

BOOK REVIEWS

INEQUALITY AND THE LAW (1984). By B. Sivaramayya. Eastern Book Co., Lucknow. Pp. 180+viii. Price Rs. 60.

THIS SMALL book¹ by Sivaramayya is a meaningful exposition of an important subject. The author deals with various aspects of inequality that exist in society and the law's effort to eliminate it.

In the first chapter he gives us a background of the inequalities which prevailed in pre-independent India. In chapter II he explains how 'equality' as an objective was enshrined in the Constitution. Three major concepts of equality have been incorporated in the Constitution, namely, (i) egalitarian or numerical, (ii) meritarian; and (iii) proportional.²

The egalitarian or numerical concept is to be found in article 326 which gives the right to vote to every adult who has passed the age of 21.³

The meritarian concept of equality is to be found in the right to equality guaranteed as a fundamental right and other concomitant rights of equality which specifically prohibit discrimination on the ground of ascriptive statutes such as those based on religion, race, caste, sex, etc.⁴

The concept of proportional equality is contained in the provisions assuring protective discrimination for certain socially and educationally backward classes of people especially those known as the scheduled castes and scheduled tribes.⁵ This reviewer however, submits that it is not right to say that such protective discrimination is a mere welfare concept. It is not mere welfare, much less is it a charity. It is a method of social engineering. Much has been said and written on this subject and much has been judicially said also.⁶ It is submitted that since an honest and sincere execution of the policy of protective discrimination was not made since its inception until recently, it is too early to call a halt to this policy. It may be that it does not benefit the downmost layer of the oppressed people. It may be tokenism also. But such tokenism coupled with other policies which aim at improving the intrinsic worth of people belonging to these sections is a must if social justice is to be the destination of our constitutional renaissance.

The reservation policy needs reformulation from time to time and some

1. B. Sivaramayya, *Inequality and the Law* (1984).

2. *Id.* at 19.

3. By the Constitution (Sixty-second) Amendment Act 1988, the age of eligibility for voting was reduced from 21 to 18.

4. Arts. 14, 15, 16, 29(2), 325.

5. Arts. 15(4), 16(4), 46, 335.

6. For a most recent exposition of the subject, see Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (1984).

under-classification with a view to excluding those who had relatively improved their positions and reaching those who have suffered most is called for. The author's question as to why this generation of caste Hindus should suffer for the sins of their ancestors could be answered by saying that since they have inherited so many benefits and advantages from their ancestors, they could as well pay a little for social justice. Economic criteria for determining the recipients of protective discrimination is according to this reviewer only one of the factors, not the only one. Since the basis of their past oppression has been the caste, how could it be excluded from being an important factor of identification? Applying the economic criteria for determining the backwardness is neither operationally feasible nor conceptually sound.⁷ The compensatory discrimination as envisaged by clause (4) of article 15 or clause (4) of article 16 is not a mere poverty-alleviating programme. Its context is the system in which people were suppressed because of their low social station determined by the Hindu caste system. Reservation alone, of course, is not a panacea for this kind of injustice. It has to be seen as one of the methods. What we have lacked so far is its honest execution. The implementation has suffered from either the lack-a-daisical attitude or opportunism. An enlightened policy, constantly shifting to suit the reality and constantly being result-oriented, is what we need. An empirical study of the effects of reservation needs to be made. The author's second objection against the present policy of protective discrimination is as follows :

It is not clear why equality of opportunity should be denied to a Suleman who is a Muslim or to a Thomas who is a Christian because of the harsh treatment meted out by the caste Hindus to the untouchables in the past.⁸

It is submitted that caste is used merely as an identifying instrument. It cannot be argued that in secular India, Hindus alone should provide atonement for the sins of their ancestors. In fact, it is not atonement at all. It is an affirmative state action to bring about equality in an essentially unequal society. Therefore, it is wrong to lay the responsibility on Hindus alone. It is a secular method of secular India and, therefore, whether it is Suleman or Thomas or Phiroze, irrespective of their religion, they have to join in the societal effort for creating equality. The Constitution of India does not merely prohibit inequality, it enjoins the state to promote and produce equality.⁹ This reviewer has submitted elsewhere that denial of reservations to those from the scheduled castes on the ground of their conversion to another religion from Hinduism is also unfair.¹⁰ The test should

7. See, S.P. Sathe, "Evaluating Pursuit of Equality", XXI *Economic and Political Weekly* 1451-55 (16 Aug. 1986).

8. *Supra* note 1 at 48.

9. Arts. 38(1), 46.

10. S.P. Sathe, XXII *A.S.I.L.* 359, 373 (1986), commenting on the Supreme Court decision in *Soosai v. Union of India*, A.I.R. 1986 S.C. 733.

be not religion but being a victim of social injustice. What needs to be done is a constant review of the policy of reservations to see that the scarce resource of reservation is put to the best possible use. The policy of reservations could be so conceived as to give preference to those at the rock-bottom levels of poverty. It is not the policy but its detail and implementation that deserves serious attention.

The state has to provide preferential treatment to the scheduled castes, scheduled tribes and other backward classes and, on the other hand, punish those who continue to treat them with hostile discrimination. The law prohibiting untouchability has been on the statute book and yet atrocities against the Dalits have not abated. Unfortunately, the author does not go into such extra-legal aspects. In our submission, one cannot do justice to this subject unless one understands the social context of caste tensions prevailing in rural India. The Civil Rights Act also has had a limited success. The author gives statistics of the prosecutions and convictions under that law during the last two decades.

In chapter IV the author discusses the inequality arising out of gender discrimination. Although equality has been provided in some laws, a lot of inequality survives such laws. He traces various laws and judicial decisions which have upheld gender equality, but what needs to be pondered over is as to why revivalist practices such as *sati* have re-surfaced and oppressive practices such as dowry have increased? Gender equality cannot be produced merely by prohibiting discrimination. The social prejudice that breeds such discrimination must be attacked. Even Nehru's government could not abolish joint family property, the source of discrimination again the daughter of a Hindu family.

Chapter V deals with the familiar subject of inequality arising out of unequal property distribution. This is the story of judicial decisions and constitutional amendments pertaining to right to property, which has been told many-a-times. The author further surveys the implementation of various land laws passed with the objective of providing equality. Chapter VI is on inheritance and income. Chapter VII deals with inequalities pertaining to electoral and judicial processes. In dealing with legal aid, the author raises two questions: (i) regarding the preparedness of the Bar to undertake such massive legal aid programme; and (ii) as to the priority of an omnibus legal aid programme over other programmes envisaged in the campaign to eradicate poverty. There is no doubt that the Bar has shown itself totally unwilling and incapable of taking responsibility for administering legal aid.¹¹ The Bar functions on market economy and has done little to alleviate the distress of the poor. Regarding prioritisation of legal aid, it is submitted that it is wrong to assume that this is competing with poverty-eradication for resource allocation. Legal aid in a broad

11. See, S.P. Sathe, "Activist Lawyering for Social Justice" in N.R. Madhava Menon (ed.), *Social Justice and Social Process in India* 303-14 (1988).

sense must be understood as one of the methods of poverty eradication. Not securing the rights which are given by anti-poverty legislation is a concern of poverty eradication and legal aid merely catalyses the securing of such entitlements. Legal aid has to be seen as an important weapon as well as strategy for actualising social transformation leading to a just social order and when it is seen in such perspective, the prioritisation question becomes irrelevant. A change in the outlook of lawyers and judges and a strong voluntary movement for securing implementation of the laws through social action groups, are the requisites for a successful social transformation. There is also a chapter on bonded labour which is quite informative

Sivaramayya's book is indeed a welcome addition to legal literature and would make good reading material for courses such as law and poverty, women and the law or compensatory discrimination.

*S. P. Sathe**

*National Fellow in Law, U.G.C. (1987-88). Principal, ILS Law College, Pune.