THE EVOLUTION OF THE INDIAN CONSTITUTION. By T. L. Venkatarama Aiyar, University of Bombay. First Ed. (1970) pp.x+132.

The Sir Chimanlal Setalvad Law Lectures by Mr. Venkatarama Aiyer, a former judge of the Supreme Court, are in a lucid and expressive style and reflect the profound legal scholarship, clarity and distinctive judicial philosophy of the learned author.

The learned author rightly points out in the preface that the Government of India Act, 1935 was taken as the basis of the new Constitution. As was very aptly observed by Seervai :

> A review of the provisions of the Constitution of India may have impressed a reader...with the stranger destiny of the Government of India Act, 1935. Little could the framers of that Act have dreamt that in the Constitution of a free India they would find the greatest monument of their drafting skill and constitutional insight.[1]

Lecture One deals with the evolution of the Indian Constitution tracing the constitutional development since 1600 very briefly. It is worthwhile to note that the Government of India Act, 1935 failed to satisfy the Indian leaders, and Pandit Nehru characterised it as "a new chapter of bondage."[2], but the same document was accepted as the basis of the Constitution of free India. Why? The learned author fails to give a convincing answer. Many of the problems that have arisen in recent times are traceable to this strange anomaly.

Lecture Two, entitled "Indian Constitution and Federation", deals with the basic elements of a federal polity, and in a text-book fashion refers to the conflicting views of various constitutional writers about the nature of the Indian Constitution. Aiyer rightly concludes that in normal times the constitution is a federal one.

It is however difficult to accept the assertion of Mr. Aiyar that our Constitution is "one of the most carefully drafted Constitutional documents, and that is proved by the fact that it has worked very well in practice over two decades".[3] This is assailable by the learned author's own assertion that the Constitution worked so well not on account of the fact that it was an excellently drafted work but "because the Congress which enjoyed the highest prestige as the party which had won independence, was in power both at the Centre and in the States,"[4] and, therefore, there were few conflicts in Centre-State relations.

Agreeing fully with Prof. Wheare that "a federal constitution may in

---

1. Seervai, *Constitutional Law of India,* 78 L.Q. Rev. 388 at p. 406 (1962).
2. T.L.V. Aiyar, *The Evolution of the Constitution* (1970) (hereinafter cited as *Aiyar*) at 13.
3. *Aiyer* at v-vi.
4. *Ibid.*

practice work in such a way that its Government is not federal"[5], the learned author has devoted one lecture to an important aspect of the Constitution —"the working of the Constitution." He pertinently refers to the setting up of the Planning Commission and the National Development Council and observes that it is "in keeping more with unitary than a federal Government." The position of the Planning Commission is more or less that of a super-cabinet over the entire Indian Federation. The reviewer is of the view that the drafters of the Constitution were fully aware of the necessity and desirability of the establishment of such a body; and they were fully aware of the fact that they were establishing a federal polity which will have a strong centre. A mere reading of the preamble of the Constitution confirms this, for it envisages the establishment of a "Sovereign Democratic Republic" and not a federation.

The learned author has tested the constitutionality of the Planning Commission and he rightly concludes that the Union Parliament is legally competent to enact a law under entry 20 of List III in Schedule VII of the Constitution, "Social and economic planning", establishing a Planning Commission, and even if the Commission was established without any law being enacted its setting up was valid because the executive power of the Union is co-extensive with its legislative power.

It will not be out of place to mention here that in the recent cabine reshuffle the Ministry of Planning has been reorganised and the Planning Commission will now work as one of its departments. The criticism of the Commission as being a super-cabinet is now, therefore, not tenable.

The fourth lecture is on "The Constitution and Conventions" wherein the learned author poses a question "What is the place of Conventions in the Constitutional law of India"? and tries to answer it. The conventions, he is correct in asserting, have a place in the working of the Constitution. Prof. Alexandrowicz in his book *Constitutional Development in India* has examined this aspect of the matter in a more effective manner. He is of the view that "Parliamentary and Cabinet Government in India in its entirely is inconceivable without conventional rules outside the body of the Constitution."[7]

Another question considered in this lecture is whether the President under the Indian Constitution is the head of a parliamentary form of Government as in Great Britain, or of a Presidential form of Government as in America. Mr. Aiyer quotes with approval the decision of the Supreme Court in *Ram Javaya* v. *State of Punjab* [8] that the President is a formal or Constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. But, in fact, the probelm is not so simple and the complexity of the problem is realised by the learned author himself when he expresses the view that the appointment of the Governor by the President should be considered "to be made by the President in the exercise

5. *Aiyar* at 47.
6. *Id.* at 66.
7. C.H. Alexandrowicz., *Constitutional Developments in India*, Oxford University Press (1957) at 140.
8. A.I.R. 1955 S.C. 549.

of his individual judgment."[9] It would have been more useful if the learned author had referred to other cases on the subject which have given a new dimension to the problem: *State of U.P.* v. *Babu Ram Saxena*,[10] *Jayantilal Amritlal* v. *F.N. Rana*,[11], *Rao Birendra Singh* v. *Union of India*[12] and *Narsingh Pratapsingh Deo* v. *State of Orissa*.[13] What the Supreme Court has done in some of these cases is in effect an atempt to draw a subtle distinction between the executive functions and powers of the President and his other constitutional functions and powers which have been provided for elsewhere than in articles 53, 73 and 77. The dictum in *Jayantilal Amritlal* v. *F.N. Rana* was based on the presumption that the word "functions" occurring in article 74(1) would denote basically the role of the President as head of the executive where the advice of the Council of Ministers was binding. But with respect to functions falling outside the scope of articles 53, 73 and 77, an objective approach was taken and with respect to such powers or functions the necessity or the binding force of ministerial advice was reduced to a vanishing point. It is easy to deduce that the President's power to issue a proclamation was an independent constitutional power, separate from the other powers exercisable by him as head of the executive and, therefore, no advice of the Council of Ministers under article 74 was necessary in case of exercise of the power under articles 352 or 356.

The President acting under article 124(2) may consult certain judges of the Supreme Court in the matter or appointment of judges of that Court. Article 217(1) makes provision for consultation by the President with the Chief Justice of India and the Governor of the State in the matter of appointment of judges to the High Court of that state. Article 324(4) provides for consultation by the President with the Election Commission in the matter of appointment and removal of the State Election Commissioners. All these are bodies other than the Council of Ministers from which the Constitution binds the President to take advice. The advice of these special advisory institutions must supersede the general advice, if any, of the Council of Ministers.

The discussion in lecture IV is without such elaboration with the consequence that the learned author's assertion that there is a good ground for leaving the appointment of the Governor to be made by the President in the exercise of his individual judgment, does not appear to be convincing.

Still another important subject has been dealt with in lecture IV—"Parliamentary privileges" under the sub-head "Legislature and Judiciary." In modern democratic societies the question of the relationship between the Courts and the legislatures has posed very difficult and delicate problems.

---

9. *Aiyar* at 77.
10. A.I.R. 1961 S.C. 751.
11. A.I.R. 1964 S.C. 648.
12. A.I.R. 1968 Punj. 441.
13. A.I.R. 1964 S.C. 1793.

There appears frequently an inherent conflict in their roles, the one legislating for the better ordering of society and the other umpiring the implementation of that legislation within the bounds of fundamentals of natural justice preventing arbitrary action. This balance becomes much more delicate in countries where the Constitution itself embodies a certain area beyond the reach of the legislatures themselves and where the need for a a complete transformation of society from the traditional to the modern calls for continuous action. *Keshav Singh's* case was a sad and unfor tunte culmination of that process.

Mr. Aiyar is correct when he observes that "it will be unsafe to accept the English Parliamentary conventions as straightaway applicable to Indian Legislatures without ragard to the conditions which exist under the Constitution."[14] The law of parliamentary privileges is still in a nascent state in India. The learned author has been successful in making out a strong case for codification of the privileges of legislatures. There is an urgent necessity for carrying on research in various directions. One of them is the bearing of the English precedents in relation to the provisions of our Constitution. It is inevitable that many of the parliamentary rules and practices evolved under the unwritten Constitution of England, which itself rests on the sovereignty of Parliament, will have to be modified to be in line with the express injunctions of the Indian Constitution. Legal fiction cannot introduce historical facts from one country to another.

Lecture V is on "Fundamental Rights—The Seven Freedoms, Religion and Religious Establishments." The stamp of judicial experience and insight is the characteristic of the treatment of this subject. In a masterly manner, though within a brief compass, the learned author undertakes a comparative study of English, American and Indian Constitutions. The task is accomplished successfully. The only surprising omission is the right to property. It deserved a treatment at the skilful hands of one who adorned the Bench of the highest court in the land.

The last lecture is entitled, "Fundamental Rights—Judicial Review—Directive Principles of State Policy—Amendment of the Constitution—Conclusion." Judicial review has been allotted just a page, wherein the learned author succinctly concludes that while the power of judicial review exists both in American and in India, in the former it rests on an interpretation of the Constitution by the judiciary, in the latter it is enacted in the Constitution itself.[15] Under the sub-head "Directive Principles of State Policy," Mr. Aiyer has very well brought out the constitutional utility of the 'Directives' inasmuch as they help the Courts in constitutional interpretation. They provide a framework for the State policy and outline the aims and aspirations towards which the national endeavour has to be oriented. Almost all provisions of law are susceptible to more than one interpretation. In cases of doubt or conflict the Directive Principles can be helpful in giving guidance in resolving them.

14. *Aiyar* at 84-85.
15. *Aiyar* at 110.

Under the sub-title "Amendment of the Constitution" the learned author boldly points out that Parliament has the legal competence to amend the provisions relating to Fundamental Rights. The majority in *Golak Nath's* case feared that if the present trend of curtailment of individual liberties by the Parliament was permitted a time might come when we would gradually and imperceptibly pass under a totalitarian regime. This is a political argument and should not have been taken into account in interpreting article 368. The Supreme Court itself has declared repeatedly that the possibility of abuse is not to be used as a test of the existence or extent of a legal power.[16] In the last analysis legal quibbles and artificial limitations will not protect the people from themselves.

The get-up of the book is attractive and the printing is excellent. There is hardly any printing mistake. Mr. Aiyer's learned lectures deserve grateful thanks of teachers and students of Indian Constitutional law who are bound to be benefited by this learned work. These lectures are rich in original and striking ideas. This searching analysis of the various aspects and distinguishing features of the Constitution of India is another significant addition to the literature on Constitutional law for which not only the learned author but the University of Bombay also deserve compliments.

*D. C. Jain**

16. *State of West Bengal* v. *Union of India* (1964) I S.C.R. 371 at 405.

* M.A. LL.M., Ph.D., Reader, Faculty of Law, University of Jodhpur.