

WRIT JURISDICTION UNDER THE CONSTITUTION (1984). By B.L. Hansaria. N.M. Tripathi Pvt. Ltd., 164, Samaldas Gandhi Marg, Bombay. Pp. xl+300. Price Rs. 90.

THE PRESENT revised volume dealing with the crucial articles 32 and 226 of the Constitution, authored by a sitting judge of the Gauhati High Court has been brought out after taking into consideration both procedural as well as structural changes introduced after the passing of both the 42nd and 44th Constitution Amendment Acts.

Divided into 11 chapters, the volume contains an elaborate and informative table of cases, which in itself has enriched the value of the study. It is rich in material and provides lucid reading. Chapter I traces briefly the history of article 226 of the Constitution, but general discussion about writs has been raised in chapter II, to which about 40 per cent of the volume has been devoted. The author has rather rightly pointed out that insofar as issue of writs is concerned the courts have certain jurisdictional as well as self-imposed restrictions. It is in this chapter that he has raised such basic issues as to, (i) what is the meaning of the term "person aggrieved" for the purposes of writs; (ii) who can apply and against whom; (iii) what is the scope of the power of the courts; (iv) nature of proceedings; (v) whether a new plea can be taken during the course of discussions in the court; (vi) application of doctrine of estoppel, etc. While dealing with complex and complicated problems connected with the issue of writs, the author has very ably substantiated his viewpoint with decisions pronounced by the Supreme Court as well as High Courts from time to time over the last 25 years.

Certiorari is the subject matter of discussion of chapter III. According to the author, the principles upon which the superior courts in England used to issue writs of *certiorari* have generally formed the basis of decisions in our courts also, but in view of express provisions in the Constitution we need not now look back to the early history or procedural technicalities of those writs in English law, nor feel oppressed by any difference or change of opinion expressed in any particular case by English judges so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting these writs in English law. Some of the problems which he has discussed about this writ are, (i) when it may be issued; (ii) what is the meaning of quasi-judicial act; (iii) jurisdictional errors; (iv) apparent errors of law; and (v) what is the nature and scope of "principles of natural justice". Each problem has been nicely discussed in a logical sequence and supported with court decisions.

The vast increase in the administrative powers, especially discretionary powers resting upon subjective satisfaction of authorities, has raised a

growing area of scrutiny by the courts. The author has devoted full one chapter to this important aspect, which has usually aroused much concern and criticism from different quarters. He feels that the use of discretionary power is not absolute and that if a power is coupled with duty, the donee of the power has to exercise it for the benefit of those who have that right.

As regards *mala fide* use of power, the author is of the view that the use of power for a purpose other than the one for which it is conferred is *mala fide* use of that power. Similarly when an order is made for a purpose other than the one which finds place in the order, that too is *mala fide*.

After briefly discussing the circumstances under which a writ of prohibition can be issued, the author explores the basic principles underlying *mandamus*, which he opines is of a most extensive remedial nature. According to him, the utility of a writ like *mandamus* has been that it is issued even when the action is regarded as administrative in nature, as distinguished from quasi-judicial. This apart, in exercise of powers to issue this writ some positive directions can also be given.

The author in an exhaustive discussion of *habeas corpus* welcomes the immense widening of the scope of the writ by the activist judicial interpretation.

About the nature and scope of *quo warranto*, to which a chapter is devoted, the author feels that it is not a writ of course as it is in the discretion of the court to refuse or grant it according to the facts and circumstances of the case. Who can apply for it, what are its limitations and what facts are taken into consideration by the courts while using discretion, are some of the issues which have been raised and discussed about this writ. What radical changes did article 226 undergo during the period of the 42nd amendment, how this article is comparable and in contrast to article 227 have also drawn the attention of the learned author.

As regards "Article 32 of the Constitution and Fundamental Rights", to which again a chapter has been devoted, the author has made it clear that jurisdiction under this article does not allow the Supreme Court to adjudicate on government policy matters unless the policy is held to be *mala fide*.

So also matters of political, executive policy and expediency cannot be subject to judicial control or scrutiny. The volume concludes with "Article 136 and Scope of Interference" in which only those aspects of the article have mainly been dealt with, which are relatable to an appeal from a decision under article 226. According to him the power under this article is exercised with caution by courts when some glaring error is brought to its notice leading to failure of justice. It is also not limited to entertaining an appeal from "final order" as distinguished from an "order".

The well brought out volume is a welcome addition to the knowledge about issue of writs under the Constitution. It is in fact a useful companion both for lawyers, students of Indian Constitution and others who may be interested in the study of and deal with this complex subject. The author really has taken great pains to bring together much relevant material, and put them at appropriate places with a logically developed chapter scheme.

*Hans Raj**

*Deputy Director, Indian Council of Social Science Research, New Delhi.