

THE CONSTITUTIONAL LAW OF INDIA. (9<sup>th</sup> EDITION, 2010).  
By Kailash Rai, Central Law Publications, 107, Darbangha Castle,  
Allahabad-2. Pp. lvi+812. Price Rs.300.

THE CONSTITUTION of India is the supreme law of the land. It is an organic and living document. It lays down the basic framework and the fundamental principles, defines the powers and duties of the government and spells out fundamental rights and duties and the directive principles of state policy (DPSP). It came into effect on 26<sup>th</sup> January 1950. Till now, it has been amended 94 times which shows that efforts are being made to make the Constitution more energetic and alive to the changing needs and circumstances. Since independence, India has seen major socio-economic changes, keeping pace with the globalization and liberalization which has made the country one of the most powerful emerging economies of the world. This globalization is affecting not only our economy but also social and cultural values. In this era of global laws, where many times the country is compelled to legislate under international pressure, we are trying to accommodate ourselves through legal and economic reforms. Being supreme law of the land, immense pressure is likely to be felt by the Constitution which is the chief regulator and also the powerhouse for all the laws.

The concept of basic structure evolved in *Kesavanand Bharti v. State of Kerala*<sup>1</sup> continues to apply in the interpretation of constitutional amendments but new branches coming out from this root are posing new challenges before the judiciary and the legislatures in establishing an equilibrium among different conflicting interests of such a huge and multicultural population. Increasing socio-economic disparities among different classes, evils of castecism and communalism, corruption, illiteracy, inequality and lack of sustainable development are few among many challenges before the establishment of constitutionalism.

Among these changes, a number of books and commentaries have been written by eminent jurists to explain the constitutional provisions and the efforts of the judiciary to establish constitutionalism in this rapidly

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1. AIR 1973 SC 1461.

changing time. Kailash Rai has made a similar effort by authoring a book on constitutional law of India which has run into the present ninth edition.<sup>2</sup> This book includes almost entire Constitution, divided into 43 chapters. The first chapter discusses the historical development of the Indian Constitution which is quite informative in so far as the background of Constitution is concerned. This chapter would be very helpful to the first time readers.

Chapter 2 is devoted to a discussion of the nature and kinds of Constitution, while chapter 3 and 4 deals with the nature and features of the Indian Constitution. In his discussion, the author has given references of the foreign Constitutions particularly those of U.S. and U.K. The reviewer feels that author has grossly neglected the importance of Constituent Assembly Debate at many desired places which is a very important key to open the mind and thoughts of makers of the Constitution. The thoughts of eminent jurists like Seervai is also ignored, though it became part of the judgment of the Supreme Court in *S.R. Bommai v. Union of India*,<sup>3</sup> while discussing the nature of the Constitution. Though the author has briefly given an idea of cooperative federalism (pp. 46-48), he is completely silent on the concept of neo-federalism which is a new concept to redefine the centre-state relations in the changing circumstances like the establishment of National Investigation Agency and proposed bill on goods and services tax. The author has also not mentioned anything about the report of the new commission on centre-state relations established under the chairmanship of M.M. Punchhi J. Unfortunately, the reviewer does not agree with the opinion of the author that constitutionalism (pp. 65-66) is firmly established in India. The reviewer is of the opinion that law and justice are two different things and, though the country has voluminous body of laws, the justice delivery system leaves much to be desired.

Chapter 5 discusses the 'Preamble' but the discussion does not seem to be adequate. The author has mentioned the decisions in *In Re Berubari Union and Exchange of Enclave*<sup>4</sup> and *Kesavanand Bharti*,<sup>5</sup> but has failed to give the reasons the difference of opinion in both cases. While defining the term 'socialism', the author does not say anything about the mixed economy which is prevailing in the country since independence. Chapter 6 deals

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2. Kailash Rai, *The Constitutional Law of India* (9th ed., 2010).

3. AIR 1994 SC 1918.

4. AIR 1960 SC 845.

5. *Supra* note 1.

with 'Union and its Territory'. In this chapter, the provisions of the Constitution are not properly explained. Some leading cases relating to territorial integrity like *In Re Berubari Union*, which related to cession of Indian territory to Pakistan and *Union of India v. Sukumar Sen Gupta*<sup>6</sup> relating to perpetual lease of *Teen Beegha* area by Government of India to Bangla Desh, importance cannot be ignored, are not adequately discussed.

Chapters 8 to 14 deal with 'Fundamental Rights'. The historical background is the fundamental rights has briefly been given by the author in the beginning. While discussing the concept of 'State' under article 12, even though the author has mentioned various cases, he is not able to discuss satisfactorily the changing dimensions of state and ambiguity created by none but the judiciary itself while interpreting it. Many recent important cases like *Arun Kumar v. ICFAI University*<sup>7</sup> were not noticed by the author in this chapter. Though articles 14, 15 and 16 are discussed in detail, the author has again failed to notice some recent important cases, e.g. *Dr. Gulshan Prakash v. State of Haryana*<sup>8</sup> and *Avinash Singh Bagri v. Registrar, IIT, Delhi*<sup>9</sup> to make the book more updated and informative. The effort of the author in discussing contemporary issues in detail like 'Media Trial' and 'Right to Information' is praiseworthy. While discussing article 20(3), it seems the author deliberately avoided his own views on the controversial issue of narco analysis, brain mapping and lie-detector tests, which has now been settled by the Supreme Court in *Selvi v. State of Karnataka*.<sup>10</sup> Article 21 is also discussed in detail and in coming days, this article is going to be further strengthened by some new legislations.<sup>11</sup> Article 21A, 'Right to Education' is not mentioned in the fundamental rights but finds place in DPSP which is quite inappropriate. While discussing the directive principles of state policy, a very important but controversial article 44 - uniform civil code - has barely been touched without any discussion.

Chapter 17 deals with 'Union Executive'. The comparison of the powers of Indian and American Presidents adds good flavour to the book but the discretionary powers of the President of India is not properly

6. AIR 1990 SC 1692.

7. AIR 2009 (NOC) 2860 (UTR).

8. 2009 (14) SCALE 290.

9. (2009) 8 SCC 220.

10. AIR 2010 SC 1974.

11. See, for instance, the National Green Tribunal Act, 2010, the Protecting Children from Sexual Abuse Bill, 2010 and the Protection of Women Against Sexual Harassment at Work Place Bill, 2010.

discussed. Chapter 20 deals with 'State Executive'. It would have been useful to compare the discretionary powers of the President and the Governor. Though author has mentioned about the Sarkaria Commission but not in this chapter despite of the fact that very important suggestions were given by the commission regarding the appointment of the Governors.

Chapter 19 deals with 'Union Judiciary'. The reviewer is in full agreement with the advice of the author that the judges of the Supreme Court should not hold any office after their retirement including the chairmanship of any commission/tribunal to make the highest judiciary absolutely unbiased. The author, however, does not give any opinion on the tainted judges like Dinkaran, Nirmal Yadav and Sen JJ who are still enjoying the chair and maligning the image of the judiciary. The author is again silent on the question of judges' accountability and the Judges Accountability Bill, 2010. Chapter 22 deals with 'State Judiciary'. The reviewer is of the opinion that *Shanti Bhusan v. Union of India*,<sup>12</sup> should have been discussed in this chapter. In this case, the Supreme Court had held that the appointment of an additional judge of a High Court as a permanent judge of the court on the recommendations of the Chief Justice of India without consulting the *collegium* was valid. In this chapter, the discussion of various writs and the comparison of powers of the High Courts under article 226 and that of the Supreme Court under article 32 is quite informative.

Chapter 32 deals with 'Trade, Commerce and Intercourse'. Though it is one of the most important topics which deals with freedom of trade and commerce throughout India to make the country a single economic unit, the way in which it is dealt by author is somewhat disappointing. All the provisions are very briefly explained and many important cases are either not at all mentioned or not properly discussed. The decision in *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*<sup>13</sup> case is not at all discussed though this was the first revolutionary judgment to establish the concept of 'regulatory measure' and 'compensatory tax'. Many other important cases like *Jindal Stainless Ltd. v. State of Haryana*,<sup>14</sup> *M/s. Video Electronics (Pvt) Ltd. v. State of Punjab*<sup>15</sup> and *Shree Mahavir Oil Mills v. State*

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12. 2008 (15) SCALE 647.

13. AIR 1962 SC 1406.

14. AIR 2006 SC 2550.

15. AIR 1990 SC 820.

of *J & K*,<sup>16</sup> which deal with compensatory tax and discriminatory taxing policy of the state have not been noticed in the book. This is a major drawback in the book.

Overall book is good but to make it more contemporary, informative and relevant, latest cases and other constitutional developments should be properly discussed. At appropriate places, the Constituent Assembly Debates should also be incorporated. Relevant facts of important cases and a summary of the law laid down in them should be given in the text to enable the reader to better understand the subject. Important provisions of the Constitution should be given proper analysis.

It would also be very useful for the reader to know the opinion of the author on controversial issues which the author has avoided in the present edition. Despite the above comments, the book is a welcome addition to the subject and it is hoped that it will help the reader in developing a better understanding of the subject.

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16. (1996) 11 SCC 39.

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