

18 August 2020

LAWASIA STATEMENT OF CONCERN ON THE INDIAN SUPREME COURT'S JUDGMENT FINDING HUMAN RIGHTS ADVOCATE GUILTY OF CRIMINAL CONTEMPT OF COURT

1. LAWASIA expresses concern about the recent judgment of the Supreme Court of India, holding prominent human rights and social justice lawyer, Advocate Prashant Bhushan, in criminal contempt for two tweets referring to the present Chief Justice and to the last four Chief Justices of the Supreme Court.¹ The proceedings were initiated by the Supreme Court against Mr. Bhushan, *suo motu*.
2. LAWASIA understands that Mr. Bhushan is a prominent public interest lawyer, who has appeared in a number of cases *pro bono* for citizens' groups and against various administrations. Mr Bhushan has advocated in pursuit of the protection of human rights, environmental rights, good governance and in particular, of enhanced scrutiny of various Indian public institutions, including the judiciary.²
3. LAWASIA notes that India is bound by its obligations under international human rights law, including the *Universal Declaration of Human Rights*³ (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR)⁴, to which it is a party. Of relevance, India is bound to uphold the freedom of speech and expression as a fundamental human right, and foundational to a free and democratic society. This right is recognised under Article 19 of the Constitution of India, Article 19 of the UDHR, Article 19 of the ICCPR, and under customary human rights law.
4. LAWASIA also notes the important role that lawyers play in the administration of justice, and the promotion and protection of human rights. This is achieved including through participation in public discourse. LAWASIA notes that States must respect the free speech protections lawyers are

¹ BBC 'India Supreme Court finds Prashant Bhushan guilty of contempt' *BBC* (14 August 2020) <<https://www.bbc.com/news/world-asia-india-53775312>> accessed 15 August 2020.

Krishnadas Rajagopal, 'Prashant Bhushan held guilty of contempt for tweets against CJ' *The Hindu* (14 August 2020, New Delhi) <<https://www.thehindu.com/news/national/prashant-bhushan-held-guilty-of-contempt-for-tweets-against-cji/article32351999.ece>> accessed 15 August 2020.

² Harish V. Nair, 'PIL warrior Prashat Bhushan: Scams, isolation and his beliefs' (3 November 2013) *India Today* <<https://www.indiatoday.in/india/story/prashat-bhushan-coal-scam-2g-radia-tapes-216322-2013-11-03>> accessed 16 August 2020. Kuldip Nayar, 'Judiciary on Trial' *The Dawn* <<https://www.dawn.com/news/574561/judiciary-on-trial-by-kuldip-nayar>> accessed 16 August 2020.

³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948.

⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966.

accorded, as affirmed in the United Nations *Basic Principles on the Role of Lawyers*⁵ (Basic Principles):

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

LAWASIA further notes that under the Basic Principles, States are required to protect and promote the independence of lawyers and to ensure that they are able to perform their professional functions without intimidation, harassment or fear.⁶

5. LAWASIA reaffirms the rights of lawyers as equal citizens of a state to promote and protect universally recognised human rights and freedoms, as recognised in the United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*.⁷
6. LAWASIA notes that the offence of contempt of court exists to protect the authority, performance or dignity of the legal process, and to remedy or prevent interference with the administration of justice. However, it must not be used to hamper freedom of expression or silence legitimate debate. LAWASIA is concerned that the broad exercise of criminal contempt jurisdiction could stifle public debate and unduly limit the rights of lawyers to fulfil their professional and public duties without fear or intimidation. Its chilling effect is inimical to a flourishing democracy.
7. LAWASIA notes that while every court of record has the power to punish for contempt, this power should be exercised with the greatest caution in the interest of upholding the right to freedom of expression, as well as the rule of law. An active and robust public sphere within which legitimate criticisms of the judiciary and judges can be freely expressed without fear of undue persecution is a key tenet of the rule of law. Legitimate public criticism of judicial performance is a means of

⁵ United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990.

⁶ See paragraphs 16 and 17. These principles have also been reiterated in the International Commission of Jurists' 'International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors'.

⁷ United Nations Human Rights Office of the High Commissioner, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms'

<https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx#:~:text=Adopted%20by%20General%20Assembly%20resolution%2053%2F144%20of%209%20December%201998&text=Everyone%20has%20the%20right%2C%20individually,the%20national%20and%20international%20levels.>> accessed 16 August 2020.

ensuring accountability, and criminal law and contempt proceedings are not appropriate mechanisms for restricting legitimate criticism of the courts.⁸

8. LAWASIA is a regional association of legal organisations, bar associations, law societies, lawyers and judges which advocates for the promotion of social justice and rule of law principles in Asia and the Pacific region. LAWASIA believes that the strength of the judicial system lies in the relationship of mutual respect between the Bar and Bench, and that both must work together in upholding the rule of law and delivering justice. To this end, an environment that fosters robust criticism, commentary, satire and humour is in the interest of upholding the sanctity of institutions and building a free society.
9. LAWASIA notes and appreciates the role that the Supreme Court of India has played as a pioneer in the progressive expansion of human rights in India and in influencing the expansion of human rights jurisprudence in other democratic jurisdictions.
10. LAWASIA calls on the Supreme Court of India to exercise its powers to put an end to the *suo motu* contempt of court proceedings against Mr. Prashant Bhushan.

⁸ As affirmed in the 'Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence, adopted on 19 June 1998, at a meeting of the representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates and Judges Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association)' <<https://www.cmja.org/downloads/latimerhouse/commprinthreearms.pdf>> accessed 16 August 2020.