BOOK REVIEWS

CYBER CRIME IN INDIA: A COMPARATIVE STUDY (2009). By M. Dasgupta, Eastern Law House Private Ltd., 54 Ganesh Chunder Avenue, Kolkata-700013. Pp. 24 + 419. Price Rs. 390/-.

RULE OF law is the basis for existence of state and maintenance of peace, law and order in the society. If the law of land is flouted, it leads to crime generally. Crime poses a serious threat both to the state and individuals. With the rise of industrial revolution, rapid means of communications and modern scientific inventions new dimensions of crime have been discovered.

Invention of computer and information revolution have changed the face and pace of human civilization and created the era of cyber-world and *netizens.*Being one of the byproducts of the society, crime (in cyber-world) comes into the picture with the name "cyber-crime".[1]

With the object of legal recognition to electronic commerce and to give effect to the model law on electronic commerce adopted by the UN Commission on International Trade Law,[2] the Information Technology Act, 2000 (the IT Act) was passed but the Act does not define "cyber crime". Rather under chapter XI (sections 65 to 78), it recognizes certain activities like tampering with source documents, hacking with computer system, obscene publication of information in electronic form, *etc*. as offences. The IT Act provides extra-territorial application for violation of any provisions of the Act.

Being very technical in nature and capable of affecting the entire cyber world at wide web network, cyber crimes are more harmful and dangerous than ordinary ones. In the era of e-governance and e-commerce, various new modes and methods of cyber-crime are coming out before the world like cyber stalking, squatting, e-mail bombing, spoofing, spamming, *etc*. Keeping into account the impact of cyber crime, the

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1. In July 1996, the UK National Criminal Intelligence Service (UKNCIS) launched a study of computer crime called 'Project Trawler'. In the study the terms computer crime, information technology crime and cybercrime are interchangeable. Project Trawler defines computer crime as "an offence in which a computer network is directly and significantly instrumental in the commission of crime. Computer interconnectivity is essential characteristic." *Available at:* http://www.ncis.co.uk/newpage1.htm.

2. Resolution A/RES/51/162 dated 30th Jan. 1997.

subject requires special attention.

With the aim to provide a comprehensive work covering all the cyber crimes recognized under law, the book under review[3] has been divided into six chapters. Initiating with the title "Cyber Crime-A General Perspective" in chapter 1, the author has tried to make a comparative and illustrative study of 'cyber crime' with general crime by describing the nature of crime and cyber crime, its elements, *etc*. The author has also tried to go into the causes of cyber crime and also touched some areas of criminology and penology.

The book runs in an organized way. Starting from evolution of computer, various phases of cyber crime have been entailed up to electronic crime congress held in London in the year of 2002 to prevent and control cyber crimes. Apart from generational and decade-wise classification, the detailed case study like *R* v. *Thompson*[4], *R* v. *Gold*[5] and other cases up to the year of 2008 have been explained with detailed facts.

Comparison of cyber hacking with sections 378 and 441 of the Indian Penal Code, 1860,[6] nature, character, behaviour and culture of hackers, their possible ways of hacking have been articulated properly with sufficient illustrations. Thereafter, glimpse of international initiatives on hacking, cyber hacking in USA, UK and India with legislative and judicial approach and its socio-economic impact on the country gives a clear vision to the reader.

The author has classified the cyber crime on different basis and grounds like computer as a target as well as victim, computers incidental to other crime, crimes associated with prevalence of computers, *etc.* and many more. On a single page, the author has briefed almost all the possible ways of classification a lucid manner.[7] Thereafter, the author proceeds further on the basis of such classification and has chosen four major cyber crimes, *viz:* cyber hacking, cyber fraud, cyber pornography and cyber terrorism and discussed them in detail from chapter 3 to chapter 6.

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3. M. Dasgupta, *Cyber Crime In India: A Comparative Study* (2009).
4. [1984] 3 All ER 565.
5. [1987] 3 WLR 803.
6. *Supra* note 3 at 51 and 80 where the author has well comprehended hacking with the help of s. 66 of the IT Act and the decision in *Smt. Mathri* v. *State of Punjab*, AIR 1964 SC 986 on criminal trespass.
7. *Id.* at 12.

The author has followed a set pattern and structure in each chapter like: starting with introduction of the chapter and then the international initiatives - the European Union and the United Nations efforts. Thereafter, the author provides a comparative study of USA, UK and India with legislative and judicial approach according to the need and then conclusion and suggestions have been put in each and every chapter.

Some of the suggestions given in the end of each chapter appear traditional and average, like general awareness programmes, change of passwords, giving more teeth to the law, the law enforcement agencies should be more vigilant and banning of Orkut, Myspace, *etc*.[8] Sometimes, conclusions and suggestions are under separate headings and at some places they have been merged. Some more creative and beneficial suggestions could have been included.

Though written on only selective cyber crimes, its analytical part is a qualitative contribution to this emerging branch of law. Whatever pattern has been followed, it brings comparative and comprehensive discussion before the readers. The author appears right while selecting topics for the book because the 21st century has witnessed major terrors like World Trade Centre attack, attack on Indian Parliament, Mumbai terror attack and some major economic-cum-e-scams and everywhere role of computers and internet have been found.

During the last one decade, a number of books have been written by Indian authors on cyber crimes. But very few of them are there to cater to the needs of beginners, the author is one of them and deserves the credit for bringing out such a comprehensive book. Appendix comprising of the Information Technology Act, 2000 and the rules, the Computer Fraud and Abuse Act, 1986 of USA and European Committee on Crime Problems provide room for comparative study and convenience. Exhaustive subject index adds beauty to the methodology of the book. Table of cases would have been better with citations.

At last, the publisher deserves credit and congratulation for publishing such a good book with attractive cover and good quality of print. Though bit costly, this book is beneficial to the student community and the professionals.

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8. *Id.* at 133, 181,186 and 226.

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SPECTRUM OF CBI (2009). By Mahendra Singh Adil. Capital Law House, 500/7-N, Pandav Road, Vishwas Nagar, Shahdara, Delhi - 110032. Pp. 28 +580. Price Rs. 650/-.

THE BOOK under review,[1] endeavours to discuss elaborately about the institution of Central Bureau of Investigation (CBI). It is one of the exclusive works, which one rarely finds among legal collections on the subject. CBI is the central investigation agency to investigate offences. The Government of India had under consideration the establishment of a central investigation agency for the investigation of crimes handled by the Delhi Special Police Establishment, including especially important cases under the Defence of India Act and rules made thereunder, particularly cases of hoarding, black-marketing and profiteering in essential commodities which may have repercussions and ramifications in several states; the collection of intelligence relating to certain type of offences; participation in the role of the national central bureau connected with the international criminal police organization; the maintenance of crime statistics and dissemination of information relating to crime and criminals; the study of specialized crime of particular interest to the Government of India or crimes having all-India or interstate ramifications or of particular importance from the social point of view; the conduct of police research; and the coordination of laws relating to crime. Hence, an independent central agency, namely, CBI was established on 1st April, 1963 under the Ministry of Home Affairs, Government of India. The assistance of the CBI is also available to the state police forces on request for investigating and assisting in the investigation of inter-state crimes and other difficult criminal cases.

The CBI has acquired popularity and a good reputation over a period of time which is clear from the fact that it is burdened with the investigation of many important cases of various descriptions. But the fact remains that now even CBI is not free from criticism because of its inefficiency, delay in the investigations, political interference, *etc*. Despite all the criticism and allegations, CBI continues to be the most important

1. Mahendra Singh Adil, *Spectrum of C.B.I.* (2010).

institution in the investigation of crimes.

The book under review, is divided into twenty chapters and contains a table of cases in the beginning. The first chapter, constitution and organization of CBI, begins with a brief historical background and attempts to define how this institution came into existence. The factors which led to the birth and growth of an institution are equally important in understanding and appreciating that institution and its functioning and have been elaborately discussed.

The author has also discussed CBI's area of functioning, legal powers conferred on the CBI and detailed list of offences investigable by the CBI.

The chapter also deals with the superintendence and administration of CBI, its relation with the Central Vigilance Commission (CVC), its liaison with ministries/departments of the Government of India *etc.*

Chapter 2 contains a discussion on the jurisdiction of the CBI, *i.e.* where, and what type of, offences it can investigate. Chapter 3 is about the targets, priorities and working of specific divisions specially anti- corruption, special crimes and economic offences, policy division in consultation with senior officers and field units which formulates the proposal for laying down the targets and priorities of CBI. As soon as the targets and priorities are indicated, the branches/regions/zones prepare detailed action plan for their implementation. Care is to be taken to ensure that targets are achieved within the given time frame, quantitatively and qualitatively. Chapter 4 discusses in detail the functions and responsibilities of senior officers including Director, CBI.

Chapter 5 elaborately discusses complaint, source information reports and registration of cases. It deals with how the complaints can be filed, what is the procedure for filing the complaints, where verification is required, process of verification, *etc.* The source information reports (SIR) are dealt in detail.

Chapters 6 to 11 refer mainly to the procedural aspects of investigation and trial of the registered cases by referring to the relevant provisions of the Code of Criminal procedure, 1973 (Cr PC). Chapter 6 is devoted to general instruction regarding investigation and enquiries, detailed account for investigation procedure in India and also abroad by providing an annexure in this respect. Chapter 7 refers to arrests, custody, bail and remand. Chapter 8 is about searches and seizures, Chapter 9 deals with facilities and cooperation extended by administrative authorities. It includes grant of pardon or immunity and technical assistance in investigation. It also provides the lists of CFSLs, GEQDs,

state FSLs, test houses and test laboratories and other technical institutes available for assistance in CBI cases, with their complete addresses.

Chapter 10 provides for case diaries and progress report and its format, final report, SP's report and comments of superior officers. Chapter 11 elaborately provides for the investigation of the case, filing of appeals and revisions, *etc*. Chapter 12 refers to departmental action and chapter 13 is about cyber crimes that are very common now-a-days. Chapter 14 deals with the Central Forensic Science Laboratory (CFSL). An annexure containing performa used in CFSL, guidelines and instructions for submission of cases to the CFSL have also been provided along with it. Annexures guidelines for recording conversation/voice using audio recording systems and about National Human Rights Commissions guidelines relating to administration of polygraph test (lie detector test) on an accused person have been provided.

Chapters 15 to 17 mainly refer to the international scenario in this respect. Chapter 15 is about interpol and coordination wing. INTERPOL is the telegraphic address of the international criminal police organization (ICPO). At present, this is the only official international police cooperation organization, solely and permanently responsible for ensuring day-to-day police cooperation across international borders. It also provides for the National Central Bureau (NCB) in New Delhi in detail, coordination wing, look out circulars and annexure about complete list of interpol member countries. Chapter 16 is about investigation abroad and letters rogatory, extradition, interpol notices, *etc*. Chapter 17 mainly refers to the provisions of the Hague Convention.

Chapter 18 deals with the National Investigating Agency (NIA) with emphasis on the National Investigating Agency Act, 2008, its shortcomings and loopholes, comparative view of NIA and CBI, jurisdiction of NIA, offences investigated by NIA and its procedure for investigation. Chapter 19 is about Federal Bureau of Investigation (FBI) of the USA, for the sake of comparison. Last chapter is about role and functions of the Central Vigilance Commission which the author has discussed in detail.

The author has written a comprehensive standard work about CBI with important reference to the international bodies like Interpol which are effective in the same area and for the same purpose. A comparative study with an American agency, FBI, is nicely presented. The book in its appendices contains ready reference of the Delhi Special Police Establishment Act, 1946; the Central Vigilance Commission Act, 2003; the Central Vigilance Commission (Staff) Rules, 2007; the National

Investigation Agency Act, 2008; the National Investigation Agency (Manner of Constitution) Rules, 2008; Intimation to Speaker regarding arrest, detention, *etc*. and release of member and the Supreme Court decision in *Vineet Narain* v. *Union of India*.[2]

The book is nicely written though it is not analytical and also does not discuss many judicial pronouncements. Written in a simple language and in a clear and lucid manner, the book is a reservoir of knowledge on the subject and has been formulated concisely. It is a good treatise on the subject and an invaluable source of reference for the professionals and students alike.

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2. (1998) 1 SCC 226.

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BAIL: LAW AND PROCEDURE WITH TIPS TO AVOID POLICE HARASSMENT (2009). By Janak Raj Jai. Universal Law Private Limited, C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033. Pp. xxxvi + 332. Price Rs. 250/-.

THE CONSTITUTION of India guarantees to every citizen of India right to move freely throughout the territory in India and live with human dignity.[1] The basic purpose of arrest under warrant or without warrant is to secure the presence of the accused at the time of inquiry or trial. Another purpose is to ensure that he is available to receive sentence on conviction. If these objectives can be achieved without forcing detention on the accused during inquiry and trial, it would be an ideal blending of two apparently conflicting claims, namely the freedom of the individual and the interest of justice. The provisions relating to bail aim at such blending.

The concept of bail has a long history and deep roots in English and American law. In medieval England, the custom grew out of the need to free untried prisoners from disease-ridden jail, while they were waiting for the delayed trial conducted by traveling justices. Prisoners were sailed or delivered to a reputable third party of their own choosing who accepted responsibility for assuring their appearance at the trial and if the accused did not appear, his bailer would stand trial in his place.[2]

The law relating to bail and bond is incorporated under the Code of Criminal Procedure, 1973 (Cr PC)).[3] The relevant provisions have been incorporated in the Cr PC with a view to restoring liberty to an arrested person without jeopardizing the objectives of arrest. It is based on the fundamental principle of criminal jurisprudence that "bail is a rule and jail is its exception".[4] In some provisions,[5] it is the right of the accused to get bail while in some others, it is left to the discretion of the court.

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1. The Constitution of India, arts. 19(1)(d) and 21.
2. As quoted in *Moti Ram* v. *State of M.P.* (1978) 4 SCC 47.
3. Ch. XXXIII, ss. 436-450.
4. *Gurucharan Singh* v. *State* (*Delhi Administration*) (1978) 1 SCC 118.
5. Cr PC, ss. 436-439.

Section 436-A[6] speaks about the maximum period to which a person can be detained even if no bail or surety is furnished by him. To save a person from unnecessary stigma of arrest, a provision of anticipatory bail[7] has also been incorporated. For granting bail, some special powers are also conferred on the high courts and the court of sessions.[8] Thus, the legislature has wisely incorporated the bail provisions to secure the freedom of the accused without compromising on fundamental obligation to secure justice.

The present edition of the book[9] under review is an excellent addition to the subject which fills the vacuum in this branch of law. It contains 27 chapters followed by appendices. The book was originally written in 1995 with a view to providing the wealth of case law for lawyers, students, *etc*. The journey of the book covers almost one and half decades and the aims set out by the author seem to have been well achieved. The book is a comprehensive analysis of cases pertaining to law relating to bail and bond by referring to police investigation, role of police, its power and duties, provisions relating to first information report, framing of charge, *etc*.

Chapters 1 to11 deals with the provisions of bail. The concept of bail along with its historical background has been discussed in the first chapter. Chapter 2 explains the term bail, parole and furlough and their difference. It removes the confusion as the terms are generally considered synonymous. In chapter 5, the author has analyzed the provisions of granting bail in non bailable offences. Under this chapter, the grounds and limitations on/under which the bail is granted are well discussed. In chapter 6, the author has discussed anticipatory bail by drawing a distinction between pre-arrest bail and post-arrest bail. Chapter 7 explains the situation in which bail can be cancelled and its effect. Chapters 8 and 9 contain a very good presentation by giving current cases, including *Sanjay Datt* case, on security proceedings in bail. Chapters 10 and 11 explain the position of law and effect on bail if police has failed to file charge sheet in time and the cancellation of bail granted under section 167(2) of Cr PC. This portion of the book contains complete analysis by pointing out difficulties with solutions in the light of leading and current cases.

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6. Inserted by Act 25 of 2005, s. 36.
7. Cr PC, s. 438.
8. *Id*., s. 439.
9. Janak Raj Jai, *Bail: Law and Procedure with Tips to Avoid Police Harassment* (4th ed., 2009).

Chapters 12 to 15 of the book deal with the provision of information to police and their power to investigate into the matter with a view to provide tips to the victim to avoid police harassment. A reference of *D.K. Basu* v. *State of West Bengal*[10] in this regard would have been very useful as in this case Supreme Court had issued broad guidelines in cases of arrest. A common discussion has been made in chapter 14 to clear the law relating to first information report (FIR). The evidentiary value of FIR is also discussed in this chapter.

Chapter 16 of the book deals with the law relating to framing of charge. It is an essential requirement in a criminal proceeding. The purpose of charge, quashing of the charge and the ground of discharge have been properly discussed. The distinction between discharge and acquittal and its effect is also given in this chapter. Other chapters of the book deal with the duties of the judge, court, prosecutor and the defense in granting the bail (ch. 17); the legality of remand and the maximum period for which the accused can be released on remand (ch. 18); duties of judges and court to assure sitting place in the court for the accused and the guidelines in issuing bail (chs. 19-20); constitutional right to issue the writ of *habeas corpus* to save the individuals from unlawful detention (ch. 21); grant of bail under different central and state laws (chs. 22-24); the golden principles governing the law on bail (ch. 25) and different forms of the application for bail (ch. 27).

In the opinion of the reviewer, there was no need to divide the whole discussion into a large number of chapters. The references given are not properly footnoted. The author has, at many places, given incomplete references.

The book under review, despite the above observations, is a welcome addition to the law on bail and other related matters. It would prove to be helpful and useful to professionals and also for researchers and students interested in a detailed study of this branch of law.

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10. (1997) 6 SCC 642.

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SERVICE LAW OF GOVERNMENT EMPLOYEES (2009) By R.K. Bag. Eastern Law House Private Limited, 36 Netaji Subhash Marg, Darya Ganj, New Delhi-110002. Pp. 602. Price Rs. 525/-.

THE SERVICE jurisprudence is highly complex as it is intertwined with legislation, statutory rules, administrative directions and judicial decisions. The phenomenal expansion of state activities not only through the governments but also the giant statutory authorities, government undertakings and local bodies involving countless citizens bring to the foreground need for close study of the laws and rules regulating the *interse* relationship between the employer and the employee engaged in government services. The practical as well as the academic importance of the subject is beyond question. The tremendous rise in the service disputes is due to lack of a relatively simple and coherent statement of law on the subject. Once core issues relating to the subject are identified and defined, the principles culled from multiplicity of reported cases and multitude of other sources are arranged in a systematic manner, the service laws can be presented in an attractive manner and as a more comprehensive subject.

The book under review[1] is an in-depth study with insights of the service law in India. The author has arranged well the statutory rules, administrative directions and judicial pronouncements governing the conditions of service of the government employees along with his own comments on the vital aspects of service law.

The book is divided into 25 chapters and an appendix section including important Acts relating to service law. Each chapter starts with a synopsis.

Chapter 1 deals with the ambit of statutory rules and administrative directions, wherein article 309 of the Constitution of India, empowering the government to make service rules and articles 73 and 162 empowering the government to issue administrative directions have been discussed. The author has discussed the scope and extent of judicial review of statutory rules and administrative directions. Judicial review over administrative action is available on the grounds of illegality, irrationality and procedural impropriety.

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1. R.K. Bag, *Service Law of Government Employees* (2009).

In chapter 2, the author discusses the administrative tribunal and its jurisdiction. In the present day era, administrative tribunals are world-wide phenomena. While comparing administrative tribunals with the courts, it may be said that the administrative tribunals are those which exercise judicial functions, separate from the courts and tend to be easily accessible, less formal and less expensive. Such bodies are manned by persons having specialised knowledge or expertise in the subject matter concerned. The need to have an independent machinery to try and adjudicate the complaints and grievances of civil servants expeditiously and without much expense was felt for long. The Constitution (Forty-second Amendment) Act, 1976 made major changes in the settlement of disputes relating to service matters by introduction of article 323A in the Constitution. Article 323A empowers the Parliament to establish service tribunals to deal with the litigation pertaining to service matters. In pursuance of this provision, the Parliament enacted Administrative Tribunals Act, 1985 for the establishment of service tribunals for deciding service disputes of civil servants of the centre as well as the states. Various provisions of the Administrative Tribunals Act, 1985 and their interpretation by the courts have been discussed, though briefly, by the author. The jurisdiction of the high court *vis-à-vis* administrative tribunals has been discussed by referring to *L. Chandra Kumar* v. *Union of India*,[2] wherein the Supreme Court has declared unconstitutional the provisions of articles 323A(2)(d) and 323B(3)(d) ousting the power of judicial review of the Supreme Court and high courts under articles 32 and 226/227, respectively. The topic is very important and deserves a more detailed study. The coverage given to this topic in just ten pages appears to be inadequate. The author could have emphasised more on need to insert part XIV-A in the Constitution through 1976 amendment by referring to the recommendations of the Law Commission of India,[3] Administrative Reform Commission,[4] Shah Committee[5] and Swarn Singh Committee[6] and the need felt by the Supreme Court[7] to establish service tribunals to

2. AIR 1997 SC 1125 : (1997) 3 SCC 261.

3. Law Commission of India, *14th Report on Reform of Judicial Administration* (1958).

4. *Report of Personnel Administration* (1969).

5. *Report of High Court Arrears Committee* (1969).

6. *Report of Swarn Singh Committee* (1976).

7. *Kamal Kanti Datta* v. *Union of India* (1980) 4 SCC 38; *Harjit Singh* v. *Union of India* (1980) 3 SCC 205.

make his discussion complete and more informative on the topic. Judicial decisions on the ouster of judicial review of the decisions/orders of service tribunals require a detailed discussion.[8]

Chapters 3 to 18 deal with various facets of service law right from recruitment/appointment till retirement of a government employee. The value of the book lies in its bringing together at one place the latest case law on recruitment, confirmation and regularisation, leave and absence, correction of age, lien and transfer, deputation, annual confidential report, pay and increment, reservations, promotion, seniority, termination, compulsory retirement, *etc.* The author must be credited for his remarkable and imaginative effort in this regard.

Chapters 19 to 24 highlight the procedure and practice involved in disciplinary enquiries and major and minor penalties that can be imposed on government employees. The principles of natural justice play an important role in disciplinary enquiries. There must be fair play in action and the parties to be affected must be given a reasonable opportunity to represent their case by the concerned authority. The authority must act in an unbiased and impartial manner. The requirement of recording reasons for the decision is a safeguard against administrative arbitrariness and ensures a degree of fairness in the process of decision-making. The author has explained the concept and importance of principles of natural justice with the help of decisions of the apex court. But at times, one is left feeling that perhaps the significance of principles of natural justice could have been understood better had the three principles of natural justice, *viz. nemo judex in causa sua, audi alteram partem* rule, and the requirement of passing a reasoned order, been discussed in detail with the help of landmark judgments of the Supreme Court. Resultantly, the book has to be read along with standard works on administrative law for a proper appreciation of the subject.

Chapter 25 deals with pension and retiral benefits. Various kinds of pension, gratuity, commutation of pension and withholding pension have been discussed elaborately with the help of judicial decisions. The discussion will be of immense value, not only for the employer and the employees, but also for the prospective litigants in understanding the law on the subject.

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8. *S P. Sampath Kumar* v. *Union of India* (1987) 1 SCC 124; *J.B. Chopra* v. *Union of India* (1987) 1 SCC 422; *M.B. Majumdar* v. *Union of India* (1990) 4 SCC 501; *R.K. Jain* v. *Union of India* (1993) 4 SCC 120; *Sakinala Harinath* v. *State of Andhra Pradesh* (1993) 2 An WR 484; *L. Chandra Kumar supra* note 2.

The book contains a scholarly and lucid exposition of various aspects of service law. The legal propositions and the *ratio* of judgments have been formulated concisely and in a simple language. The book is well presented, richly bound and moderately priced. It is a storehouse of knowledge on the subject and will be cherished by the administrators, government employees, legal practitioners, law professors, researchers, judges and tribunal members.

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THE LAW OF EVIDENCE (2nd ed., 2010). By S.D. Basu. Allahabad Law Agency, Law Book Publishers, 16/2, Mathura Road, Karkhana Bagh, Faridabad (Haryana). Pp. xxxiv + 533. Price Rs. 250/-.

A POSITIVE legal regime with an enormous corpus of legislation in the contemporary world is a feature unmatchable to all periods of human history so far. This is a natural corollary of the requirements of the very advanced stage of society marked by a mechanical way of life rather than simple organic existence. Being a phenomenon where law making and its review is a continuous process with specific goals to be achieved, inter-personal and group conflicts are also on the rise. Amidst the given situation of constant and fast conception of new laws, their birth, growth, interpretation, reinterpretation and withering away under the challenges of the day, a voice that invariably catches everybody's attention for substantive reasons, is the concern for enforcement of laws even though existing in enormity. For the enforcement of any law with effectiveness, the basic requirement is the establishment of a claim, charge or obligation through a process of evidence in accordance with approved norms settled by legislation or judicial precedent, any gap in the chain of events due to lack of evidence aborts the judicial process. The law of evidence, therefore, gains added importance as an adjective law, significant for the functioning of any legal system. The matters of standard of proof, relevance and admissibility of a fact as evidence, presumptions and preservation of evidence are all dealt with under the law of evidence.

In India, the main legislation dealing with the subject is the Evidence Act, 1872, an outcome of the efforts of Sir James Fitzjames Stephen during British period. Many commentaries have been written on the Act, of which that of Monier J is well known in legal circles. Others who have tried their hand on the subject have generally not been acclaimed with the desired prominence and recognition. Basu's book in hand is one of such books having survived in the market for a decade.

For any writer on law of evidence, the main challenge has been to explore new dimensions of relevance of facts to prove a claim or charge in changing social context with shift in values. Ordinary and common sense reasoning has though been imperative in determining the questions regarding relevance of evidence or its relevance but now the possibilities

of postulations and random processes are also being advocated seeking reliance on unarticulated premonitions. Developments in technology and its use for doing an act or proving, distorting and disproving a fact is the latest concern of authors on law of evidence. The canvas for discussions on the subject extends to a vast area of legal studies falling equally in the domain of criminal law, civil law and laws on governance and regulatory mechanisms.

The book under review[1] is mainly meant for students and gives section-wise comments on the provisions of the Evidence Act, 1872 comprising a concise view of the principles of law evolved by the judiciary through a long experience in English and Indian courts. It contains discussions on various aspects of law of evidence beginning with a self review in its very casually written nine-line preface, definitely not suited to a reading for the students of law, saying: "Law is ever evolving and to keep 'peace' with it, one has to be updated with amendments in law propounded by apex court and different high courts. An attempt has been made to bring more and more case law and to provide simple and 'impatic' commentary in this edition, for benefit of students and advocates". The preface in itself nowhere indicates the subject of the book. The introductory chapter needs to be rewritten putting relevant materials in a naturally drawn sequence for better grasp of the basics by a student of law.

The book as such covers all the provisions of the Evidence Act, 1872 focusing in part-I on relevancy of facts; in part-II on judicially noticeable facts, proof of facts by oral evidence, proof of contents of documents with presumptions and exclusion of oral by documentary evidence; and in part-III on burden of proof, estoppel, witnesses and their examination, improper admission and rejection of evidence. The comments on various sections of the Act are generally narrative and project views of courts making the book a combination of legislation and judicial interpretation, of course, leaving a lot of scope for improvement in coherence and creativeness. Though somewhat analytical, the discussions are not usually critical. The legislative amendments to the Act made by the legislature recently have been appreciably incorporated in the book on which some more focus would be beneficial.

In view of the evolution of human rights jurisprudence, certain issues now require, for their fine understanding, a highly critical approach,

1. S.D. Basu, *The Law of Evidence* (2010).

especially in the area of non-admissibility of confession to police with reference to fundamental rights, police atrocities for extracting confessions, emerging arrogance in state authorities and non-state anti-establishment actors, narco-analytical testing, electronic brain mapping, psycho-social torture, admissibility of doctored electronic and non-electronic evidentiary materials and so on. Passing references to such significant and vital matters may not serve as useful reading for law students even at Bachelor's level. In the next edition of the book, giving prominence to such areas of concern will enrich this work and add further to its utility.

The book can be further enriched by discussions on the reforms needed for updating the laws and making them relevant to the changing times. For example, how far the decision of the Supreme Court in *Union of India* v. *T. R. Verma*,[2] that the Evidence Act does not apply to inquiries conducted by tribunals even if quasi-judicial in character should continue to apply. The same line of thought can be extended as regards the application of the Evidence Act to revenue courts and tribunals, and what limits are to be set if the broader application of the evidence law is agreed to in principle for any adjudicating body or dispute resolution process. Reference in this regard should be made to relevant reports of the commissions and committees, especially those of the Law Commission of India.

Changes in the socio-legal milieu demand fair critical analysis of the principles like that originating from *Mills* v. *Oddy*,[3] permitting secondary evidence under section 65(a) of the Evidence Act on account of anybody not producing an original document in his possession for the purposes of evidence for any so-called privilege or its capacity to incriminate him. Impact of the Right to Information Act, 2005, which has thrown wide open the gates of access to documents in public offices, needs also to be discussed in different perspectives as may be relevant for ensuring justice. Recasting of section 112 is another important issue that needs more elaborate discussion in the light of new emerging techniques in genetic engineering as observed by the Supreme court in *Smt. Kamti Devi* v. *Poshi Ram*,[4] that section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in

2. AIR 1957 SC 882.
3. (1834) 6 C & P 728.
4. AIR 2001 SC 2226.

contemplation of the legislature. Reports of the of the Law Commission of India, 69th Report submitted by the Fifth Law Commission and 185th Report submitted by the Sixteenth Law Commission, should be thoroughly discussed in this regard. The recommendations for improving the law need to be made a part of the discussions given in text-books to promote critical studies with creativity.

In view of the niceties of the law of evidence, the present book may be updated and upgraded as suggested above to maximize its utility to the law students.

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