

INEQUALITIES AND THE LAW. By B. SIVARAMAYYA. [Lucknow: Eastern Book Company. 1984. vii+180 pp. Hardcover: Rs. 60.00]

THIRTY-SIX years ago, the founding fathers of modern India brought forth on the subcontinent, to use the picturesque words of Abraham Lincoln in the American context, “a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal”.¹ The preamble to the Constitution proclaims “equality of status and of opportunity” as one of the cherished ideals of the nation. Equality has two aspects: negative and positive. Equality may be achieved by removing the inequalities. Slavery is a dreadful denial of equality of human beings as human beings. In the United States when slavery was abolished by the 13th Amendment the slave became a free man. By a positive measure of the 14th Amendment he was given the status of a citizen.

When India became independent, “untouchability”, described by the Supreme Court as a part of the Hindu religion,² was the bane of the society. The presence of the “untouchables” desecrated the temples. Their touch or even their shadows defiled other class Hindus. The abolition of untouchability in Article 17 of the Constitution secured for millions of Indians a status of equality as human beings. The opening of temples through legislative measures like the Madras Temple Entry Authorization Act, 1947 and the Bombay Hindu Places of Public Workship (Entry Authorization) Act, 1956, secured for the “untouchables” equality of status in matters of religion. The mandate of Article 15(2) to the State not to discriminate against citizens on the grounds of race, religion, or caste, secured for the “untouchables” equality of status by giving them equal access to shops, restaurants, hotels, places of public entertainment, wells, tanks, burning ghats for the cremation of the dead, and places of public resort which are dedicated to the public or maintained out of wholly or partly out of public finance. Though they were restored as human beings they remained backward. Special provisions are envisaged in Part XVI of the Constitution. One such provision includes the reservations of seats for the Scheduled Castes and Scheduled Tribes in the House of the People of the Union and Legislative Assemblies of the States. These reservations which were originally contemplated for ten years have been extended by amendments every ten years for a period of forty years. Article 16(4) enables the State to afford them preferential treatment by reserving posts for them in public employment. Article 15(4), introduced by the 1st Amendment, enables the State to make any special provision for the “advancement of any socially and educationally backward classes of citizens for the Scheduled Castes and Scheduled Tribes”.

“Untouchables” were not the only targets of discrimination. Women were also discriminated against. Indeed according to a commentator the position of women resembled that of the “untouchables”.³ Sex-based discrimination is forbidden under Article 15(1).

¹ Gettysburg address. (Given on 19th November, 1863 at the dedication of the national cemetery on the civil war battlefield at Gettysburg).

² *Venkataramana Devaru v. State of Mysore*, (1958) S.C.R. 895, 1005.

³ G.C. Sarkar, *The Hindu Law of Adoption*, (1916), p. 157.

The book under review examines the causes leading to inequality in India, the measures adopted to combat them and evaluates the effectiveness of such measures. The theme of the book is that despite the impressive legislative measures nothing tangible has been done for the uplift of the "poorest of poor". Practices and laws relating to females, castes, property, inheritance, and bonded labour are identified as causes for breeding inequalities. Pernicious practices like *sati* (self immolation or forced burning of a widow) were stopped by the colonial regime through the 1829 Regulations. The colonial masters did not do anything to abate non-gender-based inequalities.

The book begins with quotations from other works to present pictures of barbarous practices like *sati*, female infanticide, slavery and untouchability. Statistics of widow burning for 1815-1818 are given but the source is not cited. If, as stated, among the 200 Bedi families there was not a single girl left to live until 1846, and no marriage of girls had taken place among the Harra Rajputs for over a period of 200 years, one is constrained to wonder how these sects could survive genetically. Other doubts which arise relate to female infanticide. Was it not an offence under the Indian Penal Code of 1860 that came into force from 1 January 1862? Why was it necessary to enact the Female Infanticide Act of 1870 to make female infanticide an offence? If a vigorous and determined enforcement of this law "bore fruit" and the Act was repealed in 1906, was female infanticide no longer an offence after the repeal?

Even though the dust cover claims that technicalities are avoided, few pages in the chapter on "Equality under the Constitution" deal with the role of the preamble in constitutional interpretation without reference to such authoritative texts as Maxwell's *Interpretation of Statutes* or Craies' *Statute Law*. Among the provisions of the constitution no reference is made to Article 29(2) in the part on the Fundamental Rights and Articles 41 to 47 in the part on the Directive Principles.

It is argued that barring Article 15(2) and Article 17 no other fundamental rights are enforceable against individual action. In *Praga Tools Corporation v. C. V. Immanuel*,⁴ the Supreme Court explained that a writ of mandamus may be issued against any person (who need not be a "public official") for the enforcement of statutory duties. In *Peoples' Democratic Rights Union v. Union of India*,⁵ a writ was maintained against the Central and State Government for ensuring compliance by private contractors with welfare legislation affecting a large number of persons engaged in development works initiated by these governments.

The work makes no reference to the legislation opening the temples to the "untouchables" and the abundant case law relating thereto. It makes no reference to a large number of cases decided by the Supreme Court, particularly an important one like *State of U.P. v. Pradip Tandon*,⁶ where the judicial criteria of determining social and educational backwardness for the purposes of making reservations was enunciated. The fact that economic aid was given to the Scheduled

⁴ A.I.R. 1967 S.C.1306 at 309-1310.

⁵ A.I.R. 1982 S.C. 1473.

⁶ A.I.R. 1975 S.C. 563.

Castes, Scheduled Tribes and backward classes in the shape of scholarships, tuition fee exemptions, maintenance allowances, government hostels, and other facilities is not mentioned.

The book makes no survey of the quantitative success of reservations and financial aid given to these backward classes. Have they assuaged the inequalities or have the benefits of reservations and government handouts created a vested interest in backwardness?

In spite of the various lapses in the book it may be thumbed through for information regarding the measures adopted in India to overcome social, economic, and political inequalities, even though, the price of the book, according to Indian standards, is exorbitant.

L.R. PENNA