



The Constitution of India: A Contextual Analysis

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BOOK REVIEW - THE CONSTITUTION OF INDIA: A CONTEXTUAL ANALYSIS

BY *ARUN K. THIRUVENGADAM* PUBLISHED BY *OXFORD AND PORTLAND,*
OREGON, 2017, P. XXXIII + 265, PRICE NOT STATED

—Dr. Mahendra Pal Singh*

The book¹ is part of the ‘Constitutional Systems of the World’ series. Already, a number of constitutions have appeared in that series, while the rest are in the process of publication. The “series seeks to provide scholars and students with accessible introductions to the constitutional systems of the world, supplying both a road map for the novice and, at the same time, a deeper understanding of the key historical, political and legal events which have shaped the constitutional landscape of each country.”² Therefore, instead of being written in the style of a textbook on the Constitution of India, the book is designed from the perspective of comparative studies in constitutional law.³ Consequently, it is more suitable for an accomplished constitutional scholar than for a beginner uninitiated in constitutional law, even though it touches upon every significant aspect of the Indian Constitution. In the author’s words: “It departs from conventional Indian constitutional scholarship in placing less emphasis on constitutional doctrine (as evolved in judicial decisions delivered by the High Courts and the Supreme Court). Instead, the book turns the spotlight on the political bargains and extra-legal developments that have influenced constitutional evolution.”⁴

Written within the word constraint, the author has organised the background and evolution of the Constitution and its making, the law and legal literature as well as the related political and social developments within seven chapters besides the introduction and conclusion, in the way he found most appropriate for serving the purpose of the book as part of the series. One could think of a different and

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¹ ‘The book’ refers to the book under review. And the page numbers refer to its pages.

² See The book, at ii, 5.

³ *Id.*

⁴ The book, at i.

better arrangement, but the author has his own justifications for the scheme he has planned which is *prima facie* justified.⁵

Referring to the beginnings of the Indian civilization, the author comes down to the colonial period in the late 19th century when seeds of modern constitutional structure were sown on the demand of Indian leaders, which in the course of time led to the birth of the Constituent Assembly a few months before the end of the colonial era in 1947, setting the process of constitution-making. This, through an intensive process that lasted nearly three years, produced the Constitution that came into operation on 26 January 1950. The book examines the legal and political constitutional developments until May 2017.⁶

The author initiates his study with the national executive and the legislature. Going through the process that is similar to the British model of parliamentary form of government, the author alludes to several issues that arose in respect of the position of the President *via-a-vis* the Prime Minister at the Constitution making stage, during the tenure of the first President and the Prime Minister and their amicable settlement at all stages, through understanding the style of functioning of the two functionaries as well as through judicial pronouncements. No issues have arisen since then in respect of the working of these two institutions. Much credit goes to the individuals who initially held these offices for substantially long periods and are presumed to have raised some of these questions merely to settle them for the future. Consequently, no questions have arisen since then in respect of the position of these two offices. Similarly, as regards the position of the Prime Minister *vis-a-vis* Parliament, that was also settled by bringing all important issues in Parliament as well as by the maximum presence of the Prime Minister and his minister colleagues by their maximum presence during parliamentary sessions. Those traditions have, however, been not maintained by some of the future Prime Ministers and their minister colleagues, lowering the dignity of the Parliament in the process. The author critically examines all these issues as well as the issues of Centre State relations minutely and in all relevant details in different eras, since the commencement of the Constitution and suggests appropriate improvements.

Examining the federal arrangements in a historical context, the author justifies the existing arrangements including the asymmetrical federalism. Much space and support has been assigned in discussing the extension of federal arrangements to village and municipal levels, which strengthen democracy as well as the position of excluded sections of society such as women and Scheduled Castes.

3 very important aspects of the Constitution – fundamental rights, directive principles of state policy and the judiciary – are dealt with, together in one

⁵ The book, at 5.

⁶ The book, at 9.

chapter. While clubbing fundamental rights and the directive principles is understandable, the addition of judiciary remains somewhat enigmatic until one goes through the chapter. In his monumental book on the Constitution, Granville Austin worked out a web of three interconnected, inextricable themes of the Indian Constitution: social revolution, direct democracy and national unity. He argued that “the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy.”⁷ Dealing with judiciary, he said: “the Judiciary was to be an arm of the social revolution”.⁸ Thus, there is a close connection between the 3 issues covered in this chapter together. In the discussion on judiciary the author also alludes to the theme of national unity which the unitary judiciary in the Constitution promotes.⁹ Moreover, the author discusses fundamental rights and directive principles as interpreted and applied through different stages in the working of the Constitution and finds that while in spite of differences on the understanding and application of the fundamental rights and the directive principles by the legislative and executive branches of the state and the judiciary, the Constitution worked well during the Nehru-era, problems started aggravating in the later period leading to serious differences between the government and the judiciary. These, in course of time resulted in the establishment of the doctrine of basic structure, emergence of public interest litigation, judicial appointments at the High Courts and the Supreme Court through judicial collegium and even invalidation of an amendment replacing collegium by a judicial appointments commission.¹⁰ In the course of this discussion the author also points out the problems that afflict the judiciary leading to delay and denial in the administration of justice.

The book also includes discussion on the functioning of certain institutions like the Comptroller and Auditor General, Election Commission and the new emerging regulatory bodies. The Election Commission has been in the limelight from the very beginning of the Constitution because of the immense exercise it performs in ensuring smooth elections at the level of the Union as well as the States, with regards to which the author says: “Surveys indicate that the Election Commission enjoys the highest rates of public trust/confidence among India’s public institutions; it ranks higher, for instance, than the judiciary, government, political parties and police.”¹¹

He cautions: “However, its institutional independence remains a virtue that needs to be constantly monitored” because of its crucial role in sustaining democracy in the country.

⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, 50 (Oxford University Press, 15th Edn., (2010) (1966).

⁸ *Id.* at 164.

⁹ The book, at 117.

¹⁰ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1.

¹¹ The book, at 156.

The office of the CAG acquired prominence only during the latter part of the first decade of this century when several prosecutions of the ministers of the Union Government were launched on the basis of its report, though of course such prosecutions had been launched earlier against the State ministers and Chief Ministers also. The author finds his role crucial for the success of liberal economy introduced since 1991.¹² Liberal economy has also introduced and is expected to introduce in future more of the various kinds of regulatory bodies- such as the Securities and Exchange Board of India ('SEBI') and Telecom Regulatory Authority of India ('TRAI'), which in the absence of constitutional status, the author thinks, are subject to pressure from the government and other sources.¹³

Going by his imaginative arrangement of constitutional issues, the author deals with the proverbial diversity of the country under the heading of "Constitutional Regulation of India's multiple Identities" such as castes, indigenous communities, religion, gender and language. Of course, these divisions lead to majorities and minorities issues requiring protection of the latter, though within the former or both there may be identifiable weaker sections that require special attention. Referring to the detailed constitutional provisions scattered all over its text including the schedules, the author imaginatively deals with the pre and post constitutional position with all the relevant historical events and legislative, judicial and administrative measures and concludes with an optimistic note on "the sustenance of a vibrant constitutional culture."¹⁴

Expectedly, the last chapter deals with constitutional change that takes place in a number of ways including constitutional interpretation and application prominently by the courts but also by the legislature and executive giving rise inter alia to constitutional conventions and practices. Pointing at all these issues, the author discusses in detail the main provisions contained in Article 368 with reference to its background and making, as well as its interpretation and application in the course of challenges to its application. Interestingly, while the amendment procedure in Article 368 appeared to be quite clear and flexible, its application was challenged from the very beginning, i.e. from the very first amendment. These challenges have been skilfully analysed by the author with reference to related events until in 1973 the Supreme Court laid down that the basic structure of the Constitution cannot be changed in the exercise of amendment power.¹⁵ Reference is made to the contribution of Dieter Conrad who introduced the Indian legal community to the concept of unamendable basic structure of the Constitution. From India that doctrine has spread to almost all post WW II constitutions of the world.¹⁶ The author also discusses its refinement and application in a few

¹² The book, 148.

¹³ The book, 160.

¹⁴ The book, 205.

¹⁵ *Kesavananda Bharati v. Union of India*, (1973) 4 SCC 225.

¹⁶ Y. Roznai, *Unconstitutional Constitutional Amendments*, 42 (2017).

subsequent cases. Towards the end, he also alludes to Bruce Ackerman's concept of a 'constitutional moment' that brings substantial change in the constitutional outlook as, for example, how the declaration of new economic policy in 1991 has substantially changed the constitutional outlook.

The author concludes his exercise by expressing his apprehensions regarding constitutionalism in India in the context of similar developments all around the world. He does not hide his displeasure with the constitutional developments in general during the last few governments but particularly since the coming into power of the current government at the Centre which undermines most of the foundational constitutional values such as secularism and civil liberties. He ends by suggesting:

At the critical juncture in the journey of Indian constitutionalism it becomes even more important that there is a renewed debate and understanding about the nature and scope of the constitutional culture that was ushered in by the new constitutional order in 1950, and what the contours of this order are at the present time.¹⁷

Repeating what I said in the beginning, though the book is written for the international audience, it is of equal interest to accomplished Indian constitutional scholars, in drawing their attentions towards the deviations we have made from the constitutional path paved by its makers. It is a smooth reading, sustaining continued interest in going through it. For all these qualities of the book the author must be congratulated, hoping more such readings from him.

¹⁷ The book, at 252.