

## BOOK REVIEWS

TOWARDS LEGAL LITERACY: AN INTRODUCTION TO LAW IN INDIA.

Edited by Kamala Sankaran and Ujjwal Kumar Singh. Oxford University Press. New Delhi: 2007. Paperback. Pages v - 211. Rs. 195.

There are introductions and introductions. Some introductions seem to be purely descriptive, e.g. stating the manner in which one's work is organised. Some are used as disclaimers- "Mine is *only* an introduction!" Some aim at setting the tone for subsequent events. Whatever be the kind of introduction, they aim to familiarize the object of the introduction to the subjects. Drawing from the philosophical arguments on the impossibility of descriptive projects, it is unlikely that an introduction can, irrespective of its claims, be purely descriptive. A feature of introductions which may be both, a reason for defeating descriptive claims and increasing the importance of perspectives, is that introductions are in most cases in relation to things which are unfamiliar to the person being introduced and familiar to the person who introduces. The knowledge of a knowledgeable person (especially teachers) introducing, has the potential of forming lasting impressions unless one doubts the credibility of the introducer or was an expert in the field oneself. This feature calls for introductions to state their perspectives honestly and take other perspectives on board. A strategy such as this would help those being introduced, to critically evaluate other perspectives operating in the same fields of knowledge, the deduction of which may lie solely in the fact of their being new and unknown.

The book being reviewed is at least an honest introduction. At the very onset, it makes clear its perspective, claims and aims. It is an introduction to law in India and aims at furthering legal literacy. Turn the book around and it is clearly stated that it is a text for undergraduate students, which in no manner undermines its relevance for other citizens.

The book is a reader with papers primarily written by academicians, with the exception of the papers of Justice V.R. Krishna Iyer and Justice S. Muralidhar. The papers cover a wide range of subjects in the field of law which include areas fundamental to the understanding of law<sup>1</sup>, developments which are contemporary<sup>2</sup> and matters which require

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<sup>1</sup> The papers on 'Basic Structure of the Constitution', 'Law Relating to Criminal Justice Administration', 'Law of Contract', 'The Indian Judicial System', to name a few.

<sup>2</sup> The papers on 'Cyber Law', 'Consumer Law', 'Alternate Dispute Settlement Mechanisms'.

reflection on, and evaluation of, our laws, institutions and practices.<sup>3</sup> A good way to review a book such as this, which stresses on evaluation, with giving description its due, would be to assess whether or not the perspective that it claims to introduce the subject from are sustained by the contents.

## I. THE PERSPECTIVE

Doubts about the perspective from which the book seeks to introduce law in India are laid to rest by the Introduction by the editors. It states boldly that equality is a virtue, and that the seemingly content-independent virtues of the law, like solving coordination problems, can be achieved in a society of equals alone.<sup>4</sup> This conclusion would have been rewardingly convincing to those targeted readers who search for logical connections, if the connection between equality as a necessary condition for efficiency in the context of law was stated. Being a text book however, one could presume that the fullest expression of ideas in such a text were to be elaborated by those who would initiate the discussions on the readings. The lack of such statement does not undermine the importance of the perspective that the book adopts by stating law to be an instrument for dismantling hierarchies and ensuring equality of opportunity and participation, with a view to reconstitute a moral society.<sup>5</sup> The uncritical call for such a conception of law is better explained by Prof. Upendra Baxi's paper; a piece of writing which justifies the need for a 'wake up' call of such nature, but not without recognizing the existence of other perspectives .

Prof. Baxi's paper explores deep rooted problems about the general perception of the meaning of legal literacy and offers valuable understandings of it to persons and groups who take up its cause. The paper throws up the unpopular question of alternative legal traditions and links it to the problem of legal illiteracy. Illiteracy and innumeracy necessarily entail lack of knowledge about laws only in those traditions where the written word is given primacy over the spoken; where certain kinds of knowledge

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<sup>3</sup> Prominent in this category being the papers on 'Offences Against Women', atrocities against scheduled castes and tribes, 'Labour Laws and the World of Work', anti-terror laws and 'The Concept of Religious Personal Laws.'

<sup>4</sup> See p. xi of the book.

<sup>5</sup> The object of the book is best found in its reference to democratic spaces: "*This reader is an attempt at reinforcing this space through the creation of an alert citizenry, enhancing rights consciousness and making the law more accessible.*"

are a monopoly of the literate. The thread of this thought runs through the other ideas put forward in the paper. Prof. Baxi draws linkages between legal illiteracy, systems of production; and domination. He highlights the dependence of the production of illiteracy on the cooperation between state actors and civil society actors. He critiques the descriptive claims of positivist theories as being unable to guide action and displays the assumptions and interests behind different meanings ascribed to legal literacy.

The paper sets the tone of the book by defining illiteracy in terms of injustice and reveals to readers certain Indian perspectives of literacy and education as “*far in advance of all the contemporary and voguish human rights talk.*” The distinguishing feature of such perspectives from others like the liberal one, lies in their comprehension of literacy and education as necessarily involving (a) an understanding of sufferings of others and (b) building capabilities for action on the basis of literacy. Such an understanding converts ‘subjects’ to ‘citizens’ and makes them capable of evaluating laws and institutions. One becomes legally literate “*not to serve interests of the dominant but to resist injustices towards others*”.

The perspective set by the Introduction and Prof. Baxi’s paper call for an evaluative attitude of citizens towards their laws, legal institutions and actors. It also calls for literacy of legal and other political actors.<sup>6</sup> All this, with a view towards ‘*reconstituting a moral society*’ where our rights and other’s sufferings are taken seriously. The idea of legal literacy has the above as integral features, and thus any attempt at furthering it would succeed only if it cultivates such evaluative attitudes in people.

In what follows I assess whether the papers in the book reflect and carry forward this project of legal literacy which I shall refer to as the ‘evaluative project’. The assessment of course fails entirely if I have failed to correctly comprehend the book’s perspective. I have made an attempt to bring out some central arguments of Prof Baxi’s paper which justify my belief that the book has been introduced with a particular approach to legal literacy, and is rooted in an understanding of suffering and injustice. Though the message he tries to convey is simple and clear towards the end of the

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<sup>6</sup> Such actors, *inter alia*, assume importance in a context where the Indian parliament has made the realization of compulsory education contingent upon the action of such actors. Prof Baxi finds the reasons for illiteracy rooted in the lack of a fundamental right to literacy and education in the Indian Constitution.

paper, it is doubtful that the finer but important nuances of the paper would get conveyed to undergraduate students without substantial assistance by teachers.

## II. SUSTAINING THE PERSPECTIVE

The evaluative project finds many successful envoys in the papers that follow, in spite of a few letdowns. Justice Iyer's paper is one such envoy which describes certain features of the constitution like the Fundamental Rights and Directive Principles as basic. He evaluates the performance of our institutions, particularly the Indian Supreme Court, in interpreting and upholding these features and unhesitatingly criticizes the Court *inter alia* for adopting a conception of equality which "*defeats its quintessence*". The paper also identifies the judiciary and parliamentary democracy as basic features of the constitution and after a brief description of their nature highlights their failure to follow the constitutional mandate. "*Fair is the Preamble which impregnates the constitution with sublime values....Foul is the functional experience of the Constitution...*" The paper adopts a eulogizing tone towards the values in the constitution which portrays the same to the students as sacred and unquestionable. In my opinion however, the paper's critical attitude towards authorities which claim to be, and are portrayed as unquestionable, would cultivate a critical attitude in students which would not spare the constitution either.

Justice Iyer's paper is followed by one on the 'Indian Judicial System'. The paper is predominantly a summarization of the law on the hierarchy of courts, their powers and functions. The paper provides information that is otherwise found in the constitution and statutes, and precisely for this reason, the description could have meaningfully been a guidance to such specific materials. The evaluative project could have been better sustained by highlighting aspects of the judicial system which require thought and the reasons for such requirement. In the few opinions that it puts forth, the paper gives an unqualified credit to the judiciary for making the state administration accountable and sensitive to sufferings of citizens. The credit is due no doubt, but making it unqualified would place it at odds with the contents of Justice Iyer's paper. The paper concludes with reference to two unexplained concepts; a legal system, and a justice system, and advocates a move from the former to the latter. It seems to unintentionally suggest that law and justice are concepts necessarily at odds, a suggestion with grave consequences if left unexplained.

The lengthy descriptions in the paper on the judicial system raise questions with bearings on the evaluative project. Is it possible that in a book which seeks to introduce law, topics with vast materials could be introduced in a manner which cultivates an evaluative attitude? Would not description dominate, given the constraints of space? The answer seems to be an emphatic no, reflected in a number of papers aiming at the same project. Though the papers on contracts and consumer laws follow the trend of summarizing the law, the papers on criminal justice administration, labour law, offences against women, environmental law, religious personal laws and anti terror laws further the evaluative project. The paper on 'Law Relating to Criminal Justice Administration' seems to be the one covering the widest field, if not the paper on Labour Laws. The paper deals with the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. In spite of the length of these statutes, the paper introduces important features of the law in an interesting manner by providing analogous examples and raising conceptual questions. The writing never gives the reader the impression of being imparted a lesson in criminal law. Rather, it uses examples which connect provisions of law with each other and with events in everyday life along with a taste of interesting conceptual issues. A method such as this operates as an auxiliary reason for adopting evaluative attitudes. The realization that bodies of knowledge, walled by claims of being technical, specialized and thus the monopoly of a few, being relatable to reasons that pervade ideas and concepts used in everyday life, fosters confidence in one to engage with such bodies. Such confidence would turn recipients into evaluators and subjects to citizens. It may be argued against my assessment that criminal law is an interesting subject in comparison to other areas of law and thus, the appeal of the paper. This argument however, would not deny any credit to the manner of writing and method adopted by the paper, similarities with which are found in other papers, which further the evaluative project.

It may be due to the nature of the subject matter again, but most of the papers dealing with issues relating to particular groups and categories of persons, seem to advance the evaluative project. The paper on labour laws is a significant weapon in the armoury of the project. For a paper on a subject, interest in which seems to be diminishing in students of law, there could not be a better start than to demonstrate the number of people affected by such laws. The paper is a savoury blend of legal information, their relationship with social issues; and evaluative opinions on the law and legal institutions. Instead of summarizing different legislations, a few important ones are elaborated upon and the others covering the field are referred to

by way of a table. Central issues regarding rights of workers are discussed along with the interpretation of the law by adjudicative bodies. In its choice of issues to be highlighted, it does not fail to draw attention to those issues which are peculiar to women workers, and which should otherwise be of equal concern to men.

The evaluative project marches ahead with the paper on offences against women, which apart from highlighting important issues, uses examples of everyday situations and suggests how they could be dealt with. The paper draws attention to interesting interpretations of the law by courts, which pose anomalous situations, and which in turn reflect the deep rooted social attitudes that our legal actors have towards women. It introduces the perspective of law as an instrument towards certain goals, but definitely not an adequate one by itself. The piece on atrocities against scheduled castes and tribes (SCs and STs) too evaluates the role of laws and the courts in addressing the problem at hand. However, the paper while introducing the subject to the students does make sweeping statements regarding the problem. It would have been fair, if differences in the social status of SCs and STs were qualified especially with regard to the tribes in the North-Eastern periphery. In the alternative, the paper could specifically have been on atrocities against Dalits. Some problematisation of issues involved by tackling arguments against presumptions in criminal statutes, the tensions between freedom of speech and prohibition of hate speech; and addressing concerns of abuse, would have strengthened the position advocated for.

In tune with the evaluative project are the papers on the concept of Religious Personal Laws (RPLs), access to criminal justice, environmental law and anti terror laws. The paper on RPLs invites attention to tensions between equality and aspects of the rights to freedom of religion. The paper starts with an account of the historical development of RPLs and moves on to provide information regarding the present status of such laws. Uncomfortable issues nevertheless assume prominence, asking questions about convenient understandings of the oft-celebrated concept of unity in diversity. The relevance of the problem posed transcends RPLs as they are pertinent to questions regarding rights of minorities in multicultural societies, more so in the context of rights of individuals and groups within the minorities. True to the project, the author both evaluates and then advocates for a position rooted in fidelity to equality.

The paper on access to criminal justice too provides interesting insights into the concept of legal aid and problematises conventional understandings prevalent not only amongst lay persons, but also amongst practitioners. While advocating a holistic understanding of legal aid which encompasses a range of services, the paper also addresses arguments against the idea of free legal aid. The piece is largely drawn from a commendable scholarly work by the author and thus presupposes the understanding of certain legal concepts by its readers. This however does not impair the evaluative project. The paper highlights invaluable linkages between law and poverty. It indicates the shift in the judiciary's focus from the poor in custodial institutions to the legitimacy of judicial institutions in the eyes of the victim and its shortcomings in moving from the formal declaration of rights to their effective realization. These are valuable insights that encourage an evaluative attitude towards institutional authorities, more so since they come from an institutional actor.

### III. THE PERSPECTIVE SUSTAINED

A substantial part of the book sustains the project, which the editors introduced and Prof. Baxi justified. The belief of the editors that the book would be useful to citizens other than students is a justified one. The papers in the book would be of immense value to persons seeking an introduction to the subjects dealt with. Apart from providing much needed information in simple language, they also provide valuable analysis predominantly from a rights perspective. The book is positioned to occupy a strategic place in tackling, in Prof Baxi's terms, the '*illiteracy of the literate*'. Books of this genre hold immense potential to educate institutional actors and provide them with a perspective with which to deal with laws. The commonly held 'legalistic' notion of the law by such actors, which is associated with a non-evaluative attitude towards laws, is interrogated and discouraged by the evaluative project.

The choice of subjects by the book sustains the assertion of the editors that law impacts everyday life of citizens. However, a paper on intellectual property rights, its effects on a wide range of people and the global nature of interests involved may have satisfied the requirement of addressing contemporary subjects in a more fulfilling manner. Though cyber laws are a contemporary subject, the degree of technical knowledge required and the class of people it effects may water down its candidacy for the

prized space in the book in the light of legal literacy's connections with injustice and suffering.

The book overall provides informative descriptions, evaluative analysis and often, a qualified advocacy of issues and positions. However, papers like the one on Public Interest Litigation, could have interrogated the criticisms of the exercise of PIL jurisdiction and troublesome trends in the same more adequately. Though the judiciary's role provides us reasons to celebrate, recent trends have thrown up questions of judicial governance and judicial activism which require more than a passing mention.

Irrespective of the criticisms that I have often indulged in, the book is a significant step towards legal literacy which is a fundamental prerequisite for a rule of law society, in the written tradition, which we have opted to become.

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