

JUSTICE IN HER INFINITE VARIETY

Mithi Mukherjee, *India in the Shadows of the Empire: A Legal and Political History 1774 – 1950* (New Delhi: Oxford University Press, 2010)

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I. ENGAGING PASTS AND FUTURES

Mithi Mukherjee’s *India in the Shadows of the Empire* offers a set of rich and provocative essays on a legal and political history of India from 1774 – 1950. Previous attempts have focused on outlining colonial legal developments or tracing the creation of legal institutions – chronicling court structures, council reform and codification attempts. Mukherjee chooses to focus on discursive practices surrounding categories of ‘law’ and ‘justice’ in this time period.¹ The argument running through the essays is that colonial and anticolonial politics were shaped by deploying ‘justice’ in particular ways. Taking the reader through nearly 200 years of ‘modern’ Indian history, the essays trace how ‘colonial justice’, marked by territorial conquest and plunder was replaced by ‘imperial justice’, that rests on notions of benevolence and mercy. The two are conflated with the idea of ‘justice as liberty’ and ‘justice as equity’ respectively in the events that the book discusses, from the Warren Hastings trial (1787 – 1795) to the framing of the Indian Constitution (1946 – 1950). She concludes that justice-as-equity or imperial-style justice was what found expression in the

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¹ Legal histories include those by M.P. Jain, A.B. Keith, Rama Jois, V.D. Kulshetra and S.V. Desika Char. These provide excellent renditions of the legal developments and a chronology of institutional developments, but are not connected in these writings to the social or political context. The classic exposition on the constitutional history of India is GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (1966). Other interesting work has looked at particular aspects of constitutional history and include NASSER HUSSAIN, *THE JURISPRUDENCE OF EMERGENCY: COLONIALISM AND THE RULE OF LAW* (2003) and S.K. CHAUBE, *THE CONSTITUENT ASSEMBLY: SPRINGBOARD OF A REVOLUTION* (2000). Several critical essays, exploring historical aspects of constitutionalism have appeared in *POLITICS AND ETHICS OF THE INDIAN CONSTITUTION* (Rajeev Bhargava ed., 2008) and *INDIA’S LIVING CONSTITUTION* (R. Sudarshan *et al* eds., 2005).

Constitution. Mukherjee's draws upon Foucauldian views on power, knowledge and politics, but she claims to go beyond this framework by arguing that discourse does not alter merely present realities, but also those of the future. The discourse on 'justice' was, and continues to be instrumental in determining the trajectory of Indian politics.

Monographs critically examining a legal history of colonial India are, at this time, few and far between. Several shorter essays have appeared in academic journals that have focused on discursive practices within and about the law – about a variety of subjects from religious conversion to the banning of cow slaughter. Many have been influenced by the work of Bernard Cohn on the relationship between law and the colonial state, one of Mukherjee's own mentors.² This book also contributes to a legal history of India in the context of the empire.³ Distinguishing her work from earlier attempts that have focused either on the transfer of ideas from the metropole to the colony or Marxist renderings that, in her opinion, emphasize economic developments, she joins a rank of younger scholars who have recently begun writing on, flows and counterflows of ideas and institutions within the empire, and of how politics and law are implicated in this process.⁴

In keeping with attempts to treat justice as a discursive category, each of the six chapters uses the court as a trope.⁵ It is worthwhile to note that the time period under study that Mukherjee has identified is coterminous with the establishments of 'real' courts. The first Supreme Court was set up under Letters Patent in Calcutta in 1774 and the Constituent Assembly concluded its debates in 1950; these years mark the beginning and end of her narrative. The use of courtroom spaces and case laws in and of themselves to make broader statements about social and political developments is a prominent method of analysis for legal historians of South Asia,⁶ but Mukherjee's concern is

² BERNARD COHN, *COLONIALISM AND ITS FORMS OF KNOWLEDGE: THE BRITISH IN INDIA* (1996).

³ Several monographs on the political thought in the empire have used India as a case study. See UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE* (1999); KARUNA MANTENA, *ALIBIS OF EMPIRE: HENRY MAINE AND THE ENDS OF LIBERAL IMPERIALISM* (2010). Other works that have focused on the 'making' of empire (using varied lens) include DURBA GHOSH, *SEX AND THE FAMILY IN COLONIAL INDIA: THE MAKING OF EMPIRE* (2006) and PREM CHOWDHRY, *COLONIAL INDIA AND THE MAKING OF EMPIRE CINEMA* (2000).

⁴ See e.g., ELIZABETH KOLSKY, *COLONIAL JUSTICE: WHITE VIOLENCE AND THE RULE OF LAW* (2010); RITU BIRLA, *STAGES OF CAPITAL: LAW, CULTURE AND MARKET GOVERNANCE IN LATE COLONIAL INDIA* (2009)

⁵ Other situations where courts are central to the scholarly arguments made are BYRON CANNON, *POLITICS OF LAW AND THE COURTS IN NINETEENTH-CENTURY EGYPT* (1988); LAUREN BENTON, *LAW AND COLONIAL CULTURES: LEGAL REGIMES IN WORLD HISTORY 1400 – 1900* (2002).

⁶ One of the earliest writings in this regard was Lloyd Rudolph and Susanne Rudolph, *Barristers and Brahmins in India: Legal Cultures and Social Change*, 8 (1) COMP. STUD. SOC'Y & HIST. 24 (1965) and David Washbrook, *Law, State and Agrarian Society in India*, 15(3) MOD. ASIAN STUD. 649 (1981). See also JANAKI NAIR, *WOMEN AND LAW IN COLONIAL*

not just with these ‘real’ courts, but with spaces that operate with the trappings of a court. Here, the plaintiff and defendant appear as ‘enunciative personas’ and the courtroom is built up, literally speaking, around the contested subject matter.⁷ As a technique, this succeeds particularly in the first part of the book. Reading the fourth and fifth chapters which focus on Gandhi and the Constituent Assembly however, the trope seems almost restrictive of the analysis. I will first consider the more interesting implications of using the courtroom as a trope, and then go on to critically examine her arguments on the Constituent Assembly’s treatment of justice as a sovereign legislative principle.

II. ‘COURTS OF LAW AND STYLES OF SELF’:⁸ THE COURT AS A TROPE

The ‘courts of law’ in these chapters prove extremely useful in understanding the concept of justice that Mukherjee points to. In the first chapter on the Warren Hastings trial in London, Mukherjee uses the Privy Council in London as centrestage, while in the second, the Indian Legislative Council is treated as the ‘court’ in which the early “anticolonialists” would argue their case. In the final chapter, the Constituent Assembly is the court, where the provisions of the Draft Constitution are debated and finalized. Initially, the court as a trope is engaged to make the point that legal procedures ensure that subjective intentions of the parties cannot quite surface, being overcome by these institutional impulses. The implication of the argument is far more interesting. Subjective intentions may be inferred (if it is not immediately evident) from the manner in which parties in a court work institutional logics to their advantage. Perhaps legal procedures can be political – who invokes it and who it is invoked for can make for different styles and substance to one’s argument in court, depending often on the ‘relief’ asked for. When Edmund Burke appears for

INDIA: A SOCIAL HISTORY (1996); PARTHA CHATTERJEE, A PRINCELY IMPOSTER? : THE STRANGE AND UNIVERSAL HISTORY OF KUMAR OF BHAWAL (2002); Mattison Mines, *Courts of Law and Styles of Self in Eighteenth-Century Madras*, 35(1) MOD. ASIAN STUD., 33 (2001); Neil Brimnes, *Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor’s Court in Late Eighteenth Century Madras*, 37(3) MOD. ASIAN STUD. 513 (2003). Work that had adopted an ‘internal’ perspective to the law include RADHIKA SINGHA, A DESPOTISM OF LAW (1996); Mitra Sharafi, *The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism meets Anglo-Islamic Dower and Divorce Law*, 46(1) IND. ECON. & SOC. HIST. REV. 57 (2009); Anuj Bhuwania, ‘Very Wicked Children’: ‘Indian Torture’ and the Madras Torture Commission Report of 1855, 6(10) SURJ. HUM. RTS 7 (2009); Rohit De, *The Two Husbands of Vera Tiscenko: Apostasy, Conversion and Divorce in Late Colonial India*, 28(4) L. & HIST. REV. 1011 (2010); Matthew Groves, *Law, Religion and Public Order in Colonial India: Contextualising the 1887 Allahabad High Court Case on ‘Sacred Cows*, 33(1) S. ASIA: J. S. ASIAN STUD. 87 (2010). A number of book chapters also focus on the discursive potential of the law in colonial India and are too numerous to list here.

⁷ As an aside, using a court as a trope is particularly in keeping with an analysis largely centered on high politics. A great number of people are kept out of courtroom because of their lack of access to cultural and/or economic resources. See the classic work on this question Marc Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change* 9(1) L. & SOC’Y REV. 95 (1974).

⁸ From the title of Mattison Mines, *Courts of Law and Styles of Self in Eighteenth-Century Madras*, 35(1) MOD. ASIAN STUD., 33 (2001).

the prosecution in the Warren Hastings trial, Mukherjee beautifully captures how Grotius on the laws of war is used to make the argument that plunder and conquest of territory must be within certain limits.⁹ The presiding judge in this question is ‘empire’ (and the monarch personifying empire). According to Burke’s argument, which equated corruption with plunder, the empire should not allow its representatives, the East India Company officials, to violate these ‘laws’. Although restricted by legal procedure, Burke also managed to push beyond existing precedent. Mukherjee’s analysis of why Burke chose to adopt this line of argument shows how subjective intentions may still be indirectly inferred. However, where does this leave justice? By using the courtroom as trope, justice appears not as revolutionary transformation, but as calibrated and rule-bound. Was this the reason why, perhaps in a larger context, it was unsatisfactory? For this, Mukherjee offers an explanation in the second part of her book in her chapters on Gandhi and the Constituent Assembly.

Reading through the essays, one might ask why the courtroom is a chosen trope, given that ‘justice’ exists in multiple forms and is employed as frequently outside a courtroom, as it is within one. The chapter on *vakil raj*, or the role of the legal professional in the national movement, steps in to demonstrate the limits of legal justice. Can courtrooms actually *produce* justice through arguments between two self-interested parties arguing before an impartial judge? These limitations (of British law / legislative courts, to be precise), in Mukherjee’s opinion, were overcome by Gandhi’s role in anticolonial politics, till then spearheaded by the Indian National Congress. Gandhi drew upon the indigenous category of *moksha*, or spiritual liberation, to argue that in fact, imperial justice as liberty (as formerly articulated by the Congress could not result in actual self-government (or as he called it ‘parliamentary swaraj’) So, Mukherjee argues, ‘judicial precedents’ and ‘illustrations’, too often staple lawyerly talk, would not result in independence; freedom would have to come through renunciation. Rather than wait for democracy to be ‘...introduced into India, one precedent at a time’,¹⁰ Gandhian politics focused on negotiating freedom and politics - domains typically seen as being in conflict with each other. Mukherjee’s argument that non-violence and renunciation afforded an opportunity to go beyond the question of identity that had long concerned colonial Indian society is to be

⁹ MITHI MUKHERJEE, *INDIA IN THE SHADOWS OF EMPIRE : A LEGAL AND POLITICAL HISTORY 1774 – 1950* 26–8 (2010).

¹⁰ *Id.*, 121.

closely investigated with reference to events during the 1920s – 1950s.¹¹ The ‘freedom’ struggle was frequently non-violent and identity-based high politics did not take a backseat at this time - Ambedkar or Jinnah or Periyar or Tara Singh are examples in support of this proposition. Neither did the nationalist elite within the Congress follow too closely in his footsteps. My inference from Mukherjee’s analysis would be to show how justice operated in multiple modes - while Gandhian politics transcended the limits of courtroom-circumscribed justice (and by extension, constitutional methods), liberal constitutional politics was still alive and well in other levels of the national movement.

Finally, the use of the court as a trope allows the reader to re-imagine the ‘cases’ that Mukherjee picks out. Across the essays, they include corruption in the East India Company, the formation of the Congress and the debates surrounding the nature of constitutionalism in postcolonial India. These are well-known “events” within mainstream histories, but Mukherjee investigates how these ‘cases’ were argued and ‘decided’ as per a particular conception of justice. In her treatment of the Constituent Assembly as a ‘case’, Mukherjee’s argument engages with Aditya Nigam’s views of the Assembly as an ‘event’ in interesting ways.¹² Nigam argues that it is as important to look at the socio-political currents leading up to the Assembly as it is to locate it as an ‘event’. His argument about the Bakhtinian polyphony of voices being drowned out by the institutional logics that animated the Assembly is in keeping with Mukherjee’s own views on court-style justice. Nigam, too, steers clear of the ‘temptation’ to read a liberal intent in the Constitution, much in keeping with Mukherjee’s own ideas of how justice as equity, rather than justice as liberty triumphed. Unlike Mukherjee however, Nigam does not go so far as to consider justice as equity as the sovereign governing principle of the constitutional text.

¹¹ Questions of law marking out identity and community have been addressed by many scholars, especially using the theoretical framework of colonial difference highlighted in PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS* (1993). See e.g. ELIZABETH KOLSKY, *COLONIAL JUSTICE: WHITE VIOLENCE AND THE RULE OF LAW* (2010) (discussing forms of racialised justice in colonial criminal courts); MRINALINI SINHA, *COLONIAL MASCULINITY: THE “MANLY ENGLISHMAN” AND THE “EFFEMINATE BENGALI” IN THE LATE NINETEENTH CENTURY* (1995) (discussing the constructions of colonizing and colonized elite in nineteenth century India along gendered lines).

¹² See Aditya Nigam, *A Text Without An Author: Locating the Constituent Assembly as an Event*, 39 (21) *ECON. & POL. WKLY* 2107 – 2113 (2004).

III. JUSTICE, EQUITY AND GOOD CONSCIENCE IN THE CONSTITUENT ASSEMBLY

The final chapter on the framing of the Indian Constitution is meant to demonstrate that justice as equity triumphed over justice as liberty. Most of Mukherjee's arguments here are centered around the Constituent Assembly's deliberations. I will address particular aspects of her arguments, testing them against a more "lawyerly" reading. I do not intend that lawyerly be equated to formalist here, for these readings also lead to substantive claims that are different from Mukherjee's. First, Mukherjee argues that the Preamble mentions 'justice' as the sovereign legislative principle owing to it being mentioned first in the Preamble to the Constitution. However, the Preamble does not function as an independent source of legislative power, nor was it, in practice, intended to be one.¹³ As per principles of statutory interpretation, there can be no hierarchy of values within a preamble.¹⁴ It may be argued that the preamble to a constitution, which is not an ordinary statute, may well be different. But a debate on whether the Preamble should be considered as a part of the Constitution started with the first Fundamental Rights case, *A.K. Gopalan v. State of Madras*, where the principles expressed in the Preamble were considered irrelevant to test the validity of laws.¹⁵ After the observations of judges in *Kesavananda Bharati v. State of Kerala*¹⁶ in 1973, appellate courts have progressively begun to use the Preamble to interpret the Fundamental Rights Chapter but this was hardly intended at the time of drafting.

Second, Mukherjee claims that communities, rather than individuals became the focus of constitutional provisions. There are two arguments in this respect. She initially argues that this was because the members of the Constituent Assembly, elected through a limited franchise, represented different communities. To transcend this 'problem' of representation, she says there should have been ratification by the people, perhaps through a referendum. This might not have been viable at the time. The Indian Constitution was not ratified through referendum; some scholars argue that (at the time that the Indian Constitution was drafted) very few modern constitutions were.¹⁷ Mukherjee

¹³ DURGA DAS BASU, *SHORTER CONSTITUTION OF INDIA* 2 (2006)

¹⁴ Seervai does mention 'justice' as an autonomous ground and the only one of the values in the Preamble that is specifically incorporated into the text of the Constitution at Article 38. However, this opinion is not borne out by other commentaries on the Constitution, nor is there judicial precedent to this effect. See H.M. Seervai, *Constitutional Law of India: A Critical Commentary*, Volume II 1944 (4th edn., 1993).

¹⁵ AIR 1950 SC 27.

¹⁶ AIR 1973 SC 1461.

¹⁷ See K.C.WHEARE, *MODERN CONSTITUTIONS* (1966). But notable recent (post 2005) examples where the constitution was subject to a referendum include Egypt, Turkey and Kenya. For an extensive study on nation-wide referendums from 1900 – 1970s, see DAVID BUTLER AND AUSTIN RANNEY: *REFERENDUMS: A COMPARATIVE STUDY OF PRACTICE AND*

further goes on to argue that communities are the focus of rights talk in the Constitution. Indeed, she says, the fundamental freedoms available to citizens could be reasonably restricted in the name of justice.¹⁸ This is not an entirely accurate characterization. For instance, the 1950 constitutional provision on freedom of speech was subject to ‘reasonable restrictions’ in the interests of the security of the state, friendly relations with foreign States, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Justice does not appear to be a common aspect of these restrictions. Perhaps a fairer assessment would be that the individual citizen is indeed the focus of much of Indian constitutionalism, except that it does not stop there, but goes on to create several categories of group rights, including anti-discrimination rights and cultural and educational rights for minorities.

Third, Mukherjee argues that universal adult franchise is the Gandhian “legacy” in the constitutional text. By placing ‘popular will’ back in the constitutional process, the Constituent Assembly places the text back in the hands of ‘We The People’ The focus in this argument is the Gandhian legacy, and not on whether there is popular sovereignty backing the Indian Constitution. There is ferocious debate on both the nature of Gandhi’s legacy,¹⁹ and on whether there ought to a debate on the legacy question at all.²⁰ The Congress’s turn to constitutionalism in the 1940s culminating in the written constitution of 1950 did not find favour with Gandhi, who intended the Indian National Congress to be a social service organization post Independence and not a political party. Although he was not a member of the Constituent Assembly, he attempted to engage the process. Two submissions to the Constituent Assembly, one in 1946 and the other in 1948, outlined his vision of economic development, although the “scientific” approach to nation building and planning in the 1940s in India had dubbed this approach “redundant” within the realm of constitutional politics. His pleas for decentralized economies and call for prohibition were discussed and included in the text of the Constitution (albeit in the non-justiciable, supposedly symbolic Directive Principles of State Policy) and the Constituent Assembly frequently invoked his name,

THEORY (1994). For a theoretical discussion in the contemporary context, see Stephen Tierney, *Constitutional Referendums: A Theoretical Enquiry*, 72 MODERN L. REV. 360 (2009); Jon Elster, *Legislatures as Constituent Assemblies*, in THE LEAST EXAMINED BRANCH: THE ROLE OF LEGISLATURES IN THE CONSTITUTIONAL STATE 181–97 (2006).

¹⁸ MUKHERJEE, *supra* note 9, 192–93.

¹⁹ See e.g., Thomas Pantham, *Gandhi and the Constitution: Parliamentary Swaraj and Village Swaraj*, in POLITICS AND ETHICS OF THE INDIAN CONSTITUTION 59 (Rajeev Bhargava ed., 2009).

²⁰ See e.g., Judith Brown, *The Mahatma and Modern India*, in NATIONALIST MOVEMENT IN INDIA 55 (Sekhar Bandopadhyay ed., 2008).

including at the time of passing of the Objectives Resolution – this all evidences the politics of possibility that the constitutional text had in common with Gandhi.²¹ To understand Gandhian legacies in the Constitution solely in terms of universal adult franchise alone would be problematic.²² Gandhi is the Constituent Assembly's absent presence.

IV. FINAL REFLECTIONS

Even accepting that 'justice as equity' remained the dominant tone of constitutional politics, would it be realized or remain an aporia? I was reminded of Ambedkar's speech at the end of the constitution drafting process (which Mukherjee refers to as well) where he exhorts people not to get carried away by ideas of a social revolution contained in the text of the Constitution. It would ultimately be the people who work the Constitution that are responsible for social and economic equality in the country, in addition to the political equality that was already guaranteed. For Ambedkar, liberty, equality and fraternity were the 'trinity' of ideals that the Constitution had to live up to. Summing up the achievements of the Constituent Assembly, he says:²³

"On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle

²¹ Gandhi's understanding of 'social revolution' finds place in the impassioned speeches of Constituent Assembly member, Mahavir Tyagi:

"That there must be prohibition is admitted to by all. I submit that Gandhiji's foremost plank of constructive programme was prohibition (cheers), and we all stand pledged to this programme...I must submit that the Constitution as it is, and I have repeated this many times before, is devoid of Gandhiji's ideas. It is very poor from that point of view...This prohibition has been in his programme...If we cannot accommodate even the idea of prohibition in our Constitution, then what else have we been sent here for? We have been talking of revolutions, and about all sorts of progress. But if we cannot have even this small reform in our Constitution; the book will not be even worth touching with a pair of tongs."(CAD, 19 November 1948).

And on the other hand, Hansa Mehta argued for why Gandhian ideals were alive and well within the constitutional framework:

"Then there was a charge that Gandhian principles have been sacrificed. I already submitted that we have embodied provisions for removal of untouchability for national language, for communal harmony and for goodwill and guarantees to minorities, encouragement of Gram Panchayats and village industries and for protection of milch cattle. These are the planks on which Gandhism flourished in this country and it created a non violent revolution in this country. If these principles have been embodied in the Constitution, I want to ask how Gandhism has been sacrificed in this Constitution" (CAD, 22 November 1949).

²² David Gilmartin argues for instance, that universal adult franchise could be understood as a Congress and particularly Nehruvian legacy dating back to the 1920s, but I have not taken up this point for discussion here. David Gilmartin, *Election Law and the People in Colonial and Postcolonial India, FROM THE COLONIAL TO THE POSTCOLONIAL: INDIA AND PAKISTAN IN TRANSITION* 74 (Dipesh Chakrabarty et al, 2007).

²³ CAD, 25 November 1949.

of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built up.”

Mukherjee quotes an earlier part of this speech to show that Ambedkar feared that people would resort to *bhakti* or hero worship in politics, and that it would result in dictatorship instead of the parliamentary democracy that was envisaged by the provisions of the Constitution. She goes on to argue that a dictatorship seemed likely because Ambedkar was conscious of justice as equity as the sovereign principle, which necessarily required the person of the monarch. Perhaps Ambedkar had Gandhi in mind when he spoke of the hero of Indian politics, or perhaps it was Nehru. Nevertheless, Ambedkar was one of the strongest supporters of the inclusion of the Directive Principles of State Policy, which Mukherjee quotes as an example of justice as equity.²⁴ He is unlikely to have advocated for these, if he understood that it would be impossible in the absence of a dictator-state. Hence, to attribute Ambedkar’s fears to the role of ‘justice’-dispensing monarch seems secondary to his fears about the constitutional text being inadequate to a project of realizing social justice.

Perhaps the politics of possibility that a constitutional text captures cannot be enacted without these “impossibilities” that high politics would encounter in translating ideals into reality. These apprehensions are surely not restricted to Ambedkar’s speech in 1949. What is commendable about this volume is that by locating India “in the shadows of empire”, Mukherjee is writing a history of the present.²⁵ Justice as equity has echoes in contemporary politics in India. It takes on arguably less attractive forms in courtrooms, such as in the judgment of the Allahabad High Court in the Ram Janmabhoomi-Babri Masjid dispute that partitioned the disputed land three ways in an attempt to avoid communal riots. It also reflects in ever-expanding jurisdiction of the Indian Supreme Court

²⁴ CAD, September 1 1949.

²⁵ Mukherjee also stresses this point in her response to Kunal Parker in the pages of the *Law and History Review*. See Mithi Mukherjee, *A History of the Present*, 23(3) L. & HIST. REV. 697 (2005).

that purports to do ‘complete justice’.²⁶ The role of actual courts in determining the course of Indian politics (the real despot, after all?) is understated in Mukherjee’s reflections at the end of the book. Outside of courtrooms too, the state struggles with the large number of non-state formations, from corporations to NGOs to digital worlds, that create their own imaginations of fairness, justice or freedom that is too often blurs the traditional state-society formulation that the Constitution envisages. A theorisation of these trends will benefit from the insights that Mukherjee’s skillfully provides.

²⁶ Art. 142 of the Constitution of India: (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.