

BOOK REVIEWS

LAW AND SOCIAL TRANSFORMATION IN INDIA (2014). By Oliver Mendelsohn. Oxford University Press, YMCA Library Building, Jai Singh Road, New Delhi 110 018. Pp. xii + 302. Price Rs. 895/-.

OLIVER MENDELSON'S *Law and Social Transformation in India* is a series of essays written by Mendelsohn over the last three decades. In the first four essays, Mendelsohn discusses the Indian legal system, and uses his rich field work to understanding the workings of the system, the causes of litigation, and formal, as well as informal systems of dispute resolution. One of the main arguments that Mendelsohn makes is that land is the major cause of disputes between people. Land disputes not only lead to civil and revenue cases, but also to criminal cases. In the second set of essays (the fifth and the sixth essay), Mendelsohn provides an interesting account of the legal profession in India. In the third set (seventh and eight essay), he analyzes the successes and failures of public interest litigation. In the final essay, Mendelsohn discusses a very topical issue – anti terror legislations in India.

The *first* essay seeks to examine the Indian judicial system. Mendelsohn first engages with the theses of Bernard Cohn and Robert Kidder who wrote about the Indian legal system. Analyzing the development of the Indian judicial system, Cohn argued that the Indian peasant society did not accept the basis of the courts system, and hence used courts not to settle disputes, but to further them. On the other hand, Kidder argued that the nature of Indian court process is more in the nature of negotiation, rather than adjudication. Taking both these arguments into consideration, Mendelsohn argues that Cohn and Kidder did not take a crucial factor of the nature of disputes that courts have to face. He argues that land disputes form the core of litigation in India, and that courts have not been able to effectively settle land disputes, because of the unique nature of these disputes in the Indian context. He uses a case study, a conflict over land, to show how litigation is used by people. He explains how a litigant uses all the legal forums available to him – civil, criminal, and revenue courts to resolve the conflict over his land. After arguing (and seeking to establish) that land disputes are the basis of most litigation in India, Mendelsohn discusses the basis of the British land administration, the causes of litigation during the British period, and the causes of litigation in independent India. He argues that Indian courts have failed to resolve disputes through their judgments, largely due to two reasons. First, the lack of an effective enforcement mechanism; and secondly, the complex litigation process, with all its rules and procedures. He also examines the role that lawyers have played in the failure of courts, by using procedural tools to thwart dispute resolution. Mendelsohn thus argues that it is only the cessation of land disputes, which can be brought about by changing land relations in India.

In the *second* essay, titled “How Indian is Indian law?” Mendelsohn makes an argument about the distinctive nature of Indian law. Using case studies, he argues that India is unique since there are constant attempts to resolve disputes outside the framework set up by the state. This, he argues, is not a function of the weakness of the Indian state, but a case of communities taking more responsibility for their own ordering. He traces the source of this practice to Hindu law (and other personal laws). Mendelsohn thus argues that India is unique. It has a strong “official” legal system, but at the same time has a very strong civil society, which resolves disputes, outside the framework of the formal state. He says that this sort of pluralism is one of India’s greatest strengths.

The *third* essay seeks to answer the question: “Who or what constitutes the dominant power and/or authority” in present-day Indian villages. Mendelsohn argues that there has been a change in the character of agrarian India which has led to a change in past perceptions that the dominant castes had the power and authority in Indian villages. He says that dominant castes have declined at the village level owing to economic, social and political integration of villages into bigger urban units. He also attributes the decline to the British system of revenue collection, as well as courts, which curtailed the power that local groupings had. Further, Mendelsohn argues that in post-Independence India, elections played an important role in displacing the dominant caste. He concludes arguing that the decline of the caste-based dominance has not necessarily led to an egalitarian social and political order.

In the *fourth* essay, Mendelsohn analyzes violence against “Harijans”. He attributes violence to two factors – what he terms as “traditional” and the modern form of resistance. He argues that traditional violence was based on a master-slave relationship against the “Harijans”, as also the belief that they had control over evil spirits, and brought bad luck. However, in more recent times, such violence is caused largely due to the resistance of “Harijans” to exploitation, as well as a backlash to privileges that the “Harijans” get in modern India. Mendelsohn gives examples of traditional violence arising from factors such as refusal to remove dead cattle, access to water, and “Harijans” taking out marriage processions – a caste Hindu practice. He argues that in more recent times, the cause of violence against “Harijans” is land-related disputes – ranging from ownership disputes to disputes over payment of wages. This has been marked by assertion of “Harijans” of their rights, and the resistance of caste-Hindus to such assertion of rights. He further argues that sometimes even the state machinery acts against assertion of rights, like in the case of social movements, including the Naxalbari movement. Hence, Mendelsohn concludes that it is the changing character of “Untouchable” consciousness that is leading to violence against them, although recognizing at the same time that the issue is an extremely complex one.

The *fifth* essay seeks to contextualize post-colonial Indian law in light of colonial law and experience, and to analyze the role of the law in post-liberalization India. The main argument of all Mendelsohn's essays, that land is a major factor in the Indian legal order is reflected in this essay as well. He argues that the colonial legal system, through its rules and procedures, led to land-related litigation, especially litigation over agrarian land, emerging as the major form of litigation in the judicial system. However, in post-colonial India, this declined. Mendelsohn attempts in the essay to identify and analyze the reasons for such decline. He points out, however, that urban land-related litigation has increased. Discussing the present legal system, Mendelsohn analyzes the role that lawyers and courts have played in implementing the law. He argues that they have failed in their role of implementing the law. He notes that the Supreme Court has become activist, and has thus become the institution that the nation seems to rely on. Public interest litigation and writ petitions are used as a tool by litigants, instead of using regular civil or criminal courts.

In his *sixth* essay, Mendelsohn discusses the Indian legal profession. He uses rent-control litigation as a case study to show how rather than making a case on merits, the role of the lawyer for the tenant appears to be to strategically delay the case, so that the tenant continues to enjoy possession of the property. He also notes how in India, most lawyers actually argue their cases in courts (litigators), and very few actually play the role of an advising counsel or a solicitor. He discusses the emergence of corporate law firms in Bombay, and their struggles for legitimacy. These firms, he points out, were led by solicitors, who unlike their litigating counterparts, did not participate in courts. They were more involved in conveyancing, and working on transactional and corporate matters. He provides a case study of a prominent law firm, to analyze the working of one. He also notes the dynastic nature of Indian law firms, as well as their opposition to permit foreign lawyers to practice in India. Mendelsohn thus argues that there are two sides to the Indian legal profession. One side, exemplified by litigators who work on issue of rent-control, compound the problems of the Indian legal system. The other, exemplified by the corporate firms, engage in what he believes is productive legal practice. He thus argues that the corporate law firm model is the best hope for the Indian legal system. Mendelsohn argues that globalization and the modernization of the legal profession will benefit the Indian citizen.

In the *seventh* essay, Mendelsohn discusses the *Bandhua Mukti Morcha* case¹ in the Supreme Court and the plight of quarry workers of Faridabad. He argues that the failure of the Supreme Court and of activists like Swami Agnivesh was because of a doctrinaire approach that was adopted, instead of a more pragmatic one. Through case studies, he points out how rehabilitation did not really work, nor did the confusion

1. AIR 1984 SC 802.

over the definition of “bonded labour”. He argues that the Supreme Court failing to have its orders enforced, led to the condition of quarry workers not changing as a result of the court’s judgment.

In the penultimate essay, Mendelsohn argues that the Supreme Court of India has become the most powerful institution in the country. He attributes this development to the failure of the other institutions, and at the same time the changing approach of the court itself. Mendelsohn discusses the emergence of the public interest litigation movement and its impact on increasing the popularity of the court. He also discusses the criticisms against the PIL movement, however concluding that the court is one of the strengths of Indian public life.

In the *final* essay, Mendelsohn traces the anti-terror legislations in India. He discusses the reasons for the enactment of these legislations and the political history behind the legislations. He notes how civil liberties have been curtailed by anti-terror legislations, and compares the authoritarian slant of these legislations with a constitutional order that privileges civil liberties.

This book is a valuable contribution by Mendelsohn as it includes deep knowledge of his field work in rural as well as urban India. The impact of British rule in India on various institutions of the Indian polity has been discussed scholarly. The changing landscape of India due to globalization, especially in the field of litigation and the emerging changes in the dynamics of authority is well researched. The interface between laws, courts, especially in Supreme Court and public opinion is a notable edition to the study and understanding of law and social change in India. The book is a valuable addition to the understanding of the legal developments in India.

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