

BOOK REVIEWS

INDIAN CONSTITUTIONAL LAW (2005). By Prof. M. P. Jain. Wadhwa and Co., Nagpur. Pp.1708. Price Rs. 695/-.

CONSTITUTIONAL LAW of a country is an amalgam of politics, governance, human rights, social justice and rule of law – the story of organization and management of power amidst complex and evolving relationships in developing societies. Seen in such a perspective the subject is amenable to varying interpretations in content and concerns which makes it an attractive subject among legal scholars, political scientists and public administrators. There are nearly a hundred treatises, many of them by renowned lawyers and academics, written on Indian constitutional law though the Constitution itself is only 55 years old. The profusion of landmark decisions on important constitutional provisions from the apex court and the series of one hundred and more amendments have made the task of constitutional lawyers difficult, but exciting. No wonder that the standard text book on Indian Constitutional Law by M. P. Jain, first published in 1962, has gone through five editions and several reprints in a span of four decades. With each new edition the book has grown in size and content. The book, no doubt, has been popular with academicians and practitioners alike, both within the country and abroad.

A word about the author known to the reviewer personally for several years. The late Prof. M. P. Jain was a prolific writer on legal subjects, a store-house of knowledge especially in public law and a teacher par excellence. His contribution in administrative law is perhaps more outstanding than his work in constitutional law, at least, that is my assessment. As a writer he is meticulous in adhering to facts and references to sources which make his work an authoritative tool for further research. In later years he became a comparative law scholar publishing authoritative volumes on public law of other Asian countries too. Among the few scholars quoted in high court and Supreme Court judgments, M. P. Jain is a prominent one.

There is much to commend on the organization of the subject in the book. Constitution is an organic whole and its understanding depends on how the subject is presented, coherently linking chapters and articles, in different parts of the document. The author attempted to do it in his work with a great deal of success. There are many books written as commentaries on articles of the Constitution following the same structure as in the Constitution. The book under review does not adhere to the scheme of the articles in the Constitution; it succeeds in giving a



functional analysis of the scheme of governance under rule of law, which is what constitutional law is about.

Nearly half the book contains matters relating to rights and duties of citizens, while the other half discusses issues and concerns, functions and relations, powers and limitations of government at the central, state and local levels. The introduction chapter is refreshing reading to everyone interested in constitutional governance as it presents comparative and historical perspectives of constitutional law, constitutionalism (limited government), rule of law, constitutional values and conventions, federalism, independent judiciary and responsible government. It is an invitation to every reader of the Constitution to look at it not just as another law, but as fundamental law, dynamic and flexible enough to guide the destiny of over a billion people for several centuries through the path of democracy and rule of law.

In explaining the structure and functioning of government at the central and state levels, the author has by and large adopted a narrative style according to the scheme of the Constitution digesting the amendments and case law of not only Indian courts, but of other democratic countries as well. This is an area where too many changes are taking place almost every day which leave the reader to wonder whether an electronic text book is better suited to keep updated rather than a printed book. One cannot blame the author or the publisher for this inherent drawback in printed books in a world of fast moving changes happening every day driven by technology and globalization. For example, the Freedom of Information Act adopted recently (2005), which may impact governance in a true sense, cannot be found in the book. Every session of Parliament and every term of the Supreme Court adds on new policies and practices some of which make substantial change in the character and style of governance under the Constitution. Certainly, M. P. Jain's Indian Constitutional Law requires a sixth edition instead of an expanded reprint to enable the readers to comprehend fully the developments in government which are taking place in quick succession.

The problem of knowledge lag is not that severe when one examines the part on citizens' rights and duties. It is fairly exhaustive and comprehends the judicial trends analytically and incisively to be able to anticipate developments in decisional law. The comment that the reviewer would like to make on this part of the book is the relative neglect of social and economic rights. The chapter on directive principles is not adequate to reflect the growing importance of what one would call "survival rights", assuming central concern in human rights discourses around the developing world. Perhaps the next edition of the book would think of giving due importance to these rights in a separate (Part VI) section of the book analyzing the variety of laws at central and state levels, which imposed duties on governments for the realization



of these rights. Alternatively, it is possible to read Part III and IV of the Constitution together and project a composite human rights jurisprudence, which is rather a unique contribution of Indian constitutional law.

The publishers deserve credit for few value additions brought about in the reprint (Constitutional Amendments since the 5th edition in 2003) of the book. The book is little too bulky to be held in hand for reading. 2000 pages of material though printed in fine paper is too big for a single volume. The economy paper back volume is priced at Rs. 695, which seems reasonable. The printing style is modern, the binding, despite its size, is good and the get-up is attractive. Another feather in Wadhwa Nagpur's cap.

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FAMILY LAW ON DIVORCE AND JUDICIAL SEPARATION (2003).
By Naseem Akhtar. Deep and Deep Publications Pvt. Ltd. New Delhi.
Pp 306. Price Rs.600/-.

INCREASE IN matrimonial litigation, coupled with new/amended laws has resulted in corresponding increase in literature on matrimonial laws as well. Naseem Akhtar's *Family Law on Divorce and Judicial Separation* is yet another addition to the vast majority of books on the subject. The author has discussed the various personal law statutes, pointed out the loopholes and also made some suggestions for reform. There are, however, at the same time, various disconcerting features too, which the reviewer would like to point out, with compunction though.

At the outset, the reviewer finds the very title of the book a bit enigmatic. The word 'family' in the title appears to be uncalled for. Chapter four of the book which deals with christian marriage law overlooks the most significant fact that the Indian Divorce Act, 1869 has been completely overhauled in 2001. The Act has been brought almost at par with the other personal law statutes but the author, writing in 2003, deals with the unamended christian divorce law which has become obsolete. Probably the book had a long gestation and the chapter (and the conclusions) was written before 2001.

Apart from this, there are statements of law which do not appear to be legally correct. To mention a few: the author states that a marriage is voidable under section 12 of the Hindu Marriage Act, 1955 (HMA).¹ To the best of the reviewer's knowledge section 12 of the Act which lays down the conditions under which a marriage may be annulled, nowhere mentions that a marriage in contravention of the minimum legal age requirement can also be annulled under the section. Infact, such marriage is neither void under section 12 nor even a ground for divorce under section 13 of the Act and hence by analogy, valid.

Further, the author has overlooked the amendment of 1999 under which the word 'epilepsy' has been dropped from section 5(ii)(c) of the HMA, which lays down the conditions for a valid marriage. Thus, a marriage under the Act may be solemnized notwithstanding the fact that a party is suffering from epilepsy and such marriage is no longer voidable

1. Naseem Akhtar, *Family Law on Divorce and Judicial Separation* 250.



under section 12 of the HMA.²

Then again, at one place³ the author states that the Special Marriage Act, 1954 (SMA) provides that in every decree for judicial separation the court should specify a definite period within which cohabitation must be resumed and that after the expiry of the period so specified, unless the court extends the period on the application of either party, the marriage will be automatically dissolved. The reviewer pleads complete ignorance of any such provision in the SMA, or in any other Act.

There are several mistakes in the cross reference in the footnotes. To mention a few footnote 204 at page 86 says, “Tahir Mahmood, supra note 143, whereas footnote 143 at page 85 refers to a case (*T.Rangaswamy v. Arvindammal*); likewise footnote 231 at page 87 “see *Kaushalya’s* case, supra note 29” but footnote 29 at page 82 refers to the statements and objects of a Bill introduced in 1964. Such examples can be multiplied.

The author has, however, usefully pointed out some of the loopholes in the laws, *e.g.*, that a suit for nullity of husband’s second marriage cannot be filed by the aggrieved first wife as she has no *locus standi* under section 11 of the HMA;⁴ that the SMA and the HMA, unnecessarily outstretched their net of prohibited degrees necessitating latitude for contrary customs;⁵ that a male can adopt a child at the age of 18 and thus become an adoptive father, whereas he cannot marry below the age of 21 and thus become a biological father;⁶ that section 21-A of the SMA is discriminatory as it provides that a Hindu marrying a Hindu under the Act would be governed by his personal laws of succession, whereas a Muslim marrying a Muslim or a Parsi marrying a Parsi under the Act will not be governed by their personal laws in the matter of succession but by the provisions of the Indian Succession Act, 1925.⁷

The price of the book is also on the higher side. In any case the errors of omissions and commissions are too significant to be ignored and the author would do well to immediately rectify the same.

*Kusum**

2. It would be pertinent to note that while the original HMA of 1955 made no mention of epilepsy, the same was incorporated in 1976. Then again in 1999, *vide* Marriage Laws (Amendment) Act, 1999, the word epilepsy was dropped.

3. *Supra* note 1 at 280.

4. *Id.* at 273.

5. *Ibid.*

6. *Id.* at 272.

7. *Id.* at 225.

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ENVIRONMENT PROTECTION AND SUSTAINABLE DEVELOPMENT (2004). By Prof. S. Bhat. APH Publishing House, New Delhi. Pp. 241. Price Rs. 495/-.

ANY STUDY on “sustainable development and protection of environment” needs expertise both in law and science because it involves insights not only into legal doctrines but also the on-going natural, biological and other related processes in and around the planet earth. It also needs comprehension regarding stability of the biosphere with reference to the probability of its getting affected by use of technology and unregulated use of resources. Further, there should be an eye on existing mechanisms and motivations for environment protection at the national and international levels. The book under review approaches the subject in these perspectives with focus on recent developments in the world around, particularly in India. The relevant issues have been discussed in the federal perspective with an analysis of the powers and duties of the central and state governments for the efficient management of the environment and its protection. The major premise for the author has been the growing concern world over for safeguarding the environment as a common cause for all states ever since the Stockholm Declaration on Human Environment made by the United Nations in 1972. Holding the idea of seeking harmony and balance between the principles of law and the scientific principles, he stresses the need for acquiring the best by combining the natural principles of science and the national and international laws relating to environment protection.

The book, with 11 chapters, is forwarded by Prof. M.G.K. Menon, FRS. He has described it to be of interest to both scholars and the public, within and outside India. The first chapter of the book defines the areas of major concern for environment protection and sustainable development. The author has rightly noted that it is seldom that the history has thrown so many challenges to mankind as now, especially on the protection of environment. He has remarked that the global environment is subject to tremendous pressure in terms of pollution of air, water and land, especially in the developing countries. The population explosion has added to its gravity and has confronted mankind on various counts. The author has taken due note of the fast changing ecology, both in cities as well as the countryside. He has observed that even though the biological engineering promises to produce more food and forests, the mankind should maintain balance in population growth and conserve maximum possible space for people. The author states that in



the absence of some checks on population growth, we may be left only with standing rooms to live. Since the earth has finite space and resources of water, land and air scarce, there is a need to conserve these resources and leave for future generations what we have inherited ourselves. Global warming is one more issue that has been highlighted in this chapter, calling for new steps to be taken for the survival of life on earth. The author opines that the advancements in science, especially in the field of biology, can offer some hope provided proper emphasis is laid on conservation of resources, recycling of materials and eco-management of natural geographical regions.

In the second chapter of the book, the author brings to focus the global movement for environment protection as a part of the modern civilisation and has shown that the movement is growing stronger with time and the sustainable development has become a key to decision making on economic development. This is evident even from the 1972 Declaration in which new legal and economic principles have been mooted for mankind to follow. The UNESCO's involvement in conservation of nature and preparation of the "World Charter for Nature" by UN also indicate the same trend.

The impact of environment protection movement in India and development of various institutions and law for that purpose have been discussed in the third chapter of the book. Since the global environment movement was started in 1972, almost in the same year was constituted in India a high level National Committee on Environmental Planning and Coordination, which began the movement for environment protection in the country. The chapter makes a mention of the landmarks of the Indian environment movement, such as preparation of reports by scientists for the protection of environment, drafting of new laws for environment protection, the CHIPKO movement, movement to save Himalayas, review of policy on construction of dams and role of courts in the protection of environment. It also discusses the creation of a new consciousness on environment and conservation and developing of a new attitude and ethos for environment management in the country.

An analysis of the constitutional provisions related to the duties and responsibilities of states towards environment protection and developments in the centre-state relations for enforcing environment protection laws has been given in the fourth chapter of the work. The trends in this respect are, in the opinion of the author, in conformity with the principles of environment protection. Fifth chapter presents an evaluation of the working of the Environment Protection Act, 1986 and various rules framed thereunder. The working of the Ministry of Environment and Forests (MEF) as the nodal agency for implementing environment protection programmes, which is a major concern for people in general and the industries in particular, has been discussed in the sixth chapter



of the book. The author feels that the MEF has responded well to national challenges, especially in drafting new laws and creating new institutions for environment management.

The interaction of law and science for environment management has been discussed in the seventh chapter. This chapter outlines a biologist's view of the world, which has emerged in recent years when mankind is considered as one species – *homo sapiens*. The international law, according to the author, has helped to develop this view for the stability of the biosphere and for the protection of global environments. The overall state of national environment in India has been brought to focus in the eighth chapter along with the issues relating to compliance and enforcement of environmental laws and fixation of standards to minimise damage to environment. Additionally, an analysis of the United Nations Charter for Nature (1982) and the Rio Conference (1992) for sustainable development has been presented in the ninth chapter of the study. In the last two chapters of the book, i.e., tenth and eleventh chapters, the author has set out the new goals to be achieved by the nation with regard to sustainable development and has stressed the need for active involvement of students, teachers, lawyers and economists to discover the unattended areas of concern on the subject.

The book is not exhaustive on the subject but has rightly opened up the discussions on various significant issues on the environment protection and sustainable development, which should be further debated by scholars at the national and international level.

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ECONOMIC LAWS AND PRACTICE (2003). By Suchitta Koley & Dr Sanjeev Kumar(ed.). Vrinda Publications, Delhi. Pp. 1054. Price Rs.265/-.

ECONOMIC ACTIVITY in a society constitutes the matrix for development of the nation. All economic activities such as industries, financial and capital markets *etc.* need to be governed by the laws and regulations framed by the state guided by the broader objectives underlying the polity. Long awaited and hardearned freedom of India aroused genuinely optimistic dreams of independent India, which are duly reflected in the Preamble of the Constitution of India. Led by the broader goal of a welfare state, India formulated its policies, adopted the programmes and enacted the laws. There is a plethora of laws made by the Parliament to regulate the economy. Some of them constitute core legislations.

The book under review is the summation of certain important legislations dealing with economic matters. The book running into 1054 pages has been divided into 25 chapters and 2 appendices . Chapter I gives a cursory prologue to the economic laws, their importance and a birds eye view of Constitutional framework of India. One may not see any indepth study or philosophical foundations underlying the economic laws being provided by this Chapter though Chapter 2 summarises the provisions of Industrial (Development and Regulation) Act, 1951, which was the key instrument for implementation of industrial policy of Government of India. Besides narrating the statutory provisions regarding advisory councils, development councils; regulation, investigation, takeovers and control of industrial undertakings; powers of central government; various offences and penalties have been discussed in the light of some judicial pronouncements. New industrial policy of 1991 has also been incorporated in this chapter. Chapter 3 dealing with the Consumer Protection Act, 1986 deals with the broader objectives of the Act, elaborates various statutory definitions with the support of case law. It may be mentioned here that the Consumer Protection Act, 1986 has undergone a seachange after the amendment of 2002. The editor has skipped to incorporate those important amendments and resultantly the Consumer Protection Act 1986 as discussed in this chapter fails to provide upto date knowledge of law on the subject. Chapter 4 deals with Essential Commodities Act, 1955, which was enacted to effect control of production, supply and distribution of essential commodities. The provisions of the Act have been abstracted alongwith annotations and



some cases. In order to ensure the availability of essential commodities, the legal provisions vesting vast powers in the central government besides imposing penalties for the offences under the Act have been outlined by the editor. It needs to be pointed out that the editor has failed to mention the new Sections 3D & 3E inserted by the Essential Commodities (Amendment) Act, 2003, which have enlarged the powers of the central government. Chapter 5 deals with the Competition Act, 2002. In pursuit of globalization, India has responded by opening up its economy, removing controls and resorting to liberalization. As a natural corollary of this, the Indian market needed to be geared to face competition from within and outside the country. Considering MRTP Act, 1969 as obsolete in view of International economic developments and realizing the need to shift focus on promotion of competition, instead of curbing the monopolies, the Parliament enacted the Competition Act, 2002 seeking to ensure fair competition in India by prohibiting trade practices which cause adverse effect on competition in the markets within India. For this purpose the Act provides for establishment of quasi judicial body i.e. Competition Commission of India. Whole legal framework of Competition Commission of India has been discussed in this chapter. Chapter 6, deals with the Environment Protection Act, 1986 which was enacted by the Parliament as an umbrella legislation to protect and improve the environment above all other legislations. Bare provisions of EPA Act, 1986 regarding powers, procedures, offences and penalties have been abridged by the editor, without any illustrations, annotations or case law.

The law relating to conservation of foreign exchange and proper utilization thereof was enacted as Foreign Exchange Regulation Act, 1973 empowering the Reserve Bank of India to be the sole controlling authority. With the advent of new economic polity, free flow of foreign exchange into India necessitated the review of abovesaid law. Thus with the object of facilitating external trade and payments and for promoting orderly development and maintenance of foreign exchange market in India, Foreign Exchange Management Act, 1999 (FEMA) replaced the FERA. FEMA has been incorporated in the chapter 9. As compared to FERA, FEMA simplifies the procedure and delegates certain powers to authorized dealers. Provisions of FEMA have been adequately narrated in a very simple manner in the present volume. Chapter 10 deliberates the Prevention of Money Laundering Act, 2002 enacted by the Parliament as the outcome of Political Declaration and global programme of action adopted by UN general assembly in its 17th special session, calling upon the member states to adopt national money laundering legislation and programme. Provisions regarding maintenance of record by the banking companies; summons, search and seizure; establishment of appellate tribunal; procedure to be followed by the *tribunal etc.* The editor has



not correctly cited the Acts as the Prevention of Money Laundering Act, 2002 (Act No.15 of 2003).

Chapter 13 lays down the provisions of Foreign Trade (Development and Regulation) Act, 1992 which tends to regulate the foreign trade by facilitating imports into and augmenting exports from India. Besides reproducing the law as contained in the Act, the editor has incorporated the Export Import Policy 2002-2007 of India with precision. Chapter 14 elucidates the Securities Exchange Board of India Act, 1992 enacted to stop enormous malpractices increasing rapidly with the growth in number of investors. SEBI was constituted as a supervisory body to regulate and promote the securities market so as to restore confidence of investors. SEBI (Amendment) Act, 2002, which has brought in major amendments of far reaching consequences should have been discussed by the editor. This amendment has increased the number of members of SEBI from 6 to 9. Many powers of SEBI and Appellate Tribunal have undergone change. Securities Contracts (Regulation) Act, 1956 has been embodied in Chapter 15. Chapter 16 gives an account of legislative provisions of Trade Marks Act 1999, which has repealed the erstwhile Trade and Merchandise Marks Act, 1958 and provided the law for registrations and better protection of trade marks for goods and services and for the prevention of use of fraudulent marks. In order to encourage investment flows and transfer of technology, need for simplification and harmonization of trade mark management system, the bare provisions prescribed by this Act regarding registration and certification of trade marks, establishment of appellate board, offences and penalties have been reproduced. Regarding date of enforcement of the Act a small rectification is required at p.505 i.e. the Act came into force on 15th September 2003, vide S.O. 1048 (E) dated 15.9.2003 published in the official Gazette of India Extra Pt.II Sec(II) dated 15.9.2003. The date of 30th December 1999 had mentioned by the editor is not the date of enforcement but date of President's assent. Similarly, the Designs Act, 2000 discussed in Chapter 17 came into force on 11 May 2001 vide S.O. 414(E) dated 11.5.2001 published in Gazette of India Ext.Pt.II Sec.3(II) dated 11.5.2001, whereas President gave his assent to it on 25.5.2000.

Chapter 18 encapsulates the Copyright Act 1957 as amended by the Copyright (Amendment) Acts, 1983, 1984, 1992, 1994. The Copyright(Amendment) Act 1999, has incorporated very vital amendments in the original Act of 1957 which have not been mentioned by the editor and thus the readers shall be deprived of upto date legal position. After this amendment the expression, "literary work" covers databases. Meaning of Copyright *vis-à-vis* computer programme has been changed. Subsistence of copyright has been changed from 50 years to 60 years. Performers' rights shall now subsist for 50 years instead of 25



years. A new section 40-A entitled Power of Central Government to apply chapter VIII to broadcasting organizations and performers in certain other countries has been inserted now. The title of chapter VIII has been changed by the Amendment Act of 1994 as “Rights of broadcasting organization and of performers”, which has been wrongly cited by the editor at 18.9 as “Rights of Broadcasting authorities”. Similarly at p.648 there is a reference to Specific Relief Act, 1877 whereas it should be 1963. These mistakes should be rectified. Editor would do well if he updates the law of copyrights in this chapter.

The Patents Act, 1970 has been discussed in chapter 19. The introductory part of the chapter consisting mainly of the editors’ work requires clarity and coherence in the information sought to be furnished. The provisions as amended by Patent(Amendment) Act, 1999, have been discussed but cognizance of very important amendments made *vide*: the Patents (Amendment) Act, 2002 has not been taken. By virtue of this amendment every international application under PCT for a patent would be deemed to be an application under the present Act, provided a corresponding application has also been filed before the controller in India. Now publication of an application for a patent has been prohibited for a period of 18 months from the date of application or date of priority, whichever is earlier. Making application outside India for grant of patents for any invention relevant for defence purposes or related to atomic energy, except under the authority of a written permit granted by or on behalf of the Controller has been prohibited. An application for a patent can be examined only at the request of the applicant or any other interested person within 48 months from the date of filing, failing which the application would be deemed as withdrawn. Thus the law described in this chapter is in its unamended form and requires updating.

Chapters 20,21,22,23,23-A and 24 encompass the abstracts of the Smugglers and Foreign Exchange Manipulators(forfeiture of property) Act, 1976, The Registration Act, 1908, the Economic Offences (inapplicability of limitations) Act, 1974, the Standard of Weights and Measures Act, 1976, Packaged Commodity Rules, 1977 and Indian Stamps Act, 1899, with certain references of decided cases. Chapter 25, discusses the MRTP Act, 1969 alongwith the comments and enormous judicial references. It needs to be reiterated that MRTP Act, 1969 stands repealed by the Competiton Act, 2002 which has already been covered in chapter 5. Syllabi of certain professional courses and examination papers have also been appended as Appendix 1 & 2 in the book to make it useful for the students.

This book running into more than a thousand pages wraps in its fold two dozen significant legislations, which are very important for any common man as well as lawman. Besides bare statutory provisions given by the editor some annotations are also necessary for the readers. Title



page carries the name of Suchitta Koley as editor and of Dr. Sanjeev Kumar without indicating his role.

Despite a good effort by the editors, mistakes in proof reading are rampant. The book has been reasonably priced but needs to be improved qualitatively by updating and incorporating the amendments at relevant places in Consumer Protection Act, the Copyright Act, SEBI Act, Patents, Act *etc.*

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CHILD RIGHTS IN INDIA: LAW, POLICY AND PRACTICE (2003).
By Asha Bajpai. Oxford University Press, New Delhi. Pp 504. Price
Rs.695/-.

THE BOOK is divided into nine chapters, and its focus is on law, its enforcement, implementation and reform. The author demonstrates the need for a comprehensive law on children and integrates the four sets of civil, political, social, economic and cultural rights of every child; need to move from a sectoral and departmental approach to an integrated approach in which the services for children must be convergent and link the allied systems.

In Chapter I, the author suggests that the term 'child' may not be defined uniformly but should be in conformity with the Convention on the Rights of the Child *viz.* below 18 years of age, suggesting a higher age for protective care and lower age in respect of civil and cultural matters.

The author notes that despite the elevation of primary education as a fundamental right yet even at the governmental level elementary education has been a saga of broken promises characterized by neglect of education of urban, disadvantaged children and low budgetary allocation.

The author sums up in around four pages the law of intra country adoption under the Hindu Adoption and Maintenance Act (HAMA) and shows how the absence of a legislation governing inter country adoption compelled the Supreme Court to issue elaborate guidelines. She has also included a couple of cases though an analysis from her on the same would have been more appropriate, more specifically as the case of *Bengt Ingmar Eriksson v. Jannibai Sukharya Dhangda* which presents strange facts. Does it really appeal to reason or logic that children should be deprived of the love and affection of their parents only because they are poor labourers and should they suffer for the fault and lack of coordination between the various agencies? In this case the children should have been handed over to their parents. They were instead given in adoption to the Swedish couple despite their protests. This judgement leaves a bad taste as the parents here were not guilty of any misconduct or neglect of their children. These cases cited by the author are very important and, in fact, eye openers to the need for immediate legislative attention to the problems faced in inter-country adoptions. She follows it up with a comparative study of the international law i.e. laws of



adoption of various countries and calls for a common secular law of adoption.

Unfortunately under the Indian law the issue of adoption is considered part and parcel of the personal laws of the parties and is, therefore, coloured with religion. Describing the need for a uniform law of adoption as not under the directive principles of state policy for enactment of a uniform civil code but as the primary need for protection of the rights of the children, she attributes the failure of the Maharashtra Bill providing for the facility of adoption to every Indian irrespective of their religion to its linkage to uniform civil code, an issue that is thoroughly politicized.

The author argues:

If the Maharashtra Bill in its preamble stressed on the aspect of justice to the child rather than the uniform civil code, it would perhaps have had a better chance of being enacted in law. The proposed common secular law on adoption would perhaps be acceptable to all the communities if its main focus is on the welfare of the destitute and orphan child and it does not interfere with the inheritance laws, which are of divine origin in some communities.

However, there is some confusion here. Firstly, the observation of the author that only Hindu community in India has a law enabling adoption needs some clarification as besides this Act that is available only to Hindus, the Juvenile Justice (Care and Protection of Children) Act, 2000 that is a secular enactment, also enables members of any community to take a juvenile in adoption. Secondly, discussing the capacity of a Hindu to adopt a child under the Hindu Adoption and Maintenance Act, 1956, in chapter-II the author says:

[A] single woman or a divorcee or a deserted woman has the capacity to adopt if they are Hindus.

The observation does not appear to be correct as a deserted woman has not been granted a right to take a child in adoption. Desertion does not put an end to her marriage and though the consent of the wife is required, the primary right to take a child in adoption still remains with the husband. Thirdly, foot note 43 mentions:

For details see Important Judgments relating to Adoptions on p.57.

But this page does not carry any judgments. Fourthly, the author could have included here the Bills of 1972 and 1980 relating to adoption that were introduced in the parliament and their fate.

The author suggests that under the common law of adoption for all Indians which she strongly recommends, an adoptive parent would



deemed to have willed away 1/3rd of his property in favour of the adopted child. This suggestion, however, has a deceptive simplicity and should be avoided. It restricts unreasonably the power of a person to dispose of his property in accordance with his wishes and would also create an artificial distinction between the status of an adopted child and a natural born child, creating tussles in the family and would also make the natural absorption of the adopted child in the family difficult. No aspect of personal law can be seen in isolation as all family law matters are interconnected. Law of adoption has a direct bearing on laws of maintenance and succession that are purely religion based in the current scenario of the multiplicity of personal laws.

Discussing the guardianship and custody battles between the parents, the author describes the children as the innocent casualties of a matrimonial warfare and blames the parents for the insecurities that a child faces amidst their troubled marriage. She notes that the parents engage experts to fight the cases on their behalf while the bone of contention i.e. the child has no one to speak for him.

Discussing the case of *Dhanwanti Joshi*, wherein the courts had given the custody of a fourteen year old boy to the father on the sole consideration that he being in the US and having money would be able to provide a better future to the child, the author rightly argues that money alone should not be the criterion for determining welfare as it is not limited to physical or material comforts only that can be bought with money and stability, security, level of understanding, care, warmth, compassion are if not more but are of equal importance. Here, in addition the case also poses a problem, as the risks of a child torn from her mother, taking to bad vices at the tender age of 14 are far greater. Adolescents require the maximum surveillance of the parents as drug abuse and alcoholism target the children who are insecure due to parental neglect. Obtaining custody, on the ground of money and being able to give physical company to the child are two totally different considerations, each as demanding as the other and money alone should never be the determining factor unless a lack of it affects the child enormously.

Tracing the evolution of the child labour policy in India from 1919 to 2002, the author enlists the international legal strategies and movements in this area, and notes that one of the primary focus in case of restraining child labour should be not only that the child should have access to basic education but also that there should be a reasonable financial alternative for the ousted child worker.

Chapter 5 deals with the right to protection against sexual abuse and exploitation. The author explains child abuse with the help of seven different definitions and elaborates on how child sexual abuse becomes exploitation when a third party benefits from it. As part of a globally



organized sex trade child labourers and young domestic workers are used for sexual gratification with employers and adults becoming pawns in the hands of traffickers due to increased demand of child prostitutes.

The book also raises the issue of selective foeticide and infanticide, policy and legislations affecting children and those affected with HIV/AIDS and calls for many measures, including sensitization of medical personnel.

Chapter 9 deals with the paradigm shift in the policy and making child rights a reality. There appears to be a contradiction in her stand here. The author rightly notes that environmentally housing is one of the important requirements of every child as many diseases including respiratory and ophthalmic *etc.* are as a result of overcrowding, poor ventilation and generally unsatisfactory conditions of housing environment. She says that it is the poor, specially women and children, who live in the slums and are at the receiving ends of the dehumanizing mode of development and planning. She says that the right to shelter is a constitutional right and has been repeatedly emphasized by the judiciary. However, her attitude towards the demolitions of these slums is full of disapproval. According to her, their rehabilitation is very distant and adversely affects the education of their children and she substantiates it by giving cases of demolitions and uprootment in three specific situations.

The author notes that:

...there has been a marked change in the attitude of the courts during the last decades, the concentration being on cleaning cities of its dirt and on assisting the rich and the middle class to lead a comfortable life.

This observation of the author does appear to be strange in light of the practical reality. Is she suggesting that the slums and pavements provide a better environment for a child to grow even if they are immensely crowded, crime infested and without any proper sanitation facilities? She herself points out that the children who are brought up on pavements or street show a high mobility, are prone to taking to crime very early in the life, have an alarming increased risk of being sexually exploited and infected with drugs *etc.* yet she laments the fact that the government uproots them only to rehabilitate them far at distance and visualise this as appeasement to the rich and the middle class. It is pertinent to note that the Supreme Court recently observed:

providing a slum dweller with an alternative accommodation is like rewarding a pickpocket.

The treatment of every chapter is very much to the point and brief as unnecessary details have been avoided. The author takes specific



issues and has not attempted any generalization. For its size, it contains abundant information on every aspect that has been covered, displaying the sincerity and honesty of writing. However she could have added more of her own comments and analysis. On the whole, the book is very informative and as the title reveals would prove useful to the researchers, professionals working in the field of child rights, and those interested in development of children.

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COMPANY LAW (2003). By Dr. N. V. Paranjape. Central Law Agency. Pp 584. Price Rs.200/-

THE PACE of change in company law in India has been so fast in the recent years that this revised edition has become an essential reading for not only students but also for academics and practitioners. This edition presents the subject of company law in a clear, straightforward and up-to-date fashion and covers all the recent legislations including the Companies (Amendment) Act, 2002, The revival and rehabilitation of sick industrial companies inserted by the Companies (Second Amendment) Act, 2002, law relating to producer companies consisting of 46 new sections from 581 A to 581 ZT. The extensive case law on the subject is carefully presented and analyzed with quotations from frequently cited judgments. In addition to Indian case law there is coverage of English, American and Commonwealth cases. The edition contains the most important cases reported in last twelve months. The edition is divided into 26 chapters and five appendixes.

Chapter 1 is introductory which begins with a short discussion on origin of company law in India and also highlights the major changes made by the various Companies (Amendment) Acts up to the (Amendment) Act, 2002.

The registration of a company is carried out usually by the persons who subsequently take more or less active part on the company's organization following its formation. Such persons are referred to at the time of pre-incorporation as 'promoters' and they are subject to the duties and liabilities discussed in chapter 4. A company is normally a particular form of business organization. This organization does not arise informally, but is the result of a statutory process. Chapter 4 also discusses this statutory process of incorporation. The registration of a company is affected by deposit of two documents - a memorandum of association, which is company's constitution, and the articles of association, which contains the company's internal regulations. These two very important documents are discussed and very well illustrated by case law in chapters 5 and 6.

All aspects of the company law including contributed capital, profit, loan capital or debt capital, credit *etc.* have been extensively analysed in the light of case law in the subsequent chapters.

Chapter 17, in particular, deals with the constitution and powers of newly formed national Company Law Tribunal (NCLT) and Appellate Tribunal. Previously, the Company Law Board had extensive powers to



examine company's affairs. These power were divided into two types: the power to inspect company's documents and power to appoint investigative inspectors.

Chapter 21 discusses a new part, namely, Part VIA of the Companies Act inserted by Companies (Second Amendment) Act, 2002 which relates to the revival and rehabilitation of sick industrial companies.

The winding up, a process by which company's affairs are brought to an end, is discussed in chapters 22 and 23. The company is dissolved so that its creditors can be paid and, if possible, contributed capital returned to members, who may even receive distribution of any surplus remaining. The author has discussed detailed legal rules and recent case law and has tried to make it easy to understand the difficult subject of winding up.

Chapter 25 explains the law relating to producer companies as introduced by the Companies (Amendment) Act, 2002 and chapter 26 explain in very simple terms various miscellaneous provisions contained in Part XI and XIII of the Companies Act. The five appendixes, at the end of the book, give information about the statutory register and books to be maintained by the company, and various penalty provisions under the Company's Act. These appendixes may be of immense value for the practitioners.

Though it may be of immediate and great use to the students of company law in professional courses like CA, CS, ICWA *etc.*, it is equally be useful for lawyers, accountants and company executives.

*Suman Gupta**

The Hindi edition of the book by the same author, which has received Government of India award for distinguished books on law in Hindi, was reviewed by B. N. Mani, Additional Legal Advisor, Govt. of India (Retd.) and member, Governing Council of ILI. According to him the Hindi version is useful to all those who are interested in the subject.

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BOOKS RECEIVED FOR REVIEW

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