

LEGAL FRAMEWORK FOR RESEARCHING A POST-COVID SOCIAL WORLD

Written by *Ravneet Kaur*

2nd Year Public Policy Student, National Law School of India University, Bangalore, India

(Book review- Sony Pellisery, Babu Mathew, Avinash Govindjee and Arvind Narrain, Transformative Law and Public Policy. India: Routledge, 2019, 246pp. ISBN: 9780367463861 [Hardback])

ABSTRACT

The true nature of a transformative constitution is that it demands the state to actively pursue these goals in its policy making being guided by Directive Principles of State Policy enumerated in Part IV of the Constitution. With taking instances illustrating law-policy interface, from global to national level, this book highlights topics which have resurfaced during the COVID times, like labours, migration, minorities, land issues and most imp the interface of law and policy. While the academia waits on to research on ground, in this book review, we will see a framework this book provides us with a legal framework for researching in a post COVID social world.

Keywords: Public Policy, COVID, Transformative constitutionalism, vulnerable communities

Change is considered the only constant and this has been graciously imbibed by the living nature of Indian constitution. The amending powers of the constitution has been designed in such a way that it incorporates socio-economic changes being reflected in the society. Recently, in *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India And Ors*ⁱ landmark judgment, the apex court upheld the right to privacy as a fundamental right. This was in the light of criticisms against aggressive Aadhar related policies by the central government. B.R Ambedkar has noted that political democracy cannot last without social democracy and it is in this context, the holy trinity of rights- liberty, equality and fraternity are recognised as principles of life. The true nature of a transformative constitution is that it demands the state to actively pursue these goals in its policy making being guided by Directive Principles of State Policy enumerated in Part IV of the Constitution. Reflecting on the need to interpret the Constitution as a transformative document, Justice Krishan Iyer has remarked that,

“The authentic voice of our culture, voiced by all the great builders of modern India, stood for abolition of the hardships of the pariah, the mlecha, the bonded labour, the hungry, hard-working half-slave, whose liberation was integral to our independence. To interpret the Constitution rightly we must understand the people for whom it is made – the finer ethos, the frustrations, the aspirations, the parameters set by the Constitution for the principled solution of social disabilities.”ⁱⁱ

Cueing from this, the book *Transformative Law and Public Policy*, brings forward the relation of judicial and political institutions with socio-economic concerns of the citizens. The essence of the book remains in the interweaving of law and policy, but the authors have tried to look into different real-life instances to give a theoretical backing to this interface. Apart from the framing Chapters, the book addresses the ideational influences of policies where they talk about anti-global doctrine and idea of distributive justice (in Chapter second and eleventh), resource management where the authors discusses finances and land assembly with urban perspectives (in Chapter fourth, fifth and tenth), inclusive dimensions of public policy debates on vulnerable sections of society like migrants, minorities and children (in Chapter third, seventh and eight) and the role of actors in policy processes where they deliberate upon role of various stakeholders (in Chapter ninth and sixth).

The opening Chapter of the book gives readers a strong premise about the interface of law and policy, along with setting an affirmative tone for following Chapters. Works of classical authors like Hart and Dworkin, along with modern philosophers like Nussbaum have been referred to give it a strong theoretical background, on law and policy. It has beautifully captured the essence that the constitution is a fountainhead of law and policy which gets rooted within the socio-economic context of a nation state. Policy making in India is an extremely complex process which involves participation of various stakeholders at each level. In other words, public policy decisions cannot be arrived at technocratically. Further, to set the pathway of the book, the authors have deduced a beautiful matrix to make the readers comprehend the synergies between the two domains which basically shows the linkages between policy centric and law centric institutional spaces deal with public problems. However, the contributing role of external factors cannot be underestimated, specifically globalisation and this can be seen in our policies on liberalisation of economy like deregulation, privatisation and disinvestment.

But, every policy of the West shouldn't be imitated in the East as the political economy of the country has a major role playing and this is how Lialch Litor puts forward her debate for anti-global doctrine which strengthens domestic institutions and their capacity to design public policy in the second Chapter. She explains this with an example of right to strike where the countries haven't adopted ILO standards with respect to their labour laws. She has provided an understanding of differences between partial and full anti-global laws through quoting landmark cases in countries like Israelⁱⁱⁱ, Germany^{iv} and Canada^v. Often, the consideration of the political economy of law is missed by many theorists but the author has duly highlighted that we should keep in mind the local cultures, political agendas and characteristics of domestic labour relation when designing law. Also, the impact of COVID on labour laws was quite visible on these lines where every state changed its law to fit the times. Yet, this doesn't undermine the influence of political science theories of the west into our lives. Consider the concept of distributive justice which originated in West, is therefore best thought of as providing moral guidance for the political processes and structures that affect the distribution of benefits and burdens in societies, and any principles which do offer this kind of moral guidance on distribution, regardless of the terminology they employ, should be considered principles of distributive justice^{vi}. In the eleventh Chapter Parakkal et al. studied an Indian village in Kerala to understand the application of these theories in real life of tribal. It is

interesting to note that justice notions as taught to us in theories, is found even in transactions behind land alienation found in the lands of tribal. The authors have highlighted an extremely crucial point that a simplistic and linear approach of legal solutions cannot successfully incorporate the complexities of people's lives.

This brings us to the significance and influence of stakeholders in the policy-law interface. This, the book has captured beautifully while discussing the former planning commission and bureaucracy (in Chapter sixth and ninth respectively). Taking ahead from the justice notions in tribals' land, Amrutha Jose Pampackal based on her field-based observations on the factors contributing the bureaucracy at local level, has tried to bridge the literature gap in understanding the local bureaucracy. In her Chapter, she has concluded that the role of local bureaucracy is not merely restricted to implementation and is crucial in interpreting the policies, making them crucial in policy making process. This has opened the possibilities of further research leading to policy changes. If read along with Sony Pellisery et al. in Chapter sixth while critically reviewing the evolution of the planning commission and its role, highlights the contradictions of 'value' and 'planning' faced by the planning commission. When understanding the issue of land alienation, applying economic values to the lands of tribals and paying them compensation belittles the value of native land that their generations have carried.

Another set of vulnerable sections the book discusses are minorities, children and migrants. As discussed, the role of globalisation in policy making, securing borders is a gift of neo-liberalism to the modern man, we've seen it in different forms from US to Australia. The rationale behind is in terms of national security and national sovereignty but it poses serious human rights violations. In the light of this, Suzanne Bevacqua et al. discusses the border policy of Australia in the third Chapter. Its Operation Sovereign Borders (OSB) offshore immigration control policies are referred to as 'secrets' citing the issue of 'people's smugglers'. Authors take the readers through the issues of operational matters of the policy being legally enforced. With the implementation of Citizenship (Amendment) Act, 2019 India faced a massive backlash by its minority communities, of which majority were migrants. Even though theorists argue that greater heterogeneity (minority groups) in a particular society increases the chances of horizontal inequality thereby, becoming a serious threat to national development, India has always celebrated its diversity and minorities. However, 2019 witnessed the most challenging times for the minorities of our nation. Mushtaq Ahmad Malla in the seventh Chapter uses case

studies of four oldest democracies- India, Pakistan, Sri Lanka and Bangladesh by comparing the objectives with outcomes in terms of minorities' participation and representation. The theory of transformative constitutionalism promises a progressive growth for every section of the society irrespective of their caste, colour, religion and gender. But, the promises are meant to be broken, or in this case not fully kept. The author has identified an 'ideal' type of Transformative Constitutionalism for participation of minorities, and countries can take inspiration from this ideal type to make their policies more inclusive in nature. Olsen in the following Chapter captures the essence of the contribution of labourers, their wages and migration to poverty of the well-being of children. Norway tops the HDI rank but lacks behind the child rights' social policies. Countries with similar positions can seek guidance from the Chapter, especially the concept of substantive equality in which the author asks her readers to analyse social policies. With the outbreak of COVID, various new policies have been made and re-made, however, the inclusivity of these policies becomes all the more important in such difficult times and the frameworks being discussed in above Chapters helps us in providing the same.

COVID will increase the debt crisis for various under-developed and developing countries. For a country like India which has a higher dependent population, restructuring of macro-economic policies becomes all the more important. Ansari Salamah revisits the existing modalities on debt restricting mechanisms (in Chapter fourth). It advocates how the law is archaic and we need a new one. Post COVID times will see restrained Foreign Direct Investment inflows (FDI) however, if China faces global lash then India will be the closest country to fill the vacancy (both in terms of geography and resources). But conducive conditions are required for the same. Foreign capital will be allowed or not but the question whether investors would like it or not. Mishra et al. discusses the legal and policy questions in FDI making an assessment of India's case (in Chapter fifth). While discussing the modalities, they question their readers to ponder upon the extent of role of judiciary in such matters. Authors have highlighted the role of judiciary as an important stakeholder in policy making process.

Like every branch of a tree makes a tree, similarly every branch of government makes social changes or at least holds potential to do so, be it judiciary or parliament, both, together or alone. The book, through its elaborative Chapters, suggests that the collective aspirations of the people will reinvent the institutions for a connected existence under policy-law interface. It also

promises to show how a transformative constitutional approach can alleviate poverty and achieve desired standards of development. This book highlights topics which have resurfaced during the COVID times, like labours, migration, minorities, land issues and most imp the interface of law and policy. While academia waits on to research on ground, this book provides us with a framework of solutions for the issues we will face. If we want to understand the playing of intersection between Law and public policy, we want to understand the crucial symbiotic role of each, this is the book to read.

REFERENCES

- J.L Favor, *Distributive Justice*, Retrieved June 09, 2020, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2017, Winter), <https://plato.stanford.edu/entries/justice-distributive/>.
- Indira Jaising, *For me now it means personal liberty*, Retrieved June 09, 2020, SCROLL.IN (2019, July 30), <https://scroll.in/article/931512/for-us-it-now-means-personal-liberty-indira-jaising-explains-transformative-constitutionalism>

ENDNOTES

ⁱ Writ Petition (Civil) No 494 Of 2012

ⁱⁱ Indira Jaising, *For me now it means personal liberty*, Retrieved June 09, 2020, SCROLL.IN (2019, July 30), available at <https://scroll.in/article/931512/for-us-it-now-means-personal-liberty-indira-jaising-explains-transformative-constitutionalism>

ⁱⁱⁱ Labor collective dispute 57/05 *The General Histadut v. Metrodan* (2005)

^{iv} Application no. 68959/01 *Enerji Yapı Yol v. Turkey* 21 April 2009

^v 32 *Saskatchewan v. Saskatchewan Federation of Labor*, [2015] S.C.R 245

^{vi} J.L Favor, *Distributive Justice*, Retrieved June 09, 2020, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2017, Winter), <https://plato.stanford.edu/entries/justice-distributive/>.