

## BOOK REVIEWS

THE CONSTITUTION OF JAMMU AND KASHMIR : ITS DEVELOPMENT AND COMMENTS (1994). By A.S. Anand. Universal Book Traders, Delhi. Pp. xxiv + 517. Price Rs. 295.

PROBABLY JUSTICE Holmes observed that, “the Constitution like all life is an experiment”. The Constitution of Jammu and Kashmir is still unique in itself. Since Independence, ceation of Jammu and Kashmir, its statehood and the Constitution have all along created an anxiety and curiosity among enlightened persons, not only of this sub-continent, but also of various parts of the globe. The book is perhaps the first venture to deal constitutionally, historically and analytically with the subject and its various facets. As evaluated by Justice M.N. Venkatachaliah, who has wrtitten the foreword, it is a scholarly work of an erudite jurist.

The book deals with three constitutional documents:

- (i) The Jammu and Kashmir Constitution Act of 1939 — the first adventure by the Monarch to ‘democratise’ his State. The Act was not a product of Constituent or Legislative Assembly, but promulgated by His Highness the *Maharaja*;
- (ii) The Constitution of India in relation to Jammu and Kashmir; and
- (iii) The Constitution of Jammu and Kashmir.

The book elaborates geographical and topographical significance of the state coupled with successive events connected with this paradise on the earth. It proceeds to draw lively details of the regimes of *Maharajas* from Gulab Singh onward. The details are illustrative and touch numerous aspects. The author with great caution has presented the entire scenario of socio-political happenings without any overtones. The book climbs its peak when it deals with the political tensions, which preceded the Indian Independence. The author has masterly, but with sensitivity, dealt with the dilemma of His Highness the *Maharaja* during the period preceding the accession of Kashmir to the Indian Union. Relevant correspondence find place at the appropriate portion of the book.

The book elaborately discusses about the establishment of the Legislative Assembly, *i. e.*, *Praja Sabha* during *Maharaja Hari Singh*’s time, manner of filling up its membership and passing of important legislattions.

Sections 4 and 5 of the Act, *inter alia*, conferred all powers—executive, legislative and judicial on His Highness and constituted him an absolute Monarch. The High Court was the highest court in the state, subject however to the ultimate control and superintendence of *Maharaja Sahib Bahadur*. The powers of the judiciary show that institution to be the penultimate authority even in its own field. An appeal lay to a Board like the Privy Council, chosen by His Highness under the Appeal to His Highness Act and a corresponding duty was cast on the



High Court and all subordinate courts to carry out the orders of His Highness. The High Court was, however, not considered to be the final interpreter of the Constitution and Rules. The final powers were assumed by His Highness, the *Maharaja*.

The entire Constitution has systematically been examined. The powers of various Bodies as analysed and conclusion recorded are free from super-impositions. A clause seemingly secular in nature prohibiting asking of questions and moving resolutions in relation to personal laws, religious usages, *etc.*, of a community is shown up on analysis as one giving statutory recognition to communal discrimination, having regard to various personal laws already in existence. Kashmir was probably one of the first states to enact a section in its Penal Code sometime in 1933 making cow-slaughter a non-bailable offence with imprisonment upto ten years upon conviction.

The uniqueness of inter-constitutional relationship between Jammu and Kashmir and India is scrutinised in great detail. The power to confer special status is traced to article 2 of the Constitution of India, which confers power on Parliament to admit into the Union, or establish new states on such terms as it thinks fit. The author opines that article 370, which really means a division of sovereignty, is possible because the Constitution of India is federal in character. The law on the subject, both laid down by the legislatures is dealt with at appropriate places. The nomenclatures make it easy to locate and correlate with other parts of the book. In particular, the chapter dealing with 'distribution of powers between Kashmir and India' answers virtually every question that could occur to a lay or legal mind on the scheme of distribution of executive and legislative powers.

The chapter on the Constitution of Jammu and Kashmir puts to rest a persistent controversy on the legal status of its territory.

It is crystal clear to the author that there is absolutely no ground for thinking that the people of Jammu and Kashmir had any doubt about affiliation to India because section 3 of the Constitution reads:

The state of Jammu and Kashmir is and shall be an integral part of the territory of India.

While dealing with the Executive under the Jammu and Kashmir Constitution, the author has dealt with the most unusual feature of powers of the *Sardar-i-Riyasat*, now the Governor, *i.e.*, the obligation on the Governor to exercise his powers only on the advice of the Council of Ministers and ask the question, "what is he to do if he is advised to do something he believes to be repugnant to the Constitution?" There are important observations on the comparative powers and positions of the Governors of other Indian states and that of Kashmir. The Governor of Kashmir is, unlike other Governors, himself empowered to issue a proclamation of emergency with the concurrence of the President of India. On the legislative front, the author observes that at last, the people have found a Legislative Assembly representing them and not their rulers.

Virtually, every aspect of the relationship between the State of Jammu and Kashmir and the Indian Union is being debated. The book makes scholarly



endeavour to answer the questions, such as, (i) Why the Constitution of India was not made fully applicable to the State of Jammu and Kashmir like the rest of the States in India? (ii) Why the state was allowed to have a Constitution of its own? (iii) What were the factors which induced the state to have its own Constitution and to secure a special status in the Indian Union? and (iv) Has the peculiarity in Kashmir led to any great hardship? Similarly, the book is capable of answering many other questions.

Entire events interwoven with the constitutional developments could not have been more apt and transparent than the presentation in the book. The book literally unfolds the developments, which culminated in the Constitution. It is a *locus classicus* on the subject.

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