

Quest for Human Rights

EDITOR

Mohammad Shabbir

Ambedkar Chair Professor of Law

Dr. Ambedkar Chair of Legal Studies and Research

Department of Law, Aligarh Muslim University, Aligarh



RAWAT PUBLICATIONS

Jaipur • New Delhi • Bangalore • Mumbai

ISBN 81-7033-969-3
© Contributors, 2005

No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system, without permission in writing from the publishers.

Published by

Prem Rawat for *Rawat Publications*

Satyam Apts., Sector 3, Jawahar Nagar, Jaipur 302 004 (India)

Phone: 0141 265 1748 / 7006 Fax: 0141 265 1748

E-mail: info@rawatbooks.com

Website: www.rawatbooks.com

Delhi Office

4858/24, Ansari Road, Daryaganj, New Delhi 110 002

Phone: 011-23263290

Also at Bangalore and Mumbai

Typeset by Rawat Computers, Jaipur
Printed at Chaman Enterprises, New Delhi

EDITORIAL BOARD

Mohammad Shabbir
Editor

Zafar A. Khan
Research Officer
Joint Editor

Rakshanda Mobeen
Ambedkar Research Fellow
Member

Contents

<i>Foreword</i>	ix
<i>Preface</i>	xiii
<i>Introduction to Dr. Ambedkar Chair</i>	xix
<i>Acknowledgement</i>	xxiii
<i>Contributors</i>	xxv
1 Law, the Constitution, Weaker Sections, Women, Minorities, Scheduled Castes and their Development <i>Kapil Sibal</i>	1
2 The Constitutional Model of Equality and Fraternity: The Indian Experience <i>Justice A.S. Anand</i>	16
3 Constitution, Oppressed Segments and Minorities: Socio-Legal Perspective <i>Sardar Tarlochan Singh</i>	29
4 Minorities' Right to Run Educational Institutions: T.M.A. Pai Foundation in Perspective <i>Virendra Kumar</i>	41
5 The Sexual Minority Rights versus the Cultural Ethos: The Queer Crisis <i>Mohammad Shabbir and C.K. Faisal</i>	93

viii \ Contents

6	Devising Development and IT for Human Rights Measurement <i>Abdul Matin and Rakshanda Sajid</i>	108
7	Judicial Scrutiny of Executive Action and Oppressive Legislative Measures as Legal Safeguards <i>H.B. Das</i>	148
8	Central-State Relations on Water: The Malaysian Experience <i>Nik Ahmad Kamal and Muhammad Yusuf Saleem</i>	188
9	Quran, Conversion and Constitution: A Random Approach <i>Iqbal Ali Khan</i>	200
10	Reservation in Public and Private Sector <i>C. Chellappan</i>	217
11	Judiciary on Educational Rights of Minorities <i>Mushtaq Ahmad</i>	231
12	Equality through Legislative Measures: The Law in Book versus the Law in Action <i>Zafar A. Khan</i>	248
13	Torture as a Challenge to the National Human Rights Institutions: The Role of National Human Rights Commission of India <i>Gurjeet Singh</i>	275
14	Human Rights of Oppressed Segments and Minorities <i>Jasleen Kewlani</i>	302
	<i>Index</i>	315

Contributors

Kapil Sibal, Eminent Lawyer and Minister for Science, Technology and Ocean Development, Union Government of India, New Delhi.

Justice A.S. Anand, Chairman, National Human Rights Commission, New Delhi.

Sardar Tarlochan Singh, Chairman, National Commission for Minorities, New Delhi.

Virendra Kumar, U.G.C. Emeritus Fellow, formerly Professor and Chairman, Department of Law, Dean, Faculty of Law and Fellow, Punjab University, Chandigarh.

Mohammad Shabbir, Dr. Ambedkar Chair Professor of Law, Incharge, Dr. Ambedkar Chair of Legal Studies and Research, Department of Law, A.M.U, Aligarh.

C.K. Faisal, L.L.M. Student, Department of Law, A.M.U., Aligarh.

Abdul Matin, Associate Professor, Department of Sociology and Social Work, A.M.U., Aligarh.

Rakshanda Sajid, Ambedkar Research Fellow, Dr. Ambedkar Chair of Legal Studies and Research, Department of Law, A.M.U., Aligarh.

H. B. Das, SJS, Special Judge, C.B.I., Orissa, Bhubaneshwar.

Nik Ahmad Kamal, Dean, Ahmad Ibrahim, Kulliyah of Laws, International Islamic University, Malaysia.

xxvi *Contributors*

Muhammad Yusuf Saleem, Lecturer, Kulliyyah of Economics and Management Sciences, International Islamic University, Malaysia.

Iqbal Ali Khan, Reader, Department of Law, A.M.U., Aligarh.

C. Chellappan, IAS (Retired), Former Member, National Commission for SC/ST, New Delhi.

Mushtaq Ahmad, Advocate on Record, Supreme Court of India, New Delhi.

Zafar A. Khan, Research Officer, Dr. Ambedkar Chair of Legal Studies and Research, Department of Law, A.M.U., Aligarh.

Gurjeet Singh, Head, Department of Law, G.N.D.U., Amritsar.

Jasleen Kewlani, Lecturer, Department of Sociology, S.D.A.M. College, Dina Nagar, Gurdaspur, Punjab.

8 Central-State Relations on Water: The Malaysian Experience

Nik Ahmad Kamal and Muhammad Yusuf Saleem

This paper examines the constitutional position of water and the extent of federal and state power over rivers. It intends to identify the main issues surrounding rivers that may strain central-state relations or lead to disputes among the states themselves. In particular, the discussion is focused on the pollution of interstate rivers and the distribution of their waters. The possibility of conflicts between federal environmental laws and the power of the states over rivers is critically examined. The paper also discusses possible disputes that may arise among the states on the use and distribution of interstate rivers. The Federal Constitution, however, does not provide for a mechanism through which interstate water disputes could be resolved. The paper also makes references to other federations to see how Malaysia may learn from their experiences in dealing with its interstate rivers. Various possibilities are explored and suitable suggestions are made.

Constitutional Position

The Reid Commission while deliberating on issues related to water and rivers recommended that states should have control over "inland waters, including all rivers and streams, water supply and storage".¹ The Commission, however, thought that