



JUDICIAL REVIEW: PROCESS, POWERS, AND PROBLEMS (2020). Edited by Salman Khurshid, Sidharth Luthra, Lokendra Malik, and Shruti Bedi. Cambridge University Press, 314-321, 3rd Floor, Plot No. 3, Splendor Forum, Jasola District Centre, New Delhi-10025. Pp xxxii + 430. Price Rs. 1250.

ESTABLISHING RULE of law is an implicit objective of constitutional scheme. In order to correct any constitutional anomaly, various methods of constitutional review have been devised. Judicial review is one such method that preserves the sanctity, integrity and effectiveness of the Constitution. In this regard, it will be worthy to mention that the framers of the Indian Constitution, despite objections, preferred judicial review as the method to correct constitutional anomaly. Perhaps, the thought was that *via* judicial review, the Constitution can be preserved.

Professor Upendra Baxi opines that judicial review is a process that assumes its source from social legitimation; a transition from a “low social visibility into a liberated agency with a high socio-political visibility”.¹ It is in this backdrop, the book² under review is prepared. It acknowledges the rich and diverse legacy of Professor Baxi and tries to explain how judicial review under Indian constitutional scheme is working as a process towards enhancing the life; besides working as an introspection into the travails and tribulations of the constitutional courts.

Upendra Baxi: Judge of Judges

Professor Upendra Baxi deserves special mentioning for all the laurels, distinctions, awards and honours conferred upon him. He is a popular figure amongst legal academia that comprises of judges, lawyers, scholars, law teachers and importantly law students. Never in the field of juristic contribution was “so much owed by so many” to this “Creative Jurisprudent who is nonpareil”. I feel privileged to have close association with Professor Baxi. During my tenure as Vice-Chancellor of National Law School of India University, Bangalore, I had the honour of organizing Professor Baxi’s special lectures and short-term credit courses (in response to the never-ending requests of the students) and on other occasions to share the dais and benefit from his erudite learning and scholarly expositions.

Perhaps, very few have this distinction to understand the difference between criticism and critiquing in scholarly manner. In order to appreciate the difference one ought to have a combination of two qualities (a) intelligence and (b) knowledge of law. These are in abundance in Professor Baxi which rightfully confers upon him the title *judge of*

1 Upendra Baxi, “Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India” 4(1) *Third World Legal Studies* 107-132 (1985), available at: <http://scholar.valpo.edu/twls/vol4/iss1/6> (last visited on 2 Feb., 2020).

2 Salman Khurshid, Sidharth Luthra, Lokendra Malik, and Shruti Bedi (eds.), *Judicial Review: Process, Powers, And Problems, Essays in the Honour of Upendra Baxi* (Cambridge University Press, New Delhi, 2020).



judges. He has brought brilliant expositions on shaping the legal jurisprudence and expanding the scope of social transformation.

Justice A.K. Sikri's inimitable 'Foreword' reminds one of Shavian Prefaces. Bernard Shaw is credited with reviving the British drama to an "opulent exuberance in English literature" through his Prefaces, and Justice Sikri's 'Foreword' has set the tone of the book in a similar way. Justice Sikri rightly opines that Professor Baxi has made "lasting contribution to the strength of jurisprudence".³ The language in which he expresses his views has considerable followers, and the manner he compels others to think across the widest spectrum appears unmatched. In fact, some of his recommendations to the Indian legal education are revolutionary indeed which continue to guide the present thought of reforms.⁴ The list of people who admire the erudite contribution of Professor Baxi is (and will remain) unending. This perhaps could be appreciated from the small excerpt from the 'Editors' Note', which runs thus:⁵

Professor Baxi's numerous scholarly writings have provided an intellectual sanctuary to academics, lawyers, judges, and many more who have always managed a 'sighting' of their favourite pieces. His life has been pleasantly employed towards radiating information, disseminating ideas, and setting new trends in the legal world.

The book

The book is an edited volume consisting twenty broad themes. In doing so the editors have brought forth a remarkable work which highlights some of the most cherished, and at times even controversial aspects. It also explains (in detail) how judicial system responds to (or ought to respond) the conundrums raised and how judges are required to (ought to) strike a balance between activism and self-restraint in matters of complex and contentious issues.

The volume is a compilation of chapters from constitutional law experts from both India and abroad. In the 'Introduction', Professor M.P. Singh on the basis of personal experiences holds that Professor Baxi has performed exceptionally well with the assigned administrative responsibilities besides producing "enormous writings on diverse issues of law and related disciplines".⁶

3 *Id.* at vii.

4 Upendra Baxi, "Notes Towards Socially Relevant Legal Education: A Working Paper for UGC regional Workshops in Law 1975-1977" in *Towards a Socially Relevant Legal Education* (University Grants Commission, New Delhi), available at: <https://www.ugc.ac.in/oldpdf/pub/report/1.pdf> (last visited on 3 Feb., 2020). In order to appreciate the relevance of the Report, see Prakash Sharma, "Continuing Legal Education: Rethinking Professional Ethics and Responsibilities in India" 5(2) *Asian Journal of Legal Education* 152-168 (2018); Prakash Sharma "Continuing Legal Education: Idea, Need, and Relevance" 46(4) *Indian Bar Review* 399-407 (2019).

5 *Supra* note 2 at xxiii.

6 *Id.* at 2.



In the first chapter, Mark Tushnet addresses Professor Baxi's concern for social rights, points out the difficulties that arise in the judicial enforcement of such rights.⁷ In the following chapter, James Manor establishes a close relationship between good law and good politics and their impact upon society.⁸ Thereafter, Abhishek Singhvi contributes a chapter that looks into the reforms in the administration of justice.⁹ Holding Indian judiciary accountable for delays (under the plea of maintaining independence), the author opines that they have created a scheme that in a way has monopolized the job of appointing judges. John McEldwoney analyses the potential of social action litigation in the globalization and internationalization of national legal orders.¹⁰ Sital Kalantry analyses the use of the 'creeping jurisdiction'; wherein the Supreme Court tries to stall certain matters under its jurisdiction and urges the executive to create a policy or deign a legislation rather than adjudicating.¹¹ Joel I. Colon-Rios admits that strong judicial review of amendments of the Constitution, as it was done in India, has greater impact.¹² He discusses how occasions like these influence other nations.

Tracing his first meeting and subsequent interaction with Professor Baxi, Balram K. Gupta discusses the position of our Constitution *vis-à-vis* Common Law Countries, particularly the place of the judiciary.¹³ He further argues that active engagement between constitutional institutions results in achieving constitutional goals. Amita Dhanda evaluates the relationship between the Indian Supreme Court and the executive at different points of their existence.¹⁴ Referring to Professor Baxi's piece she clarifies that it is not her intention to comment or criticize but to respond in a manner which she terms as a "Baxian Bioscope" to the Indian judicial process.¹⁵ Bringing comparative perspective to the concept of judicial activism, Yaniv Roznai and Gary J. Jacobsohn discuss how a Constitution can be revolutionized within the legality of constitutional order without any dramatic and revolutionary activity.¹⁶

In the following chapters, Professor Vijender Kumar and V.P. Tiwari explore the concept of democracy, judiciary and judicial review through Constituent Assembly Debates and the Supreme Court judgments.¹⁷ The authors raise an important point that while the judiciary has religiously guarded the separation of powers for the other two branches of government, it has failed to observe the same discipline when it comes to exercising

7 *Id.* at 13.

8 *Id.* at 27.

9 *Id.* at 46.

10 *Id.* at 60.

11 *Id.* at 79.

12 *Id.* at 107.

13 *Id.* at 127.

14 *Id.* at 145.

15 *Id.* at 146.

16 *Id.* at 163.

17 *Id.* at 188.



its own powers.¹⁸ Oishik Sircar expresses the concern that Professor Baxi displays on the basis of what he has seen and experienced generally in all societies, particularly in India.¹⁹ These experiences lay down the foundation for the jurisprudence that exhorts to establish a better society.

Perhaps, the highly debatable aspect of the Indian Constitution is addressed in the manuscript of Lokendra Malik, wherein he argues that though the incorporation of article 124(3) was done after due deliberation, yet it remained unattended and unutilized,²⁰ meaning that it has remained a dead letter despite having the presence of notable distinguished jurists including Professor Baxi. According to the author, such a move would have yielded quality justice and also encouraged legal scholarship by opening an additional avenue to legal scholars for the recognition and utilization of their scholarship.²¹

Sidharth Luthra and Nivedita Mukhijia focus on the necessity of an intermediate Court of Appeals in India and the need to reinvent the nature of the Supreme Court as a constitutional court.²² P. Puneeth analyses whether the tribunals in India have the power of judicial review, the adverse effects they have and the need for revisiting *L. Chandra Kumar* case.²³ R. Hari Krishnan and Anurag Bhaskar opined that article 142 of the Constitution of India is unique in the sense that it enables the Supreme Court to do complete justice in any cause or matter pending before it.²⁴ On the other hand, Shailendra Kumar highlights how article 142 has created confusion and contradictions in matters that are governed by specific statutory provisions.²⁵ Anurag Deep analyses the impact of judicial review on the development of jurisprudence for counter-terror legislations.²⁶ Shruti Bedi examines whether judicial review is a tool that leads to judicial overstepping, or if it can be classified as a necessity justified with a view to maintain democracy.²⁷ Talking about three pillars of the judiciary, i.e. judicial independence, judicial review and judicial dissent, Yogesh Pratap Singh concentrates on the importance of establishing not just independence externally but also internally.²⁸

In the concluding chapter, Salman Khurshid examines the role of the judges of the Supreme Court in applying the principles of constitutional morality in constitutional adjudication in the light of important constitutional litigation.²⁹

18 *Id.* at 198.

19 *Id.* at 202.

20 *Id.* at 236.

21 *Id.* at 249-50.

22 *Id.* at 225.

23 *Id.* at 293.

24 *Id.* at 341.

25 *Id.* at 365.

26 *Id.* at 315.

27 *Id.* at 277.

28 *Id.* at 252.

29 *Id.* at 384.



The book reinforces the point that the Supreme Court of India may not have the sword or may not have the purse, but that its recent judgments have been sharp and that its nascent jurisprudence has been rich.

Concluding remarks

To sum up, the Festschrift in honour of “Professor Upen” (as Professor Upendra Baxi is endearingly called by his close associates, friends, admirers and students) is as “Athenian in built” and as “Spartan in wisdom” as the “Intellectual powerhouse” in whose honour it is published.

Salman Khurshid *et al.* deserve the encomiums of all for bringing out such a luminous publication in honour of the “Legal Giant”, who never tries to dwarf others.

The volume deserves to be part of the collection of law school libraries and individual book shelves. All the contributors have used very simple language. The table of contents along with a well-placed ‘Index’ provided in the volume certainly makes it handy for immediate reference. The price of the volume is reasonable keeping in view the matter and the get up of the work. The volume is thus a ready reckoner and useful to judges, lawyers, scholars and students alike.

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