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Book Review. Gajendragadkar, P.B., The Constitution of India

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Reviewed by Ralph F. Fuchs *

In this modest volume, containing the first series of Gandhi Memorial Lectures at University College, Nairobi, the distinguished former Chief Justice of India, now Vice Chancellor of the University of Bombay, summarizes certain fundamental aspects of constitutional government, and concludes with a comparison of Indian and Kenyan governmental principles. Necessarily, in so brief a compass, the lecturer focuses on selected aspects of Indian constitutional law. He stresses the central purposes of the Constituent Assembly which wrote the Constitution and the interrelations of legislation and judicial decisions in effectuating those purposes. He omits such political matters as the allocation of power among the President, Prime Minister, and cabinet, but points out briefly that, despite frequent attributions of federalism to the government of India, clear constitutional provisions place the supreme authority unquestionably at the center. The practical effects of the center’s emergency powers are not discussed.

The author’s presentation is descriptive in large part, but he sets forth effectively and with conviction the philosophy of 20th-century liberalism which the Indian Congress Party has espoused and which suffuses the Constitution. It combines democratic values and methodology with the goals of the welfare state; and it underlies the Fundamental Rights and the Directive Principles of State Policy set forth in the Constitution. The Directive Principles, in the author’s view, are important guides to interpretation even though they are unenforceable by judicial process. They justify the rather frequent resort to constitutional amendment which in the Indian experience has been necessary to counteract certain overly technical or uncomprehending judicial decisions that from time to time have nullified social legislation or statutes designed to maintain public order. He regrets the constitutional provisions for preventive detention, however, and hopes for their early elimination. Others might obviously differ with his evaluation of the course of constitutional decision and amendment.

Dr. Gajendragadkar is unhappy with the decision of the Indian Supreme Court, rendered shortly after he retired from it, which held the Fundamental Rights provisions to be unamendable in a manner that would restrict their scope; for in his view no government can permanently be immunized from popular desires for change. His text invokes the wisdom of Gandhi and of Nehru, which in his view the Constitution-makers “made an earnest endeavor to translate” into a workable scheme of government. The book can be recommended as an excellent brief summary of the history, constitutional embodiment, and basic philosophy of the Indian system. Its frequent references to the thought and experience of Western countries, including the United States, demonstrate how truly a democracy with kinship to our own is at stake in the Indian experiment.

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