
A STUDY IN EXECUTIVE-JUDICIAL CONFLICT

The Indian Case

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During the past decade or so, the Indian judiciary has suffered considerable damage to its pride and prestige. Between 1966 and 1977, Mrs. Gandhi denounced judges and their judgments in her effort to bend the judiciary to her power. In the process she not only undermined the popular image of the institution but also destroyed its "mystery and mystique." The Janata interregnum (1977-79) tried to restore to the judges some degree of confidence in themselves, but the return to power of Congress (I) in 1980 seems to have revived memories of the old Emergency regime. Even before Mrs. Gandhi had the time to settle into office, Justice P. N. Bhagwati of the Supreme Court, as if running for cover, despatched the following letter to her:

May I offer you my heartiest congratulations on your resounding victory in the elections and your triumphant return as the Prime Minister of India. . . . I am sure that with your iron will and firm determination, uncanny insight and dynamic vision, great administrative capacity and vast experience, overwhelming love and affection of the people and above all, a heart which is identified with the misery of the poor and the weak, you will be able to steer the ship of the nation safely to its cherished goal.¹

The letter was written in confidence. The press, however, received a copy of it, allegedly through the prime minister's office. Within days Justice V. D. Tulzapurkar referred to it in a bitter attack: "If judges start sending bouquets or congratulatory letters to a political leader on his political victory, eulogizing him on assumption of a high office in adulatory terms, the people's

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confidence in the judiciary will be shaken."² The marathon debate that followed the episode not only put Bhagwati on the defensive but also exposed the shifting loyalties of the members of the Bench and the Bar. Eager not to be caught on the wrong side of the fence, the judges presiding over the Janata-established special courts to try the sinners of the Emergency hastened to pack their files and closed the courts.

Mrs. Gandhi, who had often viewed the courts as the center of political opposition, watched the widening cracks in the judicial edifice. And then, on March 18, 1981, she called into question the judicial integrity of the Janata-appointed judges:

The former Janata regime had made a lot of appointments in the judiciary on political basis . . . a dilemma faced by us was whether these persons appointed on political basis in the judicial services should be allowed to continue; and if they were continued, how can we expect justice from them? What is their credibility?³

It was an intimidating statement; a frontal attack on the judiciary had begun.

And now, the Supreme Court seems to have caved in. It has not only appeased the government and given Mrs. Gandhi what she has been wanting for a long time, but it has also undermined its own independence by lowering the stature of the Chief Justice of India. This is the consequence of the *Judges' Transfer* case in which a majority of a seven-judge Constitution Bench (set up to deal specifically with the interpretation of the Constitution) offered the government carte blanche to hire (including the Supreme Court judges), fire (temporary judges), and transfer (except on a mass scale) High Court judges without the usual consent of the Chief Justice of India. In other words, for all practical purposes Mrs. Gandhi has now been given a free hand to manage the judiciary the way she likes.

The decision of the Bench, as one newspaper proclaimed, was a New Year's gift (the decision was announced on December 31, 1981) to the government. However, it was a gift that was very unkind to the giver. The gloomiest aspect of the judgment was the devastating *obiter dicta* against the supreme figure of the judiciary, Chief Justice Y. V. Chandrachud. Appointed Chief Justice by the Janata regime, Chandrachud had been the anathema of the Congress (I) party for strongly thwarting the moves of the Gandhi government to pack the courts. The judgment not only proved him wrong but also made him the subject of unsavory comments. Chandrachud stood humiliated, ironically by his own "brothers" (a common way of addressing fellow justices), and the government rejoiced at the fissure running through the Court. "The judiciary," commented the *Statesman*, "shall never be the same again."⁴

This essay identifies the changing realities in the executive-judicial relations since 1966 and suggests that judges, increasingly obliged to choose between judicial independence and survival, are choosing survival as the better part of valor. The Emergency regime had reduced the powers of the judiciary; the present regime is likely to establish a judiciary that is nominal in its functions and that legitimizes rather than questions the scope of executive powers. The issue is not simply one of parliamentary sovereignty but also one of executive supremacy versus judicial review.

The first three sections of this essay discuss executive-judicial relations during the three different federal leadership eras: the first Gandhi era, 1966–77; the Desai era, 1977–79; and the second Gandhi era, 1980 to the present. These are followed by some general concluding remarks.

The First Gandhi Era, 1966–77

With the enactment of a series of constitutional amendments (24th, 25th, 26th, 29th) in 1971–72 to overcome the decisions of the Supreme Court in the *Golak Nath* (1967), *Bank Nationalization* (1970), and *Privy Purses* (1970) cases,⁵ one might have thought that the issue of parliamentary sovereignty versus judicial review was settled and that the Court would not challenge the constituent power of the Parliament in the future. However, this did not happen. In the *Keshavananda v. State of Kerala* (1973) case, the Court decided that whereas the Parliament had the power to amend the Constitution, it had no power to emasculate or destroy its “basic structures.” It further held that the Parliament could not abrogate fundamental rights, though reasonable abridgment of such rights could be effected in the public interest.⁶

The judgment was disturbing enough for the champions of parliamentary sovereignty, but some of the extra-judicial comments made by Justices Hegde and Mukherjea—that the government could not “speak on behalf of the entire people of this country” and that, given the vagaries of the electoral system, it did not “represent even the majority of the people in the country”⁷—were simply too harsh for a government that had received a heavy mandate in the 1971 elections. As Upendra Baxi noted: “It was one thing to deny Parliament the last word in the matter of constitutional change; and quite another—and devastating—to deny the legitimacy of the constitutionally prescribed procedures in fulfilment of which the then government was deemed to be the majority government.”⁸

The *Keshavananda* decision was delivered on April 24, 1973. Mrs. Gandhi struck back the next day. The government announced the appointment of Justice A. N. Ray as the Chief Justice of India in preference to three senior

judges who had dared to interpret *Keshavananda* boldly and in the face of open threats from the regime. As N. A. Palkhivala records:

During the hearing . . . the Attorney-General appearing for the Union of India and the counsel for some States expressly referred in open Court, both orally and in writing, to the alternative of "political action" if the Supreme Court's rulings did not find favour with the government. This background is not without significance in considering the cases of supersession.⁹

The supersession of judges provoked volumes of protest from all across the country, but the government refused to admit that it had compromised the independence of the judiciary by its unprecedented action.¹⁰ On the contrary, Steel Minister Mohan Kumaramangalam formulated a "committed judiciary" theory and insisted that it was incumbent on the part of the government to consider not merely "judicial integrity" but also the "philosophy and outlook" of judges.¹¹ The controversy continued, almost unabated, for several years, but the judges received the message in unmistakable terms: behave or else.

During the Emergency (1975–77), the Supreme Court survived because it did not confront Mrs. Gandhi head-on. The Court did not formally give up its power of judicial review, but some judges began interpreting the Constitution in light of the new political climate. Justice Krishna Iyer, for example, not only granted a quasi-absolute stay to Mrs. Gandhi against the operation of the Allahabad High Court judgment but also went out of his way to suggest that the Prime Minister had committed no "graver electoral vices" under the "draconian" section 123 of the Representation of People Act. "Draconian laws," the Justice added, "do not cease to be law [*sic*] in courts but must alert a wakeful and quick-acting legislature."¹² If this was a message to the Prime Minister on how to proceed, she received it well. The besieged Parliament quickly passed the 39th amendment (Article 329A) to the Constitution, which not only validated the Prime Minister's election but also placed certain electoral laws beyond the pale of judicial review. The Supreme Court upheld Mrs. Gandhi's election on November 7, 1975, under the retroactively changed electoral laws. However, it struck down Article 329A(4) as *ultra vires* on the ground that it offended the rule of law—a part of the basic structure of the Constitution (vide *Keshavananda*). Thus, the Court accomplished a very difficult task: it provided a welcome relief to Mrs. Gandhi and, at the same time, preserved its own legitimate role by asserting the power of judicial review. There were, of course, arguments over the meaning of "basic structures," but it was astonishing to note Justice

Chandrachud's comment that the 39th amendment Act did not "destroy the democratic framework of our Government."¹³

Three days after the above judgment was delivered, the government requested the Court to reconsider *Keshavananda*. The Chief Justice assembled a Full Bench but dissolved it in indecent haste after two days of awkward exchange of arguments between "brother" justices and the Attorney-General of India. The outcome of the episode was unfortunate for Chief Justice Ray, for he was accused of playing to the tune of the regime which, as the Attorney-General pointed out in his nervousness, was seeking review of the case in order to amend "the very structure of the Government."¹⁴

Though the theory of "basic structures" survived, the emergence of Sanjay Gandhi on the political stage coupled with the deliberations of the Swaran Singh Committee to reform the Constitution¹⁵ generated new fears in the corridors of the Court in early 1976. To begin with, Chief Justice Ray agreed, voluntarily or otherwise, with the President of India to the mass transfer of High Court judges who were allegedly out of line with the regime; this unprecedented move and the controversy surrounding it tremendously undermined the prestige of the Chief Justice.¹⁶ Following this came the *Habeas Corpus* (1976) case in which the Court (with the exception of Justice H. R. Khanna) not only refused to grant relief to the victims of the preventive detention orders but also came close to endorsing the Emergency regime itself.¹⁷ The conclusion of the Court in this case that the emergency provisions (MISA) lifted the rule of law in the country was tragic both for the victims and for the doctrine of basic structures of the Constitution, but the observations of some of the judges were lamentably notorious. For example, Justice Chandrachud, who turned a perfect somersault during the Janata regime and admitted having lacked the courage to resign after this judgment, said at the time:

Counsel after counsel expressed the fear that during the Emergency the executive may whip and strip and starve the detenu and, if this be our judgment, even shoot him. Such misdeeds have not tarnished the image of free India and I have diamond-bright, diamond-hard hope that such things will never come to pass.¹⁸

Justice M. H. Beg went a step further. He not only appreciated the "care and concern" of the regime for the detainees, who were "well-housed, well-fed, and well-treated," but also complimented the government for having averted the "dangers of tomorrow" by taking the necessary security steps.¹⁹ And, in the *Union of India v. Bhanudas* (1977) case, the Court seemed so nervous that it almost abdicated its judicial function by declining to intervene in the

conditions, much less in the legality, of detention. Once again, Beg's comments shocked civil libertarians: "Speaking for myself, I am inclined to suspect that a number of allegations made on behalf of detainees have the oblique motive of partisan vilification or political propaganda for which Courts are not proper places."²⁰

Despite the pro-regime decisions of the Supreme Court, the Parliament enacted the 42nd amendment (December 18, 1976), which not only abrogated *Keshavananda* but also subordinated fundamental rights to the directive principles of state policy and restricted the writ jurisdiction of State High Courts. And even though Mrs. Gandhi announced elections to the Lok Sabha on January 18, 1977, she did not hesitate to strike another blow at the Supreme Court ten days later when she announced the appointment of Justice Beg as the Chief Justice of India in preference to Justice Khanna, who had refused to toe the government line in the *Habeas Corpus* case.

Like other institutions in society, the judiciary suffered enormous agony during the Emergency period; it yielded in substance to the autocratic rule of Mrs. Gandhi and in the process lost its institutional prestige and cohesiveness. The identification of judges and lawyers either as pro-regime or anti-regime created schisms in the membership of the Bench and the Bar, and the courtrooms across the country became sites for partisan clashes rather than for civil discussions.

The Desai Era, 1977-79

The victory of the Janata party in March 1977 brought new hopes for the restoration of democratic government in the country. Prime Minister Morarji Desai, in his very first broadcast to the nation on April 4, said:

I yield to none in my zealous regard for the independence of the judiciary. . . . I recognize that the right to liberty is the natural right of all the citizens of this country. We are resolved fully to restore those rights as embodied in the Constitution as it was before the eclipse in the last two years or so.²¹

Three days later, Shanti Bhusan, Union Law Minister, began restoring the lost constitutional balance. He introduced the 43rd amendment bill in the Lok Sabha (finally enacted in April 1978) to wipe out those provisions of the 42nd amendment Act that had given sweeping powers to the Parliament to make laws dealing with "anti-national" activities and had required extraordinary majorities of the Supreme Court and High Court judges to declare on the constitutionality of Central and State laws, respectively.²² In May 1978, the government introduced the 45th amendment bill (renumbered as the 44th amendment bill) not only to eliminate the remaining repressive features

of the 42nd amendment Act but also to establish a liberal democratic regime in the country. Unfortunately, the bill had a rough journey through the Congress-dominated upper house (Rajya Sabha), which passed it only after five of its crucial clauses—dealing inter alia with (a) the primacy of fundamental rights over the directive principles of state policy; and (b) the compulsory use of a referendum to amend the basic structures of the Constitution—were dropped by the government. The bill, as enacted in May 1979, thus failed to provide for a liberal state, though it placed considerable restrictions on the emergency powers of the executive in order to prevent manipulation of the rules of the game in the future.²³

Though the government could not restructure the Constitution the way it had promised, it made major efforts to restore confidence in the community of judges. For one thing, the 44th amendment bill and the debate that followed it did convey a welcome message to the judiciary that the government, unlike the Emergency regime, was willing to recognize the correctness of *Keshavananda* and to limit the constituent powers of the Parliament. For another, the government, through its proposed device of a referendum to amend the basic structures of the Constitution, indicated to the judiciary that it had a coordinate status with the Parliament and that the sovereign will of the people alone could change this structural balance. In addition, the government reaffirmed the “seniority principle” in judicial appointments and appointed, despite some loud protests, Justice Chandrachud as the Chief Justice of India in February 1978. It also canceled Mrs. Gandhi’s mass transfer of High Court judges to emphasize that the Constitution did not contemplate punitive transfers (i.e., transfers without the “effective” consultation of the Chief Justice of India) of judges.²⁴

In view of the reassuring political climate, the Supreme Court began demonstrating a renewed sense of confidence and vitality. In most of the decisions made between 1977 and 1979, the Court exhibited a new social awareness of its role in the political system. Besides taking some important initiatives in matters of legal aid, prison reforms, and administration of criminal justice, it oriented its constitutional interpretations to the task of the public good. In *Pathak* (1977), the Court awarded substantive justice when it ruled that the State could not abrogate the bonus settlement with the workers of the Life Insurance Corporation (LIC) under the facade of “public interest.” And, the sound and fury that accompanied the ruling in *Maneka* (1977) left no doubt that the Court was burying its emergency past and emerging as the final guardian of fundamental rights. “Governments come and go,” said Justice Iyer, “but the fundamental rights of the people

cannot be subject to wishful value-sets of the political regimes of the passing day."²⁵ If the restriction imposed on personal freedom indicated any abuse of power, added Justice Bhagwati, "the arms of the Court (were) long enough to reach it and to strike it down."²⁶

Though the Court would have preferred to stay out of the vortex of national politics, it was drawn into it in the *Dissolution* (1977) and in the *Special Courts Reference* (1978) cases. In the *Dissolution* case, the Court upheld the Janata's move to dismiss nine Congress State governments (a decision under which Mrs. Gandhi removed an equal number of Janata State governments in 1980) and suffered some justified criticism for the elaborate defensive policy statements that it made in support of its decision.²⁷ In the *Special Courts Reference* case, the court almost got coopted in the Janata's task of bringing the sinners of the Emergency to quick trial when it not only affirmed the legislative competence of the Parliament to enact the Special Courts bill but also suggested the modifications in the bill that would make it constitutionally valid.²⁸ Though it was argued that the bill, which selected offenders with special reference to the emergency period, created a separate class of offenders (and hence violated the right to equality), the Court overruled the objection on pragmatic grounds and in the interest of speedy trials. The Court was accused (and perhaps rightly so) of legitimizing the move of the new political masters to make the trial of their adversaries spectacular, if not unfair.

While the Court was skillful in dealing with political issues, it must be admitted that it failed to operate as a cohesive institution. Chief Justice Beg (Mrs. Gandhi's appointee who retired in February 1978) came in for heavy criticism from the press (particularly for his *Habeas Corpus* decision) and from his own "brother" justices for hobnobbing with the Acting President of India during the *Dissolution* case. Justice Goswami put it on record, much to the embarrassment of the Chief Justice:

I part with the records with a cold shudder. The Chief Justice was good enough to tell us that the acting President saw him during the time we were considering judgment after having announced the order and that there was mention of this pending matter during the conversation. I have given this matter most anxious thought, and even the strongest judicial restraint which a judge would prefer to exercise, leaves me no option but to place this on record hoping that the majesty of the High Office of the President, who should be beyond the high watermark of any controversy, suffers not in the future.²⁹

As the retirement of Chief Justice Beg drew closer, a Bombay Memorandum (prepared by fifty-two public men and advocates) called into question the

integrity of both Justice Chandrachud (next-in-line of seniority) and Justice Bhagwati for their decision in the *Habeas Corpus* case and appealed to the government not to appoint any one of them as the Chief Justice of India. The Memorandum said: "The people of the country can hardly be expected to allow the Supreme Judicial Power in the State to pass into the hands of Judges whose record can do no credit to any freedom loving people or to the Supreme Court."³⁰

Criticism notwithstanding, the Janata government embraced the "seniority principle" and appointed Justice Chandrachud as the next Chief Justice of India though attacks on his personal integrity continued long thereafter. Arun Shourie wrote:

Thus, we have our "leaders" and our "laws." We have our judges too. Judges represented at the top by a judge who one day upholds the fascist decision of a clique to deny six hundred and fifty million the right to *habeas corpus*, who the next day wishes he had the courage to resign rather than pronounce that judgment, who the day after addresses one of the principal culprits of the Emergency [Sanjay Gandhi] again and again as "a very responsible member of society."³¹

Thus, public criticism put both the Chief Justices (Beg and his successor, Chandrachud) on the defensive; they were made to feel guilty for their decisions during the Emergency, and this robbed both of them of their capacity to give a corporate identity to the Court. Chief Justice Beg received very little respect from his colleagues while Chief Justice Chandrachud sought to build his credibility among justices during the Janata interregnum until he ran into trouble with the Congress (I) party.

The Second Gandhi Era

Mrs. Gandhi's return to power in January 1980 revived the anti-judiciary hysteria of the Emergency period. The judiciary, some Congress (I) politicians insisted, needed an overhaul because it was contaminated by the Janata partisanship. On January 14, 1980, Law Minister Shiv Shankar promised (a) that the system of appointment of judges would be reviewed in order to make the judiciary more committed to the ideals of the Constitution, and (b) that the "obnoxious" Act relating to special courts would be repealed.³² As if to escape the wrath of the new masters, all courts dealing with cases against Mrs. Gandhi and others began moving with the winds of political change. A day after the Minister of Law made his statement, Justice Jain invoked "improper procedure" in the creation of his special court and hastily closed its doors after summarily dismissing all cases against Mrs. Gandhi and others. The judge said that "the creation and establishment of this court

and the declaration and designations to try the said cases were not made in accordance with the provisions of the Constitution and are, therefore, of no effect and confer no jurisdiction on this court."³³ A month later, Justice Joshi declared the establishment of his special court unconstitutional and dismissed the "jeep scandal" against Mrs. Gandhi.³⁴ In the last week of March, Justice Aggarwal discharged Sanjay Gandhi and his co-accused Singh in the polymix case, observing that "accusations against them lacked reasonable ground to expect a conviction and as such could be regarded as groundless."³⁵

The Supreme Court, it appears, carefully distinguished constitutional matters from issues involving a "cocktail of law and politics." While the Court held its own in constitutional matters and refused to play the politics of the establishment until mid-1981 (when it began caving in to the government), it awarded politically expedient justice on "cocktail" issues. In April 1980, a three-member Bench set aside the conviction of both Sanjay Gandhi and V. C. Shukla in the notorious *Kissa Kursi Ka* case, leaving without cover both Justice O. N. Vohra (who, after eleven months of trial and 6,500 pages of evidence, had convicted them and who, later on, paid the price for doing so when he was refused a permanent position on the Delhi Bench) and Chief Justice Chandrachud (who, as a member of the Supreme Court Bench, had canceled Sanjay Gandhi's bail on May 5, 1978, and sent him to jail for one month "for tampering with witnesses" in this case.³⁶). The Supreme Court, as A. G. Noorani wrote, did not take note of the fact that Sanjay Gandhi had been charged for "attempting to suborn the prosecution witnesses" and that "the innocent ought not to and, indeed, do not tend to tamper with witnesses."³⁷

In May 1980, another Supreme Court Bench, consisting of Justices Reddy and Iyer, gave a politically expedient (though legally questionable) decision when it dismissed two appeals, one challenging the withdrawal of the *Baroda Dynamite* case by the erstwhile Janata government, and another arising out of the withdrawal of cases against Bansi Lal by the Gandhi government.³⁸ Describing the submissions in the case as a "cocktail of law and politics," Justice Reddy, who wrote the judgment, warned that "criminal justice is not a plaything and a court is not a playground for politicking. . . . If political fortunes are to be reflected in the processes of the court, very soon the credibility of law will be lost." And yet, the judgment concluded: "To persist with prosecutions, where emotive issues are involved, in the name of vindicating the law may even be utter foolishness bordering on insanity."³⁹ The Court's ruling that politically motivated prosecutions were

different and could be treated differently was, of course, good politics but bad jurisprudence. Relying on this judgment, the Delhi Metropolitan Magistrate, V. B. Gupta, allowed the prosecution to withdraw, in the so-called public interest, a criminal case against Sanjay Gandhi and others who were involved in violent clashes with the Delhi police while protesting against the setting up of special courts in May 1979.⁴⁰ In fact, once the Supreme Court had given the lead, all 35 criminal cases against Sanjay Gandhi were gradually withdrawn or settled in his favor.

While decisions in "cocktail" cases brought no special honor to the courts, a few constitutional decisions of the Supreme Court were highly irksome for the ruling party. In May 1980, a five-member Bench of the Supreme Court, presided over by Chief Justice Chandrachud, struck down two of the most crucial clauses of the controversial 42nd amendment Act in the *Minerva Mills* case and reaffirmed *Keshavananda*. The Court ruled that section 55 of the amendment Act "is beyond the amending power of the Parliament and is void since it removes all limitations on the power of Parliament to amend the Constitution and confers power upon it to amend the Constitution so as to damage or destroy its basic or essential features or its basic structure."⁴¹ This reassertion of the power of judicial review by the Supreme Court upset many ruling politicians, who saw in it a new challenge to the progressive policies of their government. The General Secretary of the Congress (I) party warned that the judgment will have "serious political and constitutional implications," and the Law Minister suggested that the government would "appeal to the Supreme Court to constitute a larger bench to reconsider the order."⁴²

The controversy relating to the *Minerva Mills* case never abated. At the same time, however, the Supreme Court became the target of yet another Congress (I) attack when it held in the *LIC Bonus* case (1980) that the old bonus settlements to lower employees of the Corporation were valid and must be paid. The government brought in new legislation to nullify this judgment, but the Court passed an interlocutory order refusing to stay payments pending the validity of the new legislation.⁴³ And, when the Supreme Court began admitting writ petitions in early 1981 challenging the validity of the preventive detention law (i.e., the National Security Ordinance and the National Security Act 1980 which replaced it) and of the Special Bearer Bonds Act 1981 (which was designed to recover black-market money in the country), the Gandhi government renewed its attempt to cut the Court to size. Besides blaming the judiciary for many of the ills afflicting society, the ruling circles began debating the virtues of a presidential form of govern-

ment in which the judiciary, stripped of its constitutional power to review legislation, would be made accountable to some kind of politically appointed Superior Council. Such debates became so irksome that Justice Iyer of the Supreme Court, in one of his public lectures, remarked that a "presidential system had the potential to subvert democracy" and that the Parliament would be well-advised to consider if such a change would not "violate the basic structure of the Constitution."⁴⁴

Though the entire judicial system was pressured to conform, the ruling party zeroed in its attack on the *pater familias*. Unlike Justice Bhagwati, who was labeled as a Congress (I) man for his laudatory letter to Mrs. Gandhi, Chief Justice Chandrachud had a very low rating with the ruling household. Appointed Chief Justice of the Supreme Court by the Janata government—a disqualification in itself under the new regime—Chandrachud had not exactly endeared himself to the Gandhis for sending Sanjay to jail in 1978 or for turning *volte face* during the Janata period. By mid-1981, the estrangement between Chandrachud and the ruling party was so great that Askoke Sen, a Congress (I) MP and the President of the Supreme Court Bar Association, even hinted at his impeachment by Parliament.⁴⁵ Undaunted, the Chief Justice continued to defend the judiciary against executive interference and called upon the Bench and the Bar to be united as this was "the only way we could fight the provocation and attack on the judges."⁴⁶ On July 12, 1981, Chandrachud made his stand clear: "As the head of the judiciary does not interfere with the functioning of the Cabinet or ministry, so the head of the executive should not interfere with the functioning of the judiciary."⁴⁷

When I interviewed the Minister of Law, six chief justices, and eleven judges of various High Courts in July and August 1981, the battle lines seemed firmly drawn between the executive and the judiciary. While the Minister insisted that Chief Justice Chandrachud was creating insurmountable problems⁴⁸ for the government's attempt to overhaul the increasingly "communal and partisan" justice system, all but two of the High Court chief justices and judges felt that the ulterior motive of the government was to discipline all those judges whose judgments did not sit well with the ruling party. The danger to the independence of the judiciary, they said, was "very real" because (a) the government was not only the biggest litigant in the courts but also believed in the "righteousness" of its actions; (b) some public officials and lawyers—the "toady boys" of the ruling party—had a noticeable tendency to keep dossiers on judges and to "tattoo" them black or white for the political masters; and (c) the Court Chambers and Bar Associations were more engaged in internal feuds than in preserving the institutional

integrity of the judiciary. Communalism, they argued, was a country-wide phenomenon, not restricted to the judiciary alone, and the government had to have a broader approach to remove it.

The issue that had forced Chief Justice Chandrachud to give a clarion call for unity was the government's insistence in having a free hand in the appointment, confirmation, and transfer of High Court judges—a constitutionally questionable power but used by the government during the Emergency to humiliate non-pliant judges.⁴⁹ Throughout 1980, the Chief Justice had refused to submit to pressures and made the government appoint eight chief justices to High Courts (and five judges to the Supreme Court) according to well-established constitutional practices. However, the government was getting desperately anxious not only to appoint its own loyal supporters to the Bench but also to transfer or "weed out" some 115 High Court judges, half of whom were temporary, appointed by the Janata government. Thus, when the Minister of Law announced his "appointment and transfer policy"—that each High Court should have one-third of its judges and its chief justice from outside the State and that such a task should be accomplished by transferring judges from one High Court to another—Chief Justice Chandrachud was quick to react:

I do not think it will be either feasible or proper to transfer each and every sitting Chief Justice of the High Court to another High Court or to appoint an outside Judge as Chief Justice. . . . [The question is] so replete with practical difficulties and involves question of such high principles that a very careful thought shall have to be given to it before a final decision is taken.⁵⁰

Chandrachud's stand was in line with the decision of the Supreme Court in *Sheth v. Union of India* (1977) which held that "transfers on a wholesale basis" that left no scope for careful deliberations of "the facts in each particular case" were outside the "contemplation of our Constitution." The Court had concluded that even individual transfers could not be effected by the government without the "effective" and "real" consultation of the Chief Justice of India as provided in Article 222(1) of the Constitution. Thus, the Chief Justice of India was willing to consider individual cases and did recommend the transfer of Madras High Court Chief Justice Ismail to Kerala and of Patna High Court Chief Justice Singh to Madras in January 1981, but he was adamant not to endorse the government policy of wholesale transfers.⁵¹ Despite the fact that these were cases of individual transfers duly recommended by Chandrachud, both the Chief Justice and the government did suffer some embarrassment when Ismail resigned in protest⁵² and Singh appealed the decision to the Supreme Court.

While the transfer policy was still being debated in early 1981, the government began twisting the arms of Janata-appointed temporary or additional judges. Initially appointed for a period of two years, it was a well-established convention before the Emergency interregnum either to extend their term if the business of the courts so warranted or to confirm them against permanent vacancies in various High Courts. By mid-1981, the government had confirmed a few of the additional judges but kept most of them on tenterhooks either by giving them last-minute short-term extensions⁵³ or by dropping them unceremoniously on the expiry of their term. Justice Tulzarpurkar of the Supreme Court was, in fact, constrained to remark that the government was treating judges "worse than clerks."⁵⁴

The government had also asked the additional judges (see Ministry of Law circular of March 18, 1981) to give an undertaking that they would have no objection to being transferred outside their States on appointment to permanent positions. All these tactics to undermine the role of the judiciary brought an angry response from Chandrachud:

What is involved in the issue is not the motive or intentions of someone but the principles. When Article 222 of the Constitution clearly says that a judge can be transferred [or appointed under Article 224] after consultation with the Chief Justice of India . . . how can the executive then assume that it alone has the right to transfer a judge or grant an extension to an additional judge. Since the executive is controlled by political leaders . . . it may, it is feared, transfer a judge to a far-off place like Sikkim, the Andaman Islands or Assam, or refuse to grant him further extension if he does not toe the line.⁵⁵

In June 1981, the "motives" of the government became quite obvious when it refused extensions to O. N. Vohra (who had convicted Sanjay Gandhi in the *Kissa Kursi Ka* case) and S. N. Kumar (who was labeled a Janata candidate but was recommended for appointment by Chief Justice Chandrachud against the wishes of the Delhi Chief Justice⁵⁶) of the Delhi High Court. While Vohra did not challenge the decision, many legal luminaries took Kumar's case to the Supreme Court.

Thus, when a seven-member Constitution Bench of the Supreme Court, presided over by Justice Bhagwati, met on July 20, 1981, it was asked to decide on three thorny questions. The first was whether Singh had been properly transferred from Patna to Madras; the second was whether the circular of March 18, 1981, seeking the consent of additional judges for transfer, was within the brief of the Minister of Law; and the third was whether the government had acted correctly in dispensing with the services of Kumar.

Before the Constitution Bench reached its decision on these crucial issues, it was obvious that the Court was badly disunited. Besides the usual ideological divisions—left, center, right—that had overtaken the Court, the extent of backbiting among the judges had gained a certain measure of notoriety in legal circles. Justice Tulpurkar had attacked Justice Bhagwati for eulogizing the Prime Minister; Justice Desai had stalked off to his chamber in anger when one of his colleagues reminded him that the oath of office was more important than social sympathies; Justice Bhagwati had found Chief Justice Chandrachud “guilty” of not fulfilling the judicial requirement of circulating his own judgment among “brother” judges in the *Minerva Mills* case; and Justice Iyer had responded from public platforms to Justice Tulpurkar when the latter had attacked him for his “irrelevant perorations and sermons.”⁵⁷ Given the tendency among the judges to fight out their political and personal battles in public, the Court seemed wanting both in will⁵⁸ and in cohesiveness to fight the government in the present case.

Thus, when the Constitution Bench, by a majority of four-to-three, announced its judgment on December 30, 1981, it was hailed as the most precious New Year’s gift to the ruling party. The essence of the decision was that: (a) Singh’s transfer from Patna to Madras was in order; (b) the Law Ministry’s circular was valid since it applied to judges who had yet to be confirmed; and (c) the government was correct in dispensing with the services of Kumar even though Chief Justice Chandrachud was opposed to it. The implications of the decision were obvious—consultation with the Chief Justice of India, as provided in the Constitution, did not mean concurrence of the Chief Justice, and the government was free to hire (including the Supreme Court judges), fire, and transfer all the additional judges provided it had gone through certain formal constitutional procedures. The more portentous rider in the judgment was that the last word in these matters rested with the President of India alone. In contravention of well-established conventions, the President could even initiate proposals⁵⁹ for the appointment of judges to High Courts and to the Supreme Court. In other words, the ruling party could now parcel out the posts of judges from its own party headquarters. As one Supreme Court advocate put it: “The President means the Congress (I), under the present circumstances. This is a scandal. From now on, the ragamuffins of the ruling party will have the right to decide who will be a High Court judge, or even its chief justice.”⁶⁰

While the government celebrated the judgment, the Court lost most of its aura of respectability by exposing its internal divisions. Justice Bhagwati began showering choice innuendoes on Chandrachud—“figuratively de-

scribed as *pater familias*," who could claim no "primacy over other constitutional functionaries" and who had taken a "constitutionally impermissible" position in the Kumar case⁶¹—and the attack became more vicious as the arguments proceeded in the case. Though Chandrachud's move to recommend Singh's transfer from Patna to Madras was upheld (and this was the only saving grace for Chandrachud), there was a sinister move on the part of the government to destroy his personal credibility even on this issue. Chandrachud had filed an affidavit before the Constitution Bench stating that he had consulted the President of India in regard to Singh's transfer. However, when the issue came up before the Bench, President Sanjiva Reddy sent a special message to the Court denying that he had been consulted *in person* by Chandrachud.⁶² This gave yet another opportunity to Bhagwati to criticize the Chief Justice: "It is an affidavit which is made by the Chief Justice [and yet] the statement made . . . is delightfully vague."⁶³ And, when Justice Desai insisted that he must know the constitutional connotation of the term "President," K. Parasaran, Solicitor-General for India, asked: "Why did we have a Supreme Court if we could not take as truth the sworn statement of the Chief Justice of India?"⁶⁴ The affidavit, of course, was accepted but Chandrachud's credibility was definitely put on the line.

A rather unusual feature of the judgment that caused great jubilations among the ruling politicians was the peroration by the majority of the Constitution Bench on the "value-packing" of judges in order to get rid of the "cancer-ridden" judicial system. The chorus on value-packing was loud and clear. "The Judiciary," said Bhagwati, "has a socio-economic destination" because the Constitution is "not a non-aligned parchment."⁶⁵ Desai went a little further: "The three organs of the government created by the Constitution must march in step. All must be imbued with the same values. Judges must be value-packed."⁶⁶ And Justice Venkataramiah talked of the desirability of having "people's judges" who alone could "fit into the scheme of popular democracy."⁶⁷ Even Mrs. Gandhi could not have said it better!

Conclusion

Apart from the issue of parliamentary supremacy in constitutional matters and despite the historic suicide committed by the Supreme Court in the *Judges' Transfer* case, the ruling party is not likely to give up its tirade against the judiciary until it toes the government line. How long the Supreme Court will remain a politically relevant and nationally significant institution is rather difficult to predict, but a Catch-22 questionnaire of the Law Commission,

seeking alternatives to this august body, is already making judges of the "Hall of Justice" extremely nervous. The questionnaire, which contains suggestive answers, revolves around the presumption of a buried fixation: junk the Supreme Court. As R. K. Makhija, President of the Delhi Court Bar Association, put it:

Mathew [head of the Commission and a retired Supreme Court judge] wants to complete his unfinished task of reducing the Supreme Court to the status of a serf. He wants to block the writs in the name of reducing workload. He wants to cut back on hearing so that points that do not suit the executive cannot be clarified. . . . Finally, he wants to do away with the very Supreme Court which cradled him for six long years and wants to play the Frankenstein to it.⁶⁸

It may be a fraudulent interpretation of democracy to have a government that is above its own laws, but there seems no dearth of zealot advocates of this concept of government among the members of the ruling party. The tragedy is that some of the judges, determined not to be hurt, are undermining the very institution that is the source of their strength.⁶⁹

Notes

1. The full text of the letter dated January 15 is published in the *Overseas Hindustan Times*, April 3, 1980. Justice Bhagwati's judgments during and after the Emergency have "startling inconsistencies." See Arun Shourie, *Indian Express*, January 25, 1982.
2. *Overseas Hindustan Times*, April 3, 17, 24, 1980.
3. *India Today*, January 31, 1982, p. 62.
4. *Statesman Weekly*, January 9, 1982.
5. The confrontation between the Parliament and the Judiciary began with the decision of the Supreme Court in the *Golak Nath* case. The Court not only upheld the contention of the petitioners that certain Land Reforms Acts were *ultra vires* of the Constitution because they infringed fundamental rights but also declared that "the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution." In the *Bank Nationalization* case, the Court declared as invalid the Banking Companies Act 1969 under which fourteen banks were nationalized; the Court's view was that the Act violated fundamental rights. In the *Privy Purses* case, the Presidential order derecognizing the former rulers of princely states was struck down on the ground that it was outside the competence of the President to issue such an order. The Court's judgments in the two last-mentioned cases created serious uneasiness in the political circles. See S. N. Ray, *Judicial Review and Fundamental Rights* (Calcutta, 1974); S. M. N. Raina, *Law, Judges, and Justices* (Indore, 1979).
6. The four of the nine judges who did not sign this judgment were A. N. Ray, K. K. Mathew, M. H. Beg, and S. N. Dwivedi. See D. C. Gupta, *Indian Government and Politics* (New Delhi, 1978).
7. Upendra Baxi, *The Indian Supreme Court and Politics* (Lucknow, 1980), pp. 21–23.
8. *Ibid*, p. 25.
9. N. A. Palkhivala, *Our Constitution Defaced and Defiled* (Delhi, 1974), pp. 93–94.
10. See Mohan Kumaramangalam, *Judicial Appointments: Analysis of the Recent Controversy Over the Appointment of the Chief Justice of India* (New Delhi, 1973); Kuldip Nayar (ed.),

The Supersession of Judges (New Delhi, 1973); G. G. Mirchandani, *Subverting the Constitution in India* (New Delhi, 1978); N. A. Palkhivala (ed.), *A Judiciary Made to Measure* (Bombay, 1973); K. S. Hedge, *Crisis in Indian Judiciary* (New Delhi, 1973).

11. For Kumaramangalam's view on the subject of committed judiciary, see his *Judicial Appointments*. Also see Kuldip Nayar, *Indian After Nebru* (New Delhi, 1975), pp. 215-216.
12. Baxi, *Indian Supreme Court*, p. 51. The Allahabad judgment was delivered on June 12, 1975. It was the verdict on the petition filed by Raj Narain for quashing Mrs. Gandhi's election to the Lok Sabha on the plea that she had employed corrupt methods to win her election. The verdict went against her. For a detailed reaction to this verdict, see J. S. Bright, *Allahabad High Court to Shah Commission* (New Delhi, 1979).
13. Justice Chandrachud's observations, writes Baxi, were "astonishing at the level of statesmanship and disconcerting at the level of juristic technique." Baxi, *Indian Supreme Court*, p. 59.
14. The dialogue between a few judges and the Attorney-General is reported in Anil Divan, "The Supreme Court: Legitimacy and Accountability," *The Radical Humanist*, August 1981.
15. The Swaran Singh Committee, set up by the Congress High Command on February 26, 1975, recommended those drastic changes in the Constitution that became part of the notorious 42nd amendment Act. For a brief purview of the Committee's report, see *Keesing's Contemporary Archives*, June 18, 1977.
16. The government had long followed the principle not to transfer a High Court judge without his consent and without effectively consulting the Chief Justice of India. See *Lok Sabha Debates*, XVIII, April 25-May 7, 1963. The experience of sixteen transfers during the Emergency violated this principle. See A. G. Noorani, "Transfer of High Court Judges," *Economic and Political Weekly*, September 20, 1980.
17. A number of persons were detained after the issue of Presidential Order dated June 27, 1975, which suspended the right to move the courts for the enforcement of right to life and personal liberty. However, some of the detainees challenged their detention by *habeas corpus* petitions under Article 226 of the Constitution. For details, see S. M. N. Raina, *Law, Judges, and Justice*, pp. 122-127.
18. *India Today*, July 1-15, 1981, p. 80. Speaking at a Bar Association meeting in Bangalore, Chandrachud said: "I should have resigned [after the MISA judgement]. I regret I have no courage to do so."
19. Baxi, *Indian Supreme Court*, p. 113.
20. *Ibid.*, p. 119. Baxi headlines this case as "the last nail in the coffin of personal liberty."
21. G. G. Mirchandani, *Subverting the Constitution*, p. 191.
22. The 42nd amendment laid down (a) that no High Court could hear cases involving the constitutional validity of Central laws; (b) that only two-thirds of a minimum five-judge High Court Bench could decide the constitutional validity of any State law; and (c) that only two-thirds of a minimum of a seven judge Supreme Court Bench could determine the constitutional validity of Central laws. See Sunder Raman, *Fundamental Rights and the 42nd Constitutional Amendment* (Calcutta, 1977).
23. For two excellent articles on the subject, see A. G. Noorani, "Cleaning up the Constitution," *Seminar*, January 1979, and Lloyd I. Rudolph and Susanne Hoerber Rudolph, "Judicial Review versus Parliamentary Sovereignty: The Struggle over Stateness in India," *Journal of Commonwealth and Comparative Politics*, XIX:3, November 1981.
24. Article 222(1) of the Constitution reads: "The President may, after consultation with the Chief Justice of India, transfer a judge from one High Court to any other High Court." However, Law Minister Sen had stated in the *Lok Sabha* in 1963 that the government

- "had accepted it as a principle that so far as High Court Judges were concerned, they should not be transferred excepting by consent. This convention has worked without fail during the last twelve years, and all transfers have been made not only with the consent of the transferees, but also in consultation with the Chief Justice of India." In the *Union of India v. S. H. Sheth* (1977), the Supreme Court ruled that (a) the Constitution contemplated only individual transfers, and (b) transfers by the President only after an "effective and meaningful" consultation with the Chief Justice of India. See *Lok Sabha Debates; Union of India v. S. H. Sheth* in N. R. Madhava Menon, "Judicial Appointments and Transfers," *Journal of the Bar Council of India*, VIII(1), 1981; *Gujarat Law Reporter*, No. 17, 1976, pp. 1017-1140. For a reflection on Chandrachud's appointment, see Henry J. Abraham, "Merit or Seniority . . .," *Journal of Commonwealth and Comparative Politics*, XVI:3, November 1978.
25. Baxi, *Indian Supreme Court*, p. 155. The case arose when the government impounded Mrs. Maneka Gandhi's passport under Section 10 of the Passport Act. The Court ruled that Section 10 was arbitrary and offended fundamental rights.
 26. *Ibid.*, p. 163.
 27. See *Times of India*, May 7, 1977; Baxi, *Indian Supreme Court*, pp. 127-136; Bhagwan D. Dua, "India: A Study in the Pathology of a Federal System," *Journal of Commonwealth and Comparative Politics*, XIX:3, November 1981; Alice Jacob and Rajeev Dhavan, "The Dissolution Case: Politics at the Bar of the Supreme Court," *Journal of Indian Law Institute*, 19:4, October-December 1977.
 28. See S. Sahay, "Significance of Special Courts," *Statesman Weekly*, December 23, 1978.
 29. Alice Jacob and Rajeev Dhavan, "Dissolution Case," p. 390.
 30. See Rajeev Dhavan, *Justice on Trial: The Supreme Court Today* (Allahabad, 1980), pp. 73-74.
 31. Arun Shourie, *Syptoms of Fascism* (New Delhi, 1978), p. 308.
 32. *Statesman Weekly*, January 19, 1980.
 33. The cases pending before the special court were in relation to the arrest of Bhimsen Sachar during the Emergency, and the alleged harassment of four officials detailed to collect information regarding the Maruti car project of Sanjay Gandhi. See *Overseas Hindustan Times*, February 28, 1980; A. G. Noorani, "Judgment in Special Court No. 2," *Economic and Political Weekly*, February 23, 1980.
 34. In this case, Mrs. Indira Gandhi and others were accused of procuring jeeps without payment from some industrialists and companies for use in the Lok Sabha election campaign in 1977 at Rae Bareilly and Amethi. See *Overseas Hindustan Times*, February 28, 1980.
 35. *Overseas Hindustan Times*, April 3, 1980.
 36. Before Justice Vohra convicted Sanjay Gandhi and V. C. Shukla for entering into a conspiracy during the Emergency to destroy the film "Kissa Kursi Kaa" produced by Amrit Nahata, the Supreme Court Bench, consisting of Chief Justice Chandrachud, Justices Ali and Shinghall, had canceled Sanjay Gandhi's bail for "abusing his liberty by attempting to suborn the prosecution witnesses."
 37. A. G. Noorani, "Kissa Kursi Kaa Case," *Economic and Political Weekly*, June 14-21, 1980.
 38. The Baroda Dynamite case involved George Fernandes and others who were charged with blowing up bridges and derailing passenger trains in various parts of Bombay and Karnataka during the Emergency. The Janata government withdrew the case from the Delhi High Court in March 1977. However, R. K. Jain challenged the withdrawal in the Supreme Court. See *Overseas Hindustan Times*, April 24, 1980.
 39. *Overseas Hindustan Times*, May 15, 1980.

40. *Overseas Hindustan Times*, May 22, 1980.
41. But for Justice Bhagwati, a five-member Bench of the Court ruled that the "Parliament could not have unlimited power to amend the Constitution and it could not write into the Constitution that an amendment made by it 'shall not be called into question in any court on any ground.' In other words, the Parliament could not debar the courts from their right of judicial review simply by declaring that such amendments were not to be touched by the courts." *Overseas Hindustan Times*, May 22, 1980.
42. *Ibid.* Also see S. Sahay, "A Close Look: No Place for Firmans," *Statesman Weekly*, May 24, 1980.
43. See Anil Divan, "Supreme Court"; *Times of India*, December 29, 1981.
44. *Overseas Hindustan Times*, May 22, 1980. Also see A. Prasad, *Presidential Government or Parliamentary Democracy* (New Delhi, 1981); S. Sahay, "Not Wiser Than Before," *Statesman Weekly*, December 6, 1980.
45. See *India Today*, July 1-15, 1981; *Himmat*, July 1, 1981; *Onlooker*, July 16-31; *Link*, June 21, 1981; *Illustrated Weekly*, July 12-18, 1981.
46. *India Today*, July 1-15, 1981.
47. *Illustrated Weekly*, July 12-18, 1981.
48. The Minister of Law did not seem to like the Supreme Court admitting writ petitions challenging the validity of the National Security Ordinance (and the Act which replaced it), Special Bearer Bonds Act, LIC (amendment) Act, etc. He was particularly concerned about the consequences of courts reviewing court martial verdicts and the promotion policy in the armed forces. In a recent case—*Captain V. K. Singh v. Union of India* (1981)—Justice Iyer of the Supreme Court, while ruling in favor of the Captain, had said, "Even the top brass must act according to law as lawlessness in the Defence Forces is a grave risk." See *India Today*, June 1-15, 1981.
49. Besides the transfer of sixteen High Court judges, two additional judges of the Delhi High Court, Aggarwal and Lalit, were neither confirmed nor given a further extension when their two-year term expired during the Emergency. See *Illustrated Weekly*, July 12-18, 1981.
50. Chandrachud's correspondence with the Minister of Law dated July 31, 1980, appears in the *Overseas Hindustan Times*, December 3, 1981. Also see A. G. Noorani, "Transfer of High Court Judges"; *Overseas Hindustan Times*, November 5, 12, 19, 1981.
51. By the end of the year 1980, seven High Courts had remained without permanent Chief Justices for over six months because Chandrachud wanted individual cases considered on merit. See *India Today*, February 1-15, 1981.
52. See M. M. Ismail, "The Decision was Mine," *India Today*, August 1-15, 1981; *Statesman Weekly*, July 18, 25, 1981.
53. "Two High Court judges in the Panjab and Haryana High Court, who were to end their temporary tenure in the afternoon on February 19, 1981 got their extension only that morning—and the extension was only for four months. In Madhya Pradesh the swearing-in of judges who had been confirmed belatedly had to be held at midnight because they could not have continued in office beyond that." Kuldip Nayar in *The Daily*, Ahmedabad, July 30, 1981. Also see *Overseas Hindustan Times*, December 31, 1981.
54. *Illustrated Weekly*, July 12-18, 1981.
55. *Ibid.* The Law Minister defended his circular on the basis of the recommendations made by the Law Commission of India and suggested that the transfer policy would bring about greater "national integration." See *Eighth Report, Law Commission of India* (New Delhi, 1979), p. 24; *Tribune*, July 16, 1981, for the text of the circular; *Statesman Weekly*, May 2, 1981, for criticism.
56. Article 217(1) of the Constitution states that every judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Govern-

- nor of the State, and the Chief Justice of the High Court concerned. Prakash Narain, Chief Justice of the Delhi High Court, had charged Kumar with corrupt practices in his letter to the Minister of Law dated May 7, 1981; however, he had requested the Minister not to show the letter to the Chief Justice of India. Since Kumar's wife had switched her party loyalty during the Janata regime, the whole episode was labeled as a grand conspiracy to get Kumar. The Supreme Court, in its final judgment on December 30, 1981, passed strictures against Narain for going over and above the head of the judiciary. See *Overseas Hindustan Times*, June 25, November 5, 12, 1981; *Statesman Weekly*, July 25, 1981; *Onlooker*, July 1-15, 1981, p. 10; *Tribune*, December 31, 1981.
57. Salman Khursheed and Sudershan Kumar Misra, "Supreme Court: A Bench Divided," *India Today*, February 1-15, 1981.
 58. Since November 1981, the Supreme Court's judgments in relation to the Special Bearer Bonds Act, LIC (amendment) Act, and National Security Act were not only pro-establishment but also somewhat apologetic. See *Overseas Hindustan Times*, November 5, 1981; *Times of India*, December 29, 30, 1981.
 59. The proposals were generally initiated by the High Court Chief Justice in the case of appointment of a High Court judge and by the Supreme Court Chief Justice in the case of a Supreme Court judge. It was only in overriding circumstances that the President rejected such proposals. See *Eighth Report, Law Commission of India*. M. Hidayatulla, *My Own Boswell* (New Delhi, 1980), p. 178.
 60. See *India Today*, January 31, 1982.
 61. Since 1980, Bhagwati had never concurred with Chandrachud on any judgment. See *ibid*; *Tribune*, December 31, 1981.
 62. *Statesman Weekly*, November 21, 1981. Justice Tulzapurkar was critical of the President's action: "I fail to appreciate the desirability or necessity of the statement made on behalf of the President disowning the personal discussion with the Chief Justice of India. . . ." *Tribune*, December 31, 1981.
 63. *India Today*, January 31, 1982.
 64. *Statesman Weekly*, November 21, 1981.
 65. *Statesman Weekly*, January 16, 1982.
 66. S. Sahay, "A Close Look: You Said Value-Packing, Milord?," *Statesman Weekly*, January 23, 1982. Sahay's comments are very appropriate: "The grave danger of the Judiciary playing to the gallery is that sooner than we imagine, it may be politically packed, and not merely 'value-packed.' The majority judgment has created conditions for such a development."
 67. *Ibid*; *Tribune*, December 31, 1981.
 68. Sumit Mitra, "Judiciary: Sinister Implications," *India Today*, February 28, 1982. Also see *Statesman Weekly*, February 6, 1982; *Overseas Hindustan Times*, February 18, April 15, 1982. For a cursory understanding of the government's point of view on judiciary, see "Law Minister likes Soviet Legal Set-up," in *Overseas Hindustan Times*, August 6, 1981; "Question of Commitment," *Statesman Weekly*, October 11, 1980.
 69. Referring to the judgment in the Judges' Transfer case, Ranjit Mahanty, Chairman of the Bar Council of India, said that the "last nail in the coffin of an independent judiciary has been driven by the judiciary itself. . . judges like gladiators were out to exhibit their loyalty and prowess to the King and his courtiers in the royal box, beheading in the process their learned brothers in the apex courts." *Overseas Hindustan Times*, February 11, 1982; "Judges at Loggerheads," in *Times of India*, January 1, 1982.