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FOREWORD

LANGUAGE OF THEIR LORDSHIPS

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Lawyers will tell you that certain observations or remarks made in a judgment, that are not necessary for the final decision in the case, are generally termed *obiter dicta*, a Latin phrase meaning ‘*things said by the way*’. Such observations are distinguishable from the judgment’s *ratio decidendi*, another Latin phrase meaning ‘*reasons for the decision*’. *Obiter dicta* are, therefore, generally not considered to be of a binding nature. However, when they are made by the Supreme Court of India, they can be binding on courts subordinate to it and can also have ‘*persuasive*’ value in guiding future decisions.¹

If this legal position holds good for *obiter dicta* that is written, what about ‘*oral observations*’ made by judges during hearings? These are reported widely in social media and the internet abounds in video clips with sensational labels like

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¹ *Halsbury’s Laws of England*, vol 26 (4th edn, Reissue) para 574; *Oriental Insurance Co Ltd v Meena Variyal* (2007) 5 SCC 428, ¶26.

*“Angry Judge!”*² And so on. Maybe they do not qualify as *obiter dicta*. They are a different species that keeps those observing court proceedings guessing as to their true purport. With increased media coverage of court proceedings, combined with hybrid hearings and live-streaming, these extra-judicial observations and remarks provide excellent fodder for catchy headlines. Their Lordships are often caught holding forth, in not too discreet ways, on a range of issues. Whether intended or not, these asides end up revealing the hidden prejudices and preconceived notions of judges. And the consequences can sometimes be embarrassing.

Recently, the remarks on Rohingyas by a Bench of the Supreme Court, presided over by the Chief Justice of India, attracted a good deal of attention.³ The remarks, reportedly widely in the press, were: *“Has Indian government declared Rohingyas as Refugees? Should intruders be given Red Carpet Welcome?”*⁴ In another case, the Court was told that the deported Rohingya refugees were being thrown by the Indian government into the Bay of Bengal off the Andaman Islands. The response of the Court was that this was *“a beautifully crafted story”*.⁵ While

² legalcourts, ‘I am Asking You in Hindi Only | Judge Angry on Officer’ (YouTube, 5 December 2025) <https://www.youtube.com/shorts/QsWRN_rwJkY> accessed 11 December 2025; legalcourts, ‘This is Not the Restaurant.. Where is Your File? | Judge Angry on Lawyer’ (YouTube, 8 December 2025) <https://youtube.com/shorts/2t55rPCpTHU?si=uo_hYaZyYOlZaRU> accessed 11 December 2025; Law Chakra, ‘Watch How Not to Argue in Court? Judge Gets Super Angry. Patna High Court Stream’ (YouTube, 20 June 2022) <<https://www.youtube.com/watch?v=RjJN-S2YoZBM>> accessed 11 December 2025.

³ A group of former Judges, Senior Advocates, and members of the Campaign for Judicial Accountability and Reforms (CJAR) issued an open letter to CJI Surya Kant, stating that his comments were “unconscionable” and contrary to constitutional values, urging the Court to adopt a more rights-respecting approach towards refugees. In response, forty-four retired Judges released a joint statement defending the CJI, denouncing the open letter as a “motivated campaign” and warning that such criticism amounted to interference with the judiciary and the government’s policies on national security and immigration. Ex-Judges, Lawyers Write Letter to CJI Surya Kant Objecting to Remarks on Rohingyas’ (Live Law, 5 December 2025) <<https://www.livelaw.in/top-stories/supreme-court-former-judges-advocates-cjar-open-letter-to-cji-surya-kant-over-unconscionable-remarks-on-rohingya-refugees-312375>> accessed 11 December 2025; ‘44 Retired Judges Slam “Motivated Campaign” Against CJI Over Remarks on Rohingyas’ *The Hindu* (10 December 2025) <<https://www.thehindu.com/news/national/44-retired-judges-slam-motivated-campaign-against-cji-over-remarks-on-rohingyas/article70379645.ece>> accessed 11 December 2025.

⁴ “Has Indian Govt Declared Rohingyas as Refugees? Should Intruders Be Given Red Carpet Welcome?” Supreme Court Asks’ (Live Law, 2 December 2025) <<https://www.livelaw.in/top-stories/has-indian-govt-declared-rohingyas-as-refugeesshould-intruders-be-given-red-carpet-welcome-supreme-court-asks-311892s>> accessed 11 December 2025.

⁵ “Fanciful Ideas”: Top Court on Plea Claiming Rohingyas Dropped in Andaman Sea’ (NDTV, 2 December 2025) <<https://www.ndtv.com/india-news/fanciful-ideas-top-court-on-plea-claiming-rohingyas-dropped-in-andaman-sea-8431369s>> accessed 11 December 2025; Betwa Sharma, ‘Supreme Court Said that there is No Evidence Modi Govt Forced Rohingya Refugees into the Sea. There is’ (Article-14, 19 May 2025) <<https://article-14.com/post/supreme-court-said-no-evidence-modi-govt-forced-refugees-into-the-sea-there-is-682abd706d963>> accessed 11 December 2025.

hearing another case concerning a Sri Lankan refugee, the Court commented that India was ‘*not a dharamshala*’.⁶

Invariably, these observations are absent in the written orders issued for those hearings. They apparently are meant for public consumption but not as part of recorded institutional memory. But then, the internet does not forget. The judges perhaps don’t realise that a parallel online record of court events is in the making. One way of making legal sense of this phenomenon is that in such instances the Court is taking ‘*judicial notice*’ of,⁷ and in that process adopting, the common misconceptions and prejudices concerning refugees stemming from the xenophobic perceptions held by the more privileged sections of society, aided by a hostile media and a dominant political class. It is difficult to contest prejudice with facts. Or for that matter, with law.

Despite the Protection of Human Rights Act, 1993 recognising the two major international human rights conventions as part of domestic law,⁸ and rightly so since India has ratified both of them for long,⁹ the Indian Supreme Court, with certain notable exceptions,¹⁰ has tended to look upon the body of international human rights instruments and institutions and their work with a general disdain. When a Sudanese individual, holding a refugee card issued by the UNHCR, and awaiting acceptance by Australia of his application for asylum, knocked the doors of the Supreme Court of India for interim protection against police harassment, the Court was reluctant to give his refugee status any weightage. Instead, it commented that UNHCR had opened ‘*a showroom*’ and

⁶ ‘India Not a “Dharamshala”, Can’t Host Refugees from All Over : Supreme Court Rejects Sri Lankan Tamil’s Plea’ (*Live Law*, 19 May 2025) <<https://www.livelaw.in/top-stories/india-not-a-dharamshala-cant-host-refugees-from-all-over-supreme-court-rejects-sri-lankan-tamils-plea-292626>> accessed 11 December 2025.

⁷ *Bharatiya Sakshya Adhinyam* 2023, s 51 reads: “No fact of which the Court will take judicial notice need be proved.” *Bharatiya Sakshya Adhinyam* 2023, s 52 provides facts which shall be taken judicial notice of.

⁸ The two major international human rights conventions recognised by the Act are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). s 2(i)(d) defines ‘human rights’ as meaning those also “...guaranteed by the Constitution or embodied in the International covenants and enforceable by Indian Courts”. s 2(i)(f) defines “International covenants” to specifically mean the ICCPR and the ICESCR.

⁹ India signed both the ICCPR and the ICESCR in 1967. Both were ratified by her in 1979.

¹⁰ *Vishaka v State of Rajasthan* (1997) 6 SCC 241 where the Court based its directions on the Convention of All Forms of Discrimination Against Women (CEDAW); *Vellore Citizens’ Welfare Forum v Union of India* (1996) 5 SCC 647 in which, while adopting the “Polluter Pays Principle” and the “Precautionary Principle” into domestic law, the Court reiterated the position that once principles of customary international law are not contrary to municipal law they shall be deemed to have been incorporated into domestic law; *Francis Coralie Mullin v UT of Delhi* (1981) 1 SCC 608, enunciated the rights provided in the Universal Declaration of Human Rights and the ICCPR.

was very casually issuing refugee cards.¹¹ That the UNHCR has a fairly rigorous procedure of screening made no difference to the Court's pre-conceived notions.

While hearing petitions concerning illegal and arbitrary demolitions being carried out by certain state governments of dwelling houses belonging to persons protesting against arbitrary state action, the Court refused to permit an intervention by the UN Special Rapporteur on Housing Rights.¹² It easily bought into the Government's objection that this was an '*interference*' by a foreign body in the internal affairs of the state.

These concerns about the Court's oral remarks, and the observations in its written orders, get reflected in some of the perceptive essays in this Volume. Prof. Rongeet Poddar is perhaps justified when he says that looking upon all refugees with disdain and suspicion "*emanates from a politically-manufactured distrust of the 'other' refugee – who does not fit into the hegemonic imagination of an insider refugee that the Citizenship (Amendment) Act, 2019 legitimates. Dismissing the repatriation of Rohingyas as a 'fanciful' narrative, the Court inaugurates a jurisdiction of suspicion where the right to life is dispensable.*"

And yet, it is necessary, as does Prof. Aishwarya Birla, to remain optimistic that notwithstanding several countries world over acting in total violation of their international human rights obligations, it is important to entrench human rights in the Global Pact on Climate Change particularly in the context of climate change refugees. This she says will also be consistent with an ecocentric approach to environmental issues as opposed to an anthropocentric one.

Judicial misconceptions are not about refugees alone. Meher Govekar draws our attention to the Court's remark made in *B R Enterprises v State of U.P.*¹³ that losses in lotteries increase the "*craze with intoxicating hope*," drawing the individual "*repeatedly back into the circle of lottery like a drug addict*".¹⁴ She rightly notes that the "*legal adoption of such terminology echoes historical practices, such as labelling people with mental illness such as "lunatics" or applying explicit moral judgements to individuals affected by HIV, often referring to them as having "gay related immune deficiency*".

¹¹ "They Have Opened a Showroom Here": Justice Surya Kant on United Nations Agency Issuing Refugee Cards to Immigrants in India' (*Live Law*, 8 October 2025) <<https://www.livelaw.in/top-stories/supreme-court-they-have-opened-a-showroom-justice-surya-kant-on-un-agency-issuing-refugee-cards-to-immigrants-3062305>> accessed 11 December 2025.

¹² 'Supreme Court Reserves Judgement in "Bulldozer Action" Case; Stay on Demolitions Remains' (*Supreme Court Observer*, 3 October 2024) <<https://www.scobserver.in/journal/supreme-court-reserves-judgement-in-bulldozer-action-case-stay-on-demolitions-remains>> accessed 11 December 2025.

¹³ (1999) 9 SCC 700.

¹⁴ *ibid* ¶59.

In another case where the issue before the Supreme Court was concerning the deplorable conditions of night shelters for the homeless poor in Delhi, the remark of the Bench was: *“Rather than making them contribute to the development of the nation, are we not creating a sort of parasite? Because of these benefits, people do not want to work.”*¹⁵ In a PIL airing concerns of forced religious conversions, the presiding Judge of the Supreme Court Bench observed: *“If you believe that particular persons should be helped, help them but it can’t be for conversion. Allurement is very dangerous. It is a very serious issue and is against the basic structure of our Constitution. Everyone who stays in India, will have to act as per the culture of India.”*¹⁶ The other Judge added: *“And religious harmony as well.”*¹⁷

In the context of gender sensitisation, notwithstanding the attempt made by the Supreme Court to bring out a glossary to underscore the need to use legally appropriate terms in judgements,¹⁸ it appears that we still have a long way to go. A judge of a chartered High Court in deciding a case of false implication under POCSO thought it necessary to take a “Duty/obligation based approach to the issue in hand.”¹⁹ According to His Lordship, it was “the duty/obligation of every female adolescent to: (i) Protect her right to integrity of her body. (ii) Protect her dignity and selfworth. (iii) Thrive for overall development of her self transcending gender barriers. (iv) Control sexual urge/urges as in the eyes of the society she is the looser (sic) when she gives in to enjoy the sexual pleasure of hardly two minutes.”²⁰

The real issue was “the criminalisation of romantic relationship between two adolescents of opposite sex”. That, it was said, “should better be left to the wisdom of the judiciary.”²¹ Thankfully, His Lordship of the High Court received a rap from the Supreme Court which found these observations “utterly irrelevant for deciding the controversy.”²² It added: “To say the least, these observations are shocking, which will ex-facie invite a finding of perversity.”²³ The message was

¹⁵ Krishnadas Rajagopal, ‘Freebies Ease the Poor into a Parasitic Life, Draining Them of the Will to Find Work: Justice Gavai’ *The Hindu* (12 February 2025) <<https://www.thehindu.com/news/national/sc-deprecates-practice-of-announcing-freebies-says-people-not-willing-to-work/article69210262.ece>> accessed 11 December 2025.

¹⁶ “‘Charity Can’t be for Conversion’ Supreme Court Rejects Objections to Maintainability of PIL Against Forced Religious Conversion’ (*Live Law*, 5 December 2022) <[https://www.livelaw.in/top-stories/charity-cant-be-for-conversion-supreme-court-rejects-objections-to-maintainability-of-pil-against-forced-religious-conversion-215834\\$](https://www.livelaw.in/top-stories/charity-cant-be-for-conversion-supreme-court-rejects-objections-to-maintainability-of-pil-against-forced-religious-conversion-215834$)> accessed 11 December 2025.

¹⁷ *ibid.*

¹⁸ The Supreme Court released the “Handbook on Combating Gender Stereotypes” in January 2024 <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/01/2024012544.pdf>>.

¹⁹ *Probhat Purkait v State of W.B.* (2023) 1 HCC (Cal) 626, ¶39.

²⁰ *ibid* ¶40.

²¹ *ibid* ¶44.

²² *Right to Privacy of Adolescents, In re* (2024) 15 SCC 788, ¶19.

²³ *ibid.*

loud and clear: “A judgment of the Court cannot contain the Judge’s personal opinions on various subjects. Similarly, advisory jurisdiction cannot be exercised by the Court by incorporating advice to the parties or advice in general. The Judge has to decide a case and not preach. The judgment cannot contain irrelevant and unnecessary material.”²⁴

But the problem persists. Sample this. An Allahabad High Court Judge, in a disapproving tone, observed in his order: “*After live-in-relationship has been legalised by the apex court, the court had fed up (sic) such cases. These cases are coming to the court because the concept of live-in-relationship is against the settled law in the Indian middle class society (sic).*”²⁵ Does such ‘settled law’ of the Indian middle class also accommodate the view expressed by a former CJI, *while releasing a report on International Men’s Day on November 19 this year, that “There are Sita maiyaas as well as Surpanakhas in Indian Society”*?²⁶

In an order granting anticipatory bail to a man accused of rape and cheating, one High Court judge observed: “*The explanation offered by the complainant that after the perpetration of the act she was tired and fell asleep, is unbecoming of an Indian woman; that is not the way our women react when they are ravished*”.²⁷ He also questioned why the woman had gone to her office late at night or consumed drinks with the accused. Following an application filed by the state government, which argued the remarks could adversely affect the investigation and trial, the judge expunged the last four lines of a specific paragraph in his judgment. The accused had no objection to the expunging.²⁸

Rishav Ray and Shreya in their essay point out how the Rajasthan High Court, in *Reena v State of Rajasthan*²⁹, while deliberating on the question of whether live-in couples are entitled to state protection when one of them is a married individual, directed the mandatory registration of such relationships.³⁰ This stirred a hornet’s nest as it had grave implications for privacy and

²⁴ *Right to Privacy of Adolescents, In re* (2024) 15 SCC 788, ¶17.

²⁵ ‘Live-in Relationship Concept Goes Against Indian Middle-Class Values: Allahabad High Court’ (*Live Law*, 26 June 2025) <<https://www.livelaw.in/high-court/allahabad-high-court/allahabad-high-court-live-in-relation-concept-against-middle-class-values-fed-up-295856>> accessed 11 December 2025.

²⁶ Arna Chatterjee, ‘In Society, There are Both Sita Maiyas and Surpanakhas: Ex-CJI UU Lalit Ahead of International Men’s Day’ (*Bar and Bench*, 18 November 2025) <<https://www.barand-bench.com/news/in-society-there-are-both-sita-maiyas-and-surpanakhas-ex-cji-uu-lalit-ahead-of-international-mens-days>> accessed 11 December 2025.

²⁷ *Rakesh B v State of Karnataka* 2020 SCC OnLine Kar 844, ¶3(c).

²⁸ *ibid.*

²⁹ 2025 SCC OnLine Raj 205.

³⁰ These directions on the registration of live-in relationships were issued even as the question of whether such couples are entitled to protection orders, in light of conflicting judicial opinions, was referred to a larger Bench.

unwarranted state intervention in, and the moral policing of, the personal lives of people.

But even in the context of ‘financial orders’ of alimony or maintenance at the post-separation stage in matrimonial disputes, which Anshul Dalmia in his essay terms as ‘public goods’, the courts appear oblivious to two structural limitations. One is the broad judicial discretion, which can introduce paternalistic views. The other is the orders’ narrow design, which are often limited by the presence of assets and timing (only at the end of a relationship). So how does one overcome these limitations? By making a shift from an ‘*equality of outcome*’ to ‘*equality of opportunity*’ and ‘*equality of condition*’. Furthermore, the reform must challenge the linear conception of autonomy in family law, instead recognizing the cyclical and permanent nature of caregiving burdens and their wider, life-long economic consequences.

Dr. A. Sridhar and Dr. K. Rajendra in their essay on Mundra loans for women put forth a similar suggestion. There should be policies that not only ensure financial access but also equip women with the necessary skills and education (positive rights) to fully utilise these resources, contributing to sustainable economic growth and social empowerment.

Judges have made controversial remarks in other contexts too. While denying bail in a case arising under a criminal law concerning cow slaughter, the High Court offered gratuitous advice that the cow should be declared a national animal and gau raksha should be included as a fundamental right of the Hindus.³¹ Apparently, while that does not invite the troll army, the comment of a former Chief Justice of India while dismissing a PIL invited not only social media trolling from the far right dominant religious groups but an unsuccessful attack by a lawyer who hurled a shoe at the Bench.³²

Even while all this makes for some somber reading, we need to be reminded that the judiciary is indeed the last hope for people waiting for justice; that it does happen in individual cases, even though not as frequently as one would hope for. Ravi Shankar Pandey’s essay on the decision of the Supreme Court in *Om Prakash v. State of Uttarakhand*³³ is one such. According to the author it is a ‘landmark’ decision for two reasons. “*First, it emphasises that the primary task before the courts is to search for ‘truth’ within the legal enterprise. Second, it also*

³¹ *Javed v State of U.P.*, Criminal Misc. Bail Application No. 22400 of 2021, order dated 1 September 2021 (2021:AHC:96664).

³² HT News Desk, ‘Shoe Attacker Cites CJI’s Khajuraho Remark: “Almighty Asked Me How I could Rest”’ *Hindustan Times* (7 October 2025) <<https://www.hindustantimes.com/india-news/cji-br-gavai-shoe-attack-rakesh-kishore-khajuraho-temple-lord-vishnu-remarks-101759795491720.html>> accessed 11 December 2025.

³³ *Om Prakash v Union of India* 2025 SCC OnLine SC 47.

reiterates the law that executive power can be reviewed under writ jurisdiction and that a plea of juvenility can be raised at any stage of trial or in appeal.”

But then that is a digression from the main theme of this set of engaging essays. Many of them tend to revolve around one central concern- the language that judges deploy either in their written orders or in their oral observations. It is trite that judgments of Indian courts at most levels are not easily understood by the litigants, and much less by laypersons. They are replete with legal jargon. Sometimes, even a superior court is stumped. The Himachal Pradesh High Court passed this order in a rent control case:³⁴

“The...tenant in the demised premises stands aggrieved by the pronouncement made by the learned Executing Court upon his objections constituted theretofore...where within the apposite unfoldments qua his resistance to the execution of the decree stood discountenanced by the learned Executing Court.

However, the learned counsel...cannot derive the fullest succour from the aforesaid acquiescence... given its sinew suffering partial dissipation from an imminent display occurring in the impugned pronouncement hereat where within unravelments are held qua the rendition recorded by the learned Rent Controller...”

The Supreme Court did not have to strain much. It set the order aside saying: “...[I]t is not possible to comprehend the contents of the impugned order passed by the High Court.”³⁵

But there is an even greater problem when courts don't understand what the litigants are saying. Let us envision an imaginary non-footnoted court situation (close to reality though). An elderly litigant, waiting alone in the visitors' gallery of the Chief Justice's Court stepped forward to argue his case in Punjabi on a day when the Bar was on strike. After indulging him for a while, the Chief Justice remarked: “*Dekho Babuji, jo aap keh rahe hain, hamein samajh nahi aa raha hain. Aap vakeel rakh lo.*” [Look, sir, we are unable to understand what you are saying. You should engage a lawyer.] The elderly litigant was clearly puzzled and remarked: “*Kamaal hain. Samajh aapko nahi aa raha hain, aur vakeel mujhe rakhna hain?*” [How strange. You are unable to understand the case, and yet I am expected to engage a lawyer?].

Yes, language in Indian courts, is a problem. Compounded by the written and spoken judicial words.

³⁴ *Pawan Kumar Sharma v Sarla Sood* 2016 SCC OnLine HP 2699.

³⁵ *Sarla Sood v Pawan Kumar Sharma* 2017 SCC OnLine SC 1673.