



SELECT ESSAYS ON THE INDIAN CONSTITUTION (1989). By P.S. Chaudhari. A. Mukherjee and Co. Pvt. Ltd., Calcutta. Pp. xii + 198. Price Rs. 50.

ESSAYS ON origin and development of fundamental rights, right to life and personal liberty, freedom of speech and expression, emergency and rights, role of governor, parliamentary and presidential form of government constitute the book¹ under review.

The author in the first essay captioned "Fundamental Rights—Origin and Development," contrary to its title, has not traced the origin and development of the fundamental rights in the Indian Constitution. He has made only passing references to the Government of India Act 1935 and zeal of the founding fathers of the Constitution to put constraints on state power and provide safeguards to the citizens of India against excessive and arbitrary interference from the executive and legislature by guaranteeing a set of rights to them. He has exhaustively surveyed the similar rights in UK, USSR, Canada, France and China with a view to knowing their origin, nature, scope and evaluating their role in checking despotic and tyrannical powers of the respective governments. Strangely, he, while doing so, has neither examined relevance of these rights in appreciating and understanding the fundamental rights guaranteed in the Indian Constitution nor outlined their origin and development. In the absence of such an exercise, reference to, and analysis of, the rights prevailing in other legal systems, naturally, sounds out of tune with the title and theme of the essay.

Similarly, in the second essay on the right to equality, the author without going into the genesis, relevance and significance of the principle of equality in the Indian society, polity and Constitution gives only a few glimpses of the fundamental rights and refers a few leading judicial pronouncements unravelling intricacies of the principle to demonstrate restrictive and liberal judicial responses to it. In the absence of critical analysis and comments of the author, objective evaluation of contribution of these cases in providing meaning and contents to such a frequently resorted to, and extensively used, fundamental right to check arbitrary exercise of state power, it becomes impossible to assess the contribution of the essay in the existing literature on the topic.

The right to life and personal liberty, guaranteed under articles 20 to 22 of the Constitution, constitutes the theme of the third essay. The author, by way of analysis of a few leading cases, has highlighted the significance and relevance of the fundamental right in the administration of justice. Commenting on the Indian jurisprudence, which unlike UK and USA allows preventive detention both in the peace and war time, he has suggested its

1. P.S. Chaudhari, *Select Essays on the Indian Constitution* (1989).



deletion to avoid serious inroads in the right of personal liberty and to uphold the constitutional principles of liberty, equality and other democratic values. He has also touched upon legal aid, right to travel, rights of detainees and prisoners, death penalty *vis-a-vis* the right to life and compensation for violation of the right to life and personal liberty. Strangely, the author has neither raised nor examined a few crucial questions of constitutional law importance which emerge out of the judicial opinions on payment of compensation for violation of the right to life and personal liberty,² delaying execution of death sentence,³ custodial violence and police harassment⁴ and effect on punishment of denial of legal aid.⁵

The author in the essay on freedom of speech and expression has examined different contours of the rights such as freedom of press, censorship, contempt of court, right to seek information, right to broadcast one's views and exhibit films on television and has rightly pleaded for "fairness" and "openness" in the administration of the government.

The essay on emergency, in which the author has examined the 38th, 42nd and 59th Constitutional Amendments, hardly contributes and enhances one's understanding of the emergency provisions in the Constitution and their use in the Indian polity. The essay does not make it clear whether the author speaks of all the legal rights or fundamental rights.

The essay on role of a governor under the Constitution demonstrates dichotomy between the constitutional principle in theory and practice and examines the question as to constitutionality of dismissal of a government enjoying majority in the Assembly according to his pleasure.

The last essay, against the background of the experiences of the French, German and the USSR Governments and opinions of leading jurists, ponders upon the feasibility of either form of the government in India and consequential constitutional amendments.

The book, which is to a great extent a compilation of cases on the selected topics devoid of critical analysis and comments, neither evinces acumen of the author nor stimulates intellectual academic deliberations. It therefore, hardly enhances one's understanding of the themes of the essays, or makes a significant addition to the existing enormous literature on the topics.

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2. Generally see, S.N. Jain, "Money Compensation for Administrative Wrongs through Article 32", 25 *J.I.L.I.* 118 (1983); K.I. Vibhute, "Compensatory Jurisdiction of the Supreme Court—A Critique", 21 *Jr. Const. & Parl. Studies* 136 (1987).

3. *E.g.*, see, *T.V. Vatheeswaran v. Tamil Nadu*, A.I.R. 1983 S.C. 361; *Sher Singh v. Punjab*, A.I.R. 1983 S.C. 465; *Javed Ahmed v. State of Maharashtra*, A.I.R. 1985 S.C. 231; *Triveniben v. Gujarat*, A.I.R. 1989 S.C. 1335.

4. See, *Kadra Pahadia v. Bihar*, A.I.R. 1981 S.C. 939, A.I.R. 1982 S.C. 1167; *Sheela Barse v. Maharashtra*, A.I.R. 1983 S.C. 378; *Upendra Baxi v. State of U.P.*, A.I.R. 1978 S.C. 191.

5. *Suk. Das v. Union Territory of Arunachal Pradesh*, A.I.R. 1986 S.C. 991.

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