



BOOK REVIEWS

THE CONSTITUTION OF JAMMU AND KASHMIR: ITS DEVELOPMENT AND COMMENTS (3rd ed. 1998). By Justice A.S. Anand. Universal Law Publishing Co. Pvt Ltd., Delhi. Pp. xxx+562. Price Rs 425.

GEOGRAPHICALLY, JAMMU and Kashmir (J & K), has a very strategic placement. Here nature's benevolence has been in abundant measure. Curse it might be, here the Divine Melody since the last half century tunes with sound of guns. Since inception, Pakistan has set up a counter claim of sovereignty over J&K and resorted to violence to sustain it. The issue has invariably been deliberated at every world forum. In modern world history, due to prolonged controversy, the beautiful landscape possibly has become more problematic than Palestine. In the world affairs, this paradise under the sky as well its socio-cultural and polito-constitutional developments have, therefore, consistently maintained dilemma, curiosity and tension. Developments leading to the Constitution of J&K had been multifarious, multifaceted and unusually unique in themselves.

The Treaty of Amritsar 1846 acknowledged the supremacy of the British Government. In token thereof, amusingly H.H. the *Maharaja* Gulab Singh undertook to present annually one horse, twelve perfect shawl goats (six male and six female) and three pairs of Kashmiri shawls. H.H. *Maharaja* Hari Singh established *Praja Sabha* (Legislative Assembly) even before arrival of the democratic wave in this sub-continent. On 28-6-1938, an organised demand was made for responsible government, to cure the ills of people. J & K Constitution Act 1939, was an event unparalleled in the constitutional history, being a presentation of H.H. on his own volition. In 1947 J&K got integrated in the Union of Independent India. Instrument of accession of 27-10-1947, however, maintained that it does not affect sovereignty of the *Maharaja* over the State of J&K.

In 1950, the Sovereign Indian Republic adopted the Constitution with the peculiar feature of article 370. Consequently, the constitutional provisions and central enactments have no application on its own force to J&K, even though it is one of the states in the Indian Union. The adaptability thereof has been left to the desirability of the Government of J&K. In 1957, J&K by adopting an independent Constitution further distinguished itself. Unequivocally, the Constitution has recognised the accession of J&K in 1947 in the Indian Union, but takes upon itself to define the existing relationship between the two.¹ The Constitution took cognisance of the invasion of certain territories of J&K by Pakistan.² The preamble and constitutional framework have been on the model of the Constitution of India.

Each development leading to the Constitution has vitality in itself. In the entire constitutional framework, article 370 has a crucial as well as critical place. Design of the article as articulated since 1-12-1963 has been as a temporary and transitional measure. Clause 3 empowers the President of the Republic of India to withdraw the operation thereof. The exercise has, however, a fetter, since it is

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1. S. 3.
 2. S. 48.



subject to recommendations of the Constituent Assembly of the State. Every curious mind raised a question as to why the article, even after a lapse of considerable period, could not shed away its transitory character? On the other hand, it has become more fundamental in assertion and a source of tug of war for political quarters. To judge constitutional developments with appropriate perception was a formidable challenge to jurists, constitutional experts and social scientists. Still more, there was a serious risk as commented by Dicey³ that legal treatises on constitutional law, being a maze, the wanderer gets perplexed by unreality. This treatise has however, been explored with an analytical mind and microscopic vision. Any unreality in this mighty task, even if peeped in, could not deviate the author. And that has testified to the might of the author.

The entire background is intermingled with numerous developments and has a complex character. That itself poses several penetrating and perturbing questions, which earlier, had no apt answer. Dispassionately, but with logical dissection, the author has answered them all. The laurels, he has earned by solving the age old puzzle as to why the Constitution of India has not in its entirety been made applicable to J.&K. To a pointer that the independent Constitution of J & K necessarily invites an implication of division of sovereignty of the Indian Republic, the book gives a most scientific and jurisprudential deal. The formidable task to trace and consolidate the developments leading to the Constitution, the author could simplify by accurate and close scrutiny of all relevant events and their numerous facets and then scanning them with the most crystallised insight. Evaluation of the massive research in a foreword by eminent jurist, Justice M.N. Venkatachaliah, (former Chief Justice of India) has crowned the treatise.

Continuance of occurrence of the events and amendments to the Constitution from time to time after the second edition of 1994, necessitated the current edition. Not only is it comprehensive, but also extensive and still more intensive in substance, research and analysis. Meticulously, the author avoided any superimposition while recording the conclusions. The book has discussed the constitutional provisions, having reference to the Constitution of India, with relevant case law. Incorporation of historical background at appropriate places furnishes an outlook to make a study of the events and constitutional scheme more purposeful. Chapterisation is very thoughtful and systematic. Chapters, Historical Background (II), Kashmiris Demand A Constitution (III), and Kashmir and Indian Independence (IV), illuminate the mind of the reader before entering into the constitutional scheme. Certainly the book takes us through such areas mostly unknown or rarely known. Justice Venkatachaliah aptly complimented that the treatise "takes us through a journey of the most significant area of Indian nation building."⁴

Entire exposition is marked with rare clarity. Appendixes have added richness to the volume. The book has a remarkable potentiality to serve all kinds of interests of all concerned.

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3. A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (1956).

4. Justic A.S. Anand, *The Constitution of Jammu and Kashmir : Its Development and Comments* viii (3rd ed. 1988).

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