"The Fair Name Of Justice":
The Memorable Voyage of
Chief Justice Chandrachud

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Yashwant Vishnu Chandrachud, who retires on July 12, 1985 after serving India with unusual distinction as her sixteenth Chief Justice, for an unprecedented tenure of seven years in that capacity, will be remembered with affection and pride as a gentleman judge who strove to uphold dignity of discourse amidst the disintegration of a whole tradition of lawyering and judging. He came to the Supreme Court in the very decade which saw its emergence as a powerful political institution and his tenure as a Justice began, more or less, with the historic assertion of the possession of constituent power by the Supreme Court in Kesavananda Bharati; his career as Justice was to be shaped by the trauma of challenges to preserve residual liberties of Indians in the teeth of the emergency of 1975-1976. His elevation as a Chief Justice of India was preceded by an ungenerous attack on his integrity as a judge by leading lawyers through the Bombay Memorandum. His first three years as Chief Justice saw marked dissension within the Court, not just on ideological but on personality grounds. Since 1979, when the Supreme Court of India at last began to become a Supreme Court for Indians through social action litigation (miscalled public interest litigation) the Chief Justice had to mediate conflict of ideology and style of justicicing amongst his senior brethren. Chief Justice Chandrachud had to perform the unenviable tasks of implementing an inchoate policy of transfer of High Court justices, tasks which in turn were to be adjudged in the notorious Judges Case. And he had his own share of problems in negotiating appointments to the High Bench with his constitutional fellows, including the President of India, the Prime Minister and the Law Minister of India. At no other time in Indian history, the Supreme Court was so controversial and so relevant to India's destiny as during Chandrachud's tenure as Chief Justice.
For Chief Justice Chandrachud, the voyage to justice was unduly turbulent; there was constant pitching and rolling; there were threats of mutiny; and some terrifying moments of uncertainty in the eye of the storm. It was lonely and anguished seafaring; and it did not help very much to drop anchor, from time to time, at the shores of America and England; the jurisprudential cargo proved difficult to unload, unlike in the fifties and sixties. India was now ready for its own homespun jurisprudence; and it became the destiny of Chief Justice Chandrachud and his brethren to forge and fashion it, with all the splendour of its rawness.

For a gentleman judge, who was always unwilling to strike and afraid to wound, the passage was even more turbulent. The times called for not just high state:personship but a remarkable managerial ability to deal with the hurly-burly of politics in the capital, the ability to deal with men and women for whom supreme power was the sumum bonum. Yashwant Chandrachud had neither the time nor the temperament to develop a courtier jurisprudence nor the ability to manoeuvre those in power to the ends of justice. He, rightly, refused to accept that power is the supreme virtue, bringing with it knowledge, wisdom, rationality and judiciousness.

The result, overall, was an anguished judge and a tormented Chief Justice of India. If the Supreme Court of India would have some day its own Shakespeare, the Chandrachud years will be recalled as its Hamlet years; years over which the impulse to take right decisions was smothered by the inability to realize these. Perhaps, in this, Yashwant Chandrachud symbolized the career of all those who loved India and wanted to take her to greater glory but proved themselves inadequate even to combat her sacrilegious demotion to a sub-continental full of harrowing injustices. Chief Justice Chandrachud was at least candid enough to acknowledge that all that he, and the Court, could do was "the modest best". If in the eye of the exploited masses of India, and therefore in the eye of Indian history, this modest best may not even seem good enough, there is consolation to be had from the fact that there was anguish and struggle and not the placid bourgeois delight in the misery of masses as a sure sign of a good social order.

To review Chief Justice Chandrachud's work on the Supreme Court is thus to explore a vignette of contemporary Indian history, a daunting task at best of times. Even the fact that I had the privilege of knowing the man and the judge for well over a decade does not embolden me to essay this task comprehensively. It is a privilege to be asked by Dr. Raj K. Nigam and Dr. O.P. Motiwala of the Documentation Centre for Corporate and Business Policy Research to contribute to this Chandrachud Reader (a literary genre which I was privileged to initiate in India with the Mathew Reader in 1978). I am also aware that no comprehensive review of Yashwant Chandrachud's work is as yet possible, as even the book is being released he is burning the midnight oil to complete his judgments. These include the historic verdict on whether the impoverished urban poor of Bombay have in Article 21 fundamental right to live on pavements. No matter how these cases are ultimately decided, the fact that they were allowed to crowd the agenda of the Court and burden its conscience speaks volumes about the democratization of judicial process which can safely be dated with the Chandrachud years on the Court.

In many ways, Chief Justice Chandrachud represented the best traditions of the Indian Bar. In this sense, he will always be recalled, with high esteem, as a lawyer's judge. Unfailingly polite, urbane to a fault, widely read not wearing his learning on the sleeve, insistent on justice according to the law and solicitous of language and diction, Yashwant Chandrachud cherished the dignity of discourse as the principal reassurance for doing justice. He was agonized by trends which pointed to the disintegration of the tradition of the Indian Bar. But he was not discouraged by this from looking at the brighter and nobler side of the legal profession which he reiterated on and off the bench. Thus, on the occasion of the First Law Day he put forward as a truth that the lawyers "have been the highest type of citizens":

"The truth is that in all ages the lawyers have been the highest type of citizens. In every struggle for liberty, justice and right, the lawyer has been in the lead. In 1215 at Runnymede the people of England forced King John to sign a guarantee of their liberties known as Magna Carta. The man who drafted that instrument was a lawyer. Thomas Jefferson, who wrote the Declaration of American Independence, was a lawyer. Abraham Lincoln was a lawyer, Mahatma Gandhi and Pt. Jawahar Lal Nehru were also lawyers. The inspiring spring of the dedication to peaceful and non-violent means of one and of the socialist idealism of the other can readily and reasonably be traced to the commitment of an ideal lawyer to the rule of law and to the faith of the visionary lawyer in law's social purposiveness. When Jesus Christ was crucified, there were more than a million people present. Out of that milling multitude, only two men stepped out to claim his body and gave it a decent burial. Both of them were lawyers."

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These are memorable words, celebrating the great ideals of the legal profession. And soon after the emergency, in dealing with cases of transfer of justices during the emergency, Justice Chandrachud complimented “the gentlemen standing in black robes, though small in numbers, championed public causes with a courage which dumbfounded even that world in which Martin Luther King and Lord Coke had lived and died”. This is a warmhearted and noble tribute, the like of which may not be found in the annals of the world judicial archives.

But, as the Chief Justice himself noted, such lawyers were small in number; and during his twelve year tenure on the Court he not merely saw even this number decline further but also found that the bulk and generality of the profession refused to be summoned to high ideals by his nobly impassioned rhetoric. Lawyering, even for senior leaders of the Bar, is principally a source of affluence and influence, and a career which brings power without accountability. The bulk of the Bar has systematically profaned, and continues to do so, “the world in which Martin Luther King and Lord Coke lived and died”.

Indeed, aside from a few lawyers and that, too, in crisis situation, the senior leaders of the Bar—who over the years have publicly lamented the decline in the Supreme Court—have neither shown the least courage nor a spirit of sacrifice; they have not even allowed the possibility of their elevation to the High Bench to emerge. Chief Justice Chandrachud, like many of his predecessors, was unable to persuade a single eminent counsel to accept elevation. In fact throughout its existence only two members of the Bar have adorned the judgment seat.

Not merely this. The Supreme Court Bar did not relax its insistence over its hegemony over the Justices. For example, it threatened a strike in 1982 when the Chief Justice initiated through a circular a number of changes enabling expeditious disposal of a small category of matters which would be disposed off without any hearing. The Chairperson of the Supreme Court Bar Association declined to see the Chief Justice of India, despite his invitation, until the membership authorized him to do so. In the event, even this minor reform had to be dropped. Browbeating justice is also a standard tactic; but this reached its nadir in the West Bengal Poll case, involving five counsel of eminence (including Shri Ashoke Sen) where written allegations of bias against a Bench (comprising Justices D.A. Desai and A.P. Sen) were neither withdrawn nor substantiated; the case could only proceed after Chief Justice Chandrachud, in a dramatic hearing, persuaded counsel to extend an apology; this happened after much haggling over the formulation of apology.

These are dramatic instances which come to public attention in the manner of the tip of the iceberg. But the continuous insistence on decorum by the Chief Justice, both on and off the bench, is suggestive of a lot of things wrong in the state of Denmark. Thus, though himself a man of liberal inclination, Chief Justice Chandrachud protested rather sharply when a junior woman counsel appeared in the Court in bell-bottom trousers; there was no male chauvinism in this protest (which attracted frontpage national headlines) but only a plea for decorum. Similarly, as recently as April, 1985, he reiterated (speaking before the Saurashtra Bar) his insistence that counsel should not be rude or crude in their dealings with judges. A content analysis of his public speeches would, no doubt, reveal occasions which marked serious breaches of the tradition of law of which he was, remained unflinchingly to the last, amongst the finest products.

And yet Chief Justice Chandrachud refused, against all evidence, to believe that legal profession in India was increasingly acquiring attributes of trade and business. As late as 1984, he insisted, for example.

Whatever be the popular conception or misconception regarding the role of today’s lawyers and the alleged narrowing of the gap between a profession on the one hand and a trade or business on the other, it is trite, that traditionally, lawyers do not carry on a trade or business nor do they render “service” to customers.

In a sense, the traditions he invokes are no longer operative; and it was a positively romantic conception of how lawyers’ firms work which made him decline to hold that a lawyer’s office (even though an industry under the omnibus holding of Justice Krishna Iyer in the Bangalore Water Supply) could ever be considered a “commercial establishment” or a “shop”. He explicitly refers to “old memories” when he says:

If current trends are any indication and if old memories fall not, the earnings of lawyers’ clerks cannot, in reality bear reasonable comparison with the earnings of commercial establishments, properly so called. They, undoubtedly, work hard but they do not go without any reward. They come early in the morning and go late in the evening at night, but that is implicit in the nature of their duties and the time they spend is not a profitless pastime.

The perceptions of “current trends” and invocation of unfailing “old memories” compel the conclusion that the “welfare of those who work in lawyers’ offices” concerning which His Lordship expresses (with Justice Tuzzapurkar) touching solicitude, can be “ensured” in many other
What these ways are is not clear; but it is clear that they are not socialistic as envisaged by the Constitution.

Overall, then, Chief Justice Chandrachud preferred to exhort and summon the Bar to be true to its tradition; he did not use his power and standing to remove the growing asymmetry between the Bar and the Bench. He preferred a didactic role to an activist/interventionist role. Of course, the didactic role could not succeed as the formation of material interests only yield, if at all, to the operation of power. But an activist use of his powers would have occasioned confrontation; and the Chief Justice did not relish such a prospect. Rather, he preferred a consensual model of changing the ways of the Bar. There was no possibility of any basic reform of judicial administration through such an approach for the simple reason that it would require the Bar to willingly surrender its hegemony which is instrumental in maintaining its affluence. Chief Justice Chandrachud's regime is distinguished by its allegiance to didactic consensual modes of change; it suggests for his distinguished successors the need to try alternate models of action. If this institutional learning does not occur, the Supreme Court will neither remain "supreme" nor perhaps even a "Court" (in the sense of a prime locus of constitutional authority) in the years ahead.

III

Aside from the aspect of a struggle with the Supreme Court Bar for reforms of administration of justice, the Chief Justice had many other opportunities to reshape the institution. Justice Chandrachud moved slowly but surely. Both the staff and the budget of the Court increased during the Chandrachud years. At long last, acoustic aids also arrived for the time being; they were so efficient as to amplify even fraternal whispers (which often determine the course of justice) to the delight of the legal correspondents and the more crafty ones in the Bar. The Supreme Court building, too, expanded; although the new judicial chambers compared unfavourably with the more spacious old ones. Some sort of order, I believe, was brought into the allocation of lawyers' chambers in the Court premises; and though late in the day, microprocessors also arrived. The Supreme Court was also able to get five Asiad cars; there is an impression around that more could have been obtained.

This was some progress, although Chief Justice Chandrachud was not able to introduce computerized information retrieval for the Court, which is necessary to prevent the unedifying spectacle of different benches working at cross purposes in relation to the same matters or controversies, indeed to a point that when judgment in one matter is about to be delivered counsel are able to bring to the notice of the justice that a similar matter is pending before another bench thus often inhibiting the conclusion of both. Nor was Justice Chandrachud able to proceed with proposals for microfilming of Court's records. The Supreme Court of India is the country's highest Court of Record; and yet the records are the most difficult to trace. He was not able to scrap the system of classification of judgments by Justices as 'non-reportable', introducing an element of censorship affecting communication of the law made by the Court and declared by the Constitution as binding for all courts and tribunals throughout India. I had myself ventured to greet the Chief Justice in his chambers soon upon his elevation with a list of things that needed be done, especially in relation to computerization and microfilming and decensorship. This agenda now passes on to the seventeenth Chief Justice of India.

In terms of corporate nature of the institution, one finds that the tenure of the sixteenth Chief Justice of India saw the emergence of new stresses and strains for a whole variety of reasons. In a sense, the 1973 supersession (followed again in 1977) ushered in uncertainties, and lobbying on all sides, creating new dependencies and alignment everywhere. The aftermath of the emergency characterised by the systematic delegitimization of some of the incumbent Justices of the Bar, and the induction by the Janata Government of Justices on the specific criterion of their having 'stood up' during the Emergency, aggravated tendencies towards institutional disintegration. The Supreme Court began, in the post-emergency period, to rapidly lose its corporate character; and it began its great march towards its transformation into an assembly of individual justices.

Chief Justice Chandrachud, though inadvertently, aided this process at least by two outstanding public articulations. The first was soon after the emergency when His Lordship gave an insider's view of judicial dynamics in the infamous decision in Shiv Kant (nabees corpus case) and in effect said that he wished that he had the courage to resign at that stage; in a sense, it was belated but handsome, and sincerely agonized, apology from one of the most distinguished justices of India to the people of India. But that left his colleagues, especially the survivors on the Bench, in a uniquely embarrassing position. The second articulation came in the wake of controversy, inaugurated by four law teachers in an Open Letter to the Chief Justice of India, concerning the judgment in Mathura rape case. In a public meeting, Chief Justice Chandrachud complimented the authors of the Open
Letter and made observations which suggested that the decision was wrong in law and unjust; this, in turn, misguided some women's organizations in leading a procession to the Supreme Court demanding a review. The review petition was irately dismissed by the Brethren of the Chief Justice who had sound reservations on this extra-curial verdict on their work.

Both these articulations were, to my mind, wholesome and arose out of the climate of judicial populism in the wake of the revocation of the emergency. But they ruffled the sensibilities of justices who did not appreciate going public. The style of extra-curial legitimation reached its zenith when an incredibly emotional letter written by Justice Bhagwati found its way to the national press, unlike the other three letters, even though more restrained, addressed by sitting Justices of the Supreme Court to Prime Minister Indira Gandhi in the wake of her electoral triumph in 1980.

The dissensions continued to grow, in the full glare of media; never before in its history did the Supreme Court goings-on made such a good copy. The differences between Justices Chandrachud and Bhagwati, real and alleged, were exploited not merely by the print media but also by the members of the Supreme Court Bar, retired and sitting Justices of the Supreme Court, bureaucrats and ministers, and even by sitting justices themselves. Itself lacking an effective public relations office, the Supreme Court continued to be buffeted by gusts of unsavoury grapevine gossip and uncontradicted press reports. And the interpersonal feeling of hurt and estrangement grew apace among concerned Justices. When the full history of this period is written, one would be able to appreciate how a vital national resource -- the dignity and the office of the Chief Justice of India -- was irreversibly eroded. The inter-personal bitterness acutely surfaced in observations from the Bench and even in written opinions as well as in public speeches by sitting justices.21

The personal and the ideological conflicts merged into one. But, for the people of India, that is the Atisudras (the social and economic proletariat, in Babasaheb Ambedkar's phrase) it was the ideological conflict in the Chandrachud years which was far more crucial. The immediate populism, in the aftermath of the emergency which gave us Maneka Gandhi22 and the prison justice decisions,23 paved way for social action litigation and expiatory jurisdiction, liberalizing standing for the redress of violation of fundamental rights by governmental lawlessness.24 Despite some initial resistance, the Supreme Court of India now vibrates with the impulse to realize fundamental rights of im-

poverished masses, aided by a youthful brigade of academic lawyers, social activists, journalists and miniscule minority of the professional lawyers.

Chief Justice Chandrachud deserves national appreciation for his active toleration of rapid judicial innovations, pioneered by Justices Bhagwati, Krishna Iyer, P. Chinnappan Reddy and D.A. Desai. An initially hostile legal profession, supported on this issue ably by his senior Brethren, (not to mention the frowning top echelon bureaucracy at judicial incursions into their realms and the embarrassment of nation's leading political actors) could have persuaded any Chief Justice, so already inclined to curb, in various ways, the growth of social action litigation. It is a notorious fact about power that while it is difficult often to exercise it beneficently, it can be all too easily exercised malignantly against innovation and change. The Chief Justice resolutely resisted all pressures, within and without the Court, including those which at no time can be mentioned in print for the greater good of the nation, to lend his standing and authority against social action litigation. Indeed, he helped its institutionalization by developing practices and rules making it a normal part of the Supreme Court docket.

At the everyday working level, aside from these conflicts, Justice Chandrachud helped weaken to some extent the corporate character of the Court by protesting from the bench against the Forty-Second Amendment requirement that a seven-judge bench should be constituted to dispose of matters challenging the constitutionality of legislation. The Forty-Fourth Amendment, in the Janata Years, saw a repeal of this provision. Of course, even when legitimate in itself, this norm did create a considerable strain on the Court overburdened with rapidly growing arrears. Indeed, the phenomenon of runaway expansion of Court's work has led to a more frequent empanelling of two-judges bench in the Chandrachud era than at any time in the history of the Court.25 This, of course, constituted a further fragmenting force.

The Chandrachud years also saw the growth of a rather lamentable tendency: a tendency to which His Lordship himself referred to, in his First Law Day address, gently, as always, as "not-so-chronic delays in decision making" in the Court.26 What was perhaps no-so chronic in the early eighties has now, with respect, become endemic. Towards the retirement of any of the colleagues, large number of judgments are delivered; that, in itself, at least ensured some expedition. But the tendency of giving orders now, with reasons to follow (and the reasons take their own sweet time) has noticeably grown, inviting anguish and protests from time to time by some Justices.27 And at least one senior
Justice seems impervious to even the modicum standards of judicial accountability; he has, during the Chandrachud years, accumulated, on one count, close to fifty judgments which he seems disinclined to expedite even after a period of three years. The Seventeenth Chief Justice owes to the nation the formulation of a new discipline in the Court. I do not underestimate the difficulties of any Chief Justice in such matters; after all, the Chief Justice is only first among equals. But she is first and that unfortunately casts on her the unenviable burden, when friendly nudgings fail, to evolve some kind of disciplinary regime. With all its modern wisdom and technology, the world has still to formulate ways of accomplishing a miracle whereby an omlette could be made without breaking an egg. The Hindu way of sidestepping the problem by recourse to vegetarianism is, alas! not an answer to the institutional problem of ever-so chronic delays in decision-making in the Supreme Court.

A further indicator of the decomposition of the Supreme Court is to be found in the initial observations with which he prefaced his dissenting opinion in Kesavananda and the initial observations of Justice Bhagwati in Minerva. Justice Chandrachud in Kesavananda explains his separate dissenting opinion by the fact of the Justices being “over-taken by adventitious circumstances” including the time taken by counsel, and “date-line” set by the retirement of the learned Chief Justice; he regrets that there “has not been enough time, after the conclusion of arguments, for an exchange of draft judgments amongst us all”28. In Minerva Justice Bhagwati invoked the very same observations to lament the demise of judicial collective.29c. The ‘adventitious circumstances’, the fatal foes of corporate character of the Supreme Court, remained unabated during the tenure of Chandrachud years.

IV

The ideological universe of Indian Supreme Court Justices is not easy to discover and delineate, so extraordinarily varied are their tenures and the nature of cases and controversies coming before them for adjudication. The lack of a dissenting tradition aggravates the task. And it is difficult to get at the deep structure of decisions, especially in constitutional adjudication, without a mature grasp of regressive and progressive tendencies in politics of the time. 30 Western labels and rubrics (like ‘conservatism’, liberalism, activism and restraint) further cloud understanding.30 What follows by way of an impressionistic account is subject to all these caveats and also to constraints of a publication deadline, which, as noted at the outset, precludes access to Chief Chandrachud’s swansongs.

A student of Justice Chandrachud’s work on the decisions is struck by judicial moderation, evidenced by a careful and judicious evaluation of conflicting social interests. Justice Chandrachud is clear that the constitutional division of functions or separation of powers is, in principle, good and ought to be made to work. It is through the institutional division of labour that the nation will progress on constitutional lines; and however strong the feeling that judicial intervention will set all things right, it must be resisted when it has the tendency to disrupt the balancing of powers provided by the Constitution. Institutional accommodation is crucial for preservation of democratic rights; attempts to preserve rights at the cost of endemic conflict between executive, legislature and judiciary are, according to Chief Justice Chandrachud, self-defeating.

Certainly, Justice Chandrachud does not believe that the Supreme Court should be subservient to the executive and the legislature; to be so would be to abdicate powers and repudiate duties under the Constitution. He accepts as legitimate and healthy a certain amount of conflict and tension between the Supreme Court and the Supreme Executive.31 But Justice Chandrachud believes that in matters of national integrity and security and in the rare situations when enforcement of rights threaten the survival of the Supreme Court as an institution, the Supreme Court should not intervene against the Supreme Executive, even if fundamental rights are thereby jeopardized.

The belief is evidenced by his controversial decision in Shiv Kant during the emergency and the non-decision in Sant Longowal habeas corpus petition, drawn out for almost a whole year during 1984-1985.32 Of course, Shiv Kant fell to be decided when there was declaration of emergency under the Constitution, in the Longowal case, at best there was a real perception of an undeclared emergency in Justice’s minds and at worst a paralytic of judicial will, triggered off by scenarios of how the Supreme Executive would respond if Sant Longowal were to be ordered released.33 In one case, there was a constitutionally proclaimed reign of fear and suspicion; in another, such a reign was imposed by justices upon themselves without the formal constitutional proclamation. But Justice Chandrachud’s message is loud and clear through both: “We must protect fundamental rights but not at the cost of national integrity and security”. And it is the Supreme prerogative of the Supreme Executive to declare emergencies; the President’s (i.e. the Prime Minister’s) satisfaction that certain states of affairs exist necessitating such declaration of emergency is declared beyond judicial review.34
Institutional accommodation, involving sacrifice of rights, is also to be preserved to sustain Parliamentary supremacy in matters of detention. Vital amendments to Article 22 further safeguarding rights of detainees, were made by the Forty-Fourth Amendment on April 30, 1979. The Union Executive was given the power to bring these amendments into operation. It has yet to exercise this power. The majority of the Supreme Court (Justices Chandrachud, Bhagwati and Desai, with Justices Gupta and Tuzaparker dissenting partly) held in A.K. Roy v. Union of India\(^{35}\) that it cannot direct the executive to bring these amendments in force; nor can it countenance the plea that such action was mala fide or unconstitutional on any ground. Justice Chandrachud prologues his opinion by declaring that “personal liberty is a precious right.”\(^{36}\) No matter how precious it is it has “to be subordinated within reasonable limits, to the greater good of the people.”\(^{36}\) If the executive, therefore, sabotages the constitutional amendment altogether by not bringing it into force\(^{36}\) such action, according to the majority is “both within reasonable limits” and “for the greater good of the people.”

It may be argued that such moderation is in effect an abdication of judicial powers and duties and the Court is betraying the Constitution through such exercise of restraint and moderation by denying protection to citizens when it is most needed. I have myself contended elsewhere that decisions like these uphold the ideology of the unwritten Constitution over that of the written one. The basic norm of the latter is rule of law; the basic norms of the former is the unity of centralized state power to be maintained anyhow by the Supreme Executive.\(^{37}\) Such accommodation, to use a striking phrase of Julius Stone, leaves the citizen “short-changed.”\(^{36}\)

It is clear that despite his apology to the Nation for his decision in Shiv Kant, Chief Justice Chandrachud was not able to revisit and revise his own position on the supremacy of the executive on matters, which he thought, affect national integrity and unity. Rights take a second place in such situations; and integrity of the constitutional structure of governance through the Supreme Executive is allowed precedence over everything else. In the abstract, these propositions are axiomatic. But in a pluralist society, even in the midst of crises, what constitutes legitimate protection of national security and integrity remains open to sharp contention.

Outside this arena, a second characteristic of Justice Chandrachud’s performance is high volatility, and that too on rather crucial issues of the nature and the future of the Indian Constitution. It does not, for example, require a very close analysis of His Lordship’s dissenting opinion in Kesavananda sustaining the supremacy of Parliament to amend all aspects of the Constitution.\(^{39}\) His contribution to the deciphering of the basic structure in Indira Nehru Gandhi\(^{40}\) and his resounding exposition in Minerva and Waman Rao (indeed in some respects an improvement on the Kesavananda majority)\(^{41}\) for one to be awed by continental shifts in Justice Chandrachud’s basic positions. I, of course, salute the shifts; and applaud the courage, creativity and candour displayed in these opinions. I remain aware that this dynamic disagreement with his own positions does indeed raise the possibility, to the unwaried mind, that “we have under the same name-two different” Chandrachuds.\(^{42}\) Since I have recently had an occasion to examine the learned Chief justice’s position as a “pilgrim’s progress” to the “shrine of the basic structure” in my Courage, Craft and Contention: The Indian Supreme Court in the Mid-Eighties,\(^{43}\) I do not burden this text with a complex analysis of this volatility but merely refer the interested reader to that analysis.

The same volatility in approach characterizes Chief Justice Chandrachud’s utterances from the bench in regard to transfer of High Court justices and the exercise of this power to initiate transfer of justices as the Chief Justice of India. In Sankalchand Justice Chandrachud grudgingly cedes the power to transfer for efficient administration of justice; and he instances “the rarest of the rare occasions which can be counted on the fingers of hand” where transfers would be fully justified.\(^{44}\) But as the Chief Justice, the transfers he initiates are clearly in wholesale violation of his own maxims; an aspect which Justice D.A. Desai has rather mercilessly exposed in his opinion in the Judges Case.\(^{45}\) This particular example of volatility presents as agenda of puzzles: it is, prima facie, inexplicable that the selfsame Justice should have acted the way he did. One cannot rule out, at a deeper level of analysis, a play of direct and indirect pressures on the Chief Justice of India to rush these transfers against his better judgment. One can only await authentic disclosures from the dramatis personae for a fuller understanding. Until then, the puzzling script remains.

Outside the parameters of restraint and moderation outlined in the proceeding, Chief Justice Chandrachud is second to none in asserting the importance of enforcing rights. In Minerva\(^{46}\) he so reconfigures the interlinkages between the Directive Principles and Fundamental Rights as to endow the Rights unamendable constitutional substance and presence. The Rights constitute the means; the Directives provide the ends, so much so that without the Directive, the Rights
in Part III "would be without a radar and compass.\textsuperscript{47} But the Rights provide ways in which the ideals are to be served; the "purity of means" is as important as the majesty of ideals. If the Directives are allowed to override the basic rights, the ideals themselves will "become a pretence for tyranny."\textsuperscript{48} Justice Chandrachud has no hesitation in declaring that to "destroy the guarantees given by Part III in order to achieve goals of Part IV is plainly to subvert the Constitution by destroying its basic structure.\textsuperscript{49} Indeed, a new essential feature has been invented: the "harmony between and balance between fundamental rights and directive principles.\textsuperscript{50} It also follows from all this that judicial review for the purposes of enforcement of fundamental rights is also an essential feature of the basic structure of the Constitution.\textsuperscript{51} Chief Justice Chandrachud rectifies a carte blanche to Parliament (i.e. the Supreme Executive); the institutional morality envisaged by the Constitution demands not just that the Supreme Court respect the Supreme Executive but also vice versa. A fine balancing of interests, indeed.

It is, of course, not enough to say that fundamental rights pertain to the basic structure. Their everyday enforcement through courts is what matters; and courts can masquerade the rights by strange interpretations\textsuperscript{52} or decidiophobia.\textsuperscript{53} No Justice was more keenly aware of this fact than Chief Justice Chandrachud. Justice Chandrachud found in 1983 a fit case to make a far-reaching innovation in the enforcement of fundamental rights. In \textit{Rudal Sah v. State of Bihar},\textsuperscript{54} the Chief Justice (and Justices A.N. Sen and R Misra) decided to award cash compensation of Rupees Thirty Thousand and costs to the petitioner for his unlawful incarceration for well over fourteen years after the Sessions Judge, Muzaffarpur, had acquitted him in 1962.

The Chief Justice moved by the extraordinary injustice and unbecoming callousness of the Bihar Government expanded the horizons of the Court's fundamental rights jurisdiction. He insisted that one of the telling ways in which the violation of ... (Article 21) right can reasonably be prevented and due compliance with Article 21 be secured, is "to mulct its violators in the payment of monetary compensations. Administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to judiciary.\textsuperscript{55}

This is a momentous innovation and gives fundamental rights a much needed edge against the citizens' uneven combat against state lawlessness. Justice Chandrachud exhorts: "If civilization is not to perish ... it is necessary to educate ourselves into accepting the fact that respect for rights of individuals is the true bastion of democracy.\textsuperscript{56}

Compensation for the violation of rights is the new constitutional pedagogy. And the Chief Justice assigns homework to the State of Bihar: the "State must repair the damage done by its officers to the petitioners' rights" and as an aspect of this reparation the State may "have recourse against those officers."\textsuperscript{57} The amount is, certainly not good enough, given the nature of mutiling of Rudal Sah's rights. Hence, the Chief Justice announces it as an "interim measure.\textsuperscript{58} Rudal Sah is also free to sue for compensation. It would have helped "poor Rudal Sah" in his fight against "the Leviathan" had the Chief Justice also directed the State Legal Aid Committee to assist him fully.

But it remains important to note that this is the first decision of its kind in India and it is not based on any "concession" made by the State. The Chief Justice makes this categorically clear.

Justice Chandrachud was moved to issue a mild corrective in \textit{Maneka} to the creative effusion of Justice Bhagwati and Justice Krishna Iyer when he observed, without dissenting, that: "Our Constitution too strides in its majesty but, may it be remembered, without a due process clause."\textsuperscript{59} In \textit{Rudal Sah}, Chief Justice Chandrachud makes us realize that the Court's powers to enforce fundamental rights are far wider than what even a "due process" clause may confer. Indeed, in many decisions of far-reaching impact concerning anticipatory bail,\textsuperscript{60} the right to set-off sentences for convicts who are sentenced to life imprisonment,\textsuperscript{61} the unconstitutionality of Section 303 of the Indian Penal Code ordaining mandatory death sentence,\textsuperscript{62} the Chief Justice has so construed Articles 14 and 21 as to continuously remind us of the majestic strides of the Constitution, regardless of interpellations from the American Constitution.

Of the same blood - group as Rudal Sah is the memorable decision in \textit{Shankar Dass} overturning the dismissal of the appellant from the services of the Union of India. Shankar Dass, who represented the "bravery of a broken man" for 23 long years,\textsuperscript{63} was convicted for criminal breach of trust. He took Rs.500 out of the Delhi Milk Supply earnings by way of desperate remedy in adverse circumstances.\textsuperscript{64} The learned First Class Magistrate proceeded to recommend probation for Shankar Dass; in this he was far ahead of his time and deserves the fulsome praise the Supreme Court bestows on him.\textsuperscript{65} The Government of India proceeded to dismiss him on the ground of his conviction; this was reversed in a second appeal by a Delhi High Court Judge in 1971. The Government of India filed a letters patent appeal in the High Court to secure reversal of the 1971 decision; Shankar Dass brought the matter to the Supreme Court in 1972. It came for disposal in 1985.
The Supreme Court (through Chief Justice Chandrachud, Justices D.A. Desai and A.N. Sen) in an anguished decision reinstated Shankar Dass with back wages from the day of his dismissal, with costs. Among the many grounds on which this could have been done, the most fundamental ground commended itself to the Justices and that pertained to the exercise of powers of government under Article 311(2). This power, the Chief Justice insisted, in the spirit of Menaka, has to be exercised fairly, justly and reasonably. The Chief Justice, in a highly quotable and wounding sentence, stated:

Surely, the Constitution does not contemplate that a Government servant who is convicted of parking his scooter in a no-parking area should be dismissed from service.

The "right to impose a penalty carries with it the duty to act justly." The penalty in this case was described as "whimsical".

It is a pity that the enunciation of a new jurisprudence of power did not extend to the Supreme Court itself, which decided the appeal after 12 years. Twelve years is a long period in the life of an individual. The "duty to act justly" in protection of rights extends no less to the Supreme Court. It would have been a good act of atonement if the learned Chief Justice had directed the Registrar of the Court, as a part of the decision, to bring to his notice all similar cases for priority disposal, since full many of Shankar Dass "dark, unfathomed caves" of Supreme Court bear. Surely, the feeling of the Court that it has only done its "modest best" would have been alleviated partly by such a measure. Hopefully, the Seventeenth Chief Justice of India will complete the tasks inaugurated, so agonizedly, by Chief Justice Chandrachud in Shankar Dass.

Chief Justice Chandrachud could not bring himself to vote against the constitutionality of death penalty in Bachan Singh, even under Article 21 as reincarnated through Maneka. As an abolitionist, I regret very deeply the approach of the majority of the Court, which to my mind stands cogently rebutted, for the solitary powerful dissent given two years after the order, by Justice Bhagwati. Naturally, the views of the learned Chief Justices on the necessity and legitimacy of death penalty in the "rarest of rare cases" influences his thought and action relative to its implementation. In Sher Singh v. State of Punjab, Chief Justice Chandrachud (for himself and Justices Tulzapurkar and Varadrajan) overturned a salutary rule enunciated by Justice Chinnappa Reddy in Vatheeswaran that "delay exceeding two years in the execution of sentence of death to invoke Article 21 and demand the quashing of the sentence of death". The Court in Sher Singh finds this limit unrealistic; the only realistic time-limit is that there should be none; The Court expresses its view that "no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of death sentence the sentence must be substituted by the sentence of life imprisonment".

If we ask the question "Why?" we make some startling discoveries. It is incredible, but true, that the court finds the time limit unrealistic because delays can be manipulated through the court processes. Chief Justice Chandrachud implicates us to look at the "statistics of the disposal of High Courts and the Supreme Court to appreciate that a period of two years is generally taken by those Courts together for the matter involving even the death sentence." This normalization of a practice in High Courts and Supreme Court, violative to the core of Article 21 (whose reach is expounded in this very case with appealing rhetoric by the Chief Justice himself) sits pathetically strangely with his urging the state and the central governments that they should avoid long delays in exercising their constitutional powers of reprieve and self-impose a time limit of three months for the disposal of clemency petitions because delay "defeats justice." One gets a rather curious impression (especially when the Chief Justice of India, normalizes the delays in appellate courts) that the Chief thinks that Article 21 guarantees of right of life and liberty avail only against the executive and the legislature and not to courts. If "it shall be the duty and the endeavour of this Court to give to the provisions of our Constitution a meaning which will prevent human suffering and degradation", if "Article 21 stands like a sentinel over human misery, degradation and oppression", if its voice is the voice of "reason and fair play" which "reverberates as long as the life (of the condemned) lasts", then it is difficult to understand that a Chief Justice of India should be so overawed by sovereignty of judges and courts to handle appeals against death sentence in casual, leisurely manner as to feel totally a helpless spectator. And, indeed, if-crafty convicts, through their lawyers, manipulate the court procedures into long delays, should this be accepted by a Chief Justice without a demur? Why should, if Article 21 is to live up to all this noble rhetoric, it not stand as a sentinel over court-system as well? A total liberation from any time-limit will, indeed in future, as it has in the past, make award, confirmation and commutation a totally arbitrary and lawless exercise.
important an issue, the Chief Justice did not, in the interest of a more humane administration of capital punishment, constitute a five-judge bench which could have perhaps reshaped his own perceptions concerning the rigorous applicability of Article 21 to justices and courts. There are very few decisions of the Chief Justice which appear to me eligible for reconsideration; but of these, Sher Singh cries out for reversal.81

VI

Chief Justice Chandrachud is extremely solicitous of individual rights even at the level of statutory construction. Against a rather controversial background of the the activities of Sanchalta Chit Fund, which offered as high as 48% interest to depositors, contributed to enormous growth in unaccounted money, and generated tremendous economic power in its handful of promoters, without any assurance of any kind of accountability to the depositors or the government,82 Chief Justice Chandrachud insisted that the F.I.R. must be quashed. The "condition precedent to the commencement of investigation under Section 157 (of the Criminal Procedure Code) is that the F.I.R. must disclose prima facie, that a cognizable offence is committed.83 The Code confers no "unfettered discretion on the police to commence investigation", only if the commencement of investigation satisfies the condition precedent, the Court will allow the investigation to proceed. The grant of any "unlimited discretion", says the Chief Justice, "can become a ruthless destroyer of personal freedom".85

The principle is salutary and Chief Justice Chandrachud enunciates this principle "with considerable regret"86 in view of "bizarre state of affairs"87 of Sanchalta Chit fund. Indeed, even counsel Asoke K. Sen (now the Union Minister for Law and Justice), on behalf of the firm, asked the Court to proceed on the basis "that the exorbitant amount of interest was being paid out from unaccounted money".88 All that Chief Justice Chandrachud is able to do here is to allow the police to retain the cash, books of account and other documents for a period of two months in order to allow the Central and the State governments to proceed further in ways which will somehow protect the small depositors. Even here judicial moderation is conspicuous; a principle of considerable importance has been enunciated but a major criminal investigation, wholly bona fide, is cut short in its prime. (Incidentally, unlike Shankar Dass, Sanchalta Chit Fund case reached the Court on 12 March, 1981 to the promptly decided upon on Feb. 2, 1982). An activist Justice would have no doubt found a way to enunciate the principle as well as to avoid quashing the F.I.R. by an appropriate construction of the Act to disclose a prima facie offence.

Barring a few cases of custodial torture brought recently through social action litigation, Indian courts have very rare occasions to enforce the law against enforcers of the law. Convictions for third degree methods, even for causing death of the victim, are removed from the arena of judicial invigilation by the fact that prosecutorial initiative rests wholly with the state. In a rare event that police torture features in the criminal justice system, rules of evidence and standard of proof make conviction exceedingly improbable. And in the rarest of the rare case where the trial court convicts, the High Court acquits in an appeal filed by the State (it is imperative to ask as to why the State should go in appeal in such cases in the first place, having thought that the case is, in the first instance, fit for prosecution). Chief Justice Chandrachud (and Justice A.N. Sen) had a unique opportunity to remedy this state of affairs when the State of Uttar Pradesh (in an unusual move) appealed against the reversal of conviction of the Station House Officer of Husainganj Police Station, District Fatehpur, for having caused fatal injuries to Brijlal who had filed a complaint of corruption against a constable in that police station.89 Brijlal was so badly beaten up between 10.00 a.m. and 12.00 noon that he lay in excruciating pain, with nineteen wounds, in the verandah of Additional District Magistrate, R.C. Nigam, who visited him there to pass an order of judicial remand.90

Brijlal died in jail the same evening. The ADM recorded the statement of Brijlal that he was beaten "very badly" by the Darogah and constables of the Husainganj station. His dying declaration was to the same effect. We do not know on what grounds the High Court reversed the conviction. But Chief Justice Chandrachud's brief analysis of facts and his exposition of the law relating to dying declaration in the distinctive circumstances of the case makes one wonder as to how the High Court could possibly have come to any different conclusions. The Chief Justice has categorically laid down that in cases like this "the court should not hesitate to act on the basis of an uncorroborated dying declaration". Not merely this: Chief Justice Chandrachud felt moved by the atrocity to make a fervent plea to the Government to heed to the "need to amend the law appropriately" to diminish the possibilities of perpetrators of such atrocities "to escape by reason on paucity or absence of evidence".

Police officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of
brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, upon whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The Law as to burden of proof in such cases may be re-examined so that handmaids of law and order to do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection.\(^9^1\)

A Krishna Iyer, a D.A. Desai or a Chinnappa Reddy would have conveyed the same message but with greater angulish and vehemence. Of course, judicial suggestions for changes in the law are rarely heeded, no matter how expressed. But the use of the term ‘sanctum sanctorum’ for an interrogation room in an Indian police station lends an avoidable dignity to what are in effect chambers of horror.

Chief Justice Chandrachud will surely be hailed for the Court’s decision in Shah Bano protecting the rights of Muslim women for maintenance under Section 127 of the Criminal Procedure Code, 1973.\(^9^2\) On principle, the matter had been decided, rightly, in favours of the Muslim women by two three-judge benches of the Supreme Court, led by Justice Krishna Iyer and involving participation by Justices Tuilzaporekar, Pathak, Chinnappa Reddy and A.P. Sen.\(^9^3\) Despite this stable judicial consensus among five justices of the Court, Justice Fazal Ali (sitting with Justice Varadaraj) placed the matter before the Chief Justice for directions for having it “reconsidered” by a larger bench. The “reconsideration” was required not merely because the two decisions are “in direct contravention of the plain and unambiguous language of s.127(3)(b) of the Code of Criminal Procedure, 1973 which far from overriding the Muslim law on the subject protects and applies” but also because Muslim Personal Law was simply unamenable by virtue of Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937.

It was unusual for a two judge bench to thus cast strange doubts on the well reasoned holdings of two other three-judge bench; but it is clear that a very sensitive matter was involved as Justice Fazal Ali overwhelmingly felt that the court, in its earlier decisions, was violating the shariat.

Shah Bano, the Chief Justice (speaking for a unanimous Bench) achieves three results, with utmost judicial dexterity and delicacy. First, and consistent with earlier decisions, he establishes that the obligation to provide maintenance in the Criminal Procedure Code offers a “quick and summary remedy to a class of persons unable to maintain themselves”;\(^9^4\) the provisions are of a “prophylactic nature” and “cut across the barriers of religion”.\(^9^5\) The real purpose for so providing was not to affect or destroy any system of civil personal law but to sustain the “individual’s obligation to the society to prevent vagrancy and destitution”.\(^9^6\) In this sense, section 125 is “truly secular in character”.\(^9^7\)

Second, Chief Justice Chandrachud embarks on an examination of the potential of conflict between the Code provisions and the Sharia. According to the dominant exposition of the Muslim personal law, the obligation to offer maintenance ceased on the expiration of the period of iddat.\(^9^8\) Chief Justice Chandrachud agrees that this may be so; but he is unable to find authority in the shariat for the proposition that the obligation to pay maintenance thus terminates even for the wives who are unable to maintain themselves. Section 125 precisely applies to this category of cases. Therefore, there is no conflict between the Muslim personal law and the Code.\(^9^9\)

Third, the Chief Justice deals admirably with the difficulty arising from section 127(3)(b) which authorizes the magistrate to cancel an order of maintenance if the divorced wife has received “the whole of the sum which, under customary or personal law applicable to parties, was payable on such divorce”. To the contention that under the Muslim personal law, mah\(r\) constituted such payment, Chief Justice Chandrachud counters that this is not logical. If mah\(r\) is, indeed, an amount which the wife is entitled to receive from the husband “in consideration of marriage”, how can, in logic, this payment be described as “amount payable in consideration of divorce”?\(^1^0^0\) Alternately, if mah\(r\) is a “mark of respect” for the wife (a “man may marry a woman for love, looks, learning or nothing at all”) he settles a sum of money as “a mark of respect”, but surely he does not divorce her as a mark of respect.\(^1^0^1\) In neither case, the sum of mah\(r\) can be regarded as “customary payment” under the Code.

Shah Bano, in cameo, displays the best aspects of crafts-personship of Chief Justice Chandrachud. There is razor-sharp logical analysis but it is expressed with very great delicacy.

A tremendous amount of judicial creativity packed in this great judgment is presented as routine fare. Very great respect is shown to the great religious tradition of Islam; indeed it is saved from a calamity arising from thoughtless aggressive interpretations which present it as somewhat inhuman religious traditions even in relation to women without means of support. The activist assertion by Juste Krishna Iyer in Bai Tahira that “payment of mah\(r\) money, as a customary discharge, is
within the cognizance" of Section 127.\(^{103}\) (A statement likely to be construed by certain sections of Muslim opinion as unfortunate) has been gently corrected by the Chief Justice's analysis of the institutional rationale of mahr.

And it is only after this fine judicial performance that Chief Justice Chandrachud turns to characterize as a display of unwarranted zeal to defeat the right of maintenance of women who are unable to maintain themselves\(^{104}\) in submissions of the Muslim personal Law Board. His Lordship characterizes its view that indigent women should fend for themselves as a "most unreasonable view of law as well as life."\(^{105}\) And the Indian State is also gently reproached for its indifference to the implementation of Article 44 of the Constitution. As gently as he can, and only as he can, Chief Justice Chandrachud reminds the State that it is fallacious to expect gratuitous community leadership for changes in Muslim personal law: the Constitution does not hedge the fundamental obligation upon the State in Article 44 to any such condition precedent. He also expalins that the courts have to "inevitably" assume the "role of the reformer" since "Sensitive minds" find it undurable "to allow injustice to be suffered when it is so palpable."\(^{106}\) The Chief Justice is aware that courts can perform this role, no matter how palpable the injustice, and reminds the executive and the legislature that "piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common civil code" as justice to "all is a far more satisfactory way of dispensing justice than justice from case to case."\(^{107}\) The reference in plural to personal laws inescapably draws attention to unjust elements in other systems of personal law, as well as the Muslim law. Chief Justice Chandrachud has shown in Shah Banu the potential of the Supreme Court for gracious adjudication on momentous matters.

VII

I will not burden this essay with a detailed study of Chief Justice Chandrachud's attitudes towards precedents and statutory construction. But it would be incomplete without reference to some salient features of His Lordship's craftpersonship. First, the learned Chief Justice, on first sight, appears ambivalent towards discussion of "academic issues". In reality, the apparent ambivalence conceals a technique of avoidance: that is whenever he is disinclined to analyse a complex pertinent argumentative strategy, whether this is due to pressures of time, or ideological disinclinations, Justice Chandrachud immediately describes the matter as "academic". The technique of avoidance is a resource for juristic restraint.\(^{108}\) It also signifies principled eclecticism.

In a sense, the technique of avoidance is a strategy for the manipulation of relevancies. Justice Chandrachud, to my mind, has been the only Justice of the Supreme Court who has so deftly and frequently employed this technique.

In Maneka, in his concurring opinion, Justice Chandrachud says that he "will say no more because...one says no more than the facts warrant and decides nothing that does not call for decision".\(^{109}\) Incidentally, this is a counsel which the States in the Dissolution Case\(^{110}\) would have been happy to have extended to them!\(^{111}\) In sharp contrast, Chief Justice Chandrachud says in Minerva, dismissing a rather crucial preliminary objection almost with wave of hand, as it were:

There is no constitutional or statutory inhibition against the decision of questions before they actually arise for consideration.\(^{112}\)

The importance of questions determines what is to be decided; and judges alone who determine what is important. The rest is academic!\(^{113}\)

Second, Justice Chandrachud does not like to read more into legislatice texts than is strictly necessary; and what is "strictly necessary" is of course determined by the judicial approach, in his case one characterized by considerations of institutional comity, moderation and balancing of conflicting interests. He generously resorts, and with considerable respect, to the rules of statutory construction, although he is aware, that interpretation is not a value-free process.\(^{114}\) In some cases, he goes so far as to rewrite the statutory text with a view not just to clarify its intent but to provide exemplarship to the not-too-keen-to-learn legislative draftsperson.\(^{115}\) I could find only one major case, where the interests of social justice, require him actually to add the preposition "at" to a legislative text in order to effectuate the legislative intent.\(^{116}\)

Third, Justice Chandrachud displays a remarkably liberal attitude to precedents. This is most strikingly evident in constitutional interpretation, especially in Waman Rao, where the learned Chief Justice extends to all the amendments, from the First onwards, the doctrine of basic structure; and finds that there are no precedents binding upon the Court preventing this exercise. Indeed, he asserts, charmingly (and in my view correctly) that legal "problems should not be treated as mere subjects for mental exercise."\(^{116a}\) and that the very precedential decisions "are themselves precedents on the binding nature of precedents".\(^{116}\)

Similarly, although advisory opinions are not strictly binding, in Special Courts Bill advisory opinion, Justice Chandrachud went so far as to opine that the holding should be considered binding because the
Court there had put in the incredible effort of hypothetically amending the Bill and holding it constitutionally valid. His Lordship said that it would be "deeply frustrating" if on mere technical reasons the holding in the opinion was regarded as merely advisory. In all this, Chief Justice Chandrachud merely represents to the tissue rejection of the transplnat of stare decisis on the Indian jurisprudence.

**Fourth**, Chief Justice Chandrachud reiterates the essentially discursive nature of judicial reasoning. In critique of Kesavananda I had argued that if appellate justices are to make law and they have to and do, they must adopt standards of craftsmanship at least equal to those of legislative draftsmanship. Appellate justices are not entitled to say what they do not mean and to mean what they do not say, for what they say and mean has a community wide importance. I made the point sharper by saying, that given the lawmaking nature of judicial decisions, judgments have to be read as if they were statutes. In one sentence rebuttal of this position His Lorship observed in Shiv Kant that; "No judgment can be read as if it is a statute". My anxieties were about the level of judicial craftspersonship and my task would be amply done if a reader of this essay would be able to recognize that Chief Justice Chandrachud is among the master judicial craftsmen in the English-speaking world. His opinions are models of clarity, logical structuring, lucidity and elegance. It would not be too much to say that his name will endure as a master of judicial prose.

**VIII**

All this elaboration on the achievement whose name is Yashwant Chandrachud still does not do justice to his strengths as a judge who cared deeply for India by cultivating traditions and culture of law in times which threatened these as well as the nascent Indian liberal democracy. His concern with the people of India was genuine, even when the very traditions and culture of law which he embodied in his life work as a Justice did pose insuperable difficulties and constraints in ameliorating their distress. He presided over the Supreme Court with distinction. Even when his tenure brought him anguish and torment he remained in word and deed a gentleman judge. He forever hoped and prayed that "nothing that we do will tarnish the fair name of justice which can only come from a keen social awareness, which involves a nice and judicious balancing of interests". Of Yashwant Chandrachud it would be true to say that he strove valiantly to preserve and promote "the fair name of justice". In that struggle, he was forever prepared to learn from his own perceptions of his failings and failings, which were not too numerous; thereby, he has also ensured an exampleship in judicial self-learning, regardless of considerations of prestige and public image, in full public glare and through cold printed word which will endure. Chief Justice Chandrachud's strivings remind us all of the truth that is "is not given to any generation of men to complete the tasks of human improvement and redemption; but no generation is free, either, to desist from them."

**FOOTNOTES**

5. U. Baxi, "Taking Suffering Seriously: Social Action Litigation Before the Supreme Court of India" 8-9 Delhi L. Rev. 81 (1979-80) and the materials therein cited.
9. Speech by Hon'ble Chief Justice of India on the Inauguration of the First Law Day (1980) 2 SCC 7 (Journ.)
12. See Justice Jagannath Reddy, We Have a Republic: Can we Keep It? 143 (1984)
18. For an early aspect of this tendency, see the observations of Justice Goswami in State of Rajasthan v. Union of India 1977(3) SCC 592 at 671; and note 22 to U. Baxi, cited supra note 8.
22. Maneka Gandhi v. Union of India 1978 1 SCC 248 (hereafter cited as Maneka)
25. V. Gupta, of the Delhi University is currently finalizing a quantitative study of the Indian Supreme Court; the reference in the text refers to his finding.
26. See Supra note 9 at 9.
28. Kesavananda, supra not 1 at 959-960.
29. U. Baxi, Politics passim.
31. For an elaboration of the distinctions between the written and unwritten Constitution see U. Baxi, Courage, Craft and Contention... (1985 forthcoming).
33. See Baxi, supra note 32.
34. Woman Rao v. Union of India AIR 1981 S.C. 271 at 293-294 (Per Chandrachud J.); see also Minerva 1835-1842 (per Bhagwati J.)
36. Id. at 299. 30a. Id. at 300.
36b. Justice A.C. Gupta, in his dissenting opinion, uses a less offensive word: He said the Act did not empower the executive to scotch amendment. Id. at 366.
37. See supra note 31.
41. See Baxi, Courage, Craft and Contention (forthcoming: 1985), Tripathi.
42. Ibid. 43. Supra note 41.
44. Judges Case at 690-894.
45. See U. Baxi, Courage, Craft and Contention, supra note 41.
47. Id. 51. Minerva at 1779.
48. Such as application of the doctrine of res judicata and laches to fundamental rights under Article 32 in Daryao v. State of U.P., AIR 1961 S.C. 1457 see also U. Baxi, "Quis Custodiet Ipsos Custodes?" in Constitutional Developments in India (1975; A Jacob ed.)
49. See for the dread of arriving at a decision in Longowal case, supra note 33.
50. 1983(3) SCR 508. 55. Id. at 514. 56. Ibid. 57. Ibid. 58. Ibid.
51. Maneka at 327 (emphasis added).
63. Id. at 359. 64. Id. at 361. 65. Id. at 362. 66. Ibid. 67. Ibid.
68. Ibid. 69. Ibid.
74. Id. at 79. 75. Sher Singh. Supra note 72 at 356.
76. Ibid. 77. Sher Singh. supra note 72, at 358.
78. Ibid. 79. Sher Singh. supra note 72 at 354.
80. See the dissenting opinion of Justice Bhagwati and the summation of Dr. Raza’s thesis in Bachan Singh supra note 71 at 1380-81.
81. Indeed, there is a strong case for saying that it is a per incuriam decision—Indian style Maneka stands cited but still ignored.
83. Id. at 142. 84. Ibid. 85. Ibid. 86. Supra note 82 at 143. 87. Id. at 147. 88. Ibid.
90. Id. at 555. 91. Id. at 559.
94. Supra note 92 at 770. 95. Ibid. 96. Ibid. 97. Ibid.
98. Supra note 92 at 772. 99. Id. at 773. 100. Ibid. 101. Ibid. 102. Ibid. 103. Supra note 92 at 778.
104. Ibid. 105. Ibid 106 Ibid 107. Ibid.
108. See U. Baxi, Introduction to K.K. Mathewson Democracy equality and Freedom at 177; for the contrasting cases of juristic activism.
111. See Baxi Politics 127-136.
112. Minerva at 1803. (emphasis added)
118. U. Baxi, “The Constitutional Quicksands of Kesavananda Bharathi... and the Twenty-fifth Amendment (0) (1974) 1 SCC (Jour) 45, 484.
119. Shiv Kant at 671 (emphasis added).
120. The reader already has a large number of quotable quotes in the text thus far see, e.g., text accompanying supra notes 9, 10, 55, 66, 79, 101; and the excerpts from Chief Justice Chandrachud’s opinions in this book will bear out more than fully the high literary qualities of his opinions. See also the delightful opinion in M.R. Patanjali v. Farooq Abdulhaq (1968) 2 S.C.C. 343 dismissing the convoluted petition, and especially the parting shot:
Thirdly, more the example, greater the need to keep a written record of the spoken word. In the written record lies the safety of the public speaker, though not, perhaps, the benefit of posterity.
I will resist the temptation here to cite illustrations from his aphoristic jurisprudence; that is a theme by itself. But it will not be a matter of surprise if Justice Chandrachud should be among the most oft-quoted justices of the Indian Supreme Court.