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BOOK REVIEW

THE SUPREME COURT OF INDIA'S JURISPRUDENCE ON SOCIAL RIGHTS, WELFARE, AND SECULARISM

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The Court and the Constitution of India: Summits and Shallows. O. Chinnappa Reddy, Oxford University Press, 2008. Pp. 337, \$ 75.00 (paperback)

The Supreme Court of India (Supreme Court) has self-consciously incorporated political and social justifications to shape the Constitution of India (Constitution) into a living moment for the people.¹ *The Court and the Constitution of India: Summits and Shallows*, by Chinnappa Reddy, does not aim at any systematic theses, it simply portrays the participatory role of the Supreme Court in transforming social relations and bringing legal change. This is a rare work of juristic writing by a former judge of the Supreme Court and thinker in his own right, refraining from any self-attribution.² Through this work, Reddy undertakes a historical analysis of the Supreme Court, evaluating its performance based on its commitment to freedom and equality. Three themes emerge from Reddy's analysis of the Supreme Court and its shaping of the Constitution: the tension between individual and social rights, the

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1. Bruce Ackerman coins the term "constitutional moment" to describe a rare event in "constitutional politics" that signifies a transformation in the constitutional landscape. See generally Bruce Ackerman, *Constitutional Politics/Constitutional Law*, 99 YALE L.J. 453 (1989); Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771 (1997); BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* (1991). However, it is hard to find such an epochal event in the Indian constitutional experience. There has been no singular "constitutional moment" in the Ackermanian sense. There is a danger of nominalism in such an understanding of Indian constitution law—words and ideas of a text can obscure reality. Constitutional reasoning is multi-layered and unravels itself through a process of public-spirited deliberation.

2. Chinnappa Reddy's tenure as a judge of the Supreme Court of India was from 1978-1987. *List of Retired Hon'ble Judges*, SUPREME COURT OF INDIA, http://supremecourtofindia.nic.in/judges/list_retired_judges.htm (last visited Feb. 12, 2012).

transformative identity of the Constitution, and insights into the inner workings of the Supreme Court.

The Court and the Constitution of India: Summits and Shallows does not develop any normative arguments, but reflects Reddy's convictions on welfare³ and secularism.⁴ Specifically, Reddy believes that freedom and equality are empty concepts unless they are infused with the ideals of social revolution. Reddy revisits lessons of constitutional theory, focusing mainly on the unresolved antimony between constitutionalism and democracy. The book is written in Reddy's distinctively minimalist style. Reddy employs an external standpoint to analyze and critique the developments in Indian constitutional doctrine and precedent. The depth of his analysis and argument prove that judges largely under-theorize, instead relying on philosophies of constitutional reasoning.

Overall, Reddy maps Indian constitutional law by evaluating the Supreme Court's role in protecting social rights over individual rights. It is precisely this court-dependent reasoning that restricts his analysis and the relevance of this work for advanced scholars in this field. After surveying the vast Indian experience of constitutional adjudication, Reddy oversimplifies his conclusion by stating that, despite its shortcomings, the Supreme Court has "done very well indeed."⁵ In the same vein, he falls short on developing some

3. Some of Reddy's own judgments highlight his persistent quest for social welfare and protection of minorities. *See, e.g.*, *Sanjeev Coke Mfg. v. Bharat Cooking Coal Ltd.*, A.I.R. 1983 S.C. 239. The case challenged the Coking Coal Mines (Nationalization) Act as a violation of the right to equality guaranteed under Article 14 of the Constitution of India. *Id.* The law was enacted in fulfillment of the Article 31C enforcing the egalitarian ideals in the constitution contained in the Directive Principles of State Policy. *Id.* Reddy distinguished the rationale in an earlier case, *Minerva Mills Ltd. v. Union of India*, A.I.R. 1980 S.C. 1789, and found the Directive Principles to be fundamental to the governance of the country. *Id.* "The broad egalitarian principle of social and economic justice for all was implicit in every Directive Principle, and, therefore, a law designed to promote a directive principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and the desirable constitutional goal of social and economic justice to all." *Id.*

4. *See, e.g.*, *Bijoe Emanuel and Others v. State of Kerala*, A.I.R. 1987 S.C. 748 (questioning whether Jehovah's Witnesses could be compelled to sing the National Anthem against their fundamental religious belief. Reddy held that punishing students whose faith did not permit them to sing the National Anthem infringed their right to freedom of speech and expression and right to hold and practice their religious beliefs.); *S.P. Mittal v. Union of India*, A.I.R. 1983 S.C. 1 (questioning whether the followers of the sage and philosopher, Aurobindo, constitute a religion entitled to the right to practice and the right to manage its own affairs. Reddy dissented, finding that Aurobindoism is a religion, and that the freedom of conscience cannot be separated from the right of a religious denomination to manage one's own affairs.).

5. O. CHINNAPPA REDDY, *THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS* 314 (2008).

of his major arguments and defending his presuppositions in a systematic manner. For instance, Reddy does not explain why liberal theories of statehood create an obstacle to realizing socially desirable goals. However, to put this work in perspective, it is relevant for readers to appreciate that Reddy bases his assumption on the jurisprudential ground that law and legal ideology play a socially transformative role.⁶

The Foreword is written by India's leading constitutional scholar and jurist, Upendra Baxi. He situates this work and the legacy of Chinnappa Reddy in the context of the Supreme Court's expansive development in social rights jurisprudence. For Baxi, Reddy's "virtue of rectitude"⁷ distinguished him from other judges. He commends Reddy as someone unafraid to publicly defend his intellectual position on human rights and socialism. Baxi contrasts the adjudicative styles of other activist judges and notes that unlike Krishna Iyer, D.A. Desai, and P.N. Bhagwati, Reddy occupied a unique "median position" in India's constitutional scheme.⁸ This short introduction to Indian constitutional adjudication provides an insightful background that will be useful for comparative constitutional scholars for whom the Indian Supreme Court has become an important example of innovatively using the power of judicial review to develop social rights jurisprudence.

Reddy divided *The Court and the Constitution of India: Summits and Shallows* into thirty-one chapters that concentrate on the linear evolution of Indian constitutional law. Reddy covers a broad array of subjects of constitutional interest such as women's rights, federalism, environment, public interest litigation, contempt of court, administrative law, labor law, taxation, election law, criminal law, and judicial activism. However, these cursory discussions undermine the main thrust of the book about the relationship between individual and social rights and the importance of the Indian context and identity in interpreting the Constitution. These subject-based chapters are disappointing in their analysis because they fail to tie into the rest of the work. The discussions are merely set in the nature of a chronological arrangement of citations and recalling textual provisions from the Constitution. Despite this, seen from the point of view of the progress of the early Supreme Court,

6. See generally Justice O. Chinnappa Reddy, Judge of the Supreme Court of India, Need for a Socialist Jurisprudence, Address at Transactions of Third Indo-Soviet Law Seminar, in (1987) 4 SCC (Jour) 4.

7. REDDY, *supra* note 5, at xi.

8. *Id.* at xxi.

Reddy has tried to write a modest history of constitutional interpretation by the Supreme Court that may be helpful to the reader new to Indian constitutional law.

The identity of the Constitution, as based in social and economic rights, is the primary recurring theme of Reddy's work. He highlights the beginning years of the Supreme Court which saw a mix of deference to state made law on personal liberty, and at the same time, protection of freedom of speech and expression and the right to property.⁹ The interesting parts of the book are the contestations between the judiciary and parliament over the right to property. Reddy delves into in particular detail about the identity of the Constitution derived from social welfare and new equality, socialism, and secularism.

THE TENSION BETWEEN INDIVIDUAL AND SOCIAL RIGHTS

The significant part of the book explicates the relationship between individual rights and social welfare rights manifested on account of the tension between fundamental rights and directive principles of state policy. Fundamental rights under the Constitution are entitlements of freedom, liberty, and non-discrimination, which become the basis of a democracy.¹⁰ The directive principles of state policy are the social welfare agenda of the Indian state and are non-justiciable and aspirational in nature.¹¹ Reddy describes how Indian constitutional adjudication is characterized by the pull

9. *See id.* at 29 (discussing *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27; and observing that the "majority judges appeared to be still under the influence of the old colonial jurisprudence and oblivious to the fact that what they were expounding was the jurisprudence of a new Constitution for people who had just freed themselves from colonial rule"). Reddy discusses *Romesh Thapar v. State of Madras*, A.I.R. 1950 S.C. 124. In that case, the Supreme Court struck down a government notification banning entry, distribution, or sale of a newspaper in the State of Madras as it violated the freedom of speech. REDDY, *supra* note 5, at 40. Reddy is of the opinion that in cases of the free speech and the right to form associations or unions, the court showed "great alacrity and stood firmly by the side of the citizen." *Id.* Reddy also discusses *State of Madras v. V.G. Row*, A.I.R. 1951 S.C. 196, where the Supreme Court struck down an executive order authorizing a ban on an unlawful association. *See id.* at 41. Reddy then discusses the Supreme Court's role in protecting the fairness of compensation when a private property is acquired for public purpose. *See id.* at 45-46 (discussing *State of West Bengal v. Bela Banerjee*, 1954 S.C.R. 558; *P. Vajravelu Mudaliar v. Special Deputy Collector*, (1965) 1 S.C.R. 614; *Metal Box Co. v. Workmen*, (1969) 73 I.T.R. 53).

10. *See* India Const., pt. III.

11. *Id.* pt. IV. The earliest position reflecting the extreme view was taken in the case of *State of Madras v. Champakam Dorairajan*, A.I.R. 1952 S.C. 226. REDDY, *supra* note 5, at 76. The case went so far as holding that the directive principles are subsidiary to fundamental rights. *Id.* This view, however, has been overturned gradually in subsequent cases leading to the Basic Structure case. *See id.* at 77.

and push of constitutionalism. Specifically, the egalitarian spirit of the directive principles on one hand, and the core of the individualist thrust of the fundamental rights as democracy on the other, capture the push and pull of Indian constitutionalism. Thus, Reddy explains the dualism under the rubric of social and individual rights in the Indian constitutional ethos. His analysis leaves the question: can the task of constitutional interpretation be reduced to such simple dualisms?

Reddy shows the bright lines that existed during the early years between the text of the Constitution, Parliament, and the Lockean-styled Supreme Court on account of agrarian reform legislations aimed at equitable distribution of land holding. He explains how the egalitarian scheme of redistributing private land was curbed by Article 19(1)(f), which guaranteed to citizens the fundamental right to property.¹² The parliament overcame the restrictions by introducing Article 31A and B.¹³ Article 31A and B immunized a law implementing the government's policy of land reform and nationalization from any challenge on the grounds of a violation of fundamental right.¹⁴

The divergence between the court and parliament on the right to property is first seen in the case of *State of West Bengal v. Bela Banerjee*, where the Supreme Court held that a law taking private property for public purpose had to provide compensation.¹⁵ Par-

12. Article 19(1)(f) came to be deleted by the Constitution (Forty-fourth Amendment) Act, 1978. *See id.* at 144.

13. The Constitution (First Amendment) Act, 1951. The amendment introduced Article 31A and Article 31B to protect the government's land reform legislations and its industrial policy of nationalization. *See* REDDY, *supra* note 5, at 42–43. Article 31A protected laws dealing with the acquisition of estates, the takeover of corporations and others from any challenge on grounds of Article 14 (equality) or Article 19 (right to freedoms). *See id.* Article 31B protected all laws and regulations inserted in the IXth Schedule of the Constitution from any challenge of fundamental rights. *See id.* As a result, all laws placed in the IXth Schedule received virtual immunity from judicial review. *See id.*

14. The Supreme Court upheld these amendments in *Shankari Prasad v. Union of India*, A.I.R. 1951 S.C. 718, and *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S.C. 845. *See* REDDY, *supra* note 5, at 45. *Shankari Prasad* challenged the First Amendment of the Constitution, which immunized legislation abolishing the *zamindari* land holding system from fundamental rights challenges. *Id.* One of the contentions was that parliament did not possess the amending power to abridge a fundamental right. *Id.* It was argued that an amendment was also "law" and any law that takes away a fundamental right is subject to the infringement test under Article 13(2) of the Constitution. *Id.* The majority of five judges ruled in favor of the amendment. *Id.* In *Sajjan Singh*, the court reaffirmed *Shankari Prasad* while upholding the Seventeenth Amendment. *Id.*

15. *Id.* (citing 1954 S.C.R. 558).

liament responded by enacting the Fourth Amendment.¹⁶ The Fourth Amendment required that no law for compulsory acquisition can be called into question in any court of law for inadequacy of compensation and on the grounds of Articles 14, 19, and 31. However, the Supreme Court again reversed the effect of this constitutional amendment in the case of *Vajravelu* by holding that compensation has to be a "just equivalent."¹⁷

Along the same lines, the constitutional validity of the Seventeenth Amendment¹⁸ was questioned in *Golaknath v. State of Punjab*,¹⁹ where the Supreme Court overruled its previous decisions in *Shankari Prasad* and *Sajjan Singh*, to hold that an amendment cannot abridge the fundamental rights that are guaranteed by the Constitution.²⁰ Reddy insists that *Golaknath* invokes the classic debate as to whether individual rights are more fundamental than rights of social welfare.²¹ The consequence of this perspective was the invalidation of several constitutional amendments made by the parliament to fulfill its commitment to social revolution. According to Reddy, the effect from *Golaknath* was that the Supreme Court accorded greater weight to the individual's right to property than the social welfare measures being introduced by parliament regarding land reform legislation.²²

Reddy criticizes the Subba Rao led judgment, referring to it as a "tragedy."²³ He further observes that "the effect of *Golaknath* was to . . . fossilize the constitution."²⁴ Reddy argues that *Golaknath* gave predominance to the individual's right to property as a fundamental right and ignored the overwhelming social interest of inequitable land holdings that was idealized in the directive principles of state policy.²⁵ Reddy observes, as follows:

The Judges led by Chief Justice Subba Rao, otherwise a liberal judge, showed a near obsessive percipience of the Fundamental

16. *Id.* at 45-46 (discussing The Constitution (Fourth Amendment) Act, 1955). The amendment also added enactments in the IXth Schedule.

17. *Id.* at 46 (quoting *P. Vajravelu Mudaliar v. Special Deputy Collector*, (1965) 1 S.C.R. 614).

18. The Constitution (Seventeenth Amendment) Act, 1964 (amending Article 31A, which provided for protection of laws for acquisition of estates, and including more state laws relating to land reforms in the IXth Schedule).

19. A.I.R. 1967 S.C. 1643.

20. The judgment invalidated several constitutional amendments and welfare oriented legislations. REDDY, *supra* note 5, at 47.

21. See *id.* at 48.

22. *Id.* at 47.

23. *Id.* at 48.

24. *Id.*

25. *Id.*

Rights in the Constitution that they were expounding, but no perception of the Directive Principles, which were also part of the Constitution. . . . While they showed a great sensitiveness to rights forming the basis of a political *democracy* they showed no concern or interest in rights which would form the basis of a *welfare state*.²⁶

Reddy finds the lack of “indigenous” jurisprudence and the effects of poor constitutional borrowing from the United Kingdom and United States as reasons for what he feels was the majority judges’ flawed reasoning.²⁷ While Reddy’s position clearly supports directive principles over fundamental rights, he fails to argue how tensions between individual rights and social rights can be normatively reconciled.

With a view to end the impasse after *Vajrevelu* and *Golaknath*, parliament introduced the Twenty-fourth and Twenty-fifth Amendments to seek unlimited power to amend the Constitution.²⁸ The Twenty-fourth Amendment sought to take away amendments made from the challenge of fundamental rights.²⁹ Likewise, the Twenty-fifth Amendment removed the word “compensation” and instead added the word “amounts” to bypass the judgments.³⁰ In addition, the Twenty-fifth Amendment introduced Article 31 C according to which no law implementing any directive principle of state policy can be questioned on the grounds of violating Articles 14, 19, or 31.³¹ These were reviving attempts by the parliament to implement its social rights agenda in the wake of the Supreme Court’s protection of individual liberty under *Golaknath*. Reddy does well to capture these changes in an easy and concise manner that will be appreciated particularly by readers of Indian constitutional law.

Ultimately, the challenge of the Twenty-fourth and Twenty-fifth (and Twenty-ninth³²) Amendments came up before the court in

26. *Id.* (emphasis added).

27. *Id.*

28. *See id.* at 52.

29. *Id.* (discussing The Constitution (Twenty-fourth Amendment) Act, 1971). The Statement of Objects and Reasons expressly states that the decision of the Supreme Court in *Golaknath* necessitated the constitutional amendment. The Constitution (Twenty-fourth Amendment) Act, 1971.

30. REDDY, *supra* note 5, at 52 (discussing The Constitution (Twenty-fifth Amendment) Act, 1971). The amendment replaced the word “compensation” with “amount” to place the Supreme Court’s judgments outside the scope of review. *Id.* Further, it introduced Article 31C giving effect to laws implementing directive principles and immunizing such laws from fundamental rights challenges. *Id.*

31. *Id.*

32. *Id.* at 53 (discussing The Constitution (Twenty-ninth) Amendment Act, 1972, which included the Kerala Land Reforms (Amendment) Act, 1969 in the IXth Schedule of the Constitution).

the *Kesavananda Bharati* case.³³ The *Kesavananda Bharati* case overruled *Golaknath* and introduced the Basic Structure doctrine to preserve the power of judicial review in the field of constitutional amendments.³⁴ The Basic Structure doctrine was introduced to protect certain essential features in the Constitution from amendment. The doctrine later came to be useful in many cases protecting the core identity of the Constitution whenever it was under threat.³⁵ After the judgment in *Kesavananda*, the Supreme Court became one of the most powerful supreme courts in the world.³⁶

Reddy does not discuss the implications of the Basic Structure doctrine apart from observing the possible dangers of its misuse by the Supreme Court.³⁷ He fails to fully grapple with the relationship of stability, flexibility, and self-determination in light of the deep entrenchment of some unalterable constitutional provisions. This omission renders his analysis incomplete at a time when constitutions around the world are experimenting with amending formulas to avoid rigidity and at the same time preserve the democratic nature of constitutional revision.

Kesavananda balanced directive principles and fundamental rights and upheld Article 31 C implementing directive principles. Reddy decries that today the IXth Schedule in the Constitution dealing with the validation of certain acts has been misused.³⁸ That laws not pertaining to land reforms are also included as a part of the IXth Schedule, thereby making those laws immune from any challenge of fundamental rights.³⁹

Nevertheless, parliament's bid to push its socio-economic agenda strained democracy and individual rights. Parliament introduced the Forty-Second Amendment to give primacy to directive principles over fundamental rights, thus conferring upon itself unlimited powers to amend.⁴⁰ In light of the Basic Structure doc-

33. *Id.* (discussing His Holiness Kesavananda Bharati v. The State of Kerala, A.I.R. 1973 S.C. 1461).

34. *Id.* at 53-54.

35. *See, e.g., id.* at 56, 157 (discussing Indira Gandhi v. Raj Narain, A.I.R. 1975 S.C. 2299, and S.R. Bommai v. Union of India, A.I.R. 1994 S.C. 1918).

36. *See id.* at 58-59 (discussing Waman Rao v. Union of India, A.I.R. 1981 S.C. 271, which held that all additions to the Ninth Schedule until the date of the *Kesavananda* judgment were not open to challenge; and all those amendments made thereafter can be challenged on the touchstone of the basic structure doctrine).

37. *See id.* at 59-60.

38. *Id.* at 59.

39. *Id.*

40. The Constitution (Forty-second) Amendment Act, 1976. The Statement of Objects and Reasons record that: "A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suf-

trine, the court in *Minerva Mills* struck a part of the amendment down as unconstitutional; observing that both directive principles and fundamental rights are “together constitute the core of our Constitution and combine to form its conscience.”⁴¹ Reddy critiques Y.V. Chandrachud’s judgment, advancing his reasons that directive principles constitute a part of the right to life.⁴² He endorses the later judgment in *Sanjeeva Coke*⁴³ (which he himself rendered) overruling *Minerva Mills* on the ground that laws made in pursuance of directive principles are immune from challenge. Though the binding judicial position on this is still somewhat unclear, the accepted view is one of harmony between the two types of rights.⁴⁴

Reddy avoids foundational questions on the nature of India’s court-centered democracy and the over-reliance of judicial review to protect social rights. The Indian judiciary has retreated from its earlier deference to parliament and emphasized the balance of individual and egalitarian rights to advance social justice. In doing so, it has judicialized the entitlements of basic rights and justice and left the political class unaccountable. However, the political economy has changed since the self-transformed court’s progressive role on social welfare. In failing to dwell on the range of theoretical and political consequences of judicialization, Reddy’s account is not helpful for a law and politics understanding of constitutionalism and democracy in India.

THE TRANSFORMATIVE IDENTITY OF THE INDIAN CONSTITUTION

A second interesting theme from this work is the identity of the Constitution as a transformative one. Socialism and secularism are the collective identity that uniquely binds the Constitution. They define the constitutional function of the nation as embodied in a set of value systems. There have been examples of many constitu-

fer a virtual atrophy. . . . [A]chieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some years now.” *Id.* The amendment among other things introduced the words “socialism” and “secularism” in the constitution. *Id.* Further, it vested the Supreme Court with exclusive jurisdiction to question any central enactment on the ground of constitutional validity. *Id.* § 23. In addition, it required a minimum of two-thirds of the judges to declare any central of state law constitutionally invalid. *Id.* § 25.

41. *Id.* at 79 (citing *Minerva Mills Ltd. v. Union of India*, A.I.R. 1980 3 S.C. 1789).

42. *Id.* at 80–81.

43. *Id.* at 81–82 (citing *Sanjeeva Coke Mfg. v. Bharat Cooking Coal Ltd.*, A.I.R. 1983 S.C. 239).

44. *Id.* at 82 (citing *Unnikrishnan v. State of Andhra Pradesh*, A.I.R. 1993 S.C. 2178).

tions that lack this integrative symbolism and consequently have failed.⁴⁵ The thrust of Reddy's analysis tirelessly reflects preserving this constitutional symbolism.

The word "socialism" was introduced by way of the Forty-second Amendment of the Constitution to reaffirm the policy of equal distribution of property, national wealth, and resources among all sections of society. Reddy traces the roots of socialism in the Constitution as reflected in the directive principles. He describes the directive principles as a charter of social, economic, and political justice aimed to guarantee right to livelihood and education, equal pay for equal work for men and women, and local self-government.⁴⁶

Reddy observes that this type of pragmatic socialism fits the Indian model and refers to it as "constitutional socialism."⁴⁷ By the same token, Reddy makes a powerful argument for the right to strike as a fundamental right of collective bargaining, despite the negative trend of decisions in *T.K. Rangarajan v. Government of Tamil Nadu* and *State of Kerala v. James Martin*.⁴⁸ Further, he expounds the doctrine of socialism as the "essential step towards humanism."⁴⁹ However, this is a rather weak and undefended justification because it fails to consider the implications of an overly statist democracy. This oversight shows that judges can have deep convictions without systematic and rational enquiry into their beliefs.

Indian secularism is founded on the freedom to practice religion and protection to religious minorities. Reddy posits that secularism in the Indian context implies "a permissive attitude towards religion out of respect for individual conscience and dignity."⁵⁰ Reddy elaborately discusses the judgment in *S.R. Bommai v. Union of India*, where a bench of nine judges of the Supreme Court held that secularism was a basic feature of the Constitution.⁵¹ Reddy lauds the judgment as a "triumph for secularism."⁵² However, con-

45. See Dieter Grimm, *Integration by Constitution*, 3 INT'L J. CONST. L. 193, 195 (2005) (citing contrasting examples of the Weimar constitution which failed to integrate the people and the U.S. Constitution which symbolizes national integrity to show the importance that integrity has to the legitimacy of the constitution).

46. REDDY, *supra* note 5, at 73-74.

47. See *id.* at 142.

48. *Id.* at 190 (discussing *T.K. Rangarajan v. Gov't of Tamil Nadu*, (2003) 6 S.C.C. 581, and *Kerala v. James Martin*, (2004) 2 S.C.C. 203).

49. *Id.* at 139.

50. *Id.* at 157.

51. *Id.* at 157-60 (discussing *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918).

52. *Id.* at 160.

stitutional secularism in India ignores *how* the separation between religion and politics can be manifested. This issue is important because Indian secularism, unlike the Jeffersonian model, does not reject or exclude religious beliefs in any manner.⁵³ India is a pluralistic society. Thus, Indian secularism is derived from the principle of toleration and autonomy where people can live together in harmony and at the same time have their own exclusive beliefs.⁵⁴ Reddy's position on secularism reflects a sophisticated appreciation of the separation thesis in a pluralistic society.⁵⁵

Reddy observes that secular values must not be confined only to the state, but rather must also extend to individuals.⁵⁶ In this context, he cites three cases arising from election petitions objecting to offensive messages in election pamphlets, which appealed to Hindu revivalism.⁵⁷ The Supreme Court held that a call for Hindu nationalism was not anti-secular as Hinduism was not a religion in the strict sense, but a "way of life."⁵⁸ Reddy criticizes the judgments as a "violent blow to secularism" based on his broad understanding that even individuals must be hold secular values.⁵⁹

In this connection, a controversial issue often linked with political secularism is the issue of historiographical revision. Reddy suggests a rewriting of Indian history as a means to project the ideals of the Constitution and secularism.⁶⁰ The observation counters the status quo and argues for presenting historical problems from the point of view of pluralism. However, Reddy essentially stirs the familiar debate about objectivity and value based judgments in writing history to caution against improper historical writing.

53. See generally Rajeev Bhargava, *What is Secularism For?*, in *SECULARISM AND ITS CRITICS* 486 (Rajeev Bhargava ed., 1998).

54. See generally *id.*

55. See REDDY, *supra* note 5, at 150 (discussing *Bijoe Emanuel and Others v. State of Kerala*, A.I.R. 1987 S.C. 748). In *S.P. Mittal v. Union of India*, A.I.R. 1983 S.C. 1, Reddy upheld the right of a religious denomination to manage its own affairs. He also relies on philosophers Karl Marx and Bertrand Russell to express his own skepticism about the general idea of religion. *Id.* Reddy also tries to trace toleration through the ages in Indian history to show the religious diversity that existed across centuries. *Id.*

56. REDDY, *supra* note 5, at 164 ("The concept appears to be a little narrow. It is not merely the state but every citizen or group of citizens that are required to act in a manner not likely to cause injury to or create the hostility of another person . . . on religious differences.")

57. *Id.* at 160 (citing *Manohar Joshi v. Nitin Bhaurao Patil*, A.I.R. 1996 S.C. 796; *Dr. Ramesh Yeshwant Prabhao v. Prabhakar Kashinath Kunte*, A.I.R. 1996 S.C. 1113; *Bal Thackeray v. Prabhakar Kashinath Kunte*, (1996) 1 S.C.C. 384).

58. *Id.* at 161.

59. *Id.* at 160.

60. *Id.* at 172.

AN INSIGHT INTO THE INNER WORKINGS OF THE SUPREME COURT

The contribution of this book goes beyond the realm of academic constitutional discourse. It is an intrepid account by a judge who could think for himself and not be captivated by public fame or high position. It is this critical voice that makes his anecdotal information about the Supreme Court and the performance of its judges a veritable legal classic.⁶¹ For example, Reddy questions the appointment of judges on government appointed commission during judicial tenure.⁶² Similarly, Reddy disapproves the rule of seniority in the appointment of the chief justice as it deprives many talented and outstanding performers as was the case of Vivian Bose and K.S. Hegde.⁶³ Reddy observes that Subba Rao was one of the best chief justices the Supreme Court had.⁶⁴ Reddy credits Chandrachud's tenure at the Supreme Court as the "most productive period" in the history of the court.⁶⁵ He attributes the political climate of suppression of judges as the main reason for Chandrachud's mediocre performance.⁶⁶ At the same time, Reddy states that Chandrachud was the "master of the art of constituting benches so as to get the best out of the judges."⁶⁷ Reddy thus reminds us about the strategic impact of the chief justice on the decisional outcomes of the Supreme Court. The chief justice of the Supreme Court decides the composition of the constitutional bench.⁶⁸ This key aspect of institutional design is sometimes overlooked by scholars studying the factors influencing the Supreme Court's rulings during different eras.

In the last chapter, "Conscience Keepers of the Law?: Judges and Courts," Reddy remembers many eminent judges from Patanjali Shastri to R.C. Lahoti for their unique contribution to constitutional jurisprudence. For example, there have been several classical dissenting judgments in the history of the Supreme Court; most notably Fazal Ali in *A.K. Gopalan*,⁶⁹ H.R. Khanna in *ADM Jabalpur*,⁷⁰

61. Reddy is critical of former Supreme Court Chief Justice Venkatchalliah for his failure to intervene during the demolition of the *Babri Masjid (mosque)* by Hindu fundamentalist groups in 1992. *Id.* at 162–63.

62. *See id.* at 307.

63. *Id.* at 308–09.

64. *Id.* at 309.

65. *Id.*

66. *Id.*

67. *Id.*

68. *See id.*

69. *Id.* at 30 (discussing *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27).

70. *Id.* at 315 (discussing *ADM Jabalpur v. Shivakant Shukla*, A.I.R. 1976 S.C. 1207).

and P.N. Bhagwati in *Bachan Singh*.⁷¹ Reddy compliments such decisions and the judges who made them, including Krishna Iyer as a judge with a “bleeding heart for the underprivileged,” and P.N. Bhagwati as “an excellent craftsmen.”⁷² These cursory observations are like judicial folklore: useful for scholars interested in studying the ideological predilections of justices of the Supreme Court. In the final analysis, Reddy acknowledges the progressive role of the Supreme Court in protecting social and economic rights and is careful not to overstate the case.⁷³

In summary, Chinnappa Reddy gives an evolutionary account of Indian constitutionalism by describing the progressive expansions and periods of decline of the Supreme Court in social and economic rights adjudication in India. His commentary shows that a constitution is not merely a power-map that limits state power or regulates the structure between the branches of government: it represents a commitment to emancipation and social democracy. Reddy maintains a critical distance in his tenor and analysis and succeeds in raising the debate about the relationship of freedom and equality in Indian constitutional law.

71. *Id.* at 310 (discussing *Bachan Singh v. State of Punjab*, A.I.R. 1980 S.C. 898).

72. *Id.*

73. *Id.* at 314.

