

## BUCHBESPRECHUNGEN / BOOK REVIEWS

*Arun K Thiruvengadam, Constitution of India: A Contextual Analysis*, Hart Publishing, Oxford and Portland, Oregon 2017, 296 pages, price: £24.99, ISBN-13: 9781841137360

Context is essential to understand constitutional law. As far as Indian constitutional law is concerned, the context to be considered is especially vast, not only because of the sheer size of the country's population, but also because of the rich history leading up to Independence as well as the eventful, oftentimes dramatic, decades that followed.

Thus, when studying Indian constitutional law in context, one needs to understand the colonial background, India's multi-ethnic, multi-lingual, and multi-religious population, widespread issues like poverty and discrimination based on grounds such as sex, caste, and religion, as well as the fact that India is surrounded by neighbours with whom relationships are either not very friendly, or even hostile. Furthermore, one needs to understand the rapid transformation that has taken place in the country since its governments have decided to liberalise the economy in the early 1990s.

While the constitutional text has been described and analysed against this backdrop, a concise and, especially, up-to-date account had been missing until the release of Thiruvengadam's book in 2017. For decades, Granville Austin's two books "The Indian Constitution: Cornerstone of a Nation" and "Working a Democratic Constitution: The Indian Experience" were among the best titles introducing both the Constitution and its historical and political context. But these books are far from providing a quick read, being well over 1,000 pages long combined. Moreover, they are not up to date, as the latter book only briefly touches upon the developments in the very early 1990s, mostly describing a nation that in many ways now seems like a country of a distant past.

To understand India's Constitution as it is today, it is important to consider all decisive events that may be considered "constitutional moments", which include Independence, the 1970s Emergency, the change to coalition governments after decades of rule by the Congress Party, economic liberalisation in the 1990s and, most recently, the strong grip on power by the BJP-led Hindu nationalist government. Thiruvengadam's book not only highlights all of these important events, but also describes the roles played by different constitutional actors. This includes the Constitutional Assembly, the national Parliament, the Executive, and the Judiciary, but also actors whose roles have so far not been studied in depth, such as the Comptroller and Auditor General, the Election Commissions and several regulatory institutions created post-1991. The book reserves an entire chapter for these "technocratic constitutional institutions" (chapter 5 of 7).

The author, therefore, aims to tell both stories that have already been told by other authors (like in Austin's books), but in a very concise and accessible manner, and at the same time to explore issues that have not received much attention in the past. The book succeeds in accessibility, being less than 300 pages long and being written in a language

that is easily understandable, without lacking sufficient depth when dealing with complex issues. It is also a very enjoyable read, even for readers who are already familiar with many of the topics covered, also because the book offers new perspectives and ideas, such as when telling the story of early attempts at constitution making by the Nationalist Movement (Chapter 1) or when developing a rough typology of constitutional amendments (Chapter 7).

The book deals with the Constitution in seven chapters, each of which highlights different actors and aspects of constitutional law, rather than telling the story of the Constitution chronologically. The choice of categorising the content in this way illustrates that the book is a legal account, rather than being – like Austin’s books – primarily historical or political. Consequently, the author summarises the “black letter law”, i.e. the constitutional provisions, concerning each of the subjects at hand in almost every chapter before exploring the context of these provisions, both describing their origins and their workings in practice.

Like a historical account, however, the book starts with the “Origins and Crafting of the Constitution” in Chapter 1. The chapter focuses primarily on the time period from 1857 to 1947 (the British Raj), but also describes previous centuries since 1550, albeit very briefly. The analysis of the era of the British Raj and the draft constitutions developed by the Nationalist Movement allows an explanation how in 1950, newly independent India adopted the colonial structures of governance while at the same time designing other aspects of the Constitution in order to create an egalitarian democracy, for instance by including a Bill of Rights, which the National Movement had demanded as early as 1895. Already in this chapter, the importance of contextualisation becomes apparent, as the author also highlights that the rights of citizens were, in some respects, restricted considerably because the Constitutional Assembly was at the same time ruling the country as the Dominion Parliament, tackling the challenges of partition, insurgency and Hindu nationalism, and therefore learning to appreciate the police powers enjoyed by the colonial state (p. 31). Without being aware of this context, it is difficult to understand why such powers were retained in a liberal democratic constitution.

Chapter 2 then further describes the role of the Executive and Parliament after the Constitution went into effect. The author highlights how the set-up resembles the UK’s Westminster System while at the same time departing from the colonial system that the British had used to govern India. Consequently, he argues, it would be an oversimplification to conclude that the constitutional set-up is a continuation of the colonial era, as this would ignore the complexities involved in the process of making choices concerning the executive and the legislature. Still, the author goes on to explain that by making Euro-American constitutional choices, the Constitutional Assembly at the same time rejected, to a large extent, the revival of ancient Indian practices and Gandhian ideas. Unfortunately, those Gandhian ideas about decentralisation are only described very briefly, on one and a half pages (pp. 45-46), stopping short of explaining, at least roughly, what a truly “Gandhian Constitution” might have looked like. Similarly, the author’s argument that regulating political parties in the constitutional text itself would have been important in the interests

of maintaining strong traditions of constitutional democracy (with the author referring to the example of Germany's post-War Constitution, p. 50), is intriguing, but leaves the reader wondering which problematic developments may or may not have been prevented by additional constitutional provisions, as the book touches upon this idea only very briefly as well.

The third chapter deals with Federalism and Local Government, describing the relevant constitutional provisions and their implementation in practice. The author highlights the role of regional parties that have become increasingly important under the federal set-up created by the Constitution. He also explains how local government at the sub-state level was strengthened, or, in some ways, created in the first place by providing for local government institutions with new constitutional provisions added by the 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments in 1992. The chapter also offers a brief overview of India's fiscal federal setup, describing the distribution of revenues and finances between the Union and the States (pp. 86 et seq.).

Chapter 4 deals with Fundamental Rights, Directive Principles and the Judiciary. The struggle between the government and the judiciary, especially concerning property rights and the government's initiatives for land reforms, as well as the relationship in between justiciable Fundamental Rights and (seemingly) non-justiciable Directive Principles is a story that has been told many times. However, the author manages to do so on mere 37 pages without leaving any major questions unanswered, making this chapter a great introduction for anyone studying the Indian Constitution for the first time.

The next chapter, on the other hand, concerns issues that may be a novelty even to readers who feel they are familiar with Indian constitutional law. In Chapter 5, the author describes India's "Technocratic Constitutional Institutions", analysing the roles of the Comptroller and Auditor General, the Election Commission and "new regulatory institutions". Such "technocratic institutions" are often overlooked, as their workings and powers are not as tangible as the "regular" three branches of government. This holds true especially for the "new regulatory institutions" that were created since the 1990s, which the author describes in the last part of the chapter (pp. 157 et seq.). As two examples, the author highlights the Securities and Exchange Board of India (SEBI) and the Telecom Regulatory Authority of India (TRAI). As with other parts of the book that deal with the constitutional set-up after the beginning of the era of economic liberalisation in 1991, the section on the "new regulatory institutions" is rather short (four and a half pages), which leaves the reader with a desire to learn more about this relatively recent part of Indian constitutional history. Still, it is commendable that the author managed to include these institutions in the book, and that he reserved an entire chapter for "technocratic institutions" in the first place.

Chapter 6, titled "Constitutional Regulation of India's Multiple Identities", tackles some of the most difficult and contentious issues of Indian constitutional law. The author explains the historical reasons why "group rights" for religious minorities that had played an important role in colonial India were weakened in the constitutional set-up while rights for Scheduled Castes, Scheduled Tribes and Other Backwards Classes (SC, ST, OBC)

were strengthened vis-à-vis the previous colonial order. He also delves into the issue of language and its role in the creation of new States. While these issues are complex enough to fill an entire book, the author succeeds in providing a concise and accessible overview, while also highlighting the limited success that legal measures such as affirmative action or “compensatory discrimination” have had on the ground.

Finally, the author has also included a chapter on Constitutional Change, describing the provisions for changes to the constitutional text itself as well as how the Constitution has changed without explicit constitutional amendments through “constitutional moments”. As far as “regular” constitutional amendments are concerned, the author makes an intriguing argument that one should not just consider the relatively large number of amendments to the constitutional text since Independence, but that one should also be aware of the fact that there are very different kinds of amendments, with only some of them being an expression of political turmoil or instability. In doing so, the author develops, as mentioned above, a very interesting “typology” of constitutional amendments, highlighting how some were a mere necessity because of time limits for some constitutional provisions, while others dealt with a very specific issue (the secessionist movement in Punjab). The most famous and most contentious constitutional amendments dealing with fundamental rights, especially the right to property, are only one of four types of amendments in the author’s typology.

The argument that the Constitution has been changed not only through amendments and interpretation, but also shaped by “constitutional moments”, is perhaps even more interesting, with the author once again highlighting the importance of economic liberalisation in 1991. However, this final part of Chapter 7 dealing with “constitutional change through constitutional moments” is rather short: the author has only reserved one page for it (pp. 229-230).

In the book’s Conclusion, the author highlights some contemporary issues, first and foremost the large amount of public support and power that Prime Minister Modi’s BJP government has enjoyed since 2014. He argues that that party’s victory in 2014 demonstrates that the phase of coalition governments after the 1980s is indeed not a permanent one, but that majorities and dominance by a single party are again a reality. The author also notes that such powers enjoyed by a single party have brought worrying developments, such as the government using antiquated colonial laws for prosecution of “anti-nationals” or new Judiciary-Executive tensions, such as measures taken against a Delhi High Court judge or the issues concerning judicial appointments (pp. 236 et seq.).

As this short outline of the book’s chapters shows, the author has managed to tackle a multitude of issues on just under 300 pages, and has succeeded in providing depth for each and every one of them by providing historical and political context. For scholars, whether they are studying the Indian constitution for the first time or whether they are already well-versed in the subject and would like to review certain topics, the book is an excellent source for a quick overview of all the issues covered.

However, scholars who have already studied Indian constitutional law and constitutional history and who might pick up this book to find out more about developments since

the 1990s might be left wanting for more, considering the brevity at which the book covers these developments. The author himself notes that the fact that many scholars have previously focused on issues such as the “basic structure doctrine” distracts from constitutional moments such as economic liberalisation in 1991 (p. 229). Consequently, it would be desirable for the parts that do describe this constitutional moment to be expanded in future editions of the book.

Still, overall, for Indians and non-Indians alike who are studying the Indian Constitution for the first time, for those who want to have a book for quick reference, for those who want to brush up on their existing knowledge and at the same time, understand the issues at hand against a broader context, the book is highly recommended. The accessible language makes it a very enjoyable read as well.

Florian Matthey-Prakash

*Silvia von Steinsdorff, Ece Göztepe, Maria Abad Andrade and Felix Petersen, **The Constitutional Court of Turkey Between Legal and Political Reasoning**, Nomos, 2022 ISBN 978-3-8487-4632-3 (Print), 978-3-8452-8862-8 (ePDF)*

In an era marked by a global resurgence of authoritarianism, populism, and debates about the weakening role of constitutional courts this book arrives quite timely. With its critical analysis of Turkey's Constitutional Court, the book provides useful insights, shedding light on the Court's history, its case-law, and its influence on Turkish constitutional order.

The authors note that surprisingly little is known about the AYM (*Anayasa Mahkemesi*), the Constitutional Court of Turkey, and its case law, despite its existence for over six decades. This assertion is convincingly sustained by a literature review that uncovers a limited number of outdated monographs, mostly written in Turkish, and a selection of articles that are limited in their scope and/or the time periods they cover. The book highlights an obvious absence of systematic judicial analyses pertaining to the AYM, covering the extensive period from the Court's establishment in 1961 up to recent times, as late as 2022. It undertakes the aim of filling this gap, an aim it achieves successfully.

The book is divided into three parts. "The Institution", the first part, delves into Turkey's constitutional history from 1924 and goes on to tell the establishment of the AYM under the 1961 Constitution. This section further encompasses the general constitutional framework, including the selection of judges for the AYM, the status and competences of the Court, and the effects and scope of its decisions.

While Part I serves as a valuable guide to the history of Turkish constitutional law and the Court's constitutional status and powers for those unfamiliar with the subject, it also goes beyond simply providing a descriptive glimpse of the Court. On top of that, it provides convincing observations about the impact of Court's internal structure on its