



BOOK REVIEWS

INDIAN CONSTITUTIONAL LAW. By M.P. Jain. 3rd. ed. (1978). N.M. Tripathi Pvt. Ltd. Bombay. Pp. xi+742 and supplement pp. i to xix. Price Rs. 60.

M.P. JAIN, a renowned scholar by his own right and a prolific writer, hardly needs an introduction for scholars and students of law. The second edition of his book was published in 1970. The present, *viz*, the third edition was released in 1978. The country has during a substantial part of this intervening period witnessed virtually a political upheaval and the politicians in power have taken full liberty by tampering and tinkering with the Constitution in the form of amendments prompted by and large by political considerations to serve the party ends of those who for the time being commanded a majority in Parliament. It is difficult, almost impossible, for any writer to catch up with the race between the contending political parties in amending the Constitution. This explains why M.P. Jain had no option but to get the third edition released because of the demand for the new edition of the book, with a supplement bringing the materials in the book up-to-date until June 1978.

There has been among the higher echelons of the pedagogues in the country a controversy whether such commentaries on the Constitution, or for that matter on any subject in law, should be produced. It is argued that such commentaries with the entire material including the ever mounting volume of case law presented in a well digested and systematic form wean away the readers from undertaking the not so easy task of going through the basic reading material, *viz*, the decisions of the courts and deprive them from thinking for themselves and from analysing and digesting the source material. The proponents of this view commend books which deal with "Cases and Materials"—so common for a pretty long period in the United States. Scholars holding this view propound their theory of 'How to read (or not to read) a case'? It is true as far as it goes. However, this brand of scholars underrate the value of commentaries which present systematic, well digested, critically evaluated version of the material which can equip a reader to grasp what the writer has to say and, if the reader is really keen and painstaking, to go to the source material for himself and to reach his own conclusions which may or may not be in consonance with those of the scholar who presents such a commentary. Not many, students or teachers, belong to this latter category at least in India, and hence the utility of concise but complete, thorough but critical commentaries whose value cannot and should not be underrated. The supplement takes care, in a way in which a supplement



can possibly do, of the Constitution (42nd Amendment) Act and the Constitution (Forty-fifth Amendment) Bill which is now designated as the Constitution (Forty-fourth Amendment) Act. But for the difference in the complexion of the *Rajya Sabha* and the *Lok Sabha* as also because of the fall out of the marriage of convenience between political parties and groups, M.P. Jain would have been required to take care of some more, not excluding at least one omnibus, amendment. Hence no one can level the criticism against the book that it was out of date on the date it was released. This third edition, as the author has very rightly said in the preface, keeps

the bulk of the book within reasonable bounds, some pruning and consolidation of the old text have been attempted. As a result of this effort, this edition has a few pages less, though the range of information and materials contained herein are much more than the previous edition.¹

“Basically” he adds, “the present edition follows the same format, organisation and methodology of treatment of the subject-matter as the earlier edition”.²

M.P. Jain gives comparative provision of the American, Canadian and Australian Constitutions at appropriate places and refers also to the debates in the Constituent Assembly wherever deemed necessary. These are instructive and illuminating. Thus, to take only one example, which became so very pertinent in the contemporary Indian context when *Lok Sabha* was dissolved and elections were due to be held in January 1980. The author refers to the precedents and views of learned writers on the question whether or not the Crown is bound to dissolve the House when so advised by the Prime Minister.³ M.P. Jain or anyone else could not possibly foresee the unprecedented situation with which the President was confronted and the way he acted as he did to meet the situation. M.P. Jain does, however, say that : If there are multiple, loosely knit parties then the marginal discretion of the President in matter of appointing the Prime Minister and dissolution of Lok Sabha may be of crucial and decisive significance”⁴. Again when fissures appear in the party system and it becomes fluid, then the President can have opportunity to exercise the marginal discretion. In any case the Constitution envisages not a dictatorial but a democratic President who uses his judgment to keep the democratic government.

1. M.P. Jain, *Indian Constitutional Law* v (3rd. ed., 1978).

2. *Ibid.*

3. *Id.* at 28-29.

4. *Id.* at 94.



The Constitution, even one like ours, which is the bulkiest Constitution in the world, provides the bare skeleton (and skeleton is all too important, is not it ?) to which blood and flesh is provided by an enlightened judiciary confronted with variegated fact or law situations. It is this part of any commentary on the Constitution which provides the test or criterion of its utility, as well as the forensic skill of the writer. Judged from this angle, M.P. Jain has undoubtedly done a magnificent job in this edition, as in the earlier editions of the book.

The introductory part (part I) gives the salient features of the framework of the Constitution. In part II entitled 'The Central Government' M.P. Jain deals with Parliament, the central executive, and the Supreme Court. Similarly in part III he deals with the state government. In part IV he deals with the federal structure encompassing the legislative, financial and administrative relations between the union and the states, the emergency provisions, *etc.* In part V he deals with the political and civil rights. In part VI he deals with miscellaneous topics while part VII provides a valuable commentary on constitutional interpretation and amendment. He does not confine himself to the textual analysis, and the judicial decisions but gives his own evaluation and suggestions and goes into other important details, *e.g.*, to name a few, he deals with the inner working of various committees of Parliament, discusses parliamentary privileges with copious reference to the practices in the United Kingdom with his own comments about them. While dealing with the difficulties in codifying the privileges he makes the suggestion that "effort may be made to definitise privileges through declaratory resolutions"⁵. The suggestion merits serious consideration. He substantiates his suggestion by referring to the 1967 Report of the House of Commons⁶ in the United Kingdom. While dealing with the provisions relating to the Supreme Court with regard to the advisory opinion the author points out that:

It is advisable that the highest court has advisory jurisdiction but it should be invoked only sparingly and not frequently and in such cases where factual situations are ripe, or where legal issues are capable of being formulated precisely and can be considered by the court without much of a factual data and political questions should not be referred to the court for advice.⁷

One may have honest difference of opinion with M.P. Jain on the point, more so when academicians are propounding the thesis, not unconvincingly, that the Supreme Court is the centre of political power. It is easier said than done. It is extremely difficult to disentangle precisely

5. *Id.* at 68.

6. See Sills, Report of the Select Committee on Parliamentary Privileges, 31 *Mod L. R.* 435 (1968).

7. *Supra* note 1 at 137.



legal questions from political questions. Apart from this the whole business of advisory opinion could better have not been there, and even if the framers of the Constitution in the exercise of their wisdom thought it fit to incorporate it in the Constitution, the Supreme Court could have been better advised to dispense with it by refusing to tender advisory opinion under article 143 (1) in every case referred to it for opinion for the court has option in the matter. The Supreme Court has recently gone to the extreme by tendering advisory opinion on a private member's Bill introduced in Parliament.⁸

While dealing with legislative relations M.P. Jain has provided a valuable commentary by analytically referring to judicial pronouncements on the different entries. Any writer of a commentary on the Constitution has really to face a stupendous task of incorporating the gist of judicial pronouncement—more so when judges more often than not indulge in the luxury of giving long, separate and concurring judgments, couched in flowery and ambiguous language, interspersed with copious quotations almost constituting a piece of poetry rather than prose. Quite often it requires penetrating and painstaking task and even intuition to glean something out of the verbiage of judicial pronouncements. Judges indulging in such exuberance exercise in language and pedanticism may get veneration of a few, but it makes the task of those who are interested in knowing the law difficult. M.P. Jain, however, performs the task of stating the law with commendable clarity using his forensic skill efficiently.

The book has been written in simple language and is valuable for students, scholars of law, and political scientists. One only hopes that M.P. Jain could include the later amendments in the text itself so that a reader may not have to refer to the supplement which by its very nature can provide only a sketchy information. But the talisman of predicting the forthcoming amendments no one possibly have.

The printing and get up are flawless. The editing is perfect. For those who audit the book it would be of immense value.

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8. *In re, Special Courts Bill, 1978*, A.I.R. 1979 S.C. 478.

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