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Book Review: A People’s Constitution: The Everyday Life of Law in the Indian Republic

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INTRODUCTION

Published in 2018, Rohit De’s insightful book is a ground-breaking exploration of how marginalized groups, including women, Dalits, merchants, and religious minorities,¹ used the Indian Constitution as a tool to assert their rights and confront state authority. By situating the Indian Constitution as a transformative legal framework in a newly independent nation, the book reveals its dynamic role in everyday life. Although drafted by elites and written in English,² it quickly became embedded in the lives of ordinary people. De highlights the significant involvement of grassroots actors in constitutional litigation from the 1950s to the 1970s, reshaping traditional narratives that typically focus on elite legal figures.

De’s work offers a compelling narrative of constitutional litigation by focusing on everyday citizens – traders, sex workers, butchers, and religious minorities – who used the Constitution

¹ Rohit De, *A People’s Constitution: The Everyday life of law in Indian Republic* (Princeton University Press 2018)

² *Ibid*

to negotiate their rights and redefine their relationship with the state in post-colonial India in transformative ways. De describes the book as a 'dialectic between the Indian Constitution as 'politics of state desire' and as 'articulating insurgent orders of expectations from the state.'³

Against these tensions in Indian constitutional practice, Rohit De's 'A People's Constitution', explores citizen efforts to defend rights and deepen constitutional culture in early independent India. Through detailed ethnographies of landmark cases on issues like alcohol prohibition and cow slaughter, the book illustrates the emergence of what De terms 'A People's Constitution.'⁴

SUMMARY OF THE BOOK

Adopted in 1950, the Constitution⁵ was a landmark achievement created by Indian leaders and reflected diverse voices. Constitutional remedies, such as writs, allowed marginalized communities to seek justice and challenge discriminatory policies, despite their elite origins.⁶ This judicialization of conflict, noted since the colonial period, intensified after the new constitutional order was established.⁷

The Republic of Writs: De highlights the Indian Constitution's provision for constitutional remedies, particularly the right to issue writs, which allows citizens to challenge violations of their fundamental rights directly in court.⁸ This mechanism empowers individuals to hold the state accountable and enhances judicial oversight of administrative actions. De recounts the case of Mohammed Yasin,⁹ a vegetable vendor in Jalalabad, who petitioned the Supreme Court against a municipal bylaw that restricted vegetable trade, demonstrating how the Constitution serves as a tool for marginalized citizens to protect their livelihoods.

³ Mathew John, 'A People's Constitution: The Everyday Life of Law in the Indian Republic by Rohit De' (2020) 15(2) Asian Journal of Comparative Law <<https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/peoples-constitution-the-everyday-life-of-law-in-the-indian-republic-by-rohit-de/EB1CCC0417929EDF5AA0EDED3419307>> accessed 20 November 2024

⁴ *Ibid*

⁵ Constitution of India 1950

⁶ De (n 1)

⁷ Sunila Kale, 'Review of De, A People's Constitution: The Everyday Life of Law in the Indian Republic' (2020) H-Asia, H-Net Reviews <<https://www.h-net.org/reviews/showrev.php?id=54127>> accessed 20 November 2024

⁸ De (n 1)

⁹ *Mohammad Yasin v Town Area Committee* (1952) SC 115

Ordinary Citizens as Constitutional Actors: The book challenges the idea that constitutional interpretation is only for elites, highlighting the role of ordinary citizens in addressing grievances through the Constitution.¹⁰ De argues that these interactions between citizens and the state played a crucial role in defining and expanding constitutional law.

Methodological Approach: De employs a social history approach and archival research to showcase how marginalized individuals participated in constitutional litigation, focusing on 'losers'¹¹ in legal battles and alternative justice routes. The introductory chapter highlights that citizen action has historically driven political issues into the courts. It is divided into four substantive chapters, each addressing constitutional cases linked to state actions that affect daily life.¹²

CHAPTER 1: THE CASE OF THE CONSTABLE'S NOSE: POLICING PROHIBITION IN BOMBAY

The Prohibition Law and Its Context: Inspired by Mahatma Gandhi's ideals, the prohibition policy aimed to reshape societal behaviour by banning alcohol consumption. Gandhi viewed drinking as a foreign custom that weakened the Indian workers and the nation. A drunkard was a diseased man, he wrote, "quite unable to help himself".¹³ The law sought to eliminate alcohol as a colonial vice and reflected a desire for moral upliftment, but its enforcement relied on colonial-era policing, raising concerns about personal liberties. Notably, women's mass participation marked the early prohibition campaigns.¹⁴

The Case of Pesikaka: A Parsi government employee, Behram Khurshed Pesikaka,¹⁵ was charged under the Bombay Prohibition Act of 1949,¹⁶ after a minor traffic accident based solely on police claim that he 'smelled of alcohol,'¹⁷ despite no evidence of intoxication or alcohol possession. His conviction relied on a police constable's statement, reversing the burden of proof onto the accused. Pesikaka's defense argued that this approach violated procedural fairness and the principle of innocent until proven guilty, challenging the constitutionality of the BPA under Article 21¹⁸.

¹⁰ De (n 1)

Prohibition and Constitutional Rights: The BPA¹⁹ was one of the first laws in post-independence India to face significant constitutional challenges. It granted police and prohibition officers extensive powers to enter premises, stop individuals or vehicles, and confiscate suspected goods that they suspected of illicit liquor without warrants. Citizens argued that these practices allowed for arbitrary arrests and detentions, violating principles of procedural justice.²⁰

A significant legal challenge came from Nusserwanji,²¹ who petitioned the high court for a Writ of Mandamus, claiming the Prohibition law infringed on his right to trade and personal liberty under Articles 19²² and 21²³ of the Constitution.

Judiciary as a Mediator: The judiciary became a key mediator in these disputes, upholding parts of the BPA while also questioning its validity in cases like *Pesikaka's*, revealing the courts' role as a check on state power. While the BPA was defended on the grounds of promoting public morality, judicial concerns about procedural irregularities indicated its potential for abuse.

Impact and Implications of the Prohibition Experiment: The enforcement of Prohibition laws by the BPA²⁴ revealed continuities between colonial and post-colonial state mechanisms, expanding state surveillance and control, and disproportionately impacting minority communities such as Parsis and Pasis (who were Dalits), who had cultural and economic ties to the liquor trade. The expansion of police powers led to further state incursions into private life, prompting citizen challenges.

¹¹ *Ibid*

¹² Kale (n 7)

¹³ De (n 1)

¹⁴ *Ibid*

¹⁵ *Behram Khurshed Pesikaka v State of Bombay* (1955) SC 123

¹⁶ Bombay Prohibition Act 1949

¹⁷ De (n 1)

¹⁸ Constitution of India 1950, art 21

¹⁹ Bombay Prohibition Act 1949

²⁰ De (n 1)

²¹ *Nusserwanji Balsara v State of Bombay* (1951) BOM 210

²² Constitution of India 1950, art 19

²³ Constitution of India 1950, art 21

²⁴ Bombay Prohibition Act 1949

CHAPTER 2: THE CASE OF THE EXCESS BAGGAGE: COMMODITY CONTROLS, MARKET GOVERNANCE, AND THE MAKING OF ADMINISTRATIVE LAW

Commodity Controls and Their Historical Context: Commodity controls were first introduced as emergency measures during colonial rule under the Defence of India Act, 1939,²⁵ allowing the government to manage essential goods for the war effort. After independence, these controls were expanded to address shortages and stabilize the economy, leading to tensions between state authority and individual freedoms. Following independence, the Essential Commodities Act,²⁶ criminalized hoarding and black-market practices, granting administrators broad powers to regulate production, distribution, and pricing, which often led to bureaucratic overreach and corruption.

The Bagla Case: In the Bagla Case,²⁷ a middle-aged Marwari couple, Harishankar and Gomtidevi Bagla were accused of illegally transporting 493 pounds of cotton cloth without a permit from Bombay to Kanpur, violating the Cotton Textile Order 1948.²⁸ They argued that the Essential Supplies Act²⁹ violated their right to trade under Article 19(1)(g)³⁰ and was arbitrary, conflicting with the right to equality under Article 14.³¹

Judiciary as a Mediator: The judiciary examined the constitutionality of administrative orders, reinforcing the need for procedural safeguards to prevent arbitrary actions while upholding the state's regulatory powers. Landmark cases like Bagla's³² reinforced judicial review as a crucial mechanism for accountability in economic governance, establishing checks on executive discretion and ensuring that state policies align with constitutional rights.

The Permit-License-Quota Regime: The post-colonial state established a 'Permit-License-Quota Raj,'³³ regulating economic activity through licenses to prevent hoarding and black-market

²⁵ Defence of India Act 1939

²⁶ Essential Commodities Act 1955

²⁷ *Harishankar Bagla and Anr v State of Madhya Pradesh* (1954) SC 465

²⁸ Cotton Textile (Control of Movement) Order 1948

²⁹ Essential Commodities Act 1955

³⁰ Constitution of India 1950, art 19

³¹ Constitution of India 1950, art 14

³² *Harishankar Bagla and Anr v State of Madhya Pradesh* (1954) SC 465

³³ De (n 1)

practices. However, this led to bureaucratic overreach and corruption, as administrators had broad powers to grant or revoke licenses without clear guidelines. Consequently, small traders, particularly from the Marwari community, faced arbitrary regulations that often criminalised ordinary business practices, labelling them as 'Economic Offenders' and stereotyping them as black-market operators.³⁴

CHAPTER 3: THE CASE OF THE INVISIBLE BUTCHERS: ECONOMIC RIGHTS AND RELIGIOUS RITES

Historical and Legal Context: Historically, cow slaughter has been a politically sensitive issue in India, notably after independence, when Article 48³⁵ of the Indian Constitution directed states to prohibit the slaughter of cows, calves, and other milch and draught cattle. This principle fuelled cow protection laws that sparked significant controversy, rooted in both the economic need to preserve cattle for agriculture and the sacred status of cows in Hinduism.³⁶

The Mohd Hanif Qureshi Case: The key focus is the Mohd. Hanif Qureshi case,³⁷ where Muslim butchers challenged cow slaughter bans as over 3,000 petitioners, mainly from the Qureshi community, filed writ petitions with the Supreme Court, arguing that the ban unreasonably restricted their trade³⁸ and discriminated against those slaughtering cows compared to other animals.³⁹ They also contended that the ban hindered their religious practice of sacrificing cows during Eid-ul-Adha.⁴⁰

Judiciary as a Mediator: The Court upheld most cow slaughter laws, stating they did not violate fundamental rights while allowing exceptions for certain cattle like old, unproductive cows. Judges dismissed the religious freedom argument, concluding cow sacrifice was not essential to

³⁴ *Ibid*

³⁵ Constitution of India 1950, art 48

³⁶ De (n 1)

³⁷ *Mohd Hanif Qureshi and Ors v State of Bihar* (1958) SC 731

³⁸ Constitution of India 1950, art 19(1)(g)

³⁹ Constitution of India 1950, art 14

⁴⁰ Constitution of India 1950, art 25

Islam. This reliance on cultural assumptions often reinforced majoritarian biases, prioritizing collective economic goals over individual rights.⁴¹

Economic and Policy Implications: Economic implications were significant, as unproductive cattle imposed an economic burden, consuming resources without contributing to agriculture. Petitioners argued that allowing their slaughter would benefit industries like leather, soap, and pharmaceuticals. While Nehru's central government sought to moderate the cow protection debate, state laws often reflected majoritarian sentiments, revealing the challenges of managing economic policy in a diverse society.

CHAPTER 4: THE CASE OF THE HONEST PROSTITUTE: SEX, WORK, AND FREEDOM

Prostitution and the Law: Prostitution in India has deep socio-cultural roots but became regulated under British colonial rule, which aimed to control venereal diseases and racial interactions. Diverse groups of women, including courtesans and temple dancers, were broadly labelled as 'prostitutes,' resulting in ongoing stigmatization after independence. The Indian Constitution's Article 23⁴² prohibited trafficking and forced labour, framing prostitution as a 'social evil.'

The Case of Husna Bai: In 1958, a 24-year-old sex worker, Husna Bai⁴³ challenged the Suppression of Immoral Traffic in Women and Girls Act (SITA)⁴⁴ in the Allahabad High Court, claiming it violated her fundamental right to practice a trade or profession under Article 19(1)(g) of the Constitution.⁴⁵ As her family's primary breadwinner, she argued that SITA would make her destitute. By openly identifying as a prostitute,⁴⁶ Bai contested the view of sex work as unproductive and targeted Section 20 of SITA⁴⁷, which allowed for the expulsion of suspected prostitutes.

⁴¹ De (n 1)

⁴² Constitution of India 1950, art 23

⁴³ *Shama Bai and Anr v State of Uttar Pradesh and Anr* (1959) All 57

⁴⁴ Suppression of Immoral Traffic in Women and Girls Act 1956, s 20

⁴⁵ Constitution of India 1950, art 19

⁴⁶ De (n 1)

⁴⁷ Suppression of Immoral Traffic in Women and Girls Act 1956, s 20

Judiciary as a Mediator: The judiciary's response to Bai highlighted the conflict between individual rights and societal morality. While the courts upheld SITA's constitutionality to protect public morality, they also validated restrictions on prostitutes' movement in the name of decency,⁴⁸ as seen in the *State of Uttar Pradesh v Kaushalya Devi*.⁴⁹

Impacts and Implications: In postcolonial India, the judiciary viewed prostitution as incompatible with moral and developmental goals, yet litigation allowed sex workers to voice their grievances through constitutional rights. Female reformers often depicted them as victims needing rescue, which conflicted with sex workers' claims of agency and independence. Bai's case⁵⁰ revealed contradictions in the SITA law,⁵¹ which criminalized support activities like brothel-keeping while allowing individual prostitution to continue, highlighting the transformative potential of the litigation process.⁵²

ANALYSIS OF THE BOOK

One of the strengths of De's book is his use of previously untapped Supreme Court records, making him the first scholar to explore what he calls a 'Secret' Archive'. Unlike most constitutional law texts that focus on judges and lawyers, De emphasizes citizen litigants. His incorporation of archival materials and oral histories enriches the narrative beyond purely doctrinal analysis.

The text emphasizes a focus on constitutional change, particularly during its early decades. De actively "sought challenges to new regulatory authorities and legislation aimed at transforming society and the economy," enhancing the book's clarity and depth. The book's thematic structure is also commendable, as it allows for the exploration of specific aspects of constitutional engagement while contributing to a cohesive narrative about law in postcolonial India.

⁴⁸ De (n 1)

⁴⁹ *Kaushalya Devi v State of Uttar Pradesh* AIR 1963 ALL 71

⁵⁰ *Shama Bai and Anr v State of Uttar Pradesh and Anr* (1959) ALL 57

⁵¹ Suppression of Immoral Traffic in Women and Girls Act 1956, s 20

⁵² De (n 1)

However, this selectivity raises concerns about the broader context of Supreme Court cases and materials in the Supreme Court Record Room. While it highlights how minority communities use the courts to demand their rights, it may overlook important aspects such as the roles of rural and tribal groups. Including these perspectives could enhance the narrative. The book doesn't provide a profile of the overall archival context, and De acknowledges that his selected cases may oversample minority litigants.

While the book offers pioneering insights, its focus on specific cases may restrict broader generalizations about constitutional culture in India. Additionally, reliance on legal archives might overlook the voices of non-litigants, raising questions about their interactions with constitutional ideals.

CONCLUSION

A People's Constitution is essential for anyone interested in Indian constitutional history and the interplay of law and society. Rohit De's work emphasizes the Constitution's role as a dynamic instrument shaped by its citizens. The book enriches our understanding of India's legal landscape and highlights the power of ordinary people in upholding democracy. De's book is a landmark read in postcolonial India, blending meticulous research with engaging storytelling.

It challenges traditional views of constitutionalism, emphasizing that constitutions are shaped not only by lawmakers but also by the citizens. As India navigates issues of rights and state authority, De's work highlights the significant role of ordinary people in constitutional law.

The book offers valuable insights into the limits and possibilities of postcolonial India and is essential reading for anyone interested in law, history, and society.