SOME SELECT ASPECTS OF THE CONSTITUTIONAL PHILOSOPHY OF JUSTICE CHINNAPPA REDDY[1]

Justice (Ret'd) B. Sudarshan Reddy
Supreme Court of India

At the very outset, let me express my deepest sense of honour at being asked to deliver this Justice O. Chinnappa Reddy Memorial lecture, on the occasion of the hundredth anniversary of his birth. This privilege is greater, on the account that I also happened to serve this country as a judge of the Supreme Court of India. That, in no way can ever mean that I was even remotely as worthy as the great man in whose memory this lecture is being delivered. I did not, I wish to emphatically state, in my wildest dreams ever imagine that I would hold the same position that he did. In comparison to the accomplishments of Justice Chinnappa Reddy, both before and after his appointment as a judge of the Supreme Court, let me state that my occupation of the same position has to be deemed, a simple twist of fate.

While I could not have avoided accepting this invitation from the legal fraternity, I must confess to a great deal of trepidation. And how could I not feel diffident? After all, I am talking about a person who was my hero in the judicial firmament, as he indeed was for so many of us who began our study of law, while he rose to prominence through his intellectual brilliance and his unparalleled capacity to combine it with empathy for the weakest among us. Let me place it on record that one of the reasons I joined law college was Justice Chinnappa Reddy. In my early years as a member of the bar, seniors in the profession spoke of him with unalloyed appreciation. We avidly followed his judgements, and afternoons spent in the courts where he presided were unforgettable lessons in graceful deportment, incredible

---

1 Justice Chinnappa Reddy Memorial Lecture, 22nd October, 2022 Hyderabad

legal and sociological insights and above all, a palpable concern for justice with solicitous concern for the most vulnerable.

A special mention must be made of Justice Chinnappa Reddy's contributions as a judge of the A.P. High Court. As many of you may be aware, in the dark days of the Emergency, even as the judiciary of the Apex Court buckled and delivered the constitutional abomination that was *ADM Jabalpur*, a few Justices – indeed a mere handful across the country – insisted that Emergency powers could not be interpreted to mean the abandonment of core fundamental rights. Justice Chinnappa Reddy was one of the leading lights and a beacon of hope, when political and constitutional darkness enveloped the polity. In these times, I would suggest that Justice Chinnappa Reddy's tenure as a judge of the then united A.P. High Court should be taken as an example and guide for those serving on High Courts who might be tempted to yield to the executive, setting aside their moral obligation to uphold the values of an independent judiciary, the Constitution and the cause of justice.

As a member of the then younger cohort of the Bar, I can attest to the fact that Justice Chinnappa Reddy's unwavering protection of political freedoms and Indian democracy electrified and infused us with a great sense of idealism, engendering an understanding that there is a larger purpose to the practice of law. At the same time, we were also very dismayed, when the then regime considered him to be defiant and difficult and he was transferred to another High Court. When the Emergency period ended, Justice Chinnappa Reddy was offered the position of Chief Justice of the AP High Court, indicating an institutional atonement. He declined and chose to stay back at the High Court he was transferred to. The reason? Because he was also committed to the idea of protection of the dignity of the Court, and his moral framework would not allow something as trivial, in his mind,

as personal vindication to hint a mistake by the institution. What one of the leading jurists of India wrote about him is worth recounting here:

> *"Chinnappa Reddy occupies a secure and exalted place in the Indian judicial pantheon. The judicial virtues he pursued on the High Bench helped enormously to restore the bruised legitimacy…. of the Supreme Court of India….. the notion of avatar… never appealed to him. For Chinnappa, the virtue of rectitude assumed a concern for collegiality…. He strove to enhance the collective competence of the Court as an Institution of co-governance of the nation and contributed greatly to the sustenance of its collective constitutional wisdom…."* [2]

I believe that Justice Chinnappa Reddy's concern about the enhancement of "collective competence of the Court" is best exemplified by his discussion of the celebrated *Minerva Mills*[3] case in the *Sanjeev Coke*[4] case. The principal question for consideration was whether the Coking Coal Mines (Nationalisation) Act, 1972 was entitled to the protection of Article 31-C of the Constitution. In his arguments, Shri A.K. Sen had relied on certain sweeping observations of Justice Bhagwati, which effectively held that the "*connection has to be between the law and the directive principle and it must be a real and substantial connection*". A.K. Sen had creatively used the prolix language of Justice Bhagwati in *Minerva Mills* to submit that a "*law founded on discrimination is not entitled to the protection of Article 31-C, as such a law can never be said to be to further the Directive principle on Article 39(b)*".

How Justice Chinnappa Reddy addressed the rather creative manner in which A.K. Sen had sought to subvert the main principle of

---

2 Baxi, Upendra: "*Foreword – The Court and the Constitution: Summits and Shallows*", Reddy, O. Chinnappa R, pg xi.

3 Minerva Mills v Union of India, (1980) 3 SCC 625.

4 Sanjeev Coke Manufacturing Company v M/S Bharat Coking Coal Limited & Anr, (1983) 1 SCC 147.

Minerva Mills ought to be taken as an essential lesson for judges writing on constitutional values that seemingly contradict each other. It is worth citing from the judgement at length:

> *"We have some misgivings about the Minerva Mills decision, despite its rare beauty and persuasive rhetoric…. We confess the case has left us perplexed. In the second place, the question of constitutional validity of Article 31-C appears to us to be concluded by the decision of the Court in Keshavananda Bharati*[5] *case…. the protection of Article 31-C was, at that time, confined to laws giving effect to the policy of clauses (b) and (c)…."*

Justice Chinnappa Reddy then brilliantly analysed the dialectics of the Constitutional structure in setting aside A.K. Sen's assertions as to what *Minerva Mills* stood for:

> *"While we broadly agree with much that has been said by Bhagwati, J ……. to accept the submission of Shri Sen that a law founded on discrimination is not entitled to the protection of Article 31-C as such a law can never be said to further the directive principle affirmed in Article 39(b), would indeed be, to use a hackneyed phrase, to put the cart before the horse. If the law made to further the directive principle is necessarily non-discriminatory or is based on a reasonable classification, then such a law does not need any protection such as that afforded by Article 31-C. Such law would be valid on its own strength, with no aid from Article 31-C. To make it a condition precedent that a law seeking the haven of Article 31-C must be non-discriminatory or based on reasonable classification is to make Article 31-C meaningless."*

5 Keshavananda Bharati v State of Kerala, (1973) 4 SCC 179.

Possibly realizing that the very prolixity of the language of Justice Bhagwati that made *Minerva Mills* a case of "rare beauty" was also leading to avenues for misinterpretation, and subverting the very principle that the Constitution sought to strike a balance between – that the legislation, for the achievement of progressive goals could not be set aside on the anvil of a simplistic and limited reading of egalitarianism – Justice Chinnappa Reddy rehabilitated both *Minerva Mills* and in the gentlest of, and yet effective, terms criticised Justice Bhagwati:

> *"If Article 14 is not offended no one need give any immunity from any attack based on Article 14. Bhagwati, J. did not say anything to the contrary. On the other hand he was at great pains to point out that the broad egalitarian principle of social and economic justice for all was implicit in every directive principle, and therefore, a law designed to promote a directive principle, even if it came into conflict with formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and desirable constitutional goal of social and economic justice for all. Never for a moment did Bhagwati J., let in by another door the very controversy which was shut out by Article 31-C."*

And then he continued:

> *"While we agree with Bhagwati J. that the ……. connection with directive principle must not be some 'remote or tenuous connection', we deliberately refrain from the use of the words "real and substantial", "dominant", "basically and essentially necessary" and "closely and integrally connected" lest anyone chase after the meaning of these expressions…….and what we have now said about the qualifying words is only to caution ourselves against adjectives getting the better*

> *of the noun. Adjectives are attractive forensic aids but in matters of interpretation they are diverting intruders."*

And finishing the lesson on the need to be careful of what one writes, and not let eloquence get the better of the need to be very careful in uttering more than what is necessary, the master of terse formulation ended with a gentle arm over the shoulder of his fellow judge:

> "*These observations have the full concurrence of Bhagwati, J.*"!

Notwithstanding such mastery over the Constitutional imperatives, and a deep and abiding concern for judicial statecraft, Justice Chinnappa Reddy was allowed to write for the majority in only a few five judge Constitution benches. This is often thought of as a big mystery, which hushed whispers suggested ought to be unravelled. Especially, given that scholars like Gadbois and Baxi have opined that Justice Chinnappa Reddy must surely rank as one of the few towering intellects to have graced the Supreme Court of India.

One does not have to posit or subscribe to a theory that the judges of the Supreme Court overtly discriminate against fellow judges on the basis of their social background to begin to untie the strings of this mystery. Given that a majority of the judges of the Supreme Court have come from social back grounds in which lyricism of the written text is a paramount virtue, the emphasis placed by Justice Chinnappa Reddy – hailing from the hardscrabble peasant social background – on moral urgencies of the consequences for the weakest may have been less palatable. Moreover, for those hailing from social backgrounds in which equivocation of reality of the social condition of the masses was an inherent cultural imperative, the terseness of his articulation may have engendered an uncomfortable level of cognitive dissonance.

Whatever the forces that may have conspired or conjugated to prevent a brilliant humanist from setting the parameters of modes of

constitutional adjudication, contents and contours of constitutional identity, and inscribing a framework of discourse that was always mindful of moral urgency in the efforts to achieve a more progressive and socially just state of affairs without allowing the State to turn authoritarian or fascist, we also necessarily have to wonder whether the predicament that our democracy finds itself could be attributed to an undertheorized and undercooked progressive liberalism, making it shallow. Notwithstanding the eloquent exegesis of egalitarianism and social justice by favoured mandarins that was put on show, less emphasis was placed on the material consequences for the less fortunate, and how that might impact the ability of the masses to understand and protect the project of democracy in India. If only Justice Chinnappa Reddy had been allowed to clearly articulate the main contours of constitutional identity, and if the moral urgency that he felt animated the Indian Constitution had been allowed to be the central focus, maybe we would have had the benefit of a more brilliantly and persuasively articulated as well as a lasting constitutional jurisprudence- something that would have cautioned us that unless the nation heeds and acts upon the moral urgency of establishing conditions of social justice in which the inherent dignity of the hitherto deprived masses is reasserted and protected, political equality will be of mere platitudinal value and potentially unprotected from depredations by the elite classes. This would be because those very masses, due to their continued material and cultural deprivations – relative and absolute – would be left with limited social capacities, individually and as groups, to defend the substantive aspects of even political freedoms.

This was the very fear that Babasaheb Ambedkar pointed out so presciently when our Constitution was ratified. The continuing of vast and graded socio-economic inequalities with just notional equality

in the political sphere may be argued as having created the current crisis of our democracy marked by a strident, and evil, discourse against political freedoms of those who seek to speak for the weakest.

Normally, in speeches such as this, the speaker would move towards a rendering of issues of more current purport and may refer to the person being honoured only parenthetically. But, Justice Chinnappa Reddy was no ordinarily great man. It would be an unpardonable mistake, intellectually, to not recount the many warning bells he had sounded, most of which we as a nation did not fully heed, which inevitably wound our way to our current predicaments.

Of course, in a long and distinguished career as a judge, Justice Chinnappa Reddy delivered many hundreds of judgements of exquisite logic, redolent perspicacity and deep clarity. Hence, the very process of choosing a few to talk about would necessarily begin to be a bit arbitrary. However, the following few cases that I wish to highlight are those which have deeply influenced me, and as I sketch them, I am hoping that the audience will pick up on the deep strains of constitutional angst we must all feel with the current status of constitutional jurisprudence in India.

The first case I wish to describe and discuss is *Mohd. Yousuf Rather v. State of J & K*.[6] In this particular case, the main issue was about how irrelevant grounds in an order of preventive detention vitiate it. Justice Singhal authored the majority opinion for himself and Justice Sarkaria. Justice Chinnappa Reddy was flabbergasted "*by a good deal of vehement argument …. advanced by Dr. Singhvi to sustain the order of detention*" and chose to add a brief note with his concurrence. He begins with a characteristically brilliant formulation that encapsulates the

6 Mohd Yousuf Rather v State of Jammu and Kashmir, (1979) 4 SCC 370.

constitutional anxieties and constitutional checks. As always, it is worth citing him extensively:

> *"[T]he Constitution of India recognizes preventive detention as a necessary evil, but, nonetheless, an evil. So, we have by Constitutional mandate, circumscribed the making of laws providing for preventive detention…….. The law is now well settled that a detenu has two rights under Article 22(5)…. (1) To be informed, as soon as may be, of the grounds on which the order of detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain relief for him. The inclusion of an irrelevant or non-existent ground among other relevant grounds is an infringement of the first of the rights, and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason for saying that inclusion of even a single irrelevant or obscure ground… is an invasion of the detenu's constitutional rights is that the Court is precluded from adjudicating upon the sufficiency of the grounds ……."*

With regard to Dr. Singhvi's argument that all the other purported charges that are vague and inchoate should be disregarded and only the last one be taken into account, the following observation of Dr. Chinnappa Reddy was so characteristic of the great man's capacity for a brilliant metaphor, that is both precise and also compelling: "*The last straw which breaks a camel's back does not make weightless the other loads on the camel's back.*"

As I re-read the case of *Mohd. Yousuf Rather* in preparation of this lecture I smiled wryly to myself. Just a few days ago we read in the newspapers that the Union of India declared in the Supreme Court that "*jail is the only place for all 'urban naxals'*". In the newspaper reports there was no indication that the Supreme Court asked about the meaning of that expression. Anyone following the current socio-political discourse, even with a modicum of effort, would probably be aware that the expression is now used for any one and all who voice any kind of support for the weaker segments or engage in criticism of authorities or of a particular socio-political stance.

In *Mohd Yousuf Rather*, one of the first grounds cited was that the detenu was a "Naxalite", which on closer examination only involved the detenu believing that meant no more than that he was a believer in the Marxist-Leninist ideology and Dr. Singhvi confessed that the expression Naxalite was too imprecise and vague. The other ground pressed for detention was that the detenu made a speech in which he asked the audience to shun the life of dishonour and rise in revolt against oppression. As he always did, Justice Chinnappa Reddy's observations convey the correct constitutional position, which we all can then compare with what we are seeing and hearing now:

> *"Some think of Naxalites as blood thirsty monsters; some compare them to Joan of Arc. It all depends on the class to which one belongs, one's political hues and ideological perceptions…….. Dr. Singhvi had, ultimately to confess that the expression…. was as definite or vague as words describing ideologies…….It is enough to say that it is just a label which can be as misleading as any other and is, perhaps, used occasionally for that very purpose…..Now, expressions like "revolt" and "revolution" are flung about by all and sundry….Every turn against the establishment is called a "revolt" and every new idea is labelled as "revolutionary"……. Neither paragraph three nor four*

> *of the grounds of detention specifies the particular form of revolt or revolution which the detenu advocated. Did he incite people to violence? What words did he employ? What, then, is the connection between these grounds and 'acting in a manner prejudicial to the maintenance of the public order"? There is no answer to be gleaned" and hence the alleged grounds are "held to be both irrelevant and vague."*

Lest some misguided souls engage in a knee jerk criticism of the foregoing as the response of a judge who was a socialist, we can reassure them that Justice Chinnappa Reddy's defense of political freedoms – of conscience, of ideological persuasions and of expression – was equally felicitously extended to those who could be deemed to hold entirely opposing socio-political opinions. In the case of *Ramashankar Raghuvanshi and Anr*[7] the Supreme Court was dealing with the legality of termination from a government job on the grounds that the appellant, Ramashankar Raghuvanshi, had taken part in "RSS and Jan Sangh" activities. And I must again repeat, as always citing Justice Chinnappa Reddy extensively is worthwhile:

> *"India is not a police state. India is a democratic republic. More than 30 years ago, on January 26, 1950, the people of India resolved to constitute India into a democratic republic and to secure to all its citizens "Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity", and to promote "Fraternity, assuring the dignity of the individual". This determination of the people, let us hope, is not a forgotten chapter of history. …… All that is said is that before he was absorbed in Government service, he had taken part in some 'RSS or Jan Sangh activities.' What those activities were has never been disclosed. Neither the RSS nor the Jan Sangh is alleged to be engaged in any , subversive or other illegal*

7 State of Madhya Pradesh vs Ramashankar Raghuvanshi and Anr, (1983) 2 SCC 145.

activity; nor are the organisations banned. Most people, including intellectuals, may not agree with the programme and philosophy of the Jan Sangh and the RSS or, for that matter of many other political parties and organisations of an altogether different hue. But that is irrelevant. Everyone is entitled to his thoughts and views. There are no barriers. …….. What then was the sin that the respondent committed in participating in some political activity before his absorption into Government service?..... The whole idea of seeking a Police report on the political faith and the past political activity of a candidate for public employment appears to our mind to cut at the very root of the Fundamental Rights of equality of opportunity in the matter of employment, freedom of expression and freedom of association…… Politics is no crime. Does it mean that only True Believers in the political faith of the party in power for the time being are entitled to public employment ? Would it not lead to devastating results, if such a policy is pursued by each of the Governments of the constituent States of India where different political parties may happen to wield power, for the time being ? Is public employment reserved for "the cringing and the craven"…? We do not have the slightest doubt that the whole business of seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Arts. 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. ***To hold otherwise would be to introduce 'McCarthyism' into India.***

'McCarthyism' is obnoxious to the whole philosophy of our constitution. We do not want it."[8]

Apart from laying out, with his usual felicity, the correct constitutional position, Justice Chinnappa Reddy also pointed to another aspect of constitutionalism and constitutional values. If the power vested in a particular regime, due to electoral victories, were to be used to illegally target people and opponents holding opposing views, then reciprocation by others who may come to power at a later date would lead the country to chaos of mutually aided destruction. The caution that Justice Chinnappa Reddy urged, when the Congress party was in power – both at the Centre and in the State of Madhya Pradesh- should be borne in mind by all political parties now holding or aspiring to hold political power.

We have heard often, especially over the past decade or so, of vigilante justice being promoted by some political factions, and enforced by spontaneously forming mobs of a particular politico-religious formation, demanding that individuals belonging to other denominations prove their patriotism by singing the National Anthem or another poem deemed by many to be the National Song. In *Bijoe Emmanuel*[9]*,* the Supreme Court was dealing with the issues raised on behalf of three school children who belonged to a denomination "Jehovah's Witnesses" and who refused to sing the National Anthem even though they always stood up whenever the anthem was played. Justice Chinnappa Reddy wrote:

---

8 Also read the commentary of R. Venkataramani, recently appointed as the Attorney General of India, on this case in his book "*Judgements by Chinnappa Reddy – A Humanist*", pb. International Institute of Human Rights Society, New Delhi (1983). Indeed that book is a small treasure trove of commentaries and insights into various decisions by Justice Chinnappa Reddy.

9 Bijoe Emmanuel & Ors v State of Kerala & Ors, (1986) 3 Supreme Court Cases 615.

> *"We are afraid the High Court misdirected itself and went off at a tangent. They considered, in minute detail, each and every word and thought of the National Anthem and concluded that there was no word or thought…. Which could offend anyone's religious susceptibilities. But that is not the question at all. The objection of the petitioners is not to the language or sentiments of the National Anthem wherever….. In their words '[T]hey desist from actual singing only because of their honest belief and conviction….." we have to examine whether the ban imposed by Kerala education authorities against silence when the National Anthem is sung on pain of expulsion from the school is consistent with the rights guaranteed by articles 19(1)(a) and 25 of the Constitution….. we have no option but to hold that the expulsion of the children from the school for not joining the singing of National Anthem, though they stood respectfully… was violative of Article 19(1)(A)".*

Continuing further, and examining Article 25, he wrote:

> *"Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind interpreting Article 25….. Therefore, whenever the Fundamental Right to freedom of conscience and to profess, practice and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such an act is to protect public order, morality and health, and whether it is to give effect to other provisions of Part III of the Constitution or whether it is authorized by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practice for social welfare and reform.* ***It is the duty and function of the Court to so do.***"

While *Bijoe Emmanuel* is justifiably celebrated as a blow for religious freedoms, we must also not jump to the conclusion that Justice Chinnappa Reddy held the view that all religious views, even if held genuinely, are beyond the pale of the law. In particular, if the law is to promote other provisions of Part III or for social welfare and reform, then protections of Article 25 may not be extended. I am sure many of you would agree that such a balanced perspective between the ideas of "religious freedom and their protections" and the need for "social welfare and reform"[10] have been relatively rare, and even rarer has been the clarity of language and conviction. It is no wonder that Justice Chinnappa Reddy was one of the judges concurring with the views of Justice Y.V. Chandrachud in the *Shah Bano case* (which upheld the views of Justice Krishna Iyer in both *Bai Tahira*[11] and *Fazlunbi*[12] (Justice Chinnappa Reddy was a member of the three-judge bench in the latter case).

It is inevitable that patriarchal attitudes (or unquestioned or unexamined beliefs influenced by patriarchy), religious views and beliefs would often clash with the more modern value structures (arguably more aspired for than achieved) in which women are deemed to be equal in every way with men. Justice Chinnappa Reddy was definitely of the opinion that Article 25 ought not to be a hindrance for social welfare and reform. For instance, in the chapter on Women and Women's rights, in his book "*The Court and the Constitution of India: Summits and Shallows*"[13]. He wrote:

---

10 Attorney General R. Venkataramani points out that many Members of Parliament, including one from the largest minority, had reacted very sharply to the Bijoe Emmanuel decision, and had used extreme language against Justice Chinnappa Reddy. Supra n. 7, at page 15.

11 1979 AIR 362.

12 1980 AIR 1730.

13 Reddy, O. Chinnappa, OUP, New Delhi 2008, pages 115 and 117.

> *"One of the outstanding unresolved problems of humanity is that of the liberation of women, humanity's oppressed half…. In the ultimate analysis the measure of democracy in a country's polity and the measure of the general emancipation of the people is the degree of emancipation of its women…. Much has been said; not so much has been achieved….. [T]hese special provisions" such as Articles 14, 42, 44 etc., "have made no impact whatsoever on the general condition of Indian women, although it may have produced here and there a few professionals like doctors, lawyers, teachers etc.,. Notwithstanding the equality clauses of the Constitution, the gender bias against women of all religions in matters of succession to property, marriage and divorce still persist….. [T]hen there are the laws, laws to be made, laws to be abolished, laws to be amended. Instead of ad hoc revision of some provisions here and another provision there, the Law Commission may be asked to take up a comprehensive revision of all laws where women are discriminated against, where women need protection and where women need advancement….. the need has become urgent with the passage of time but political games and conveniences seem to prevent the government from bringing forward any legislation to implement the Directive Principles"*

Justice Chinnappa Reddy's unabashed, eloquent and persuasive stance that equality clauses of the Indian Constitution necessarily also encode a socially progressive agenda to undo unconscionable damages in the past, continuing in the present and which might continue or re-emerge in the future, could be fruitfully studied as one of truest renditions of Constitutional identity. It is such a travesty that even the so-called progressive voices of the left have not borrowed his reference frame to articulate and build a moral movement. Few have expressed as clear views as the following:

> *"**Golaknath was a tragedy**. The judges led by Chief Justice Subba Rao, otherwise a liberal judge, showed **a near obsessive percipience of the Fundamental Rights in the Constitution…. But no perception of the Directive Principles** which were also part of the Constitution. There was **a flow of high-sounding rhetoric** about the 'transcendental' nature of the Fundamental Rights **but hardly a thought for the welfare of the 'People of India mentioned in the Preamble**…. [T]here was then no indigenous jurisprudence in the making. Judges…. Were steeped in British jurisprudence and where "that "did not help them, they were ready to look to American jurisprudence…. concepts of 'reasonable classification', 'police power'…. Were needlessly borrowed… to" narrowly "construe some of the Fundamental Rights instead of giving them an expansive interpretation in the light of the Directive Principles and the Preamble…… **and an individual as a member of society was displaced by an individual, pure and simple**."*[14]

He continues:

> ***"They failed to realise** the great truth that in Constitutional Law more than elsewhere, there are no absolutes which are absolutely true. They waxed eloquent on the 'great freedoms' of the right to property and the right to compensation, **but denied to the whole people of the country freedom of choice, the freedom from the tyranny of archaic dogma, the freedom to make a new and different choice to alleviate poverty…. Concerned as they were with the 'great freedoms', they showed little awareness of the great problems of the millions of little men…….** [T]hey were*

---

14 *Ibid*, page 48.

> *highly conscious that it was a Constitution that they were expounding but appeared to be unconscious that simultaneously it was the right to property in an economy of scarcity they were expounding. It was as if the right to property was the centre of the constitutional universe around which other Fundamental Rights including the right to equality revolved.* ***The effect of Golaknath was to stop constitutional progress and to fossilize the Constitution****".*

I am sure many of you would immediately appreciate that the so called "neo-liberal agenda", often times fusing with (and sustained by a socio-political discourse painting) an extreme form of "laissez faire free markets" (bordering on being "anarcho-capitalist") rhetoric, which has come to increasingly dominate the Indian polity for the past three decades, is on course to eviscerate the idea of an "individual as a member of society" and displace it with "an individual, pure and simple". Pushed forward by "I, Me, Mine" mindsets of the elite classes (and increasingly and shockingly now the middle classes too), there is seldom any thought about what is to be done about the masses – the hundreds of millions suffering from absolute as well as relative poverty that leaves them unable to self-actualize their potential – who are left behind. Are we on our way to establishing a policy framework that the Supreme Court once described as "tax break after tax breaks for the rich, and the gun for the poor" to man the "security state" protecting the gated communities for the "few"?

As the neo-liberal agenda was being heralded in 1991, my good friend and a distinguished parliamentarian, Shri. S. Jaipal Reddy, cautioned the then Prime Minister and the then Finance Minister that they must at least be careful that their policy agendas do not lead to the emergence of a dystopia in which the "state behaves like the market, and the market behaves like the state". Many reasonable

people are apprehending that that might be where we are headed, if we aren't already there. This is the inevitable consequence of a neo-liberal agenda – all over the world – in which the right to property is deemed to be the sole purpose and center of the Constitutional universe and of the socio-economic spheres of human action. This view necessarily engenders a fascist "security state" with a remit of protecting not just the borders of the nation, but also the borders of "the gated communities" of the few. But we need to ask ourselves- What would the support of the "security state" be limited to? As many discuss in whispers of the nation's policing powers and agencies being used to aid the rapid accumulation of assets and wealth of the very few, and to brow beat even those with considerable wealth (but not possessing the same level of patronage of those wielding political power), what should we expect of our constitutional future? Would the effect again be the stoppage of "constitutional progress and to fossilize the Constitution"? And fossilize the lives of hundreds of millions, with a view that accumulation of unlimited wealth by the very few is the primordial national purpose, some being given the gun to protect the very few, and the rest to remain silent (and if some of the more irresponsible and strident commentary on social media is to be believed) or even allowed to disappear?

The above uncomfortable questions are seldom asked, as the very foundations of notions of welfare of all communities are decimated, as the views and reality that human beings are also social animals are removed from consideration, and the expectations that there is great merit in serving others in the society, especially the weakest scorned (and even potentially subject to criminalization).

The decisions of Justice Chinnappa Reddy in the areas of socio-economic policies are too well known to be repeated here in extenso. Nevertheless, a brief recounting of his brilliant articulation in

at least a few of the cases is necessary, at least, to find some emotional and intellectual relief for ourselves.

As the Covid pandemic raged, and millions were likely to perish, two judges of the Supreme Court observed that it may be necessary for the Union of India to provide free testing to save lives. This raised the hackles of the neo-liberal coterie, and some went so far as to deride the judges in most contemptuous and un-parliamentary of language on social media. Their gripe was that any kind of attempt at moderating prices, even with the threat of millions dying, was unacceptable. The cost to the society, of potential death of millions, was apparently of no consequence to them. In the case of *Union of India v Cyanamide India Ltd*[15], Justice Chinnappa Reddy wrote:

> *"Profiteering, by itself, is evil. Profiteering in the scarce resources of the community, much needed life sustaining foodstuffs, and lifesaving drugs is diabolical…. It must be remembered that Article 39(b) enjoins a duty on the State towards securing 'the ownership and control of material resources of the community are so distributed as best to subserve the common good…… No doubt the order as made on November 25, 1981 has the manufacturers on terms, but the consumer public has been left high and dry. Their interests have in no way been taken care of. In matters of fixation of price", once a determination of essentiality is made "it is the interest of the consumer public that must come first".*[16]

In the *Sanjeev Coke* case, Senior Counsel, Shri. A.K. Sen asserted that "*neither a coal mine nor a coke oven plan owned by private parties*

---

15 (1987) 2SCC 720.

16 It must be noted that Justice Chinnappa Reddy was very careful in using the word "profiteering" and not "profits". Cambridge Dictionary defines profiteering as: "**the act of taking advantage of a situation in order to make a profit, usually by charging high prices for things people need**: The pharmaceutical company has been charged with profiteering from the AIDS crisis."

was a 'material resource of the community…. According to the learned counsel they would become material resources of the community only after they were acquired by the State".

Further, Shri A.K. Sen also used Krishna Iyer, J's prolixity in State of *Karnataka v. Ranganatha Reddy*[17]…. to urge that if the word 'distribute' was given its proper emphasis (based on what Krishna Iyer, J wrote), it would inevitably follow that "*material resources must belong to the community as a whole, that is to say, to the State or the public, before they could be distributed as best to subserve the common good.*"

As I have said again and again in this speech, Justice Chinnappa Reddy could make short work of specious arguments. His response was classic "Chinnappa" (as he himself would occasionally ask people to address him as):

> *"We are unable to appreciate the submission of Shri Sen. The expression 'material resources of the community' means all things which are capable of producing wealth for the community. There is no warrant for interpreting the expression in so narrow a fashion…… The expression involves no dichotomy. The words must be understood in the context of constitutional goal of establishing a sovereign, socialist, secular, democratic republic. Though the word 'socialism" was introduced in the Preamble by an amendment…. That socialism has always been the goal is evident from the Directive Principles of State Policy. The amendment was only to emphasise the urgency".*

And then he continued:

> *"……. everything of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of*

17 (1977) 4 SCC 471.

> *private resources from the coils of Article 39(b) is to cipherise its very purpose…. A directive to the State with a deliberate design to dismantle feudal and capitalist citadels of property must be interpreted in that spirit and hostility……"*

And finally, let us take the case of *K.C. Vasantha Kumar & Anr v State of Karnataka*[18], which involved the question of legality of reservations in the context of Articles 15(4) and 16(4). Justice Chinnappa Reddy's opinion in this case, covered a wide gamut of issues. But what he said about the so-called argument "from merit" is of particular importance, as that is always brought forth, again and again, in a very glib fashion, by purveyors of the opinions of upper classes, whenever the topic of reservations is brought forth:

> *"Over three decades have passed since we promised ourselves "justice, social, economic and political" and equality, of status and opportunity"…… the social and economic disparities are indeed despairingly vast.* ***The Scheduled Castes and the Scheduled Tribes and other socially and educationally backward classes have long journeys to make……. Their needs are their demands. The demands are matters of right and not of philanthropy. They ask for parity and not charity…….****"*

And he continues:

> "*Before we attempt to lay down guidelines for the Commission….. we will do well to warn ourselves and the commission against* ***the pitfalls of the 'traditional' approach towards the question of reservations…. which has generally been superior, elitist and therefore ambivalent****.* ***A duty to***

18 1985 (Supp) SCC 714.

> ***undo an evil*** *which has been perpetrated through the generations* ***is thought to betoken a generosity****….. so a superior and patronizing attitude is adopted. The result is that the* ***claim…. to equality as a matter of human and constitutional right is forgotten*** *and their rights are submerged in what is described as the 'preferential principle' or 'protective or compensatory discrimination'…. Unless we get rid of these superior, patronizing and paternalist attitudes…. it" would be "difficult to truly appreciate the problems involved in the claim of Scheduled Castes, Scheduled tribes and other backward classes* ***for their legitimate share of the benefits arising of their belonging to humanity and to a country whose Constitution preaches justice, social, economic and political and equality of status and opportunity for all".***

After setting the context as to why reservations are to be advanced, not as charity but as a matter of right owed on account of inherent human dignity of the beneficiaries, he addresses the pernicious meritorian argument of the elites:

> "*One of the results of the superior, elitist approach is* ***that the question of reservation is inevitably viewed as the conflict between the meritorian principle and the compensatory principle. No, it is not so. The real conflict is between the class of people, who have never been in or who have already moved out of the desert of poverty, illiteracy and backwardness and are entrenched in the oasis of convenient living and those who are still in the desert and want to reach the oasis.*** *There is not enough fruit in the garden and so those who are in, want to keep out those who are not.* ***The disastrous consequences of the so called meritorian principle to the vast***

majority of under-nourished, poverty stricken, barely literate and vulnerable people of our country are too obvious to be stated".[19]

"***And what is merit***? ***There is no merit in a system which brings about such consequences.*** *Is not a child of the Scheduled Castes, Scheduled tribes or other backward classes who has been brought up in an atmosphere of penury, illiteracy and anti-culture, who is looked down upon by tradition, no books and magazines to read at home, no radio to listen, no T.V. to watch, no one to help him with his his homework, who goes to the nearest local board school and college, and whose parents are either illiterate or so ignorant and ill-informed that he cannot even hope to seek their advice…… has not this child got merit if he, with all his disadvantages is able to secure the qualifying 40% or 50% …..* ***surely, a child who has been able to jump so many hurdles may be expected to do better and better as he progresses in life.[20] If spring flower he cannot be, autumn flower he may be. Why then, should he be stopped at the threshold on an alleged meritorian principle?*** *..... Mediocrity has always triumphed in the past in the case of the upper classes. But why should the so called meritorian principle be put against the mediocrity when we come to the" weaker sections?"*

---

19 At that point of time, in 1985, the prevailing cultural zeitgeist was still at least that of acknowledgement that these were real problems, even if sufficient moral courage was not always forthcoming to address them with great moral vigour and urgency. In our current denouement, the approach seems to be a cultural zeitgeist to ignore or deny any such problems (at best) or bitterly attacked as being an "anti-national discourse".

20 Kenneth Arrow, a Nobel laureate, speaks of how empirical evidence (sometime in 2004 or so) has shown that those who suffer early childhood deprivations, can make up and approach higher levels of achievements of the non-discriminated if they are allowed to pursue their studies for a longer period of time.

The ontological blunder of removing the individual from within the context of her belonging to a social context, and coupling that with locating human beings as nothing more than individuals has led to a metaphysical tragedy with significant consequences to our ability to cooperate and undertake collective action necessary to solve many structural and consequential problems. The problem lies with the value frame we have chosen, which is based on the neo-liberal frameworks of thought that an individual is capable of greed, and hence must only be expected to strive for personal aggrandizement. By removing the individual from the society and eliminating the duty to also be considerate of the social context and welfare of others, we have effectively created an atmosphere of accumulating negative externalities that can devastate the physical and the social world. And in the "I, Me, Mine" world, "merit" is only all about the individual and not the commonality of purpose. This is what agitated Justice Chinnappa Reddy, and what he repeatedly warned against.

Some of what Justice Chinnappa Reddy cautioned us, many decades ago, is now being spoken of with great concern by major philosophers. For instance, Michael Sandel writes, in the "*Tyranny of Merit*[21]":

> *"The debate over who is a maker in today's economy, and who a taker, is ultimately an argument about contributive justice…… thinking this through requires public debate about what counts as a valuable contribution to the common good…. My broader point is that renewing the dignity of work requires that we contend with the moral question underlying our economic arrangements, questions that the technocratic politics of recent decades have obscured…."*

---

21 Sandel, Michael J: "Tyranny of Merit: What's Become of the Common Good?", pages 221 -222.

> *"One such question is what kinds of work are worthy of recognition and esteem. Another is what we own one another as citizens. These questions are connected. For we cannot determine what counts as a contribution worth affirming without reasoning together about the purposes and ends of common life we share. And we cannot deliberate about common purposes and ends without a sense of belonging, without seeing ourselves as members of a community to which we are indebted. Only insofar as we depend on each other, and recognize our dependence, do we have reason to appreciate their contributions to our collective well-being. This requires a sense of community….. to enable us to say…. "we are all in this together" ….. Over the past four decades, market driven globalization and meritocratic conception of successes, taken together have unraveled these moral ties…….. Meritocratic sorting taught us that our success is our own doing, and so eroded our sense of indebtedness. We are now in the midst of the angry whirlwind this unraveling has produced."*

Which again brings us to what Justice Chinnappa Reddy meant when he wrote "*Golaknath was a tragedy……. and an individual as a member of society was displaced by an individual, pure and simple*". While Michael Sandel's concerns in *Tyranny of Merit* are still within the framework of "utilitarian calculus", Justice Chinnappa Reddy combined that with notions of (i) "inherent dignity" of a human being that needed to be protected for their own sake by an unwavering commitment to complete justice – identified in the Preamble as being comprised of social, economic and political , (ii) equality of opportunity and status, and the (iii) existential need for fraternity – both from the perspective of utilitarian fraternity and also human dignity that flows from such fraternity. His lament, about *Golaknath* fossilizing the Constitution, has to be understood from that perspective.

We have to ask: Given the reluctance, over the past few decades, to talk about the Directive Principles as being *sine qua non* for realizing the national purpose, have we effectively brought back the tragedy of *Golaknath* to play itself out in the lives of hundreds of millions of our fellow citizens? And we must also ask ourselves in these times, given that he was such a passionate soldier for the progressive agenda of the Constitution and his ever-present concern for the weakest, whether Justice Chinnappa Reddy might have also been labelled an "urban naxal".

In this lecture, I have tried to weave a narrative taking into account just a small portion of the work of a truly remarkable mind. A much more nuanced, and exhaustive rendering of the true scale and complexity of his work is probably in hundreds of cases – which I submit, without hyperbole, might be some of the finest works in law and jurisprudence. Consequently, this lecture must necessarily be viewed as a tentative foray and hence, might also be susceptible to error. However, I hope that this would engender interest amongst the legal fraternity, especially among the young scholars, to research his works, his life story and his written notes (if they have been preserved). This would serve the purpose of bringing back to life Justice Chinnappa Reddy, and also bring greater vigour to our life as practitioners of the law.

And let me end my speech here the way he ended his book, "*Shallows and Summits*":

"Endaro mahanubhavulu
Andariki Vandanamulu"

And on a personal note, let me say –

"Naa kritagnathulu
Ee saati leni mahanubhavudiki"

Jai Hind.