



LAND AND THE CONSTITUTION IN INDIA. By H.C.L. Merillat.  
Columbia University Press. 1970. Pp ix + 321 + index. \$ 10.

THIS IS a comprehensive, incisive and clear study of a very important phase of interaction between land and the Constitution in India. It traces the chequered history of the evolution of the institution of property through nearly twenty-five years of India's independence and seeks to identify its discernible contours not merely in the legal-constitutional context, but also through the relevant socio-political milieu. It is a thoughtful discussion of the controversial right of property in the context of other fundamental rights in the Constitution of India. Indeed, the Indian constitutional history of the right of property, as the introduction well recognizes, is basically a commentary on the interactions of articles 31, 19, and 14 of the Constitution, their interpretations by the courts, and the amendments made by Parliament.<sup>1</sup>

Besides the introduction, which explains the concern and confines of the study, the book is divided into twelve chapters. In the opening chapter the author briefly describes the socio-economic setting within which the problem is treated and purports to give the American reader a general Indian orientation. Tracing briefly the history of the development of law relating to land, he refers to the British contribution in aggravating the problem of land tenure.<sup>2</sup> But he feels that:

Despite the vehemence of the constitutional debate surrounding rights in land that followed independence, there were relatively minor shifts in the pattern of ownership and possession of agricultural land...the new land reforms were continuations and elaborations of policies adopted by the British.<sup>3</sup>

This is certainly open to question.

The second chapter on "The Last British Constitution for India," describes the British concept of property as inducted into the body juridic of the Government of India Act, 1935. Chapter 3 on the "Founding Fathers" closely follows the grand debate that took place in the Indian Constituent Assembly and the "compromise formula" struck on the property issue. He also examines "how 'fundamental' were the Fundamental Rights meant to be" and finds that the authors of the Constitution did not indicate that "they were in some manner entrenched in the organic act, beyond the reach of the usual amending process".<sup>4</sup>

The author's treatment of the inadequacies of the land revenue system in chapter 4 is penetrating. Chapter 5 is 'concerned with the development

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1. H.C.L. Merillat, *Land and the Constitution in India* 5 (1970)

2. *Id.* at 13-27.

3. *Id.* at 35.

4. *Id.* at 70.



of constitutional doctrine" on the rights of property holdings in land. He describes the various land reform measures since independence and their ineffectiveness.

Chapters 6 to 10 form the core of the analysis of land as a legal problem. The author discusses in a very lucid manner the struggle between the Parliament and state legislatures on the one hand, and courts on the other, over the right of property. The First, Fourth and Seventeenth Amendments to the Constitution, and the reasons for their adoption, are succinctly examined. Chapter 11 deals with the most important and controversial problem of the right of Parliament to abridge the fundamental rights and amend the Constitution. The discussion of the famous *Golak Nath* case<sup>5</sup> is particularly commendable. Chapter 12 is a recapitulation of the history of land reforms in the light of socio-political conditions which affected and were themselves affected by these reforms.

The postscript refers to the split in the ruling Congress Party and its effect on the right of property, especially exemplified by the bank nationalization in 1969, which was challenged before the Supreme Court and declared unconstitutional.<sup>6</sup> The government nationalized the banks under a new law meeting some of the objections of the court.

Merillat must be congratulated for his fine book. It makes a valuable contribution and clarifies some important aspects of the right to property under the Indian Constitution. But the story is not yet complete. Some interesting and very important developments have taken place recently in connection with the judiciary-legislature relations. Mention may be made of the *Privy Purses*<sup>7</sup> case and the recent Twenty-fourth and Twenty-fifth Amendments of the Constitution which were subsequently challenged before the Supreme Court in *H.H. Kesvananda Bharati v. State of Kerala*.<sup>8</sup> We hope Merillat will soon take an opportunity to review these developments.

R. P. Anand\*

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5. *I.C. Golak Nath v. State of Punjab*, A.I.R. 1967 S.C. 1643:

6. See *R.C. Cooper v. Union of India*, A.I.R. 1970 S.C. 564.

7. *Madhav Rao Scindia v. Union of India*, A.I.R. 1971 S.C. 530.

8. A.I.R. 1973 S.C. 1461.

\* Professor of International Law, Jawaharlal Nehru University, New Delhi.