

PREFACE

The Indian Law Institute and the Supreme Court have always shared a special relationship. While one is a premier law research institute, the other is the ultimate dispenser of justice. Both complement and supplement each other in many ways. Legal research is an important aid to judgement making, and the judgements delivered by the apex court provide a basis for further analysis and research on various issues. Apart from the common platform of law, the Supreme Court and the Indian Law Institute also share a special bond of physical proximity, not to speak of their frequent association in various official and academic capacities. It is, therefore, most appropriate that the Institute brings together prominent persons involved in academic law to study the contribution of the Court in various fields of law, when the Court touches the golden jubilee year of its existence.

On the occasion of the Court's inauguration, the first Attorney-General, M.C. Setalvad, delineated the role that the Court was intended to play, when he observed: 'The task before us all is the building of a nation alive to its national and international duties, consisting of a strong central authority and federal units, each possessed of ample power for the diverse uses of a progressive people. In the attainment of this noble end, we hope and trust that this Court will play a great and singular role and establish itself in the consciousness of the Indian people.' Over the years, the Court has played this role magnificently.

The real source of strength of the judiciary lies in public confidence in the institution. An independent judiciary is a national

asset. It has always come to the rescue of the deprived sections of society, and in the process, gained the confidence of the masses. Further, India being a land of diverse cultures and religions, the apex court has had the onerous task of respecting differing sensitivities. However, in doing so, the Court has never compromised the need to give meaningful relief to the parties, at times, in the face of severe criticism. The twenty-two essays contained within the pages of this book, written by judges, lawyers, law teachers and legal researchers vividly highlight these aspects. It is an analytical study of the development and interpretation of the law by the Court through its judgements in various areas.

In the last fifty years, the apex court has acted as the protector, guardian and interpreter of fundamental rights and has sought to integrate them with directive principles. M.P. Jain's erudite and exhaustive study of fundamental rights discusses the contribution of the Court and asserts that the Court has not only made the fundamental rights and directive principles real, effective, and more pervasive, but has in effect, expanded the scope of several fundamental rights by adding new dimensions to them.

In any society, irrespective of its political structure, administrative law performs a socio-economic function. I.P. Massey discusses various aspects of administrative law and analyses the role of the Court in evolving an administrative law regime, and opines that the Court has made a 'tremendous contribution to the establishment of the rule of law in India and enhanced the quality of life of the people, especially those belonging to the deprived and disadvantaged sections of society'.

The Court's role in the development of service law has been scrutinized by M. Rama Jois, who looks into different aspects of service law, like the doctrine of pleasure, security of tenure, fundamental rights, balancing the interests of the backward and the forward classes without ignoring merit, promotions, premature retirement, and equal pay for equal work.

One of the main citadels of the Court during this period has been judicial activism, which was a bold effort by the Court to revitalize the judicial system by providing the common man simple, fast, and cost-free access to courts. Its emergence as the constitutional panacea for all systemic ailments has reaffirmed people's faith in the judiciary. The Court's role in protecting the

interests of all sections of the society through public interest litigation and overcoming the procedural hurdles has made the Court a 'common man's' court. Upendra Baxi considers the future of Indian judicial activism by taking stock of its development over the years. He also insists that human rights communities and social movements must develop 'socially responsible' standards for evaluating judicial activism.

K.C. Sunny, on election laws, observes that the judgements of the Court reflect its concern for free and fair elections, and that this has contributed substantially to the development of election law.

Kusum analyses the role played by the Court in matrimonial adjudication under the Hindu law. She concludes that while new dimensions have been added to various statutory provisions by liberal interpretation or by invoking the special powers conferred on the Court under Article 142 of the Constitution, 'there have also been a few judgements which have a potential of negative fall-outs'. Danial Latifi discusses significant judgements on Muslim Law not only of the Supreme Court of India but also of Pakistan and Bangladesh. B. Sivaramayya* assesses the role of the court in providing gender justice, which is visible in the 'entire gamut of the legal spectrum'.

The area of mercantile law, which is very wide, covering law relating to contracts, negotiable instruments, partnership, sale of goods, bailment and more is explored by P.M. Bakshi.

T.N. Pandey and M. Chandrashekarani explore the role of the Supreme Court in evolving and developing the law on direct and indirect taxes by interpreting constitutional provisions and tax statutes.

The judicial task of balancing conflicting interests in the area of industrial relations, social security, and minimum standards of employment prove to be extremely difficult in view of the sharply divided and vociferously pressed rival claims. This is all the more so when the legislation is silent or vague. S.C. Srivastava views the role of the Court as the protector of weaker sections of the society and sometimes even as legislator. He asserts that while labour law is crystalising in favour of the worker, the Court has tried to strike

*The editors deeply mourn the untimely and unnatural death of Professor Sivaramayya who was closely connected with the academic activities of the Institute.

tried to strike a balance between the interest of the worker and the industry.

Rapid industrialisation, and environmental pollution are issues that have attracted the attention of the legislature and the judiciary during the past few years. The apex court has played a central role in creating an Indian jurisprudence on environment and has come down heavily on eco-killers. C.M. Jariwala discusses various issues in pollution like industries, water, air, construction, sanitation, and waste disposal.

The Court has attempted to protect the interest of consumers against the dubious acts of entrepreneurs and providers of services. The scope of the Consumer Protection Act, 1986, has been expanded by the Court through interpretation, to bring within its fold many vital services not explicitly covered. Gurjeet Singh, while closely analysing the Court's various judgements, lauds its role as a protector of consumer rights.

In discussing the role of the Court in the interpretation and evolution of rent laws in the country, D.N. Jauhar is of the view that the present generation of judges has a more liberal approach towards landlord-tenant relations. M.L. Upadhyaya discusses the role of the Court in furthering agrarian reforms which aim at economic development and social justice by upholding the validity of measures such as tenancy laws, ceiling, and consolidation of land holdings.

P.M. Bakshi discusses judicial contribution in the development of the law of tortious liability. He discusses various substantive and procedural aspects of compensation law, and concludes that the Supreme Court has 'usually shown' a 'bold and progressive approach' in the matter.

The apex court has not confined its functions to interpreting and developing municipal law, but has also involved itself in the interpretation of the rules of international law. S.K. Verma examines India's position on various principles of international law which have been clarified through various judgements of the Supreme Court. She concludes that on many important issues of international law, the Court has not deviated very much from the practice during the colonial rule in India. Lakshmi Jambholkar provides the Indian perspective on private international law, or conflict of laws, as essayed by the apex court.

The State's concern for its citizens is reflected not by the volume of its legislation, but through proper administration of justice. The Court, through its various judgements, has interpreted the civil and criminal law of the country to dispense justice. R. Sundaravaradan and Jaspal Singh take a close look at the Court's judgements on civil procedure and evidence, and on criminal law. S.K. Dholakia examines the Court's contribution to giving arbitration its proper place as an alternative means of dispute resolution. The author recounts the brief history of arbitration in India, looks into the role of the Court in interpreting the law under different statutes on the subject, and the challenges before the Court under the Arbitration and Conciliation Act, 1996.

While presenting this volume to our readers, we are conscious of, and apologise for, certain gaps, omissions, and overlaps which are perhaps unavoidable in an attempt of this nature. However, we do hope that this publication will be of special interest and value to readers from the legal fraternity, and will also be of value to persons from various disciplines.

S.K. Verma
Kusum

