BOOK REVIEWS

CENTRE - STATE RELATIONS IN INDIA (1985). By Anirudh Prasad. Deep & Deep Publications, New Delhi. Pp. viii+826. Price Rs.400.

THE DOCTORAL thesis of Anirudh Prasad on the very volatile subject of Centre-State relations in India is a very welcome work. The treatise[1] contains eight chapters, eleven appendices and two tables, bibliography and an index.

The introduction[2] deals with the historical and academic requirement for the study of the subject of Centre-State relations. The author has tried his best to bring the discussion up to date by reference to the appointment of the Sarkaria Commission[2a] and its questionnaire in the last appendix. Though, as admitted by the author, the canvass of the topic is very vast and more of a political nature, the author has necessarily preferred "to select those areas which are of focal importance in Centre-State relations and where judicial decisions have either played some role or where it can be envisaged that they can play some role."[3]

Chapter II deals with the Federal framework of the Indian Constitution and the scope for judicial role in the Indian Federation. After discussing the different views of scholars on the concept of Federation, the author has discussed the characteristics of a Federal constitution, *viz.*, (*i*) division of powers; (*ii*) written constitution; (*iii*) government with limited and defined powers; (*iv*) a Federal court; (*v*) rigidity of the constitution; and (*vi*) judicial principles of "immunity of instrumentality" "to ensure that every Government is endowed with necessary means, financial and administrative to make itself viable."[4] After tracing the evolution of the Federal system in India right from the Maurya and Gupta periods to the Government of India Act 1935, the Indian Federation as contained in the Constitution is outlined. While discussing the scope for judicial role in the Indian Federation the author has rightly traced a case for judicial review as developed in Switzerland, Canada, Australia and indicated the three important implications, *viz.*, (*a*) nullification; (*b*) credibility; and (*c*) creativity of the power of judicial review which drags the courts into political controversies.

---

1. Anirudh Prasad, *Centre-State Relations* (1985).
2. *Id.*, ch. I, pp. 17-26.
2a. *Commission on Centre-State Relations : Report* (1988)
3. *Id.* at 25.
4. *Id.* at 32-33.

This last implication is highlighted by Baxi.[5] In the light of the various pronouncements of the Supreme Court the author opines :

> The general love of the framers of the Indian Constitution for specifically writing everything in the Constitution, leaving little scope for conjecture, is responsible for giving a definite constitutional legitimacy to judicial review in India which is absent in the United States of America.[6]

While discussing the implications of judicial review in Indian Federation he has not only shown how the independence of the Supreme Court and High Courts is ensured by many other devices as well, but has also made pertinent suggestions about some patent loopholes that need to be plugged, *viz.*, (*i*) inadequacy of the emoluments and post-retirement benefits; (*ii*) appointment of additional judges; and (*iii*) variance of the number of judges in the Supreme Court by an ordinary legislation which may result into packing of courts by the executive.

In chapter III after discussing the various relevant judicial techniques adopted by the Indian judiciary, the author comes to, (*a*) the politico-administration viability of federating units; (*b*) States' participation in the composition of the National Government; and (*c*) Centre-State co-ordination. According to him the majority judgment in *State of West Bengal* v. *Union of India*[7] "not only negated the concept of dual sovereignity but also left the very existence of the States at the mercy of Union Parliament".[8] It is hoped that the courts know the technique of treating such unfortunate decisions as exceptions which are not expected to be followed in future. Further, "an innovative interpretation of the scope of Article 222 of the Constitution" is shown "in consonance with the general scheme of the Constitution guaranteeing independence of judiciary and giving say to the States, though a limited one, in their own affairs".[9]

The author has echoed the popular and scholastic feelings "that the provisions relating to 'failure of constitutional machinery in a State'... have failed to fulfil the constitutional aspirations" and glided into the very broad conclusion that "we cannot depend much on the Courts as far as the merits of a case are concerned".[10] After considering the various views on the topic, the author suggests that "[i]f all the above protections against misuse of powers under Article 356 remain only theoretical the burden to check the misuse of power would ultimately fall on the Courts."[11]

---

5. Upendra Baxi, *The Indian Supreme Court and Politics* (1980).
6. *Supra* note 1 at 70.
7. (1964) 1 S.C.R. 371.
8. *Supra* note 1 at 219
9. *Id.* at 232
10. *Id.* at 267.
11. *Id.* at 268.

On the whole the topic on the Central Inquiry into State Affairs has been well dealt with by the author. However in the next topic regarding States' participation in the composition of the National Government he has, in a desperate search for some solution, made a bold suggestion that for the purposes of holding an election to the office of the President of India or biennial election of *Rajya Sabha*, members of even the dissolved legislative assemblies of the states or *Lok Sabha* should be treated as qualified to participate in the voting till such time as the new elections take place.[12] But the question arises as to how far it is possible, feasible and even legally and politically proper to do so. Let us take the situation obtaining in the early part of the year 1977, when the *Lok Sabha* was dissolved. President Fakhruddin Ahmed soon died in office before the March 1977 election and the whole composition of the *Lok Sabha* was changed by the election. If the suggestion of the author is accepted and if the Presidential election were to precede the general election, in such circumstances the outcome of the former could be altogether different. Centre-State coordination is the most important subject while discussing Centre-State relations and that is what the Sarkaria Commission has seriously suggested to achieve through various devices as recommended in its Report. In this topic the reviewer fully agrees with the author's submission that there is little reason to believe that these incidents of agency (*viz.*, (*i*) a principal binding his agent; and (*ii*) agent cannot overstep the limits of his authority) do not apply to relationship of the Centre and State Governments.[13] However, he should have given the full citation of the election dispute referred to by him.[14] In the present context the author's submission that the American precedents cannot be literally applied in India because of a fundamental distinction[15] is not tenable because of the fissiparous and parochial tendencies among some of the regional parties in power in some border states. From the summary of the Sarkaria Commission Report it appears that the commission has not attempted to answer the two important issues raised by the author under the caption "Certain unresolved issues", *viz.*, area of mercy jurisdiction and the realm of preventive detention. Though the first issue is not likely to create any controversy, the second has all the potential of rocking into a constitutional crisis. The author has rightly lamented that state has "a very nominal power in the matter and there is little that the Courts can do if Parliament is bent upon legislating in a manner so as to incapacitate the States in the matter."[16] It is hoped that the issue is settled before it is too late.

The major thrust of the book in the latter half dealing with the fiscal aspects of Indian Federalism is divided into three separate but interconnected chapters, *viz.*, distribution of taxing powers,[17] regulation of

12. *Id.* at 283.
13. *Id.* at 294.
14. *Id*, footnote 318
15. *Id.* at 299
16. *Id.* at 316.
17. *Id.*, ch. V.

inter-state trade and commerce[18] and restraints on taxing power.[19] The emergence of a financially stronger Union necessitates transfer of revenue receipts of the Union to the states on the principles of compensation, derivation, need and national welfare.[20] Under the Indian Constitution the following four features of financial arrangement between the Union and states are found, (*i*) no concurrent power of taxation; (*ii*) proceeds of all taxes levied by the Union not forming part of the Union fisc; (*iii*) primary responsibility of the Finance Commission to work out share of taxes; and (*iv*) State revenues in many areas dependent on the good sense of Parliament.[21]

The author has exhaustively dealt with the constitutional scheme in operation by giving 19 tables. He has dealt at length with the judicial attitudes on the question of Centre-State financial relations.

The various interpretations of the Union and State tax entries in relation to each other are also considered. As is well known, by entry 97 of list I in schedule VII, the residuary power including power to tax is vested in the Union. The author has correctly pointed out :

> [I]n the absence of the Union List, the powers of the Centre would have been much less than what they are today. Today, the legislative items in the State and Concurrent Lists are interpreted in the context of the specific items mentioned in the Union List and by applying the rule of harmonious construction the Courts delimit their scope.[22]

While dealing with the cases where state powers were affected, the author observes :

> [A]dditional powers in favour of the Central Government cannot be inferred by resort to residuary power of Parliament. All powers of the Central Government in relation to the States must be either expressly given under the Constitution or should be possible to necessarily imply the same by taking into account the expressly given power in the context of the nature and structure of the Constitution.[23]

Analysing the residuary power the author states :

> Courts have generally adopted a policy of legitimation and Parliament cannot be accused to have exercised this power recklessly. Speaking specifically about the tax area it can safely

18. *Id.*, ch. VI.
19. *Id.*, ch. VII.
20. *Id.* at 319.
21. *Id.* at 321-25.
22. *Id.* at 430.
23. *Id.* at 452.

> be said that so far Parliament has intervened only State Legislature had not shown any enthusiasm to tap the tax resources.[21]

According to the author the judicial contribution in interpreting the the scope of tax entries is not spectacular because "[B]y and large they have played the role of legitimatiser and have discouraged constitutional provisions being used for tax avoidance."[25]

The author answers negatively to the basic question of invoking the court jurisdiction for coercing the Union Government and Parliament to honour the constitutional trust reposed in them in the matter of Federal Financial relations as "the whole thing may be considered too political to be worthy of judicial interference."[26] After discussing the entire gamut of cases dealing with inter-state trade and commerce, he argues that state legislatures can impose all varieties of restrictions on inter-state trade and commerce provided the requirements of article 304 (*b*) are fulfilled. In practice it is not easily possible to contemplate a situation where a state government may create its territory as a protected trade zone against the the wishes of the Central Government. The reason is that the powers of state legislatures under entries 26 and 27 of State list are subject to the Concurrent list entry no. 33.[27]

While summing up the chapter on restraints on taxing power, the author feels that the judicial attitude has been consistently helpful to the states inasmuch as they have interpreted the relevant provisions of the law in such a manner as not to widen unnecessarily the meaning of inter-state sales of sales made in the course of import or export.[28] On the whole the study shows that the general framework of comparative Federation is not disturbed by the courts.

This admirably written book on a very important subject of Indian Federation is not free from a number of flaws, the most important lapses being in the context of proof correction. There are a number of spelling mistakes, at times, coupled with the omission of conjunctions. Further the author could be well advised to give, in the footnotes, cross references of the topics dealt with at different places in his book; because in their absence a casual reader fumbles before locating a particular reference. The table of cases, tables of Central, state statutes and bibliography should have been given in proper alphabetical order. It appears that while quoting other works the author has not cared to check the sentences properly, as some words are omitted.[29] Also it would have been proper, had the author

24. *Id.* at 460.
25. *Id.* at 462.
26. *Id.* at 463.
27. *Id.* at 575.
28. *Id.* at 621.
29. See, (*a*) on page 149 while quoting Hidayatullah J ; (*b*) in footnote 124 on page 354 referring to a chief minister; (*c*) in line 15 on page 566; (*d*) in line 31 on page 618; (*e*) in line 17 on page 284.

discussed the dissolution of State Assemblies in 1980 while referring to the example of 1977.

Inspite of the above blemishes, the book is very important for general readers, students and researchers. Its popularity will soon oblige the author to take out a second edition, wherein, it is hoped, he will take care to correct the mistakes and deficiencies pointed out above and make it up to date in the light of the Sarkaria Commission Report on the Centre-State Relations.

*Pravin Mehta**

*Principal, Jitendra Chauhan College of Law, Bombay.