

PRESIDENTIAL DISCRETION (2016). By Debtoru Chatterjee. Oxford University Press, YMCA Library Building, 1 Jail Singh Road, New Delhi 110001, India. Pp. xv+313. Price Rs. 995/-.

THE INDIAN Constitution envisaged the parliamentary form of government, on lines of the Westminster form of government of United Kingdom. In UK, the monarch is a constitutional head of the government and the real powers are vested in the cabinet headed by the Prime Minister. In India, the President of India holds the position of constitutional head of the government and is obliged to act on the aid and advice of the council of ministers headed by the Prime Minister, who is collectively responsible to the Parliament.¹ The constitutional scheme of relation between the President and the Parliament are categorically enunciated in various articles of the Indian Constitution.² Perusing the relevant articles of the Indian Constitution, it is understandable that the real powers of the government are exercised by the Prime Minister and the council of ministers, as per the business rules framed by the President on the advice of the Prime Minister.

This issue, however, raises some pertinent questions *viz*: what is discretion? Does President acquire similar position to that of the British monarch or of any other commonwealth state? When most of the things are decided, settled and undertaken in the name of President, does President have any say in it? Above all, does President of India have any discretion?

Debtoru Chatterjee in his book³ examines these dilemmas by offering in depth analysis of the meaning of presidential discretion by offering biographical material of Indian presidents and British sovereigns to explain how they tackled diverse political situations. The book vividly captures some extraordinary circumstances and combines three approaches—historical, analytical, and comparative.

In this book, the author rightly puts forward the argument that the presidential power operates in a narrow territory of discretionary power. This book examines the scope and limitations of the discretionary powers through various examples from India, UK, and the Commonwealth. The focus of this book lies in the importance of the Indian presidency during the crisis of a hung Parliament. Having said this, the book is an objective effort to explore

1 The Constitution of India, art. 75 (3).

2 *Id.*, arts, 53, 60, 61, 74, 75, 77, 78, 103, 143, & 217

3 Debtoru Chatterjee, *Presidential Discretion* (Oxford University Press, New Delhi, 2016).

many more other situations faced or tackled over the years, across various Commonwealth jurisdictions. The book highlights the usage of discretionary power of the President that rightfully comes into play despite a written Constitution and legalistic interpretation drawn by various scholars. The idea is to draw lessons that can be unmistakably presented as signposts for the future.

The book rightly puts forth an argument that on the subject of Presidents' discretionary power, the Constitution maintains a silence—a silence that can only be filled up by the conventions evolved in the UK or other parts of Commonwealth on the subject. The argument of the author is that adoption of any rigid convention which doesn't strive to meet the constitutional norms of the nations would cause grave repercussions. As an alternative to this discourse the book asserts the principles of constitutional morality!!

The book comprises of seven chapters apart from an introduction and a conclusion, covering themes, that presents President's relation with the cabinet from the perspective of the written words of the Indian Constitution. Through "Introduction", a background of few principle areas in the Constitution, that allows discretion in certain situations has been laid out,⁴ such as: appointment of a prime minister; dismissal of government; refusal of dissolution; and refusal of cabinet or prime ministerial advice.

The first chapter titled "The Choice of a Prime Minister", comprehensively covers cases that require the constitutional head to raise objections as to the ministerial appointment suggested by the Prime Minister. The author mentioned (though very briefly) how such a situation had not occurred so far in India.⁵ Significant portion of this section focuses on instances that have occurred in the past, and various possibilities that might arrive in the future.

The second chapter titled "Acceptance of Advice" examines the scope and binding nature of cabinet advice on the Indian President. The author after perusing less known facts concerning advice on matters involving discretion to the President, highlights how a President would be well within his rights in demanding or insisting observance of constitutional norms and practices.⁶ This kind of observance must also keep in mind the principle of parliamentary accountability that compels head of the state to act upon the aid and advice of the ministers. The author discusses how the right of reconsideration connotes different preposition in India and in the UK. The constitutional conventions of

4 *Id.* at xxiii.

5 *Id.* at 37.

6 *Id.* at 44.

the UK restricts this right in ordinary matters and in extraordinary situation, the consent of government might not be binding; whereas in the Indian set up—for all purpose the consent remains binding.

The third chapter titled “Dismissal of Government” deals with a situation that demands justification of popular sovereignty over political sovereignty of Parliament.⁷ The author submitted that the constitutional head in exercising such discretion must exercise caution and, therefore, should exercise it in rarest of rare case alone. It may be noted that in India, the power to dismiss government or its ministers rests completely on the advice of Prime Minister. It is the Prime Minister interposing between the President and his cabinet which prevents the President from acting as a dictator.

The fourth chapter titled “Dissolution of Parliament” captures the two propositions that allow the President to use discretionary power to dissolve the Parliament. The author while referring to the constitutional usage, prevailing in the UK and Commonwealth, highlights the requirement of the cabinet’s decision and not of the Prime Ministers to which the majority of colleagues are opposed to.⁸ It may be noted that a defeated Prime Minister has either a choice of resigning or counselling dissolution of Parliament, but in no circumstances, an authority to impose his decision on the constitutional head.

The next chapter titled “The President as Mediator” cites instances wherein the Indian President is required to act as a conduit between the government and the opposition. The author explains how in Britain, the monarch plays a well recognized role of a mediator in securing consensus, by narrowing down the controversy.⁹

The last chapter titled “Constitution over Conventions?” highlights the peculiar positioning of Indian President to that of British monarch. The discussions suggest that former is neither a mere figurehead nor a constitutional behemoth (since the position attains a constitutionally attributed responsibility); whereas the latter commands absolute power (however they are governed through conventions). The author carefully explained how spirit of conventions of parliamentary form of government must not be defeated or violated through the letter of the Constitution.¹⁰ The author examines certain situations that

7 *Id.* at 91.

8 *Id.* at 129.

9 *Id.* at 134.

10 *Id.* at 155.

would deny discretion to the Indian President, even though he would have them, in certain special circumstances.

The “Conclusion” examines the discretionary powers of the Indian President in a constitutional setting to British monarch. The author explains how *silence* of the written constitution should be used within the spirit of the Constitution to serve the greater purpose. Indian President receives utmost responsibility to uphold the constitutional values, which requires a great deal of alertness and consciousness towards the acts and omissions of the state functionaries. It is in this respect that the author concludes that the Indian President, over the years has faced stricter challenges than the British monarch or commonwealth heads.

The author makes us rethink constitutional morality. The book admirably demonstrates how British constitutional sovereigns positioned themselves between 1900 to 2000. The author highlights the ready decline in the approach of monarch towards democratically elected Parliament; from being a rival of the cabinet, “they veritably became its surrogate”.¹¹ The author analyzes several cases from Indian Supreme Court that clearly suggests how judiciary sometimes strategically aggrandized its jurisdiction by exploring matters far beyond its jurisdiction. Perhaps the greatest virtue of the book is its analysis of the functioning of the constitutional heads coupled with narration of apt stories which are easy to comprehend by the readers.

Understanding Commonwealth conventions and bringing them into the fore of Indian functioning requires careful understanding of our requirements. It is suggested that the written constitution must be construed with a real and literal meaning. It should not be twisted by reading commonwealth convention and practices into it. One has to bear in mind that the British sovereign is born to the throne while the Indian President is elected (of course there are various other blatant dissimilarities too). This is why despite donning a constitutional mantle that essentially binds a President to accept cabinet advice while exercising all powers formally bestowed by the Indian Constitution, the President of India can, in extraordinary circumstances, exercise discretion.

The book, on the whole, is a great contribution by the author and a value addition to the existing legal literature. Veracity, directness, simplicity and coherence in the language; citation of interesting but not so well known facts; insightful quotes and presentation of argument and views in a persuasive manner makes it a compelling reading. There is no iota of doubt that this book is

11. *Id.* at 160.

provocative, and thoughtful, and a must read for those who are exposed to law and politics, be they academicians, judges, students, practitioners or those interested in constitutional history and reforms.

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