
preface to the eighth edition

The exordium in a series of volumes that we are planning to put in your hands is the apposite quarter to scribe at once an apology and a justification. Apology for not being able to hand over the entire bulk at one go and a justification that a work of this dimension is worth the wait! Dr. Durga Das Basu, writing a preface to the 6000 pages series of volumes of the 6th and 7th editions had said that the monumental work completed, as it were, the Mahabarata on the Indian Constitutional law on the background of world constitutional jurisprudence of an unprecedented magnitude. Mahabarata's scope is encapsulated tersely by one quotation from the beginning of its first *parva*: "What is found here may be found elsewhere; what is not found here will not be found elsewhere". As with Mahabarata, so with Dr. Basu's magnum opus on the Indian Constitution. The epic, as they say, employs the story within a story structure, otherwise known as *frametales*, a narrative motif familiar to Indian literary works. These commentaries on the Indian Constitution weave a thread of judicial pronouncements with the textured comments of the author. The comparative analysis with the constitutional practice and interpretations of other countries of appropriate places adds the right hues to complete the imagery of an exotic ethnic costume.

The prodigious output is generated, thanks to the lucubrations of practitioners of constitutional law, viz., the judges and the lawyers. The churning of the courts are no palaver. They are indeed the cerebral fodder that sustains the development of all laws. Will you believe that even before anyone article in the Constitution of India was put to test in courts or its first judgment lettered in print by the Supreme Court or any other High Court of our land, the first volume by Dr. Basu appeared in November 1950? The author had indulged in an eclectic exercise through the constitutional maps of various countries and offered to his readers the distilled experiences realized by putting their constitutional paradigms to practice.

Our Constitutional document is a potpourri of the political schemes of the rulers and the aspirations of their peoples in diverse countries. A popular encyclopedia reminds us that it borrows from the British Constitutional practice, the idea of Parliamentary form of Government, idea of rule of law, institution of Speaker and his role, law-making procedure, the concept of 'procedure established by law' and a titular head as President akin to the British monarch; Of the Constitution of United States, we have borrowed the concept of the Chapter of Fundamental Rights, Federal structure, power of judicial review, independence of the judiciary and the position of President, although a mouthpiece of the Cabinet and hence of the Executive, seen as the Supreme Commander of armed forces. Parameters of administrative decisions through 'due process of law' is another concept that we owe to the American Constitution; Of Ireland, we have borrowed the Constitutional enunciation of directive principles of state policy; The ideals of liberty, equality

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and fraternity are etched from the French history; The Canadian experiment is replicated through a quasi- federal form of government, a federal system with a strong central government and the idea of residual powers of legislature; The freedom of trade and commerce within the country and between the states as well as the power of the national legislature to make laws for implementing treaties, even on matters outside normal federal jurisdiction are concepts borrowed from the Australian counter part; Fundamental duties that were incorporated as late as the 42nd amendment remind us of the erstwhile USSR constitution, while the emergency provisions are borrowed from the German constitution. Where then does it reflect the Indian ethos? That perhaps finds utterance through the 73rd amendment that contains extensive provisions for establishing the Panchayat Raj.

The rules that the constitution spells out and the interpretations that the courts supplant are basic to the understanding of the aspirations of vast populace in India. The politically conscious milieu has given to itself a constitution that articulates the principles determining the institutions to which the task of governance is entrusted, along with their respective powers. Its life is suffused with the fundamental rights that it guarantees. In its long journey, it has weathered many a storm; it has also carried whiffs of fragrance in realizing to its citizens what is aspired for. When the surrounding countries of Bharat are still wallowing under political oppression and economic under-development, we have done rather too well through our constitution.

Look, what our people have achieved through the constitution; how our brethren consisting of men of law have interpreted it; why the political establishment could not achieve what they wanted through dubious ways, even in their exclusive domains of parliament and legislative assemblies, with the constitutional courts acting as their watchdogs.

In the last decade, there have been countless judgments that are truly trail blazing in constitutional history. The doctrine of judicial review is on a stronger basis than ever before through *Rameshwar Prasad v. Union of India* (2006) 2 SCC page 1 (also called the Bihar Assembly dissolution case); *I.R. Coelho v. State of Karnataka* 2007 (2) SCC page 1 (issue of non-justiciability of laws in the IX Schedule); *Epuru Sudhakar v. Government of Andhra Pradesh* (Governor's power of pardon). *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666, *Unnikrishnan v. State of Andhra Pradesh* (1993) 1 SCC 645, *T.M.A. Pai Foundation v. Karnataka* (2002) 8 SCC 481 and *P.A.Inamdar v. Maharashtra* (2005) 6 SCC 537 represent the education quartet and the Supreme Court has stumbled on several theories, like education being a fundamental right to freeing education from state control; *M. Nagaraj v. Union of India* 2006 (3) SCC 212 tackles the issue of reservation for backward classes. The globalization initiative has its fallouts that are

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unfriendly to labour, through the decisions in *State of Karnataka v. Umadevi* 2006 (4) SCC 1 (issue of regularization in the context of back-door entries into public employment) and *T.K. Rangarajan v. Govt. of Tamil Nadu* AIR 2003 SC 3032 (right to strike is not a fundamental right). Public health and environmental concerns obtained a renewed primacy in *Murli S. Deora v. Union of India* 2001 (8) SCC 765 that prohibited smoking in public places. Voters' right to know the criminal antecedents of candidates contesting for Parliament and State assembly elections in *PUCL v. Union of India* AIR 2003 SC 2363 kick-starts the beginning of electoral reforms. The boom in Information Technology had a new source of taxation and the nature of service rendered came to be regarded as 'goods' liable for sales tax in *T.C.S. v. State of Andhra Pradesh* AIR 2005 SC 371. The *Best Bakery* exposed the vulnerability of witness to financial allurements. The case restored sanity to criminal trails by severe punishment for perjury and the readers will follow the law in *Zahira Habibullah Sheikh and another v. State of Gujarat* AIR 2004 SC 3114 and 3467. The list of cases of paramount importance are as variegated as the subjects that the Constitution traverses.

A series of volumes of this mammoth size cannot be a product of one person. A whole team has been involved in this exercise. The publishers M/s Wadhwa and Company Nagpur, are doing a signal service to the legal world by making possible this arduous, yet worthy effort to take shape through books brought out in ornamental style that is their wont and we offer to them our gratitude in abundance. We also thank Shri K. Kannan, Advocate, Madras High Court for securing to us source materials for the volumes, whenever we made out demands on his time. We also thank Shri B.M. Gandhi, Former Principal, Law College, Modasa, for having helped in updating the Introduction part and in the preparation of the Subject Index of the individual volumes to the series.

The Constitution is like an ever-flowing river Ganga. Through our present edition, we hold but a cauldron to collect the water up to its brim. Inevitably, it will flow out soon, ready to fill many more receptacles. Every successive edition could be a part of the continuum in the growth of this branch of law. Shortcomings are not in the river that nourishes our land; it is in the vessel that attempts to capture the rising tide. We will clean the blotches through vigilant leadership, when you may bring the errors to our attention. Wishing the readers a warm Indian Independence Day greetings on the 60th year of the historic occasion!

15th August, 2007
"60th Independence Day"

Justice Y.V. Chandrachud
Justice S.S. Subramani
