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15th January 2018

To,
Justice J. Chelameswar
Justice R. Gogoi
Justice M.B. Lokur
Justice K. Joseph
Justice A.K. Sikri
Supreme Court of India
New Delhi - 110001

Subject: Complaint against the Chief Justice of India, Justice Dipak Misra under the in-house procedure

Dear Hon'ble Judges,

The Executive Committee of the Campaign for Judicial Accountability and Reforms (CJAR) is making the present complaint against the Chief Justice of India, Justice Dipak Misra under the in-house procedure for investigating complaints against judges of the High Courts and the Supreme Court. In order to maintain public confidence in the integrity of the Hon'ble Supreme Court, this complaint against the Chief Justice of India is being addressed to the five senior most judges of the Supreme Court after the Chief Justice of India. The Chief Justice of India has apparently committed several acts of serious misconduct which should be inquired into by a committee of three/five judges of this court. The main charges in this complaint against the Chief Justice of India are as follows:

1. The facts and circumstances relating to the Prasad Education Trust case, show prima facie evidence suggesting that the Chief Justice of India, Justice Dipak Misra may have been involved in the conspiracy of

paying illegal gratification in the case, which at least warrants a thorough investigation.

2. That the Chief Justice of India, Justice Dipak Misra dealt on the administrative as well as judicial side, with a writ petition which sought an investigation into a matter in which he too was likely to fall within the scope of investigation since he had presided over every bench which had dealt with this case and passed orders in the case of Prasad Education Trust, and thus violated the first principle of the Code of Conduct for judges.
3. That the Chief Justice of India appears to have antedated an administrative order dated 6th November 2017 which amounts to a serious act of forgery/fabrication.
4. That Justice Dipak Misra acquired land while he was an advocate, by giving an affidavit that was found to be false and despite the orders of the ADM cancelling the allotment in 1985, surrendered the said land only in 2012 after he was elevated to the Supreme Court.

The Supreme Court, at its Full Court Meeting held on December 15, 1999 unanimously adopted the “in-house procedure” for taking suitable remedial action against judges of the High Court and the Supreme Court, who by their acts of omission or commission, do not follow the accepted values of judicial life, including the ideals expressed by the Supreme Court in the ‘Restatement of Values of Judicial Life’.

(A copy of the ‘Restatement of Values of Judicial Life’, is annexed as **Annexure P - 1**)

The in-house procedure provides that complaints against Supreme Court judges are to be sent to the Chief Justice of India who, if he finds that the complaint merits enquiry or investigation, would constitute a committee of three judges of the Supreme Court to examine the complaint and give a report. Though this procedure is silent with respect to complaints against the Chief Justice himself, it is obvious that complaints against the Chief Justice of India cannot be examined by the Chief Justice himself and therefore must be examined by the next judge in seniority or by a collegium of senior judges. This principle has been held by this Hon’ble court in several cases.

In *K. Veeraswami v. UOI and Others* **1991 SCC (3) 655** while dealing with the question of registration of FIR against judges of the High Court and Supreme Court, this Hon'ble court held,

"... the Chief Justice being the head of the judiciary is primarily concerned with the integrity and impartiality of the judiciary. Hence it is necessary that the Chief Justice of India is not kept out of the picture of any criminal case contemplated against a Judge...If the Chief Justice of India himself is the person against whom the allegations of criminal misconduct are received the Government shall consult any other Judge or judges of the Supreme Court ..."

In *Addl. District & Sessions Judge 'X' v. High Court of M.P.*, **(2015) 4 SCC 91**, this Hon'ble court held that the Chief Justice of the High Court who had an adopted a position in respect of some aspects of an inquiry under question, must not be part of the in-house procedure since he cannot be expected to arrive at a fair conclusion.

"50. The next contention of the learned counsel for the petitioner was, that the inquiry conducted by the "two-judge committee", constituted by the Chief Justice of the High Court, cannot be expected to arrive at a fair conclusion.

53 ... Undoubtedly, the Chief Justice of the High Court has adopted a position, in respect of some aspects of the matter, contrary to the position asserted by the petitioner. Truthfully, even though these facts do not have any direct bearing on the allegations levelled against Respondent 3, yet when examined dispassionately, the fact of the matter is that the Chief Justice of the High Court, personally perceived certain facts differently. These facts are personal to the Chief Justice of the High Court, namely, whether attempts were made by the petitioner to meet the Chief Justice of the High Court, and whether he declined such attempts. In the above view of the matter, we are of the considered view, that it may not be appropriate, in the facts and circumstances of the present case, to associate the Chief Justice of the High Court with the investigative process. It is not as if, there is any lack of faith, in the Chief Justice of the High Court. It is also not as if, there is any doubt in our mind, about the righteousness of the Chief Justice of the High Court. The issue is that of

propriety. To the credit of the Chief Justice of the High Court, we may also observe, that he may have adopted the present procedure, just for the reasons indicated above, namely, to keep himself out of the fact-finding process, so as to arrive at a fair and just decision. But that is inconsequential. We are accordingly further satisfied in concluding, that following the "In-House Procedure" strictly by associating the Chief Justice of the High Court concerned, would not serve the contemplated purpose, insofar as the present controversy is concerned."

In *State Of Punjab vs Davinder Pal Singh Bhullar* **2011 (14) SCC 770** this Hon'ble court has observed that a judge must at all times, act fairly, without bias and in good faith.

"16. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice, i.e., the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial "coram non judice". Therefore, the consequential order, if any, is liable to be quashed."

*17. In *Rupa Ashok Hurra v. Ashok Hurra and Anr.* (2002) 4 SCC 388, this Court observed that public confidence in the judiciary is said to be the basic criterion of judging the justice delivery system. If any act or action, even if it is a passive one, erodes or is even likely to erode the ethics of judiciary, the matter needs a further look. In the event, there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, technicality ought not to outweigh the course of justice ' the same being the true effect of the doctrine of ex debito justitiae. It is enough if there is a ground of an appearance of bias.*

The judicial complaints procedure for the United Kingdom Supreme Court provides that where,

"1. Any complaint against a Justice of the Supreme Court when acting in that capacity, by whomever received, shall in the first instance be passed to the Chief Executive. Complaints must be made within three months of the date for matters about which the complaint is being made. If the complaint relates only to the effect of a judicial decision or discloses no ground of complaint calling for consideration the Chief Executive if she thinks it appropriate, shall take no action save to inform the complainant (if identifiable) that no action will be taken.

2. In any other case the Chief Executive shall refer the complaint to the President, unless the complaint relates to the President, in which case it shall be referred to the Deputy President, unless the complaint relates also to the Deputy President, in which case it shall be referred to the most senior member of the Court to whom it does not relate."¹

This internal complaint procedure to deal with complaints against judges of the Supreme Court in the United Kingdom thus provides that where the complaint is against the President of the Supreme Court, (equivalent to the Chief Justice of India), it is the next senior most judge who in consultation other senior judges will examine the complaint.

The collegium system came into being through interpretations of pertinent constitutional provisions by the Supreme Court in the 'Judges Cases'. Underlying the evolution of the principle of the collegium is the Supreme Courts dictum that the collective opinion of a collegium of senior judges is much safer than the opinion of the Chief Justice alone. Ushering in the collegium system, the court said that the recommendation for appointment and transfers of judges of the High Court and Supreme Court should be made by the Chief Justice of India in consultation with his senior most colleagues.

It is in these circumstances, this complaint against the Chief Justice of India is being addressed to the five senior most judges of the Supreme Court after the Chief Justice of India for an inquiry into this complaint. The Chief Justice of India has apparently committed several acts of serious misconduct which should be inquired into by a committee of three/five judges of this court. It

¹ <https://www.supremecourt.uk/docs/judicial-complaints-procedure.pdf>

would be most appropriate if the five senior most judges of this Hon'ble court enquire into this complaint.

However it is for this collegium of the five senior most judges to determine as to how this complaint should be dealt with. Merely because the in-house procedure does not explicitly prescribe a method for dealing with a complaint against the Chief Justice, cannot mean that there can be no in-house inquiry on complaints against the Chief Justice. Such a procedure must be evolved and it would be best if it is evolved by the collective wisdom of the collegium of senior judges of this court.

**APPARENT ACTS OF MISCONDUCT OF THE CHIEF JUSTICE OF INDIA,
JUSTICE DIPAK MISRA**

CHARGE NO. 1

The facts and circumstances which create reasonable doubt about the role of the Chief Justice of India are as follows:

a) The manner in which the case of the Prasad Education Trust was dealt with by the Chief Justice of India, Justice Dipak Misra

The Chief Justice of India, Justice Dipak Misra presided over every Bench that heard the matter of this medical college which is the subject matter of the investigation in the FIR registered by the CBI. The facts and circumstances which raise reasonable doubt about the role of Justice Dipak Mishra in Prasad Education Trust matter are as follows:

- That by order dated 1.08.2017 the bench headed by Justice Dipak Misra in the Prasad Education Trust writ petition (no. 442/2017) which was tagged with Global Medical College and Super Speciality Hospital and Research Centre v. UOI (no. 411/2017), ordered that the

government consider afresh the materials on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner colleges/institutions and that the Central Government would re-evaluate the recommendations of the MCI, Hearing Committee, DGHS and the Oversight Committee. This by itself was not extraordinary.

(A copy of the order dated 1.08.2017 is annexed as **Annexure P- 2)**

- That on 24th August 2017, a Bench headed by Chief Justice Dipak Misra, granted leave to the Prasad Education Trust to withdraw the said writ petition and to approach the Allahabad High Court. This was certainly unusual, given the fact that Justice Dipak Misra was directly dealing with many other cases of similarly placed medical colleges to whom MCI had refused recognition.

(A copy of the order dated 24.08.2017 is annexed as **Annexure P- 3)**

- That on the 25th of August 2017 itself, the Allahabad High Court granted an interim order to the Prasad Education Trust, allowing them to proceed with counselling and directing the Medical Council of India not to encash their bank guarantee. That thereafter on 29th August 2017, in hearing the SLP filed by the Medical Council of India from the order of the Allahabad High Court granting relief to the Prasad Education Trust, the Bench headed by Chief Justice Dipak Misra, directed that while the writ petition before the High Court shall be deemed to have been disposed of, liberty is granted to the Prasad Education Trust to again approach the Supreme Court under Article 32 of the Constitution of India. The granting of liberty to the college to approach the Supreme Court again in such circumstances was very unusual. This is compounded by the fact that the interim order of the High Court allowing counselling to continue and thereby admissions to continue, was not expressly set aside by this order disposing of the writ in the medical college in the High Court.

(A copy of the Allahabad High Court order dated 25.08.2017 is annexed as **Annexure P- 4)**

(A copy of the order in the SLP dated 29.08.2017 is annexed as **Annexure P- 5)**

- Thereafter on 4th September 2017, Justice Dipak Misra issued notice on the new writ petition filed by the Prasad Education Trust (writ petition no. 797/2017). It is really surprising that notice should have been issued on this fresh writ petition of the college if indeed the matter stood concluded by disposing of the writ petition of the college in the High Court on the basis of Mr. Mukul Rohtagi's statement that he does not seek any relief other than non encashment of the bank guarantee. It is even more unusual because on 1st September 2017, the same bench had already given a judgment in the matter of a similar medical college namely Shri Venkateshwara University (Writ petition no. 445/2017), by stating that,

"The renewal application that was submitted for the academic session 2017-2018 may be treated as the application for the academic session 2018-2019. The bank guarantee which has been deposited shall not be encashed and be kept alive".

This indeed became the basis of the final order in the Prasad Education Trust writ petition which is shown to be dated 18th September 2017. If the matter had to be disposed off mechanically by following the judgment of 1st September 2017, in the other medical college case, where was the occasion for first giving liberty and then entertaining the fresh petition of the college on 4th September 2017 and keeping it alive till at least the 18th of September 2017?

It is also important to note that officials of Venkateshwara college are mentioned in the CBI FIR,

"Information further revealed that Shri B P Yadav got in touch with Shri I M Quddusi, Retd. Justice of the High Court of Odisha and Smt. Bhawana Pandey r/o N-7, G.K. -1, New Delhi through Sh. Shudir Giri of Venkateshwara Medical College in Meerut and entered into criminal conspiracy for getting the matter settled."

(A copy of order dated 1.09.2017 in writ petition no. 445/2017 is annexed as **Annexure P- 6)**

(A copy of the order dated 4.09.2017 in writ petition no. 797/2017 of Prasad Educational Trust is annexed as **Annexure P- 7)**

(A copy of the order dated 11.09.2017 in writ petition no. 797/2017 of Prasad Educational Trust is annexed as **Annexure P- 8)**

(A copy of the order dated 18.09.2017 in writ petition no. 797/2017 of Prasad Educational Trust is annexed as **Annexure P- 9)**

- That the order dated 18th September 2017, was not uploaded on the Supreme Court website till the 21st of September evening as is clear from the date stamp on the 18th September 2017 order. The order was uploaded 2 days after the registration of FIR by the CBI. This puts a question mark on whether indeed the order was dictated in open court that day or whether it was kept pending and dictated after the registration the FIR and the reporting of that in the media. Besides the order uploaded to the website has the date of 21st September 2017 stamped on it.
- Finally the manner in which the Chief Justice of India has tried to ensure that the writ petition filed by the Campaign for Judicial Accountability and Reforms (writ petition no. 169/2017) not heard along with the writ petition no. 176/2017 filed by Ms. Kamini Jaiswal by the senior most 5 judges of this court while hastily constituting a 7/5 judge bench, himself presiding over that Bench, not recusing himself from the Bench even after being requested to do so, countermanding the order passed by Court No. 2 in Ms. Kamini Jaiswal's petition to list the case before the 5 senior most judges and thereafter constituting a bench of 3 relatively junior judges which included one judge who had been party to the order in the Prasad Education Trust case, are further circumstances which raise serious doubt about his role in the Prasad Education Trust case, which is being investigated by the CBI.

b) Evidence available with the CBI

The CBI lodged an FIR on the 19th of September 2017, in the matters relating to criminal conspiracy and taking gratification by corrupt or illegal means to influence the outcome of a case pending before the Supreme Court. The FIR reveals a nexus between middlemen, hawala dealers and senior public functionaries including the judiciary. The case in which the FIR has been filed involves a medical college set up by the Prasad Education Trust in Lucknow. As it appears from the FIR lodged by the CBI, an attempt was being made to corruptly influence the outcome of the petition which was pending before the

Supreme Court. The said petition was being heard by a bench headed by the Chief Justice of India.

The evidence with the CBI, before it registered this FIR, includes several tapped conversations between the middleman Biswanath Agarwala, Shri I.M. Quddussi, Retd. Judge of the Orissa High Court and the Medical College officers. The transcripts of some of these conversations dated 3.09.2017 and 4.09.2017, have been received by the Campaign from reliable sources and may be verified from the CBI.

(A copy of the transcript of conversation tapped by the CBI on the 3.09.2017 in Hindi original and translated into English is annexed as **Annexure P – 10)**

(A copy of the transcript of conversation tapped by the CBI on the 4.09.2017 in Hindi original and translated into English is annexed as **Annexure P – 11)**

It is important to note that the tapped conversation on 3.09.2017 between Shri Quddusi and Biswanath Agarawala (middleman), indicate that negotiations are on to get the matter of the Prasad Education Trust Medical College settled in the Apex Court. A relevant portion of the conversation from transcript dated 3.09.2017 is as follows:

“V: Yes I think, in which is theirs, in which temple is it – Temple of Allahabad or Temple in Delhi

Q: No no it is not in any temple yet, now it needs to be

V: Yes yes yes! So now you can talk about it, he will do it. About that I have spoken about it there

Q: Has said for sure (pucca)

V: Yes yes. In that you see this one thing...100% this, our person who is our captain, it is being done through the captain, so what is the problem. Tell me?”

(V – Vishwanath Agarawala Q – Shri I.M. Quddussi)

It is relevant to note that the writ petition no. 797/2017 of the Prasad Education Trust was admitted a day later, on the 4.09.2017 by a Bench headed by the Chief Justice Dipak Misra, that issues notice on the new writ petition filed by the Prasad Education Trust. As quoted above and in the excerpt below, reference has been made in the conversations to the “Captain” who will get the matter favourably settled on the payment of the bribes.

“V - He knows that we people say 200 bahi. 500 bahi you tell them, 500 gamla! We will say 200 gamla there, 100 gamla we will give, 100 we will give later

V - 500 tell him to do..that work is very difficult work...we should also get, you and I

Q Alright, alright, alright

V Yes that will be done for sure. Have had a complete talk, there is no problem

Q Ok so tomorrow we will meet

V Now only one thing father is saying, one thing he is saying that, this captain of ours has ... all over India...whatever work there is, he is willing to do

(V – Vishwanath Agarawala Q – Shri I.M. Quddussi)

Further the tapped conversation from 4.09.2017 between Biswanath Agarwala, Shri I.M. Quddussi and Mr. BP Yadav (of Prasad Education Trust), refer to the said petition under article 32 being filed on 4.09.2017 and that the next date for hearing given by the Court being “Monday”. The Monday after 4.09.2017 is 11.09.2017 when the matter of Prasad Education Trust was indeed listed and again heard by a bench headed by the Chief Justice of India that directs the matter to be further listed on the 18.09.2017.

“Q - They say they filed their petition. Today they have given a date for Monday. They are asking when- how much will it be and how and secondly how can they believe their work will be done for sure.

V - Are these those medical people?

Q - Yes yes

V - Ya so the date is listed for the coming Monday?

V - Yes so that is review ?

Q - No no it's a petition under art 32

V - Yes yes yes. There is no such assurance/guarantee. If they give the stuff work would be done 100%...

Yadav - So that day I had gone to the High Court because, see brother, that time on/in it money was stuck. No I spoke/said very clearly. That's why we went. From there they/he gave an order. After coming here, they dismissed it. They/he said to file a fresh petition. Under article 32 a fresh petition has been filed. It had a date set, the date was pushed to the 11th by them/him. So what we want is that tomorrow we make your ticket and for that sorry. Vishvanath Ji I will give it to you, now you get our work done for us.

V - No, the work is not even 100% but 500% guarantee. But the luggage will have to be given before and he/they is/are saying no to meeting because the government that is going on - Tea seller's government. That is watching everyone, that is the problem...

Yadav - No Prasad will be needed. We will give the Prasad. We have to give the Prasad.

V - Work will be done 100%, but I won't go to speak tomorrow or day after. You keep the luggage/stuff ready... if given we people will get it done 100%

Yadav - Meaning advance will have to be given

V - Yes, advance has to be given to them/him. Otherwise why will they/he do it, you say. There is no written-reading in these matters. All this runs on belief in this world. They/he will do it 100%.

Yadav - Tell me what has to be given. I have only one college I can't trust another.

V - Will get it done for 1.

Yadav - Tell me clearly, what will I have to give. We don't have much capacity. Make us speak, if boss/sir is there then make us speak, I will talk to boss/sir.

V - No there's no problem. We/I will get the work done.

V - No they/he said for 1. I had spoken for 1, they/he said three. 2.5 has to be given there, 50 will be kept with us.

Q - So how much advance has to be given

V - Advance now... They/he said at that time, for review petition give 100 people. If the review is allowed, then even you will get to know. Then we....

Q - Then you do one thing. You do one thing. His is listed for Monday, postpone the date by 3-4 days.

V - So we will send a few people. So 3-4...if you give 2 people then we will extend the date by 3-4 days.

V - On Monday we will finalize. They give us the luggage/stuff (saamaan) - some 2-2.5; no problem some order will be given. Papa see here. Neither will it put you in a problem nor will it put me. Because there the association will talk. Won't reach, otherwise we will be stuck in a lot of problems. If we are not able to do the work, then we will return the

luggage/stuff (saamaan) that is here. There is no chance that work will not be done. There we have spoken clearly, that it will be allowed.

Q - Here, talk to them/him.

V - Yes, conversation was clear. Calculated as per three. They/he wont do it for less than 3.

Yadav - Hello

V - Yes, we had spoken last time also. Sir for 1 they were asking for 3. If 3 is given total will be allowed to those ask for prayers. I told him, he was talking about 5 at the time. They/he were speaking of 15 bricks, even last time they were speaking about that only.

Yadav - So all the money will go in advance.

V - Sir I don't want to take any risk there, because it's a 100% guarantee job. If you give it there, your work will be done 100% guarantee. No ifs and buts. Once work is done, sir will sit for 10-15 months. Get 14-15 jobs done, even you will believe it. He will do it 101%.

Yadav - So when should I give, tell me.

V - Date is 11th, so if it can reach us by 6-7th we will get it done. Your work will get done by the 11th.

Yadav - Do it within 2.5 yaar, my capacity is only till 2.5. get it done.

(V – Vishwanath Agarawala Q – Shri I.M. Quddussi)

This evidence available with the CBI, of the tapped conversations between Shri Quddussi, middlemen and the medical college officials, reveals that a conspiracy, planning and preparation was underway to bribe the judge/judges who were dealing with the case of this medical college. It further reveals that negotiations regarding the amount of bribes to be paid were still on while the matter was listed before a Bench headed by Chief Justice Dipak Misra on 4.09.2017 and 11.09.2017. The references in the conversations between the middleman Biswanath Agarwala from Orissa and the officers of Prasad Education Trust to “Captain... has all over India” and to “sir will sit for 10-15 months” seem to be referring to the Chief Justice. In light of the convoluted course that the case followed and in light of these tapped telephonic conversations, this matter needs an independent investigation to ascertain the veracity of the claims being made in the conversations, of the plans to allegedly pay bribes to procure favourable order in the case of the Prasad Education Trust in the Supreme Court and to also clear the doubt about the role of the present Chief Justice of India.

c. Denial of permission to the CBI to register an FIR against Justice Narayan Shukla of the Allahabad High Court

The most serious circumstance that has emerged, which further strengthens the doubt regarding the role of the Chief Justice of India in the Prasad Education Trust matter, is his denial of permission to the CBI to register a regular FIR against Justice Shukla of the Allahabad High Court, who presided over the Bench that gave the interim order in favour of Prasad Education Trust. It is learnt from reliable sources that the CBI officers went to the Chief Justice of India on the 6th of September 2017, with the transcripts and other evidence recorded by them in the FIR and preliminary enquiry, showing almost conclusively the involvement of Justice Shukla in this conspiracy and his receiving gratification of at least one crore in the matter. The CBI Preliminary Enquiry report was registered on the 8th of September 2017 after the Chief Justice of India refused permission to register an FIR against Justice Shukla on the 6th of September 2017. The Preliminary Enquiry report obtained from reliable sources states as follows:

"Source also informed that Shri I.M. Quddusi and Shri B.P. Yadav met Hon'ble Justice Shri Narayan Shukla in the morning on 25.08.2017 at his residence in Lucknow regarding the matter and delivered illegal gratification. Source has further informed that on 25.08.2017, an order was passed in petition, Misc. Bench No. 19870 of 2017 filed by Prasad Education Trust, by a Bench, which included Hon'ble Justice Shri Narayan Shukla. The order directed that the petitioners college shall not be delisted from the list of colleges notified for counselling till the next date of listing, i.e. 31.08.2017. Further the encashment of bank guarantee was also stayed till the next date of listing. It was further clarified that on the basis of the order, the petitioners shall have no right to claim any admission of the students...

Sources informed that Justice Shri Narayan Shukla assured Shri I.M. Quddusi that he will return a part of illegal gratification previously received by him shortly.

The aforesaid acts prima-facie reveal that Hon'ble Justice Shri Narayan Shukla of Lucknow Bench of the High Court of Allahabad in collusion with Shri I.M. Quddusi, Retired Justice of the High Court of Odisha; Smt. Bhawana Pandey; Shri B.P. Yadav and Shri Palash Yadav of Prasad

Education Trust and Shri Sudhir Giri of Venkateshwara Medical College and unknown others, committed gross misconduct while discharging duties as a public servant.”

(A copy of the Preliminary Enquiry Report is annexed as **Annexure P 12**)

Even after being made aware of this extremely important and virtually conclusive evidence against Justice Shukla in accepting gratification, the Chief Justice of India refused permission to the CBI for registering even a regular FIR against Justice Shukla, without which further investigation against him cannot be done and he cannot be charge-sheeted. It is reliably learnt that the officers of the CBI have made a record of this denial of permission by the CJI in a notesheet. By preventing the registration of an FIR against Justice Shukla and later by dismissing the CJAR petition seeking a SIT probe into the allegation in the CBI FIR by a bench constituted by the Chief Justice, all investigation into the conspiracy to bribe judges for obtaining a favourable order has been virtually stalled. Ensuring that no further investigation is undertaken, into this serious charge of alleged judicial corruption, amounts to a serious abuse of power by the Chief Justice of India.

It has however subsequently been reported that the CJI has set up some in-house inquiry against Justice Narayan Shukla on the basis of some orders that he passed in another similar case of a Medical College. If this warranted an in-house inquiry, why was an in-house inquiry not ordered in the case of Prasad Education Trust where an identical interim order was passed by Justice Shukla and which came up before Chief Justice Dipak Misra well before this. Also if this was serious enough for in-house inquiry why was permission denied to CBI to register an FIR particularly when the CBI had presented documentary evidence in the case. Therefore, the subsequent in-house inquiry ordered in this case appears to be an eye wash after this scandal became well publicized.

All this is not to say that the Chief Justice of India is definitely involved in the conspiracy, but that the above numerous facts and circumstances clearly call for an enquiry/investigation in this matter.

CHARGE NO. 2

That the Chief Justice of India, Justice Dipak Misra dealt on the administrative as well as judicial side, with a writ petition which sought an investigation into a matter in which he too was likely to fall within the scope of investigation since he had presided over every bench which had dealt with this case and passed orders in the case of Prasad Education Trust

The Code of Conduct formulated in a Conference of all the Chief Justices in the country in 1997 which has been laid down in the 'Restatement of Values of Judicial Life', says in the very first code:

"1. Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly any act of the judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided."

The actions of Chief Justice Dipak Misra in dealing with this case in the manner detailed below, clearly violate this salutary Code of Conduct.

On Friday 10th November 2017, writ petition no. 169/2017, Campaign for Judicial Accountability and Reforms v. UOI & Anr, was listed before Court no. 6. When this petition was mentioned for urgent hearing on 8th November 2017 before Court no. 2, it was directed that this matter be listed before Court no. 2 on Friday the 10th November 2017. Thereafter the registry informed the petitioner's counsel Mr. Prashant Bhushan, that on account of the Chief Justice's administrative order, the case would not be listed before Court. no. 2 but in another court. On the 10th of November 2017, when this matter was taken up before Court no. 6, the court was informed that in a similar connected matter of Kamini Jaiswal the court had already directed it to be listed before a Constitution Bench of 5 senior most judges of the court and therefore this should be tagged with that related matter. The order of this court was to place the matter before the Chief Justice for appropriate directions. However at 2:45p.m. the petitioners counsel was telephonically informed that a 7 judge bench would sit in Court no. 1 and that he should come to Court no. 1 by 3p.m. Outside the court a notice had been put up

mentioning the constitution of this bench as, Justice Dipak Misra, Justice A.K. Sikri, Justice R.K. Agrawal, Justice Arun Mishra, Justice Amitava Roy, Justice A.M. Khanwilkar and Justice Ashok Bhushan. However on going inside the court, it was found that of those 7 chairs put up initially, two chairs were hurriedly removed and a bench of 5 judges excluding Justice Sikri and Justice Bhushan sat at 3p.m.

The petitioners counsel was then told that the court was taking up the petition of the Campaign for Judicial Accountability and Reforms, wherein it had sought an independent SIT supervised by a former Chief Justice of India and monitored by the court, into a CBI FIR making allegations of conspiracy and preparation to pay bribes to procure a favourable order in the matter pending before the Supreme Court. It is relevant here to quote from the CBI FIR dated 19th September 2017:

"Information further revealed that Prasad Education Trust filed a Writ Petition (Civil) No 797/2017 in the Apex Court. Shri B. P Yadav, in furtherance of the said conspiracy requested Shri. I. M Quddusi and Smt. Bhawana Pandey who assured to get the matter settled in this Apex Court through their contacts and they further engaged Shri. Biswanath Agrawala, a private person R/o HIG-136, Phase 1, Kanan Vihar, Chandrashakerpur Bhuneneshwar, Odisha for getting the matter settled in the Apex Court Shri. Biswanath Agrawala claimed very close contact with the senior relevant public functionaries and assured that he would get the matter favourably settled. However, they demanded huge gratification for inducing the public servants by corrupt and illegal means in lieu of the aforesaid help."

(A copy of the CBI FIR dated 19th September 2017 is annexed as **Annexure P - 13**)

Further, the petitioners counsel requested the Chief Justice of India that it would be wholly improper for the Chief Justice to hear this matter in his judicial capacity or administrative capacity since this case involved an investigation which may extend to his conduct as well, since he had presided over every bench which had dealt with this case and passed orders in the case of Prasad Education Trust. However ignoring all this and the clear principle of conflict of interest, the Chief Justice of India proceeded with the hearing and

passed an order effectively nullifying the order of Court no. 2 in Ms. Kamini Jaiswal's case, where the matter was ordered to be listed before the senior 5 judges of the Supreme Court since it involved an issue of importance and sensitivity.

It is well settled that no person can be a judge in his own cause (*nemo judex in sua causa*) and accordingly no judge or administrative authority can deal with the case in which that person is himself interested or concerned.

In *Ranjit Thakur v Union of India* (1987) 4 SCC 611, this Hon'ble Court held:

"15. The second limb of the contention is as to the effect of the alleged bias on the part of Respondent 4. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and is whether Respondent 4 was likely to be disposed to decide the matter only in a particular way.

16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice.

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him.

18. Lord Esher in *Allinson v. General Council of Medical Education and Registration* said:

"The question is not, whether in fact he was or was not biased. The court cannot inquire into that. . . . In the administration of justice, whether by a recognised legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased."

In *Inderpreet Singh Kahlon v. State of Punjab*, (2006) 11 SCC 356: this Hon'ble Court held,

“81. We also fail to understand as to why two Senior judges who had headed the Committee should have been made part of the Bench. It was not a case where the doctrine of necessity was required to be invoked. It may be that the counsel appearing on behalf of the judicial officers did not object to the learned judges who were members of the Committee to hear the matter.

82. There is no quarrel with the proposition that the allegation of bias may be capable of being waived. [See *G. Sarana (Dr.) v. University of Lucknow*²².] However, in this case, bias as regards the subject-matter on the part of the members of the Committee who heard the writ petition is apparent on the face of the record.

85. The writ petitioners, thus, might have waived their right to raise a contention as regards bias on the part of the Hon’ble judges but the same would not mean that this Court would ignore such a vital fact. It was clearly a case where the Hon’ble judges should have recused themselves from hearing the matter. It was for them to remind themselves that justice is not only done but manifestly seen to be done.”

In *Pinochet, In re* [1999] UKHL 1; [2000] 1 AC 119; [1999] 1 All ER 577; [1999] 2 WLR 272, the House of Lords in appeal held,

“The fundamental principle is that a man may not be a Judge in his own cause...In such a case, once it is shown that the Judge is himself a party to the cause, or has a relevant interest in its subject-matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has made sufficient disclosure....”

In *P.D. Dinakaran (1) v. judges Inquiry Committee*, **(2011) 8 SCC** this Hon’ble court further held,

62. In India, the courts have, by and large, applied the “real likelihood test” for deciding whether a particular decision of the judicial or quasi-judicial body is vitiated due to bias. In *Manak Lal v. Dr. Prem Chand Singhvi* it was observed: (AIR p. 429, para 4)

“5. ... every member of a tribunal that [sits to] try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges

should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.”

In this case clearly the CBI FIR makes allegations that the entire conspiracy and planning was to bribe and influence the apex court judges who are dealing with the case of Prasad Education Trust. This bench was clearly headed by Chief Justice Dipak Misra. In these circumstances, he was an interested party and could not have dealt with this case either on the judicial or even on the administrative side by way of assigning a particular bench to hear this case.

Further against all principles of natural justice and in a clear case of conflict of interest, the Chief Justice Dipak Misra constituted a three judge Bench to hear Ms. Kamini Jaiswal's related petition, with Justice Khanwilkar as a part of the Bench. This despite the fact that Justice Khanwilkar was part of every hearing in the Prasad Education Trust matter. The judgment of this Bench in Kamini Jaiswal petition says that the Chief Justice can still exercise his power as master of the roster and constitute benches even when he is involved in the case. It further says that asking a judge to recuse from a case amounts to contempt of court. It is submitted that these two propositions are both in violation of settled law by this court by larger benches and have been given by a bench where one of the members had a conflict of interest and had been expressly asked to recuse himself. Therefore, this order is clearly in violation of the principles of natural justice and therefore, void and can be ignored by any court of authority.

The law on recusal has been settled in a large number of cases, both in India as well as abroad. The principle in all these cases is clear, that no judicial or administrative authority can deal with a case, even if it had a remote connection with that case. In this case the connection was direct, since CJAR's petition sought an independent investigation into a matter, where the allegation was that attempt was made to procure a favourable order in a petition regarding recognition of medical college which case was being heard

by a bench which included the Chief Justice of India and Justice Khanwilkar. The apparent acts of Justice Dipak Misra, in hearing this case, asserting authority by assigning benches to hear this case, preventing or trying to prevent a Constitution bench of 5 senior most judges to hear this case and fixing it before a bench of junior judges, constitute a gross violation of natural justice, abuse of authority and gross misconduct. While at this stage there may not be conclusive evidence of Justice Dipak Misra's involvement, the circumstances listed above definitely warrant a thorough investigation.

CHARGE NO. 3

That the Chief Justice of India appears to have antedated an administrative order dated 6th November 2017 which amounts to a serious act of forgery/fabrication

That on 9th November 2017 while the hearing of a writ petition no. 176/2017, Kamini Jaiswal v. UOI & Anr was in progress before Court no. 2, the registrar brought an administrative note to the court which was thereafter ordered to be annexed to the order passed by the court on 9th November 2017.

(A copy of the order dated 9th November is annexed as **Annexure P -14** and a copy of the note annexed to the order is annexed as **Annexure P -15**)

This note is purportedly dated 6th November 2017 but appears to be antedated and appears to have been prepared and issued on 9th November 2017 itself. This seems to be the case from the following facts and circumstances:

i) That at the end of para one of the note it is stated that:

"Your Lordship has been pleased to direct that in future whenever such directions are issued, the matter(s) be listed before the Bench presided over by Hon'ble Chief Justice of India at 3p.m. or at such time as may be indicated by Your Lordship, on the same day or before such Bench as directed by the Hon'ble Chief Justice of India."

If there were already pre existing orders of the Chief Justice of India on this issue, what was the occasion for the Chief Justice to call for, and for the registrar to put up a fresh note on the 6th November 2017?

ii) If this note was indeed issued on 6th November 2017, why was it not communicated earlier to Court no. 2 which was to hear the urgent mentionings while the Chief Justice of India was sitting in the Constitution Bench? Why was it only communicated in a hurry while the hearing of Ms. Kamini Jaiswal's petition was in progress?

iii) The Constitution Bench presided over by the Chief Justice of India in a highly unusual manner, arose at noon on 9th November 2017 after Court no. 2 had ordered Ms. Kamini Jaiswal's petition to be taken up at 12:45p.m. in Court no. 2. The Chief Justice thereafter reportedly told lawyers when the bench resumed at 2p.m. that he had risen early prior to lunch to attend to some family matters.

It appears from the above-mentioned circumstances that this administrative note dated 6th November 2017 was in fact hurriedly prepared between noon of 9th November 2017 when the Constitution Bench was made to rise and 12:45p.m. when Court no. 2 was to take up Ms. Kamini Jaiswal's matter and has been apparently antedated to 6th November 2017. Antedating of a document of this kind is a serious act of forgery and fabrication and amounts to serious misconduct.

CHARGE NO. 4

That Chief Justice Dipak Misra acquired land while he was an advocate, by giving an affidavit that was found to be false and despite the orders of the ADM canceling the allotment in 1985, surrendered the said land only in 2012 after he was elevated to the Supreme Court

That in the year 1999, two years after being enrolled as an advocate in Orissa, Justice Dipak Misra had applied for and was allotted 2 acres of agricultural land from the government, purportedly for raising a fodder farm. For seeking this allotment he gave a false affidavit that neither he nor his family owns any agricultural land. However in an earlier lease application for this land he had stated that his family owns 10 acres of land.

(A copy of the affidavit in lease case no. 588 of 1979 is annexed as **Annexure P - 16**)

(A copy of the lease application is Annexed as **Annexure P - 17**)

Thereafter in an enquiry by the Additional District Magistrate (ADM), Cuttak, it was found that this allotment was illegal and ordered to be cancelled. The ADM's order held:

"I am satisfied that the lessee has obtained lease by misrepresentation and fraud."

(A copy of the ADM's order in Lease Revision Case no. 238 of 1984 In the Matter of the Orissa Govt. Land Settlement Act, 1962 & In the Matter of St vs Sri Deepak Mishra, 1985, s annexed as **Annexure P - 18**)

That despite cancellation of allotment it was learnt that Justice Dipak Misra did not surrender possession of plot for many years after and the record of rights was corrected only on 6.01.2012, a year after he was elevated to the Supreme Court in 2011. It is noteworthy that in this case and other similar illegal land allotments, the Orissa High Court had ordered a CBI investigation. The CBI had thereafter submitted a status report in 2013 but it appears there is no final report prepared by CBI and the matter is still pending investigation. The PIL in which this order directing CBI enquiry was passed, has apparently been listed before the bench of Justice Inderjit Manahy for years and has been adjourned many times. In the CBI status report it is stated:

"In this case, Shri Dipak Mishra s/o Raghunath Mishra, Vill-Tulsipur, P.S. - Lalbagh, Cuttack & permanent R/o Banpur, Puri was sanctioned 2 acres of land by the then Tahsildar Mr. J. A. Khan on 30.11.1979 at Plot No. 32 Khata no. 330, Mouja – Bidyadharpur.

The allotment order of Tahasildar was cancelled by ADM cuttack vide Order 11.02.1985. But record was corrected only on 6.01.12 as per the order passed by the Tahasildar, Cuttack only after 6.01.2012."

(A copy of the CBI status report is annexed as **Annexure P - 19**).

The act of Justice Dipak Misra in seeking this allotment as a lawyer for raising a fodder farm, is itself improper. As a lawyer, under the bar council rules, he is not allowed to conduct any business. Moreover, seeking the allotment by filing a false affidavit is even more serious misconduct. Finally keeping possession of the plot for many years even after cancellation of the allotment is even more serious misconduct.

This case of Chief Justice Dipak Misra's alleged land allotment fraud, relates to a period when he was still a lawyer. It is important here to point out that in the case of Justice Soumitra Sen of the Calcutta High Court, the in-house inquiry committee held him guilty of misappropriation of large sums of money which he received in his capacity as receiver appointed by the High Court of Calcutta, when he was still a lawyer. Though he had paid back the money, the in-house committee had noted in its February 6, 2008 report to the Chief Justice of India that *"mere monetary recompense under the compulsion of judicial order does not obliterate breach of trust and misappropriation of receiver's funds for his personal gain"*. The in-house committee had concluded: *"The conduct of Soumitra Sen had brought disrepute to the high judicial office and dishonour to the institution of judiciary, undermining the faith and confidence reposed by the public in the administration of justice."* Justice Soumitra Sen gave in his resignation after the Rajya Sabha passed the motion for his impeachment and before it was placed before the Lok Sabha.

These above-mentioned matters have tarnished the reputation of the court and have brought the judiciary into disrepute. It is a matter which needs to be swiftly dealt with. The in-house procedure does not deal with complaints against the Chief Justice but for any other judge it says the Chief Justice will constitute a committee of 3 sitting judges of the Supreme Court to look into the complaint. The extraordinary nature of this case involving serious allegations of misconduct against the Chief Justice himself, in our respectful submission, requires an enquiry committee of 3 or 5 next senior most judges of the Supreme Court. The enquiry must be swiftly done so that the reputation of the judiciary is not damaged further and the integrity and independence of the judiciary remains intact.

Thanking you.

Sincerely,



Prashant Bhushan, (Convenor, Campaign for Judicial Accountability and Reforms)

On behalf of, The Executive Committee, Campaign for Judicial Accountability and Reforms