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*Kale on De, _A People’ Constitution_*

Rohit De’s *A People’s Constitution: The Everyday Life of Law in the Indian Republic* offers a creative examination of the first two decades in the life of India’s constitutional order. A corrective to the argument that this order exists at two removes from the lives of ordinary Indians, De instead shows that although the document was drafted and ratified by a thin layer of political elites, it was through the engagement and interaction of ordinary Indians with the Constitution that its purpose and power was made manifest.

The introductory chapter lays out the stakes of De’s project. De suggests that over time, by invoking the Constitution, “citizen action drove politics into the courts” (p. 4). This tendency toward judicialization of conflict was already present in the colonial period but De suggests it became even more pronounced after the new constitutional order came into effect. In telling the story of India’s Constitution from the vantage of ordinary citizens, De marks a middle ground between two divergent narratives, one triumphant and the other cynical. The former stories emphasize the Constitution’s heroic authors and their radical impulses whereas the latter gesture to the vast gap between the rhetoric of radicalism and the reality that so many parts of the text were taken unamended from colonial law, and served to uphold the interests and integrity of the state and elite actors above those of ordinary citizens. De suggests that a careful reading of the judicial record shows that this gap is chimerical; ordinary citizens did in fact believe the Constitution to be an important repository of rights upon which they could stake claims, and acted on this belief. The mechanism of engagement was the constitutional provision that allowed citizens to bring complaints about the state’s violation of fundamental rights, and enjoined the courts to provide remedies in the form of writs against the state. And, significantly, it was through such claim-making that the “the Indian Constitution profoundly transformed everyday life in the Indian republic” (p. 9).

The main body of the book is organized as four substantive chapters, each dealing with a set of related constitutional cases that respond to actions on the part of the state to “attempt to transform the daily life of the citizen” (p. 18). Each set of cases comprises citizen responses from one specific minority or marginalized community; De suggests that the rights guaranteed by the Constitution were particularly important for groups that were disempowered by the logic of majoritarian democracy.
The first chapter takes up prohibition laws in Bombay and other provinces. Prohibition laws had the effect of greatly expanding the powers of police and creating new channels for state incursions of private life, both of which invited challenges by affected citizens. Through a reading of Prohibition in Bombay province oriented around two specific cases involving men from the city's Parsi community, De suggests that Parsis were singularly affected. De mentions several other communities (lower-caste groups like the Pasis and Bhandaris) who, like the Parsis, were closely involved in the liquor trade, but we get little sense of the extent to which they were affected by Prohibition statutes and able to respond in similar ways. The chapter raises further questions about which other Indian citizens, from which communities, were caught up by these measures and had the wherewithal to challenge the state in response. The focus of the second chapter is government efforts to impose price controls through the Essential Commodities Act, a continuation of colonial-era wartime measures. De focuses on a case brought by a middle-aged Marwari couple accused of transporting cotton cloth illegally from their home in Bombay to Kanpur in the north. Here, De underscores the importance of their identity as Marwaris, another example of how the Constitution empowered minority communities in particular.

Chapter 3 examines *Mohd. Hanif Qureshi v. State of Bihar*, about legal challenge to bans on cow slaughter. Whereas the Supreme Court's judgment has often been read as an example of how Hindu majoritarianism was given judicial cover, De suggests that the several months of trial and the judgment itself have several other important features: the use of social science evidence, the appointment of one of the first *amicus curiae*, and several thousand individual petitioners (in addition to the five more well-known writ petitions). In addition, De points out that it serves as a useful terrain on which to examine how an issue became “constitutionalized,” that is, shifted from other arenas of conflict to the judicial arena, in newly independent India. The final empirical chapter analyzes sex-workers' responses to the Suppression of Immoral Traffic in Women and Girls Act of 1956 and other legislative attempts to regulate prostitution. De examines a variety of petitions filed by prostitutes who argued for the unjustness of these laws on the grounds that they violated their constitutionally protected rights to livelihood and freedom of movement.

All of these instances of public engagement with the Constitution operate in what De argues is the terrain of the market. In this he sees a shift from a focus on property, the preoccupation of the colonial order, to a concern with consumption, production, and distribution—the modalities of the marketplace. In highlighting this as a shift from property to the market, De perhaps draws too sharp of a distinction. After all, the market is predicated on the rule of property, and much of the legal conflict elucidated in De's empirical chapters turns on what is properly considered to be property and the extent to which the state can alienate property (including occupation as a form of property) without compensation. De paints these engagements with the Constitution as the work of ordinary Indians. But his additional point that all of these cases emerge from within the marketplace provides an important nuance to this point. The collection of the cases in De's book demonstrates that the rights-based order brought into being by the Constitution is an economic order, and Indians are engaging the state as economic actors. They are ordinary, yes, but they are legible as subjects in a very particular fashion.

De rightfully celebrates the Constitution's importance in providing a new modality by which ordinary Indians could empower themselves. The idea that political conflict would eventually becoming constitutionalized, as De puts it in his chapter on the clash between cow protection activists and the rights of Muslim butchers, is an optimistic one. While this issue may have entered the judicial arena with the *Qureshi* case, it has never
dwelled exclusively there; we can point to hundreds of cases of violence in the name of cow protection in the last seven decades, with an alarming uptick in vigilante action in the last few years. One gets the sense that De believes that from independence onward, the movement has been the migration of conflict from “street politics and backroom negotiations” (p. 4) to the judicial arena. Constitutional orders exist not outside or above but entirely amidst social and political norms and institutions that give them meaning and power. As these norms and fashions shift, so does the significance and interpretation of constitutions themselves. We are seeing this now in constitutional orders across the world, where radical transformations in political and social expectations are rewriting the rules of engagement and in some instances also rewriting parts of the constitutional order itself to reflect this.

One of the strengths of De’s book—the use of previously untapped Supreme Court records—is also an aspect that could have been given more detailed attention and analysis. De became the first scholar to work with what he calls a “‘secret’ archive” (p. 16) contained in the Supreme Court Record Room. Unlike most books on constitutional law that are peopled by judges, lawyers, and politicians, De’s contribution is to foreground citizen litigants. Interested in the early decades of constitutional change, De deliberately “sought early challenges to the new regulatory authorities and legislation that were set up as a part of the state project to transform society and the economy” (p. 17). Having such a clear focus for selecting case materials strengthens the book and provides an important connective thread linking the varied case material analyzed in the empirical chapters. However, by selecting for certain kinds of cases, and presumably disregarding others, it becomes difficult for the reader to get a sense of how these cases fit into the larger ambit of Supreme Court cases and the materials in the Supreme Court Record Room. For example, De argues that his reading of the archive led him to conclude that “minority communities (of caste and religion) appeared to be overrepresented in the courts, which shows that they took the state’s obligations to protect them seriously. This book provides evidence that electoral minorities ... were overrepresented before the courts in constitutional cases” (p. 17). The book demonstrates a variety of ways that minority communities interacted through the courts to demand protections of their rights as citizens. But that is not the same as demonstrating the overrepresentation of minorities before the courts since, first, the book does not give the reader a profile of the overall archival record and how the selected cases fit within this broader picture, and second, De acknowledges selecting certain kinds of cases for his project that might oversample minority litigants. A more complete account of the Supreme Court Record Room might have also provided something of a scholarly public service with signposts for the kind of future research questions that might be addressed through this material. As De notes, his access to the archives was granted personally by the chief justice of India (p. 16).

There are times when it seems that in his commitment to highlight the possibilities opened up by the Constitution, however, De is less attentive to what issues and which Indians are sidelined. There are ordinary Indians who remain less legible in the constitutional order—the propertyless, the occupationless. And there are certain kinds of violent exclusions that the Constitution itself ratifies and upholds. These are not De’s concerns, and are perhaps properly the subjects of other books. One other important legacy of De’s book is to demonstrate just how much we can learn about the limits and possibilities of postcolonial India through a careful examination of its unfolding constitutional order. This book deserves to be read widely and taught in a variety of classes on politics and law.
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