



REVIEWS

ASPECTS OF INDIAN CONSTITUTIONAL LAW. By G. N. Joshi. Sir Chimanlal Setalvad Lectures (First Series, 1964). Bombay University Press. Distributors P. C. Manaktala & Sons Private Limited, Churchgate, Bombay. pp. ix+237. Rs. 12. 50.

IN A COUNTRY where legal writing is largely confined to commentaries on codes, and on acts of the legislature, a book of topical analysis like Mr. G. N. Joshi's is a welcome addition to the literature of constitutional law. Mr. Joshi's long experience with India's constitutional development, and the depth and quality of his understanding of its problems, greatly enhance the value of the book and make it necessary reading for anyone who wishes to acquire a critical and dependable knowledge through a small book. The task of presenting so briefly a simple and yet evaluative survey of a complex and overflowing subject like constitutional law is a very difficult, if not an altogether impossible, task and can only be handled by an expert. This little book, with some adjustments and explanatory notes, could be a stimulating book on Indian constitutional law. The special characteristics of the Constitution, the amending process, the emergency provisions, the fundamental rights, legislative, financial and administrative relations, trade and commerce, the role of the judiciary, and its rules of interpretation are all sought to be covered in 234 pages of an octavo volume.

In view of this very broad canvas of Mr. Joshi's work, it is not surprising that he has been unable to carry his analysis to the depths he seems to be capable of, or even to support and illustrate the valuable generalizations he makes as he goes along. At page 30, after quoting the Supreme Court's view¹ of the relationship of the fundamental rights and the directive principles, Mr. Joshi comments :

One feels that the view taken by the Supreme Court of the true scope and function of the directive principles of State Policy under the scheme of the Constitution, is narrow and restrictive, and ignores the mandate of the Constitution, that the directive principles are fundamental in the governance of the country.

But he does not give his own suggestions as to what would be a proper view to take of this relationship. In the 37 lines of print that follow the above passage, although he explains how the Court has used the directives in spite of its "holding," he neither indicates that he has softened his criticism nor attempts to offer any model of the relationship himself.

At pages 59 and 60 Mr. Joshi says :

One feels that had the Supreme Court construed article 31(2), keeping in mind that it was construing a Constitution or the organic law under which

1. *Mohd. Hanif Quereshi v. The State of Bihar*, [1959] S.C.R. 629, 648.



laws are made, and the broad language of the provision, and not put a literal construction, the curtailment of the right to property to the extent to which it is done could have been avoided.

This observation is made by the author while commenting on the amending process. But even when he deals with the right to property (pages 119 to 125), he gives no illustrations or explanatory comments in support of this generalization. One may be inclined to agree with the generalization, but the evaluation it contains needs to be spelled out in a brief examination of the cases—particularly the *Kochuni* case² and the cases thereafter.

Again, at page 184, referring to *Bengal Immunity Co. Ltd. v. The State of Bihar and Others*,³ where the Supreme Court reversed its previous decision on article 286, Mr. Joshi observes :

One feels that the Supreme Court will have to reconsider some of its judgments. Some of its judgments when read in the light of other judgments, appear to be incoherent. At times one finds it a bit difficult to reconcile all the judgments dealing with the same article delivered by the different Benches of the Court.

It may be that this comment represents an opinion formed after careful reading of the cases but it would have been more helpful for judicial caution, as well as for legal research, if Mr. Joshi had identified the areas of “incoherence” and given references.

The book contains many such remarks and generalizations. It is not possible to refer to all of them in a brief review.

Perhaps the special merit of this book lies in its presentation of the Indian Constitution as a historical growth in response to the needs of the people and the times. The author briefly but ably refers to the factors which made the Indian Constitution a *sui generis* one. This part of the book contains some very well adjusted passages from Indian constitutional and historical records. Mr. Joshi clearly shows that the Indian Constitution can only be properly understood and appraised in the light of a long experience with unitary government, the sheer externality of the federal division of powers between artificially created autonomous provinces, and a desire to provide for the possible emergence of disruptive forces in future with the rise in literacy and greater democratization of the social process.

According to Mr. Joshi⁴ there have been only three important cases in which the question of respective powers of the union and the state was raised. On the basis of this evidence he says that the scheme of

2. *K. K. Kochuni v. State of Madras*, [1960] 3 S.C.R. 887. For a controversy as to the effect of the case see Narain, “Deprivation of Property and the Right to Hold Property under the Indian Constitution: A Study of the *Kochuni* Decision,” 6 *J.I.L.I.* 410 (1964); and Rekhi, “The *Kochuni* Decision: A Rejoinder,” 8 *J.I.L.I.* 111 (1966).

3. [1955] 2 S.C.R. 603.

4. At 141.



distribution of legislative powers has worked very well, as it has fulfilled the expectations of the framers of the Constitution that it would minimize litigation. Perhaps this is too hasty a generalization. Other reasons could be advanced for lack of cases in this area. The very reasons which Mr. Joshi advanced in support of his point of view that the federation of India was an artificial creation could be used to suggest that the states have yet to outgrow their past experience and attain their own distinct status before venturing to bring more cases in this area. It is also possible that the lack of court cases results from the existence of other extra-legal institutions which Indian political practice has developed, and through which conflicts are routed to a more amicable solution. Given the fate of recent state property legislation in the courts, and more particularly the tensions generated by the recent controversy between the courts and the legislature, the experience of the states of the union would not provide a climate conducive to an increase in court cases in this area.

On a general review of the legislative powers of the union itself, Mr. Joshi feels that the powers are adequate⁵ and that

all that is necessary is that the Centre should act promptly without hesitation to exercise them readily and effectively, mindful only of the vital and basic need—unity of the country—without which there is no possibility of making any progress towards a national welfare State.

This exhortation of Mr. Joshi to the centre or the union government has a rather ideological flavour. He assumes that the existence of powers alone is enough. But powers have to be exercised not in a vacuum but in a socially alive milieu where various groups and subgroups are exercising innumerable pressures on the leaders who man the government. The exercise of their power is limited by two main factors. One relates to the basic urgencies and dictates of the survival and the continuance of the party in power. Thus nothing must be done to make the party unpopular. The other is the limitations of the democratic process, which presupposes that only the resulting compromises can be implemented in political action, and not ideologies however necessary and desirable. Even a small approximation towards the implementation of ideologies would assume a high degree of literacy, intelligence and social conscience in the Indian community. This social transformation is a dream. Perhaps a beginning towards its realization could be made if the values which the Constitution embodies could be made more communicable to various groups and subgroups of the Indian society. This leads one to suggest that the great constitutional experience of Mr. Joshi and his mature scholarship could have been more helpfully utilized for this communication process if he had been requested to confine himself to a monographic study of any one of important

5. At 147.



aspects of the Constitution of India. There are in this brief but wide survey many mature observations. Any one of these fully examined and documented would itself be a great and abiding contribution.

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INTERNATIONAL LEGAL CONTROLS ON PRODUCTION AND USE OF NUCLEAR ENERGY. By J. M. Sethna. Bombay: Kothari McDuneil and Company. 1966. Pp. xv + 125. Rs. 15/-.

HUMANITY IS FACED today with an unparalleled challenge. The fantastic scientific and the technological developments, the invention of thermo-nuclear weapons capable of shattering the globe, the continued bipolarization of the world, the precarious "balance of terror" between the two groups, and the resulting tension between states, have all brought the world on the verge of a possible nuclear holocaust which, if it ever comes, is bound to be catastrophic. Every man, woman or child today "lives under a nuclear sword of Damocles, hanging by the slenderest of threads, capable of being cut at any moment by accident or miscalculation or by madness."¹ There is little doubt that these "weapons of war must be abolished before they abolish us."² World peril today has become every man's responsibility.

It is in response to this call of duty and responsibility that the author addresses himself to the most difficult and baffling problems relating to disarmament and legal controls of nuclear energy in this small but interesting book. He discusses in different chapters the various proposals of the nuclear powers regarding disarmament,³ establishment of the International Atomic Energy Agency,⁴ international agreements for promoting and ensuring the peaceful use of atomic energy,⁵ banning of nuclear tests and the effect of Nuclear Test Ban Treaty of August 5, 1963,⁶ need of inspection for any meaningful disarmament,⁷ international legal sanctions to ensure the use of atomic energy for peaceful purposes and prevent its diversion to military objectives⁸ and socio-economic uses of atomic energy.⁹

But while the interest of the author in these difficult problems is laudable, his treatment of the subject is disappointing. Apart from

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1. President John F. Kennedy, "Address to the U. N. General Assembly on September 25, 1961," in *John F. Kennedy Speaks* 34 (U.S.I.S. New Delhi 1963).

2. *Ibid.*

3. Introduction, Chapter I.

4. Chapter II.

5. Chapter III.

6. Chapter IV.

7. Chapter V.

8. Chapter VI.

9. Chapter VII.