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A challenge before the nation

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Have some Chief Justices of the Supreme Court indeed been delinquent, or is Shanti Bhushan resorting to bravado? The truth should come out.

Shanti Bhushan is a distinguished Senior Advocate of the Supreme Court. The former Union Law Minister has been a public-spirited counsel of corrective strategy. Now he has, in a stroke of seemingly egregious expression of national conscience, raised a historic, heuristic challenge. He has questioned the integrity of the top brethren of the highest judiciary of the Republic, hurling charges of corruption against eight of 16 Chief Justices of the past. He has defiantly desiderated them in a militant manner. Take action for contempt of court against me, if you dare, he seems to say. And the media have publicised Mr. Bhushan's action, which sounds much like bravado.

Now it is left to the nation to move on this matter of paramount importance. This is an astonishing event — the rarest of the rare kind. If India is not a coward, if its swaraj is not merely soft and formal but firm and phenomenal, an appropriately high-level investigation, with consequential follow-up action that is punitive and reformatory, is imperative. This is no time to hesitate or involve in an exchange of rhetoric. Nor is this the time for a guarded and diplomatic reaction. This is unprecedented: a succession of Chief Justices have been publicly accused by a Senior Advocate of standing, risking his career.

Take action or face collapse. This is not a matter for ordinary public interest litigation. Until now, in no democracy would such an event have happened. There is not a moment now to relax or show amoral indifference or inaction. Should India keep quiet and go into slumber in the face of Operation Bhushan Bravo now, the world will judge this democracy as a bundle of brave words that, when it comes to action, is a flop show. This is not an hour to relax or retreat from duty. This is an open offensive against the highest court. The court, with vast powers of adjudication of justice and writ jurisdiction, has been put in the dock, so to say. To remain deaf or dumb to this situation will be a shock and a shame. When the judicial system suffers seppuku, we become a society sans justice.

This is a crisis beyond Mr. Shanti Bhushan and Chief Justice S.H. Kapadia themselves. The extraordinarily epic charge demands a trial. How can the courts close its eyes and pretend to be asleep? Wake up and walk with your head high, and create a tribunal as unique as the situation. To fail here will put the nation's reputation under grave suspicion.

The judiciary is constitutionally empowered to be critical, to quash and be a corrective. It could issue creative writs or directives binding the functional process of the Executive and the Legislature. What about the judges if they are not efficient, competent and capable, and with a

vision and mission to transform the social dimension of any policy or action that is violative of *suprema lex*? In the United States, Chief Justice Earl Warren produced a racial revolution that U.S. President Eisenhower could not achieve. In the Commonwealth, visionary judges have shown their ability to transmute society through judicial activism.

Even in India, public interest litigation has revolutionary potential if our 'robed brethren' are really socialist and secular. They do not always possess in plenary fashion such a dimension in terms of perception or vision. On the contrary, some of them often tend to yield to class bias and political pressure by multinational corporations, or class-oriented prejudices. Indeed, some of them seem to be slowly succumbing to corruption by powerful vested interests. This is a grave danger.

Yet, the controversy raised by Mr. Shanti Bhushan poses a serious peril before this Republic's crimson future. Our trust with destiny, articulated in the historic address by Prime Minister Jawaharlal Nehru, cannot be implemented since final adjudicatory powers under Article 141 and 144 lie with the highest court. To remain inert and indifferent to the attack is to be amoral and unethical to constitutional mandates. If this Republic is a live constitutional instrumentality, it has received stab wounds on its chest. Our Supreme Court Judges do have a moral stature.

If Parliament has a sense of shame, now is the time to act: it cannot wait till tomorrow. Mr. Shanti Bhushan has dared the court. Of course, he will get an opportunity and has an obligation to the nation to prove the truth of his charges. Not to act on the matter will amount to cowardice, timidity, bankruptcy, and an unworthy submission to his audacious invasion on the credibility of India's highest moral authority, the Supreme Court.

Parliament must act. Let the Prime Minister move a resolution asking the two Houses to meet and pass a motion appointing the highest-ever quasi-judicial body to sit and inquire into any judicatural retreat from their oath of office. This will involve issues of grave importance. It is no longer Bhushan vs. the Supreme Court. It is the people's right to have a paramount Supreme Court of justice. This nation is greater than Mr. Shanti Bhushan and it cannot have a moral backbone if these charges are not publicly enquired into and consequent changes are made — so that the Supreme Court may shine supreme.

Any Commission or Tribunal that is created should not be confined to the charges in its ambit of enquiry. The public must be able to bring any other charges against the judges of the highest court. This will be a historic, epic tribunal to try its own judges without fear or favour and cleanse the system of any bad elements. Frame a performance prescription, punish any guilty judges.

Or if Mr. Shanti Bhushan fails in his bid, let him face the consequences of his phenomenal folly. There should be no secrecy but only transparency, no contempt proceedings to hide delinquent conduct. This will be an epic battle more important than the making of the Constitution — a national hearing by a superlative tribunal. I suggest the Chief Justices of all the High Courts plus the Speaker and the Chairpersons of the two Houses sitting as a body assisted by the Attorney-General and the Solicitor-General. During the course of these proceedings, ad hoc judges may be appointed to hear cases. The marathon process will involve sittings on three days a week. The other four days could be set apart for their regular judicial work. Such a tribunal will be unique — a brave judicial odyssey. For, never has there been such a spiritual or civil challenge to a nation's supreme body.

Let us not be afraid of doing the right thing at the right time. Anybody who comes up with charges must suffer punishment if these turn out to be unproven. Nobody can escape after

levelling allegations frivolously, nocently, malignantly and mendaciously. Mr. Shanti Bhushan and Prashant Bhushan will either go down in history as tremendous challengers of evil or run afoul of the law for having raised frivolous charges. Justice shall be done to the judges, and equally to those who have levelled unproven charges. Those who seek to defile the system through blackmail will be punished, unless they are able to back up and prove the charges.

The collegium

Meanwhile, there is one more item of great relevance and importance to be considered by Parliament. This involves the collegium created by a judgment of the Supreme Court to make appointments and recommend the transfer of judges of the higher courts. This instrumentality is the creature of a judgment with no foundation in the Constitution. It constitutes an usurpation of the powers of the Executive with no guidelines whatsoever. It has played havoc and deserves to be demolished by parliamentary correction, by means of an amendment to the law. The collegium is answerable to none, and acts without transparency. Instead of waiting for a larger bench to eliminate it, a constitutional provision must extinguish this instrument.

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