

S KRISHNAMURTHY AIYAR'S COMMENTARY ON THE INDIAN TRUSTS ACT (6th ed., 2010) by S.K. Sarvaria, Universal Law Publishing Co. Pvt. Ltd., C-FF-1A, Dilkhush Industrial Area, G.T. Karnal Road, Delhi-110033. Pp. cxviii + 934. Price: Rs 995/-.

THE PHILANTHROPIST human instincts and a ferocious desire to conserve the property in the family for the benefit of the generation of descendants rules largely in the creation of trusts in India. Though having originated in England right during the reigns of King Henry II, user of the term "trust" legally came in England about the time of King Henry III, first theologically and then through ecclesiastical judges. Initially, it grew out of medieval custom of putting to use land and other forms of property to evade the statutes of Mortmain. Later, the system of use extended and applied to a variety of other purposes including family welfare; public services; charitable and sometimes purely religious purposes.

Under Hindu law, historically, trusts had a dominant religious and charitable connotation rather than the domination of welfare of the family, such as endowments for religious and charitable purposes, gifts to idols and constructions of temples, *etc.* Similarly, under Muslim law, much prior to even the origin of the concept of trusts in England, settlement of property for public and religious purposes through *wakf* was an ordained legal phenomenon. The legislation on trusts came in the year 1882 with enactment of the Indian Trusts Act. The substantive content of this legislation was virtually a reproduction of the English law with few modifications. Since then, this field, despite having a unique importance of its own, has not seen extensive literature and, therefore, a treatise on the law of trust is a welcome addition for those wanting to further dwell into this zone.

The book under review,¹ besides an introduction, contains nine chapters and fifteen appendices including the sixteenth report of the Law Commission on the Official Trustees Act, 1913, and the seventeenth

1. S.K. Sarvaria, *S Krishnamurthy Aiyar's Commentary on The Indian Trusts Act* (6th ed., 2010).

report on the Trusts Act, 1882. It also contains model trust deeds and forms. The author discusses the origin and development of trusts in England; concept of trusts under the Hindu and Muslim law, definition and creation of trusts in India, rights, powers and duties of trustees and beneficiaries, extinction of trusts, trusts under the state laws and under the UK laws, and then proceeds with section-wise commentary on the legislation.

For the benefit of readers, the book also provides in brief the law pertaining to limitation aspects which were scattered in previous edition of the book but have been rearranged and reconciled in a separate part after the commentary on the Indian Trust Act, 1882, running into around thirty pages.² Eight pages³ by Sir Jai Lal on “Interpretation of law on Trusts” provide in simple language what a trust is about and with illustrations clarify the crux of the subject. The book is fairly exhaustive and glimpses of the hard work that has been put into it are visible at places, but the style is not simple but highly technical. It is presumptive of the reader possessing not merely elementary but a considerable knowledge of the subject and is not meant for the beginners. It displays an advanced level of treatment and would be comprehended by those who have already taken some lessons in the law relating to trusts. It is based more on judicial precedents and the much wanted inputs of the editors/authors are completely missing at several places.⁴ Many a times, the subheadings include only a judicial decision with primary emphasis in detail on the facts, rather than a critical appraisal of the whole topic supplemented by the judicial precedent.

The introduction running into 76 pages with an extensive synopsis that in itself spreads over four pages, has a promising start but soon becomes repetitive, abrupt and then loses the flow completely. The first 15 pages tell the reader what a trust is, how it is created, its requisites, essentials; parties and purpose, subject matter; positive and negative duties of trustees; his rights, powers, and liabilities, who can be a beneficiary; his rights and liabilities, extinction of trusts and of certain obligations in the nature of trust. The introduction also deals with freedom of Indian citizens to profess, practise and propagate one’s religion in the light of

2. *Id.*, pp. 644-676.

3. *Id.*, pp. 677-685.

4. For instance, see *id.* pp. 56-58, where under the headings “creation of trust by prisoner’s property” and “trust of land” only the cases, with emphasis on the facts and the stages that the case went through have been provided.

article 25 of the Constitution of India as also in relation to *dharmā* and the emphasis on preservation of the same under the Andhra Pradesh Charitable and Religious Institution and Endowments Act, 1987. The later pages gradually distort both the presentation as also the substance. For instance, at many places, textual content appearing in the body of the book appears to be a collection of paragraphs from different cases with negligible input from the authors/editors themselves and strangely, are more of *cut and paste* nature. Substantial parts of judicial pronouncements without editing them, lead to an inevitable conclusion that one is reading the language of the judge in a full scale judgment from a law report rather than the relevant extract/account of the case in a book. The author/editors have not bothered to use their own language to explain a case, its *ratio*, etc., but have assembled the same and put them in the book without even a grammatical change of phrases. Further, these cases are not in quotes but are part of the running commentary in the main text. Therefore, what is relevant for a judge, and totally irrelevant for a reader, stares glaringly in the face of the latter, who would attempt to grapple with finding the facts, the arguments and ultimately the *ratio* of the case and would then try to figure out its relevance to the main topic in the book. A good book where the clarity of the subject is depicted by the language of the author is totally missing in the present book. For instance, the paragraph starts as,

Admittedly the petitioner has neither been removed in terms of section 28(2) (h) of the Act nor there a vacancy for the post of *mahant*. Therefore, the respondent –president cannot take recourse.....⁵

Appellant-plaintiff is trade They filed a suit⁶.

High Court cannot sit in appeal ... this is so because the power of this court is limited to ...⁷

This contention also cannot be accepted.....⁸

The writ petition is liable to be dismissed.....⁹

It has not been argued from the side of the respondent....¹⁰

In the instant case the application was filed...¹¹.

5. *Id.* at 25.

6. *Id.* at 31

7. *Id.* at 29.

8. *Id.* at 35.

9. *Id.* at 36.

10. *Id.* ay 37.

11. *Id.* at 42.

The introduction thus indicates a collection of the materials topic-wise that has been put under relevant headings haphazardly, without any flow or even editing. It is abrupt, disjointed and extensively repetitive. For example, three paragraphs have been repeated *verbatim* in close succession, *i.e.* one paragraph of ten lines on p.5 has been repeated on p.6, another on p.7 and then on p.8. Again, on p. 8 one paragraph of ten lines has been reproduced twice without change of a single comma or full stop.¹² “Creation of Trusts by prisoner’s property” given in two paragraphs on pp. 56 and 57 has been repeated at pp. 67 and 68. Similarly, on p.29, four paragraphs have been reproduced from *Beni Jal Mistry v. Joint Charity Commissioner*,¹³ which are not in quotes but are part of the text and no effort has been made to explain the intricacies of the case and its importance in relation to law of trust, testing virtually the patience of a reader. The language used while tackling the judicial decisions at many places appears so abrupt that it is closer to the head notes appearing in the law reports, for instance:¹⁴

Allotment of land was made to trust. rival (sic) claims by two trusts. Rejection of application of petitioner trust on ground that it was subsequently registered is illegal.

Trust property was not disposed of by inviting open tenders. Trust had been deprived of the opportunity to get maximum value of disputed properties. Matter was directed to be decided afresh after hearing parties.

It is extremely irritating to read the collection of unedited judgments appearing as point-wise short notes that is extraordinary in a book of this stature. Further, there are number of other discrepancies as well. No uniformity is observed in citation of cases. At several places, the cases along with their names and citations have been given in the main texts,¹⁵ while at other places, only the citations have been provided without the names of the cases both in the main text of the book¹⁶ as also in the foot notes.¹⁷ The reviewer is bewildered that such mistakes have been ignored

12. *Id.* at 5, 6, 7 and 8.

13. AIR 2002 Bom. 342.

14. *Supra* note 1 at 43.

15. For instance, see *id.* at 87, 247, 254 and 351.

16. *Id.* at 80, 81, 601, 602, 603.

17. For instance, see *id.* at 101 (note 1, 4), 101 (note 3, 4, 5), 113 (note 8, 9), 142 (note 2), 156 (note 3), 163 (note 3), 171 (note 3), 194 (note 4), 196 (note 6), 207 (note 3), 215 (note 3), 241 (note 5), 335 (note 2), 337 (note 2), 356 (note 2), 371

at the time of proof reading and an otherwise well researched commentary has met with such shabby treatment. It is hoped that the subsequent editions would see improved presentation, deletion of repetitions, adequate and appropriate treatment of judicial pronouncements and uniform and complete citations.

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(note 6), 379 (note 1), 381 (note 2), 397 (note 1), 403 (note 1), 405 (note 6), 410 (note 2), 412 (note 1), 418 (note 1), 419 (note 3), 423 (note 1), 445 (note 5), 449 (note 7), 451 (note 7), 465 (note 2), 471 (note 1), 479 (note 1), 487 (note 1), 489 (note 3, 7), 526 (note 2), 527 (note 2), 533 (note 11), 535 (note 7), 536 (note 5), 538 (note 1), 543 (note 1), 544 (note 3), 549 (note 1), 550 (note 3), 569 (note 1), 573 (note 5), 574 (note 4), 575 (note 10), 604 (note 1), 611 (note 3), 622 (note 2), 623 (note 3), 630 (note 2) and 634 (note 1).

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