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Constitutional Law

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CONSTITUTIONAL LAW

—K. Prahalad Bhat*

Ever since it was promulgated in 1950, the Indian Constitution has been the subject of much judicial and academic scrutiny. The area of constitutional law has given rise to most of the landmark cases that have shaped the history of the Supreme Court over the last six decades. As is natural for the law governing the very basis of governmental structure and institutional design, every socio-political flashpoint has found legal expression as a question of constitutional interpretation. The understanding of constitutional law is therefore of paramount importance for every student and practitioner of the law. The book, "*Constitutional Law*", published by Eastern Book Company, and authored by Dr. Mamta Rao is another welcome addition to the litany of textbooks on the subject.

The Constitution of India is the longest in the world, with the powers, functions and limitations of state bodies elaborately dealt with. The Supreme Court, frequently called upon to decide issues of interpretation, has expounded on many parts of the Constitution in great detail and has evolved several concepts of its own as well. Therefore, a study of this area of law is necessarily arduous and books attempting to deal with every important facet of constitutional law are usually voluminous. Mrs. Rao's effort is remarkable for its brevity; concepts have been explained neatly and with reference to necessary case law but without over-elaboration. The book achieves its ambition of providing an overview to the Constitution in a simple, accessible style.

The author, being a professor of law, has naturally approached her commentary on the Constitution from an academic's, rather than a practitioner's, perspective. As such, the author makes no presumptions as to the familiarity of the reader with Constitutional law and consequently, explains every concept and principle of constitutional law in clear and concise terms. The copious references to case law and other materials prove useful for the inquisitive reader. The topics are dealt with as per the structure adopted by the text of the Constitution itself. In keeping with the author's textbook approach, each topic is introduced by definitions, followed by brief, clear statements of law. Where necessary, tables, charts

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and other tools have also been provided for easy reference. While the area of constitutional law is too vast for exhaustive coverage of every single pronouncement of the Supreme Court, especially in the case of topics such as fundamental rights, most of the significant pronouncements of the Supreme Court have been adequately covered by the author. The author has also referred to and explained recent decisions of the Supreme Court such as the *Natural Resources Allocation, re, Special Reference No. 1 of 2012*, (2012) 10 SCC 1, *State of Kerala v. Mar Appraem Kuri Co. Ltd.*, (2012) 7 SCC 106 and *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1 which increases the utility of the book for the discerning reader.

The textbook approach to an exposition of constitutional law necessarily reduces the scope for a more rigorous approach to each individual case. As a result, while the statement of the law as decided by the Supreme Court is neatly summarized by the author, she has not delved in any great detail into the specifics of each case, particularly with reference to the legal reasoning behind the interpretation of the text of the Constitution and the conflicting views possible thereof. This is, however, to be expected in a book which is tailored to suit the needs of law students and others unfamiliar with the intricacies of Indian constitutional law. This is not to suggest that the book is without value to a practitioner; the organized presentation, summary of key concepts and the ease of reference, especially to key cases on each topic through marginal notes, are all useful from a litigator's point of view.

The author adopts a descriptive approach to the law; the relative merits of different interpretations and arguments are rarely discussed. This, however, does not detract from the merit of the book as a summary of the development of constitutional law over the last sixty years. The prose is rarely laboured and the simplicity of the explanations makes the book a good restatement of constitutional law. The book also traces the legal history of constitutional law in India from the Charter of 1600 incorporating the British East India Company to the present day Constitution and this will undoubtedly prove useful to students and scholars alike.

The Constitution broadly performs three essential functions; it limits state action by providing certain inalienable rights to individuals, it provides for the separation of powers between branches of State as well as division of power between federal and provincial bodies and it delineates the manner in which power is to be exercised. While the author has generally struck the right balance between brevity and the need for explanation in the book, the portions dealing with federalism and centre-state relations are perhaps too cryptic. Readers unfamiliar with principles applicable in determining the competence of Parliament and State Legislatures to pass laws and the manner in which the conflict between laws passed by different federal units are resolved may have benefitted from a more detailed discussion of these subjects. In contrast, the discussion on the

rights conferred under Part III is well explained and the reader is left with a clear understanding of the principles elucidated.

Through her commentary which spans close to 800 pages, Ms. Rao has covered most important aspects of Indian constitutional law while also providing a brief outline on the nature of constitutionalism in general. However, in adopting an Article-wise approach to the text of the Constitution, the author has perhaps failed to highlight the importance of certain provisions found in the Schedules to the Constitution. In particular, one of the fundamental aspects of federalism is the division of the legislative power between the Centre and the States. The Indian Constitution has delineated the powers of Parliament and the State Legislatures through three lists provided in the Seventh Schedule to the Constitution. However, there has been considerable legal controversy over the scope of some of the entries due to their peculiar wording and their being made subject to the Acts of Parliament. The Supreme Court in cases such as *Tika Ramji v. State of Uttar Pradesh*, AIR 1956 SC 676, *Ishwari Khetan Sugar Mills (P) Ltd. v. State Of Uttar Pradesh*, (1980) 4 SCC 136 and *Hingir-Rampur Coal Co. Ltd. v. State of Orissa*, AIR 1961 SC 459, has consistently evoked the doctrine of occupied field to describe the denudation of power of the State Legislature overfields of legislation in certain circumstances. There have been several cases on the scope of the doctrine and the distinction between the doctrine and the related but distinct concept of repugnancy. The doctrine of occupied field, in the context of Indian Constitutional law, owes its existence to the provision in entries in the Seventh Schedule to the Constitution such as Entries 52, List I and Entry 24, List II which, when read together, provide that Parliament may, by law, declare that the control of certain industries by the Union is in the public interest in which case, these industries shall no longer be under the control of the States. Similarly, Entry 7 of List I provides for Parliament having the sole competence to legislate on industries declared necessary for the purpose of defence or the prosecution of war. Similar entries abound in the Seventh Schedule and the importance of the wording of the entries cannot be overstated as the legislative competence, or lack thereof, is one of the main grounds of challenge to the validity of any legislation under the Constitution. The above doctrine is the entire basis for the law of mines and minerals as well as regulation of ports in the country and has also significantly affected the law of higher education. Therefore, a deeper analysis of the provisions of these entries would have perhaps been appropriate.

Whilst more attention could perhaps have been given to certain important concepts such as the doctrine of occupied field and the aspect theory, the author has successfully presented complex principles in a simple manner, which is a commendable effort as the decisions of the Supreme Court on constitutional law are both numerous and lengthy. In sum, the book is a crisp and concise introduction to Indian constitutional law, which will be especially beneficial to students of the law.

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