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# BOOK REVIEW

# JUSTICE VERSUS JUDICIARY: JUSTICE ENTHRONED OR ENTANGLED IN INDIA? (2019)

BY SUDHANSHU RANJAN, OXFORD UNIVERSITY PRESS, NEW DELHI, PP. IX-XV + 385. PRICE: RS 995.

—Arun K. Thiruvengadam*



## I. INTRODUCTION AND A BRIEF SURVEY OF SCHOLARSHIP BY LEGAL JOURNALISTS

There is a small but growing tribe of legal journalists who have authored book-length works relating to aspects of the legal system in India. The book under review is authored by Sudanshu Ranjan, a veteran journalist with a career spanning several decades. This is his second book on the Indian judiciary. In this review, I provide an overview of the book and its principal themes and argument, before concluding with an assessment of its virtues and weaknesses.

Before turning to the contents of the book, it is worth commenting briefly on the unusual genre of legal scholarship produced by professional journalists. The United States ('US') has historically produced the most well-known legal journalists. This can partly be attributed to the fact that the law, and the judicial determination of political questions, has played an important role in issues of governance in that jurisdiction since very early on in its history. Alexander

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Tocqueville's famous statement – "[s]carely any political question arises in the United States that is not turned, sooner or later, into a judicial question"[1] – was pronounced as early as 1835, only a half century after the adoption of the US Constitution, and has been regarded as expressing a truism about the American polity ever since. However, even in the US, the first dedicated legal journalists emerged only in the twentieth century. The celebrated *New York Times* journalist, Anthony Lewis, is widely regarded as having created the field of legal journalism in the US. Lewis won the Pulitzer Prize twice, with the second citation specifically mentioning his coverage of the US Supreme Court and its landmark decision in *Baker v C Carr* (1962).[2] Lewis authored many books, with the two most famous ones being narratives focused on two significant US Supreme Court decisions – *Gideon's Trumpet* (1964) and *Make no Law: The Sullivan case and the First Amendment* (1991).[3] Lewis, in turn, inspired many others to take to legal journalism. Although Lewis was not a lawyer by training, those who followed him often had law degrees. They were thus professionally equipped to cover courts and interpret judicial decisions for themselves, instead of merely reporting the views of lawyers, judges, and legal scholars. Some of those who have followed Lewis include Linda Greenhouse, Adam Liptak, and Jeffrey Toobin.[4] While covering the court and writing as journalists in our times, each of them has carved out a special place for their own commentary and analysis of the US Supreme Court and, more generally, of law in the US. The scholarship produced by these legal journalists in the US goes beyond conventional legal scholarship as their accounts are enriched by their beat reporting and access to judges, lawyers, and politicians involved in important cases and events.

Legal journalism in India has had a much shorter history, even though journalists have covered the Indian Supreme Court and legal events across the nation since the advent of independence in 1947. However, it is only recently that legally trained journalists have garnered attention for the analysis that they have provided beyond the pages of newspapers and magazines, in books published by mainstream publishers. Works by senior journalists, such as Manoj Mitta and V. Venkatesan, fall within this category and have added important

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1 Alexis De Tocqueville, *Democracy in America* (Phillips Bradley ed, vol 1, Knopf: US 1945) 280.

2 369 US 186 (1962) : 1962 SCC OnLine US SC 40. The case involved the redistricting of constituencies and is considered a landmark because the US Supreme Court held that it involved questions of a legal and judicial nature and was thus justiciable.

3 Anthony Lewis, *Gideon's Trumpet* (Random House: New York 1964); Anthony Lewis, *Make no Law: The Sullivan Case and the First Amendment* (Random House: New York 1991).

4 See generally, Linda Greenhouse, *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey* (Times House: New York 2006); Linda Greenhouse, *The US Supreme Court: A Very Short Introduction* (Oxford: New York 2012); Adam Liptak, *To Have and Uphold: The Supreme Court and the Battle for Same-Sex Marriage* (Byliner Inc 2013); and Jeffrey Toobin, *The Nine: Inside the Secret World of the Supreme Court* (Anchor 2008).

dimensions to our understanding of legal institutions in India.[5] Given the prominence he gained in later years as a politician, it is easy to forget that Arun Shourie first garnered national attention as a journalist. His early books drew significantly from his journalistic work. His 2001 book, *Courts and their Judgments*, provided a withering critique of the Indian Supreme Court's PIL jurisdiction, during a period when it was being invoked with great frequency, and anticipated similarly biting criticism from a new generation of scholars.

In more recent times, a younger group of legal journalists has emerged, who write with greater forthrightness and skill about legal developments. They seem unencumbered by the rigid constraints of older generations of legal journalists, who wrote for traditional print and magazines in hushed, reverential tones to supplement their factual analysis of legal and court-related events. New age web-based platforms, like *The Wire*, *Scroll*, and *The Print*, seem to provide today's journalists greater space and freedom to write boldly about courts, legal institutions and personalities. The emergence of long-form journalism, on platforms like *The Caravan*, has also facilitated this shift in tone, rigour, and content. This generation of journalists, several of whom either have formal legal training or have invested in obtaining deep legal knowledge on their own, writes with a bracing candour that does not rely on the inside knowledge or expertise of the bar and the bench. Consequently, their writing throws light on the secretive, clubbish practices of the world of lawyers and judges, which is dominated by male, upper-class and upper-caste mindsets, subjecting them to unprecedented scrutiny. They exhibit courage and a tendency to speak truth to power that is a breath of fresh air in a space which did not allow for transparency and plain-speak. Some of these new voices include Atul Dev, Murali Krishnan, Debayan Roy, Apurva Vishwanath, and Shrutisagar Yamunan. I will return to this theme in the conclusion as the focus now turns to the book under review.

## II. CONTEXTUALIZING AND SUMMARIZING THE BOOK UNDER REVIEW

Sudhanshu Ranjan is a senior journalist who spent many years working with Doordarshan. He is the author of several books, but the two from his oeuvre that relate to the law specifically have been published with mainstream academic publishers. His earlier work, titled *Justice, Judocracy and Democracy in India: Boundaries and Breaches*, was published by Routledge India in 2012,

[5] HS Phoolka and Manoj Mitta, *When a Tree Shook Delhi* (Roli books 2013); Manoj Mitta, *Modi and Godhra: The Fiction of Fact-Finding* (Harper Collins 2014); and V Venkatesan, *Constitutional Conundrums: Challenge to India's Democratic Process* (LexisNexis 2014).

and was positively reviewed in the *Journal of the Indian Law Institute*.[6] Given the related themes of the two books, and the similarities in how Ranjan structures and crafts his overall argument, I will briefly cover the first book before turning to the current work.

In the Introduction to his 2012 book, Ranjan's main argument is advanced quite pithily as follows: "The net result is that the judiciary is playing a pivotal role in the governance of the country. The government with a fractured mandate is hardly in a position to counter it; but is the overbearing role of one institution healthy for a democracy?" Over the course of five chapters, spread across 300-odd pages, Ranjan seeks to answer the question in the negative, by focusing on instances where the expansion of judicial power has often occurred with flimsy reasoning and in ways that have curbed democratically legitimate practices. The first chapter, extending to over a 100 pages, traces the origins of judicial review in the Anglo-American tradition, before providing a breezy overview of the expansion of the power of the Indian judiciary across its post-colonial history of a little over six decades (until the date of publication of the book in 2012). In the remaining chapters, Ranjan's focus is on the following issues – the separation of powers between the three wings of government; appointment of judges to the higher judiciary; the power of judges to punish for contempt of court; and the privileges of the legislature and their interpretation by courts over time. Using these disparate issues, and specific examples within each theme, Ranjan makes the case that the judiciary in India is overreaching by transgressing its powers and authority. His claim is not unqualified as, at several points, he notes that the judiciary's intervention is justified because of the venality of officials and extreme inaction of the other wings of government. Nevertheless, he concludes that the judiciary must be reined in, both for its own good and for the good of India's traditions of democratic constitutionalism.

The book under review, published seven years later by Oxford University Press, continues the broad theme and sensibility, but is more strident in its outrage over the interpretive (and other) excesses of judges. The subtitle of the book is framed as a question: "Justice enthroned or entangled in India?" Ranjan answers this question on the very first page of the Introduction to the book. The inspiration for this formulation stems from a statement of Gandhi, where he asserted that the legal profession must seek to enthrone justice, rather than entangle it in the net of law. Ranjan asserts, at the outset, that in contemporary India, "it appears that justice is not being enthroned but entangled."[7] He uses this formulation throughout the book to argue that the Indian judiciary

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[6] P Puneeth, 'Justice, Judocracy and Democracy in India: Boundaries and Breaches by Sudhanshu Ranjan: Book Review' 55(1) (2013) Journal of the Indian Law Institute 115-120.

[7] Sudhanshu Ranjan, *Justice versus Judiciary: Justice Enthroned or Entangled in India?* (OUP 2019) 1.

– more specifically, the Supreme Court – is not delivering true justice, but is involved in administering a form of justice that is deeply compromised. This message is drilled across the Introduction in strong language and then reinforced through the specific issues focused upon in the six subsequent chapters, which together extend to 360-odd pages.

As with his first book, Ranjan's first substantive chapter (Chapter 2 in the book) is the longest, at 130 pages, addressing the issue of 'Accountability of judges.' It begins with a brief description of the exchange between Justice Lord Edward Coke, Chief Justice of the Court of Common Pleas, and King James I, sometime in 1610. The point of this historical anecdote is to emphasize the fact that while kings were also held to be under the law, in our times, judges themselves seem to feel unbound by law. The chapter then briefly refers to schemes for enforcing judicial accountability in the US and Canada before noting that, in recent times, judges in India have accumulated great power. What makes this problematic, in Ranjan's view, is the following:

> [Judges in India] must be made accountable not only in respect of their personal conduct and integrity, but also in regard to the judicial verdicts that they deliver, which befuddle many a time and are thus incomprehensible. … The need for judicial accountability has increased all the more as the judiciary is, nowadays, performing not only judicial functions, but virtually executive functions as well. … But, such unbounded powers without any concomitant accountability tend to make it an autocratic and narcissistic institution. Unmindful of the budgetary and other vital implications, it passes orders which are simply unimplementable, such as the one for the interlinking of rivers, a policy decision which falls clearly in the domain of the executive. It is able to do all this because it is not held to account for all such acts.[8]

To make good on this claim, Ranjan then lists several themes, one after another, in what sometimes becomes a tedious read across 125 pages. The cases, events, and anecdotes he cites are drawn from a very large range of time periods and issues, making it hard for the reader to keep track of the overall narrative, a feature I will elaborate upon later. Illustratively, the issues covered include: the Supreme Court's arbitrary use of the role of the *amicus curiae*; the disturbing trend of ignorance of Constitution Bench rulings by smaller benches of the Supreme Court; the high-handed use of its powers by the Supreme Court, often without a real basis in the law, including in the *Sahara India Parivar* investor fraud case; the conflicting judgements on the issue of

[8] ibid 26.

transgender rights and the decriminalization of homosexuality in the *NALSA* and *Koushal* decisions;[9] the Supreme Court's brazen attempts to avoid the applicability of the Right to Information Act to itself; the failure of the judiciary to ensure that updated statistics about its functioning is made available to the public in a transparent and efficient manner; the fall in the quality and reasoning of its judgements; the failure to have clear norms for allocating cases to judges, which leads to the problem of bench-hunting; other examples of judicial indiscipline, where coordinate benches of the Court refuse to accept binding decisions and give conflicting rulings; the clear presence of corruption in the judiciary; troubling allegations of sexual harassment against Supreme Court judges, which did not result in any punishments; the failure to have clear rules regarding conflicts of interest and recusals; and post-retirement assignments which bring disrepute to the judiciary.

Some of these events, such as the issue of corruption in the judiciary, are tracked across a very long span of time. Ranjan specifically begins with 'corruption in ancient times', and then extensively covering the Justice V. Ramaswami impeachment case in the 1990s. He then updates the analysis to events from a few years prior to the publication of the book in 2019. While this broad time-frame makes the narrative unwieldy, what is of great value is Ranjan's meticulous detailing of the controversies and their careful accumulation, indicating the extent of the problem over time and across all rungs of the Indian judiciary. The language used is always tight and crisp, with a view to keeping the focus on the facts being described. This use of language is also wise, given that the Indian Supreme Court has often invoked its powers of contempt to arbitrarily curb legitimate criticism of its actions – an issue that Ranjan covered in his first book. Even otherwise, as a veteran journalist, Ranjan would be only too aware of this trend. That is why the events set out in this chapter are also a display of quiet courage. This is especially so when Ranjan details how Supreme Court Justices A.K. Ganguly and Swatanter Kumar did their best to suppress the allegations of sexual harassment levelled against them by young women interns who had been assigned to them by the Court. As Ranjan notes, neither judge was willing to adhere to even the basics of the legal process in relation to the charges against them, despite being fully aware of what due process required. Indeed, as Ranjan details, Swatanter Kumar was able to get the Delhi High Court to issue a gag order ensuring that his shocking actions could not be covered by the media.[10] This ensured that he

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[9] *National Legal Services Authority v Union of India* (2014) 5 SCC 438 and *Suresh Kumar Koushal v Naz Foundation* (2014) 1 SCC 1 respectively.

[10] For another view, detailing the saga of Justice Swatanter Kumar's successful attempt to gag the media, facilitated by a phalanx of prominent lawyers and the Delhi High Court, see Prashant Reddy, 'How Journalists Keep losing to Judges: The Swatanter Kumar Gag and 4 other Chilling Times the Media Lost to the Bench' (*Legally India*, 10 February 2014) <https://www.legallyindia.com/home/swatanter-kumar-how-do-journalists-keep-losing-to-judges-20140210-4328> accessed 10 May 2021.

was later able to obtain high-profile post-retirement jobs both within government and, at the time of writing, in Indian legal academia. While the shocking charges of sexual harassment levelled against Chief Justice Gogoi by an employee of the Supreme Court garnered headlines across the nation, Ranjan's analysis is a reminder that the impunity displayed by Justice Gogoi has precedents in India's recent past. Ranjan's tone of righteous indignation seems particularly apposite in this section of the book.

Chapter 3, titled 'Binary application of laws', is relatively short at 30 pages, focusing on examples of cases where, according to Ranjan, the double standards of the law are starkly evident. He focuses on those instances where the rich get special treatment in court cases, drawing upon examples of industrialists like Dhirubhai Ambani, film actor Salman Khan, Congress politicians during the tenure of Chief Justice A.N. Ray, and prominent state-level politicians, including Lalu Prasad Yadav and J. Jayalalitha. Ranjan also focuses on the failure to prosecute the perpetrators of mass communal riots, including the anti-Sikh riots of 1984, and the Bhopal gas tragedy. His description of the long, and ultimately fruitless, attempts of the Uphaar fire tragedy victims is particularly poignant.

This is followed by the chapter that, in my view, is the pick of the book. Titled 'Supreme Court's power to do complete justice', it is spread across 28 pages and focuses on a single provision of the Constitution: Article 142. This provision enables the Supreme Court to 'do complete justice' and has been deployed in various controversial cases, where the Court has arrogated powers and jurisdiction to itself which would otherwise have been without legal basis. Ranjan's succinct analysis here focuses on the history of the provision and the original motivations for including it. Thereafter, he analyses early Supreme Court decisions which limited its use and provided caveats about the context in which it could be invoked. Ranjan then describes how, after rarely deploying it in the first three decades, the Supreme Court began invoking it from the 1990s onwards. Ranjan criticizes the inconsistent use of the provision and carefully notes some of the absurdities involved, especially when the provision was invoked not only to override express statutory text but also to go against the spirit and the text of the Constitution itself. Ranjan's analysis also serves as a very good resource for the doctrinal history of the provision. It is in this chapter that Ranjan's tracing of constitutional doctrine and his careful analysis of text, precedent, and legal reasoning comes through. Since the publication of the book, Article 142 has continued to be invoked, most famously to decide the *Ayodhya* case.[11] Ranjan's warning seems particularly prescient: "Article 142 has to be used to avoid miscarriage of justice in the absence of any express legal provisions. Frequent invocation of Article 142 is creating uncertainty ….

[11] *M Siddiq v Suresh Das* (2020) 1 SCC 1 : 2019 SCC OnLine SC 1440.

Something meant to obviate injustice should not be used to obfuscate clearly defined law."

Chapter 5 turns to the issue of 'Judicial Delays' and, at 95 pages, is the second-longest chapter in the book. While Ranjan covers many events, episodes, and suggested reforms, it is unclear whether his analysis adds anything to the existing literature on this issue, which is fairly well-documented by now. What stands out is his journalistic eye for the particularly tragic consequences of delay in specific cases. He marshals an impressive array of cases to demonstrate this vividly.

Chapter 6, titled 'Lawyer, Heal Thyself', turns to a relatively under-emphasized and under-studied phenomenon: the role of the Indian legal profession beyond judges, with a specific focus on lawyers practicing before courts across India. Ranjan begins with references to Shakespeare and Ancient Greece before pithily covering the birth of the modern legal profession during the colonial era and early attempts to structure and regulate the growing legal profession. He is outspoken in his criticism of the 'crassly commercial' approach of the practicing Indian bar. He documents how leading Indian lawyers charge fees that are exorbitant, even by the standards of OECD nations. He goes on to demonstrate how such a skewed remuneration scheme at the top leads to problems for the profession as a whole. He also provides evidence of the poor drafting skills of lawyers in India, while also commenting on their tendency to use jargon, foreign terms, and ornamental and outdated words to make up for their lack of clarity, rigour, and substance. Ranjan documents many instances of corrupt and criminal conduct on the part of lawyers and the utter failure of the Bar Council of India to regulate them. Many of the instances documented by Ranjan are either little-known or long-forgotten, and his work will serve as an archive of these events.

This is followed by the last chapter in the book, titled 'My Lord or Your Excellency', which extends to a mere six pages and seeks to emphasize the continuing colonial and feudal nature of the judiciary. Ranjan's main point here is to emphasise the irony involved in the Supreme Court's daily routine and practices being steeped in feudal and hierarchical habits that are quite antithetical to the culture of freedom and liberty promoted by the Constitution, which makes the judiciary the custodian institution of such values.

## III. ASSESSING THE MERITS AND WEAKNESSES OF THE BOOK

As should be clear by now, I have both praise and criticism to offer on Ranjan's book. I will offer three points for each category.

The first positive I would highlight is Ranjan's skill as a journalist, which enables him to focus on the individual instance or example that he uses to illustrate his broader point. The book is full of well-chosen descriptions of both high-profile incidents and little-known events that are succinctly detailed. Ranjan possesses a rare ability to describe a fact situation fairly and clearly, in a manner that makes the point of the narration self-evident to the reader. While doing so, he focuses on the most critical facts, using appropriate extracts and direct quotes from primary materials. In choosing what to focus upon, Ranjan goes beyond what an academic or a practicing lawyer would. This adds both depth and colour to his analysis. A good example of this is the section 'Judiciary's brazen attempt to escape accountability under the RTI Act' from the first chapter on 'Accountability of Judges'. In this section, across the space of 22 pages, Ranjan provides the background to this issue and then analyses the several judgements on this point from 2007 onwards.

The second point is related to the first. At places in the book, Ranjan relies upon a quotation or a remark made to him in the course of an interview by a lawyer or a judge. This adds an immediacy and a specificity to an otherwise more abstract description. One is left wishing that there were more such nuggets, but the ones that are present in the text add texture and variety to the description.

Finally, Ranjan is to be commended for the forthright and clear style of language and expression that he adopts almost throughout the book. He is unsparing in his criticism of judges, lawyers, and other members of the legal complex. When he offers criticism, which is very often, he does his best to lay out the grounds of his reasoning. He seeks to back up his claims by providing evidence of various kinds, drawn from historical texts and events, the case law of the courts, the bare text of provisions of law, or well-known facts and events. In this way, he seeks to make good on a charge that he often levels at Indian judges of not providing good reasons for their judgments.

I should preface the criticism I offer by noting that I offer them as an academic, which is the stand point that informs my perspective on this and other books, especially those published by a leading academic publisher like Oxford University Press. That, of course, is not the only or correct view that one can take, but it is the standpoint that informs my critique. Other readers may not view Ranjan's book from such a lens, nor should they be expected to.

My first point of critique is about methodological self-awareness on the part of an author. While reading a work, I first try and understand the methodological choices made by the author, also in a bid to fully understand the motivations of the work. There are, of course, multiple approaches that authors can take (analytical/normative/descriptive/empirical and so on). Looking at Ranjan's

book, it is clear that he has a strongly normative stance on the role of the judiciary. Following from his previous work, Ranjan seeks to demonstrate how the Indian judiciary is abusing its high constitutional power, by focusing on specific issues that he believes help him make his case. Ranjan's stance is evident from the very first page of the Introduction, as I have noted earlier. He appears driven by a very strong normative vision of how judges should discharge their adjudicatory functions. Much of it appears to be derived from classic Anglo-American notions, given his extensive reliance upon cases and historical examples from that tradition. The difficulty with a strong normative vision can be that it does not pause to consider alternative views or explanations. Such an approach can obscure more nuanced views of the subject being studied. There is also a danger that the author might end up cherry-picking case studies that are designed to support the main premise of the work. So, for instance, it is not clear whether Ranjan has studied cases and instances where judges have actually conducted themselves with restraint and circumspection. One classic area where Indian judges profess to exercise restraint, and respect the greater democratic authority of Parliaments and government, is the sphere of economic decision-making. This is an area that Ranjan does not focus upon, and his analysis might be rendered more or less persuasive by looking at this set of cases. Ranjan does alert us to inconsistency in the use of judicial power, but he does not adopt seriously analytical perspectives that look at the use of judicial power. Therefore, we simply do not have enough basis to evaluate his claim beyond the areas he chooses to focus upon. So, my first point is about the need for authors to be mindful of the methodological approaches they adopt, the pros and cons of each such choice, and what they can do to mitigate biases and make their analysis more objective.

My second point is about the importance of the wider socio-political context. Ranjan has now authored two books on the Indian judiciary, but his analysis does not seriously take account of the broader context. Both books were published in quite different eras (the first in 2013 and the second in 2019), and under two contrasting political regimes. His critique of the judiciary in the first book was written during the UPA II government, whereas his current book was published during Prime Minister Modi's first term of government. Yet, one would not know that by reading the books themselves. The challenges confronting the Indian judiciary in both eras have been quite different. Since 2014, the Indian judiciary has been confronted with challenges of a quite different order, but those are barely mentioned in the second book. This is decidedly odd, given that Ranjan is quite aware of the pressures that judiciaries are subjected to under dominant governments, as his descriptions of the Indian Supreme Court under the Emergency show great awareness of the environment of that era. Yet that same sensibility is completely absent while detailing the situation regarding the contemporary Indian judiciary. Ranjan's critique of the judiciary is essentially the same in both eras: of an overreaching judiciary. His critique in his first book was in tune with the dominant sentiment of

the time, and fit well with the view advanced by many commentators that the Indian judiciary and the Supreme Court of India was flexing its muscles well beyond those that could be considered legitimate.[12] It could do so because of a weakened executive under a coalition government. Almost every commentator agreed on this fact; what was disputed was whether the judiciary was justified in exercising an extravagant role in the Indian polity. Defenders of the judiciary noted that coalition governments are often politically constrained in the actions they can undertake. Therefore, argued the defenders of expansive judicial action, the judiciary had to be activist almost out of necessity, especially in response to scams, such as the 2G case and the Coalgate cases. On the other hand, critics of the judiciary worried about the continuing exercise of such an out sized role. According to them, an expansive role damages the essential character of the checking function of the judiciary while simultaneously leading to a weakening of its own internal norms and discipline, as a consequence of such excesses. Ranjan's first book fell within this latter category. However, the current book, in launching a fulsome attack on the Indian judiciary for its excesses, seems to miss the changes in the Indian socio-political context under a near-hegemonic BJP government, where the judiciary's acts of omission are now drawing far more attention than its acts of commission.

This has become far more evident in the year since the re-election of Prime Minister Modi's government in May 2019, with the Supreme Court's inexplicable postponing of politically critical issues, such as the constitutionality of the abrogation of Article 370 and of the Citizenship Amendment Act of 2019. However, even when Ranjan would have finalized the text of the second book in 2018, such a trend was palpably visible. Almost immediately after the Modi government took office in May 2014, it began pushing back against appointments to the judiciary, and flexed its greater authority as India's first majority government in a quarter century, to push back against the judiciary's expanded role in the Indian polity. The effects were felt almost immediately, as is also demonstrated in the very revealing profiles of three Chief Justices who served during this period by the journalist Atul Dev that appeared in the pages of *Caravan* magazine[13] Read together, these long-form journalism pieces allow a reader to see how the Modi government slowly retrieved space from the judiciary. Over time, the Modi government used a variety of maneuvers to force the judiciary to go back to a more constrained role; a throwback to the more

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[12] See, for example, Lavanya Rajamani and Arghya Sengupta, 'The Supreme Court' in Niraja Gopal Jayal and Pratap Bhanu Mehta (eds), *The Oxford Companion to Politics in India* (Oxford University Press 2010) 80-97.

[13] Atul Dev, 'Balancing Act: Chief Justice Khehar and the Tussle Between the Executive and the Judiciary' (*The Caravan Magazine*, 1 June 2017) <https://caravanmagazine.in/reportage/chief-justice-khehar-executive-judiciary> Atul Dev, 'The Darkesh Hour: Dipak Misra's Shadow over the Supreme Court' (*The Caravan Magazine*, 1 July 2018) <https://caravanmagazine.in/law/dipak-misra-shadow-supreme-court> accessed 10 May 2021; and Atul Dev, 'In Sua Cause: What the Judiciary has done to itself' (*The Caravan Magazine*, 1 July 2019) <https://caravanmagazine.in/law/what-judiciary-done-itself> accessed 10 May 2021.

deferential role adopted by the Indian judiciary under the dominant-party governments of Prime Minister Nehru in the first two decades after Independence. In some ways, the deference granted by the contemporary judiciary to the executive government is far more troubling. By simply not taking up cases for disposal, the contemporary Supreme Court is abdicating its constitutionally-ordained role. This trend was evident even back in 2018, as the Supreme Court refused to hear cases, such as the challenge to the Aadhaar scheme, allowing it to become a *fait accompli*.

If Ranjan had focused on this wider context, his critique of the Indian judiciary would have gone beyond commenting only upon its excesses. The areas where it refused to exercise jurisdiction or abdicated its constitutional responsibility should have attracted equal, if not more, attention. The failure to do so can be attributed to seeing the institution as a whole, instead of recognizing that this multi-member body, functioning effectively as 11 or 12 separate courts on any single day, is also shaped by the person sitting in the chair of the Chief Justice of India. This position allows the incumbent to mould the character and functioning of the institution in a disproportionately significant way because of the existence of norms, such as the power of the Chief Justice of India to be the Master of the Roster. Ranjan does partly focus on this aspect when he alludes to the controversy over specific judges, such as Justice Arun Mishra being assigned contentious cases even when he was a junior judge. However, he fails to account for this in his overall critique of the Supreme Court as an institution.

My third and final point is about the relative lack of attention to issues of structure and choices about what to leave out in a work of this nature. These are often very subjective choices, varying from author to author. I offer my very subjective comments here, because of my belief that there are some specific standards and features which can aid accessibility. This may seem paradoxical, given my appreciation of Ranjan's style and language earlier. However, there is a distinction between making choices about language and about the structure of a legal work. A work of this nature needs to be carefully thought out in order to retain the reader's attention across its long span, and also to be useful as a future resource. A work that extends to 370-odd pages must pay attention to its structure. As I have noted, both books have multiple chapters. They are tied together by an introductory chapter, but not by a concluding one. The second book has seven chapters in all, but the longest of these extends to 130 pages, while the shortest chapter extends to only seven pages. The longer chapters lack thematic consistency and have sections which seem to be an odd fit with the rest. While Ranjan's specific anecdotes draw in the reader, his eclecticism can be frustrating at times. The references to ancient Indian texts, sources from other civilizations, and the juxtaposition with cases drawn from medieval England, colonial India, and post-colonial events (sometimes within

two pages) can be disorienting rather than illuminating. Many chapters could have done with some sharp editing to pare down the one too many cases on the same point, and the tangential references which detract from the power of the main narrative in each chapter. In my view, this book would have packed a more forceful punch at a third of its overall length, without compromising its central argument. Indeed, that argument would have been rendered more forceful by such a paring down of excess content.

## IV. CONCLUSION

I conclude by returning to the theme I began with: the importance of scholarship by legal journalists in our time, both in India and elsewhere. The Indian judiciary continues to be an important actor in the Indian polity. The work of journalists, like Sudhanshu Ranjan, provides an important resource, in its own right, to understand the fascinating complexity of the people, interests, and forces that influence the working of this significant constitutional institution. While the traditional work of academics and practicing lawyers is still important, the fast pace of developments in the contemporary world requires the inputs of many other professionals to ensure that the picture conveyed is as close, and as responsive, to reality as possible.

While I have been critical of some aspects of the book, I remain convinced that it is a valuable addition on the themes it covers. More specifically, the valuable historical analysis of the origins and abuse of the Article 142 jurisdiction by the Supreme Court of India is a standout contribution of this book. I am appreciative of the distinctive style of the book and its demonstrated courage in speaking truth to power. I also hope that it inspires a new generation of journalists who cover the Indian legal profession (including its courts), to follow suit and author book-length works about the legal complex, moving away from the shorter pieces that are their usual output. A book-length work carries the promise of including reflections and long-term assessments that is simply not possible in reportage that has to meet with strict deadlines. The gains to a wider audience, who study and follow the work of courts in India, is hopefully amply demonstrated in the content of this review.