

BASU'S COMMENTARY ON THE CONSTITUTION OF INDIA. Vols. 1 and 2, 5th Ed. By D. D. Basu. [India: S. C. Sarkar & Sons (Private) Ltd. 1965. £4. or US\$12].

INTRODUCTION TO THE CONSTITUTION OF INDIA. 4th Ed. By D. D. Basu. [India: S. C. Sarkar & Sons (Private) Ltd. 1966. Board bound Rs. 16/-; paper bound Rs. 14/-].

Basu's *Commentary on the Constitution of India* has established itself as the standard reference book on the Indian Constitution. The fifth edition seeks to bring it up to date. However, this has not always been achieved in all cases. A significant lapse occurred in the discussion on Article 22 of the Indian Constitution which provides, *inter alia*, for the assistance of counsel to a person who is arrested or detained. Reference was made to the parallel provisions of the United States Constitution (Sixth and Fourteenth Amendments) and the case-law on the scope of the right to counsel.¹ However, the fifth edition failed to incorporate the landmark case of *Gideon v. Wainwright*² decided by the United States Supreme Court in 1963 which enlarged the right to counsel in the States of the United States to such an extent as to overrule the pre-1963 position as stated in the text of the *Commentary*.³ Prior to the *Gideon* decision, the due process clause of the Fourteenth Amendment had been interpreted to impose a limited obligation on the State Governments to provide an indigent accused, with the assistance of counsel. As Basu stated, a distinction was drawn between cases involving capital punishment and other cases, the duty to provide counsel being mandatory in the former and discretionary in the latter, depending on the circumstances of the case.⁴ In contradistinction, the Sixth Amendment, which was addressed to the Federal Government and not the States, affords an accused in all criminal prosecutions the assistance of counsel for his defence and this includes the appointment of counsel to aid an indigent accused at the expense of the Government. The effect of the *Gideon* decision was to obliterate the distinction between capital and non-capital cases as applied to the obligations of the State Governments and to assimilate their positions to that of the Federal Government. In view of the significance of the *Gideon* decision on the right to counsel the failure to mention it was most surprising. Indeed, even before 1963, the distinction between capital and non-capital offences had been gradually eroded in the late fifties and early sixties by a series of decisions which have reduced the significance of the distinction,⁵ but these cases had not been noted, those referred to being decisions in the late forties and early fifties.⁶ Since the publication of the fifth edition of the *Commentary*, the United States Supreme Court decisions of *Escobedo v. Illinois*⁷ and *Miranda v. Arizona*⁸ have enlarged the scope of the right to counsel in pre-trial proceedings and perhaps the author may wish to add them to or substitute them for the older cases cited in the next edition of the *Commentary*.

Some comments are also called for on some remarks of the author in connection with the equality before the law and equal protection of the laws clauses of Article 14. The author adopted the view of the Indian Supreme Court that there is a tangible distinction between these two clauses; that "while equality before the law is a somewhat negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law (Dicey), 'equal protection of the laws' is a more positive concept implying equality of treatment in equal circumstances though the object is fundamentally the same, *viz.*, equal justice, and, in fact, the idea of equality of treatment finds place in the English writer Jennings' exposition of the principle of equality before the law:

1. Vol. 2, at pp. 99 *et. seq.*; see also, Vol. 1 at p.292 under heading "justice should be available to all".
2. 372 U.S. 335 (1963), followed in *Escobedo v. Illinois* 12 L. ed. 2d. 977 (1965); *Miranda v. Arizona* 16 L. ed. 2d. 694 at p.722 (1966).
3. Vol. 2, at p.100.
4. *Ibid.*
5. *E.g. Griffin v. Illinois*, 351 U.S. 12 (1965); *Burns v. Ohio*, 3 L. ed. 2d. 1209 (1959); *Draper v. Washington*, 9 L. ed. 2d. 899 (1963); *Douglas v. California*, 9 L. ed. 2d. 811 (1968).
6. Vol. 2, at p.100.
7. 12 L. ed. 2d. 977 (1965).
8. 16 L. ed. 2d. 694 (1966).

Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike.⁹

It is difficult to see what different areas of the right of equality both these clauses protect. It seems obvious that each prohibits discrimination between persons in like circumstances whether in terms of the grant of privileges or the imposition of burdens or liabilities and are thus tautologous. In endorsing this distinction¹⁰ the author was fortified by the fact that both these clauses are found in Article 7 of the Universal Declaration of Human Rights and Article 20(1) of the Covenant on Human Rights, 1950. The present reviewer finds it difficult to accede to a distinction supported by such reasoning where the protection afforded by both these clauses cover the same area. The incorporation of both clauses seems *ex abundantia cautela*.

One last comment may be made with respect to the *Commentary*. There is a tendency towards repetition and delving into too wide an area in the exposition of the various Articles to the Constitution so as to create an impression of diffusion.¹¹ The discussion could be compressed without loss of quality. The use of the same numbers to refer to footnotes in preceding or subsequent pages is sometimes confusing and occasionally, a footnote corresponding to a particular number cannot be traced.¹² Reference to a wrong page has also made its appearance. However, these are minor drawbacks and do not seriously detract from the utility of the *Commentary* as a reference book.

Unlike the *Commentary*, the *Introduction* is a very slim volume outlining the Constitution of India with brief comments on the various Articles as well as a short account of the historical and philosophical background of the Constitution. It is, within its own terms of reference a comprehensive little book in coverage, and presented to all those readers who wish for a quick birdseye view of the Indian Constitution.

9. *State of U.P. v. Deoman* A.I.R. 1960 S.C. 1125 at p.1134; see also, *Sheoshankar v. M.P. Government* A.I.R. 1951 Nag. 58 at p.86; *Suryapalsingh v. U.P. Government* A.I.R. 1951 All. 674 at p.690; *Row v. State of Madras* A.I.R. 1951 Mad. 147; *Shrikishan v. Dattu* A.I.R. 1953 Nag. 14 at p.15; *S.I. Bank v. Pichuthayappan* A.I.R. 1953 Mad. 326 at p.331.
10. Vol. 1, p.287.
11. Vol. 1, at p.294 *et. seq* in connection with Article 14.
12. Vol. 1, at p.287. Reference to footnote 16 in statement “equality before the law is a somewhat negative concept.”