



JUSTICE VERSUS JUSTICES (2000). By Justice Ashok A. Desai.
Taxman Allied Services Pvt. Ltd., New Delhi. Pp. 11+168. Price Rs.
300.

IT TAKES no time to recapitulate the mesmerisation caused by the heavy doses of sociological decoding from Justice V. R. Krishan Iyer which the law men, at home as well as abroad kept enjoying during his judicial tenure and through his writings later. Justice Iyer has ever expected a judge to be oriented to 'activist justicing' and 'benign interpretation'. He, in his highest exhilaration to his cause states: "To defy or deny social justice to the humblest Indians even from the highest court, is not any extra constitutional, but also contra constitutional". In a similar state of zeal he points out that existing system of justice has descended in this territory from the 'Imperial Jural Legend and its struggle is to maintain "*Status Quo Ante*" in the social order. The judges according to him are the commanders of that non-native cause and they function to detract social justice.

The book under review is, from cover to cover, an attempt to look behind the realities and seek a disillusionment of the vehement critique of Justice Iyer which describes "Judges as opponents of the Justice". The author Justice Ashok A. Desai, raises many queries in response to Iyer's indictment of the judiciary including those relating to: (a) the basic understanding of the terms 'social justice' and 'Justice-Social' in the constitutional context, and (b) the role of a judge under the Constitution. He discusses the related issues under eleven different chapters, preceded by a prologue and followed by an epilogue. The discussions are of much academic taste and relevance. He, in his assertions, is sharp and analytical. The author suggests that the criticism should not be disproportionate; when it is so, it develops septic and does not remain constructive in character. The author, after identifying the "Inferno Around Judiciary" has tried to call things a spade a spade. One of the reasons of criticism against judiciary according to him, is the galloping expectation, which invariably exists in a society about a public functionary. Delay in 'justice' and 'exorbitant cost' have their own reasons behind them, which need proper digging and proficient explanation. The author correctly points out that the existing judicial system could not be thrown out at one stroke, just because of its history, more so when no ideal alternative has emerged from discourses so far. It needs to be noted in this respect that one cannot have an entry into his future in complete *de hors* of the past.

The book, with support from expert opinions contains a detailed discussion on the meaning and content of 'justice' and tries to define the



nature and attributes of 'social justice'. In the discussions on theories of justice the author stresses for a careful evaluation of the assertions of Justice Iyer that: (a) the social justice is assured by the Constitution under its planning and it is the ultimate command; (b) other laws have a secondary place; and (c) judges are under the roof of the Constitution. The author agrees on these assertions but refuses to share the conclusion drawn by the Justice Iyer that the judges must pour life in the 'social justice'. He admits that laws are subordinate to the Constitution but at the same time asks, whether they are subordinate to judges as well! The author explains in depth the significance of "The Preamble" to the Constitution after a reference to all possible technicalities concludes, in contra distinction to Iyer's view, that the preamble does not enjoin 'social justice' as pattern of justifying but demands an adherence to "Justice-Social" in its peculiar constitutional disposition.

With reference to the "Directive Principles of State Policy" the author discusses the genesis of non-justifiability of these "directives" and makes it philosophically clear that any failure on the part of the state in following them can be better taken cognizance by the nation as a whole rather than ordinary courts. The debate on 'judicial activism' in chapter VI of the book is very vibrant. Justice Iyer's poser that "We need judicial architect and not a legal mason" really puts a judge into a state of delirium. To make the choice between the 'architect' and 'mason' becomes tough when he wants that the 'rule of law' and 'rule of life' must interact. Justice Desai, however, carefully chooses to be on the side of judicial restraint. He devotes the whole chapter VII to the subject and explains, with reference to the actual position of a judge, that a judicial discharge cannot be anything more than what can be read in law.

Further in response to Justice Iyer's urge against the adversary system, the author explicitly makes a reformist conscious about the futility of a mere rhetoric. A practical and workable lay out must always be available to meet the anxiety for change. A reformist must, therefore, on sensing a gap between the prevalent system and the system of his design, quest for a definite device to fall in. The author shows his over all reservation about the use of glittering words rather than presenting things with practical shape of reality.

The book offers a valuable collection of references on Iyer's view about 'self-drive of social justice' and the author's perceptions about 'need for law'. The present reviewer feels that both the views carry a sound reasoning but the choice may generally be found in favour of more certainty. Fairness demands a socially conscious legislator and a versatile judge. They, however, must not be quite dangling. In any case, the role of a judge gains enormous significance. He has to respond to the change even where frequent modification in the letter of the law will not be possible.



As regards the role of judiciary, the author in chapter X of the book observes that the judiciary has a definite mission within the bounds stipulated by the Constitution. It is the conscience keeper of the constitutional promises and assurances. It prevents executive atrocities and legislative excesses. Its function is, however, linked with them and the judicial constructions have to be for the enrichment of the spirit of the Constitution. The book further deals with the relevant issues like: "Judiciary versus Parliament" and comments upon the ideas of "dispassion in dispensation" and "creativity in interpretation". It gives an artful dealing to the subject of 'rule of law'. The rule of law, according to the author demands judicial discipline rather than a particular pattern of justicing. Every statute is to be upheld, unless found derogatory to the constitutional values. Rule of law, in its essence, is wedded to the democracy rather it has emerged with it to resolve the conflicts which arise in a community. This is the cohesive force for the integration of the society. Rule of law must, however, run close to the rule of life.

In the end the author, as an experienced judge in himself, concludes the discussion with the exposition of the views from both precepts "Social justice" and "Legal justice". He observes that "justice according to law is nobody's legacy by inheritance. Nobody struggles to maintain *status quo ante* ... Let the caravan of social justice make a glorious march. None can have a genuine anxiety to obstruct. But then none should brow beat to joining". The book, in the words of Marius Stephan Rechtsanwal (Germany) "is a MUST for all those who remain in the cages of law" and "equally important for those who cage the law in order to dispense justice".

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BOOKS RECEIVED FOR REVIEW

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