

THE JUDICIARY**Questions without answers**

Former Law Minister and Senior Advocate Shanti Bhushan releases his correspondence with the Judges of the Supreme Court, the President and the Prime Minister seeking an inquiry into certain allegations relating to Chief Justice of India A.S. Anand.

**SUKUMAR MURALIDHARAN
V. VENKATESAN**

FOR all the energy that has been expended in its elaboration, "judicial accountability" remains an elusive concept, partly because the issue has been debated almost exclusively in the rarefied domain of legal pundits. On April 14, Senior Advocate of the Supreme Court and former Union Law Minister Shanti Bhushan took a bold initiative to bring the discussion into the public forum. At a media conference in Delhi, Shanti Bhushan released the rather one-sided correspondence he has been engaged in since February 2001, seeking an inquiry into certain allegations that have been swirling around the person of the Chief Justice of India, Dr. A.S. Anand.

Shanti Bhushan's epistolary crusade began on February 20, when he addressed identical letters to all the judges of the Supreme Court seeking the institution of the "inhouse procedure" that had reportedly been devised as a remedy for possible judicial misdemeanours. A copy was also sent to the President for his information. Except for a one-line acknowledgment of receipt from Rashtrapati Bhavan, Shanti Bhushan failed to obtain any response. He wrote to the Prime Minister on March 30, outlining the substance of his earlier correspondence and urging the government to initiate the "necessary inquiry into the allegations". "It is primarily the responsibility of the government," he said, "to ensure a pure and functional system for the administration of justice."

On the face of it, this assertion seems to be at variance with established principles of judicial appointments. By its 1993 ruling in the Supreme Court Advocates on Record case, commonly referred to as "the second judges case", the Supreme Court had ruled that "consultation" with the Chief Justice of India (CJI) in the matter of judicial appointments necessarily meant that the President had to obtain his concurrence. This reversed the position that had been prevalent since 1982 when the constitutional procedure of "consultation" was interpreted as a courtesy that did not necessarily require the concurrence of the CJI.

The ruling in the "second judges case" seemingly vested a great deal of authority in the matter of judicial appointments in the office of the CJI. In 1998 the Supreme Court rendered an opinion on a presidential reference, which sought to remove all the inherent uncertainties in the 1993 ruling. By spelling out precisely the scope of consultations that the CJI himself was obliged to undertake,

the Supreme Court sought to ensure that the function of judicial appointments does not become excessively centralised in one person's hands.

The effect of all these rulings nevertheless has been to enshrine the judiciary as a self-regulating institution. Towards the end of his tenure as CJI, Justice M.N. Venkatachaliah constituted a committee of judges to lay down standards of conduct for members of the judiciary. This was partly to ensure that the judiciary did not become a "self-perpetuating oligarchy" as Justice S.R. Pandian had warned in his concurring opinion in the second judges case, and partly to assuage public concerns that had been expressed over the Justice V. Ramaswamy episode that led to an impeachment drama in 1993.

In May 1997, a full collegium of the Supreme Court adopted a virtual charter of judicial self-regulation in accordance with the highest standards, entitled "Restatement of Values in Judicial Life". Later that year, a committee of Supreme Court judges submitted a report recommending the institution of an "inhouse procedure" to deal with issues involving the conduct of judges. It has authoritatively been reported that this proposal was discussed at a conference of High Court Chief Justices in 1999, following which the details were circulated to all members of the higher judiciary.

Shanti Bhushan's letter to the Supreme Court judges seeks the invocation of the "inhouse procedure" to inquire into the allegations against the CJI. But he also relies upon a 1991 ruling by a Constitution Bench of the Supreme Court in the Veerasami case, when the pivotal role of the CJI in monitoring adherence to judicial norms was not yet established and the government was deemed to have a significant role in the matter. The Constitution Bench had held in 1991 that if allegations of misconduct were received against the CJI, then the government was at liberty to "consult any other judge or judges of the Supreme Court" in order to seek appropriate remedies.

This principle, if applied to the context of judicial self-regulation, would mean that "any other judge or judges of the Supreme Court" would be at liberty to invoke the "inhouse procedure" if credible apprehensions of misconduct were to be raised against the CJI. But since the precise mechanisms of this "inhouse procedure" are not known to the public, Shanti Bhushan took the path of abundant precaution and addressed his letter to all the judges of the Supreme Court.

The lack of any response or reply to his letter was interpreted by Shanti Bhushan as evidence that no credible "inhouse procedure" exists to oversee judicial conduct. This was the substance of his letter to the Prime Minister, wherein he expressed his willingness to "discuss" any possible apprehensions that might exist about "the role of the government in the matter". There could be no compromise, though, on the need to "immediately initiate the requisite inquiry in the matter".

Shanti Bhushan took his campaign to the public realm within a fortnight of despatching his letter to the Prime Minister. Two days later, Union Law Minister Arun Jaitley responded on behalf of the government. The substance of the allegations raised by Shanti Bhushan, he said, related to "judicial orders and judicial proceedings". Some of them had been raised in a 1988 petition seeking the transfer of Justice Anand, who was then the Chief Justice of the High Court of Jammu and Kashmir, in accordance with established policy. Another allegation relating to a land transaction involving Justice Anand's wife had been looked into by the Madhya Pradesh High Court. Since all the matters of concern to Shanti Bhushan had been disposed of by the judiciary, there was no question of the government re-examining them. Such a course would be "subversive of judicial independence", said Jaitley.

Shanti Bhushan believes that this is at best an evasion of responsibility by the government. Certain allegations of judicial impropriety had indeed been made in the 1988 petition seeking the transfer of Justice Anand. But these were expunged after a preliminary hearing when Justice Venkatachaliah persuaded counsel for the petitioner that he was disinclined to hear a "mixed bag of heterogenous matters intertwined with the main question of the non-implementation of the policy of transfer". The amended petition, more narrowly focussed on the transfer issue, was later taken up by the Supreme Court. And with Justice Anand taking over as Chief Justice of the Madras High Court shortly afterwards, he was deemed to be in compliance with the policy on transfers. In other words, "there was and could not have been any consideration or pronouncement on the merits of these allegations" by the Supreme Court.

Similarly, Shanti Bhushan believes there are several unanswered questions about the manner in which the matter of the land transaction involving Justice Anand's wife, Mala Anand, was handled. As he has pointed out in his letter to the Law Minister, vital pieces of evidence were not brought on the judicial record. And when the Madhya Pradesh government filed a special leave petition in the Supreme Court against a High Court order invalidating its acquisition of land that once belonged to Justice Anand's wife, there was an intervention from "no less a person than the Chief Minister" to secure its withdrawal. ("Under a cloud", *Frontline*, August 4, 2000)

PERHAPS the most serious allegation that Shanti Bhushan makes against the CJI relates to a matter that he heard as a judge of the Jammu and Kashmir High Court in 1983. On February 7 that year, Justice Anand heard an application from the owner of Broadway Hotel, Srinagar, Lala Tirath Ram Amla, a businessman and politician, pleading for relief against proceedings initiated by the Telephones Department for non-payment of bills and passed an interim order staying the disconnection of the hotel's telephone lines.

Two years later, shortly after Justice Anand was elevated to the apex position in the State judiciary, a land transaction took place between his daughter Shabnam Anand and Krishan Kumar Amla, son of Tirath Ram Amla. According to the terms of the sale deed executed on September 18, 1985, a two kanal plot (some 1,200 square yards) at Ganderbal, just outside the municipality of Srinagar, was transferred by Krishan Kumar Amla to Shabnam Anand for a stated consideration of Rs. 30,000. The market value of such a plot of land at Ganderbal in 1985, it appears, was several times the sum recorded. As Shabnam was then unmarried and a resident of her parental home, it is reasonable to infer that Justice Anand was aware of this transaction.

Shabnam Anand was married shortly after the execution of the sale deed and her wedding reception was held at the Broadway Hotel. Soon after, on October 25, 1985, Krishan Kumar Amla filed a writ petition in the High Court challenging a statutory notice sent by the Cantonment Board, Badamibagh, Srinagar on July 11, 1985, ordering the demolition of a building constructed by him. This structure had been built on land that was assessed by the Cantonment Board as the property of the Indian Army. Amla's encroachment, they claimed, violated the Cantonment Board Act of 1924, which requires that prior permission be obtained from the Board for any such construction.

In his October 1985 writ petition Amla pleaded for a stay on proposed demolition. Chief Justice Anand, sitting with Justice K.K. Gupta, admitted it and stayed the demolition on October 29, 1985. Two years later, in August 1987, Chief Justice Anand recused himself from the case after an uproar in the Jammu and Kashmir Bar Association over the obvious conflict of interests involved.

The stay on demolition nevertheless remained in operation till September 25, 1998, when Justice T.S. Doabia disposed of the writ petition, noting in his order that it had been pending for almost 13 years. Justice Doabia had been given a voluntary transfer from the Madhya Pradesh High Court to the Jammu and Kashmir High Court in 1996, and he dealt with the Amla matter while serving on the Srinagar bench between August 13, 1998 and October 20, 1998. Justice Doabia directed the Cantonment Board to "compound the irregularity". If the construction by Amla and the breach of the Municipal Act did not involve violation of the Zonal Plan or Master Plan, he ruled, the authorities concerned should compound the irregularity. He did not deal with the issue of the construction being on encroached land, or the competence of the Cantonment Board to issue an eviction order against Krishan Kumar Amla.

Shanti Bhushan has observed that Justice Doabia had earlier dealt with the case involving the Madhya Pradesh government's acquisition of land belonging to Justice Anand's wife. The case involved land that had been granted to Mala Anand's father in the 1950s on certain conditions, notably that it would be cultivated. When this condition was not fulfilled, the State government began proceedings in the Revenue Court to resume ownership of the land. Due notice, says Shanti Bhushan, was issued in 1972 to Mala Anand and her mother, who were joint owners of the land. This is part of the record of the Revenue Court.

"Curiously", says Shanti Bhushan, "the record of the Revenue Court was never produced before the trial court" when Mala Anand and her mother began proceedings to recover the land in 1993. And the subsequent developments also are, in his judgment, suspicious: "The fact that photocopies of the order sheet and the reply of (Mala Anand's mother) Shrimati Sushila Devi are available suggests that these were deliberately suppressed from the Trial Court. The High Court thereafter recorded a finding that because there is no record of the Revenue Court proceedings, therefore (sic) they were illegal and of no effect. No attempt was made by the courts to find out what happened to the record of the Revenue Court". Shanti Bhushan concluded with the observation that even laypersons were "asking whether all this could have happened without the influence" of Chief Justice Anand.

SUSPICIONS of judicial malfeasance have also been expressed over another matter from Justice Anand's tenure in the Jammu and Kashmir High Court. In February 1983, while he was a puisne judge of the High Court, Anand filed a writ petition in his own court, along with eight other family members, challenging the validity of the Jammu and Kashmir Agrarian Reforms Act, 1976, which conferred ownership rights on tenants. The writ petition sought to retain tenanted agricultural land measuring 182 kanaks in Khor village in Ranbirsinghpura tehsil of Jammu division, on the grounds that the Act violated Articles 14, 19 and 31 of the Constitution. The writ petition was admitted and the State government was directed through a stay order dated February 2, 1982, not to attest to any change in title deeds of the petitioners.

Meanwhile, similar petitions challenging the Act had been admitted in the Supreme Court, which also granted a stay pending final disposal of the matter. On August 4, 1983, the Supreme Court dismissed these petitions, and upheld the constitutional validity of the Act. With the matter having been authoritatively settled in the highest court, the writ petition filed by members of the Anand family should have by all judicial standards been treated as dismissed. Yet it remained pending and the stay arising from it remained in force.

On May 3, 1986, a Jammu-based advocate, A.K. Sawhney, filed an intervention application connected to the Anand family's petition. He pointed out that the Agrarian Reforms Act had been

upheld by the Supreme Court, and pleaded that the stay imposed be vacated, so that the land could be "resumed by the State authorities".

Sawhney's application was not considered and it was only four years after the Supreme Court ruling, in August 1987, that the High Court disposed of the Anand family's petition. Among other things, Shanti Bhushan has sought explanations for this inordinate delay and for the failure to take up Sawhney's application for over a year after it was filed.

Summing up his communication to the judges of the Supreme Court, Shanti Bhushan has urged that "if the allegations are false" and there is "some reasonable explanation for the facts consistent with the principles laid down in the Restatement of Values in Judicial Life, then it must be so stated, so that public misgivings are put to rest". He has so far obtained neither any explanation nor any credible assurance that an inquiry will be instituted into the matter.

A strategy of stonewalling is clearly the preferred option of the Atal Behari Vajpayee government on this issue. How much longer it can sustain the pretence is quite another matter. Clearly though, there is no prospect that the "ominous cloud" hanging over the judiciary and "gravely damaging its reputation", as Shanti Bhushan puts it, will be quickly dispelled.