



LAW AND SOCIAL JUSTICE (1998). By B. M. Shukla. Rawat Publications, G-19, Vijay Chowk, Laxmi Nagar, New Delhi. Pp. 354. Price Rs. 600.

THE BOOK under review<sup>1</sup> contains a critical appraisal of the important judgements of Justice D.A. Desai with a foreword by Justice P.N. Bhagwati, former Chief Justice of India and Vice-Chairman, U.N. Human Rights Committee. The book deals critically with 49 landmark decisions of Desai, J. spread over 924 pages. Interestingly, the list of cases dealt with in the book has been selected by the judge himself. Given the large number of decisions rendered by Desai, J., selection would have otherwise proved a formidable task for the author. The selected cases are a representative sample of Justice Desai's judicial activity and bring forth in bold relief his judicial decision making skills.

The decisions analysed in the book "symbolise the judicial response to the then prevalent socio-economic and socio-political issues; might they be as diverse as liquidation and winding up of companies, termination of workmen, transfer and appointment of judges of higher judiciary, prison justice, protection of personal liberty of members of the armed forces, arbitration issues, industrial peace, college teachers, entry tax, public servant, promotion in service, etc."<sup>2</sup>

These 49 decisions written by Desai, J. for the court were all, except two, concurring decisions. Even when there was slight dissent there was general concurrence with regard to the main conclusion. This was because of his distinctive and persuasive articulation of views, observations and conclusions.<sup>3</sup> His justicing technique was unique. First of all, he would clarify the legal position before him by interpreting the relevant statutory provisions, keeping in view the aims and objects of the concerned enactment. He would then arrive at the true import of the impugned provision. If more than one interpretation were possible, he would prefer that which was more in consonance with the object of the enactment by looking into the precedents and choosing those which were in conformity with his point of view. Finally, he would apply the same to the facts of the case before him.

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1. B. M. Shukla, *Law and Social Justice* (1998).

2. See, *id.* at 13.

3. For a break up of Justice Desai's association with the various benches and his concurrence of views with his brother judges both of the Gujarat High Court as well as the Supreme Court, see *id.* at 343.



Justice D. A. Desai (Dhirubhai, as P.N. Bhagwati, C.J. who has written the foreword fondly calls him) “was an eminent judge who moulded and developed the law relating to industrial relations... He gave a new direction to the law insofar as labour law was concerned. His sympathy was always with the underdog and he had no hesitation to stretch the law in order to do social justice to the weaker sections. He always identified himself with the misery and suffering of the poor and the disadvantaged. That is why he was known as a pro labour and pro tenant judge. He never made any secret of his leanings but one thing must be said to his credit that he never broke the law. He undoubtedly stretched the law. He bent the law but he never broke the law. It was his creative genius which could mould the law like plasticine in order to dispense social justice. He was always bold and forthright in his utterances and even in his extra judicial statements he never minced any words”.<sup>4</sup>

The book has seven chapters including epilogue. Chapter one entitled “Concern for Social Justice: D.A. Desai – a Portrait” is a biographical sketch of the judge: Justice Dhirubhai Ambelal Desai was born on 9 May 1920 in a middle class Brahmin family of Surat. He passed his Advocates’ examination held by the then Bar Council of Bombay in 1945 and started legal practice in the next year. As a young advocate he had a flourishing practice and he had to make considerable financial sacrifice while accepting the position of district and sessions judge in 1961. Within seven years of his appointment he became a judge of the Gujarat High Court in 1968, a feat unprecedented in the history of the Gujarat Bar till then. He was entrusted with the original side work and was made a company judge, though by his own admission he did not know ‘C’ of company law! However, with his uncanny insights and deep understanding of the sociological aspects of the law he not only mastered the provisions of company law but devised innovative strategies for making use of company law in a constructive manner. He was elevated to the Supreme Court in 1977 where, he was strongly liked and disliked. During his tenure as apex court judge he earned the encomiums such as a “warrior judge”, “byword for justice” and “Scarlet Pimpernel”.<sup>5</sup>

After his retirement from the Supreme Court he was appointed Chairman of the Law Commission of India for a three-year tenure during which period he brought out 18 reports covering various issues of law and judicial reforms.

In chapter 2 “A Step Towards Industrial Democracy” six high courts’ and one Supreme Court company decisions are examined. ‘To wind up or not to wind up’ was the issue in *re Maneckchowk and Ahmedabad Mfg. Co. Ltd.*<sup>6</sup> The important question that he had to decide was whether to accord the court’s

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4. See, *id.* at 79.

5. *Id.* at 24.

6. (1970) 40 Comp Cas 820 (Guj).



sanction to the scheme of compromise and arrangement or to order the company's winding up. In the face of nine well-argued grounds for winding up, the easy course for the court would have been to order winding up. Desai, J. chose the difficult course and systematically, logically and legally demolished, one after the other, the grounds supporting the winding up and opposing the scheme of compromise and arrangement. He preferred a living scheme to compulsory liquidation bringing about an end to a company.<sup>7</sup> He painfully realised that if an industrial company is wound up, it would result in unemployment of a large labour force which would be deprived of all means of livelihood. He, therefore, used sections 391 and 394 of the Companies Act, 1956 for the purpose of reconstructing and rehabilitating industrial companies so that the workmen are not deprived of their employment.<sup>8</sup>

The next chapter 'Justice to Justices' examines two important cases, viz., *S.H. Sheth v. Union of India*<sup>9</sup> and *S.P. Gupta v. President of India*<sup>10</sup> on the transfer of judges/independence of judiciary. These two cases are significant in the constitutional history of India since they represent the overtones and under currents of political process *vis-a-vis* judicial process.

Chapter 4 entitled "Wiped Some Tears from the Eyes of Some Employees" analyses 17 representative cases from the area of labour/industrial law and service law matters.<sup>11</sup> They are good examples of how legal remedies might be used to redress the grievances of employees. Some of the cases examined provide good examples of the misuse of article 226 jurisdiction against labour by the employers.<sup>12</sup>

Some of the landmark decisions of Desai, J. in the area of constitutional law are discussed in the next chapter "A Daniel Came to Judgement". These cases relate to topics as diverse as status of college teachers<sup>13</sup>, "other authorities" under article 12<sup>14</sup>, prison justice,<sup>15</sup> human rights,<sup>16</sup> entry tax,<sup>17</sup> acquisition of

7. *Supra* note 1 at 27.

8. The other cases examined in this chapter are: *Panchmahals Steel Ltd. v. Universal Steel Traders*, (XVI) 1975 GLR 942; *In re Bhavnagar Vegetable Products (in Liquidation)*, (1977) 47 Comp Cas 775 (Guj); *Mansukhlal v. M.V.Shah*, (XVII) 1976 GLR 592; *In re Bhavnagar Vegetable Products Ltd.*, (1977) 47 Comp Cas 128; *Anant Mills Ltd. v. City Deputy Collector*, (1972) 42 Comp Cas 477; and *DCM Ltd. v. Union of India*, AIR 1983 SC 937.

9. AIR 1977 SC 2328.

10. AIR 1982 SC 149.

11. Some of the cases examined include, *inter alia*, *Shambhu Nath v. Bank of Baroda*, AIR 1978 SC 1088; *Goa Sampling Employees Association v. G.S. Co. of India Pvt Ltd.*, AIR 1985 SC 357; *Dhari Gram Panchayat v. Shri Brahad Saurashtra Safai Kamdar Mandal*, (XII) 1971 GLR 287; *Workmen, FCI v. FCI*, AIR 1985 SC 670; *Workmen, Hindustan Lever Ltd. v. Shambunath Mukherjee*, AIR 1985 SC 141; etc.

12. *Babulal Nagar v. Shree Synthetics Ltd.*, AIR 1984 SC 1164.

13. *Ahmedabad Kelawani Trust v. State of Gujarat*, (XIX) 1978 GLR 671.

14. *P.K. Ramachandra Iyer v. Union of India*, (1984) 2 SCC 141.

15. *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

16. *Sebastian M. Hongray v. Union of India*, AIR 1984 SC 1026.

17. *State of Karnataka v. Hamsa Corporation*, AIR 1980 SC 463.



sick sugar mills,<sup>18</sup> disposal of public property by state<sup>19</sup>, disbursement of finances by a public sector corporation<sup>20</sup> and pension.<sup>21</sup>

Chapter 6 “Tryst with Justice” examines cases of an assorted nature. They include cases on criminal law<sup>22</sup>, arbitration<sup>23</sup>, Hindu marriage<sup>24</sup>, rent control legislation<sup>25</sup>, and Army Act<sup>26</sup>.

The selected cases discussed in the book unmistakably bring out the outstanding judicial performance of Desai, J. They also show that his social philosophy was closely in tune with the philosophy underlying the Constitution.<sup>27</sup>

In the words of V. R. Krishna Iyer, J. “Justice Desai’s judicial performance in various fields of jurisprudence is a reflection of his philosophy which is the same as the philosophy of the Constitution of India.”

The author of the book, B.M. Shukla, should be specially congratulated on the dispassionate analysis of the cases. The book has been brought out with hardly any printing errors. However, in the ‘Appendix’ where the cases reviewed have been listed, there are only 47 cases mentioned instead of the 49 examined. The book will be valuable to not only students of jurisprudence, labour, company and constitutional law, sociology of law and political institutions, but also to all those who are interested in social transformation through law.<sup>28</sup> The price of Rs. 600/- is, however, on the higher side.

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18. *Ishwari Khetan Sugar Mills v. State of UP*, AIR 1980 SC 1955.  
 19. *Ram and Shyam Co. v. State of Haryana*, AIR 1985 SC 1147.  
 20. *Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd.*, AIR 1983 SC 848.  
 21. *D.S. Nakara v. Union of India*, AIR 1983 SC 130; *Poonamal v. Union of India*, AIR 1985 SC 1196; and *Deokinandan Prasad v. State of Bihar*, AIR 1984 SC 1560.  
 22. *Narottamdas v. State of Gujarat*, (XII) 1971 GLR 894; *State of Bihar v. J.A.C. Saldanna*, AIR 1980 SC 326 and *R.S. Nayak v. A.R. Antulay*, AIR 1984 SC 684.  
 23. *Guru Nanak Foundation v. M/s Rattan Singh and Sons*, AIR 1981 SC 2075; *Ranji Dayawala and Sons (P) Ltd. v. Invest Import*, AIR 1981 SC 2085; *FCl v. Yadav Engineer and Contractor*, AIR 1982 SC 1302; and *M/s Tarapore and Co v. Cochin Shipyard Ltd. Cochin*, AIR 1984 SC 1072.  
 24. *Lila Gupta v. Laxmi Narayan*, AIR 1978 SC 135.  
 25. *Precision Steel and Engineering Works v. Prem Deve*, AIR 1982 SC 1518.  
 26. *Prithi Pal Singh v. Union of India*, AIR 1982 SC 1413.  
 27. See, *supra* note 1, blurb.  
 28. *Ibid.*  
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