

BOOK REVIEWS

COMPUTERS, INTERNET AND NEW TECHNOLOGY LAWS (2012). By Karnika Seth. Lexis Nexis-Butterworths Wadhwa, Nagpur. Pp. cxxxv + 1143. Price Rs.1295/-.

THE INFORMATION-communication revolution that is transforming the world around us has done wonders in the way we think, the way we conduct ourselves and the way we organize relationships across space, time and cultures. While governments are finding it difficult to govern in the cyberspace, businessmen and entrepreneurs are discovering new ways to expand their activities with the help of the new technology. Jobs are going to places miles away from the place where the company is located and a virtual world is born outside the control of nation states and corporations. Along with it, the laws and systems of the real world have increasingly become ineffective in its regulatory functions, challenging established ways of altering relationships within nation states. The digital world is thus creating its own jurisprudence in which individuals and corporations are becoming law makers as much as governments and international institutions. It is this bewildering legal and technical scenario which is the subject of analysis in the book.¹ According to the author the book is the product of over twelve years of study and reflection during which she refined her understanding of cyber law in theory and practice. Her object in writing the book was to cater to the needs of “technical persons who have no legal background and legal persons with no technical background” to be able to communicate with each other and help develop the new technology to the advantage of people everywhere. The author also seeks to explore the rights and obligations of the Internet users so that they do not risk their safety and privacy in the cyber world. To those in government and judiciary involved in enforcing the cyber laws and regulations, she hopes to impart knowledge of its implications for effective enforcement. Thus, the attempt of the author is to serve the needs of all concerned with the computer and internet enabling them to work together under a regime mutually beneficial and yet different from that they were used to till the advent of the new technology. After reading through the text and the appendices, the reviewer is of the view that the author has succeeded in her mission to a large extent. One must however say that in attempting to be comprehensive the book has become excessively voluminous and costly particularly for a student or a beginner in legal practice. Unlike other publications on the subject one finds in the market, the book contains a useful glossary of technical terms now familiar to technology experts and a glossary of legal terms which law persons are familiar with. This is indeed helpful to the multiple users with different backgrounds who might use the book to know the law and the technology behind it.

1 Karnika Seth, *Computers, Internet and New Technology Laws* (2012).

The book is organized in 14 chapters and 10 appendices. Beginning with a historical narrative of the evolution of cyber space, it examines the dilemma of establishing jurisdiction with the help of international instruments, domestic laws and best practices now in vogue. By way of conclusion the author says, "Till the time the utopian homogeneity in law is attained and a universal forum to settle cyberspace disputes is established, one may have to rely on principles of personal jurisdiction elucidated by courts of different jurisdictions that also settle offline disputes"².

The next four chapters deal with substantive issues relating to e-contracting, electronic commerce, electronic signatures and electronic money. The Indian Information Technology Act and the rules made thereunder have made these practices legitimate in the business world though there are gaps and uncertainties in the law and its interpretation in different fact situations. With technology constantly changing, the problems and challenges are unending and the law finds itself way behind technological developments. Since the problems are common to all jurisdictions across the globe, it becomes inevitable to see how other countries are addressing the issues and what the U.N. and other international bodies outside U.N. are trying to do to harmonize the law and its practice.

Chapters 7 to 11 deal with matters relating to governance of Internet and cyber space. How does e-commerce and business profits get taxed since they involve intangible goods and on-line transactions? There are different principles and interpretations employed by different jurisdictions and there is the U.N. Model of Taxation of e-commerce. There are different tests to determine on-line taxation all of which have their own weaknesses in implementation. The book discusses these problems without suggesting any solution to all such situations. On the question of protecting intellectual property rights on copyrighted material in digital forms, the author analyzes judicial opinions in a number of land mark cases with a view to draw up the principles to follow. According to the author, it is for the intellectual property rights holders to protect their IP assets, whether patent or trademarks or copyright by using available technological tools, developing a regulatory regime which is appropriate to the technology and seeking strict enforcement by authorities. "Thus, a multi pronged approach encompassing technical, social and legal measures will be required to adequately protect intellectual property rights in cyber space" writes the author.

Protection of data and of privacy is indeed a serious threat on the Internet. Laws are yet to be adopted in many jurisdictions in this regard. International organizations and Internet users are working on strategies which can effectively protect the legitimate interests while allowing free access to cyber space for all with minimum restrictions. It may be relatively easy to legislate but difficult to enforce. Fundamental right of free speech and expression is involved and censorship is not practical nor desirable. What is recommended for the present is "net neutrality in

²*Id.* at 56.

relation to Internet transmissions irrespective of content and origin of communications flowing over Internet”. However, committing crimes using the new technology cannot be tolerated and they need to be dealt with as such under the law of the land. Chapter 10 of the book discusses the growing number and variety of cyber crimes known by different words and phrases and how they are dealt with under the Information Technology Act, 2000 and the Amendment Act of 2008. Under the title “Author’s Recommendations” a dozen steps are proposed in the book to strengthen the enforcement regime against cyber crimes which includes enacting new laws, adopting guidelines, training enforcement personnel and signing international cyber crime conventions. A key factor in this regard which is increasingly acquiring importance in the police and security agencies is the collection and analysis of electronic evidence which is the subject of chapter 11 of the book. The Information Technology Act and the rules and regulations are analyzed in this regard and some conclusions drawn to suggest the way forward.

The last two chapters are devoted to highlight some emerging issues in the digital world which are still outside the legal regime and where principles are being debated for possible adoption of some sort of convergence laws. With technologies converging it is inevitable that a convergence law has to come as a suitable response to the emerging situation. Laws in this regard are being adopted in some developed countries and one is proposed in India as well.

The final chapter of the book is on “Online Dispute Resolution” whose time has come with increasing e-disputes, digital evidence and pressure for quick and cheap mechanisms for dispute settlement. There is scope for using negotiation and mediation in on-line dispute resolution processes. The existing laws and judicial processes are conducive to promote on-line resolution. What is awaited is the readiness of the legal and judicial professions and their ability to operate digital procedures with ease and professionalism. This is a task which law colleges will have to take on board so that future generation of lawyers and judges are comfortable with the new technology and competent to operate the legal systems based on it.

It was not easy for the reviewer to prepare this review because of lack of competence in the new technologies and its applications. However, reading the book once and examining certain parts of it once more gave instructive insights into both technology and the emerging jurisprudence around it. The reviewer is sure, for those similarly placed, this book will be an excellent tool to acquire the basic knowledge necessary to understand the laws relating to Internet and information technology to be able to operate in a digital regime that is surrounding us day by day. No law person can afford to be ignorant of the virtual world of Internet anymore and this book is an invitation to introduce them to the laws and principles involved.

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BHAUMIK THE RAILWAYS ACT [9th edn., 2010] . By H.K.Saharay.Eastern Law House Private Ltd. New-Delhi. Pp. 63+990. Price Rs.980/-

THE REPEALED Act called Indian Railway Act, 1890 had a sway for over a century for governing and regulating matters pertaining to Indian railways, constructed by the East India Company more than one hundred and fifty years back in 1849. The Indian Railways Act, 1890 was repealed and re-enacted as the Railways Act, 1989. The *Bhaumik's* book now enters into its ninth edition with revision by the present author.

The book has been divided into sixteen chapters. The first chapter describes in a logical way the journey of the Indian Railway from the Act of 1890 to the Railways Act, 1989. The author has also discussed the amendments to the Railways Act, 1989 since it came into force. A very unique thing is that the author has made a comparative analysis between the provisions of the old Act, and the corresponding provisions in the Act of 1989. A brief history of the railways and its development in the US, Japan and India have also been discussed. This chapter also covers the extent of applicability of this Act and also discusses all the important definitions with the interpretations given by the court in a very elaborate manner. Wherever it was relevant author has given the corresponding definition from the Indian Railway Act, 1890, of the particular thing for better understanding.

Chapter II, IIA and III respectively deals with the railway administration, rail land development authority and commissioners of railway safety. Chapter IIA was inserted by the Railways (Amendment) Act, 2005. For a better understanding the author has made comparison between the old Act and the new Act. Author mentions that in the old Act there was no corresponding provision to section 3 of the Railways Act, 1989. 'Central Government' in the section 3 of the Act has not been defined in the definition clause of the above said Act but author has attempted to clear this word by taking reference from section 2(8) of the General Clauses Act, 1897 and from the judicial interpretations. As in the recent years it has been the prime concern of the government to increase the revenue of the railway. To meet this situation it is suggested as to how land owned by the railway can be better utilized. Chapter IIA deals with the rail land development authority. Chapter III deals with the commissioners of railway safety. With the help of the decided cases, the writer has nicely tried to describe the duties, powers, and status of the commissioner.

Chapter IV and IV-A respectively deals with the "Construction and maintenance of works" and "Land acquisition for special railway projects". Chapter IV-A has been inserted by the amendment in the year 2008. Reason behind the insertion of this chapter is to enable the Central Government to acquire land for public purposes. The author has discussed very elaborately the scope and limitation of each section

in the beginning itself. Wherever essential the author has discussed the case law. However, chapter IV-A has not been discussed intensively and the author has just mentioned the bare provisions of the amendment, without any explanation.

Chapter V of the Act relates to the opening of railways. This chapter enables Central Government to open the railway for the public carriage of passengers under section 21. As the section 29 gives power to the Central Government to make rules in that respect, the author could have mentioned some of the important rules framed by the Central Government using its power under this chapter. Chapter VI has effectively described about the fixation of rates as section 30 enables the Central Government to fix rates for carriage of passengers and goods. Chapter VII deals with the Railway Rates Tribunal. This whole chapter deals with the constitution, staff, sitting, functioning, and powers of the tribunal. The author has very intensively described the points on which complaints against the railway administration can be made before the tribunal with the help of decided cases. Further the author, in a very detailed manner, discusses powers and jurisdiction of the tribunal with the judicial pronouncements. But the author has not discussed section 3 *i.e.*, additional remedy under the Consumer Protection Act, 1986 for deficiency in service of railway department. Chapter VIII is related to the carriage of passengers. For making railways consumer friendly various things have been discussed like, exhibition of certain things and tables of fares at stations, issue of tickets on payment, conciliation of tickets and refund, and power to make rules in respect of this chapter. The author has described the word 'Facilities' elaborately with judicial interpretations as it seems very significant for the layman or passengers that which type of facilities he can expect from the railways. Section 60 of the Act deals with the rule making power of the Central Government. Since the rule making power is very significant so the author discusses it in a very detailed manner with the help of decided cases.

Carriage of goods has been discussed in chapter IX. This chapter is very lengthy starting from section 61 to section 87. The writer has tried to maintain the flow irrespective of multiple sections in this chapter. Foregoing chapter deals with the maintenance of rate books, *etc.*, for the carriage of goods, condition for receiving of the goods and duties of railway as a bailee in such situation, provision of risk rates, carriage of dangerous or offensive goods, punitive charges for overloading the wagon, open and partial delivery of consignments, lien for freight or any other sum due and unclaimed consignments with the support of judicial pronouncement and respective earlier sections of the Old Indian Railway Act, 1890. As last section of this chapter deals with the rule making power of the Central Government for this chapter, the author could have mentioned some set of important rules (as annexure) prepared by the Central Government, it would have proved more knowledgeable for the laymen. Chapter X deals with the special provisions as to goods booked to notified stations starting from section 88 to section 92. Provisions

under this chapter do not require more interpretation because its language is very easy.

Chapter XI is very important from the consumer point of view and very lengthy also. It deals with the responsibilities of railway administration as carriers. Section 93 deals with the general responsibilities of the railway administration as carrier. The author has discussed this section alone with the help of more than fifty judicial pronouncements. He discussed this section under fifty-five sub heads. This chapter is very comprehensive one starting from section 93 to section 112. Section 95 deals with delay or detention in transit and author very nicely compared this section with section 97, which is about the goods carried at owner's risk rate. Moreover the writer has compared these sections with the corresponding provisions of the Indian Railway Act, 1890. These provisions have been discussed with the help of judgments given by the court. Some other provisions are, goods in defective condition or defectively packed, responsibility of a railway administration after termination of transit, responsibility as carrier of luggage, responsibility as carrier of animals, notice of claim for compensation and refund of overcharge, application for compensation for loss of goods, persons entitled to claim compensation which are dealt by the author in a very comprehensive and detailed manner with the relevant case law and corresponding provision of the old Indian Railway Act, 1890. However, the author could have touched upon the jurisdiction of the Consumer Protection Act, 1986 and Railways Act, 1989 on the concept of 'Special Law prevail over the General Law' with decided cases of Supreme Court.

Next chapter XII deals with the accidents starting from the section 113 to section 122. Given chapter is not too much difficult to understand and there is not enough space for the interpretation. Main provisions under this chapter are notice of railway accident, inquiry by commissioner and railway administration, power of commissioner in relation to inquiries and procedures. The comparison has been made with relevant sections of the Indian Railway Act, 1890. Chapter XIII is all about the liability of railway administration for death and injuries to the passengers due to accidents. This chapter covers sections starting from 123 to 129. From the consumer point of view word 'Accident' and 'extent of liability' in the case of accident has been analyzed by the author with interpretation given by the court. Section 124-A was later inserted by the amendment in the year 1994, which is all about compensation on account of untoward incident. Under section 125 who can make an application for compensation, word 'Dependent' has been discussed by the author with the help of deciding cases which is very much essential from the consumer point of view, because most of the cases are filed with the issue that whether claimant is dependent of deceased or not.

Chapter XIV deals with regulation of hours of works and period of rest. There are not many difficulties in understanding of this chapter and nor there is scope for

further interpretation. Penalties and offences have been discussed under chapter XV. This chapter covers the sections starting from sections 137 to 182. For the breach of various rules penalties have been prescribed here under this chapter. Some offences like travelling without ticket or proper pass, penalty for transfer of tickets, offence of drunkenness or nuisance, obstructing railway servant in his duty, penalty for making false statement in application for compensation, damage of railway property *etc.*, have been discussed through comparison with the corresponding provision of the Indian Railway Act, 1890 and with the proper interpretation given by court at appropriate place. Section 175 is about endangering the safety of persons in which author, in a very descriptive way, illustrate some cases taken from the judgments which are very significant for better understanding of the provision for a common man. Last chapter XVI deals with miscellaneous provisions starting from sections 183 to 200. In this chapter the author has intensively dealt with the taxation on railways by local authorities, procedure for delivery to railway administration of property detained by a railway servant in detail with the proper help of judicial dictum.

Overall, the author has covered almost each and every aspect of Railways Act, 1989. This edition is thoroughly revised with up-to-date case law of the Supreme Court and different high courts of India. Foreign decisions have also been given in appropriate places in support of Indian decisions. The author has used a very simple language. The table of contents, table of cases along with the appendices, index, provided in the book make it handy for immediate reference. The book has an attractive get-up with good printing and is reasonably priced.

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