

BOOK REVIEWS

RIGHT TO EQUALITY IN INDIA: AN INTRODUCTION (2012). By J.K. Mittal. Satyam Law International, New Delhi. Pp. xii + 266. Rs. 675/- (Hard Bound).

THE AUTHOR with amusing forthrightness and nonchalance says that this was a modest work that straddled thirty years in making. It's a sewn up manuscript of diverse and very well researched papers, some of which, he had presented at the conclaves across the globe and the rest are published in law journals of repute through the sixties, seventies and eighties.

The development of the equality principle in the Indian constitutional scheme has been observed from different jurisdictions the world over. The author tactfully unfolds the incidence of unequal treatment in India from a historical perspective tracing it from the colonial era when the repressive policies of the British regime created a secondary status for the Indian subject *vis a vis* the British citizen in comparison.¹ The author who has already been known for a noteworthy publication on legal history is able to drive home the sheer exasperation among the natives and Indians in the British judicial services as to the grossly arbitrary manner in which the laws, that were treated as anathema to rule of law in Britain, were being applied in India. The book reveals anguishing instances of retrospective criminal legislation which Indian judges were hard pressed to apply. It unearths the manifestations of inequality that insinuated the pangs for freedom from foreign rule to be replaced by a vanguard of inalienable fundamental rights to ensure the prevalence of equality and non-arbitrariness.

The book is devoid of deep philosophical ruminations on the theoretical basis of equality. It attempts a critical dissection of constitutional framework and the ensuing judicial sentiment on the topics and does not reflect any labour on any comparative study. Thus the work's vibrancy is in the reappraisal of some path breaking junctures in the development of equality law through corresponding notes and thoughts of an active academic who worked and taught the subject during the happening years. In several contemporary text books on the subject the case law has been relegated to footnotes. However, the book under review provides a new life to the case law thereby reflecting on the contradictions prevalent at that period of time causing the reader to reflect.

The content of the book dispels certain widely held myths about positions on sensitive issues such as reservation and the stance on the same by the members of

¹ See J.K. Mittal, *Right to Equality in India: An Introduction* (2012), ch. 1, "Practices of Inequality and Indian Reaction during colonial Era" at 1-45.

the Constituent Assembly. The author lays out the thoughts expressed in the deliberations and surprises the reader with the thoughts in the evolving consensus.² The work documents the attitude of the members of the Constituent Assembly during the debates on the equality provisions. It brings out the perspectives and the misgivings in the run-up to the finalization of the draft.

An interesting paper in the book is the one which carries the author's resentment over the application of harmonious interpretation by the courts to the interpretation of the equality provisions in the Constitution. His perception is reinforced by pointing out the contradiction in reading and qualifying article 16(2) with the benign exception in article 15(3) extending beneficent provisions to woman, children and others.³ The ire of the author is directed to the extension of the same to the realm of right to public employment where such an exception is not provided for.⁴ The author is critical of the majority opinion in *Shamser Singh v. State of Punjab*⁵ wherein the effect of 15(3) was applied across the articles and in this case applied to article 16 as well. It makes for interesting reading when the author relies on the minority sentiment in *Tribhok Nath Tikku v. State of Jammu and Kashmir*⁶ in order to drive a wedge between article 15 and article 16 of the Constitution. His logic being that the perception of article 15 impacting other provisions on equality lacks sufficient discourse by the apex court to prove the connectivity between diverse articles in the Constitution. In another paper, the author dwells on the benign provisions for the weak in the Constitution particularly women and children.⁷ He brings out the philosophical underpinnings of the special provision tracing its need to the historical, societal, physical and psychological disadvantage faced by women in society. The width of substantiation is pepped up by references from Indian and American case law with some delectable pin up quotes like - "sex is an immutable characteristic determined solely by the accident of birth. The imposition of any disabilities or denial of any rights on this basis is against the system of nature as also against the system of any society".⁸

2 *Id.*, ch. 2, "Concept of equality in constituent Assembly (incorporation of right to equality in the constitution" at 46-79

3 *Id.*, ch. 14, "Discrimination in Public Employment on the Prohibited Ground of Sex" at 244 to 251.

4 Relying on Constituent Assembly debates, the author says, "The Constituent Assembly placed equality of opportunity in public employment on a higher pedestal to avoid any possible heart burning among members of public services by making special provisions for women". *Id.* at.247.

5 AIR 1970 P&H 372.

6 AIR 1969 SC 1

7 *Supra* note 1, ch. 8, "Equality and Protective Discrimination of Women" at 192-200.

8 *Sharron A. Fortiero v. Elliot L. Richardson*, 36 L.ED. 2D 583 (1973).

The collection carries some specific issues in the realm of equality that are not usually treated in a text book format on the topic of equality. The papers bring out the sensitivity and analytical objectivity of the researcher in the critical analysis of Supreme Court judgments even if it might be politically and institutionally discomfiting. The author's reservation to the judgment extending reservation to the reconverts to Hinduism is an instance in this regard. He sounds his alarm on the premise that validating re-conversion with the motive to secure economic welfare and reservation benefits may not pass the test for those genuinely embracing the Hindu faith.⁹

The book succinctly bring out the debate in the idea of representation for scheduled castes and tribes and Anglo Indians in the electoral process. The evolution of the single reserved constituency system today is dealt with by dwelling on the difficulties that were faced in the two member constituency system. In this regard the continuing care and concern to avoid the adoption of separate electorates is brought out in the judgments of the Supreme Court of India.¹⁰ The author ventures onto less trodden corners of the subject matter like the soundness and legality of debt relief laws which are a less researched area.¹¹ The other papers in the collection include topics on equality provisions and the Supreme Court, special criminal courts, judicial review of special legislation, casual labour, equal pay for equal work and special representation in legislatures.

The case law addenda titled as "Some Developments"¹² is too archived to be taken as latest updates on the topic, as it includes cases such as *Maneka Gandhi v. Union of India* decided in the year 1978 and *Indra Sawhney(Mandal Commission)* case reported in 1993 And they have played too critical a role in the development of law on the topic of equality to be called as "Some Developments".

The book, though written contemporaneously with the issues that came its way, propels the reader to draw parallels with dilemmas that have found resonance critically at a later point of time - when the courts and policy makers have confronted similar issues. For instance, the author's reference to B.R Ambedkar's call for caution in the Constituent Assembly to the possibility of 'exception' of reservation overwhelming the rule of equality¹³ is relevant in the context of excessive resort to the special reservations later on by different segments of the federal polity.

The fifteen chapters enable a recap of the past and expose the reader to an illuminating analysis that sustains the excitement of that grand moment of research

9 *Supra* note 1, ch.12, "Motivated Conversion and Protective Discrimination" at 223-25.

10 *Id.*, ch.10, "Special Representation in Legislative Bodies in India" at 204 - 213.

11 *Id.*, ch. 9, "Debt Relief to the Poor" at 102.

12 *Id.*, ch. 15.

13 *Id.*, ch. 2, "Concept of Equality in the Constituent Assembly" at 66-67.

and discovery. The manuscript sustains its relevance despite case law and commentaries having piled over the subject matter later on. The work is a collectors' item and re-enlivens the focus on critical case law of the sixties and the seventies. It also reveals the systematic zeal of the professor which is evident in the meticulous research and the enumeration of assorted references. The work brings out the author's die hard belief in constitutionalism and the need to cleanse it off imperfections in the path towards attaining equality in the Indian context.

*Jayadevan S.Nair**

* Assistant Professor of Law, Amity Law School, Amity University, Noida.