30

CONSTITUTION AND CONSTITUTIONALISM

THE CONSTITUTION OF INDIA
AN EXPOSITION OF ITS PRINCIPLES

Introduction : The Beginnings and the Growth of the Constitution.

PART I

Principles underlying the Constitutional System

Chapter 1. .. The Principle of Democracy.
Chapter 2. .. The Principle of Federalism.
Chapter 3. .. The Principle of Separation of Powers.

PART II

The Organs of the State

Chapter 4. .. The Legislature.
Chapter 5. .. The Executive.
Chapter 6. .. The Judiciary.

PART III

The Union and the States

Chapter7. .. Legislative Relations.
Chapter 8. .. Administrative Relations.
Chapter 9. .. Financial Relations.
Chapter 10. .. Emergency Relations.

PART IV

The State and the Citizen

Chapter 11. .. The Rule of Law.
Chapter 12. .. Right to Personal Freedom.
Chapter 13. .. Right to Freedom of Speech.
Chapter 14. .. Right of Public Meeting.
Chapter 15. .. Right of Association.
Chapter 16. .. Right of Free Movement.
Chapter 17. .. Right to hold Property.

The manuscript received contained only the Chapter Scheme of the book presented above and the two introductions which follow : Editors.

INTRODUCTION

The Nature and scope of Constitutional Law

In the pages that follow I have not reproduced the text of the Articles of the Constitution. Such a thing would have been in my judgment useless and unhelpful to the student who wants to have an overall idea of the provisions of the Constitution and the principles underlying it. What I have done is to select certain heads and assemble thereunder for discussion and exposition articles of the Constitution relevant to such heads. What those heads are will be clear from the Table of Contents. This is an analytical study of the Constitution which aims to give an objective picture of the Constitution and to set it in contrast with the provisions of the constitutions of other countries.

It is not unlikely that a reader may ask on what basis I have selected the heads for discussion. My answer is that these are the topics which are generally held to fall within the scope of Constitutional Law. This answer, however, raises other questions. What is meant by a Constitution ? What is the nature and scope of Constitutional Law ? Some explanation of the subject is, therefore, inevitable. It must, however, be very brief.

What is meant by the term Constitution ? The word constitution in its legal connotation means the act of establishing or of ordaining or the ordinance or regulation so established. According to Prof. Mc II wain :—

"In the Roman Empire the word in its Latin form became the technical term for acts of legislation by the emperor, and from Roman Law the Church borrowed it and applied it to ecclesiastical regulations for the whole Church or some particular ecclesiastical province. From the Church, or possibly from the Roman law-books themselves, the term came back into use in the later middle ages as applicable to secular enactments of the time."

For centuries the word Constitution always meant a particular administrative enactment. Much as it had meant to the Roman Lawyers. The word was used to distinguish such particular enactments from *Consuetudo* or ancient custom. It was not until 1610 the Constitution came to have the modern meaning, according to which it means the scheme of civil Government as defined by law ; in other words, the legal frame work of the State.

A hundred years later the word Constitution is seen to have taken on an additional and special meaning which goes much beyond the legal frame-work of the State. This is well indicated by Bolingbroke who, writing in 1733, said :—

"By Constitution, we mean, whenever we speak with propriety and exactness, that assemblage of laws, institutions and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that compose the general system, according to which the community hath agreed to be Governed."

Even this meaning of the word Constitution is still short of the modern meaning of the word Constitution. To-day the word means the fundamental law which determines the powers and duties of the different organs of Government in a State and to which they are subject. This meaning of the word Constitution was evidently brought out by Thomas Paine who argued that:—

> "A Constitution is not the act of a Government but of a people constituting a Government and a Government without a Constitution is power without right."

So much for the meaning of the word Constitution.

What is the nature and scope of Constitutional Law ? An easier way of understanding the nature of Constitutional Law is to know its scope. It would, therefore, be better to describe first the scope of it. The scope of Constitutional Law all over the world where democracy prevails includes all matters relating to the right claimed by the State against its citizens, *i.e.* (1) to make a law binding on all,

(2) to enforce the law and (3) to interpret the law and the rights claimed by the citizens against the State. If it is a composite State, i.e., a Federal State, then the scope of Constitutional Law would, in addition to those matters, include matters pertaining to the inter-relations between the Central Polity and the other polities making up the Federation, legal, executive and financial.

Given the scope what is the place of Constitutional Law in legal jurisprudence ? Prof. Holland calls it a part of the Public Law of the country. No one can deny that this is the correct view. His reasoning logically leads to that conclusion. Law as an enforceable rule of conduct relates to rights. When it relates to rights as between the citizens of the same State it is called Municipal Law. When it relates to two different States, it is called International Law. The Municipal Law of a State falls into two categories. One is called the Private Law and the other is called Public Law. Rights which may be enforced by one citizen against another fall under what is called Private Law. Rights which the State asserts against citizens to enforce against itself fall under what is called Public Law. Similarly in a federal organization the rights which the Centre has against the States necessarily belong to the field of Public Law. On no view they can be deemed to fall under Private Law.

In so far as Constitutional Law deals with the rights claimed by the State against another State or by the State against the citizens and the rights claimed by the citizens against the State, Constitutional Law must be admitted as a branch of Public Law. This explanation of the nature and scope of Constitional Law will justify why only certain heads have been selected for discussion and exposition. They are selected because their discussion offers the best method of exposing the Constitution as a part of the Public Law of India and bringing to light its special features.

●●