

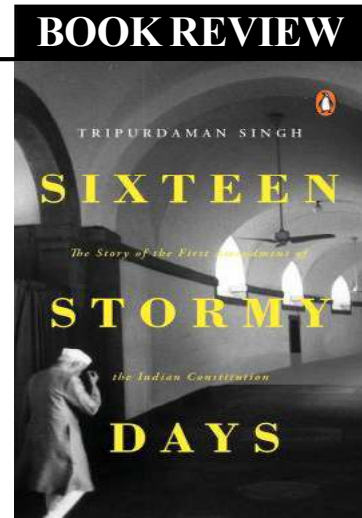
SIXTEEN STORMY DAYS

Author: Tripurdaman Singh

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*Book Review by: Maj. Gen. Dhruv C. Katoch**



On 9 December 1946, just over eight months before India achieved her independence on 15 August 1947, the new Constituent Assembly was convened with Dr Rajendra Prasad elected as the permanent chairman. Dr Prasad declared his intention of placing before the world ‘a model of a constitution that will satisfy all our people, all groups, all communities, all religions inhabiting this vast land, and which will ensure to every one freedom of action, freedom of thought, freedom of belief and freedom of worship’. The sentiment was indeed noble and reflected the subconscious desire of a people long suppressed, who desired nothing more than ridding themselves of the foreign yoke which had enslaved them for close to millennia.

The chairman of the Drafting Committee, Dr Bhim Rao Ambedkar was conscious of the vast responsibility that had been placed on his shoulders. A young and aspirational India was finally waking to a new dawn of hope, where they would be the masters of their own fate and Dr Ambedkar rightly described individual rights and the constitutional remedies to enforce and safeguard them as the

‘very soul of the Constitution and the very heart of it’.

The Constituent Assembly debates which took place over the next three years after the convening of the Constituent Assembly, and which finally led to the enactment of the Constitution of India on 26 November 1949, make for very interesting reading. Some of the most heated debates took place on the issue of fundamental rights. India had shed its foreign yoke and the people were free. The Constitution had to reflect that spirit of freedom. One of the aspects debated was the need for India’s judicial system to act as the guarantor of the fundamental rights. Very heated debates took place on the powers of the Executive and the Legislature to make laws. There was a body of opinion that wanted certain laws made by the Executive to be outside the purview of judicial review. That, of course, would have given to the Executive the power to bypass the Constitution when it was found expedient to do so, even if it trampled on the fundamental rights. Thankfully, there were enough dissenting voices to ensure this did not happen.

Ambedkar warned of the need to observe

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certain morals and conventions of the Constitution, both by the government and by the people, if parliamentary democracy was to succeed. “Indeed, if I may say so,” he had emphatically asserted in the Constituent Assembly, “if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say was that man was vile”.

On 26 January 1950, when India became a Sovereign Democratic Republic, no less a person than India’s first Prime Minister, Jawaharlal Nehru proclaimed the Indian Constitution as “...the most elaborate declaration of human rights yet framed by any state”. The euphoria that existed on the day that India became a Republic was second perhaps only to the heady feeling of becoming an independent nation at the midnight hour of 15 August 1947. In the words of the 19th-century poet, William Ernest Henley, India finally was *the master of its fate and the captain of its soul*.

It did not take long however, for the government to come to the conclusion that building an edifice based on strong guarantees of upholding individual freedoms was one thing; living up to those ideals was another. Within a year, there was a visible change in the stance of the government. The Constitution, which had been proclaimed as a charter of freedom for India’s people and the fulfilment of their dreams, was suddenly perceived as impeding in the way of the will of the same people.

This story has been eloquently captured by Tripurdaman Singh in his outstanding book, ‘Sixteen Stormy Days’. The events which led to the enactment of the First Amendment, have been chronicled in a manner that make for both easy

reading and comprehensive understanding. In essence, this was the first battle of Indian liberalism, but it was lost on the grounds of political expediency. The very people who had drafted the Constitution, now sought its amendment, leaving just a few stalwarts like SP Mookerji, Mr Jayakar, Jai Prakash Narain, Acharya Kripalani, HV Kamath, MC Chagla and a handful of others to stand up for Indian liberalism. But it was a losing fight and the amendment was enacted. This book traces the history of those fateful sixteen days when the issue was debated before it was finally enacted. The sixteen months between the promulgation of the Constitution and its amendment in June 1951 held great significance for India’s polity and the structure of the state. The social fabric had been altered and this was to become the precedence for many other amendments in the coming years.

In the debates carried out in the Constituent Assembly, the issue of personal freedom, civil liberties and individual rights and how these would manifest in the Constitution, had been a constant theme. Thus, in the fundamental rights, the provision was put in Article 13, that any law which was in force in India, and which was inconsistent with or in derogation of the fundamental rights would be void. It was for this reason that Ambedkar had proudly declared that individual rights and constitutional remedies to enforce and safeguard them were ‘the heart and soul of the Constitution’. This is not to say that reservations were not expressed. The outgoing Governor-General, C Rajagopalachari opined a need for restoring the ‘unqualified reverence for the state’ and a revival of ‘feudal manners and chivalry, but in terms of modern democracy’. There were thus

contradictory voices which laid bare the ambivalence that existed within the ruling Congress party concerning the Constitution.

The issues which were finally to lead to the amendment of the Constitution started coming out soon after its promulgation. Heavy-handed actions of the state came under scrutiny and the courts threw out the provisions which gave the state the power to indefinite and open-ended detention. The Courts increasingly became active on such issues, and this was but the tip of the iceberg. Soon, the government faced challenges to its land reforms agenda, which was a part of its social engineering exercise. It also came up with issues about freedom of speech, desiring to impose curbs on such freedom, in what it perceived to be in the interest of the state. Nehru, for some reason, was particularly irked by the constant criticism of Pakistan, which he felt was hampering his foreign policy. With the government getting constrained by the Constitutional limits on Executive power, it sought a way out of the impasse. As the Times of India observed in its editorial, it was tragic that 'our popular governments should at every stage, feel the need of repressive laws, against which leaders of our freedom struggle, cried themselves hoarse for generations'. In such an environment, the government introduced the Constitution (First Amendment) Bill.

In Parliament, Nehru came up with the ingenuous argument that the changes were required in the Constitution, because, if the changes were not made then the whole purpose of the Constitution 'may be defeated or delayed'. This was a strange argument, which in effect meant that the enforcement of the fundamental rights was

defeating the Constitution. Nehru also came up with the proposition that the Directive Principles in the Constitution took precedence over fundamental rights!

As elections were around the corner, and which were eventually held in 68 phases from October 1951 to February 1952, the Congress was keen to go into the elections with having fulfilled its poll promises. Nehru proclaimed the amendments in the context of preserving the interests of the country. However, it was more in the nature of preserving the interests of his party. And this has become a failing in India's polity, where self-interest and party interests are camouflaged in terms of the national interest and the national good. Nehru bulldozed his way to pass the amendments and Ambedkar, despite his doubts, concurred. So did the President, who perhaps had little option but to go with the tide, bound as he was with the advice of the cabinet. Patel had passed away on 15 December 1950, so the last stalwart who could have opposed Nehru was not on the scene. The amendments were passed by 228 votes in favour and 20 against, with about 50 members abstaining. Articles 15, 19 and 31 of the Constitution were amended, with which the first battle for Indian liberalism had been lost. This set the tone for a series of amendments that were to come in subsequent years.

It should thus come as no surprise to anyone that Article 35A was surreptitiously incorporated into the Indian Constitution, purportedly as a result of the Jawaharlal Nehru-Sheikh Abdullah Agreement of 1953. But the same was never published in the text of the Constitution which was printed thereafter, indicating that a fraud had been

committed on the Constitution. During the emergency, Indira Gandhi amended the Constitution, the 42nd Amendment, throwing to the winds parliamentary propriety, and pushing through the amendment when most opposition leaders were in jail, bringing out the most widespread changes to the Constitution. It was not national interests which prompted the change, but self-preservation. Then her son, Mr Rajiv Gandhi, reversed a Supreme Court Judgement, in which a Muslim woman had won the right to alimony from her husband: the case of Shah Bano. Under pressure from the Muslim clergy, the Rajiv Gandhi government passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the judgment of the Supreme Court and restricted the right of Muslim divorcées to alimony from their former husbands for only 90 days after the divorce. No national interest was involved and the Act was regressive in that it discriminated against all Muslim women. What was in play was vote bank politics and a desire to secure the votes of a section of the Indian public.

The Right to Education of all Children came into being by the 86th Amendment, when Article 21A was added to the Constitution. By the Constitution (Ninety-third Amendment) Act,

Article 15 was amended, in 2005, which gave the state the power to make special provisions, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes, insofar as such special provisions relate to their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. The leaving out of minority educational institutions is discriminatory, but yet it has become a part of our Constitution. The chipping away of the fundamental rights, which started with the First Amendment, has still not ended and points to faultiness in India's polity which seeks specific vote banks to retain power, at the expense of the national interest. That remains India's tragedy, a process which started with the First Amendment.

The book, *Sixteen Stormy days*, by Tripurdaman Singh, hence should form essential reading not just for those pursuing a degree in law, but by the lay public and by all students who have an interest in statecraft, as also those who serve in government. The Constitution is a sacred document. Let it so remain. Trampling on the Constitution on extraneous grounds can do no good to the Republic.

