

BOOKS

AMENDING HISTORY

By Arudra Burra

Sixteen Stormy Days is a study of independent India's first constitutional crisis. The crisis arose out of a series of adverse court judgments in 1950-51 which placed obstacles in the way of the Congress government's ambitious social agenda, as well its ability to maintain law and order. In May 1951, the government moved to amend the Constitution to undo the effects of these judgments. The Constitution (First Amendment) Act was passed in June, following a bitter battle in Parliament.

The Act changed the Constitution in three ways. It weakened protections for free speech; clarified that caste-based quotas in education and government service were constitutionally protected; and amended the right to property to protect zamindari abolition laws from judicial review.

These changes were all controversial. It seemed improper to respond to adverse court judgments through the device of a constitutional amendment. The free speech amendment allowed the State to curb speech in the interest of 'public order', but might be a licence for quelling political dissent. The amendment to the right to property designated a set of zamindari abolition laws as *completely* exempt from judicial scrutiny with respect to fundamental rights, surely an assault on judicial review.

Critics also questioned the government's haste in moving to amend the Constitution so soon after it had come into force. Why not wait until the election of the first Lok Sabha, in 1951? This would be a truly representative body, elected under universal franchise, unlike the Provisional Parliament that had been elected on a restricted franchise.

Singh tells the story of the conflicts

SIXTEEN STORMY DAYS: The Story of the First Amendment to the Constitution of India
by Tripurdaman Singh
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leading up to and around the First Amendment with verve and gusto. In his view, they expose the shallowness of the Congress's democratic commitment. Nehru is the villain-in-chief: vain, duplicitous, impatient of dissent, irked by constitutional constraints that prevent him from making India in his image.

The Nehru-bashing is tendentious and repetitive, but the book's real problem lies in the claim that the First Amendment was a *betrayal* of the promise of a democratic constitutional order our founding fathers gave us in 1950.

This is far from obvious. The Constituent Assembly would arguably have written the Constitution differently had it known how it would be interpreted by the courts in 1950-51.

Art. 31(4) of the 1950 Constitution already protected the zamindari abolition bills in UP, Bihar and Madras from judicial review based on the right to property. The assembly was well aware of caste-based reservations in educational institutions and government service, and did not suggest these should be discontinued. And it would certainly have wanted to allow speech to be restricted in the interest of 'public order', a term that occurs in several earlier formulations of the free speech clause.

Singh also ignores a crucial fact about the authorship of the First Amendment. In 1947, the Constituent Assembly was given legislative powers. From 1947-49, it acted both as a Constitution-making body and as independent

India's first legislature. Its constitution-making function ceased when the Constitution was adopted in 1949, but it continued to act as a legislature (the 'Provisional Parliament') until the 1951 general election. The legislative body that debated the First Amendment had, in fact, written the original Constitution, though in another avatar!

This body passed the First Amendment by overwhelming majorities. Influential figures such as K.M. Munshi voted for it. Ambedkar, the law minister, defended it in Parliament. B.N. Rau, advisor to the Constituent Assembly and architect of the draft Constitution, also supported it. Sardar Patel (who had died in 1950) had mooted the idea in the first place. With a few exceptions, the founding fathers were behind the move.

These are inconvenient facts for Singh's thesis. If anything, they support Nehru's defence of the First Amendment as an exercise in *clarifying* the intentions of those who wrote the Constitution. A proper reckoning with the First Amendment would address these facts and also examine whether the judiciary in 1950-51 did in fact interpret the Constitution in accordance with the framers' intentions. Unfortunately, *Sixteen Stormy Days* does not do so, and is only a partial and misleading account of this important and neglected episode in Indian constitutional history. ■

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