



# भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi - 110002

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So long, a criticism is healthy and unintentional, it is welcomed but the moment it becomes motivated and is made to serve some vested interest, it takes the shape of mischief and misconduct.

Independence of judiciary has to be maintained at any cost and it is first and foremost duty of the Bar to discourage all sorts of mala-fide attack on the Institution.

Mr. Dushyant Dave, Senior Advocate, Supreme Court of India has used the word "Reciprocity" in his press release, while criticizing the decisions of Supreme Court collegiums in making some recent recommendations. When we carefully examine the past and present statements of Mr. Dave, we find that Mr. Dave was very active in supporting the false case lodged for harassment of Hon'ble the Chief Justice of India; And now he is trying to connect that dead case with the subsequent recommendations made by the collegiums.

A careful examination of these comments are altogether devoid of any substance. It appears that a few lawyers of Supreme Court are in a habit to be in lime-light in media by making such absurd press statements.

The Bar cannot appreciate such things; few individual Advocates have been trying to take undue advantage of the silence of Hon'ble Judges. We know that the Hon'ble Judges, the Members of collegiums cannot come forward, issue press release to defend or support their each and every decision. It is due to this, the role of the Bar and of the Institution of advocates, becomes very important/crucial. We cannot put the highest Institution of judiciary in jeopardy.

The comment of Mr. Dave with regard to the decision of Justice Gavai in case of Chief Minister of Maharashtra, Mr. Devendra Fadnavis can never be appreciated by any prudent citizen. The Hon'ble Apex Court itself, in its so many Judgments, has settled that the compromise can be arrived at even in non-compoundable offences, if the situation warrants and no useful purpose could be served by allowing such cases to be continue. In the interest of Justice, the cases are quashed. There is nothing wrong in it.

Secondly, we cannot forget that it was Mr. Dushyan Dave himself along with his 2-3 others lawyer-friends, who had vehemently supported the holding press interview by the Hon'ble Judges in January, 2018. Now, when it is the turn of Justice Gavai, we fail to understand as to why Mr. Dave has become critic. The interview of Mr. Justice Gavai was confined to Legal issues only, there is nothing wrong or beyond jurisdiction, which could be criticized by anyone.

The comment of Mr. Dave that Justice Gavai is very close to Mr. Justice Bobde and Mr. Surya Kant is very close to Hon'ble Mr. Justice Ranjan Gogoi are all baseless and absurd comments.

Justice Bobde originally hails from Bombay High Court, naturally he is supposed to know each and every Judge of that High Court, he is supposed to be closer to them. He would have got ample opportunity to assess the legal expertise, ability, efficiency, conduct, behavior and knowledge of the Judges of the High Courts where he had/has worked. Same is the case with Hon'ble Mr. Justice Surya Kant. The Chief Justice of India might have got several occasions to assess the aforementioned necessary requirement for the elevation of any High Court Judge to Supreme Court of India. The collegium-Judges are daily coming across and examining the Judgments of Judges of various High Courts and get opportunity to assess their merit.

The closeness is a vague and complicated word. Many lawyers are close to many judges, but, it doesn't mean that those lawyers get favourable orders or they all are recommended for elevation to the High Court or Supreme Court. Imputing baseless intentions in the matter of elevation to the highest judicial institution is unfortunate. Justice Gavai and Justice Surya Kant are very upright Judges and are known for their integrity, efficiency and merit. They would prove assets for the Supreme Court.

Some of the Senior members of the Bar as well as the members of the Bar council who represented the Legal Fraternity of Madhya Pradesh, were consulted by us after seeing the comments of Mr. Dave with regard to Mr. Vishal Mishra, Advocate. The unanimous view of the Madhya Pradesh Bar with regard to Mr. Mishra is that he is a very knowledgeable and efficient lawyer. He has a very lucrative practice and strictly maintains the professional ethics. The independent opinion of Bar about him is that he is a lawyer of extraordinary merit. Now, by sheer chance, if such brilliant lawyer happens to be the nephew of a Judge, he cannot be ignored for elevation to the High Court. The merit and ability cannot be compromised only because of relationship and on the basis of baseless/frivolous comments of someone (who it appears, has

developed a habit to criticize and comment on each and every decision of the collegiums). What we find is that Mr. Dave and 3-4 other lawyers are trying to connect every decision of Supreme Court or Collegiums with the recent harassment case plotted against Hon'ble the Chief Justice of India.

The Bar cannot appreciate such attitude and the bar is of clear opinion that these handful of lawyers are bent upon to spoil the institution for serving their self-interest. The sole intention of making such frequent comments against the Judgments/Orders of Supreme Court or of Collegiums, is to lay undue pressure on the Judges of Supreme Court; we find this modus being adopted for last few years in order to get favourable orders from the Judges of Supreme Court and High Courts.

Fortunately, the vast majority of the lawyers of the country as well as 99 percent Members of Supreme Court Bar Association are fully aware of the intention of this small group of lawyers and that is the reason that the institution is safe. Almost 19 lakhs lawyers of the country as well as 130 Crores of the citizens are there to protect the Institution of Judiciary. Therefore, we are sure that neither the Judges of Supreme Court and High Courts nor the Members of the Collegium of the High Courts and Supreme Court would ever be pressurized to act upon the dictates of such people having vested interests.

The Bar Council of India, whenever finds any decision of the collegiums to be wrong, raises the objections, but the objections are in decent ways.

The Bar Council felt aggrieved with the decision of the collegium with regard to Mr. Justice Rajendra Menon and Mr. Justice Nandraj Jog, it raised its objection, but it doesn't mean that we tried to justify our objections by imputing some mal-intention on the part of any Member of the Supreme Court Collegium. If the Bar starts doing it, then the very Institution will be spoilt. We are to maintain and ensure the faith of the people in the highest Court of Justice of this country. When it is a settled law that the collegium is the final authority in the matters of appointment, there should have been absolutely no irresponsible comment from any responsible lawyer criticizing each and every decision of the collegium. Mr. Dave is a respectable Senior Member of the Bar.

We, therefore, request and appeal to the Members of the Bar as well as citizen of our country to discourage the people who are trying to weaken the highest Institution and judiciary for their self-gains. Their game is sinister; they try to be always in lime light through certain media and as stated above, to lay undue pressure upon the Judges of Supreme

Court and the High Courts. The common advocates of the country, who have love and affection for the Institution, will never allow such mal-practices to grow.

But it is also to be noted here is that in order to avoid the criticisms, the Bar Council of India has always been appealing to the Hon'ble Chief Justice of India to seek the opinion of the concerned Bar Associations and State Bar Councils and the Bar Council of India before making the recommendations. And it was under this background that when we saw the comment of Mr. Dushyant Dave with regard to the above named 3 recommendees, we consulted the concerned Bars, we discussed in detail and after getting satisfied with the recommendations of the collegium, this statement is being released.

  
(Manan Kumar Mishra)  
Chairman,  
Bar Council of India