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PUCL Statement on SC Holding Prashant Bhushan Guilty of Contempt of Court

The People's Union For Civil Liberties (PUCL) is dismayed and disappointed over a Full Bench decision of the Supreme Court holding Mr. Prashant Bhushan, Advocate, guilty of criminal contempt of court for a set of tweets which the court felt "undermines the dignity and authority of the institution of the Supreme Court of India and the Chief Justice of India and directly affronts the majesty of law". PUCL feels that the finding of the SC is not only unfortunate but will also have the contrary effect of lending substance to the view that just like how other democratic institutions in India are criminalizing dissenters, the SC too is unwilling to acknowledge serious issues about the way the judicial system is functioning and is acting in a manner which would silence democratic voices using the draconian power of 'contempt of court'.

We would like to point out that Prashant Bhushan is not the first person to raise serious and critical questions about the administration of justice in the highest court of the land. Over two years back, on 12th January, 2018, in an unprecedented press conference, four then sitting SC judges - Justices J. Chelameswar, Ranjan Gogoi, Madan Lokur and Kurian Joseph - went public about their disagreement with the then Chief Justice of India, over functioning of the judicial institution both in its administrative as also judicial sphere of functioning. In particular the issues raised by the four senior judges are central to the independence of the judiciary: manner of deciding the roster and composition and strength of Benches, *integrity of judicial process, institutional integrity*, transparency in appointment of judges, etc. They had clearly and openly indicated that *these vital principles have not just been flouted but ethically compromised*. The judges pointed out, "There have been instances where **case having far-reaching consequences for the Nation and the institution** had been assigned by the Chief Justices of this court selectively to the benches **"of their preference"** without any rational basis for such assignment. *This must be guarded against at all costs*". (emphasis ours)

While the language and content of the tweets may not be agreeable or palatable, the fact remains that Prashant Bhushan was only articulating a widespread view amongst many sections of the public, raising questions about the response of the apex court. This is spelt out in a Statement issued by prominent citizens, including former judges Madan Lokur (SC), AP Shah (former CJ, Delhi HC) amongst others, who point out:

"In the past few years, serious questions have been raised about the reluctance of the Supreme Court to play its constitutionally mandated role as a check on governmental excesses and violations of fundamental rights of people by the state. These questions have been raised by all sections of society - media, academics, civil society organisations,

members of the legal fraternity and even by sitting and retired judges of the Supreme Court itself. Most recently, the Supreme Court's reluctance to intervene in a timely manner to avert the migrant crisis during the lockdown came under intense public scrutiny. Concerns have also been raised regarding the decision of the court to not restart physical hearings, even in a limited manner, despite passage of five months since the onset of the COVID pandemic"

. An issue of equally grave concern which agitates many citizens is the widespread abuse of draconian laws like anti-sedition law, UAPA and other laws, by the Central Government to suppress and silence dissenting voices. Eminent personalities from all fields have raised concerns about the trampling of fundamental rights and stifling of democratic norms, and have pointed to the prevalence of a 'silent, undeclared emergency'. It is an inescapable reality that many sections of civil society are raising questions as to whether the constitutional courts – both the SC and the HCs – are playing their constitutionally mandated roles and safeguarding liberties of citizens against a vicious and vengeful State. The question as to whether the constitutional courts are abdicating their constitutional responsibilities is a matter of public debate and discussion.

The correctness of Prashant Bhushan's views about the role of former CJI's may be debated, but the fact remains that many sections of society feel that the structures of democracy are being dismantled and destroyed before our very eyes and the constitutionally mandated institutions are failing to play their independent, monitoring role. In such a situation the SC to which people still look up to with respect and hope, is increasingly being seen by people to be supportive of the state and unresponsive to democratic and constitutional concerns.

In our view the conviction of Prashant Bhushan - well respected for doggedly fighting against corruption in high places, indefatigable fighter for constitutional values and the ordinary citizen - for criminal contempt of court for the tweets will only reinforce the view amongst many sections of society that the SC will not allow any public questioning or criticism of its functioning and is not averse to using contempt laws to silence voices seeking transparency and accountability of the judiciary. Ironically, it is this view which will be more damaging of the image of the SC rather than the import of the tweets of Prashant Bhushan.

A time has come for the nation to seriously discuss the repeal of the contempt laws. Especially when in the country of origin, England itself, has repealed their laws relating to contempt through the Crime and Courts Act, 2013. Until the law is repealed in India, it bears relevance to keep in mind the need for the greatest restraint in the use of this extraordinary power as was pointed out in a 1946 Scottish case of *Milburn, Re*, (1946 SC 301 at 315-16), in which the then Lord President held:

"The greatest restraint and discretion should be used by the court in dealing with contempt of court, lest a process, the purpose of which is to prevent interference with the administration of justice should degenerate into an oppressive or vindictive use of the court's power"