

THE CONSTITUTION OF INDIA (1990). By Hans Raj. Surjeet Publications, 7-K, Kolhapur Road, Kamala Nagar, Delhi.Pp.xii + 422.

THE CONSTITUTION of India is profusely commented upon by the lawyers and the political scientists adopting different approaches. The book under review¹ is a topic-wise (instead of an article wise) analysis of the Indian Constitution divided into twenty eight chapters.

Every Constitution, Indian one being no exception, is a product of the dominant group operating at the time of the formation of the basic document. It does not, however, mean that the Indian Constitution is nothing but a Congress Party's document.² In the words of Austin, "Democratic decision-making by the members of the Congress Assembly party and the oligarchy's refusal to arrogate to itself all wisdom and authority helped to make possible a generally acceptable Constitution."³ Its general acceptability is reflected in its Preamble which instead of being a superficial appendage, expresses hopes, wishes, aspirations and dreams of its founding fathers.⁴ The charge on the founding fathers of being *status quoist* is, therefore, not cleared as the author of the book, like all other commentators, treats the framers with great respect.

In the field of federalism, the Indian political scientists have researched to come out with some reasoned conclusions and sometimes with solutions also. Commenting upon the growing demand for more provincial autonomy, the author finds in the bottom of it a desire to preserve culture, improvement in economic life, love for region and a will to capture the political power.⁵ These factors ultimately influence the dynamics of the centre-state relations.⁶ The establishment of an Inter-State Council (under article 263) is viewed as a soothing mechanism for treating sore centre-state relations.⁷

The guarantee of the human rights makes a pulsating heart of any modern democratic Constitution. Under the Indian Constitution, they are to be found spread over into two parts viz. part III (fundamental rights) and part IV (directive principles). Evaluating the fundamental rights, the author opines that the right to work could not be included in part III because of financial limitations and, likewise the rights available to the people living in affluent countries could also not be elevated to the status of the fundamental rights for the same reason.⁸ On the issue of the implementation of the directive principles, it is commented that

1. Hans Raj, *The Constitution of India* (1990).

2. *Id.* at 13-15.

3. Granville Austin; *The Indian Constitution-- Corner Stone of a Nation* 25 (1972, reprint).

4. *Supra* note 1 at 46.

5. *Id.* at 82.

6. See S.L. Verma, "Dissolution of Federal Authority in the Indian Political System", 20 *Journal of Constitutional and Parliamentary Studies* 17 (1986); Alice Jacob, "Centre-State Government Relations in the Indian Federal System", 19 *J.I.L.I.* 636 (1968).

7. *Supra* note 1 at 82, See also for contrasting views. Subir K. Bhatnagar, "Abracadabia of Inter State Council and National Unity", in U N. Gupta (ed.), *Indian Federalism and Unity of Nation* 244 (1988).

8. *Id.* at 98.

the governments have tried to honour these principles in true spirit⁹ but it appears to the author that "something went wrong somewhere and the principles enunciated in the Directive Principles could not be fully implemented."¹⁰ While the rights dominate in discussions in the academic circles, the issue of the fundamental duties, as usual, is completely ignored in the constitutional discourses.¹¹

The political scientists, lawyers and politicians not lagging far behind, have frequently targeted their discussion over the pivotal issue of the Indian President becoming a dictator or using his personal discretion. Discussing the position and the powers of the Prime Minister elaborately and succinctly,¹² the author rules out the possibility of the President becoming a centre of power and venturing to challenge the authority and the position of a powerful Prime Minister.¹³ The colleagues of the Prime Minister in the Council of Ministers also know that it is difficult to challenge his commanding position in a cabinet system.¹⁴ Parliament, more specifically the *Lok Sabha*, is the source of strength for the Prime Minister. It is over-burdened with work and, day by day, its work is increasing.¹⁵ The author gives a detailed vivid account of "Parliament at Work"¹⁶ with the same perfection as is testified in his treatment of the earlier chapters relating to "The Council of Ministers"¹⁷ and "The Prime Minister."¹⁸ A structural defect of the Indian Parliamentary system has been/is the malady of the defection which severely jeopardizes the representative functioning of Parliament and the state legislatures.¹⁹ In the determination of defection cases, the speaker/chairman is called upon to take difficult decisions.²⁰ For the proper functioning of the parliamentary democracy it is imperative that the speaker is impartial, level-headed, firm and courteous and have forbearance, fortitude and sufficient patience to listen to all tedious repetitions.²¹

In recent decades, the judiciary has become the *focus* of the aspirations of the Indian people. In the wake of a spate of people-oriented decisions, either in PIL jurisdiction or otherwise, the judges have occupied the centre stage in the socio-legal and political system. They have really to walk on the edge of the sword as the author expects:

9. *Id.* at 102.

10. *Id.* at 103.

11. The author of the book under review points out that, "...the very fact that a part of the Constitution has been devoted to these duties, itself bears an ample testimony to the fact that the nation wants that every citizen of India should be duty conscious and must realise that rights and duties go hand in hand.", *id.* at 107.

12. *Id.* at 171-94.

13. *Id.* at 151.

14. *Id.* at 170.

15. *Id.* at 223.

16. *Id.* at 224-55.

17. *Id.* at 156-70.

18. *Id.* 171-94.

19. See Subir K. Bhatnagar, "Anti-Defection Law: A Remedy or Malady" 13 *Indian Socio-Legal Journal* 135 (1978).

20. *Id.* at 142.

21. *Supra* note 1 at 221.

The judges should see that the laws are interpreted with national aspirations in the background. Their pronouncements should not have the least of their political leanings. They should establish their political neutrality in the eyes of the people. They should try to maintain the dignity of their office and should always remain above material temptations.²²

The Indian Constitution, unlike its American counterpart, sets out the detailed provisions for the constituent states. Adopting the same parliamentary pattern for the states, the Governor of a state, who is appointed by the centre, is made the head of the state. In recent times, the role of the Governor is hotly debated many a time with the allegation of his adopting a partisan attitude or acting on the behest of the party in power at the centre. Sometimes, the debates are so acrimonious that they threaten to overturn the appellation of the federation. In relation to the issue of the appointment of a Governor, the author suggests, "As far as possible, before making an appointment, approval of the state concerned should be obtained".²³ As regards the state legislatures, there is no uniform pattern of the number of Houses as a few states have bicameral legislatures. The political scientists should address to the question of desirability and feasibility of a uniform pattern being adopted throughout India. The author lists out the merits and demerits of the second House (the Legislative Council or Upper House) and leans in favour of having it provided men of eminence (sic) with long and varied experience of life, instead of defeated ones wanting to become ministers, are sent to it.²⁴ In the opinion of the reviewer, in those troubled states, where holding elections for the assemblies become frequently difficult, the existence of a Legislative Council may give a semblance of democracy till normalcy is restored.

In a parliamentary form of government, the bureaucracy forms the backbone of the state administration. Of late, it is being alleged that the bureaucracy in India is developing a tendency to help the ruling party in the hope of deriving certain benefits out of their patronage.²⁵ Mentioning points of criticism against bureaucracy, the author points out:

It has no human outlook. The laws are interpreted not taking human needs into consideration. The interpretation is not with a view to benefiting the people. It is completely forgotten that the laws are meant for the welfare of the people and that these are simply means to an end.²⁶

The book gives an account of the powers and functioning of some independent functionaries like Attorney General of India,²⁷ Comptroller and Auditor General

22. *Id.* at 272.

23. *Id.* at 289. See also C.P. Sheoran, "Role of Governor in Centre-State Relations: Recent Trends", in U.N. Gupta (ed.), *supra* note 7 at 167-95.

24. *Id.* at 303.

25. *Id.* at 333.

26. *Id.* at 339.

27. *Id.* at 343-44.

of India,²⁸ Election Commission,²⁹ Finance Commission,³⁰ and Planning Commission.³¹ The author describes various constitutional amendments in brief.³² The last chapter is devoted to the democratic decentralisation in which the author discusses the pros and cons of Panchayati Raj in a lucid language.³³

The book is not confined to the theoretical explanation of the Constitution only but it successfully deals also with the functional aspects of the political institutions and the processes related to the working of the Constitution. The political scientists, students and others interested in having a knowledge of the Constitution will find it a useful companion.

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28. *Id.* at 344-47.

29. *Id.* at 355-62.

30. *Id.* at 363-70.

31. *Id.* at 371-84.

32. *Id.* at 305-406.

33. *Id.* at 407-15.

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