INDIAN CONSTITUTION AND POLITY (1991). Edited by R.V.R. Chandrasekhara Rao and V.S.Prasad. Sterling Publishers, Delhi. Pp. xxx +98. Price Rs. 125.

THIS BOOK[1] contains five lectures delivered under the Extension Lectures and Symposia series of the A.P. Open University on Indian Constitution and Polity from January to April 1989. The editors, Chandrasekhara Rao and V.S.Prasad have written a comprehensive introduction. They rightly observe at the outset that although democracy seems to have triumphed at the global level (the Soviet Experience : the August coup and its failure provide further evidence of that) a continuing crisis in the theory and practice of democracy exists. The crisis, according to the learned writers, relates "both to the understanding of the content of the democratic spirit... and to the choice of socio-economic instrumentalities designed to receive, retain and channelise that spirit."[2]

The first lecture is by Alladi Kuppuswamy, who spoke on the "Framing of the Constitution and Dr. B.R.Ambedkar's Role". The author has had the benefit of watching the stupendous task of Constitution-making from close quarters because his father Alladi Krishnaswami Ayyer was one of the most active members of the Constituent Assembly and also a member of the Drafting Committee. Talking about some of our current dilemmas, the author says :

> If the Parliamentary system has not functioned satisfactorily it is not due to any defect in the system but due to the incompetence or inefficiency of those who have been running the system.[3]

The author also observes that considerable care must be taken before the right to work is made a fundamental right.[4] He rightly laments that "no steps have been taken all these forty years to implement this most important directive principle".[5] Here he refers to the directive principle regarding uniform civil code. But much more inexcusable has been the state failure to implement the directive principle regarding free and compulsory primary education to all children below the age of fourteen.

Justice O.Chinnappa Reddy states at the outset that the time was not only ripe for serious introspection but also it was necessary to consider how far "we have progressed, how far we have deviated from the course set by the compass, what achievements we have to our credit and what failures we are guilty of".[6] He traces

---

1. R.V.R. Chandrasekhara Rao and V.S. Prasad (ed.), *Indian Constitution and Polity* (1991).
2. *Id.* at ix.
3. *Id.* at 8.
4. *Id.* at 9.
5. *Id.* at 10.
6. *Id.* at 14.

the history of the last forty-two years to find out why as many as sixty-two constitutional amendments became necessary. During the first twenty years, the Constitution was amended more to highlight the social and economic rights contained in the directive principles, which the judiciary had underestimated. But the later amendments, particularly since 1975 were "aimed at securing more and more power to the Executive".[7] The Supreme Court reached its most ignominious hour in *A.D.M. Jubbulpur* v. *Shiv Kant Shukla*[8] and Parliament brought shame on itself by passing the Thirty-Ninth Amendment. However, after lifting of the Emergency, the "Court appeared to show greater concern for the problems of the ordinary people and became concerned with real practical justice than abstract legal justice".[9]

The learned author ultimately observes that there has been dismal failure on the part of the various organs of the state, including the judiciary, to attain the ends of social and economic justice which the Constitution visualised.

Upendra Baxi points out through two quotations from Jawaharlal Nehru and Jaipal Singh, how each represents a class allegation against others. Nehru complained that the magnificient Constitution had been "kidnapped and purloined by the lawyers".[10] Jaipal Singh asserted that the original people of India, *i.e.*, the tribals must have a major say in the affairs of India and that ultimately all late comers must quit. Both challenge the legitimacy of the constitutional processes from their respective perspectives. Baxi complains that while Nehruvian criticism has been shared by many, there have been few takers for Jaipal Singh's criticism. We are facing a direct conflict between these two interpretations in the Mandalisation controversy and they have to be reconciled so as to produce harmony. Baxi points out another inherent conflict between the strong state and social justice elements of the Constitution. It has been our experience that all measures for social justice ultimately end up not in the empowerment of the oppressed people but in the empowerment of the state. Does democracy necessarily presuppose a soft state! Or can we have a strong state wedded to the ideal of social justice without being authoritarian ? Baxi talks of a strong state with just means.[11] The constitutional experience is of continuous accumulation of power and its simultaneous legitimation. That is the problem of all democracies. Power for subserving public interest is a legitimate power. But such power is often capable of being abused. Accumulation creates problems of abuse, and consequent loss of legitimacy. This theme needs more elaborate treatment.

B.P.R.Vittal observes that there was a broad political consensus reflected in the Constitution,[12] but the author's further observation that the BJP or Communist parties were outside such consensus is not convincing. If real liberal and secular thought is to be the yardstick for measuring a political party's participation in the

7. *Id.* at 23.
8. A.I.R. 1976 S.C. 1207.
9. *Supra* note 1 at 27.
10. *Id.* at 32.
11. *Id.* at 38.
12. *Id.* at 53.

consensus, we are afraid, no party, not even the Janata Dal or the Congress might acquit themselves well. The author clearly sees the distinction between the provisions guaranteeing fundamental rights and those containing directive principles of state policy. The latter require fulfilment of certain conditions as prerequisites for their enforcement. The author feels that the transfer of the right to work from directive principles to fundamental rights might create problems of practical enforcement. He suggests, (*i*) various ways in which power and authority dichotomy could be articulated; and (*ii*) the revival and strengthening of the committee system in the legislative processes. The anti-defection law has seriously undermined individual party member's freedom of dissent.[13] The author points out how the whole concept of the back bencher who might not support the official party line had been useful to democracies. The role played by, (*i*) Winston Churchill in his own party against the policy of appeasement of Prime Minister, Chamberlain, towards Germany, or (*ii*) Edward Heath more recently were examples of valuable dissent influencing the party policy. He also recommends that the practice of congressional hearings before appointments are made to certain important positions and particularly to statutory and constitutional posts such as the Comptroller, and Auditor General, Governors, *etc.*, should be adopted.[14] Why not such parliamentary hearings for judicial appointments, particularly of the High Court and Supreme Court judges ? Justice Krishna Iyer's essay is on public interest litigation and repeats the story of the Indian judiciary's post emergency activism which facilitated access to courts. The courts liberalised *locus standi* and made various innovations in judicial technology of reliefs and affirmative actions. Public interest litigation is one such most creative innovation. But amidst the euphoria of PIL, one ought not to forget that there are limits to what could be done through such peripheral or cosmetic changes. These changes appeared revolutionary when Justice Krishna Iyer initiated them in cases like *Ratlam Municipality*[15] or Bhagwati J. further articulated them in *P.U. D.R.* v. *India*[16] or *Bandhu Mukti Morcha* v. *India*.[17] The enormity of government lawlessness is stupendous and the Indian judicial process is hamstrung with such constraints (including those imposed by an inward looking Bar and the politicised judiciary) that they failed to deliver what they promised. PIL which started as an unorthodox judicial strategy with a great promise, seems to have become stagnant even before having taken off.[18] On the whole, these essays are refreshingly original in thought and the editors deserve congratulations for bringing them out in book form.

*S.P. Sathe**

13. See, S.P. Sathe, *Constitutional Amendments 1950-1988 : Law and Politics* 56 (1989).
14. *Supra* note 1 at 67.
15. *Ratlam Municipality* v. *Verdhichand*, A.I.R. 1980 S.C. 1622.
16. A.I.R. 1982 S.C. 1473.
17. A.I.R. 1984 S.C. 802.
18. See, for criticism, S.P.Sathe, *Administrative Law* 377-89 (5th ed. 1991).

* Professor of Research, "Tribunal System in India" and Hon. Director, Institute of Advanced Legal Studies, ILS Law College Bldgs., Pune.