

Mr. K. K. Venugopal  
Attorney General for India,  
"SHANTHA" , A-144, Neeti Bagh,  
New Delhi -110049.

Subject: Request for consent to initiate proceedings for criminal contempt against Mr. Prashant Bhushan under Section 15 of Contempt of Courts Act, 1971 read with Rule 3(c) of The Rules To Regulate Proceedings For Contempt of Supreme Court 1975.

Sir,

The tweet by Mr. Prasant Bhushan on 21<sup>st</sup> October 2020, commenting on the personal life of the Hon'ble Chief Justice of India and connecting it with a pending case itself amounts to contempt of court for the reasons enumerated hereinafter as under :-

1- The excerpt of tweet dated 21-10-2020 by Sri Prashant Bhushan is reproduced hereinafter as under:-

*"The CJI avails a special chopper provided by the MP Govt (authorised by the CM) for a visit to Kanha National Park & then to his home in Nagpur, while an important case of disqualification of defecting MLAs of MP is pending before him. Survival of MP govt depends on this case"*

A True Copy of the tweet dated 21-10-2020, by Sri Prashant Bhushan is annexed with this letter as **Annexure -1.**

2- This tweet was published in various newspapers and e-papers namely The Telegraph, BBC News and The Wire (all articles from respective e-papers) published from

22/10/2020 to 25/10/2020. The True Copies of The Telegraph, BBC News & The Wire are annexed herewith this letter as **Annexure -2, 3 & 4**, for your kind reference.

- 3- The matter and act of contempt did not stop here but continued further as , after the abovementioned tweet was published by BBC News & The Wire Mr. Prasant Bhushan Tweeted again, thus repeating the act of Contempt. A true copy of his tweets dated 24-10-2020 & 25-10-2020 are annexed here with this letter as **Annexure 5 & 6.**
- 4- In my opinion, the tweets abovementioned and publication thereof scandalises the hon'ble Supreme Court, prejudices and interferes with the due course of judicial proceedings and administration of justice.
- 5- It is in public interest that proceedings for contempt of court be initiated against Mr. Prashant Bhushan.
- 6- Because in common law jurisdictions, perhaps the most significant role of contempt of court law is the application of the sub judice rule: no one should interfere with legal proceedings which are pending. In practice, this rule is usually used to prohibit publication of matters which are likely to prejudice the right of a fair trial when legal proceedings are pending, or in a more colloquial sense, to prevent "trial by media".
- 7- The rationale behind this rule was explained in the leading English case of **Attorney-General v. Times Newspaper Ltd., [1973] 2 All ER 54.** where Lord Diplock stated:  
"The due administration of justice requires first that all citizens have unhindered access to the constitutionally established courts of criminal or

civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly, that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of court."

It is therefore, humbly requested that you may kindly give consent to the undersigned, to initiate proceedings for criminal contempt against Mr. Prashant Bhushan under Section 15 of Contempt of Courts Act, 1971 read with Rule 3(c) of The Rules To Regulate Proceedings For Contempt of Supreme Court 1975. Thanking you, Regards.

Yours' sincerely,

[Sunil Kumar Singh]  
Advocate, Supreme Court of India,



Prashant Bhushan

12.5K Tweets

Follow

Second only to the United States in the highest number of coronaviruses in...  
washingtonpost.com

233

1.6K

7.1K



Prashant Bhushan @pbbhushan1 · Oct 21

The CJI avails a special chopper provided by the MP Govt (authorised by the CM) for a visit to Kanha National Park & then to his home town in Nagpur, while an important case of disqualification of defecting MLAs of MP is pending before him. Survival of MP govt depends on this case

ITEM NO.14 Court No.1 (Video Conferencing) SECTION X  
SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).682/2020

VINAY SAXENA Petitioner(s)

VERSUS

THE SPEAKER MADHYA PRADESH LEGISLATIVE ASSEMBLY & ANR.Respondent(s)

(WITH IA NO. 62677/2020 - EXEMPTION FROM FILING O.T. AND WITH APPLN.(S) FOR DIRECTIONS AND FOR AMENDMENT TO WRIT PETITION ALONG WITH APPLN.(S) FOR EXEMPTION FROM FILING O.T. AND FOR STAY ALONG WITH APPLN.(S) FOR EXEMPTION FROM FILING O.T.)

Date : 06-10-2020 The petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.S. BOPANNA  
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. Kapil Sibal Sr. Adv.  
Mr. Vivek K Tankha, Sr. Adv.  
Mr. Varun K Chopra, Adv.  
Mr. Vaibhav Joshi, AOR  
Mr. Gurtejpal Singh, Adv.

For Respondent(s) Mr. Tushar Mehta, SGI  
Mr. Purushainder Kaurav, AG (For M.P.)  
Mr. Saurabh Mishra, AG  
Mr. Sunny Choudhary, AOR  
Mr. Kanu Aggarwal, Adv.

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

iteprotocol.mp.gov.in

WIRELESS MESSAGE / FAX  
REVISED

FROM:-  
D. K. NAGENDRA  
DEPUTY SECRETARY AND  
STATE PROTOCOL OFFICER, MADHYA PRADESH  
MANTRALAYA VALLABH BHAVAN BHOPAL, MADH  
TEL NO:0773-2461500/1501, FAX NO:0773-24615  
E MAIL: stateprotocol@mp.gov.in  
WEB: www.madhyapradesh.gov.in

COLLECTED AT: JABALPUR, MADHWA  
CORRESPONDENCE: JABALPUR

TO:  
INFO:  
NO.F/13/386/PMS/2020/14-: KINDLY REFER TO THIS DEPARTMENT FAX MESSAGE EVEN NO. DATED 15/10/2020 (1) REVISED TOUR PROGRAMME OF HON'BLE SHRI SHARAD ARVIND BOBHE, CHIEF JUSTICE OF INDIA IS AS FOLLOWS (1) HE WILL BE REACHING JABALPUR FROM DELHI ON 17/10/2020 AT 01:05 PM BY FLIGHT No SG 2871 (1) STAY AT JABALPUR (1) ON 18/10/2020 AT 12:00 PM DEPARTURE FROM JABALPUR TO KHATIA (KANHA) BY CHOPPER (1) AT 12:30 PM REACH KHATIA (KANHA) (1) STAY AND VISIT KANHA NATIONAL PARK (1) ON 20/10/2020 AT 03:30 PM DEPARTURE FROM KHATIA (KANHA) TO NAGPUR BY CHOPPER (1) KINDLY MAKE ALL NECESSARY ARRANGEMENTS SUCH AS RECEPTION, ACCOMMODATION, TRANSPORT AND ADEQUATE SECURITY (2-) ETC. (1) HON'BLE CHIEF JUSTICE OF INDIA WILL BE TREATED AS A STATE GUEST (1)

Not to be transmitted,  
Bhopal. Dated 15/10/2020

(D. K. NAGENDRA)  
DEPUTY SECRETARY &  
STATE PROTOCOL OFFICER  
GOVERNMENT OF MADHYA PRADESH  
GENERAL ADMINISTRATION DEPARTMENT

Copy forwarded to the  
Endst. NO./F/13/386/PMS/2020/ 1/14  
1.Principal Secretary to Hon'ble Chief Minister, Govt. of M.P.,Mantralaya,Bhopal  
2.Deputy Secretary(Coordination), to Chief Secretary, M.P., Mantralaya, Bhopal  
3.Principal Secretary, Govt. of M.P., General Administration /Home Department, Mantralaya, Bhopal  
4.Hospitality Officer/Asst.Hospitality officer, State Hospitality Office, M.P., Mantralaya, Bhopal.  
5.Superintendent, State Garage, Madhya Pradesh, Bhopal.

432

4.6K

11.9K

[TRUE COPY]

# The Telegraph *online*

Sunday, 25 October 2020 • [E-paper](#)

[Home](#) / [India](#) /

Bhushan tweets about CJI Bobde's visit to Kanha park by MP govt chopper

## Bhushan tweets about CJI Bobde's visit to Kanha park by MP govt chopper

The judge is hearing a case on which the fate of the BJP government in the state hinges



[Prashant Bhushan /File picture](#)

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**Our Bureau** | **New Delhi** | **Published 22.10.20, 02:49 AM**

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Lawyer Prashant Bhushan on Wednesday tweeted that Chief Justice of India S.A. Bobde had travelled by a chopper provided by the Madhya Pradesh government to visit the Kanha National Park and his hometown at a time the judge was hearing a case on which the fate of the BJP government in the state hinged.

“The CJI avails a special chopper provided by the MP Govt (authorised by the CM) for a visit to Kanha National Park & then to his home town in Nagpur, while an important case of disqualification of defecting MLAs of MP is pending before him. Survival of MP govt depends on this case,” Bhushan tweeted.

Justice Bobde reached Kanha, known for its tigers, on Sunday (a holiday for the court) and left on Tuesday. The court had closed for Dussehra holidays from Monday and will reopen next week.

A source familiar with the Chief Justice said no undue step was taken.

The source said the Chief Justice was “entitled to a chopper, a car, an aircraft and other special facilities in view of his constitutional status”.

The source added that Bhushan's tweet was mala fide and motivated to denigrate the highest judiciary as part of an orchestrated campaign.

Earlier this year, Bhushan was convicted of criminal contempt of court for tweets against the judiciary, including one about Justice Bobde on a Harley-Davidson bike.

A bench headed by CJI Bobde is hearing a case filed by a Congress MLA against the Madhya Pradesh pro-tem Speaker's decision to dismiss a disqualification petition he had moved against 22 lawmakers from the party. The Congress MLAs had defected to the BJP to bring down the Kamal Nath government and prop up that of Shivraj Singh Chouhan.

On October 6, a Supreme Court bench headed by CJI Bobde and including Justices A.S. Bopanna and V. Ramasubramanian had agreed to examine Madhya Pradesh Congress MLA Vinay Saxena's appeal challenging the pro-tem Speaker's decision to dismiss the disqualification application moved by him against the 22 Congress legislators.

According to official sources, Chief Justices of India enjoy a unique constitutional status and have access to such privileges. It's up to the incumbent to decide on using the facilities.

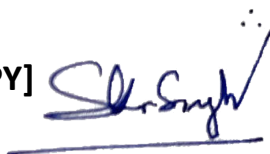
"Moreover, the CJI has Z-plus security, and for security reasons he has a right to such facilities. Supposing he travels in a state government car, will it also be questioned?" a source asked. "If the CJI can travel by government car, then why not a chopper for security reasons?"

The source added: "I don't see what's wrong with it. MP (Madhya Pradesh) is also infested with Maoists and the CJI has a threat perception. Every state, Union Territory and the Centre is a litigant in the Supreme Court. By that yardstick, neither the CJI nor any of the judges can utilise any government facilities."

The government of the state that the CJI is visiting has the responsibility of making travel and logistical arrangements.

The sources said "appropriate action would be considered against Bhushan".

[TRUE COPY]



BBC NEWS | हिन्दी

## Prashant Bhushan tweeted again about Chief Justice, what is the whole matter

- Salman Ravi
- BBC correspondent, New Delhi

**24 October 2020**

Updated an hour ago

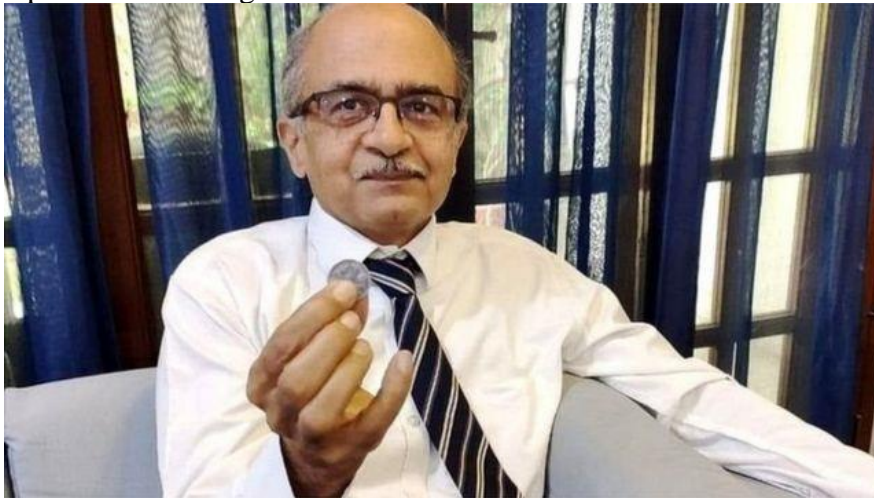


Image caption,




Prashant Bhushan was convicted of contempt of court and fined one rupee.

On 21 October, a prominent lawyer Prashant Bhushan has tweeted on behalf of the Chief Justice of India, Justice SA Bobde, during the recent vacation of the Government of Madhya Pradesh to provide helicopters for him. In his tweet, he has questioned the hospitality of the Madhya Pradesh government.





In his tweet, he said that 'the Chief Justice used a helicopter from the Madhya Pradesh government to travel to Kanha National Park and then to his hometown Nagpur. That too at a time when the important matter of suspension of the rebel MLAs of Madhya Pradesh is pending before them. Madhya Pradesh government is resting on this matter.

In this tweet, a copy of the order of the Supreme Court in the case of Vinay Saxena vs Madhya Pradesh Vidhan Sabha Speaker and others is also printed. The case was heard on 6 October by the bench of Chief Justice Justices SA Bobde and Justices AS Bopanna and V

Ramasubramaniam. The order says that a final decision in this matter will be taken on November 4.

 **Prashant Bhushan**   
@pbrushan1 

The CJ avails a special chopper provided by the MP Govt (authorised by the CM) for a visit to Kanha National Park & then to his home town in Nagpur, while an important case of disqualification of defecting MLAs of MP is pending before him. Survival of MP govt depends on this case

ITEM NO.14 Court No.1 (Video Conferencing) SECTION X   iteprotocol.mp.gov.in  

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).682/2020

VINAY SAXENA Petitioner(s) FROM: **REVISED**

VERSUS

THE SPEAKER MADHYA PRADESH LEGISLATIVE ASSEMBLY & ANR. Respondent(s)

(WITH IA NO. 52677/2020 - EXEMPTION FROM FILING O.T. AND WITH APPLN.(S) FOR DIRECTIONS AND FOR AMENDMENT TO WRIT PETITION ALONG WITH APPLN.(S) FOR EXEMPTION FROM FILING O.T. AND FOR STAY ALONG WITH APPLN.(S) FOR EXEMPTION FROM FILING O.T.)

Date : 06-18-2020 The petition was called on for hearing today.

CORAM :  
HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.S. BOPANNA  
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAM

For Petitioner(s)  
Mr. Kapil Sibal, Sr. Adv.  
Mr. Vivek K. Tomha, Sr. Adv.  
Mr. Varun K Chopra, Adv.  
Mr. Valdinav Joshi, AOR  
Mr. Gurtejpal Singh, Adv.

For Respondent(s)  
Mr. Tushar Mehta, SEI  
Mr. Purushinder Khurav, AG (For M.P.)  
Mr. Saurabh Rishra, AG  
Mr. Sunny Choudhary, AOR  
Mr. Kanu Aggarwal, Adv.

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

WIRELESS MESSAGE/FAX


NO.113/386/PMS/2020/ 1/4



1.Principal Secretary to Hon'ble Chief Minister, Govt. of M.P., Maantralaya, Bhopal  
2. Deputy Secretary (Coordination), to Chief Secretary, M.P., Maantralaya, Bhopal  
3. Principal Secretary, Govt. of M.P., General Administration (Home Department), Maantralaya, Bhopal  
4. Hospitality Officer/Asst. Hospitality officer, State Hospitality Office, M.P., Maantralaya, Bhopal  
5. Superintendent, State Garage, Madhya Pradesh, Bhopal

Copy forwarded to the  
Encl. NO.113/386/PMS/2020/ 1/4  
1.Principal Secretary to Hon'ble Chief Minister, Govt. of M.P., Maantralaya, Bhopal  
2. Deputy Secretary (Coordination), to Chief Secretary, M.P., Maantralaya, Bhopal  
3. Principal Secretary, Govt. of M.P., General Administration (Home Department), Maantralaya, Bhopal  
4. Hospitality Officer/Asst. Hospitality officer, State Hospitality Office, M.P., Maantralaya, Bhopal  
5. Superintendent, State Garage, Madhya Pradesh, Bhopal

Not to be transmitted.  
Bhopal, Dated 15/10/2020

IN K. NAGESHWAR  
SENIOR SECRETARY &  
STATE PROTOCOL OFFICER  
GOVERNMENT OF MADHYA PRADESH  
GENERAL ADMINISTRATION DEPARTMENT

6:54 PM · Oct 21, 2020 

 12K  4.7K people are Tweeting about this

## What is the case of Madhya Pradesh legislators?

Prashant Bhushan says that the case of membership of 22 MLAs in Madhya Pradesh is going on before a three-member bench of the Supreme Court, which is being heard by Chief Justice Bobde himself. If the future of Madhya Pradesh government rests on this matter, then whether it was right to accept the position of the Chief Justice of the state government in this context.

You will remember that there was a strong political drama in Madhya Pradesh for months, after which some Congress MLAs revolted from Kamal Nath's government and left the party.



Later, when Kamal Nath relinquished his chair and BJP's Shivraj Singh Chauhan became the Chief Minister. Vinay Saxena, the then Protem Speaker from the Congress Party, dismissed the Supreme Court on the dismissal of 22 alleged 'Dal Badlu' legislators and filed a petition in the Supreme Court in this regard.

The hearing of this petition began in the Bobde-led bench of which the other two members are Justice Bopanna and Justice V Ramasubramaniam.

The hearing of the case is going on and it will now be presented before the bench again on 4 November.

Bhushan says that from the helicopter provided by the Madhya Pradesh government, the Chief Justice first went to Kanha National Park in Madhya Pradesh and then went to Nagpur.

The scope of the question on this visit has become more because Chief Justice is going to hear an important case related to Mustakibal of this state.

**Prashant Bhushan has also raised questions before**



Earlier also, Prashant Bhushan has tweeted about Chief Justice SA Bobde and the court had given him a contempt of Rs.

Prashant Bhushan wrote in his tweet on 27 June this year that "when future historians will see how democracy has been eradicated in India in the last six years without any formal emergency, it is especially in the destruction of the Supreme Court." Will question participation and ask about the role of Chief Justice.

Prashant Bhushan tweeted another after a few days.

The target of his tweet was this time Chief Justice of Supreme Court SA Bobde. He wrote, 'Chief Justice of India rides a BJP leader's 50 lakh motorcycle in Raj Bhavan, Nagpur without wearing a mask or helmet when he holds the Supreme Court in lockdown and his fundamental rights to justice to the citizens Are deprived of ".

On this tweet, the court took suo motu cognizance of contempt and also imposed a penalty of one rupee on Prashant Bhushan.

Now the debate is going on in the judicial circles about Prashant Bhushan's tweet related to Madhya Pradesh and opinion is also divided. The questions are two - whether Prashant Bhushan has again disobeyed the court with this tweet and whether Chief Justice has disregarded the code of ethics established for the Chief Minister by accepting the position of Madhya Pradesh government in the latest context.

### **What does the judges code of ethics say?**

On May 7, 1997, the Supreme Court adopted a 16-code charter called 'Restrictions on the Values of Judicial Life'. The aim was to serve as a necessary guide for an independent, strong and respected

judiciary. These have been considered indispensable for fair administration of justice.

Its three points which are related to this matter -

1. Justice should not only be done but it should also be demonstrated that justice is being done. The behavior of members of the high judiciary should strengthen people's faith in the impartiality of the judiciary. Accordingly, the Judge of the Supreme Court or the High Court should not, in personal or official capacity, do any act which undermines the credibility of this belief.

2. A judge should take care of the dignity of his office and keep himself away from public life.

3. Every judge must keep in mind that he is the watchdog of the public and should not do any act which is against the honor of his office.

Some feel that Bhushan has "contempted again by doing such a tweet", while some law experts believe that his tweet "makes no contempt case" because he has only given his opinion.

Pikod Kohli, the Chief Justice of Sikkim, told the BBC that the Chief Justice, whether of the Supreme Court or of the state, all fall in the category of state guest. Their safety and living is also the responsibility of the state governments. He says that not only the Chief Justice, the judges of the states also fall in this category.

Video caption,

**What Supreme Court punished Prashant Bhushan?**

He also said that where Kanha National Park is located, it is a Naxalite affected area. In such a situation, going by road for four to five hours would have been a big challenge from their safety point of view.

These things have been clearly mentioned in the Gazette of the state of Madhya Pradesh in the year 2011. The state guest rule 1 (3 and 4) of this gazette, published in the year 21 January 2011, lists the distinguished

people, while it clearly states the responsibility of the state government for their 'reception, security, housing, food management and transportation. is.

All the states of the country have made different rules regarding important persons. But for the most important people occupying large positions, all the states have almost the same rules which these states have implemented through the Gazette.

But opinion is not the same in judicial circles on this matter. Speaking to the BBC, former Supreme Court Justice Justice Chelameswar says that during his tenure he did not accept any such facility or favor.

Talking on the phone from his village in Andhra Pradesh, he referred to a judge of the Supreme Court and said that the judge along with some famous person went for a holiday. Later that same person's case came in the court of the same judge. But in spite of that, the judge did not separate himself from hearing the case.

Chelameswar says that in view of the protocol, Chief Justice Bobde can accept the situation but in the present circumstances whether he should do it or not depends on his discretion.

### **The state government's responsibility is to protect the judge**

Justice Madan B Lokur feels that there should be a debate on this "matter".

Talking to Suchitra Mohanty for BBC Hindi, he said that the judges of the Supreme Court and High Court keep coming across the country. Either to attend a private or official function, then to give lectures. State governments provide facilities and security to them.

But, he says, it is seen that the conduct of some judges is not compatible with the dignity of their position, for this they have to introspect whether it is right for them to do so or not? Lokur says that as far as the Chief Justice is concerned, it is important to discuss and debate it.

However, Justice Ratnakar Das believes that the cases in the court are heard on the basis of evidence and arguments and decisions are made on these grounds. It has nothing to do with which state government had appointed him in his guest house. Justice Das does not consider the judges to have such facilities wrong from anywhere.

Video caption,

What did the Supreme Court say when Prashant Bhushan was sentenced?

At the same time, the officials associated with the protocol of the Supreme Court say that whatever has happened has happened according to the standards already set. If a road was chosen to go to Kanha National Park and Nagpur, it would have been wrong in view of the threat of Maoists.

The security of judges and chief justices is the responsibility of every state where they are going, whether officially or personally.

Vice-Chancellor of Hyderabad-based Nalsar Law University, Faizan Mustafa told the BBC that some of the most distinguished people have such a category under which they are given facilities according to the criteria set by them for government work or personal work.

Faizan says, "The use of helicopters should not only be an issue as it would have been given to the Chief Justice as per the protocol set out as a state guest."

As far as the tweet made by Prashant Bhushan is concerned, Faizan Mustafa says that whether it becomes a case of contempt or not, the court will decide.

### **Issue more than rules**


At the same time, writer and journalist Manoj Mitta believes that this issue is of more values than rules. He says, 'The issue is not whether the helicopter should have been taken keeping in view the special circumstances of Kanha National Park or not, the issue is of the time. The question is whether the Chief Justice of the Supreme Court of India should

become the guest of the government of Madhya Pradesh at a time when the matter of government's existence is before him. He should have taken care of the judicial code of conduct. They should keep themselves separate in such a situation so that not only justice is done but justice can also be seen happening.

Talking to the BBC, former Additional Solicitor General KC Kaushik also said that everything depends on the discretion of the judges whether they accept such a situation despite going from their personal work. He said that judges should avoid accepting such hospitality as far as possible.

This latest tweet by Prashant Bhushan has sparked a new debate on state protocol and code of ethics in the context of judges. In democracy, this debate is not meaningless in order to maintain confidence in the judicial system and the fairness of judges.

[TRUE COPY] ..



## ANNEXURE-4.

**THE  
WIRE**

POLITICS | ECONOMY | EXTERNAL AFFAIRS | SECURITY | LAW | SCIENCE | SOCIETY | CULTURE | OPINION | VIDEOS

24-10-2020

ANALYSIS

LAW

## CJI Bobde's Trip to Kanha: Is State Govt Hospitality Compatible With Judge's Code of Conduct?

A special helicopter was provided by Madhya Pradesh for the CJI's visit to Kanha National Park and Nagpur. Was this the routine use of normal entitlements? If the MP government did relax its rules, was the Restatement of Values of Judicial Life breached by accepting this hospitality?



CJI S.A. Bobde. Photo: Twitter



V. Venkatesan

GOVERNMENT

LAW

24-10-2020 18 HOURS AGO

New Delhi: A judge’s entitlement to a state government’s hospitality may not, in the normal course, be inconsistent with the professional code of conduct expected of a judge. But if there is a clash, and if the judge concerned leans in favour of accepting such hospitality rather than complying with the letter and spirit of the code, the objective of the code itself suffers a setback.

On October 21, lawyer and activist Prashant Bhushan tweeted:

Prashant Bhushan @pbbhushan1 · Oct 21

The CJI avails a special chopper provided by the MP Govt (authorised by the CM) for a visit to Kanha National Park& then to his home town in Nagpur, while an important case of disqualification of defecting MLAs of MP is pending before him. Survival of MP govt depends on this case

ITEM NO.14 Court No.1 (Video Conferencing) SECTION X  
 SUPREME COURT OF INDIA  
 RECORD OF PROCEEDINGS

WIT: PETITIONER(S) (CIVIL) No(s): 483/2020

VS

THE SPEAKER MADHYA PRADESH LEGISLATIVE ASSEMBLY & ANR. Respondent(s)

DATE : 04-10-2020 The petition was called on for hearing today.

CONVIK : HON'BLE THE CHIEF JUSTICE  
 HON'BLE MR. JUSTICE S. S. RAVINDRA  
 HON'BLE MR. JUSTICE T. SUNDARARAJAN

For Petitioner(s) Mr. Ajayil Sibal Sr. Adv.  
 Mr. Varun K. Chopra, Sr. Adv.  
 Mr. Varun K. Chopra, Adv.  
 Mr. Indraneel Joshi, Adv.  
 Mr. Gurtejpal Singh, Adv.

For Respondent(s) Mr. Tushar Mishra, IAS  
 Mr. Parvathakumar Anirvan, AS (For P.P.)  
 Mr. Sankarshankh PANDYA, JAG  
 Mr. Sunny Choudhary, ADR  
 Mr. Sameer Aggarwal, AOC

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

iteprotocol.mp.gov.in

WIRELESS MESSAGE / FAX

NO TO BE MAINTAINED  
 Bhopal: 04 Oct 2020 11:03:00

Copy forwarded to the  
 1. Hon. Secy to the Chief Justice, SC  
 2. Principal Secretary to the Hon. Chief Minister, Govt. of M.P. Mandla, Bhopal  
 3. Principal Secretary to the Hon. Chief Secretary, M.P. Mandla, Bhopal  
 4. Principal Secretary Gen. of M.P. General Administration Deptt. Mandla, Bhopal  
 5. Hon. Secy to the Hon. Minister, M.P. Mandla, Bhopal  
 6. Hon. Secy to the Hon. Minister, M.P. Mandla, Bhopal  
 7. Hon. Secy to the Hon. Minister, M.P. Mandla, Bhopal

423 4.6K 11.9K

Prashant Bhushan’s tweet on CJI Bobde.



The tweet included a copy of the Supreme Court's order in *Vinay Saxena v The Speaker, Madhya Pradesh Legislative Assembly & Another*, heard by a bench of Chief Justice S.A. Bobde and Justices A.S. Bopanna and V. Ramasubramanian on October 6. The order directs the registry to list the matter on November 4 for final disposal.

The case involves Madhya Pradesh Congress MLA Vinay Saxena's appeal against the pro-tem assembly speaker's decision to dismiss the disqualification application moved by him against the 22 Congress legislators whose resignations from the assembly led to the fall of the Kamal Nath government – and who subsequently joined the BJP.



Rebel Congress MLAs from Madhya Pradesh pose with their resignation letters at a Bengaluru resort. Photo: PTI

Bhushan's tweet also contained a copy of the wireless message or fax sent by the deputy secretary and state protocol officer of Bhopal to the collector of Jabalpur, on October 15, asking the latter to make all necessary

arrangements such as reception, accommodation, transport and adequate security to the CJI, who was scheduled to arrive at Jabalpur on October 17, on his way to Kanha National Park by helicopter on October 18.

The CJI was scheduled to leave Kanha for Nagpur his home town, on October 20, again by a helicopter provided by the state government.

### **What the protocol rules say**

The CJI is categorised as a VVIP state guest under the [Madhya Pradesh State Guest Rules 2011](#). List-A State Guests vide rule 1(3) enables the provision of services automatically on the visit of a VVIP to the state. The Rules say that the VVIPs and VIPs mentioned in the list “A” shall be treated as state guests for the purpose of reception, transport, boarding and lodging when they visit any place in the state of Madhya Pradesh irrespective of the nature of their visits.

While there is no mention of ‘Chief Minister’s chopper/helicopter’ being provided to CJI even under the transportation head, the rules say that “a suitable vehicle” will be provided to the state guest on arrival at the railway station or airport for his or her use in town and neighbouring areas.

The rules also require provision of one extra vehicle for personal staff of the state guest, and that if an additional vehicle is required it will be provided on payment basis; if a vehicle is required “for transport outside the state of Madhya Pradesh in neighbouring locations to board a train or flight”, it will be permitted after due authentication by district or state protocol officer. In other words, any transport provided outside the state is akin to a ferrying service, that will allow the VVIP to connect to his onward journey.

The rules say that the period for providing state guest facilities will not exceed three days for the dignitaries mentioned in List A on each occasion and two days for the dignitaries mentioned in List B on each occasion, according to the rules. Thereafter, all facilities will be provided on payment of regular charges as in vogue. The period shall be counted from the time of first arrival in Madhya Pradesh.

However, the government may relax the provisions of this rule in suitable cases.

The CJI arrived in Jabalpur from New Delhi on October 17, and the three days’ period would have been over on October 19. He left Kanha for Nagpur by chopper on October 20. The question that remains to be answered is

whether the state government relaxed the provisions of this rule in the case of CJI for the extra day.

### **What the code of ethics for judges say**

On May 7, 1997, the Supreme Court adopted a 16-code charter called the "Restatement of Values of Judicial Life" to serve as a guide to be observed by judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice.

Code 10 reads as follows:

A judge shall not accept gifts or hospitality except from his family, close relations and friends.

Code 16 reads:

Every judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

The Restatement of Values was ratified and adopted at the Chief Justices' Conference in 1999. All the high courts in the country have also adopted the same in their respective full court meetings.

**'CJI used facilities as per entitlement'**

The Wire withheld publication of this story for 48 hours to give the CJI, who was emailed a brief set of questions via the secretary general of the Supreme Court, time to respond. The email has gone unacknowledged and unanswered.

However, in a response to Bhushan's tweet, [Supreme Court sources told \*The Telegraph\*](#) that the CJI was "entitled to a chopper, a car, an aircraft and other special facilities in view of his constitutional status". The source also told the newspaper that the CJI enjoys a unique constitutional status and has access to such privileges. "It is up to the incumbent to decide on using the facilities," the source was quoted as saying.

The CJI's 'Z-plus' security was also invoked to justify his entitlement to such facilities. "If the CJI can travel by government car, then why not a chopper for security reasons?" the source was quoted as saying in *The Telegraph*.

"The CJI has a threat perception. Every state, Union Territory, and the Centre is a litigant in the Supreme Court. By that yardstick, neither the CJI nor any of the judges can utilise any government facilities," the unnamed official of the Supreme Court was quoted as saying.

The sources also threatened “appropriate action against Bhushan” for suggesting that the CJI may have committed an impropriety.

*The Times of India*, again quoting “Supreme Court sources”, suggested that state governments providing CJIs helicopters for quick travel is routine. The sources revealed that the CJI had travelled earlier from Shirdi to Shani Shingnapur and then back to Nagpur on a Maharashtra government chopper. “So, availing [himself of] the Madhya Pradesh government chopper to travel from Kanha to Nagpur breaches no propriety,” the source told the *TOI*.

However, merely because there was a precedent of the same CJI using a state government chopper on a different occasion doesn’t by itself settle the question of propriety.

### **Conflicts of interest and Justice Scalia’s refusal to recuse**

The CJI availing of the state government’s chopper during his short trip to Madhya Pradesh may not have become a controversy had the dates not been so close to the hearing of Vinay Saxena’s petition, which has been listed in advance for November 4. Although the CJI may, on his own, or in response to the application of one of the parties to the case, recuse from hearing it, his assigning it to a

bench of his choice as master of the roster may also come under the scanner for possible conflict of interests.

The former CJI Dipak Misra's refusal to avoid similar conflict of interests as master of the roster brought his tenure under intense scrutiny by observers. In order to carry credibility, therefore, lawyers believe it is best if the CJI's response to the latest controversy goes beyond the defence offered by the Supreme Court's official sources to select newspapers.

It may be premature to speculate on whether CJI Bobde will recuse from hearing Vinay Saxena's petition on November 4 in view of the controversy. If he does not, he will most probably find the precedent set by the former judge of the US Supreme Court, the late Justice Antonin Scalia, in the case of *Cheney vs US District Court*, worthy of emulation.

On January 5, 2004, Justice Scalia accompanied the then US Vice President Dick Cheney on a government-owned jet to Louisiana to enjoy a few days of duck hunting on the bayou.



Judge Antonin Scalia. Photo: Wikipedia

In 2001, Judicial Watch, Inc and the Sierra Club, a respectable organisation with a long history of environmental concerns, filed separate actions against the National Energy Policy Development Group (NEPDG), an advisory committee on energy policy chaired by Cheney.

The allegation was that the NEPDG failed to comply with the Federal Advisory Committee Act (FACA) by appointing non-federal employees to the group, thereby requiring that group to make public all reports, records, or other documents used pursuant to FACA. Cheney argued that such disclosure would amount to an unconstitutional interference with the functioning of the executive branch of government.

The Sierra Club filed a motion for recusal with the Supreme Court, asking that Justice Scalia not participate in any proceedings concerning whether the Vice



President should be compelled to disclose specific documents.

Although he readily acknowledged his friendship with Cheney, Justice Scalia refused to accept the implication that his friendship, in and of itself, was sufficient to reasonably call into question his impartiality on the case involving the vice president.

Justice Scalia proclaimed that a friendship has “traditionally not been a ground for recusal where official action is at issue, no matter how important the official action was to the ambitions or the reputation of the government officer”.

Justice Scalia had also argued that many justices had reached the US Supreme Court precisely because they were friends of the incumbent president or other senior officials.

Justice Scalia concluded thus:

“The question, simply put, is whether someone who thought I could decide this case impartially despite my friendship with the vice president would reasonably believe that I cannot decide it impartially because I went hunting with that friend and accepted an invitation to fly there with him on a government plane. If it is reasonable to think that a Supreme Court justice can be bought so

cheap, the nation is in deeper trouble than I had imagined”.

With Justice Scalia refusing to recuse from the case, the Supreme Court heard Cheney’s appeal with his full participation and in a 7:2 majority judgment pronounced in June 2004, decided the appeal in favour of Cheney. Justice Scalia was one of the majority judges.

Critics of Justice Scalia, on the contrary, contended that Cheney’s actions with respect to the Energy Task Force were actions of the man – not actions of the office of the vice president. Cheney was being sued on the theory that he personally allowed cronyism to directly affect his decision-making, and then tried to keep his corruption secret. Policy is official whereas vice is personal, it was argued.

Lord Denning M.R. said in *Metropolitan Properties Ltd. v Lannon* that justice is rooted in confidence, and that confidence is destroyed when right-minded people go away thinking that the judge was biased.

In the US Supreme Court, the recusal of a judge is found problematic because it deprives the participation of one of its nine members, as the even number of those remaining creates a risk of affirmance of a lower court decision by an equally divided court. This “duty-to-sit” concept is absent in the Indian Supreme Court because

the judges sit in benches. If one bench is unable to hear a case because of the presence of a judge whose recusal is sought, the case can be listed before another bench.

Unlike the US Supreme Court judges, who are nominated by the president, judges in India earn public trust by virtue of their aloofness from members of the executive. Their previous friendship – rather than their judicial acumen and neutrality – is not considered as a factor for their appointment.

If one applies Justice Scalia's reasoning, the CJI's use of a Madhya Pradesh government chopper to travel from Jabalpur to Kanha and from Kanha to Nagpur may not amount to a serious impropriety. But seen in the context of Code 10 of the Restatement of Values of Judicial Life, the CJI's conduct may appear as an aberration.

### **The question of CJI Bobde's guests**

Two other judges, whose names the official protocol programme did not mention, also accompanied the CJI from Jabalpur to Kanha in the chopper and stayed with him throughout for two nights and three days.



Justice Ravi Shankar Jha. Photo: LiveLaw

One of them is the chief justice of the Punjab and Haryana high court, Justice Ravi Shanker Jha.

The other is the Odisha Lokayukt, Justice Ajit Singh. The third person to accompany the CJI is a judge-hopeful, the advocate general of Madhya Pradesh, Purushaindra Kaurav.

Both Justices Jha and Ajit Singh are state guests under List-A, and therefore, their entitlement to the state government's hospitality, thanks to the CJI, may not come under scrutiny. Though Kaurav is not a state guest, he might well be considered the CJI's own guest, with the latter expected to spend on his hospitality.

Sources suggest that the Supreme Court's collegium is considering the elevation of Chief Justice Jha to the Supreme Court, in spite of allegations against him made by a former Supreme Court Judge. Justice Ajit Singh is reportedly lobbying for the appointment of Odisha chief justice Mohammad Rafiq as the chief justice of the Madhya Pradesh high court. Currently, the Madhya Pradesh high court is headed by an acting chief justice, Sanjay Yadav. It is learned that the Supreme Court's collegium is also considering the appointment of Kaurav as a judge of the Madhya Pradesh high court.

As the administrative head of the judiciary, the CJI may well have planned his Kanha trip to sort out decisions

pending before the collegium during the Supreme Court's current short vacation. But the question of whether the CJI and other functionaries who accompanied him complied with the Restatement of Values of Judicial Life, even while purportedly discussing the eligibility of short-listed candidates for judicial office, may have to be satisfied to claim public confidence.

[TRUE COPY]



The image shows a screenshot of a tweet from Prashant Bhushan (@pbhushan1). The tweet text reads: "A special helicopter was provided by MP for the CJI's visit to Kanha&Nagpur. Was this the routine use of normal entitlements? If the MP government did relax its rules,was the Restatement of Values of Judicial Life breached by accepting this hospitality?" Below the text is a photograph of Chief Justice of India Ranjan Gogoi. The tweet includes a link to an article on thewire.in titled "CJI Bobde's Trip to Kanha: Is State Govt Hospitality Compatible With Ju...". The tweet has 194 replies, 1.8K retweets, and 7K likes.

[TRUE COPY] ∴  
Shravya

## ANNEXURE- 6.



**Prashant Bhushan**  12.5K Tweets [Follow](#)

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**Prashant Bhushan**  @pbhushan1 · 27m

क्या मुख्य न्यायाधीश को मध्य प्रदेश सरकार से कान्हा नेशनल पार्क और अपने घर नागपुर जाने के लिए सरकारी हेलीकॉप्टर स्वीकार करना चाहिए था, जब मध्य प्रदेश सरकार से जुड़ा एक अहम केस उनके सामने लंबित है, जिस पर सरकार का भविष्य निर्भर है?



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चीफ़ जस्टिस के मध्य प्रदेश सरकार का हेलीकॉप्टर इस्तेमाल करने पर उठे सवाल.  
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