OUR COURTS ON TRIAL (1987). By V.R. Krishna Iyer. B.R. Publishing Corporation, Delhi. Pp. x + 164. Price Rs. 75.

THE BOOK[1] under view is a collection of author's speeches and articles. It has eight sub-titles but the common theme is one--a critique of judicial system. The author warns that our courts are on trial and if judges do not play their role to achieve creative mutations in the judicial process, the frustration of the disillusioned masses hungering for justice would blow up. He believes that the dilemma before courts is "between Proprietariat Jurisprudence" through writ power and "Garibi Justice through a radical rule of law. Both are in evidence in our mulatto legal system but the former dominates although the latter makes news."[2] The "avant-garde jurists" and "radical judges" promising to wipe every tear from every eye are "unwitting *maya-mongers* playing the game within the bourgeois parameters."[3] When these "super-artists of verbalism, plead that their heart bleeds for the poor and that their head rages against the elite managers of the people, no ideological conclusions upset their moral digestion."[4] They are, "as a cadre, the highly respectable Brahmins of State Power and, like ministers, MPs and the top brass in the civil services, ask for more for themselves with class-conscious, robe-conscious avidity."[5]

Throughout the book the author argues that the class consciousness of judges compels them to construe "the Constitution to defend bourgeois interests and resists structural changes in the economic order."[6] He warns "judicial imperialists" not to "tear down secularism and promote communal enclaves in the name of minority rights," or privatise the economy by striking down schemes of nationalisation and acquisition, or labour legislation. He says that if educational reforms and even abolition of capitation fee are "shown down with judicial missiles, then 'robbery' might be robbed of its aura and authority."[7] Even the basic features doctrine has been described by him as creating a "bizarre barrier to progressive legislation"[8] and constituting a riddle and "the politics of the majority on the Bench."[9]

How to eliminate the class bias of judges? The author's reply is that this can easily be achieved by appointing "radical" judges. But unfortunately, the socialists and radicals have only a dog's chance of being appointed because ministers and justices quite often wear communal and political glasses in the recommendation exercise. According to the author:

It is the advocate of yesterday who has, without scruples, evaded or

1. V.R. Krishna Iyer, *Our Courts on Trial* (1987).
2. *Id.* at 150.
3. *Id.* at 136.
4. *Id.* at 136-37.
5. *Id.* at 137-38.
6. *Id.* at 44.
7. *Id.* at 150.
8. *Id.* at 146.
9. *Id.* at 147.

> avoided tax, 'fixed' benches, practised communal politics, bribed the gods of politics and established good public relations and, through cute arts, cultivated clients and managed judges, who becomes the District Judge or High Court (or Supreme Court) Justice later.[10]

The book is replete with author's diatribe against the growing delinquency and professional deviance among judges. He says that a study of obscurantism, illiteracy, favouritism, nepotism, and delinquency of many in the judiciary makes one blush. Bench prejudices, loyalties to caste and communities, misuse of joint residences of judges by their relatives, undue hobnobbing with dubious friends, pleading with ministers for posh house sites and other monetary bonanzas including inquiry commissions, are the instances of judicial misdemeanour. The author recommends severe punishment to judicial delinquents who cannot be left to the extreme remedy of impeachment. He suggests the creation of a judicial *Lokpal* (ombudsman) or commission at national level to enquire into allegations of moral turpitude, corruption and nepotism by judges. Such a commission, to be set up under article 263 of the Constitution, should be manned by highly reputed sitting and retired judges of the Supreme Court and High Courts to the complete exclusion of members of the executive and the bar.[11]

The author is strongly opposed to any increase in the emoulments and other privileges of judges of the Supreme Court and High Courts. At several places, he virtually condemns the "hedonistic wave and monetarist craze that have appetised judges into unblushing demands for more and more."[12] This "Maharaja syndrome" is a "vicious slur" on the sanctity of the office, ignoring many benefits they still enjoy like a free furnished bungalow, electricity and water, unlimited free telephone calls, free chauffeur and peons and free medical aid besides prestige, status and power.[13] He believes that social justice demands social conscience and not a fat pay and, therefore, it is "obnoxious to consider the commercial philosophy of multiplying judicial salaries to tempt the large income brackets of the bar."[14] To him, even our good judges look enviously at pampered ministers, pity themselves and demand that in the warrant of precedence "they must be allowed to sit with cabinet ministers, allowed to fly national flag like ministers and allowed state guest facilities even on private visits anywhere in India."[15] The author believes that the "robed Maharaja" syndrome ill accords with the judicial passion for social justice for the poor and the victimised. If the judicial focus turns on "self" and if the feeling for the deprived masses will be from the "commanding heights of cosy security," "social justice will be a judicial casualty in Gandhi's country."[16]

The reviewer, however, feels that the poverty of justices of the Supreme

10. *Id.* at 16.
11. *Id.* at 20-22.
12. *Id.* at 33.
13. *Id.* at 29, 33-34.
14. *Id.* at 29.
15. *Id.* at 34.
16. *Id.* at 35.

Court and High Courts has nothing to do with social justice for the poor. Why should only they be asked to live like Gandhi, in order to be responsive to socialist slant of the Constitution? Why should they be called "robed Maharajas?" How is the question of judicial reforms closely linked with their emoluments?

In the same vein, the author is strongly opposed to the increase in the strength of the Supreme Court. According to him, it is a fallacy to think that this will solve problems of arrears, delay and the docket backlog. On the contrary, the large number of judges will turn the court into a crowd, producing confusing and inconsistent decisions besides encouraging politics among judges. In addition, it would provide opportunities to "adventurists and second-rates, communal favourites and political cloutists" to rise to the judgeship.[17]

The views of the author did not, however, find favour with the government and as early as 1986 a law was passed by Parliament increasing the strength of the Supreme Court. The emoluments of judges of the court and High Courts have also been enhanced with some fringe benefits. But the government has not accepted the proposal to increase retirement age from 65 to 70. On the proposal of increasing the age of superannuation, the author says that, if this proposal is accepted, the "wrinkled judges will be happy that their robed life will be longer. But the nations's goal is different."[18]

The greatest contribution of the book lies in its focus on the shortcomings in the judicial process. The author is opposed to many appeals which ruin the people. He wants electronic revolution and computerisation for the quick disposal of cases. He wants copies of judgments to be delivered to parties on the same day with the help of machines. He wants that rules of procedure and evidence should be drastically reformed and rationalised. He wants that judges should be assisted by professional and technical experts. He wants a research and development wing for the court system.[19] These indeed are valuable suggestions and require careful consideration.

The author's reactions and reflections on the institution of public interest litigation are very significant. Being himself one of the originators of this concept, he welcomes the growth of epistolary jurisdiction, the use of commissions for social investigation, and affirmative judicial action on the initiative of *pro bono* public interest litigators.[20] He rightly remarks that the basic goal of public interest litigation is to undo class bias of the court process and impart to it a mass bias so that justice can reach the poor and oppressed. But he is distressed to see that the new litigation has not been universally accepted by the bench and bar. The enclaves of judicial activism are scattered and small, and concentrated only in the apex court in the midst of strong opposition by legalist judges. The result is that litigation by surrogancy is placed at the mercy of "judicial humour" today.[21] He suggests that public interest litigators should have a statutory status

17 *Id* at 30
18 *Ibid*
19 *Id* at 6-9, 30-31
20 *Id* at 51-53
21 *Id* at 65

to initiate and intervene in such cases and there should be a comprehensive legislation codifying the broadened concept of *locus standi* and class action.[22]

Every line of the book deserves a careful reading and reflection. The only flaw is that there are repetitions and an overlapping of thoughts, which could have easily been avoided by editing it properly. It is full of quotable judicial quips but without adequate footnotes, making it difficult for a curious reader to follow up the study.

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22. *Id.* at 51-53, 65.

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