

The Constitution of India: Popular Sovereignty and Democratic Transformation by Sarbani. Sen, Oxford University Press, 2007, 224 pp., \$6.00 (hardback), ISBN 978-0195686494

Naman Joshi*

<https://doi.org/10.5281/zenodo.18618861>

BOOK REVIEW

Twenty Numerous scholars, despite never having visited India, have written about the Indian Constitution from a euro-centric perspective. However, Dr. Sarbani Sen, a Delhi University graduate who has resided in India and experienced diverse aspects of the country, offers a unique approach to studying the Indian Constitution by analyzing numerous case studies that are pivotal in the ongoing debate on constitutionality. Notably, there is a prevalent trend of publishing PhD theses as books, and Dr. Sen adhered to this practice by asserting that this book is an expanded and revised version of her work conducted during her doctoral studies at Yale Law School between 1990 and 1994.

The book begins with an introduction in which the author poses several queries, one of which is, "How did India get its constitution?" The author makes it obvious that swaraj, or self-rule, was not a gift from the British Parliament but rather the outcome of popular demand. Dr. Sen established a connection between the significant constitutional decision and a series of events that began with the Sajjan Singh case and continued with the Golakhnath and Keshwanand Bharati cases. The basic structure doctrine raises important questions about the relationship between constitutionalism and popular sovereignty. The author argued that the questions of the Indian constitution can be understood by going beyond the traditional view of constitutionalism, in which it is assumed that the government in power can do whatever it wants. Dr. Sen presented a broader perspective on Indian constitutionalism. She also used a methodological framework to identify the democratic source of legitimacy. According to Dr. Sen, in a constitutional state, a multi-vocal formation of opinion can motivate a majority decision, but for legitimizing transformative initiatives, a deepening dialogue between the branch's government and citizens is needed. The constitution is not a static document; it changes with time, and the nature of constitutional crises also transforms with time. In a normal political period, self-interested political bargaining is used to solve constitutional crises, and in other times, there is a leader-citizen engagement.

**Naman Joshi* is a Research Scholar at Kumaun University, an alumnus of Hindu College, University of Delhi and Jamia Millia Islamia, UGC-NET qualified in Political Science and International Relations,

©Naman Joshi. This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction, provided the original author and source are credited.

Political discourses are critical for achieving consensus-based outcomes, and the author sheds some light on political discourses and their impact on government legitimacy. It is assumed that revolution is a social phenomenon, but Dr. Sen disagreed with that. According to her, a revolution is a transformative break and can be understood as a political term. The Indian national movement began not only as a demand for self-rule, but also as a hope for a new polity. The main aim of the book is to understand popular sovereignty and democratic transformation, and Dr. Sen developed a threefold framework for redefining popular sovereignty: in the first stage, political identity is redefined and a republican sense is generated; in the second stage, popular sovereignty realizes its potential, which helps them to alter and abolish past traditions and develop a new one; and at the last stage, popular sovereignty is expressed in terms of constitutional politics. The book has seven chapters. The title of the first chapter is "The Beginning of the Idea." In this chapter, Dr. Sen briefly explains how the idea of a constitution developed in India. According to her view, the idea of the Indian constitution developed in a process where history played an important role through the thoughts and actions of earlier generations. She examined the evolution of ideas in two phases: the first phase was moderate, and the second phase was extremist. For the moderates of the nineteenth century, foreign rule was common, and they were greatly impressed by British liberal political thought; additionally, for the British, this moderate was not a threat but a natural interpreter of their rule. The demand of Congress was limited to their participation in the British government of India, as they thought that they were fit for it. Moderates walked in the line of no taxation without representation, and they also demanded an enlarged franchise. The moderates emphasized a united India with a secular tradition, with Britishers providing equal opportunity to their Indian subjects as they do to their British subjects. The author described Congress as the germ of the native parliament. Extremists transformed the idea and gave a new perspective on sovereign power in the hands of the people. Extremists wanted real, effective control over the administration, both executive and legislative. They tried to spread self-consciousness among the masses as Tilak, in his report paper, mentioned a complete change in the government as the prime goal of Congress. Extremists propagated indigenous concepts like swaraj. They argued for collective purposes, a collective mind, and a collective will to achieve independence. Their idea of passive resistance got support from the masses. The ultimate idea of an extremist was to create an alternative political structure. This chapter included the impact of Congress to build the idea of nationalism and popular sovereignty, but the author forgot to mention the prior events that helped in building the narrative of independence and popular sovereignty. However, the language used by Dr. Sen is not very complex and can be understood by anyone, even if they have little prior knowledge of the events. The other issue with this chapter is that it just holds the debate between extremists and moderates; there is a need for comparison between them, not only in some of the paragraphs but also in comparative terms through which readers can easily understand the event and the core ideas of moderates and extremists. We cannot ignore that she gave different perspectives from different leaders about the idea of popular sovereignty, which is quite interesting and comprehensive.

The title of the second chapter is "Developing the Relationship Between

Popular Sovereignty and Constitutionalism." The idea of extremist popular sovereignty was later adopted by Gandhi and Nehru. Gandhi's idea of popular sovereignty was very broad because he wanted to abolish British government all together and reintroduce the idea of direct democracy as it existed in classical Indian politics. Gandhi used Hindu doctrines and the traditions of Indian society and politics to develop his view on mass mobilization through direct sovereign authority. Gandhi's method of satyagraha emphasized the value of public virtue and the sacrifice of private interests. Gandhi connected popular sovereignty with community service, spirituality, and moral values. Dr. Sen argued that Nehru's understanding of constitutionalism and its relation to popular sovereignty was powerfully influenced by his engagement in Gandhian politics. Nehru gave priority to the political revolution. Nehru was very clear about the fact that British colonialism was linked with fascism and degraded capitalism. Nehru helped the Congress become a mass organization. Nehru builds a strong relationship with poor workers and peasants, and later they participate in mass movements like the Civil Disobedience Movement and the Quit India Movement. He was a prophet of socialism in India, but he knew that socialism would not survive until people witnessed its implications at ground level. He supported the demand for complete independence and rejected British authorities' offer of dominion status. Nehru stated in his objective resolution that all power and authority of the sovereign independent India, its constituent parts, and its government organs are derived from the people. Nehru believed in the rational organization of power. Nehru supported a secular and rational state where planning, industrialization, and education played an important role. Dr. Sen mentioned Nehru's speech, in which he said that "it may be that the constitution this house frames may not satisfy an India that is free; this house cannot bind down the next generation or the people who will duly succeed us in this task." Here also, the perspective of the author is limited only to Nehru and Gandhi, but there are many leaders who have different perspectives than Nehru and Gandhi who did not get space here due to narrow theme-based research. But Subash Chandra Bose, who is different from both, supported a short-term, authoritative government after independence for the development of the people. However, Dr. Sen precisely described the thoughts of Gandhi and Nehru about popular sovereignty, which helped the reader to understand the mentality of the two strongest personalities of India's Independence movement.

The title of the third chapter of the book is "Another Kind of Revolution." In the preamble of the Indian Constitution, the term "we, the people of India," is used. The term 'we' is used to define the trust of the upcoming generation in the constitution of India. Another revolution, according to the author, is a conscious effort by the people to exercise sovereign power by rejecting currently dominant beliefs and practices and creating new higher law principles.

Chapter four started with the title "Constitution and Revolution." In this chapter, the author argues that the symbolic significance of the assembly is clear in Nehru's objective resolution. The assembly was the symbolic body of the people. Nehru said that the assembly had gathered because of the strength of the people behind us, and we shall go as far as the people not

any party or group shall wish us to go. So, the aim of the constitutional assembly was to present the views of the people. The assembly debate allowed a valid test of legitimacy. The Indian Constitution, according to Nehru, was a symbol of the previous revolution, as it formalized a political framework that recognized the importance of the principle of popular sovereignty. The most difficult task for Nehru was to establish the assembly as a sovereign body of the people. The author argued that, while the Constitutional Assembly could not fully resolve India's real social antagonisms, it did seek to serve as a forum for achieving coherent political consensus among divergent opinions on the fundamental principles of the objectives of India. Hence, popular sovereignty became a deliberate choice.

The title of the fifth chapter is "Creating a United Political Community." To construct a new political order, the assembly faced a challenge and a question of what the principle of popular sovereignty meant in the context of a pluralist society like India's. There were two important debates making things complex: the first was the distribution of rights among the new union and provincial legislatures, and the other was the question of state affirmative action. Ambedkar had questioned the idea of Gandhian satyagraha as a form of inclusive politics. The assembly rejected Ambedkar's distinction of "schedule castes" as a separate minority community primarily in religious and caste terms. The author also presents in this chapter the Ambedkar-Gandhi discourse on the issue of separate electorates. Ambedkar had theorized that the fundamental premise of political democracy had to be secured through social reconstruction.

Chapter six started with the title "Redefining Popular Sovereignty." The author argued that through the revolution, it became clear that sovereign political power resides with the people and not with the rulers. But in the constitution assembly, Gandhi's hope for direct democracy was ignored because power itself remained in the hands of leaders and not in the hands of the people directly. Chapter six is the longest chapter of the book and is divided into three themes. Theme one talks about the separation of powers and check and balances, which emphasized that popular sovereignty is exercised in inter-institutional deliberation in the public interest. In the theme, two authors talk about the amendment process and judicial review. In theme three, the author focuses on the rights of political participation that are given to everyone equally, which give a sense of common identity and illustrate that popular sovereignty is vested with the people of India. These three themes are described by the author separately in a very detailed manner.

Chapter seven of the book is the last chapter, which starts with the title "post- founding transformation." According to the author, in the post-founding period, the principle of popular sovereignty reaches its third stage of redefinition as it interacts with the institutionalized structure of a modern nation state to create a new political meaning. The author focuses much on Article 368 of the Indian Constitution. Dr. Sen also mentioned present constitutional developments. She briefly explains the debate on property rights. In the last chapter of the book, Dr. Sen mentioned a lot of judicial judgement. The author also focuses on controversies over the amending powers of parliament. The Supreme Court of India played an important role in recognizing and preserving the distinct role of popular sovereign power

in this constitutional tradition, and it also helped in the inter-generational effort to redefine Indian constitutional and political identity.

The book is written in a very precise and comprehensive manner, and the case studies and judicial judgments help readers understand more about the context. The footnotes are very helpful in getting information about a particular event or cases. The book is written in such a way that readers do not require the assistance of a dictionary or other reference books to grasp the concept. The chapters are written in a series, and chapters are placed in chronological order. Haphazardness is not seen in the writings of Dr. Sen. The use of quotations and speeches from leaders is significant in making this book unique and easy to understand. The book is not just for academicians but also for those who are interested in knowing the constitutional development and meaning of popular sovereignty and revolution. For Aristotle, the revolution was a small change, and for Dr. Sen, the revolution happened to preserve popular sovereignty. The book is not for those who are reading it as a single source on Indian politics for a competitive or entrance exam. Because the author stated in the acknowledgement section that this book is an expanded version of her PhD thesis, we cannot expect all-rounder performance from this book; however, the author was successful in achieving her goal of redefining popular sovereignty and revolution. One issue with this book is that there is no index; it is very hectic for readers to jump between the chapters. The introduction is lengthy, but because this book is written for academic purposes, it is justified. If we talk about language, it is natural and simple, not the difficult language made by synonyms and antonyms. The book is recommended for those who really want to understand the concept of popular sovereignty in the context of the Indian constitution.