

BOOK REVIEW

V.N.SHUKLA'S CONSTITUTION OF INDIA 11TH EDITION, Editor: Mahendra P. Singh. Eastern Book Company, Lucknow, 2008. Pages: A1-66; 1-1160. Price: Rs. 590.

Description, analysis, evaluation and prescription have a dilemmic relationship. Overtly relying on any one is often a reason for criticism of an academic work. A purely descriptive work is accused of adding no value to existing knowledge or even being political by pretending to be apolitical. An analytical work based on inadequate, or worse still, an erroneous description would be a sitting duck at best for critics. An evaluation based on a 'sitting duck' analysis would run a high probability of being evaluated poorly by peers. The less said the better, about prescriptions based on inadequate evaluations. Avoidance of such tragedy in academic work calls for academic literature which abounds in comprehensive and analytical description, in turn providing a good breeding ground for critical analysis, evaluation and prescription. The extent to which any academic work can do justice to any of these four features would depend *inter alia* on the nature of the discipline, the quantum of materials, the time of authorship and above all, the purpose the author has in mind.

Prof. V.N. Shukla stated his purpose clearly in the preface to the first edition of his book *Constitution of India* in 1950. It was "an attempt ...to comment upon and explain the Constitution of India". He chose to explain each article of the constitution drawing from the Constituent Assembly debates, the few decided cases and introducing a comparative point of view wherever relevant. The task chosen, at once became tilted towards description and analysis. The short history of the constitution could not commission a work which made description quantitatively a demanding task and thus a good mix of analysis was inevitable for the purpose of 'explanation'. Evaluation was on his mind but seemingly unwarranted and premature. In his own words, "It is only after the constitution has been tried for some time that one can be in a position to say something definite about it and arrive at sound conclusions as regards its good and bad points".

Fifty eight years since, the nature of the field has witnessed tremendous change. Indian constitutional law has been through phases matched by few others in the world. The volume of case law and academic literature has more than substantially increased and the field is mined with explosive political issues. It is this legacy and changed circumstances which Prof. M.P. Singh had to do justice to in the eleventh edition of the book. In this review I first evaluate the book in terms of whether it does justice to the relationship between description, analysis, evaluation and prescription, given its purpose and the nature of the field. Then I attempt to identify a common theme by looking at the opinions expressed on some fundamental issues of Indian constitutional law. Being a commentary on a vast area, it may not be

fair to look for such a theme. However, there is an ample advocacy of ideas on issues which tickle the taste buds of a student of constitutional law.

The book has maintained the pattern that Prof. Shukla had designed. It remains an analysis of each article of the Constitution. The book starts with an introduction by the editor. The introduction is divided into three parts:

- i. Historical retrospection
- ii. Fundamental Aspects of the Constitution
- iii. Interpretation of the constitution

This is followed by commentaries on the Preamble, the successive parts of the constitution and the schedules to the constitution. The schedules are followed by Appendices which contain the Constitution Amendment Acts, starting from The Constitution (Seventy-fifth Amendment) Act, 1993 to the Constitution (Ninety-fourth Amendment) Act, 2006.

In his 'historical retrospection', Prof. Singh highlights an interesting feature of the history of constitutions, especially those of formerly colonized countries. These constitutions both represent a break from the past, and yet cannot be entirely disconnected from it. Here he touches upon the interesting academic debate of the relationship between revolutions and the continuity of law, though he does not indicate the arguments on either side of the debate. He proceeds by accepting that revolutions do not change legal realities overnight. In the context of the Indian Constitution however, the academic debate on continuity of certain legal and constitutional traditions may have potentially explosive political issues lurking in the shadows. Provisions for special protection to scheduled areas and even to sections of the population based on communal lines bear resemblances to the colonial communal awards. Often they are accused of being policies with colonial overtones. Engagement with these kinds of arguments is not found in the retrospection. Such engagement may not be the purpose of the retrospection, but examining the history of our constitution by interrogating possibly unconscious remnants of colonial designs would certainly add evaluative content of political and legal relevance. For critical legal scholars, interrogating the interpretive constructs of the constitution would definitely add value to the book.

The retrospection nonetheless gives a crisp recap of the legally significant events during British rule over India, thus enabling students of constitutional law to view the constitution in a much needed historical perspective. It would also make the idea of promoting interdisciplinarity in legal education real. The fact that one of the leading commentaries and text books of constitutional law starts with a section on colonial legal history provides space for teachers to promote the idea of such an interdisciplinary approach. Traces of using other disciplines for explaining constitutional provisions are also found in later parts of the book, a prominent example being the use of political philosophy to initiate the discussion on the right to equality.

The two following parts of the introduction seem to perform a two-fold function. First, they could act as an orientation for readers who are new to Indian constitutional law. In simple language, Prof. Singh introduces readers to fundamental aspects of the constitution, at the same time highlighting its complexities without being simplistic. The perspectives he advocates in the second part of the introduction resonates throughout the book in chapters dealing with the corresponding issues. Secondly, it would be fruitful for readers to go back to this part when they are unable to figure out the editor's view on any of the issues. Very often readers might feel that in describing the current position in law, the book prescribes a particular position or vice versa. Such instances are found in the commentary on the articles dealing with Indian federalism, equality and the Directive Principles of State Policy. In all three instances it seems that Prof. Singh is stating what the position in law is. However, if these parts were read with the introduction in mind, one would see that more often than not his own views are reflected in the decision of the Supreme Court of India. This however does not suggest that he has agreed with the court. Rather, references to earlier pieces of his, reflects some exchange of ideas between the Court and, leading academics over the years. These references also bring out the fact that the task at hand for Prof. Singh was to offer a comprehensive description and analysis of the different parts of the Constitution rather than thoroughly examine any specific issue. Nonetheless, the book summarises the views of the editor and other leading scholars on important constitutional issues. It serves as a good updated resource for researchers to find relevant cases, materials and ideas on most if not all significant issues in Indian constitutional law.

The pattern of analysis would cater to both undergraduate law students and researchers. Like in the earlier editions, first the language of the provision is discussed, followed by a chronological analysis of cases and then the editor's opinion on the position in law. Cases are explained by briefly providing the facts which highlight important issues, stating the decision of the court often mixed with the editor's opinion on the decision. This pattern coupled with the book's comprehensive account of constitutional developments explains its enormous popularity as a text for studying and teaching constitutional law.

Its popularity as a text does not undermine its role as a commentary for academics, practitioners and judges. In the preface to the eleventh edition, the editor has pointed out instances where the book has been cited in judgments of the Supreme Court of India and courts abroad. I however, stick to my opinion that owing to the quantum of materials, the task undertaken by the book is to provide a comprehensive analysis of developments in constitutional law. It is pitched at a level which is accessible to undergraduate students and at the same time is a rich source material for researchers. It is only on selected issues of importance that the book contributes to contemporary debates in the academia, e.g., fundamental rights, secularism, the basic structure of the constitution and federalism.

In conclusion, the book does justice to the vast field covered and the purpose I have tried to read in to it. It does so, by restricting itself to

description and analysis for the most part and foraying into evaluation and prescription on a few selected issues. To have a commentary on the Indian constitution which is comprehensively descriptive and analytical; and at the same time a fair evaluation with credible and responsible prescriptions, would require more than one volume on the quantitative side alone. The book being reviewed does not aim to be such a commentary; rather it is sensitive to the requirements of Indian legal education and research.

A COMMON THEME?

The book seems to agree with the Supreme Court in *Ajay Hasia*'s¹ case that the principle of reasonableness is the golden thread running through the constitution. However, the independent constitutional status of this principle and the court being the conferrer of such status indicates, what I feel, is the common thread that runs through most discussions in the book. This is the idea of the supremacy of the constitution and the preserve of the judiciary to state what is supreme when the constitution is ambiguous or silent. These claims to supremacy are severely contested in both law and politics and the book is not unaware of it. That is why at places where it matters the most, it strikes its roots in an interpretivist theory of law, making the principles of constitutional supremacy sensitive to some 'eternal' values of dynamic nature. The evidence is found in all the issues where the book evaluates and prescribes. I briefly comment on two.

Running through the introduction to the discussions on the basic structure, the editor clearly states that the constitution is supreme and that the parliament must exercise all its powers within the boundaries of the constitution, including the power to amend the constitution. In the Introduction, the position is argued for on the ground that all organs and institutions of the state have their origins in, and derive their powers from, the constitution. Without prejudice to the soundness of the argument, it would have been fair if some arguments contesting this position were engaged with in the introduction. This would give students of constitutional law a fair idea of the different positions that exist. For a researcher however, such ideas with reference to judicial decisions and academic writings are found in many sections of the book. In the elaborate discussion on the basic structure doctrine, the book clearly points towards larger values from which these principles derive, and for the realization of which these principles exist as instruments. The ideas in these parts of the book seem the closest to Ronald Dworkin's interpretivism, where the principles of law are sensitive to values, the values themselves being sensitive to changes in society.

The liaison with interpretivism continues with the discussions on federalism. The editor rejects the idea that the constitution of India can be viewed either as a unitary or a federal one in conventional terms. He is comfortable with the idea of a division of powers with a unitary bias. Surprisingly however, in

¹ *Ajay Hasia v. Khalid Mujib Shehnavardi*, (1981) 7 SCC 722.

dealing with the cases with regard to the idea of federalism he seems to be advocating more power to the states. This is not done in unequivocal terms, but by tacit approval indicated by the space allocation for different positions. Provisions like the emergency powers are justified as devices employed for preservation of the constitution. The book restricts itself to describing the Indian arrangement as a 'distinctive federation'. The states and the Union are not viewed as rivals and it is suggested that they are unlikely to be so in the future. The evidence cited in support is the functioning of the present arrangement since the constitution was adopted. This functioning is suggested to be a successful one and thus no radical change is warranted by the history of our constitutional arrangement. The indication seems to be towards a mode of decision making where changes come by way of dialogue and consensus resulting in development of healthy practices rather than strict and inflexible doctrines, relying more on principles than on rules. The picture may seem rosy when painted with legal materials and narratives from the state. But it can be said to be a true one only if backed by narratives from areas and populations who have not got a fair deal from the Union e.g., the states in the north-eastern region and Jammu and Kashmir.

It is unfair on my part to subject the book to criticisms coming from political and developmental considerations; after all, it is a book on constitutional law! However, a host of constitutional questions thrive at the borders of law and politics and thus, it would not only be fair to introduce some political element to them, rather it may further the cause of interdisciplinarity as a desired objective. It is also unfair to engage in criticism in so cursory a manner, but the continued levy of this particular criticism on a particular line of arguments, including of that taken by the book, at least deserves some serious engagement as a constitutional issue rooted in politics.

Overall, the book maintains the legacy that it inherits. The new edition preserves all the elements that made the previous ones a success, and introduces dimensions which strengthen its position as a quality repository of information and ideas on Indian constitutional law. It does justice to its purpose and field and thus preserves the niche that it has acquired over the successive editions.

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