JUDGMENTS BY O. CHINNAPPA REDDY—A Humanist (1989). By R. Venkataramani, International Institute of Human Rights Society. Pp. xxii+316. Price Rs. 90.

IF THE history of the world is but the biography of great men, the history of the Supreme Court is the life history of great judges. If it is so, one may ask, what is the criterion of a judge's greatness. Under a Constitution endorsing an ideology and in a social milieu tormented by poverty and inequality identification of a criterion of greatness of a judge may not be problematic. Is a judge committed to the ideology enacted by the Constitution? Does he subscribe to the radical structural changes envisaged in the Constitution? Does he subscribe to refreshing democratic liberalism? Does he look upon the court as a poor man's court and the Constitution a poor man's resource? If we apply these parametre only those judges who articulated the compulsions of the Constitution's ideology and contributed to the strengthening of political democracy and the ushering in of economic democracy can lay claims to greatness.

There have been eminent judges committed more to political than to economic democracy, Subba Rao and Hidayatullah, for example. There have also been judges like Gajendragadkar and Wanchoo, responsible for the judgment that led to the seventeenth amendment. Justice Wanchoo's dissent in *Golaknath* and unanimous judgment in *Namboodri* make him a complex person. There have, however, been judges committed deeply to political as well as economic democracy though at a critical moment in our history their commitment to political democracy wavered and dithered. Viewed from this perspective justice Chinnappa Reddy is one of the very few judges who remained loyal to the Constitution's ideology. It is a tragedy that because of his socialism he was kept away for some years from the benches that decided landmark cases under the socialist Constitution. While economic conservatism was deeply embedded in the lore of law by the time he came on to the court, with justices Krishna Iyer, Bhagwati and Desai struggling to remove it. From the lore of law the unfettered and unguided power of the Chief Justice to constitute benches deprived the court of the services of a judge who could have made the Constitutional jurisprudence functional to radical structural changes. It is, nevertheless, interesting to see how justice Reddy shaped and fashioned the jurisprudence dysfunctional to radical economic change.

The book under review[1] answers this question. In "a personal note" Venkatramani describes his book with poetic shyness as "a tiny treatise on some flowers of justice" exuding compassion, condensed with concern for the poor and containing persuasions of humanism. He draws attention to the cases in which justice Reddy had brought comfort to the starving textile

1. R Venkataramani, *Judgments by O. Chinnappa Reddy* (1989).

mill workers in Pondicherry and the catering cleaners of southern railway exposed to the hardships of contract labour. He refers to the variety of issues in which this versatile judge has made creative contributions without of course, sparing his un-Chinnappa Reddy like opinions in some cases. Justice Venkatachaliah rightly compliments the author in his foreword for enriching legal literature by gathering the scattered judgments of justice Chinnappa Reddy into one volume. How I wish similar courtesy was extended by us to Krishna Iyer, Desai and Bhagwati too.

Although the author says that his book is not a critique, his criticism of justice Reddy's controversial opinion in *L.I.C. of India* v. *Escorts Ltd.*, involving a struggle for corporate control between shareholders, is well founded. In this case justice Reddy asserted that state action belonging to private law was not subject to judicial review. He distinguished contractual obligations of the state from its public law obligations to hold that in the former case the state stood on the same footing as a private party and so its contractual obligations were governed by the terms of the contract, which were not justiciable under articles 226 and 32. The author asks rightly:

> What made Justice Reddy...desist from applying to the case the tools of analysis of the working of the creative genius of the bourgeoisie who invented the corporations, companies and cooperatives.. to consolidate and stabilise the capitalist system of society under whose aegis alone the exploiting class could thrive?[2]

Justice Reddy himself has answered this question. His contention is that "problems of high finance and broad fiscal policy are not and cannot be the province of the Court for the very simple reason that we lack the necessary expertise". He also said that the court would like to devote more of its time and attention to the lilliputian farm labourer or pavement dweller. The author has not drawn attention to the treatment meted out by the court to the slum and pavement dwellers in Bombay without any protest or dissent from justice Reddy. All the same when the corrupting culture has almost obliterated the distinction between public and private and filial devotions and familial obligations have run amuck is the court right in treating the state on par with a citizen in a case involving matters of high finance?

In his foreword justice Venkatachaliah says that justice Reddy, who is far ahead of his times "chose new ingredients from the social and economic compulsions of a society, grimly struggling to break the ancient shackles of poverty, ignorance, superstition, social inequalities and economic and psychic exploitations."[3]

Justice Reddy's choice of these new ingredients was influenced by his deep

2. *Id.* at 189.
3. *Id* at xvii.

commitment to an ideology known for its skilful and sympathetic analysis of the problems of the poor and the powerless. The general belief in India was that the Constitution embraced socialism only when the word *socialist* was written into the preamble of the Constitution. Justice Reddy pointed out in *Sanjeev Coke* that "that socialism has always been the goal is evident from the Directive Principles of State Policy." He said further that the "amendment was only to emphasise the urgency." He held that 'material resources" in article 39(*b*) covered resources owned by individual members of the society also and that "distribute" in the same article was used to take in all manner and method of distribution and not just retail distribution. He also said in a significant passage:

> Scales of justice are just not designed to weigh competing social and economic factors. In such matters Legislative wisdom must prevail and judicial review must abstain.[4]

The significance of this statement may be evident only if it is seen in the perspective of the Constitutional history. The decisional law of the court from the 1950's to the late 1970's shows that the court pursued a policy of judicial self-restraint in the area of civil and political rights and of judicial activism bordering on judicial imperialism in economic matters. Justice Reddy wants the court to switch over to judicial self-restraint in economic matters by respecting legislative wisdom.

The development of the doctrine of equality in the cases on equal pay for equal work, by Justice Reddy should also be seen in perspective. Although at the time of the framing of the Constitution the leading economists in the world had argued on the basis of the experience of the West that economic inequality was essential for rapid economic growth and that there should be a trade off between growth and social justice, the directive in article 38 to remove economic inequality and to secure social justice and the disenfranchisement of the structures bolstering up inequality by article 39 show that the framers of Indian Constitution had rejected the economic theory of the *sycophants, of inequality*. Further, in the reviewer's view, the Constitution's response to poverty is manifest from the cumulative compulsion of the equality provisions in the Constitution. As poverty and inequality are conceptual associates sustaining and reinforcing each other, the equality provisions rest on the assumption that reduction of inequality tantamounts to reduction of poverty. As the equality provisions in parts III and IV of the Constitution have an identical purpose, only a mental cramp will make us see conflicts and contradictions between article 14 and articles 38 and 39.

But in a long line of cases the Supreme Court read into article 14 legal equality, which in a social milieu with glaring economic inequality will remove inequalities associated with capitalism. This judicial subversion

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4. *Id.* at 72.

of article 14 resulted in a discord between equality before law and removal of economic inequality, redistribution of the means of production and removal of concentration of wealth. So much so the court even refused to see the nexus between equal pay for equal work and right to equality. Egalitarian ideals thus floundered on the rock of the right to equality in article 14.

Now Justice Reddy has brought into sharp focus the nexus between them and integrated equal pay for equal work into the right to equality. Following this lead the court should now authenticate the thematic unity, the identity or purpose and the similarity in the goal values of articles 14, 15 and 16 and articles 38 and 39, and weave the latter into the former. The Constitutions response to poverty will then spring into full and effective view making it possible for the court to develop a socialist doctrine of equality. Let us remember that Eastern Europe has not reduced socialism to a footnote in history.

The Supreme Court's recent reversal of Justice Chinnappa Reddy on the impact of a two year delay in the execution of a death sentence on the validity of the sentence invites a comment. According to Justice Reddy delay in the execution of death sentence causes terrible mental torture to the death sentencee and so a two year delay in this regard renders the death sentence unconstitutional necessitating its reduction to life imprisonment. He relied on the right to speedy trial read into procedure in article 21. But now the Supreme Court says that judicial delay has no impact on the validity of the death sentence as the court is not state and fair trial is in the interest of the accused. So only executive delay in the disposal of a mercy petition would have an adverse impact on death sentence.

Ever if the humanism of Justice Reddy is glossed over, it is difficult to see why executive delay but not judicial delay causes mental agony and torture to the death sentencee. It is also not easy to see how the right to speedy trial governs the executive dealing with merc petition when it does not govern the judiciary having a monopolistic control over trial of criminal cases. And why should the judiciary be supra fundamental rights when some of these rights are addressed to it ?

Constraint of space prevents the reviewer from bringing into focus the creative opinions of Justice Reddy on such vital issues like secularism, freedom of conscience, political affiliations and government service, compensatory discrimination, minority rights, detention without trial, natural justice and the like. There is no doubt whatsoever that the author has made a commendable effort to present to the law men the remarkable judgments of a more than remarkable judge. To read this book is to be rewarded richly.

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