BOOK REVIEWS

PREAMBLE: THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA (2004). By Justice R.C. Lahoti. Eastern Book Company. Pp.171. Price Rs.280/-.

THE BOOK under review[1] forms the Anundoram Barooah Law Lecture delivered by Justice R.C. Lahoti, Chief Justice of India, at the Gauhati High Court.

The subject is dealt with under eleven chapters starting from the text of the Preamble to epilogue. It is probably the only book on the Preamble of the Indian Constitution produced so far through an analysis of case law past and present. Examining the texture and tenor of the words used in the Preamble R.C. Lahoti J. rightly concludes that equality, justice, liberty and fraternity placed in that order signifies the philosophical travel of thought and ideology, as also a forceful indication of how the Constitution shall work. He again rightly asserts that of all the four concepts, justice is the most significant one. Then, analyzing the different facets of justice he concludes that in a democratic country where institutions have to abide by justice - social, economic and political - the other three - liberty, equality and fraternity- will be achieved. After doing this groundwork of reflecting on the philosophy of the Constitution, Lahoti J. takes us back to the pre-constitutional debates as to the content of Preamble in the context of discussions on the amendment to the Preamble in 1976. He has given an account of the views in support of the amendments and opinions expressed against the amendments by H.M. Seervai. Chapter III is, perhaps, the best from the standpoint of students. Here there is an incisive examination of the objective resolution that preceded the drafting of the preamble.

The author's conclusion that Preamble is part of the Constitution with the help of an analysis of the Supreme Court decisions in *Berubari*[2] case and *Kesavananda Bharati*[3] case may find support from the Constitution itself. There seems to be a typographical error as the date of adoption of resolution is mentioned as November 2, 1976.[4]

It seems that there was some messing up in the organization of material. The conclusions of *Berubari* case are seen enunciated at two

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1. R.C. Lahoti, *Preamble:The Spirit and Backbone of the Constitution of India* (2004).
2. AIR 1960 SC 845.
3. AIR 1973 SC 1461.
4. *Supra* note 1 at 35.

different places.[5]

Lahoti J. examines the role of the Preamble in the Constitutional interpretation with reference to the judgments given by various judges and several decisions of the Supreme Court and concludes agreeing with the views expressed by Acharya Kripalani to the effect that the Preamble contains philosophy, full of spiritualism and mysticism.

Examining the interpretation value of the Preamble Lahoti J. takes us on a journey through the various cases decided by the Supreme Court including those wherein even while interpreting international documents the court relied on the Preamble.[6]

Not satisfied with so much discussion, the author then gives the definitions given to the words and phrases on the Preamble by the courts. This chapter in fact gives an account of the interpretations given by various judges. It stands apart from the general theme of the book. At least, it is not integrated properly with the other chapters.

The editor does not seem to have taken enough care in putting the information in proper perspectives. There appears to have been a messing up. For example, while dealing with fraternity, equal protection under article 14 is discussed and a paragraph starting with the sentence: "The question therein was whether a right to reservation is available to women belonging by birth …."[7] unconnected to it is seen printed. This statement must have been taken from *Valsamma Paul* v. *Cochin University*[8] dealing with reservation. This does not fit in here. Or, it has not been made to fit in here.

In short, this is a good work so far as the Preamble of the Indian Constitution is concerned.[9] The appendix of the book adds to the utility of the material. After reading the book one is tempted to agree that the Preamble is the soul and spirit of the Constitution. It provides the mould in which the Constitution is cast. The vitality of the concepts enshrined in the Preamble should help imaginative judges to have forays into constitutional philosophy, broaden its vision, widen its reach and brighten its spirit to be relevant at all times to come.[10] It is really a contribution

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5. See *Id.* at 37 and 47.

6. In this context it may be pertinent to note that V.R. Krishna Iyer J. used to rely on the Preamble quite frequently. Most of the innovations came to be culled out from it. See *Rajendra Prasad* v. *State* of U.P., (1973) 3 SCC 646; *Premshankar Shukla* v. *Delhi*, AIR 1980 SC 1535 and *Sunil Batra* v. *Delhi*, AIR 1980 SC 1579.

7. *Supra* note at 106-07.

8. (1996) 3 SCC 545.

9. B.Sivaramayya has also written a piece on Preamble . See (1990) *Indian Bar Rev*. 32.

10. Probably K.K.Mathew J. meant to convey the same idea in *Kesavananda Bharati 's* case, 1973 Supp. SCR 1 at 797 wherein he said: The broad concepts of

to legal knowledge. The book is nicely printed and reasonably priced. It would be a worthy addition to any library.

*K.N. Chandrasekharan Pillai**

justice, social, economic and political, equality and liberty thrown large upon the canvas of the Preamble as eternal verities are mere moral adjudications, with only that content which each generation must pour content into them anew in the light of its own experience."

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LAWS ON PUBLIC SERVICE (2003). By K.M.Mandal, Eastern Law House, Calcutta. Pp.643. Price Rs.480/-.

OVER THE Years there has been phenomenal growth in service litigation leading to a large number of cases pending in courts. In 1976 when articles 323-A and 323-B were being incorporated in the Constitution by 42nd amendment there were more than 63000 service matters pending in various high courts. As a result of the Administrative Tribunals Act, 1985 the service disputes are now being adjudicated in the administrative tribunals established under this Act. The unprecedented expansion of governmental activities in the era of economic globalization has further increased the growth of service disputes not only in the government departments but also government companies and statutory bodies. In service litigation—the aggrieved party and the opposite party—both belong to the same organization and most of the service matters pertain to the issues of appointment, promotion, transfer, absorption, and disciplinary proceedings. These cases not only involve the interpretation of service rules and validity of the executive action but also certain constitutional principles such as equality of opportunity, rules of natural justice and so on. The governmental action providing for reservation for backward classes has also been a fertile source of constitutional litigation.

It must be recognized that the efficiency in administration and implementation of the governmental policies and programmes depend largely upon the members of the civil service. They are expected to execute the policies and perform their duties honestly, sincerely, impartially and without fear or favour so that they do not lose their credibility in the eyes of the people. The constitutional safeguards have been given to the civil servants so that they discharge their duties without any pressure. While framing the service rules the authorities are required to act in accordance with the fundamental rights guaranteed by the Constitution. It is, therefore, incumbent upon the government to adhere to the norms of natural justice and non-arbitrariness in relation to their employees. The public servants play a vital role in political governance. The relationship between the public servants and the government is more than that of master-servant relationship. As has been stated by the Supreme Court in *Roshan Lal Tandon* v. *Union of India*:[1]

1. AIR 1967 SC 1889 at 1894.

> [T]he relationship between the Government and its servants is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of a status. It is much more than purely a contractual relationship voluntarily entered into between the parties. The duties and the status are fixed by law and in the enforcement of the duties, the society has an interest.

The book under review[2] seeks to provide an insight into various aspects of service jurisprudence. The book has been divided into two parts. Part One has 18 chapters.Chapter1 discusses recruitment process, appointment, recruiting agencies, and methods of selection. Chapter 2 briefly refers to recruitment to non-Public Service Commission posts. Chapter 3 covers erroneous appointments and confirmation. Chapter 4 analyses the law relating to probationers. Chapter 5 deals with compassionate appointments. Chapter 6 makes an interesting reading about the issue of absorption and regularization. Relevant cases have been discussed on this issue highlighting the underlying philosophy behind the principle of regularization, namely, to prevent the exploitation of casual labourers by the employers. Chapter 7 refers to absorption of specific groups such as seasoned workers, special attendants, *punkha* pullers, and home guards etc. Chapter 8 makes a survey about the dispute relating to date of birth. Chapter 9 deals with pay scales and pay protection. Chapter 10 discusses the principle of equal pay for equal work. Chapter 11 cites rules relating to career advancement benefits and chapter 12 refers to New Intermediate Selection Grade under West Bengal Service (Appointment, Probation, and Confirmation) Rules, 1979. Chapter 13 discusses West Bengal Service Rules relating to transfer. In this chapter, the author discusses the grounds on which a transfer order can be made and the grounds on which such order can be judicially reviewed. Chapter 14 is determined by one's continuous officiation. The author mentions here the relevant case-law on the principles to determine continuous officiation. Chapter 15 discusses the topic of promotion and principle of merit-cum seniority. Chapter 16 is very well written and covers all aspects of disciplinary proceedings with relevant case–law. Chapters 17 and 18 briefly cover the topics of suspension and resignation.

The author has done a very commendable job in compiling the entire gamut of service jurisprudence. His treatment of every aspect covered in the book is lucid, brief and written in very simple language and contains valuable information.[3] However, some observations may be

2. K.M.Mandal, *Laws on Public Services* (2003).

3. In this 643 pages book only 400 pages constitute the text, the remaining 243 pages comprise the Appendices.

made, which it is submitted, ought to have been taken care of by the author.

One expected the author to devote a separate chapter on the meaning of state under article 12 for the purpose of fundamental rights. In this area there has been significant developments bringing many authorities within the expression "other authorities" as used in article 12. To give a very recent example, in *Kapila Hingorani* v. *State of Bihar*[4] the Supreme Court has held that "whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable therefore".[5] In this case the court was dealing with a PIL alleging starvation deaths and suicides by the employees of government companies and public sector undertakings in the State of Bihar as they had not been paid salaries for quite a long time. Treating these bodies as "authorities" under article 12 the court directed the State of Bihar to deposit Rs. 50 crores with the high court for disbursement of salaries to the employees of the corporations. Since fundamental rights are available against state action it is important to deal with the expanding meaning of the state for service litigation involving infringement of fundamental right to equality.

Another aspect which should have been discussed in the book in an independent chapter, is the issue of reservation of posts in favour of scheduled castes and scheduled tribes. The author has undoubtedly mentioned *Indra Sawhney* v. *Union of India*[5a] at two places[6] but many aspects such as the issue of carry-forward rule, extent of reservations and reservation in promotions required special treatment including the post-*Indra Sawhney* constitutional amendments inserting Article 16(4) A and B and amendment in Article 335. At page 195 the author very correctly mentions the case of *Ajit Singh II* v. *State of Punjab*[7] which held that the roster point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post *vis a vis* the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level if he reached the promotional level later but before the further promotion of reserved candidate, he will have to be treated senior at the promotional level to the reserved candidate even if the reserved candidate was earlier promoted to that level. It is submitted that the author failed to notice

4. (2003) 6 SCC 1.
5. *Id.*at 19.
5*a*. AIR 1993 SC 477.
6. *Supra* note 1 at 15 and 196.
7. (1999) 7 SCC 209.

that *Ajit Singh II* had been rendered ineffective by 85th Constitutional Amendment Act, 2001. The reversal of *Ajit Singh II* has been made effective from 17.6.1995, the day article 16(4) A came into force.

Amendment to article 16(4) A reads:

> In Article 16 of the Constitution in clause 4 A "in matters of promotions to any class" the words "in matters of promotion with consequential seniority to any class" be substituted.[8]

Part two of the book may be read as a commentary on the Administrative Tribunals Act, 1985. The author refers to the reasons for the passing of this Act, namely, huge pending service cases to the tune of over 63,000 on 29.1.1985. The position of articles 323-A and 323-B which has been drastically changed by *L.Chandra Kumar* v. *Union of India*[9] has appropriately been cited by him at several places.[10] The author also discusses the controversy over the question whether administrative tribunals, the creature of a statute, can exercise the power to punish for contempt which a high court can exercise under article 215 of the Constitution. Referring to *T.S. Sudhakar* v. *Government of Andhra Pradesh*[11] he states that the controversy has been settled by the Supreme Court rejecting the view taken by some high courts that the tribunals being subordinate to the high courts as held in *L.Chandra Kumar*, cannot enjoy the contempt power. In *T.S. Sudhakar* the Supreme Court has held that as *L.Chandra Kumar* had not declared the provisions of article 323-A (2) (b) or article 323-B (3) (d) or section 17 of the Act *ultra vires* the Constitution, the tribunals enjoy the power of contempt, of course, subject to overall supervision of the high court. The author has discussed the relevant case-law on the question whether a single member can constitute the bench or whether the decision of one bench is binding on another bench or whether a bench can transfer a case to another bench.[12]

The aforesaid observations, however, in no way diminish the quality of the book. The author seems to have been inspired to write this book in view of his long experience in cooperative and public sector undertakings and as principal home secretary (personnel and

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8. Prior to this amendment art 16(4) A read, "Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes, which in the opinion of the State are not adequately represented in the services under the State".

9. (1997)3 SCC261.

10. This case has been cited at 319, 326, 338, 348, 353, 368, 380, 391, 393 and 397.

11. (2001) 1 SCC516.

12. *Supra* note 1 at 335-39.

administrative reforms) and as a member and later as the vice-chairman of a state administrative tribunal. The author has provided a comprehensive and clear description of various facets of service laws and made a welcome addition to the existing literature on this subject. The book will be very useful for the employees, lawyers, administrators and all those interested in service jurisprudence. The print of the book is good.

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INDUSTRIAL JURISPRUDENCE (2004). By E. M. Rao. LexisNexis Student Series, New Delhi, Pp.lix + 481. Price Rs.450/-.

LABOUR LAW was in a ferment in the 1990s. The influence of multilateral lending agencies, led by the Bretton Woods institutions and the ideological and programmatic agenda that they set of privatisation, liberalisation and globalisation, lends itself as and an explanation for the changes brought in labour law. 'Free market', competitiveness and the neo-liberalism of the nineties necessarily demanded a restructuring of the relationship between capital and labour. It demanded, and got, a reorienting of the priorities of the state in matters of employment, protection against exploitation and the capacity of labour to associate, and to protect its own interests. The escalating battle waged by industry, spearheaded by the Confederation of Indian Industry, to remove the barriers to casualising labour by the scrapping of the Contract Labour Act of 1970, especially the provision under which the government may 'abolish' contract labour in any establishment or occupation, reflects the changing times. The move to lift the prohibition of night work for women, while not addressing anxieties that persisted about safety, as also the traditional reason of the role of the woman as homemaker which night work would disrupt, marks this period. Replacing the Trade Unions Act, 1926 with a new law, and the exclusion of trade union activity in the proliferating export processing zones also belong to the nineties. Closure of industries, hire and fire, a debate on minimum wages, voluntary retirement schemes and golden and silver handshakes, disinvestment of PSUs... constitute the landscape in which contemporary industrial and labour law and jurisprudence is located.

The book under review,[1] however, misses almost all of this. This is disappointing in itself; and the absence of an authoritative work which explores, and explains, the contours of this field adds to the disappointment.

However, E M Rao is a professor at XLRI in Jamshedpur and, as such, his book may allay a certain curiosity which lawyers may have about the version of industrial law and jurisprudence which is taught in the elite schools of management.

In his prefatory statement, Rao defines industrial jurisprudence as "the unique set of legal principles applied and reliefs granted by specially

1. EM Rao, *Industrial Jurisprudence* (2004).

constituted tribunals in the process of resolving disputes between employers and employees on matters concerning employment relationship, conditions of service, physical conditions of work, wages, benefits, social security and, most importantly, termination of employment."[2] Identifying "four major categories, namely (a) welfare and working conditions; (b) wages, (c) industrial relations and (d) social security"[3], he records his attempt to be exhaustive, having undertaken "page-by-page surfing of more than 2,00,000 pages of various labour law journals from the year 1949 to 2002, apart from consulting a host of reference books"[4] tracking legislative and judicial trends.

The chapters are constructed around jurisprudential notions reflected in their headings: "Rights", "Powers and Immunities", "Duties and Liabilities", "Judicial Disposition". A chapter then begins with a brief introduction to the meaning given to the term by jurisprudence through its various interlocutors. So, the chapter on 'Rights' has capsules on Hohfeld, Hart, Gewith, Salmond and Austin on rights before moving to judicial decisions which have a bearing on rights. The discussion of law is, therefore, differently situated from the routine where legislations, or predication, constitutes the context within which law is analysed and understood.

This could have been a revealing enterprise. But there are three features of the work that take away the value it might otherwise have had. The first is the aggressive and singleminded advocacy of employers' right. This is not a reference to a 'slant' or 'tilt' towards employers, but about a veritable diatribe that is unleashed in aid of protecting the interests of the employer.

For instance, writing about *Papanasam Labour Union*,[5] where the Supreme Court upheld the constitutional validity of section 25M of the Industrial Disputes Act, 1947 which limited the exemption of prior permission for lay off to where it was necessitated by power failure or natural calamities, Rao comments: "This decision blissfully turned a blind eye to the very essence of lay off, i.e., the urgency of action...If there is a sudden breakdown of vital machinery or non-supply of raw materials due to some sudden mishap either at the supplier's work or in transit, what should the employer do? Is it possible to argue, that these are circumstances which facilitate the leisure exercise of preparing the papers, filing application in ice copies, going through the cumbersome procedures, and waiting for the slow machinery to call the parties for a

2. *Id.* at vii-viii.
3. *Id.* at viii.
4. *Id.* at ix.
5. *Papansanam Labour Union* v. *Madura Coats Ltd*., (1997) 3 LLJ Supp 938 (SC).

hearing and pass an order? And, the employer has to keep his workers not only idle during the 2 month period during which the application is pending, but also pay them full wages for no work!... It may be politically expedient for the Parliament to pass a law, which is prima facie preposterous and irrational. But then, should the apex court, which is the custodian of the Constitution, remain silent when the affected party challenged an obnoxious provision that reduced a statutory remedy into tantalizing mirage?"[6]

This approach, often in even more acerbic terms, meets the eye at every turn of the page.[7] Of course, there is the occasional support extended to workmen also.[8] From *Dena Nath*[9] and *SAIL*[10] to *Kelawala*[11] and *Umesh Naik*,[12] circumbulating the terrain of industrial law as it affects the employer, this attitude is manifest. The chapter on 'Rights' is especially revealing of the manner of devotion of the author to the rights of the employer. The chapter is replete with the right of the employer to transfer, to promote, to change the conditions of service, to raise an industrial dispute, while giving short shrift to workers' right, setting out the author's undiluted bias. Later, beyond his neo-liberal espousal of the employers' cause, he also reveals himself as a proponent of 'natural selection' which he finds thwarted by a judiciary and judges who do not push for preserving the province of the strong. So: "The obsession of the learned judges with 'equality' is ill-advised... The essence of natural selection is differentiation, and not equality... How could the apparent economic inequality affect the judicial process, which requires a judge to decide the case on its own facts and merits, and not on the basis of strong versus weak? Indeed this was the type of insipid rhetoric that beset the rulings *ad nauseam* for two decades."[13]

This quote leads on to the second problem: the intemperateness of the language used while condemning the judgments of the court. In this era, when the power to punish for contempt is often asserted by the court, it is refreshing to find a volume where the author has not internalised censorship. But the passing off of untempered condemnation as analysis and critique – therein lies the rub. Terms of approval such as "this decision is right"[14], "the decision of Mathur, J. is consistent with

6. *Supra* note 1 at 124.
7. *Id.* at 108-10, 124, 130,135, 143, 147, 174, 186, 192, 218-219, 232, 239, 242, 244, 252, 338, 346.
8. *Id.* at 141, 142, 234, 285, 287, 377.
9. *Dena Nath* v. *National Fertilizers Ltd.*, (1992) 1 LLJ 1 (SC).
10. *SAIL* v. *National Union of Waterfront Workers*, (2001) 4 LLN 133 (SC).
11. *Bank of India* v. *TS Kelawala*, (1990) 2 LLJ 39 (SC).
12. *Syndicate Bank* v. *K Umesh Naik*, (1994) 2 LLJ 836 (SC).
13. *Supra* note 1 at 446-47.
14. *Id*. at 128.

letter and spirit of the Act as well as equity"[15] are occasionally met in the text, almost invariably where the court has held for the employer. Since courts have often had to concern themselves with protecting the interests of labour, it is severe, sometimes vicious, slamming of the judges and their judgments that appears without pause through the book. The court's position may be open to ridicule', 'perverse'[16], 'trite and border on caprice and humour"[17], "a judicial perversion"[18] possibly "operating from a position of total ignorance of rudimentary legal principles"[19], "not only insipid but at once unconstitutional"[20], "no less preposterous"[21], " nothing more than an attempt to rationalise his own misinterpretation of the provisions"[22], "anarchic"[23], "with all its halftones and inhibitions, stands nowhere near the judicial standards expected of a four-judge bench of the Supreme Court"[24], "blissfully unaware of the objects and scheme of chapter VA"[25], "capricious"[26], "sympathy was showered by Majmudar and Sabharwal, JJ., not at their expense, but of the employer"[27], "the level of hypocrisy"[28], "travesty of truth"[29] ....and so it goes on, and on.

The choicest invectives are reserved for D.A. Desai and V.R. Krishna Iyer, JJ, who the author 'credits' with "judicial indiscipline...who created a Frankenstein's monster by waving the ward of judicial hyper-activism indiscriminately in all directions."[30] Between them, it is V.R. Krishna Iyer J, who comes in for the harshest treatment. To sample the author's anger, here is a quote: "His (Justice V.R. Krishna Iyer's) further observation that 'there are no golden rules' (*Strawboard*)[31], is a self-granted licence to handle cases in a disorderly manner. Such an aboriginal approach to administration of justice might have gained unquestioned acceptance in the dark of slavery, not in the contemporary world".[32]

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15. *Ibid.*
16. *Id.* at 122.
17. *Id.* at 144.
18. *Id.* at 147.
19. *Id.* at 185.
20. *Id.* at 217.
21. *Id*. at 226.
22. *Id*. at 227.
23. *Id*. at 228.
24. *Id*. at 230.
25. *Id.* at 233.
26. *Id*. at 239.
27. *Ibid.*
28. *Id.* at 245.
29. *Id.* at 275.
30. *Ibid.*
31. *Strawboard Mfg Co Ltd*. v. *Their Workmen*, (1976) 1 LLJ 463 (SC).
32. *Supra* note 1 at 439.

The entire text reads like a judgment – of judgments, and of judges – and does not constitute either a setting out of the law, or provide an analysis that can assist understanding or developing the law.

The third problem is with the significant absences in the work. Consider the place that the Bhopal Gas Disaster and the Oleum Gas leak do *not* have in this book. The introduction into the Factories Act 1948, of Chapter IV A, dealing with "hazardous processes", where 'disaster', 'hazard' and hazardous waste have entered the parlance of labour law; where the worker's right to participate in safety management has been legislated to reduce the possibility of risk escalating into disaster; and of the Factories Act extending beyond the premises of the factory to the general public in the vicinity of the factory – these are not even acknowledged in the work. Even the changed definition of 'occupier' by which "in the case of a company, any one of the directors shall be deemed to be the occupier" has not excited his interest. The passing, incomplete reference to the nature of offences under the Factories Act,[33] termed "absolute offence" by the Supreme Court which term does not find even a mention in the book, does no justice to the importance of this area of study in developing industrial jurisprudence. The total neglect of pollution laws and judgments and their impact on industry and employment, and the changed relevances they have brought to industrial and labour law, is a vacuum in the work. The *Delhi Industries Relocation* case[34] is a case in point. Closure, retrenchment, continuance of employment, shifting the site of industry, the nature of risk immanent in the industrial enterprise and the insulation of segments of the population while moving the workers along with the risk – these are some circumstances created by the relocation case. The *Vellore Tanneries* case[35] provides a further illustration of the changes to labour law that have got played out in the province of pollution. This case, and others of their ilk, were witness to the temporary closure of which then sent to the sidelines other issues, and where workers; rights, although impacted, were not even a marginal issue. The overriding of the law by court dicta worked to relegate labour and industrial law to irrelevance; but all these have been missed by the author. These weaknesses in the construction of this work are too significant to wish away.

This book could be read to understand how an ardent advocate of employers' rights views labour law especially as it has developed through judgments of courts. But, presented as part of LexisNexis' 'student series', it has to be said that it is a book eminently unsuited to students.

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33. *Id.* at 232, 236 and 281.
34. *M C Mehta* v. *Union of India,* (1996) 4 SCC 351.
35. *Vellore Citizens' Welfare Forum* v. *Union of India,* (1996) 5 SCC 647.

It does not provide a background of the kinds of laws that populate the territory of labour and industrial law. It does not explain the rationale of these laws. Some laws, such as that governing interstates migrant workmen and decisions on the theme such as *Salal Hydro-Electric* case[36] or the *Asiad* case,[37] are not even nominally there. Child labour and bonded labour, again, are trapped in strangled silence, perhaps on the unstated explanation that the author does not consider that they are not the stuff of which labour and industrial jurisprudence is made. Then, there is the solitary lens of employers' freedoms and rights through which the arena is viewed, and the field of industrial jurisprudence constructed. The repeated intemperateness of language and judgment will make judgment precede understanding in the student's mind.

A book such as this without an index is inexcusable, and when it emerges from the offices of an established publisher, it cannot be condoned. The two faults – of placing this text in the student series, and not providing an index – ask to be urgently remedied.

Usha Ramanathan[*]

36. *Labourers Working on Salal Hydro-electric Project* v. *State of Jammu and Kashmir*, (1983) 2 SCC 181.

37. *Peoples' Union for Democratic Rights* v. *Union of India*, (1982) 3 SCC 235.

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LAW OF PREVENTION OF ATROCITIES ON THE SCHEDULED CASTES AND SCHEDULED TRIBES by Dr. T.R. Naval, Concept Publishing Company, A/15-16, Commercial Block, Mohan Garden, New Delhi –110059. Pp. xxiv+154 Price Rs. 250/-.

IT IS a moderately sized book divided into three parts besides the table of cases and annexures. The first part is introductory and deals briefly with the genesis of casteism, disabilities, prejudices and atrocities attached with it, the psychological as well as social consequences thereof and the role of courts, Constitution and the law. The second part is more academic and deals with the meaning and clauses of atrocities, definition of scheduled caste and effects of conversion. The third part is regarding laws to combat atrocities aforementioned. Annexures include the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and rules made thereunder.

Five and a half decades after the promulgation of the Constitution of India and its provisions including article 14 *i.e.* right to equality, which has been declared as forming the "basic structure" of the Constitution, equity, equality and protection continue to elude the weaker sections of the society visualised by the framers of the Constitution as the necessary beneficiaries. Two of such groups include the scheduled castes and the scheduled tribes people. They together constitute one-sixth of the population of our country.

Scheduled caste is defined under clause (dh) of section 2 of the Protection of the Civil Rights Act, 1955 and under clause (24) of article 366 of the Constitution of India and scheduled tribe under the same clause of that article.

Various provisions are made in the Constitution of India for the benefit of the scheduled castes and scheduled tribes. These include, *inter alia*, articles 14 to 17, and article 23, 24 and 29 read with articles 37, 38, 39, 39A, 41 to 45 and 46 besides article 32 and articles 226, 330, 332, 335, 338, 338A, 339, 341 and 342 as also schedules V and VI of the Constitution. Besides, various laws are promulgated to ameliorate the conditions of the scheduled castes and the scheduled tribes which include, *inter alia*, (i) Untouchability (Offences) Act, 1955; (ii) Protection of Civil Rights Act, 1955; (iii) The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 etc.

The aforesaid laws are powerful, clear and unambiguous. However, despite these laws, their combined strength have failed to ameliorate the wretched condition of the members of the aforesaid targeted beneficiaries.

As a matter of fact even article 17 is conspicuous by its less than desired implementation. This in effect is the theme of the book under review. The author lamented over this prevailing situation and asserts:[1]

> The magnitude of the problem is that even the educationally, economically and politically advanced persons belonging to scheduled castes holding the high political or executive or police post could not be liberated from this social evil of untouchability and atrocities, their position, status and prestige are still deemed low.

The book defines and explains caste, traces the historical evolution of disability attached with it, its social and individual consequences including the growth of atrocities on the members of the aforesaid SC and ST populace despite the numerous safeguards provided by the Constitution and the laws. The book also discusses various questions related to atrocities, the relevant case laws and the role of judiciary in the prevention of atrocities on the SC and ST people.

The book provides useful reading for the judges and lawyers, as well as executives and the people having interest in law. It is equally important, as it contains useful information, for the general discerning readers. The book draws attention to the very important topic to which we seem to have closed our eyes thinking that such atrocities are things of the past and any current violence is very rare and could be taken care of by the governance system. The author draws attention of the readers to the prejudices and atrocities which are dominantly based on caste factors even in the present age of freedom and liberty. The author also cites some examples of caste prejudices. "A SC youth was thrashed as he dared to chew the betal in the presence of so called upper caste-men. The students are not allowed to take their meal on the table which is used by upper caste students in the mess of a hostel situated in the capital of India. SCs are not allowed to draw water from the tap or a well or where the fresh water is pumping out in a clear stream."[2]

However, a proper acknowledgement of the utility value of the constitutional provisions and the various laws *vis-à-vis* achievements made by numerous people belonging to the SC and ST communities, would have been better appreciated. It would not only be a well deserved tribute to the said constitutional provisions and laws but also to the vast masses that constitute the aforesaid weaker sections of the society. These masses are deprived and lacking of opportunities and 'achievements' and they need sources of inspiration like any other people and possibly

1. T.R. Naval, *Law of Prevention of Atrocities on Scheduled Castes and the Scheduled Tribes*, 26 (New Delhi, 2001).

2. *Id*. at 4.

even more, just to gain the self-confidence required for a meaningful living. Perpetual projection of a gloomy image could be per chance discouraging too. Therefore, it should be balanced, if realistically possible, with a positive description of protective, and propelling measures.

The author seems to appreciate the legal and constitutional safeguards in the multiple legal systems in India. But the author notes that "values of non-state legal system differ drastically from those of the state legal systems. The constitutionally desired social order seeks to foster through state legal system the value of equality of man, whereas the Northern Indian Society operates on a reversed hypothesis"[3] of perpetual inequality protected by non-state legal system.

A more rational and data based analysis of whether the increased number of reports of violations is only due to actual increase of violence or due to the increased level of positive assertions would have been appreciable. These assertions are manifested in the greater tendency of reporting the atrocities by the SC and ST people. The book does not mention the misuse of the laws, *i.e.*, the practice of falsely implicating people in the commission of atrocities. Due to this, the legislators argue that it would be difficult to make more stringent laws on the subject. It is a matter of common knowledge that even the police authorities are registering more cases of atrocities against the SC and ST people than they did in the past. This may be the result of growing awareness and appreciation of human, constitutional and legal rights and obligations.

Uttar Pradesh and Bihar witness more instances of individual distance, hate and even violence *vis-à-vis* the SC people than the rest of the country. This has led to great political polarisation on caste basis and has affected the basic rubric of democracy and political system. The insignificant number of the ST people (Uttar Pradesh) generally keeps them free from discrimination at similar scale or degree. Also due to their insignificant numbers the ST people may not be assertive enough to lodge any complaint of whatever violence is being committed against them.

Finally, the depth of the author's knowledge is reflected in his approach to the subject and his clear, concise and, to appreciable degree, a comprehensive analysis. The book has been written in simple language; it could be easily understood even by a layman. It may serve as a reference book. The book contains useful charts and list of cases, a means to evaluate the decisions of the various high courts and the Supreme Court.

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3. *Id.* at 67.

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