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CONTEMPORARY CONSTITUTIONAL MORALITY:  
EXAMINING THE LEGACY OF CHIEF JUSTICE  
DIPAK MISRA

CHIEF EDITOR PROFESSOR (DR) SRIKRISHNA  
DEVA RAO

FOREWORD

The Hon. Michael Kirby AC CMG

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FOREWORD

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I am proud to add these introductory words to the Festschrift that honours the outstanding legal service of Justice Dipak Misra who recently retired as the 45<sup>th</sup> Chief Justice of the Supreme Court of India.

I had the honour to participate with Chief Justice Misra on the convocation of the National Law School University of Odisha in Cuttack. He was the designated Visitor of that distinguished place of learning. At his hands, I had the honour to receive the testamur of the Doctorate of Laws, *honoris causa*. It was a wonderful ceremony that mixed in equal proportions the millennia of traditions and the heritage of ancient India with the modern global outlook of a university of the current and future age.

This mixture was a symbol of the abiding features of the judicial work of Chief Justice Misra. In my contributory chapter to this volume, I have recorded my admiration and gratitude for his outstanding opinion in the decision of the Supreme Court of India in *Johar v Union of India*. That was a case decided on 6 September 2018, just before his judicial

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\* Justice of the High Court of Australia (1996-2009); Editor-in-Chief, *The Laws of Australia* 2009 -.

retirement. In that decision, he led a strong and unanimous bench of the Supreme Court of India to a clear ruling that reflected the criminalisation of a category of Indian citizens (and others) who were commonly isolated, stigmatised and punished for a minor feature of their nature. For Justice Misra, such a punitive approach, in the case of consensual same-sex relationships, was incompatible with the contemporary constitutional morality of India: a modern and diverse nation living in liberty under its independent Constitution.

Whilst that decision was of great interest to me (and had earlier been the subject of attention in my Tagore Legal Lectures for the University of Calcutta in 2014) this book demonstrates the depth and width of the constitutional wisdom that was the hallmark of Chief Justice Misra's service. His rulings on such diverse subjects as equal entry for women into temples; the constitutional basis for a right to privacy; the entitlement of all to marry persons of their own choice; recognition, under defined circumstances, of a facility for passive euthanasia; the rejection of mob lynching, honour killing and criminalisation of adultery; the prevention of Jallikattu; and the embrace of modern technology in courts with live streaming of cases of constitutional importance before the Supreme Court. All of these contributions, of substance and legal practice, demonstrate a mind of great intellectual power. It was a mind in tune with the needs of contemporary India which is on the brink of further great social, economic and legal developments of huge national and global significance.

It is not too much to say that many of Chief Justice Misra's opinions in the Supreme Court have changed the very landscape of constitutional and legal jurisprudence in India. They have helped to position the law in India

as a contributor, and not an impediment, to a progressive and inclusive society, able and indeed anxious to embrace its enormous global potential. The editors of this Festschrift have clustered the judgments of Chief Justice Misra under broad categories that are reflected in the opinions he contributed during his outstanding service. These include judgments that have expanded the horizons of liberty; judgments that have stretched the horizon of human dignity; judgments that have widened the horizons of gender equality; judgments that have expanded political constitutional principles and analysed and construed statutes dealing with criminal law, water disputes, animal rights and much more.

Through Chief Justice Misra's judicial opinions runs a golden thread that links his command and love for the constitutional morality expressed and implied in the language of the Indian Constitution. It is a morality that defends human dignity. But it also upholds the essential right and desire of human beings everywhere to experience a protected zone of joy and true human fulfilment. It is out of the lives of millions of Indian citizens, rejoicing in these eternal desires of our species, that a great nation of ordered liberty under the law is fashioned and safeguarded.

In Chief Justice Misra's judicial writing is a sparkling expression of a steely determination to uphold and defend the rights, liberties and happiness of citizens and others living under the constitutional protection of a mighty nation rejoicing in the rule of law. His wide learning, knowledge of foreign jurisprudence and respect of human dignity make the reading of his judicial opinions an enriching intellectual and doctrinal experience. But also a pleasure and a joy.

We live in an era where some of the optimism and liberalism of earlier times seems increasingly to be questioned. Then along comes along a fine jurist and important scholar like Dipak Misra who accepts with relish the judicial duty to push forward the boundaries of equality, liberty and human dignity.

The history of the Supreme Court of India has repeatedly provided great judges who inspire the law in their own country and provide a stimulus, and example, to their counterparts in foreign countries. Through a shared language and a common methodology, the heritage of Justice Misra, as a leading judge of India, can be shared with colleagues and admirers in other countries, both close at hand and some far away. This is a scholar and wordsmith who has led a great court during an era when many important decisions have been pronounced.

For his inspiring contributions to the jurisprudence of Supreme Court of India and for his inspiration and encouragement to judges in other lands, I express these words of grateful appreciation.

I also praise the Vice-Chancellor and Faculty of the National Law School University of Odisha for collecting this book of essays. It will bring Chief Justice Misra's gifts of learning and expression from out of the pages of the Supreme Court reports. They will leap into the hearts and minds of his fellow citizens. They will be enduring beyond his mortal lifetime. They will provide not only a collection of individual decisions. They will also provide a methodology and an inspiration to those who follow to continue on the same pathway. It is a pathway marked by liberty, justice and

human dignity and happiness, under the rule of law. Blessed is a nation with judges such as he.

A handwritten signature in black ink, appearing to be 'G. G. G. G.', written in a cursive style.

Justice of the High Court of Australia  
(1996-2009)