

LAW OF THE INDIAN CONSTITUTION. By P.S. Atchuthen Pillai.
Rajan Brothers (Trustees), Trivandrum. 1972. Pp. xxviii+903+xi.
Rs. 33.

SINCE THE commencement of the Constitution of India on 26 January 1950, many treatises have appeared covering all the aspects of constitutional law of India. The book under review¹ is yet another contribution to the existing literature on this subject. The book is written by an author whose other works include contributions to various fields of law, *e.g.*, torts, crimes, evidence and jurisprudence. The present book is the result of lectures which the author had delivered to the students of LL.M. and LL.B. classes. In preparing the book, the author has taken much assistance from the works of Messrs. Jain, Seervai, Subba Rao and Sen. At almost all relevant places the author quotes important provisions of the constitutions of other countries, mainly of the United Kingdom, Ireland, United States and Australia. Observations and opinions of foreign authors, wherever necessary, have been given. The author has also discussed important cases decided by Australian Supreme Court, U.S. Supreme Court and British House of Lords and Privy Council.

The book is not an article-wise commentary on the Constitution of India. It purports to be a "readable text book on our Constitution".² The whole material is discussed in XL chapters arranged by the author in his own way. Some of those chapters have been discussed in a lively manner, *e.g.*, chapters relating to services, citizenship, right to religious freedom and cultural and educational rights, Parliament and state legislatures and union and state executives. But the arrangement of the topics for discussion followed by the author does not seem to be sound. It is not possible here to take up each and every chapter and discuss it but a few chapters are being taken in view of their importance.

The author has discussed the most important provisions of the Indian Constitution relating to fundamental rights in eleven chapters running into 383 pages which is more than two-fifth of the total length of the book.³ Considering the importance of the topic, this length is justified. As to the arrangement of the chapters under the head, the author has mostly adopted his own arrangement. In the first of these chapters, author gives the general nature of the fundamental

1. Pillai, *The Law of the Indian Constitution* (hereinafter referred to as *Pillai* only).

2. *Id.*, Preface, i.

3. *Id.*, chapters VI-XVI, pp. 68-451.

rights with the help of an American case⁴ and touches upon briefly the provisions of *Magna Carta* and the Bill of Rights of England, the U.N. Charter of Human Rights and Weimer's Constitution of Hitler's Germany. A brief touch of these provisions is interesting. Then again, he tries to define fundamental rights with the most famous observation of Marshall, C.J., of the U.S. Supreme Court.⁵ But the author did not say anything regarding the nature of the fundamental rights under the Indian Constitution which must not have been out of place to discuss. Thereafter, the author proceeds to discuss the intricate question of the definitions of 'state' and 'law' as given under articles 12 and 13 of the Indian Constitution. As to the 'judiciary' being regarded as 'state', the author quotes the opinion of Seervai⁶ saying that recent view seems to be that it should be included. But since the author did not get any support for this statement from any Indian case, he gives certain hypothetical examples leaning on Seervai⁷. It may be observed here that such a belief is not sustainable as the Supreme Court has very emphatically ruled :

But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19 (1). What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind it would be plain that the judicial verdict pronounced by Court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Art. 19(1)⁸.

Even assuming that a judge does not exercise his discretion judicially or makes discrimination in certain matters, the proper remedy for the aggrieved party would be, as observed in the same case,⁹ to go in appeal and not under article 32 or 226 to enforce a fundamental right as Seervai or the present author thinks.

4. The observation of Mr. Justice Field in *Butchers' Union Etc. Co. v. Crescent City Etc. Co.* 111 U.S. 746 at 757 (1883). The author has not given the proper citation of the case which is very troublesome to the reader. The author has also not given the quotation verbatim as in the end of the quotation author puts "deriving their just powers from the *Government of the concerned*" whereas it ought to have been put as "deriving their just powers from the *consent of the governed*."

5. *Marbury v. Madison*, 2 L. Ed. 60 (1803).

6. Seervai, *Constitutional Law of India* 155 (1967).

7. *Id.* at 745.

8. *Naresh v. Maharashtra*, A.I.R. 1967 S.C. 1 at 11. Dr. M.P. Jain has taken the same view. See Jain, *Indian Constitutional Law* 477 (1970).

9. *Naresh v. Maharashtra*, *supra* note 8.

The right of equality has been discussed by the author,¹⁰ as by Seervai,¹¹ in two chapters. The first chapter covers article 14 and cases decided thereunder and the second chapter covers articles 15-18. The re-drafted article 14 by Seervai¹² has been considered by the author as "masterly correct statement of the law derived from the authoritative decision..." It might have been better had the author given his reasonings also. The author discusses in detail the cases decided by Indian courts regarding legislation applicable to one person, special courts; administrative discretion, State Bank cases, tax cases and cases regarding educational institutions. But here again, the author has omitted to discuss the important decision of the Supreme Court, *viz.*, *R.C. Cooper v. Union of India*.¹³ That case also involved the question of discrimination between the owners of the nationalized and non-nationalised banks and the impugned statute was invalidated by the Supreme Court, among under other articles, under article 14 also.

The author has discussed the cases under article 19 of the Constitution in detail and has very aptly put the right to property guaranteed under articles 19(1)(f) and 31 to 31-B in one separate chapter.¹⁴ Similarly, article 19(1)(g) also has been discussed in a separate chapter.¹⁵ The discussion of these rights in separate chapters seems quite reasonable in view of their importance. The author, in the discussion of property rights, discusses the doctrines of police power and eminent domain and the relationship between articles 19(1)(f) and 31 with the help of all important cases including the latest case of *R.C. Cooper v. Union of India*.¹⁶ The only important decision left by the author is *Rajendra Singh v. Union of India*.¹⁷

The discussion of constitutional protection of the freedom of person is not adequate because of several reasons. There does not seem any usefulness of discussing this subject by bifurcating the whole subject in two parts and dealing with them independently.¹⁸ These subjects are: the protection of the accused persons in criminal cases and the rights of life and personal liberty. After all both these heads relate to the same subject, *viz.*, protection of the freedom of person. And further, the provisions of article 20 become applicable to a person who has already committed some offence whereas article 21 applies to a person who is likely to commit some prohibited act and also to a person who is already arrested for the purposes of that article. Secondly, the position of *ex-post facto* laws, double

10. Pillai, chapters VII and VIII, pp. 95-163.

11. Seervai, *supra* note 6 at 188 and 251.

12. *Id.* at 188.

13. A.I.R. 1970 S.C. 564.

14. Pillai, chapter X, pp. 228-302.

15. *Id.* chapter XI, pp. 303-319.

16. *Supra* note 13.

17. A.I.R. 1970 S.C. 1946.

18. Pillai, chapters XII and XIII, pp. 320, 333.

jeopardy and self-incrimination doctrines as applicable in other countries has either been left altogether or touched inadequately. It was most essential to discuss them and compare them with Indian position. The fundamental right against exploitation guaranteed under articles 23 and 24 of the Constitution have been dealt with by the author in such a way as if it were not a fundamental right at all. The only space which the author could spare for the discussion of this right is in the end of chapter XIII.¹⁹ Even the printing of the title 'Right against Exploitation' does not change the impression of the reader and a reader, who does not know that this is a separate right, will think this right to be a part of the right of personal liberty which is not a fact.

The topic of the position of Governors in the states has been dealt with in barely nine pages. The Governor's powers, which have assumed great importance and become most controversial since 1967 general elections, have not been adequately dealt with. The author ought to have taken different controversies arising in various states and discussed them adequately.

The discussion of directive principles in chapter XVII is reasonable except that the author ought to have supplemented his commentary on page 453 regarding the relationship of directive principles and fundamental rights by giving a supplement in the end of the book in view of the incorporation of a new article 31C in the Constitution (Twenty-fifth Amendment) Act 1971, which has very much changed the status of directive principles contained under article 39(b) and (c) and has also made ineffective the decision of the Supreme Court in *State of Madras v. Champakam Dorairajan*,²⁰ with a view to achieve the objectives of economic justice and checking monopolies and concentration of wealth and income.

Now coming in general to topics regarding governments—both central as well as state—in all its three organs, the arrangement of the author is as follows : Union Executive (chapter XVIII); Union Legislature (chapter XIX); Financial Matters; Money Bills (chapter XX); Rights and Privileges of Parliament and State Legislatures (chapter XXI); State Executive (chapter XXII); State Legislature (chapter XXIII); Ordinances (chapter XXIV); Union Judiciary (chapter XXXI) and State Judiciary (chapter XXXII). The arrangement does not seem proper. As the position, status and powers of the President in the centre and of the Governors in the states are almost the same; the election, procedure of business, powers and privileges and function of the Parliament and state legislatures are almost the same, the arrangement of the chapters could have been this : executive including both central and state governments; legislature including Parliament as well as state legislatures. The ordinance-making powers could be discussed in the chapter of executive. The privileges

19. *Id.* at 357-59.

20. A.I.R. 1961 S.C. 226.

of Parliament and state legislatures, discussed in a separate chapter in the book,²¹ could be discussed in the same chapter. Such an arrangement would have avoided repetition of the same subject at two different places. The distinguishing features could have been given at the same places.

The provisions regarding judiciary and judicial review have been discussed in three separate chapters.²² It may be suggested that the whole subject could have been discussed in one chapter including Supreme Court and High Courts and their powers, including powers to issue various types of writs, with the help of judicial pronouncements.

The next topic discussed by the author is the centre-state relationship in which he discusses in detail the legislative, administrative and financial relationships. For making his discussion lively and exhaustive, the author discusses the doctrines of extra-territorial operation, repugnancy, supremacy of union law over state law, immunity of instrumentality, plenary power of legislation, colourable legislation, delegated legislation and conditional legislation. The author has referred to foreign constitutions and judgements wherever necessary. Important decisions of Indian courts have also been discussed in detail. However, the observation of the author that "everybody will admit that Bharat or the Union of India is essentially a federal Government"²³ is not free from doubt as there is a difference of opinion on this point.²⁴ Secondly, it might have been better had the author discussed all the doctrines at one place and then started the discussion of other subjects like taxing powers and entries of the seventh Schedule. Lastly, the discussion of delegated legislation seems disproportionate. As this is a book of constitutional law and not of administrative law a very detailed discussion of this subject in a separate chapter ought to have been avoided.

The author has discussed the amending provisions of not only Indian Constitution with the help of latest amendments including 24th²⁵ and 26th but has also compared the provisions of the constitutions in this respect of the countries like U.K., U.S.A., Switzerland, Australia, Soviet Union, Poland and China.

21. *Pillai*, chapter XXI.

22. *Id.*, chapters XVI, XXXI and XXXII.

23. *Id.* at 566.

24. See Wheare, India's New Constitution Analysed 48 *All. L.J.* 21.

25. However, in making his book up-to-date, the author has overlooked the contradiction in his two observations. Thus at p. 844 the author, while giving the text of the Constitution (Twenty-fourth Amendment) Act 1971, says, "The Bill was passed by Parliament and received the President's assent on the 5th of November 1971, when it was passed by half the number of State legislatures in India." Immediately, on the next page, without modifying his commentary, the author says, "It is for that purpose that the bill is now being circulated amongst the States and when it is ratified by half of the State Legislatures it would become law." The contradiction is apparent.

The discussion of some topics goes out of proportion. Thus, historical background of the Indian Constitution and the history and introduction given in the beginning of almost each chapter, preamble of the Constitution and delegated legislation are disproportionate and could have been discussed in brief. The salient features of the Constitution also ought to have been mentioned.

The book is not a digest of all the constitutional law cases; only the important cases on the subjects have been discussed. However, it may be pointed out that at some places, some of the important cases have not been discussed at all. Thus, the Supreme Court's decisions in *R.C. Cooper v. Union of India*²⁶ (dealing, among other matters, with the President's ordinance-making power), *Rajendra Singh v. Union of India*²⁷ (dealing with the right of freedom to acquire, hold and dispose of property), *U.N. Rao v. Smt. Indira Gandhi*²⁸ (dealing with the question of the Prime Minister continuing in office after dissolution of the House of the People), *Union of India v. N.K. Private Ltd*²⁹ and *Zulam Singh v. Union of India*³⁰ (which deal with the procedural matters relating to conduct of business of the Government of India), *D.S. Sharma v. Union of India*³¹ (dealing with the rule-making power of President) have not at all been discussed at their relevant places. Even the decision of the Supreme Court in *Golak Nath v. State of Punjab*³² has not been discussed while discussing the definition of 'Law' under article 13. The omission of these cases brings out the inaccuracy of the discussion of the subjects. At places, cases have repeatedly been discussed and sometimes without any necessity.³³

There is not only the omission of important cases mentioned above but even the information of the author is not up-to-date. Thus the information about the number of states and union territories given in chapter IV is not up-to date. Even after mentioning the Constitution (Twenty-seventh Amendment) Act 1971, the author has failed to mention the latest position regarding the subject. So also, the provisions regarding contempt of court are contained in the Contempt of Court Act 1971 which could not be incorporated by the author as an appendix in the book.

The spelling mistakes, wrong usage of comma and colon and full-stops have been most frequent throughout the book and though the author

26. *Supra* note 13.

27. *Supra* note 17.

28. 1971 (2) S.C.C. 63.

29. I.L.R. (1971) 1 Delhi 355.

30. A.I.R. 1969 Delhi 285. See an interesting article of Mr. Justice V.S. Deshpande, *The President, His Powers and Their Exercise* 13 *J.I.L.I.* 326 (1971).

31. A.I.R. 1971 Delhi 250.

32. A.I.R. 1967 S.C. 1643.

33. For instance, the cases relating to the citizenship of corporations have been discussed at three places—pages 65-67, 166 and 303. The repetition could have been avoided had the author discussed all these cases only at one place, viz., while discussing art. 19(1) (g).

tries to correct them by giving errata,³⁴ he is not successful in his attempt because of the number of mistakes. The mode of citing cases is neither uniform nor correct. Citations have often been omitted. The observations and opinions of foreign authors have been given without citing their works or pages therefrom. Lastly, the author, in the end of the book, has given a general subject index but here again instead of numbering it from page 904 onwards, the author has numbered it i to xi, which is also the page number given in the beginning of the book covering preface, contents and table of cases and thus a confusion has been created by not distinguishing it.

The last thing that requires mention is that observations of the author are generally based not on his objective reasonings but on his subjective satisfaction which is based on the opinion of other authors.

The author has however put a good deal of labour in writing this book with the help of his long teaching experience and the book would be helpful to the students and others who are interested in having a grasp of the subject.

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34. *Pillai* at 901. The author has unfortunately failed to put the errata in the contents.

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