THE CONSTITUTION ON THE COFFEE TABLE

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Bhattacharjee AM., Equality, Liberty and Property under the Constitution of India, Eastern Law House, Calcutta, 1997, Pages 172, Rs. 200/-.

The author was a distinguished Judge who needs no introduction. Among his many achievements are his tenures as the Chief Justice of the Sikkim (acting), Calcutta and the Bombay High Courts, and his other publications. Also, he is a Visiting Professor at the National Law School and he holds as many as three other titles.[1] The back flap provides the interested reader with a brief history of the author's achievements.

As the title suggests, the work consists of three propositions forming the major premises on which the rest of the work relies. The areas of concern are the interpretation of the Constitution with respect to the nature and meaning of the Equality Clause, Personal Liberty *vis a vis* Life under Art. 21 and the effect (or the lack of it) of the Amendment[2] to deny the Right to Private Property as a Fundamental Right under Part Three of the Constitution. The work also contains comments on "some miscellaneous topics relating to various provisions of the Constitution." Many of these excursions are to areas unconnected to the main purposes of the work but they are not uninteresting to read.

The Equality Clause: This chapter can be ignored by those who have read other works on the subject, while those who have not will find a good précis of the major issues regarding Art. 14. There is very little to say about this chapter except for pointing out that while the author claims to "have all along regretted my (*the author's*) unfortunate inability to appreciate the forensic adventure" that recognised the 'brooding omnipresence' of reasonableness pervading the Equality Clause,[3] he has also declared that "Art. 14 has been enthroned with spectacular activist magnitude commanding all laws to be *reasonable* on pain of invalidation" in his other literary works[4] with no indication of disapproval.

Life and Personal Liberty: In an interesting thesis, the author has suggested that "the strenuous endeavour to locate or squeeze in the Rights to Livelihood,

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1 Dharma Desikaratna, Nyaya Bharati and Smriti Sudhakar; *see* back flap.

2 The Constitution (Forty-Fourth Amendment) Act, 1978.

3 It must be noted that he has done so quite daringly in his decision in *West Bengal Power Development Corporation*, AIR 1990 Cal 125 at p. 128.

4 *Muslim Laws and the Constitution* 107 (1994) & *Matrimonial Laws and the Constitution* 91 (1996).

Education, Work, Shelter, Reputation and all that, which are *obviously Personal Liberties*, in and within the *Right to Life*, was unnecessary forensic exertion" (emphasis added).

This astonishing revelation is the result of the combination of 2 rules. First, the rule that an unnamed right cannot be read into a named right *unless* it "is an integral part of a named right or partakes of the same basic nature and character as that fundamental right. Thus the exercise of such right is in reality and substance nothing but an instance of the exercise of the named Fundamental Right".[5] The second rule being, as postulated in *Kharak Singh*, followed in *Satwant Singh* and reiterated in *Maneka*, that "while Art. 19(1) deals with particular species or attributes of ... freedom, personal liberty in Art. 21 takes in and comprises the residue". The argument is that the Rights to Education, Work, Livelihood, Shelter, Reputation and all that, are particular attributes of freedom and do not share the same basic nature and character of the right to life and so cannot be included therein. The author therefore suggests that an easier and more appropriate route to secure these rights would be to declare them as a part of the right to personal liberty, as residual liberties.

The main objections to this theory are that the word 'personal' has been totally ignored both by the Courts as well as by the author. There is a distinction between Personal Liberty and Liberty, *per se*. For example, as used in the US Constitution,[6] it lies in the fact that personal liberty is merely one of the many civil liberties, just the same as the Right to Life. Another objection lies in the fact that though the Courts have declared these unnamed rights to be a necessary constituent of the right to life, they have to be understood in light of the interpretation by the Courts of the word 'life'. Life has been described to 'mean more than mere animal existence' and if this is correct then, the expansion of the right to life seems more acceptable than rendering obsolete the knowledge base attached to the notion of personal liberty.[7] Finally, this theory would render Arts. 19, 25, etc. superfluous as the protection of the liberties therein could be dealt with under personal liberty in Art. 21 itself.

Fundamental Right To Property: Having made out a case for a new understanding of 'personal liberty', the author goes on to tender the right to property, the status of a personal liberty. This argument is quite simply a fallout of the earlier chapter and is a restatement of an earlier publication.[8] If one accepts that the right to property is a personal liberty, then the repeal of Art. 19(1)(f) has if anything placed the right to property on a higher plane because Art. 21 recognises no limitations on personal liberties.

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5 AIR 1978 SC 597 at p. 640.

6 The distinction has been made out in *AK Gopalan*, AIR 1950 SC 27.

7 The writ of *habeas corpus*, is only used to secure personal liberty. If one accepts the authors arguments it may be used to secure the right to education etc., ludicrous though it may seem.

8 AIR 1982 Jour 52.

The introduction to the book is devoted to miscellaneous comments on various aspects of the Constitution and general comments on the frailty of the law and language of the law. On the whole, the book makes for interesting reading and would have been better if only more attention had been paid in editorial and publishing assistance. The text is rampant with spelling and punctuation errors and the incorrect footnotes are innumerable. One of the major problems in reading the book is the lack of continuity. The preface is a brief summary of the book at first glimpse, but contains many contradictions of the text. The articulation could have been better, but I recommend the book for all those interested in the consequences of judicial blundering, for that, I suspect, was its purpose.