

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS

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judicialreforms.org

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Statement on the appointment of Justice Arun Mishra as Chairperson, NHRC

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By appointing Justice Arun Mishra as NHRC chief, the government has again demonstrated its disregard for human rights and its desire to subvert independent regulatory institutions of the country. As a judge Justice Arun Mishra has a long history and proven track record, of being insensitive to human rights and democratic norms and also a known propensity of siding with the government on all important issues affecting the government. He was widely known and regarded as the go-to judge for obtaining favorable judgments for this government. In fact, in January 2018, four senior most judges of the Supreme Court held an unprecedented joint press conference denouncing the abuse of power of master of roster by the then Chief Justice and assigning politically sensitive cases to judges favorable to the government, which as they said, put democracy in jeopardy. The trigger for this press conference was the assignment of the case involving the death of Judge Loya (who was trying Mr. Amit Shah, in a case of complicity in multiple fake encounters), to Justice Arun Mishra's bench.

There have been volumes said and written detailing Justice Mishra's scant regard for human rights, democratic norms or even lack of judicial propriety and his propensity to side with the government, some of the stark instances of which we mention hereafter. In February 2019, close to two million forest dwellers faced a threat of eviction from their habitats. Justice Arun Mishra's bench on hearing petitions from wildlife conservation groups, ordered the state government to evict forest dwellers whom he described as "illegal" and "encroachers", rejecting tribal claims on their forest lands. The order was based on the responses filed by the governments and forest dwellers were left undefended. The assignment of the Sahara Birla case which sought a probe into the bribery of high ranking public servants (including the alleged payment of bribes of 25 crores to the then CM of Gujarat and the present Prime Minister, Modi) to Justice Arun Mishra bench (a relatively junior judge at the time) was telling. Brushing all allegations under the carpet, Justice Mishra dismissed the application stating that high constitutional functionaries could not be subjected to investigation on the basis of loose papers. Later in 2018, Justice Mishra dismissed a challenge to the appointment of KV Chowdary as the CVC on the ground that he did not fulfill the criterion of impeccable integrity, required for the post, stating that "such complaints, cannot be taken on face value". Interestingly after his retirement in 2019, KV Chowdary was made a board member of Reliance Industries. In the Haren Pandya case, Justice Mishra dismissed a petition seeking a reinvestigation into the case and even imposed significant costs on the petitioner, despite the emergence of compelling new facts casting very serious doubt on the official narrative.

In cases involving the judiciary and judicial corruption, Justice Arun Mishra's orders only sought to cover up and never ordered an investigation. In court, he was known for his lack of compassion and listening skills, which have compelled lawyers to walk out of his court, disturbed that their cases were never "heard". These skills are vital for someone presiding over an authority that considers violation of human rights of often the most marginalized and deprived sections of society. In the

case filed by CJAR seeking an SIT to probe the alleged bribery of senior judicial functionaries in the medical college scam, Justice Arun Mishra's bench dismissed the petition and imposed exemplary costs on the petitioner organization. Similarly, Justice Arun Mishra was assigned on the bench when sexual harassment allegations against CJI Ranjan Gogoi were made public. Justice Arun Mishra was part of the bench in that extraordinary hearing that slandered the woman complainant and saw Justice Gogoi declare his innocence. In a stark case of judicial impropriety in the land acquisition matter, he presided over a Constitution bench and upheld an earlier verdict that proceedings will not lapse if compensation has been deposited in the treasury, not requiring actual payment to the landowner or court. The earlier judgment was delivered by a three judge bench headed by Justice Mishra himself, who refused to recuse from the matter despite apparent conflict of interest. Among all these cases are also four cases involving the Adani Group of companies (the favourite crony of this government) which were decided all in favour of Adani by Justice Arun Mishra even during court vacation and in a very irregular manner as pointed out by SCBA President Mr. Dushyant Dave in a scathing letter to the then CJ. (<https://thewire.in/law/why-were-adanis-cases-listed-and-heard-by-justice-arun-mishra-in-a-tearing-hurry>)

This being Justice Arun Mishra's controversial judicial legacy, it cannot be said that there were no better people available for the choice of Chairman NHRC. Several judges recently retired from the Supreme Court, with outstanding human rights records, which include Justice Madan Lokur, Justice Deepak Gupta, Justice Kurien Joseph, etc, were not considered. The reasons for the government wanting Justice Arun Mishra for this post are obvious. Apart from his record of siding with the government in every politically sensitive case, as a sitting judge he was unabashed about his open adulation for the Prime Minister when he called him a versatile genius, "who thinks globally and acts locally" at an International Judicial Conference last year, prompting many jurists to remark about the lack of propriety in his making such statements as a sitting judge. Another circumstance showing his proximity to the government was that he was allowed to retain his official residence for over 9 months beyond his retirement, despite the rule requiring him to vacate in a month.

Justice Mishra's appointment to this crucial institution, at a time when there is an unprecedented onslaught on human and democratic rights, is designed to make the NHRC into a totally moribund institution, which has been the governments design with several other democratic institutions, that have been systematically dismantled or misused for political purposes by hounding opposition, civil society and dissenting voices, such as the NIA, the Election Commission, CBI, RBI, the Enforcement Directorate, etc. His appointment signals the death knell for the protection and promotion of human rights, for which purpose the National Human Rights Commission was set up in India.

Disclosure: In addition to the Campaign being imposed an exemplary cost of Rs. 25Lakh/- vide a decision rendered by a bench headed by Justice Mishra in 2017, one of the members of the Campaign, Mr. Prashant Bhushan has been found guilty of criminal contempt vide another judgment rendered by a bench headed by him in August 2020.