



INDIAN BAR ASSOCIATION

Regional Office : First Floor, Above Oriental Bank, Opp. B.S.E, Dalal Street,
Mumbai- 400001, Maharashtra • Email : indianbarassociation@hotmail.com

20th April, 2017

Ref. No.

To,

District Bar Associations & Independent Bar Associations in
Maharashtra

Subject:- Passing resolutions and sending representations and request letters to Hon'ble Chief Justice of India for forthwith withdrawal of work form Smt Justice Chellur Chief Justice Bombay High Court ,as her incapacity, adamant&hyper sensitive conduct and poor level of understanding is proved from the proofs and evidences attached herewith and she has proved herself to be harmful ,conducive to the administration of justice.

Encl. Draft Charge –Sheet Proving 15 Serious charges against Smt. Chellur.

Legal Position of passing such Resolution:-

(1995) 5SCC457

Dear members of noble profession of advocacy;

1. The advocate is an officer of the court and his first aim is to preserve the purity, sanctity and majesty of courts of law from anything including the incompetent, corrupt, adamant, hyper sensitive and criminal minded Judges.

2. The role and status of lawyers at the beginning of Sovereign and Democratic India is accounted as extremely vital in deciding that the Nation's administration was to be governed by the Rule of Law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. Lawyers are the officers of the Court in the administration of justice.
3. Hon'ble Supreme Court in the case of *C. Ravichandran - vs. Justice A.M. Bhattacharjee , Chief Justice Bombay High Court (1995) 5 SCC 457* had directed all the Bar Associations to follow the Procedure while making the complaints against Chief Justice of High Court. It is ruled as under;

When the Bar Association , reasonably and honestly doubts the conduct of the Chief Justice of that court fouls the fountain of justice, or undermines or tends to undermine the dignity expected of a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge.

Then proper care should be taken by the Bar Association concerned,. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of 2 reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehavior.

The only authority under the Constitution that could be approached is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of

importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them.

*The Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the learned Judge and to the Institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly.

Even if the Judge were not eventually condemned, the mere invocation of the statutory provisions might taint him with a devastating stigma. The vestment of authority might remain but the aura of respect and confidence so essential to the judicial function would be forever dissipated. He, therefore, suggested that pressure by the peers would yield salutary effect on the erring judge and, therefore, judicial system can better survive by pressure of the peers

The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the Chief Justice of High Court , the Bar Association could take up the matter with the Chief Justice of India. The Chief

Justice of India, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office bearers against the Judge where deemed necessary. and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter and the Bar would await for a reasonable period the response of the Chief Justice of India.

4. That the advocates are duty bound to make complaint against Judges when they are having reasonable foundation against a particular Judge.
5. In the case of *O.P. Sharma and Ors. Vs. High Court of Punjab and Haryana (2011) 6 SCC 86* ,it has been observed by Hon'ble Supreme Court as under ;

Lawyers are the officers of the Court in the administration of justice.

Section I of Chapter-II, Part VI titled "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules specifies the duties of an advocate towards the Court which reads as under:

Section I - Duty to the Court

1. An advocate shall, during the presentation of his case and while otherwise acting before a court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

A social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country.

6. Needless to mention here that, the active, honest and justice loving members of Bar always performed their sacred duty by making prompt and proper complaints against erring Judges.

Also Hon'ble Supreme Court always respected the resolutions by Bar Associations.

The few important examples are as under;

6.1] **2001 Cr.L.J.800 [Raman Lal vs.--- C.B.I .]**

In this case the accused High Court Judge was found involved in the case of false implication of a common man. A F.I.R. got registered against the said High Court Judge.

Thereafter Bar Association made representation against said Judge and thereafter the said Judge was demoted from High Court Judge to civil Judge.

6.2] **2011(4) RCR(Criminal) 809 [Justice Nirmal Yadav vs. C.B.I.]**

In this case the High Court Judge of Punjab and Haryana High Court, Smt. Nirmal Yadav was found to have taken a bribe of Rs. 15 Lacs for passing a favorable order. C. B. I. registered a case – But it was found that the then Chief Justice of India Shri.K. G. Bal Krishnan was not keen to Take stern action against corrupt Judge and the sanction for Prosecution was refused. Thereafter Bar Association passed a resolution and news regarding the same was published in 'The Pioneer New Delhi' on 10th February 2010 Under the heading **“Cash – at – door Scame: Bar association Slams CJI ”**

With reference to the said news, secretary general of the supreme court issued a letter on 10/02/2010 to the Editor in chief of ' **The Pioneer**' and Thereafter sanction to prosecute the said corrupt Judge was accorded. The credit goes to Bar Association because perhaps the truth would not have prevailed, had the Bar Association not acted by passing the resolution.

6.3] **(1995)5SCC457**

In this case the Bombay Bar Association & Advocates Association of Western India passed a Resolution against Shri .Justice A. M.Bhattacharjee the then Chief Justice of Bombay High Court for his doubtful dealing of selling of

publication rights of a Book. After strong opposition by Bar , the then Chief Justice A. M. Bhattacharjee resigned from the post.

6.4] **Supreme Court Bar Association Vs. Chief Justice Mohit Shah**

The chairman of Supreme Court Bar Association , Adv. Dushyant Dave wrote Letter to Chief Justice of India about corruption and doubtful character of then Chief Justice Shri. Mohit Shah of Bombay High Court. Due to the strong objection by Supreme Court Bar Association the elevation of Shri .Mohit Shah as a Supreme Court Judge was rejected second time.

6.5] Even otherwise the Bar Associations have also Played a very important role for protecting the Poor citizens who were victim of misuse of power by police & Judge.

In the case of **Secretary H. Bar Association vs. S. P. – AIR 1996 SC 1925**, Hon'ble Supreme Court accepted the representation sent by the Bar Association as Writ petition and directed C. B.I. to investigate. Thereafter the Concerned S.P. was sentenced to jail for 3 months, by the Supreme Court.

Secretary, Hallakandi Bar Association Vs. State of Assam

[1996-AIR(SC)-0-1925, 1996-SCC-9-74]

Prosecution of Police Officer (S.P.) for filling false affidavit/enquiry report before Court – A undertrial prisoner was brutally beaten by police who died up – Bar Association sent letter to Supreme Court – Which was treated a Writ – Court called report from S.P. – S.P. A.K. Sinha Kasshyap filed a false report to save guilty police officer – Court not satisfied with reply of S.P. called report from C.B.I. – C.B.I. pointed out the disdendful role played by S.P. said to be against

all tenants of law morality – The report and affidavit submitted by S.P. found to be false / fabricated – Supreme Court issued a Show Cause notice to S.P. – In reply to the notice S.P. again try to mislead to court and try to justified his illegal acts – S.P. is guilty of Contempt of Court sentenced to imprisonment for three months.

7. That we being responsible officer of the Court, it is our duty to use our tool of resolution only in genuine cases and only in the largest interest of the administration of justice .
8. We should remember that A Judge who doesn't commit mistake is yet to be born. Only because Judge passes wrong order against us does not mean that we should pass a resolution against him.
9. We must have to see the impact of the conduct of the said Judge on the administration of Justice and we should always act in the larger interest of the society.
10. In the present case we have collected authentic Information against Chief Justice Manjula Chellur and we are satisfied that if immediate action is not taken then she will damage the institution and It is necessary to approach Hon'ble Chief Justice of India forthwith .
11. A High Court Judge is demi – god for poor unwitting litigant. There is hardly any remedy against High Court order for a Court Common Citizen. In this scenario, Smt. Justice Manjula Chellur should not be allowed to continue even for a moment.
12. Chief Justice being master of roster has the right to provide roster to the Judges of the Court to deal with particular subject while sitting in Bench, or Singly. Power of Chief Justice to regulate the work of puisne Judges. [State of Punjab v. Devendra Pal Singh Bhullar, MANU/SC/1476/2011 : (2011)14 SCC 770; Sanjay Kumar Srivastava v. Acting Chief

Justice, 2010(8) ADJ 631 (FB) : 2010(4) ESC 2933 (A11)(FB);
Smt. Maya Dixit v. State, MANU/UP/1143/2010 : 2010(83)
ALR 664(FB)]

Apart from deciding roster to regulate the functioning of the High Court, Chief Justice has got ample power to withdraw any case from a particular Bench and refer it to another Bench having jurisdiction for the purpose in accordance with rules of the Court. Thus, power to provide roster to regulate the functioning of the Court followed by power to withdraw cases vests in the Chief Justice of respective High Courts. Power to decide roster falls within the power of general superintendence conferred to Chief Justice under Article 225 of the Constitution of India. Power to withdraw a case/petition or nominate a petition or case to a particular Judge is a power exercised by Chief Justice under special facts and circumstances of each case.

Hence, the entire judiciary of State including all High Court Judges are under the Chief Justice of High Court and therefore the person working as Chief Justice should be of high legal acumen than others.

13. That as per constitution of India, High Court and Supreme Court Judges are equal in rank and position. High Court is not subordinate to Supreme Court [Vide (2010) 3 SCC 571, 5 Judge Constitution Bench in **“Committee of protection of Democratic Rights case”**]

It is further ruled that the power under Art.226 given to High Court are wider than the powers given to Supreme Court under Art.32 of the constitution powers under Art.32 can be exercised only for the enforcement of fundamental rights on the other hand powers conferred by Art.226 can be exercised not only for the enforcement of fundamental rights but for any other purpose as well i.e. for enforcement of any legal rights conferred by a statute etc.

Under these circumstances if Smt. Chellur is found to be disqualified for the post of Supreme Court Judge, then how she can be fit for the post of Chief Justice of the Bombay High Court. Therefore she needs to be dismissed forthwith.

Therefore it is just and necessary expectation from bench and Bar that the Chief Justice should be capable person.

After going through the level of understanding of Smt. Justice Manjula Chellur, we are worried about the various poor litigants, who happened to have fallen in the lap of Justice Chellur for decision of their cases is spine-chilling.

14. In **Rajendra Sail v. Madhya Pradesh High Court Bar Association**, MANU/SC/0310/2005 : AIR 2005 SC 2473 and at para 32 observed thus:

32.It is also necessary to always bear in mind that the judiciary is the last resort of redressal for resolution of disputes between State and subject, and high and low. The confidence of people in the institute of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of Rule of law.

The judiciary will be judged by the people by what the judiciary does . Cases may happen in which the Judge may be mistaken, but the law has provided a remedy for correction of such mistakes. The party injured is entitled to pursue every method by which such mistakes may be corrected. nothing is more important to the proper functioning of the Constitution than a strong and effective judiciary which is respected and obeyed by the people and also the administration.

It needs no reiteration that on judiciary millions pin their hopes, for protecting their life, liberty, property and the like. Judges do not have any easy job. They repeatedly do what rest of us (the people) seek to avoid, make decisions, said David Pannick in his book "Judges". Judges are mere mortals, but they are asked to perform a function which is truly divine."

27. Nelson Mandela spent 27 years in jail In South Africa. Referring to Caesar's speech, Mandela said : Cowards die many times before their death. Valiant never taste of death but once". History is replete with examples where judges have shown courage and boldness. This is part of judicial fabric and culture.

28. Needless to state that judges must think positive, act positive, do positive while negativity is counter productive. Judiciary as an institution is recognised as a productive organ.

Without the role and contribution of judges, it is not possible to translate the meaning of justice, and ensure that each action whether of an individual or the Government is in accordance with the rule of law, in addition to ensuring Parliament and State Legislature remain within the parameters of the Constitution. As noticed supra, judicial decision-making is important. Judges to do what others avoid.

Professor Griffith in his book says, "Judges are a product of a class and have the characteristics of that class....The judges define the public interest, inevitably from the view

point of their own class". It is elsewhere said that being a compassionate judge is an indispensable judicial ethic.

It is therefore said that the foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

15. That the Court is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the Court as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. Integrity is the hallmark of judicial discipline, apart from others. Justice Delivery system made of Bench and Bar. Advocates are officer of the Court. They are part and parcel of the administration of justice. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside. (vide : **Tarak Singh & Anr. Vs. Jyoti Basu & Ors., (2005) 1 SCC 201**)

In **High Court of Judicature at Bombay Vs. Udaysingh & Ors., A.I.R. 1997 SC 2286** the Hon'ble Apex Court while dealing with a case of judicial officer held as under:-

"Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified."

In *All India Judges' Association Vs. Union of India & Ors.*, AIR 1992 SC 165, the Hon'ble Supreme Court observed that Judges perform a "function that is utterly divine" and have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restraint, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully.

16. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution."

It is questionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the judge. A discourteous judge is like an ill-tuned instrument in the setting of a court room.

Respect is not to the person of the Judge but to his office. The duty of courtesy to the Court does not imply that the advocates should not maintain their self-respect and independence as his client's advocate. Respect for the Court

does not mean that the counsel should be servile. It is his duty, while respecting the dignity of Court, to stand firm in advocacy of the cause of his client and in maintaining the independence of the Bar. It is obviously in the interests of justice that an advocate should be secured in the enjoyment of considerable independence in performing his duties.

A strong Judge will always uphold the law, and that is also the aim of advocacy, even though the Judge and the advocate may differ in their point of view. The Judge must not do anything which is calculated to obstruct, divert or corrupt the stream of justice. (Please see: High Court of Karnataka Vs. Jai Chaitanya Dasa and Ors, 2015 (2) KCCR 1809)

17. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honorable members. It will be apt to quote the words of Martian Luther King (Jr.) that

‘Injustice anywhere is threat to justice everywhere’

and

“ Evil Tolerated is Evil Propagated ”

Please remember that

“ If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality. ”

- Desmond Tutu

Therefore to save the right of advocates, citizens and the Honest Judges, it is necessary that such tendency of some Judges to help influential people and also to help some Senior Counsels of their close proximity and to discriminate other

genius deserving Advocates, has to be stopped. If such tendency is not checked in time, it will harm every common lawyers specially the lawyers of backward community and the Junior Advocates.

18. That as a lawyer/advocate, we are also the officers of the court. Our duty is to protect the dignity and majesty of the court and to protect honest Judges, lawyers and litigants. However, we also owe a duty to make complaints against Judges when we found that there is a reasonable foundation against Judge.

Therefore we request you to go through the accompanying representation , supporting documentry evidences,proofs CD of sting operations and the settled legal postion.

And after satisfying your conscience perform your sacred duty to protect Hon'ble High Court and all litigants and deserving advocates and in the intrest of Bar and Bench, pass a resolution and send it to Hon'ble Chief Justice of India.

Thanking You,

Yours truly,



ADV. DIVYESH JOSHI

(Secretary)

(Indian Bar Association)