Book Reviews

Introduction to the Constitution of India by Brij Kishore Sharma, Prentice-Hall of India (P) Ltd, New Delhi, 2002, Pp. XXV + 365. Price Rs.125/-

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The Indian Constitution, the document of India's destiny and its supreme law of the land, has been in operation for more than 53 years since its inauguration in 1950. Many scholarly writings dealing with various issues of Indian constitutional jurisprudence have appeared on the Indian academic scheme. Many more are likely to appear. Many of these writings have been purely in the nature of text books, catering to the needs of law students and scholars, while there are quite a few dealing with specific constitutional issues along with a few commentaries devoted to a critical analysis of the various constitutional issues. Yet, there is another category of writings which are intended to be introductory to the study of the constitution and meant for the benefit of laymen as well as non-law students. This small book under review, which belongs to the third category, is meant, as the author claims, to fulfil "the needs of students appearing for different examinations and interviews". The author, in this work, mostly summarises the law laid down by the judicial dicta along with the summation of the relevant constitutional provisions with a sprinkling of his brief comments.

The book, though small comprising only 365 pages, has been divided into 31 chapters, covering a wide range of aspects of Indian constitutional governance. It commences with "Events before the framing of the Constitution" in Chapter-I and concludes with "Principles of natural law" in the last chapter. In between, the book deals with several topics such as "The Federal System", "The Preamble", "Territory of the Union and Formation of States", "Citizenship", "Fundamental Rights", "Directive Principles of State Policy", "Fundamental Duties", "The Union Executive", "The Union Legislature", "The Judiciary", "Services under the Union", "Emergency Provisions" and "Amendment of the Constitution", etc. in some of the other chapters.

In Chapter3 dealing with "Federal System" the author has been particularly keen to project the fact that the Indian Constitution envisages a three tier government which is, of course "a novel form of federation unknown to the outside world". He says, rightly, that while the local governments

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(Panchayats and Municipalities) in other countries are generally creatures of the ordinary laws, in India, they are the constitutional creatures brought into constitutional existence by the 73rd and 74th constitutional amendments. The Parliament's efforts in making explicit what was implicit in the Constitution by the addition of the expression "socialist secular" in the Preamble to the Indian Constitution by the Constitution (Forty-Second) Amendment Act, 1976, have come in for severe criticism from the author's pen in Chapter 4 titled "The Preamble". He is, in particular, critical of the government's efforts at privatisation as he feels that "those who take oath to bear full faith and allegiance to the Constitution have to disregard a part of the Constitution. They start their day by breaking the oath".

Dealing with various aspects of "Fundamental Rights" in Chapter 7, the author covers a wide range of constitutional issues expounded by the apex Court of the country. On the issue of applicability of the doctrine of eclipse to the post-Constitution Laws, the author has not demonstrated his awareness of the latest position as emerged from the ratio of the Supreme Court's decision in the *Ambika Mills* Case[1], for, he says that "after the Constitution came into force no distinction can be drawn between a law which violates a fundamental right and a law which is beyond legislative competence of the legislature. The result of such travelling beyond the boundaries set by the Constitution is that post-Constitution law which violates a fundamental right is void *ab initio* and no subsequent amendment of the Constitution can revive such law. It will remain dead and inoperative"[2]. It is submitted that the Supreme Court in the *Ambika Mills*[3] case has, in effect, rejected such a distinction if the impugned post-Constitution Law is judicially declared unconstitutional on the ground of its violation of a fundamental right guaranteed only to the Indian citizens.

On the issue of reservations in promotional posts in State services, the author is again strongly opposed to the 77 and 81 constitutional amendments which added clauses 4A and 4B, respectively, to Article 16 in order to circumvent the problems created by the ratio laid down in *Indra Sawhney v. Union of India* (the Mandal Commission Case)[4]. Expressing strong reservations against the implications of these amendments, the author says that "this is another instance of national interest and efficiency in administration

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1 State of Gujarat v. Ambika Mills, *AIR 1974 S.C. 1300.*

2 Brij Kishore Sharma, *Introduction to the Constitution of India*, p. 65, Prentice-Hall of India (P) Ltd., New Delhi, (2002).

3 Supra n. 1.

4 AIR 1993 S.C. 477.

being sacrificed to gain transitory political support. Our politicians are incapable of taking a decision in the interests of unity and integrity of the nation. They opt for a decision which is likely to divide the nation if it is beneficial to them at present"[5]. He is also critical of the ratio laid down in the Mandal Commission case because he feels that "[a]ll our social reformers... regarded caste as the bane of, and curse on, society.... By this decision caste has been revitalized and the nation has been cleaved into forward and backward. This is against the call of the Preamble-unity and integrity and opposed to basic structure of the Constitution"[6].

Dealing with minority's cultural and educational rights guaranteed under Articles 29 and 30 of the Constitution, the author is again unhappy with the present judicial dicta and advocates for the reconsideration of these decisions. According to him, "education which is an industry being run with a profit motive has no claim to minority protection.... The duality (minority and majority) be permitted only in the area of religion, culture and language. In other areas the law must be equal. Article 30 must be read in harmony with the Preamble, Articles 14, 15 and interpreted in the light of the fact that education is a fundamental right and a basic feature. He concludes this aspect by pointing out that "India is awaiting assistance from the Supreme Court in curbing such unwarranted discrimination against the Hindus and in building a united India.... The double standards—one for majority and the other for minority—must go. Right to education is a fundamental right flowing from Article 21. It is expected of courts to see the harm caused and say clearly that what is conceded to the minorities is equally applicable to majority by virtue of Articles 14,15,19(1) and (2) and 26(a)"[7].

Chapter 11, which is devoted to a discussion of "Union Legislature", deals with a critical appraisal of the privileges of legislators in the light of the ratio laid down in *P.V. Narasimha Rao v. State*[8]. It may be noted that in this case the Supreme Court by majority of 3:2 held, *inter alia*, that the activity of bribe-taking by a member of Parliament was in respect of anything said or any vote given by him in Parliament and that therefore he could not be prosecuted in a Court of law. Disagreeing with this view, the author is of the view that a "member who deviates from the path of rectitude by accepting illegal

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[5] Supra n. 2 at p. 73.
[6] Ibid.
[7] Supra n. 2 at p. 99.
[8] *P.V. Narasimha Rao v. State*, (1998) 4 S.C.C. 626.

gratification must face the consequences like any other person in a court of law. Article 105(2) was to protect the independence of the members in pursuits related to their functions and not to allow corruption to flourish in the guise of privilege... A legislator who has, violated the law of the land, taken bribe and been a party to a criminal conspiracy is neither entitled nor deserves such protection"[9]. In this connection, the author surmises that "just as the minority judgment in Gopalan became the majority judgment in Maneka, it is hoped that someday the Court would adopt the minority view"[10].

Chapter 15 deals with "Supreme Court of India" wherein the author has discussed, among other things, the issue of appointment of judges. Expressing his dismay at the tenor of the judicial interpretation of the constitutional provision dealing with the appointment of Supreme judges, he says that "the provision for appointment of judges of the Supreme Court has been virtually rewritten by the Supreme Court. He is of the view that what the Supreme Court did in the Judges' cases and the In re Presidential reference[11] was not judicial interpretation but was the "re-writing of the Constitution". In Chapter 28 the author has dealt with "Amendment of the Constitution". Supporting the *Keshavananda Bharati*[12] ratio, he observes that "Keshavananda is an example of judicial creativity of the first order. It protected the nation from the attacks on the Constitution by a transient 2/3 majority which may be motivated by narrow party or personal interests"[13].

Although the author says that the book under review is primarily meant for students who intend to appear for different examinations and interviews, this book, in the opinion of the reviewer, is good enough to cater to the needs of even law students who can have an overview of the important aspects of the Indian Constitution at a glance. Besides, the book is welcome for another reason also. It is eminently readable as it uses simple and smooth flowing English. In conclusion, it can be said that the book is another welcome edition to the existing literature on the subject.

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[9] Supra n. 2 at p. 163.
[10] Ibid.
[11] AIR 1999 S.C. 1.
[12] *Keshavananda Bharati v. State of Kerala,* AIR 1973 S.C. 1461.
[13] Supra n. 2 at p. 321.