

BOOK REVIEWS

Justice Kuldeep Singh — VISION & MISSION BY PAWAN CHAUDHARY. Vidhi Seva, E-31, Mansarovar Garden, New Delhi-110015 (INDIA), 1997 Pp. x +134, Price Rs. 250/-.

Constitutional law is fundamental law of the country. Though our Constitution is a detailed Constitution but it does not mean that what is written in the Constitution and in various Articles and Schedules requires no explanation or interpretation. Our Constitution is, therefore, subject to the final interpretation given by the Supreme Court of India and accordingly what is finally decided by the Supreme Court becomes the law of the land. Our Constitution has received progressive interpretation at various stages during the last 50 years. It is basically dependent on the vision of Hon'ble Judges which has made our Constitution progressive and dynamic. The book under review¹ is written by a veteran writer and is in fact a biographical account of Justice Kuldeep Singh's contribution in the growth of the dynamic constitutional interpretation during his tenure as the Judge of the Supreme Court of India.

The author has very rightly stated that Justice Kuldeep Singh pronounced judgements and orders on wide range of subjects falling under different headings, namely: Criminal Law, Service and Labour law, Environment Law, Practice and Procedure, Forests, Municipalities, Land and Tenancy, Excise and Income Tax etc. Each of them affords a great deal of attraction for separate study. Yet, he is better known for his pronouncements on constitutional provisions, particularly public law cases (e.g. cases of Taj Mahal, Mirza Ghalib, government accommodation, petrol pumps, shops allotment) and more particularly on right to life contained in Article 21 of the Constitution with the vision and mission for the betterment of life of the citizens of India.²

The author has divided the book into five chapters. In chapter two he has highlighted the contribution of Justice Kuldeep Singh on Article 14 of the Constitution of India *i.e.*, equality before law and has incorporated the contribution of Justice Kuldeep Singh through many cases decided by him like the *Bank of Baroda's case*,³ wherein the learned Judge held that the burden of showing that a classification is arbitrary is basically on

1. Hereinafter referred to as JUSTICE KULDEEP SINGH.

2. *Id.* at iv.

3. AIR 1989 SC 2105.

the person who impeaches the law. If any state of facts can reasonably be conceived as sustaining the constitutionality, the existence of that state of facts, as at the time of the enactment of the law, must also be assumed. The allegations on which violation of Article 14 is based must be specific, clear and unambiguous and must contain sufficient particulars.

The author has also discussed *Sudhir Kumar Jaiswal's case*.⁴ He also discusses *Uday Pratap Singh's case*,⁵ where the learned Judge held that it is now well settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which became crystallised.

Fundamental Freedoms as provided under Article 19 of the Constitution are also discussed. In *Sodan Singh's case*,⁶ wherein Justice Kuldeep Singh describing about right to business under Article 19 (1)(g) held that there is no justification to deny the citizens of their right to earn livelihood by using the public streets for the purpose of trade and business.

On Article 21 the author has further shown the constitutional vision of Justice Kuldeep Singh because there is no freedom more important to a person than that of his life and personal liberty and Article 21 of Constitution of India guarantees to every person the protection of his life and personal liberty.⁷ The author has highlighted the decision of Justice Kuldeep Singh in *Tehri Bandh Virodhi Samiti's case*,⁸ where the petitioners alleged that in preparing the plan of the Tehri Dam Project the safety aspect had not been taken into consideration. That the dam, if allowed to be constructed, will pose a serious threat to the life, ecology and the environment of the entire northern India region. The Court held that the Union of India had considered the safety aspect of dam and the question of design of the dam, the seismic potential of site where the dam was proposed to be constructed and the various steps which had been taken for ensuring the safety of the dam were highly intricate questions relating to science and engineering. This Court did not possess the requisite expertise to render any final opinion on the rival contentions of the experts. The author has also discussed at length the *Kumari's case*⁹ wherein in the city of Madras there was ten feet deep sewerage

4. AIR 1994 SC 2750.

5. 1994 Supp. (2) SCC 495.

6. 1989 2 SCR 1038.

7. K. Suba Rao, CONFLICTS IN INDIA POLITY at 2.

8. AIR (1990) Supp. 2 SCR 607.

9. JT 1882 (2) SC 16.

tank which was not covered with lid and was left open. Kumari's six years old son fell into it and died. The petitioner filed a writ petition which was dismissed by the High Court. However, the Supreme Court through Justice Kuldip Singh reversed the judgement of the High Court and directed the state of Tamil Nadu to pay to the appellant a sum of Rs 50,000/- with interest @12% per annum from January 1, 1990 till the date of payment within the six weeks from the date of the judgement.

Article 25 of the Indian Constitution guarantees every person a freedom of conscience and the right to freely profess, practice and propagate religion. The right in every case is subject to public order, health and morality. And state can make laws regulating or restricting any economic, financial, political or secular activity which may be associated with the religious practice. As also providing for social welfare and social reform even though they might interfere with religious practices.¹⁰ The author has discussed at length the contribution of Justice Kuldip Singh in *Sarla Mudgal's case*,¹¹ wherein it has been pointed out very eloquently by Justice Kuldip Singh that marriage is the very foundation of civilised society. After the relations are formed, the law steps in and binds the parties to various obligations and liabilities thereunder. Marriage is an institution in the maintenance of which the public at large is deeply interested. It is the foundation of the family and in turn of the society without which no civilisation can exist.¹² In this case Supreme Court through Justice Kuldip Singh gave the progressive interpretation by stating that second marriage of Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provision of section 494, IPC and the apostate husband would be guilty of the offence under action 494.¹³

On the role of judiciary under the Constitution particularly the Supreme Court of India and the pivotal role of the Chief Justice of India has been discussed by the author at length through the *Kumar Padma Prasad's case*,¹⁴ wherein the court has pointed out that Independence of judiciary is the basic structure of the Constitution. To achieve this objective there has to be separation of judiciary from the executive, and legislature.¹⁵

10. JUSTICE KULDIP SINGH at 72.

11. (1995) 3 SCC 635.

12. JUSTICE KULDIP SINGH at 75.

13. *Id.* at 74.

14. (1992) 2 SCR.

15. *Id.* at 85.

The author has also very lucidly pointed out the contribution of Justice Kuldip Singh in *S.C. Advocates On Record Association Judges Case-II*,¹⁶ wherein Justice Kuldip Singh has very rightly pointed out the duties and responsibilities of the office of Chief Justice of India which are much more onerous than that of a Judge of Supreme Court. The responsibility of toning-up judiciary in the country rests on the shoulders of the Chief Justice of India. As he is supposed to make appointments of the Judges of the High Court and in the Supreme Court. He has also to select the Chief Justices of the High Courts. He is responsible for the transfer of Chief Justices and Judges of the High Courts. As the head of the judiciary, the Chief Justice of India would lay down the principles and practices to be followed in the administration of justice all over the country.¹⁷ In the above case Justice Kuldip Singh also provided the right vision wherein he opined that there is no distinction between the 'Constitutional law' and an established 'Constitutional convention' and both are binding in the field of their operation. Once it is established to the satisfaction of the court that a particular convention exists and is operating then the convention becomes a part of the Constitutional law of the land and can be enforced in like manner.¹⁸

On the jurisdiction of the Supreme Court the author has discussed the *Case of Asif Harmeed's*,¹⁹ wherein through Justice Kuldip Singh the Supreme Court has held that even though there is not specific provision of separation of powers under the Constitution of India, yet the executive, the legislature and the judiciary are supreme to the extent of function provided under the law and therefore, in above said case the direction of High Court to the legislature for constituting "Statutory Independent Body" is solely for the legislature to consider as to when and in respect of what subject matter the laws are to be enacted. And, therefore, no direction in this regard can be issued to the legislature by the courts.²⁰

The author has also discussed the *Case of National Federation of Blind's*,²¹ wherein the Government had appointed a commission to identify the jobs in the Government which could be given to handicapped people. The commission submitted the report to the Government and identified about 416 categories of Group A and Group B posts, which are suitable for the handicapped. However, for the last seven years the Government

16. AIR 1994 SC 264.

17. JUSTICE KULDIP SINGH at 94.

18. *Id.* at 95.

19. (1989) 3 SCR 19.

20. JUSTICE KULDIP SINGH at 106-7.

21. AIR 1993 SC 1916.

had not taken any action and one Mr. S.K Rungta who himself was visually handicapped argued the case as a counsel of the petitioner before the court. It was held that the question of giving preference to the handicapped in the matter of recruitment to the identified posts is a matter for the Government of India. The court also held that the claim of visually handicapped for writing the civil services examination in Braille script or with the help of scribe was legally justified demand.²²

The reviewer feels that the author has very eloquently written a biographical account of Justice Kuldip Singh who had a missionary vision and gave the progressive interpretation of the Constitution of India. The reviewer feels that more and more jurists should write such contributions of prominent judges of Supreme Court of India which would go a long way for the healthy and learned judicial decisions by the Supreme Court of India.

The book is published by Vidhi Sewa which is perhaps the publication by the author himself and is a useful contribution towards legal literature. It is recommending that the book should be used by scholars of constitutional law, researchers, students of law and should be kept in law libraries.

Harish Chander*

22. JUSTICE KULDIP SINGH at 133-34.

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