
INDIAN BAR ASSOCIATION
Having its office at: Third Floor,
Bansilal Building, Homi Modi Street,
Opp. Gheewala Global, Mumbai-23.

Subject : Sub : Taking action under Contempt of Courts Act and under section 218, 219, 120(B) & 34 of IPC against Shri. Justice K.G. Balakrishnan, then CJI, Justice Deepak Verma and Justice Dr. B.S. Chauhan, for passing unlawful and illegal order to help accused in the case of :Sharad Pawar Vs.JagmohanDalmiya (2010) 15 SCC 290 and by Justice Dr. T.S. Thakur, then CJI, Justice Dr. A.K. Sikri, Justice R. Banumathi for passing unlawful and illegal order to help accused in the case of Sergi Vs CTR (2016)12 SCC 713 , in utter disregard and defiance of law laid down by Full Bench of Hon'ble Supreme court in the case of Pritish Vs. State (AIR 2002 SC 236; (2002) 1 SCC 253)

Reference: Law laid down by the Hon'ble Supreme Court in;

a. R.R. Parekh's Case [(2016) 14 SCC 1]

b. Sandeep Kumar Bafna's case [(2014) 16 SCC 623]

Respected Sir,

1. I, the applicant, am the Maharashtra State President of Indian Bar Association.
2. By way of this complaint I with deep pain bringing to the notice of your goodself, the gross misuse of power by six Judges of Hon'ble Supreme Court of India, with ulterior motive to help the accused who are high profile.
3. My complaint is based on the law of the land, as has been settled and laid down by Hon'ble Supreme Court of India.
4. My intention behind sending this complaint is to save the image of judiciary being maligned at the hands of some corrupt and incompetent Judges who think themselves above the law.

The proper action on my complaint will send a clear message to all that no-one is above law even if he/she is a Judge of Supreme Court as has been ruled in Justice **Nirmal Yadav's Case** 2011 4 RCR (Criminal) 809.

5. The accused six Judges have acted in utter disregard and defiance of various guidelines and law settled by Hon'ble Supreme Court.
6. While delivering the 1st lecture on M.C. Setalvad Memorial Lecture Series on 22nd February, 2005, the Hon'ble Mr. Justice R.C. Lahoti (the then CJI), narrated the following story:

A patient visited a doctor's clinic and asked the receptionist – I want to see a specialist of eyes and ears.

The receptionist said – There are doctors of ear, nose and throat and there are doctors of eyes. There is no specialist who treats both the eyes and the ears. But then why are you in need of such a doctor?

*The patient replied – These days I do not see what I hear,
and I do not hear what I see.”*

This is the reality as on date. Now-a-days, people do not see Judges following what have clearly and unambiguously been laid down in the Constitution, Law-Books and other authorities (citations). In fact, now the citations are displayed only for the ornamental purposes in the Court-Rooms, Judges’ Library and in the offices of High-Profile Advocates, which are rarely referred and the principles (as laid down therein) are rarely followed by the Judges except in some selected matters only.

7. Justice Krishna Iyer said ***‘Judge cannot be law unto themselves expecting others to obey the law.’***

8. In Justice Nirmal Yadav’s case 2011 4 RCR (Criminal) 809 it is ruled as under;

It has been observed by Hon'ble Supreme Court "Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual. Taking a panoptic view of all the factual and legal issues, I find no valid ground for judicial intervention in exercise of inherent jurisdiction vested with this Court. Consequently, this petition is dismissed.

9. That the six accused Judges acted against judgement, law and ratio by

Full Bench of Hon'ble Supreme Court in the case of **Pritish Vs. State (2002) 1 SCC 253** where it is specifically ruled that the would-be or prospective accused have no right to participate in the enquiry under Section 340 of Cr. P.C.

a. It is ruled as under;

- i. **" Section 340 of Cr.P.C. - Thus, the person against whom the complaint is made has a legal right to beheard whether he should be tried for the offence or not, but such a legal right is envisaged only when the magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the magistrate that the allegations against him are groundless and that he is entitled to be discharged.(Para 12)**
- ii. **We are unable to agree with the said view of the learned single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of this guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry. (vide M. Muthuswamy v. Special Police Establishment (AIR 1985 Criminal Law Journal 420). (Para 18)**

iii. We therefore agree with the impugned judgment that appellant cannot complain that he was not heard during the preliminary inquiry conducted by the reference court under Section 340 of the Code. In the result we dismiss this appeal. "(Para 19)

10. The above said judgment is followed in the following cases amongst others:

- **State of Goa Vs. Jose Maria (2018) 11 SCC 659**

*“This Court adverted to the decision of the Constitution Bench in **M.S. Sheriff MANU/SC/0055/1954 : AIR 1954 SC 397**, to highlight that the Court at the stage envisaged in Section 340 of the Code would not decide the guilt or innocence of the party against whom the proceedings are to be instituted before the Magistrate and at that stage it was to examine as to whether it was expedient in the interests of justice that an inquiry should be made into any offence affecting the administration of justice and that no expression of the guilt or innocence of the persons should be made while passing the order Under Section 340 of the Code. That the scope of the scrutiny Under Section 340 Code of Criminal Procedure was to ascertain whether it could decide on the materials available that the matter requires inquiry by a criminal court and that it was expedient in the interests of justice to have an inquiry into was underscored. **It was expressed in clear terms that at the stage of analysis Under Section 340 of the Code for the above purpose, there was no legal obligation to afford an opportunity to the persons***

against whom the complaint could eventually be made.”

(Para 42).

- **Libert A. Vaz Vs. State 2018 (5) Kar L.J. 155 -**

“Thus, the scheme delineated above clearly shows that there is no statutory requirement to afford an opportunity of hearing to the persons against whom the court might file a complaint before the Magistrate for initiating prosecution proceedings. Such a legal right is envisaged only when he is called to appear before the Magistrate. In the light of the above proposition and the specific provisions contained in sections 340 to 344 of Cr.P.C., the contention urged on behalf of the petitioner is liable to be rejected and is accordingly rejected.”

(Para 13)

- **Union of India Vs. Haresh Milani 2017 (4) Mah. L.J. 441 (Bom)**

This judgment of Hon’ble Bombay High Court is upheld by Hon’ble Supreme Court in S.L.P. No. 28766/2017 vide order dated 18.09.2017.

- **Devinder Singh Zakhmi Vs. Amritsar Improvement Trust, Amritsar & Anr. 2002 Cri.L.J. 4485**

“ Cr.P.C. S. 340 – 195- Petitioner filed Civil suit – In reply to the suit the respondent officer of Amritsar Improvement Trust filed a false and misleading reply in Court to frustrate claim of petitioner – Thereafter petitioner filed application under section 340 of Cr.P.C.

– Respondent officer filed application of adducing

*defence evidence which is allowed by Civil Judge – Held-
During course of enquiry under sec. 340 of Cr.P.C. the Court
cannot grant permission to accused to produce defence
evidence the order is illegal, hence set aside. It is against the
mandate of law explained by Supreme Court in Prithvi's
Case (2002 Cri.L.J.548)”*

- **M/s A-One Industries Vs. D.P Garg (1999 Cri. L.J. 4743)**
*Criminal P.C. (2 of 1974), S.340- Complainant for filing false
affidavit in judicial proceedings pending before District Judge
- Material on record clearly making out case
against accused under Section 193 of Penal Code- Court
cannot examine defence of accused at initial stage of filing of
complaint under Section 340 - Order directing prosecution of
accused for offence under S. 193 - No interference. **(Para 5)***

11. Similarly in Jose Maria's case supra Hon'ble Supreme Court after considering all judgements of Constitution Bench and other Benches of Hon'ble Supreme Court, had explained about the procedure to be followed by all Courts in cases u/s 340 Cr.P.C. It should be the procedure as provided under Sec. 202 to 204 of Cr.P.C.

12. Full Bench of Hon'ble Supreme Court in **Manharibhai Muljibhai Kakadia and Anr Vs. Shaileshbhai Mohanbhai Patel and Ors. (2013 Cr.L.J. 144)** ruled that during enquiry the accused have no right to participate nor they are entitled to any hearing of any sort whatsoever until the order of issuance of process. And the Magistrate has to pass the order without considering the defence of the accused as under;

a. Sec. 202 - 204 Cr.P.C.-

***Magistrate ordering investigation after perusing complaint
- Cannot be said to have not taken cognizance - the persons***

who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the

Magistrate for issuance of process. (Paras 58) This being the position in law, which is to be expected and obeyed by all the courts including co-equal benches of Hon'ble Supreme Court.

The judgments of the High Courts to the contrary are overruled.

24. In *Chandra Deo Singh* (AIR 1963 SC 1430), a four-Judge Bench of this Court had an occasion to consider Section 202 of the old Code. The Court referred to the earlier decision of this Court in *VadilalPanchal* (AIR 1960 SC 1113) and few previous decisions, namely, *ParmanandBrahmachari v. Emperor* **AIR (1930) Patna 30**, *RadhaKishun Sao v. S.K. Misra and Anr.* **AIR (1949) Patna 36**, *RamkistoSahu v. The State of Bihar* **AIR (1952) Patna 125**, *Emperor v. J.A. Finan* **AIR (1931) Bom 524**, *BaidyaNath Singh v. Muspratt and others* **ILR (1886) XIV Cal 141** and it was held that the object of provisions of Section 202 (corresponding to present Section 202 of the Code) was to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. It was further held that an accused person does not come into the picture at all till process is issued.

25. In *Smt. Nagawwa* (AIR 1976 SC 1947), this Court had an occasion to consider the scope of the inquiry by the Magistrate under Section 202 of the old Code. This Court referred to the

earlier two decisions in *VadilalPanchal* (AIR 1960 SC 1113) and *Chandra Deo Singh* (AIR 1963 SC 1430) and in para 4 of the Report held as under:

"4. It would thus be clear from the two decisions of this Court that **the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."**

13. Hence it is clear that the accused cannot participate in the enquiry u/s 340 of Cr.P.C unless and until process is issued against him by the Magistrate as per Section 204 of Cr.P.C. and enquiry Magistrate cannot examine the defence of the accused.

- a. But, I came across 2 Judgements of Hon'ble Supreme Court which are passed against the law settled by Hon'ble Supreme Court in above said cases and various High Courts in India;
- b. The two Judgements contrary to law are;
 - (i) **Sharad Pawar Vs. Jagmohan Dalmiya & Ors. (2010) 15**

SCC 290

(ii) **Sergi Transformer Explosion Prevention Technologies**

Pvt. Ltd. & Anr. Vs CTR Manufacturing Industries Limited & Anr. (2016)12

SCC 713:

c. While deciding above two cases, the law settled by Hon'ble Supreme Court is ignored and exactly opposite stand is taken by few judges of the Supreme Court, that too by not going through the provisions of Cr.P.C. and not even referring the earlier judgment of Hon'ble Supreme Court. The said two Judgments are passed against settled principles of law. Hence the above said two judgments of Hon'ble Supreme Court in Sharad Pawar's Case & in Sergi's case are not only Per-Incurriam but also contempt of Hon'ble Supreme Court apart from the offence under section 219 of I.P.C.

d. **PER INCURIAM:**

That, Hon'ble Supreme Court in the case of **Sandeep Kumar Bafna Vs. State of Maharashtra (2014) 16 SCC 623** had ruled as under;

“PER INCURRIAM :- A decision or judgment can be per incurriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incurriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incurriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the

earliest view as the succeeding ones would fall in the category of per incuriam.

Hence it is clear that the two judgments in Sharad Pawar's case & Sergi's case are pre-incuriam.

15. That in **Sergi -Vs- CTR (2016) 12 SCC 713** while deciding the issue the order under challenge before Supreme Court was the order passed by Hon'ble Bombay High Court dated 30th October 2012 reported in **CTR – Vs. Sergi 2012 SCC online 1626: (2014) 1 RCR (Cri) 131**.

It is shocking to mention here that the Judgment dated 30th October 2012 passed by of Hon'ble Bombay High Court which was set aside by Hon'ble Supreme Court, was based on the law laid down by full bench Judges of Hon'ble Supreme Court in **Prithish's case (2012) 1 SCC 253**. The said judgment of Prithish's case and many other judgments of Hon'ble Supreme Court were referred by Hon'ble High Court. But Hon'ble Supreme Court while setting aside order of the Hon'ble Bombay High Court had neither referred nor discussed the case law relied by Hon'ble Bombay High Court which was law laid down by the Full Bench of Hon'ble Supreme Court in Prithish's Case (Supra). This is nothing but Judicial Adventurism on the part of accused Judges as been ruled by full bench of Hon'ble Supreme Court in **Dwarikesh case AIR 1997 SC 2477** which is followed by Hon'ble Supreme Court in recent Judgment in the case of **State Bank of Travancore (2018) 3 SCC 85** where it is ruled as under;

- i. ***"JUDICIAL ADVENTURISM*** by Court – Passing Order by ignoring law settled by Supreme Court.
- ii. *It is duty of the court to apply the correct law even if not raised by the party. If any order against settled law is to be passed then it can be done only by a reasoned order,*

containing a discussion after noticing the relevant law settled.

- iii. 16. *It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order.*
- iv. 18. *We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : 1997 (6) SCC 450, observing:*
- v. 32. *When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.*

17. Judges cannot use their discretion when case law is clear Hon'ble

Supreme Court in **Sundarjas Kanyalal Bhathija and others. Vs. The Collector, Thane, Maharashtra and others (1989) 3 SCC 346, AIR 1990 SC 261** had ruled as under;

“Judges are bound by precedents and procedure - They could use their discretion only when there is no declared principle to be found, no rule and no authority - where a single judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure - it is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute- One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench.”

18. Recently Hon’ble Supreme Court withdrew all work from Justice Shukla of Allahabad High Court for passing an order by unjustified exercise of jurisdiction to favor an undeserving party. In said case i.e. in **Medical Council’s case (2018) 12 SCC 564** The country wants to give thanks to Sr. Advocate Shri Prashant Bhushan, Shri Dushyant Dave, Smt Indira Jaising for exposing the corruption in this case which compelled the Supreme Court to take action against the High Court Judge in the said ruling it is ruled as under;

*“ **Discretion** :- A Judge cannot think in terms of "what pleases the Prince has the force of law". A Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness; he is to draw inspiration from consecrated principles the Respondent-institution directed to pay Rs. 10,00,000/- to each of the students. Costs of Rs. 25 lacs to be deposited before Court within eight weeks. A Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracize perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum.(Para 13)*

A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics. (13)

The judicial propriety requires judicial discipline. A Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by requisite respect for law.”

19. Hence it is clear that the six Judges are guilty of gross contempt of Hon'ble Supreme Court and since the offence is still in continuance it is just and proper to forthwith take action against the guilty Judges.
20. In Re : **Justice C.S. Karnan's case AIR 2017 SC 3191** it is ruled by

7 Judge Bench of Hon'ble Supreme Court that if contempt petition is filed by any citizen against any judge then the Supreme Court will examine it.

21. It is therefore just and necessary that appropriate action be taken in the matter in order to avoid further travesty of justice at the hands of any of the Judges in India including Judges and even Chief Justice of Supreme Court of India.

22. That the judgement in **Sharad Pawar's case (Supra)** is delivered by the bench of Shri. Justice K.G. Balkrishnan then CJI, Justice Deepak Verma & Justice Dr. B.S. Chauhan **& Judgement in Sergi's case** is delivered by Bench of Justice Dr. T.S. Thakur, the then C.J.I , Justice. Dr. A. K. Sikri and Justice .R. Banumathi.

23. In Re: **M.P. Dwivedi's case AIR 1996 SC 2299** while punishing the Judge under contempt Hon'ble Court Act Hon'ble Supreme Court made it clear that the Judge cannot take defence that he was not aware of the earlier Judgment of the Supreme Court. And if any Judge acts against the law and direction of Supreme Court then such Judge is liable for Punishment. Hence based on this ratio all Six Judge of Supreme Court are liable to be punished.

24. That the above said conduct of the six contemnor/accused Judges of Supreme Court passing Judgement against law squarely comes under pronouncing a judgement maliciously as per law explained by Hon'ble Supreme Court in **R.R. Parekh's case AIR 2016 SC 3356 : (2016) 14 SCC 1** where it is ruled as under;

"A judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles

of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the

fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct.”

25. In **A.M. Mathur vs. Pramod Kumar Gupta; (1990) 2 SCC 533**,

it was held that ;

the quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary.

26. In **Raghubir Singh Vs. State of Haryana AIR 1980 SC 1087**, the Supreme Court has observed as under;

*"We conclude with the disconcerting note sounded by Abraham Lincoln: **"If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time."***

27. In **Rajendra Sail Vs. Madhya Pradesh High Court Bar Association; (2005) 6 SCC 109**”, the Apex Court has held thus:

“It is also necessary to always bear in mind that the judiciary is the last resort of redressal for resolution of disputes between State and subject, and high and low. The confidence of people in the institute of judiciary is

necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of Rule of law. (Para 32)

The judiciary will be judged by the people by what the judiciary does. Nothing is more important to the proper functioning of the Constitution than a strong and effective judiciary which is respected and obeyed by the people and also the administration.

28. That is **Somabhai Patel's Case AIR 2001 SC 1975** it is ruled that the level of understanding of a Judge has great impact on the litigants. It is ruled as under;

"The level of judicial officer's understanding can have serious impact on other litigants. We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court."

Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court – Even a newly appointed judge is not expected to do such mistakes - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology."

29. In **Tarak Singh's Case (2005) 1 SCC 201**, it has been ruled that;

"The Judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the

power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember that woodpeckers inside pose larger threat than the storm outside.”

30. That all the above the six judges of the Hon’ble Supreme Court are ex-facie in contempt of Hon’ble Supreme Court and as it seems apparently that the orders are passed in favour of the big personalities like Sharad Pawar, with ulterior motive to help them to bring out of the clutches of law therefore, the judges passing such orders are also liable for prosecution under section 218, 219, 120 (B) and 34 etc. of IPC.

Section 218 of IPC reads as under ;

Section 218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be

punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 219 of IPC reads as under ;

Section 219. Public servant in judicial proceeding corruptly making report, etc., contrary to law

Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

31. **In Anverkhan Mahamadkhan Vs. emperor AIR 1921 Bombay 115 it is ruled as under ;**

I.P.C.218 – *The gist of the section is the stiffening of truth and the perversion of the course of justice in cases where an offence has been committed it is not necessary even to prove the intention to screen any particular person. It is sufficient that he know it to be likely that justice will not be executed and that someone will escape from punishment.”*

That the defence of good faith is not available to the six accused judges in view of section 52 of I.P.C. which says that nothing can be said to have been done in good faith if it is done without due care and caution.

33. That recently Hon'ble Supreme Court had issued Contempt notice to Justice Markandey Katju , Former Judge of Supreme Court to show that no one is above law.
34. Duty of the designated Senior Advocates who helped such corrupt Judges: Apart from the duty of the judges it was also the duty of the Advocates appearing for the parties to cite the earlier landmark reported Judgements and to place the correct position of the law before Court even if it was against their client.
35. Hon'ble Bombay High Court in **Heena Dharia's case 2016 SCC online Bom 9859** had reminded the duties of the advocates as under ;

35. Wholly unrelated to any preliminary issue or the question of limitation, or to any estate, partition or administration action, is the decision of AM Khanwilkar J (as he then was) in Chandrakant Govind Sutar v MK Associates & Anr. MANU/MH/0761/2002 : 2003 (4) Bom CR 169 : 2003 (1) Mh LJ 1011. Counsel for the petitioner raised certain contentions on the maintainability of a civil revision application. Khanwilkar J pronounced his judgement in open Court, finding for the petitioner. Immediately thereafter, counsel for the petitioner brought to the court's notice that certain relevant decisions on maintainability had not been placed. He requested that the judgement be not signed and instead kept for re-hearing on the question of maintainability. At that fresh hearing, petitioner's counsel placed decisions that clinched the issue - against the petitioner. The civil revision application was dismissed. The counsel in question was A.S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement:

"9. While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style he did the wonderful act of

*balancing of his duty to his client and as an officer of the Court concerned in the administration of justice. He has fully discharged his overriding duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client. As Lord Denning MR in *Randel v W.* (1996) 3 All E. R. 657 observed:*

"Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants. The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law - it is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

*This view is quoted with approval by the Apex Court in *Re. T.V. Choudhary*, MANU/SC/0873/1987 : [1987] 3 SCR 146 (*E.S. Reddi v Chief Secretary, Government of AP & Anr.*)."*

The cause before Khanwilkar J may have been lost, but the law gained, and justice was served.

36. Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today. With the proliferation of online databases and access to past orders on the High Court website, there is no excuse at all for not cross-checking the status of a judgement. I have had no other or greater access in conducting this research; all of it was easily available to counsel at my Bar. Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal. Frequently, appellate orders reversing reported decisions of the lower court are not themselves reported.

The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.

37. Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperilled.

36. In **E.S. Reddy's case (1987) 3 SCC 258**, Hon'ble Supreme Court had ruled as under;

“Duty of Advocates towards Court –he has to act fairly and place all the truth even if it is against his client he should not withhold the authority or documents which tells against his client. It is a mistake to suppose that he is a mouthpiece of his client to say that he wants. He must disregard with instruction of his client which conflicts with their duty to the Court.

Duty and responsibility of senior counsel - By virtue of the pre-eminence which Senior Counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A Senior Counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honor and privilege conferred on Advocates of standing and experience by the Chief Justice and the Judges of this Court.”

37. In **Ujwala Patil's case MANU /MH/1406/2016**, Hon'ble Bombay High Court had ruled as under ;

“Advocate - Standard of moral, ethical and

professional conduct :- *It has a duty to the Court which is paramount. It is a mistake to suppose that he is the mouth-piece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him.”*

38. Hence it is humbly requested by the Complainant that the appropriate action be taken against guilty people thereby sending a clear message that;

“No one is above law” and Law is equal for all as mandated in Article 14 of the Constitution of India.

39. The conduct of accused Judges in passing wrong orders to help high profile accused is condemned by Hon’ble Supreme Court in **Indian Performing Rights Society Right Ltd. Vs. Sanjay Dalia MANU/2015/SC/0716** had ruled that;

“It is the duty of all Courts of Justice said LORD CAMPBELL”, “to take care for general good of the community that the hard cases do not make bad law”.

40. Every Judge is expected know the least that; a to A statute is best interpreted when we know why it was enacted. **RBI Vs. Peerless General Finance & Investment Company (1987) 1 SCC 424 V.R.**

KrishnaIyer J. in his unique words held that;

“Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not sub serve the purpose of the statute. Such approach would be” to see the skin and miss the

soul” Whereas, “the judicial key to construction is the composite perception of Deha and Dehi of the provision.(Board of Mining Examination Vs. Ramjee (1977) 2 SCC 256). This principle was followed by Supreme Court in (2013) 3 SCC 489 (Ajay Maken Vs. Adesh Kumar Gupta Vs. Another)”

SUCH CORRUPT JUDGES ARE RESPONSIBLE FOR LOSS OF
CONFIDENCE OF PEOPLE FROM JUSTICE DELIVERY SYSTEM

41. In case of **“Madhav Hayawadanrao Hoskot vs. State of Maharashtra; (1978) 3 SCC 544** Justice Shri V.R. Krishna Iyer reproduced the well-known words of Mr. Justice William J. Brennan, Jr. and held as under:

“16. Nothing rankles (cause annoyance) more in the human heart than a brooding sense (fear / anxiety) of injustice. Democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”

The social service which the Judges render to community is the removal of a sense / fear of injustice from the hearts of people, which unfortunately is not being done, and the people (victims & dejected litigants) have been left abandoned to suffer and bear their existing painful conditions, and absolutely on the mercy of GOD.

IT IS THE DUTY OF EVERYONE TO SEE THAT THE IMAGE OF
THE JUDICIARY IS NOT TARNISHED.

42. In **State of Rajasthan vs. Prakash Chand & Ors.; (19918) 1 SCC 1**, it was held that –

It must be remembered that it is the duty of every member of the legal fraternity to ensure that the image

of the judiciary is not tarnished and its respectability eroded. ... Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. ... It needs no emphasis to say that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we “suffer from self-inflicted mortal wounds”. We must remember that the constitution does not give unlimited powers to any one including the Judge of all levels. The societal perception of Judges as being detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a setback consciously or unconsciously. Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices.

QUALITIES OF A GOOD JUDGE LEAST EXPECTATIONS FROM ANY JUDGE.

43. While delivering 2nd lecture on M.C. Setalvad Memorial Lecture Series sometime in the year 2006, the Hon’ble Mr. Justice Y.K. Sabharwal (the then CJI) expressed that –

“A Judge would always be polite & considerate and imbued with a sense of humility. He would not disturb

the submissions of the lawyers midway only to project a “know-all” image for himself. This also means that he would be sitting with an open mind, eager to be advised by the counsel or the parties.”

44. In ***Jennison Vs. Baker 1972 (1) ALL. E.R. 997***, at page 1006”, it has been observed, which is approved by our Supreme Court thus:

“The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.”

45. On the point of predictability of the outcome of a case and transparency in the judiciary, the reputed and well-known learned authors and legal experts of Bangladesh in ***“The Desired Qualities of a Good Judge”***, have expressed thus:

“In all acts of judgment, the Judges should be transparent so that not only the lawyers but also the litigants can easily predict the outcome of a case. Transparency and predictability are essential for the judiciary as an institution of public credibility.”

46. Other qualities of a good judge have been described by the said author as under:

- (i) ***A judge is a pillar of our entire justice system and the public expects highest and irreproachable conduct from anyone performing a judicial function.***
- (ii) ***Judges must be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to***

make informed decisions that will stand up to close scrutiny.

- (iii) Centuries ago Justinian said that precepts of law are three in number i.e. to live honestly, to give every man his due and to injure none.
- (iv) **Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate of law.**
- (v) Every judge is a role model to the society to which he belongs. The same are embodied in all the religious scriptures. **Socrates once stated that a judge must listen courteously, answer wisely, considers soberly and decides impartially.**
- (vi) The qualities of a good judge include patience, wisdom, courage, firmness, alertness, incorruptibility and the gifts of sympathy and insight. In a democracy, a judge is accorded great respect by the state as well as its citizens. He is not only permitted to assert his freedom and impartiality but also expected to use all his forensic skill to protect the rights of the individual against arbitrariness.
- (vii) **Simon Rifkind laid down “The courtroom, sooner or later, becomes the image of the judge. It will rise or fall to the level of the judge who presides over it... No one can doubt that to sit in the presence of a truly great judge is one of the great and moving experiences of a lifetime.”**

- (viii) *There is no alternative of qualified and qualitative judges who religiously follow the rule of law and administer good governance.*
- (ix) ***The social service, which the Judge renders to the community, is the removal of a sense of injustice.***
- (x) ***Judiciary handled by legal person is the custodian of life and property of the people at large, and so the pivotal and central role as played by the judicial officers should endowed higher degree of qualities in consonance with the principles of “standard of care”, “duty of care” and “reasonable person” as necessary with judicial functionaries.***
- (xi) ***The American Bar Association once published an article called Good Trial Judges in which it discussed the difference in the qualities of a good judge and a bad judge and noted that practicing before a "good judge is a real pleasure," and "practicing before a bad judge is misery.***
- (xii) ***The Judges exercise the judicial power on trust. Normally when one sits in the seat of justice, he is expected to be honest, trustworthy, truthful and a highly responsible person. The public perception of a Judge is very important. Marshal, Chief Justice of the United States Supreme Court said, “we must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the Courts are acting for the people who have reposed confidence in them.” That is why Lord Denning***

said, “Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the Judge is biased”.

(xiii) *A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn; great and honest enough to discard all mere pride of opinion, and follow truth wherever it may lead, and courageous enough to acknowledge his errors.*

(xiv) *Judge ought to be more learned than witty, more reverend than plausible and more advised than confident. Above all things, integrity is their portion and proper virtue. Moreover, patience and gravity of hearing is also an essential part of justice, and an over speaking Judge is known as well tuned cymbal.*

(xv) **It is the duty of the Judges to follow the law,as they cannot do anything whatever they like.** *In the language of Benjamin N. Cardozo – “The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles”.*

(xvi) **Judges should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent.**

(xvii) **If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the**

protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.

(xviii) A Judge has to be not only impartial but seen to be impartial too.

(xix) Every judge is a role model to the society to which he belongs. The judges are certainly, accountable but they are accountable to their conscience and people's confidence. As observed by Lord Atkin – "Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men".

(xx) With regard to the accountability of the Judges of the subordinate Courts and Tribunals it may be mentioned that the Constitution authorizes the High Court Division to use full power of superintendence and control over subordinate Courts and Tribunals. Under the Constitution, a guideline in the nature of Code of Conduct can be formulated for the Judges of the subordinate courts for the effective control and supervision of the High Courts Division. In this method, the judicial accountability of the Judges of the subordinate courts could be ensured.

47. The common thread which can be called out from above judgments is that whenever any person acts contrary to law then no leniency is shown to anyone and even newly appointed Junior Judges of lower Court then are punished by the Supreme Court (vide AIR 1996 SC 2299, AIR 2001 SC 1975) the person who is Judge of Supreme

Court i.e. highest Court of the country and whose even obiter dicta are also binding as a precedent to everyone in the country as per 141 of Constitution of India does not deserve any leniency. In fact higher the past more the responsibility and therefore guilty Supreme Court Judges deserves fall punishment of 7 years imprisonment as per section 218, 213 of Indian Penal Code and separate punishment of six months under Contempt of Courts Act. Needless to mention here that two accused Judges out of above six Judges i.e. Mr. K.G. Balakrishnan and Dr. T.S. Thakur, were on the post of Chief Justice of India, then what footprints are they leaving for other junior judges of this country?

In **Rajeev Dawar's case's 136 (2007) DLT 321**, it is observed that;

“Advocate having put in more than 25 years of practice - Held, for maintaining the stream of justice unsullied, it is essential that aberration committed by those who are integral part of the administration of justice are sternly and firmly dealt with. Magnanimity and latitude should be available to those who are not knowledgeable or conversant with the system or commit the offence unwittingly or innocently - The advocate has committed criminal contempt and is liable to be punished for the same. We impose a fine of Rs. 2000/-”

48. Full Bench of Hon'ble Supreme Court in the Case of **M.S. Ahlawat V. State 2000 Cr.L.J. 388** had observed about the mistake of 2 Judges of Supreme Court in matter under sec. 340 of Cr.P.C. and observed that “ To perpetuate error is no virtue but to correct it is an compulsion of Judicial conscience”.
49. Similarly Hon'ble Supreme Court in **Perumal Vs. Janaki (2014) 5 SCC 377** had in strong words criticized the High Court Judge for passing order under sec. 340 of Cr.P.C. It is observed;

“As was pointed earlier by this Court in a different context “there is no rule of law that common sense should be put in cold storage”[7]. Our Constitution is designed on the theory of checks and balances. A theory which is the product of the belief that all power corrupts - such belief is based on experience.”

That from various other Judgments and more particularly in the case of Perumal V. Janaki’s Case (Supra) it is clear that Hon’ble Supreme Court considers mistakes of High court Judges very seriously as ‘Absolute power corrupts and the Judge put his common sense in cold storage’ and also Hon’ble Supreme Court condemned all advocates found guilty by strict action/strictures all advocates seriously as done in **E.S. Reddy’s Case 1987 SCC 3 258** and in **Nalinkanti’s Case AIR 2004 SC 4277**. Where it is observed as under;

“The Advocate relying on overruled judgment is guilty of professional misconduct.

It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon before the High Court has been overruled by this Court and it was duty of the learned counsel not to cite an overruled judgment .

It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned single Judge. Members of the Bar are officers of the Court. They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern. It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment

to the facts under consideration on it - It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment – We can only express our anguish at the falling standards of professional conducts. (Para 6) ”

50. In the case of a mistake of Sessions Judge in **Smt. Prabha Sharma V. Sunil Goyal (2017) 11 SCC 77** it is ruled that;

“ Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.”

52. But when the mistakes of Judges of Supreme Court are exposed, then Supreme Court tries to cover that mistakes, by adopting a mild stand as done in M.S. Ahlawat’s Case 2000 Cr.L.J. 388 where the stand taken it as under;

“Section 340 Cr.P.C. – Why two Judge Bench of Supreme Court have not followed the procedure of section 340 of Cr.P.C. This Court has always adopted this procedure, The order made by court is therefore without jurisdiction and without following due procedure prescribed under law. We have not been able to appreciate as to why this procedure was given a go-bye in the

present case. May be the provisions of section 340 of Cr. P.C. were not brought to the notice of the learned Division Bench”.

53. Hon’ble Supreme Court in **Nand Lal Mishra Vs. Kanhaiyalal Mishra AIR 1960 SC 882**, had ruled that ;

There cannot be double standards in courts of Justice.

“ In the courts of law, there cannot be a double-standard - one for the highly placed and another for the rest: the Magistrate Court has no concern with personalities who are parties to the case before him but only with its merits”

Hon’ble H.C. in Arunachalam Swami’s case AIR 1956 Bombay had ruled that, Article 14 of the Constitution of India mandates equality before law and equal protection of law. The equality of statutory law and also procedural law.

54. Constitution Bench of Hon’ble Supreme Court in K. Veerwami’s case (1991) 1 SCC, had ruled that if no action is taken against the guilty judges then it will shake the confidence of public in the justice system and Courts.

55. That most of the above six accused judges are retired but those who are on post should be asked to resign in view of their poor level of understanding or for their criminal conduct and proven misbehavior with tendency to defy the law to help the high profile accused.

56. I am also concerned with those litigants whose SLPs were dismissed by above said six judges by passing a one-line order as ‘SLP dismissed’ without assigning any reason. If such corrupt Judges are unable to apply the law when it is argued at length then how and in what manner they should have understood the case of any party by only reading the

SLP and then dismissing it by saying that they read it in their home. This country cannot afford such incompetent, criminal minded judges in any court and more particularly in Supreme Court and High Courts, where a single line order by them is sufficient to make or break or destroy the whole life and career of any person, family or society.

57. The Supreme Court itself had suffered a lot because of incompetence and corrupt judges' judgments. A few glaring examples are;

a. Re. Justice Karnan's case (supra) AIR 2017 SC

where Justice Karnan passed order convicting 7 judges of Supreme Court and also gave directions to seize the passport of Supreme Court Judges.

b. AIR 2004 SC 3976 Vijay Shekhar's case

Where a corrupt Magistrate issued arrest warrant against Hon'ble Chief Justice of India, Hon'ble President of India etc. for a bribe of Rs. 6,000/- per warrant.

c. (2005) 1 GLR 743

Where Magistrate issued arrest warrants against Acting Chief Justice of Bombay High Court.

58. In many of the cases, Fraud on Power by judges is being exposed. The said judges may or may not be punished but no directions to prevent such misuse were ever issued by Hon'ble Supreme Court or Hon'ble High Court. In fact directions in D.K. Basu's case (1997), Vishakha guidelines, directions to install CCTV in all police stations were issued but when it comes to transparency in Court and Judiciary the Superior Court Judges are found to be reluctant. The glaring example is of

installation of CCTV cameras in Court proceedings. It took a very long battle and after rejection by various courts and after Shri. Anna Hazareji's call for 'Jail Bharo Andolan' along with the members of Indian Bar Association lastly make it happen in Pradyuman Bist's case 2017 (4) Crimes 283 (SC). Needless to mention here that Shri. Justice H.L. Dattu, the then CJI refused the Hon'ble Prime Minister – Shri. Narendra Modi's request for CCTV recordings in Courts proceedings.

59. This creates a doubt in the mind of a common man that whether really the Judges of Courts of law more particularly of Supreme Court are willing to work for Transparency and fairness in Judicial System or they want to become the law unto themselves expecting others to obey the law.

This is not good for a sound democracy.

If the orders/judgments of Hon'ble Supreme Court are not followed by judges themselves then the other people will also go on the same line and it will create chaos.

60. Indian Bar Association is suggesting to adopt the recommendation of Adv. Nilesh Ojha, National President of Indian Bar Association, given in the 'Fair and Fast Justice Bill – 2018' drafted by him, which is taken note by Hon'ble Prime Minister Shri. Narendra Modi. **The recommendations of Advocate Nilesh C. Ojha in proposed 'Fair and Fast Justice Bill should be applied in the present case** are as under;

'FAIR AND FAST JUSTICE BILL – 2018'

- 1) The number/strength of judges of all courts be doubled. (if today if the number is 10,000 then it should be made 20,000.)**
- 2) The salary of all the judges increased thrice. (if it is now 1 lakh then it be made 3 lakh)**
- 3) The salary of all High Court and Supreme Court Judges should be Rs 10 lakh and the salary of Chief Justice of High Court and Supreme Court be 12 and 15 lakh respectively and the salary of President be 20 lakh.**
- 4) The residential premises of all the judges including those of HC and SC under vigilance of Video recording.**

5) *The mobile phones and vehicles of all the judges shall be under vigilance. The vehicles shall be having GPS system and the judges shall not be allowed to use personal vehicle.*

6) *IPC section 219 be amended or new section 219A be inserted thereby the punishment for the judges found guilty of corruption shall extend upto maximum imprisonment of life but in case shall not be less than 5 years.*

7) *No relative of any judge shall be allowed have any work or dealing with the office of judge including practicing as a lawyer. The judge violating this provision, shall be punishable under 219A, IPC which shall be cognizable and non-bailable under which punishment shall be imprisonment for minimum 2 years but which may extend to 10 years.*

8) *It shall be mandatory for all to strictly comply with Article 14 of Constitution guaranteeing equality before law and equal protection of law [AIR 1956 Bom 695]. Any judge guilty of this shall be punishable under section 219A of IPC and liable to imprisonment for minimum 5 years but which may extend to 10 years. Ex:-A) If in a case of a poor litigant, next date of hearing is given after two months but in the similar other matter if it is before two months, then such incident shall be treated as violative of Article 14. B) If argument advanced by a senior lawyer is heard for a long time but argument of a junior lawyer is not being heard with same patience or any case cited by him is sidelined then such approach shall be treated as discrimination and violation of Article 14.*

[2004 (3) Crimes 33 Vijay Shekhar vs Union of India]:- If any authority misuses its powers to please anyone by ignoring material on record and by considering extraneous factor is a fraud on power by that Judge or authority.

9) *Special Judicial Commission shall be established to hear the complaints against the judges.*

NATIONAL JUDICIAL COMMISSION	STATE JUDICIAL COMMISSION
<i>Equivalent to Supreme Court-where complaints against SC and HC judges shall be entertained.</i>	<i>Equivalent to High Court where the complaints against subordinate judges shall be entertained.</i>

10) *Special National Judicial Commission shall consist of 50 judges having status equivalent Supreme Court Judges and in this commission the complaints against SC and HC judges shall be entertained. The Principal Bench of this commission shall sit at Delhi alongwith its benches sitting at capital cities of all the States.*

11) *The judges appointed in this commission shall not be transferred to any High Court. The children of such judges shall be given free education and shall have reservation into Government Jobs.*

These judges shall be accountable to the office of President only.

12) No case, after this law has come into force, filed in any court shall be pending for a period exceeding 6 months. However, if the case is voluminous like that of Kasab Trial where the number of witnesses may be high, this period shall be extended but in no case it shall not be extended beyond one year. The violation of this provision shall be an offence and the judge guilty thereof shall be removed after giving a notice or shall be fined with Rs 10 lakh or sentenced upto 1 year. Such cases shall be entertained in special courts to be set up under this law.

13) The language of the HC and SC shall be in English but if any advocate desires to have any translator then such translator shall be made available even on the oral request. Therefore, the translators from regional languages to English, shall be appointed in the Supreme Court.

14) No petition filed in Supreme Court shall be dismissed in limine or by an order running into one or two lines. It shall be mandatory for all the courts including the Supreme Court to decide every case considering all the points raised, citations referred to, and legal grounds advanced by advocate in support of his arguments.

1. "Reason is the heartbeat of a judgment without which it is lifeless". [2008 All MR (Cri) (SC)]

2. "The reasons ascribed may not be lengthy but they should be cogent, germane and reflective... Giving reasons for an order is the sacrosanct requirement of law which is the aim of the every civilized society. And intellect respects it". [(2013) 14 SCC 348]

15. All courts, including high courts and the supreme court shall be governed by this law and any violation hereof shall be punishable under section 219 and 219 A of the IPC with imprisonment which may extend to life imprisonment but shall not be less than 5 years.

16. Section 219, IPC be made cognizable and non bailable offence punishable with imprisonment which may extend to life imprisonment but shall not be less than 5 years.

17. it shall be necessary to conclude the trial within six months and to give decision within 7 days from the date concluding the arguments by the respective advocates in any case. However, in appropriate case it may be extended upto 15 days but the judge shall ascribe the reason therefor.

18. The judges unable to understand the law shall be forthwith removed from the office and those who appointed such judges shall be proceeded against under this law.

19. in every case it shall be necessary for the advocate to advance oral as well as written arguments and one copy thereof reduced or recorded into any pendrive or CD shall be submitted to the court and the same shall form the record of the case. It shall be necessary for

the judge, after hearing the counsels for the parties to see, if there is any amendment in the relevant law. If the judge is of any opinion to decide the case either way then it shall be imperative for him to inform the parties in writing and allow the parties to submit their say in respect any such proposed order. This shall reduce the number of appeals going to higher courts and also deprecate the tendency of deciding cases capriciously.

20. the Code of Criminal Procedure shall be applicable in all the cases against the judges. However, where there is no clear provision, the specisl court may take help of Civil Procedure Code or it may have its own procedure provided it shall be in the interest of justice but not to benefit any party.

21. The biggest or the major reason of corruption in judiciary is the Discretion conferred on the judges, such as bail to be granted or not depends on the judge. Taking advantage of this discretion, any person may get illegally benefitted. To avoid this situation, every provision of law shall be explained with the help of maximum explanations lest there remains any confusion.

Such as:-

A) Where the investigation is possible without securing the custody of accused, then it shall be necessary to bail out the accused.

B) Where the Complaint is old, or where the case pertains to land or property, or any other family disputes, criminal, civil cases, the statutory provision shall be explained by way of as many as required number of explanations to the article / section / rule /order / regulation etc so that the judge shall have no chance to distort the meaning of any provision.

23. All courts from Supreme Court to the lowest court in subordinate judiciary, shall draft the order or judgment which shall contain the following particulars:

23.1 What is the case or petition about. What are the prayers?

23.2 On what law the petitioner's case is founded?

23.3 Whether all such legal points were considered by the Court below?

23.4 Whether there is any mistake in trial court and if yes how, which and where?

23.5 Whether such a mistake is blameworthy or a mistake in good faith?

23.6 What is the loss caused to the petitioner/appellant due to such a mistake?

23.7 Whether the judge whose order is appealed against had committed such mistake earlier and the same shall be examined from his service book to be maintained online.

23.8 If it is found by the Higher Court that the mistake committed by the judge below is repetitive or is blameworthy that it is not pardonable, then the Court shall direct that prosecution against the judge below under section 218, 219 and 220, IPC

be launched in the special court and the appellant who suffered loss in terms of money and time and other agony etc, shall be compensated within 7 days from the pocket of the Judge below by following the parameters laid down by Supreme Court in [AIR 1994 SC 787.]

23.9 If the higher court doesn't direct prosecution against the guilty judge then the special court may suo-motu take the cognizance of such matter and summon the judge below and prosecute his.

23.10 it shall be mandatory for all the courts to discuss the case law or law points involved in the case, more so when the higher courts decide any such case. [AIR 1990 SC 261]

23.11 any act on the part of any judge to distort or misinterpret or misread or an act of ignoring any such citation of any supreme court or high court's ruling[AIR 1997 SC 2477], in order to benefit any party shall be treated as unpardonable judicial impropriety and shall be offence punishable under section 219 of IPC where punishment shall be minimum 5 years and maximum punishment shall be upto life imprisonment.

23.12 in all cases and particularly in family matters, it shall be duty of the judge to examine whether any party has given any false evidence and if yes, then such person/party shall be prosecuted for offences under section 191,192,193,199,200,465,466,471 and 474 of IPC. It shall be mandatory to pass such an order under section 344 of CrPC where any party including any police officer, lawyer, litigant plaintiff or defendant etc shall be liable to punishment for perjury. [2002 All MR (Cri) 2462], [1998 Cri LJ 2908], [AIR 1996 SC 2326] and [AIR 1996 2299]

23.13 Under this law, there shall be laid down special Code of Conduct for the judicial officers/judges, which shall define as to how their conduct of the judges shall be in the courts and home and breach of the same shall be treated as an offence punishable by this law. e.g. There shall be clear regulation on the conducts like any judge is having liquor or drink in any bar or going to any dance bar or smoking on the road or teasing or taunting any lady on the road etc and any breach thereof shall be punishable by law with imprisonment which may extend to 5 years but shall not be less than 1 year.

23.14 When any lawyer is elevated to the Bench as a judge, then such judge shall not function at the place where he practiced before becoming the judge.

23.15 All judges from high court to subordinate court shall be transferred after completion of tenure of three years. However, a judge of the high court shall be transferred to other state on completion of six years in a state. This shall keep a check on agents and shall prevent the corruption in the judiciary.

23.16 No judge after retirement shall be offered any Constitutional post for two years from the date of his retirement.

61. It has been laid down in K. Veerswami's case (1991) 3 SCC 655 that,

(53) **The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command confidence of the public. He must voluntarily withdraw from the judicial work and administration.**

(54) *The emphasis on this point should not appear superfluous. Prof. Jackson says "Misbehavior by a Judge, whether it takes place on the bench or off the bench, undermines public confidence in the administration of justice, and also damages public respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired. This a must be so when the judge commits a serious criminal offence and remains in office". (Jackson's*

Machinery of Justice by J.R. Spencer, 8th Edn. pp. 369-70.

(55) *The proved "misbehaviour" which is the basis for removal of a Judge under clause (4) of Article 124 of the Constitution may also in certain cases involve an offence of criminal misconduct under Section 5(1) of the Act. But that is no ground for withholding criminal prosecution till the Judge is removed by Parliament as suggested by counsel for the appellant. One is the power of Parliament and the other is the jurisdiction of a criminal court. Both are mutually exclusive. Even a government servant who is*

answerable for his misconduct which may also constitute an offence under the Indian Penal Code or under S. 5 of the Act is liable to be prosecuted in addition to a departmental enquiry. If prosecuted in a criminal court he may be punished by way of imprisonment or fine or with both but in departmental enquiry, the highest penalty that could be imposed on him is dismissal. The competent authority may either allow the prosecution to go on in a court of law or subject him to a departmental enquiry or subject him to both concurrently or consecutively. It is not objectionable to initiate criminal proceedings against public servant before exhausting the disciplinary proceedings, and a fortiori, the prosecution of a

Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.

“.....But we know of no law providing protection for

*Judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. **The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required.***

(61) *For the reasons which we have endeavored to outline and subject to the directions issued, we hold that for the purpose of clause (c) of S. 6(1) of the Act the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme court and of the High court.*

(79) *Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and reexamined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. **The standards of judicial behaviour, both, on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal.** From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour. **A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.***

(80) *A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. "A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.*

Let us take a case where there is a positive finding recorded in such a proceeding that the Judge was habitually accepting bribe, and on that ground he is removed from his office. On the argument of Mr Sibal, the matter will have to be closed with his removal and he will escape the criminal liability and even the ill-gotten money would not

be confiscated. Let us consider another situation where an abettor is found guilty under S. 165-A of the Indian Penal Code and is convicted. The main culprit, the Judge, shall escape on the argument of the appellant. In a civilized society the law cannot be assumed to be leading to such disturbing results.

62. That three judges of six accused judges i.e. Justice T.S. Thakur CJI, Justice A.K. Sikri and Justice Mrs. R. Banumathi were part of the Constitution Bench Judgment in the case of **AIR 2016 SC 3056**.

In the above said judgment they ruled that-

‘Denial of the right undermines public confidence in the justice delivery system and incentivise people to look for short cuts and other for a where they feel that justice will be done quicker. In the long run this also weakens the justice delivery system and pose a threat to the Rule of Law. Access to justice is an egalitarian democracy must be understood to mean qualitative access to justice as well. Life implies not only life in the physical sense but a bundle of rights that makes life worth living. Denial of ‘access to justice’ will affect the quality of human life and violates of right to life guaranteed under Article 21 – it result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws – Denial of ‘access to justice’ thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well. Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to citizens.

Access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. Access to Justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non- citizens also. It is because equality before law and equal protection of law is not limited in its application to the realm of executive action that enforced the law. It is as much available in relation to proceedings before Courts and Tribunal and adjudicatory fora where law is applied and justice administered.

But the same Judges failed to respect their own Judgement and giving lectures to nation to follow the law laid down by them.

Need For Competent & Impartial Judge:-

63. Fair Trial required a trial before an impartial judge, a fair Prosecutor and an atmosphere of judicial calm [vide: MANU/SC/0994/2013 Selvi J. Jaylalitha, J. 2017/SC/0159/Asha Ranjan] It also includes a capable judge.

Therefore any Judge who is not worthy of it or does not stand to minimum standards expected from a Judge should be forthwith removed.

64. Request: It is therefore humbly requested that;

- a. Hon'ble Chief Justice of India be pleased to consider this representation as a WRIT as per Article 32 of the Constitution.
- b. Form a Seven Judge Bench or any larger Bench to try and punish under Contempt of Courts Act the six guilty judges viz. Shri. Justice K.G. Balakrishnan, then CJI, Justice Deepak Verma and Justice Dr. B.S. Chauhan, for passing unlawful and

illegal order to help accused in the case of : **Sharad Pawar Vs. Jagmohan Dalmiya (2010) 15 SCC 290** and by Justice Dr. T.S. Thakur, then CJI, Justice Dr. A.K. Sikri, Justice R. Banumathi for passing unlawful and illegal order to help accused in the case of **Sergi Vs CTR (2016) 12 SCC 713**. In view of law laid down in Re: M.P. Dwivedi AIR 1996 SC 2299 and in Re: Justice C.S. Karnan's Case AIR 2017 SC 3191, for their willful disregard and defiance of law laid down by Full Bench of Hon'ble Supreme Court in Pritish's case AIR 2002 SC 236 and in various other cases.

- c. Direct C.B.I to investigate the case and proceed further by registering separate F.I.R under section 218, 219, 120 (B) r/w 34 of I.P.C. against guilty Supreme Court Judges. First F.I.R against Shri. Justice K.G. Balkrishanan + 2 for passing order contrary to the law in the case of Sharad Pawar (2010) 15 SCC 290 and Second F.I.R. against Shri. Justice T.S. Thakur + 2 for passing order contrary to law in Sergi Vs. CTR case (2016) 12 SCC 713 in view of law and ratio laid down in Raman Lal's case 2001 Cr.L.J.800, Justice Nirmal Yadav's case 2011 etc.

OR

Grant sanction to the applicant for prosecuting the guilty judges

- d. That take urgent steps by directing all courts to not to follow the said two judgements in Sharad Pawar's Case (2010) 15 SCC 290 and Sergi's Case (2016) 12 SCC 713 for the purpose of preventing further Contempt of Hon'ble Supreme Court by passing an injunction or any order as ruled by Constitution Bench's Judgement in Supreme Court Bar Associations Case (1998) 4 SCC. Where it is ruled that in Contempt jurisdiction order can be passed to prevent further Contempt.

- e. Pass appropriate guidelines, directions to prevent such misuse of power by judges to help the high profile accused and to deny the relief to the deserving litigants as has been suggested in Fair ad Fast Justice Bill – 2018 drafted by Adv. Nilesh C. Ojha, National President of Indian Bar Association.
- f. Hon'ble Chief Justice of India be directed by Hon'ble President of India to exercise power as per In-House-Procedure of Supreme Court to not to assign any work to Justice A.K. Sikri and Justice R.Banumathi and ask them to resign forthwith in view of their incapacity and proved misbehaviour as has been done in the case of Justice Shukla of Allahabad High Court where no work is being assigned to Justice Shukla for passing wrong order as found in Medical Council's case (2018) 12 SCC 564 and further directions to all judges to follow the directions and law declared by Constitution Bench of Hon'ble Supreme Court in K. Veerswami's case (1991) 3SCC 655 where it is ruled that the judge whose morality is doubtful should not wait till impeachment and resign on his own.

Mumbai

Date:

Yours sincerely,

Adv. Vijay Kurle
Maharashtra State President
Indian Bar Association