BOOK REVIEWS

PRECEDENT IN INDIAN LAW. (Second edn. 2005). By Prof. Lakshminath. Eastern Book Company, Lucknow. Pp. xxvii+319. Price Rs. 475/-.

WHEN IN *Suresh Chandra* v. *State of U.P.*[1] the decision of the Supreme Court in *Sunder Singh* v. *State of Rajasthan*[2] was cited seeking application of section 304 IPC to the facts of the case, the court after citing a quotation lamented thus: [3]

> We find it difficult to discern the ratio of this judgment. No particular exception was referred to in this judgment. From the few words spoken to by their Lordships, we get the impression that the right of self-defence was sought to be exercised by the accused. If exception 4 was in the minds of their Lordships, we would expect a discussion on the point whether all the ingredients of that provision, including the last part were satisfied. We cannot, therefore, treat this case as a binding precedent applicable to the facts of this case.

This inability of the court is not something new. It is characteristic of many of the decisions. Possibly the *Sunder Singh*[4] court could have been more explicit. Or *Suresh Chandra*[5] court could have appropriately read the ratio it wanted to apply. After going through several cases in different branches of law handed down by our Supreme Court one may get the feeling that precedent in India is not amenable to a systematic study and theorisation may be somewhat difficult. This position makes the book under review a valiant effort to make a valid contribution to our legal literature. The author at the outset should be congratulated for his brave attempt to enter into this wilderness and try to achieve some order so that it can be amenable to further research.

However, it has to be pointed out that this book requires a relook while bringing out its next edition. The material in it would be more useful if it is reorganised and rewritten at some portions. There are loose ends in narration at several places[6] making the discussion eclectic.

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1. (2005) 6 SCC 130.
2. 1988 (Supp) SCC 557.
3. *Supra* note 1 at 133, para 8.
4. *Supra* note 2.
5. *Supra* note 1.
6. A Lakshminath, *Precedent in Indian Law* 90-91 (2005).

The discussions on curative petitions are also not adequate. At some places the sentences have not been complete.[7]

The discussion on *Kasturilal*[8] is indeed good. But it could have become better and useful had it been examined in the light of cases like *Smt. Basavvakom Dhyamangouda Patil* v. *State of Mysore* [9] wherein the Supreme Court said thus:[10]

> Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the state or its officers had taken due care and caution to protect the property the magistrate may in an appropriate case, where the ends of justice so require, order payment of the value of the property.

It was a case in which the stolen property recovered from the offender was lost from the custody of the police. *Kasturilal*[11] was not mentioned. And even in *P. Challa Ramakrishna Reddy's*[12] case, mentioned by the author, it is not felt that the Supreme Court dissented explicitly from *Kasturilal*[13] despite the whole discussion being against the recognition of sovereign immunity in the new context. It may not be possible for the readers to agree with the author in his understanding of case law. For example, it is difficult to agree with the understanding of the author of the impact of *Shah Bano*[14] on the interpretation of section 125 Cr.PC or on the interpretation of Muslim Women (Protection of Rights on Divorce) Act, 1986. Discussion of case law on several important questions does not appear to be adequate.

The discussion on the jurisprudence of compensation evolved in the context of *Nilabati Behera*[15] is not elaborate or adequate. Indeed, the author discusses the cases from *Rudul Sah*[16] to *Challa Ramakrishna Reddy*.[17] But its development is not discussed in detail. It has been evolved by the Supreme Court as a public law remedy having no connection with sovereign immunity. The obligation of the government to fall in line with International Convention on Civil and Political Rights is also commanded by the court to buttress its argument in its support.

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7. *Id.* at 44.
8. *Kasturilal Raliaram* v. *State of U.P.,* AIR 1965 SC 1039.
9. (1977) 4 SCC 358.
10. *Id.*at 362.
11. *Supra* note 8.
12. (2000) 5 SCC 712.
13. *Supra* note 8.
14. (1985) 2 SCC 556.
15. (1993) 2 SCC 746.
16. *Rudul Sah* v. *State of Bihar*, AIR 1983 SC 1086.
17. *Supra* note 12.

The citation of *Visakha* v. *Union of India* is not given at page 34. Probably the author refers to *Visakha* v. *State of Rajasthan*.[18]

While discussing the case law under article 12 of the Constitution the author has not explained *Arunachalam* v. *Sadanandam*[19] and *Sadanandam* v. *Arunachalam.*[20] It would have been fruitful to examine the court's explanation of the latter decision's ratio.

A student of judicial process would be more interested in chapter 3 of this book entitled "Stare Decisis – A Sociological Perspective" though he may not agree with the author's grouping or categorization of judges.[21]

It is interesting in this context to maintain that the Supreme Court had an occasion to clarify its position with regard to the review of a precedent by a bench. The petition in *Central Board of Dawodi Bohra Community* v. *State of Maharashtra*[22] sought for reviewing *Sardar Syedna Taher Saifuddin Sahebean*[23] wherein a bench of five judges (4:1) ruled that Bombay Prevention of Excommunication Act was *ultra vires* the Constitution.

A two-member bench opined that it should be reviewed by a seven-member bench. Overturning this decision the five-judge bench opined that the matter should be placed before a Constitution bench and not before a bench of seven judges. The court reiterated that the law laid down by the bench of larger strength is binding on any subsequent bench of lesser or co-equal strength. If a lesser quorum bench disagrees with the larger quorum bench all that the former can do is to invite the attention of the chief justice and request for the matter being placed for hearing before a bench of larger quorum. It will be open only for a co-equal strength bench to express an opinion doubting the correctness of the view taken by the earlier bench of co-equal strength.

In this context one is tempted to refer to a pungent observation of Lord Chancellor made in the context of Workmen's Compensation Act, 1923. He asserted: [24]

> Once again I should like to protest against the great number of cases which are so often cited upon this Act. I prefer to go back if possible to the words of the statute and not to consider such words through a vista of decisions, most of which deal with the facts in the particular case under consideration.

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18. (1997) 6 SCC 241.
19. (1979) 3 SCR 482.
20. (1980) 2 SCR 873.
21. *Supra* note 6 at 57.
22. (2005) 2 SCC 673.
23. AIR 1962 SC 853.
24. *Shotts Iron Co.* v. *Prodyee,* (1930) AC 503 at 508.

Our judiciary's tryst with precedent signifies the relevance of this observation to the Indian situation. And it is not easy to wade through the floor gates of decisions to reach a conclusion. In this situation the work under review is a valiant effort by a dedicated teacher brought out in good form by the equally dedicated publishers. The Indian scholar whether he is a teacher or a practitioner or a judge should find it very very useful. For students of judicial process it is inevitable. The book is nicely printed, reasonably priced and easily available.

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PRIMER ON JUDICIAL EDUCATION AND TRAINING (2000). By N.R. Madhava Menon, David Annoussamy and D.K. Sampath. S.C. Sarkar & Sons Pvt. Ltd. Pp. 263. Price Rs.200/- .

To prepare a Primer on Judicial Education and Training is a challenging task. As observed by A.S. Anand J., this is not just a primer but also is a classic since D. K. Sampat with his 80 years of experience; David Annoussamy J. who, like Megarry, had been an academic and judge and N. R. Madhava Menon who built up many legal institutions have smelted their thoughts in a strong enough crucible. The pioneering effort made by these eminent authors is really commendable.

Judicial training in an organized form is a recent development in India. It got a fresh look and sense of urgency ever since the acceptance of recommendations of the First National Pay Commission on training of judicial officers and the establishment of National Judicial Academy at Bhopal. During the last few years states have also set up such academies under the administrative control of high courts. The 263 pages book has been well planned, neatly arranged, and is packed with information particularly relevant from the practical side. Judicial education implies such a requirement for persons administering justice.

The first four chapters deal with the felt need in judicial training. Comparable information from developed countries and the Indian experiences of well performing institutions in Andhra Pradesh, Kerala and Uttar Pradesh have been given exhaustive coverage.

The Andhra Pradesh Academy at Secunderabad started functioning in 1991. It has an admirable presence of experienced judges at the top. The pattern is slightly different in Kerala. The judicial training institution was set up there five years earlier in 1986. (Kerala did it before the 117th Report of the Law Commission recommending establishment of institutes for training of judicial officers, long before the Supreme Court in *All India Judges Association* v. *Union of India*,[1] directed the governments of respective high courts to establish institutes for training of judicial officers).

The presence of senior district judges in the directorate makes the training more effective. It has been rightly stressed in the book that the training is to be provided both by lectures and by discussions. Experience demonstrates that discussions provide more effective opportunities for

1. AIR 1992 SC 165.

training. There is no better method than discussions, for effective education.

Judicial training in one sense is a continuing process. Reputed Law Reports should be provided to every judicial officer. Kerala's example of providing a copy of ILR official series to every judicial officer not only in his chamber but also in his office rooms at home could be emulated. The book is very comprehensive and the reader is taken through the modes and techniques of both civil and criminal law and how these can be effectively used in ensuring fairness and impartiality in the legal proceedings. Only an active judge intelligently using these provisions can cut down delay without sacrificing fairness. The needs of fairness and expedition have to be balanced.

Though the areas under civil law are well surveyed in the book under review, some topics like 'A Critical Gaze on Pleadings' could have been dealt with more elaborately. Pleadings form the foundation for the edifice of litigation. The judicial officers, attuned to view the pleadings as an aspect of natural justice will be in a position to render better quality of justice. The theoretical aspect underlying the insistence on incorporating material particulars has been discussed in detail in a number of cases. These principles have application in other branches of litigation also particularly relevant in rent control cases which constitute a substantial percentage of present day litigation.

There has been conflict in the approach of judges on this aspect. Views of a judge may reflect his mindset influenced by the social perspectives. Fact situations can be different in different cases but the perspective of the judicial officers should be clear and firm on pleadings. Taking into account all these factors it can be said that Part II of the book under the heading Civil Proceedings would be useful for the new entrants in the profession in developing their professional skills.

Chapter 12 is yet another important topic dealing with settlements. The settlement of issues should figure as an important duty of any judicial officer, as rightly pointed out in the book. A settlement brings about not merely termination of a dispute regarding money or status; it restores good relationship between the parties who were fighting all along. Counsel could also be helpful in effecting settlements. Even outside the Arbitration and Conciliation Act, 1996 such operations could be undertaken.

The distressing delay in the trial of a suit is deplored by every one. But the tools available to speed up the machinery are quite often allowed to rust in the unopened tool kit of the procedure code. Discovery and inspection, admission of facts and interrogatories referred to in chapter 10 would be a useful hint for the judicial officers entering on their new career. A gentle reminder to counsel on both sides about the availability of these provisions, which will effectively shorten the trial and help

focusing the attention on the crucial issues, may serve the purpose.

While highlighting the importance of the requirements under section 89 the safeguard introduced by the 1976 amendment about the necessity of a compromise being reduced in to writing and signed by all parties could have been referred to and stressed in the discussion.

Interlocutory applications need careful handling. Discussion about interlocutory applications assume importance for the reason that quite often an interim order continues to be operative almost till the culmination of the litigation. There is disinclination on the part of superior courts to interfere with the decisions of the first court. The higher the forum, the rarer becomes the chance of interference

A judicial officer faces a plethora of problems when it comes to execution. Helpful guidelines have been given in the book while discussing the topics "Penal Provisions in Civil Procedure Code" and "Woes of a Decree Holder".

There are lighter essays on the management of court. 'Communication skills for judges' is one such. It appears to have been written from the perspective of women judicial officers. The words 'she' and 'her' have been used on not less than 36 times!

A judicial officer too has to discharge many routine official works on the administrative side also. Chapter 22 captioned 'Judge as an able Administrator' gives a broad outline of the ministerial duties. There is a general tendency to delegate ministerial duties to someone in the ministerial section. Judicial officers can certainly rely on subordinate ministerial officials for able assistance. However, periodic verification/ supervision should be undertaken, lest the ministerial wing should go astray or become lax.

The section relating to criminal matters in the book has a wider range than civil matters in many respects. A civil suit may be of concern to the parties,s to the litigation or to the witnesses connected with it. But when a criminal action is set in motion the investigation can spread to many persons not named in the first information report or complaint. It is, therefore, necessary to provide safeguards at every stage. The Supreme Court has given effective guidelines in *D.K. Basu* v. *State of West Bengal*[2] about the duties of the police officials when a person is arrested. However, many among the arrested are unaware of their rights. This is the position in relation to even some among the police officials. Some who are aware dare to defy the instructions with impunity. Experience indicated that the state machinery has not got the necessary involvement in ensuring strict adherence to the Supreme Court guidelines in *D.K. Basu's* case. Legal education on an extensive scale among the

2. (1997) 1 SCC 416.

wider sections of the people would appear to be the only effective solution. All these issues have been beautifully dealt with under the book.

Unguided police power quite often leads to confessions being made by the accused. Whether these be extra judicial or judicial, there is a distinct possibility of police excess playing a part in getting a confession. A judicial officer with a heavy load of work will not be able to peruse closely classic textbooks on confession. For that reason, the summary of the legal position given in the book would be very helpful.

Judiciary has necessarily to keep a vigil on aberrations on the side of police. Compensation to victims is a new and healthy trend in this sensitive area. There is in the book a brief survey of reliefs and remedies available to victims of a crime.

Part III which deals with criminal proceedings also contains interesting discussions on legal aid and information technology. These are days when even a child rushes to the computer and utilizes it effectively. A judicial officer should have no difficulty in making use of the computer, of course care should be taken not to surrender his intellectual capabilities to mere mechanical efficiency. New technology has necessarily to be employed in all court complexes.

Though legal aid is certainly for the state to administer, Parliament has conferred this responsibility on legal service authorities at various levels. The working of the enactment must be familiar to a judicial officer. The Arbitration and Conciliation Act, 1996 must also be necessarily studied by him.

Attitudes, approaches, skills and ethics are all important for a successful judicial career and the young officers have to be told on how to cultivate correct norms and standards right from the beginning. The book does serve a useful purpose. It is hoped that a study of the information and guidelines contained in the book will result in quicker disposal of cases, a crying need of present day times. It is also hoped that the Primer will be followed by more elaborate exercises.

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THE CITIZEN AND JUDICIAL REFORMS UNDER INDIAN POLITY (2003). Edited by Subhash C. Kashyap. Universal Law Publication Co. Pvt. Ltd. Delhi. Pp. 270. Price Rs.350/-.

THE EDITOR of this book under survey has brought out this excellent book under the auspices of the Centre for Policy Research, New Delhi, which organized a specialized conference on the "Citizen and Judicial Reforms under Indian Polity" in collaboration with the "Citizenship Development Society". The book contains 27 valuable contributions from some of the most distinguished academicians, parliamentarians and distinguished persons who made a significant contribution in public life.

The book is divided into six parts and deals with important areas like judiciary and judicial reforms; citizen, justice and judiciary; appointment and removal of judges; administration of justice; judicial accountability and contempt jurisdiction

In the introductory article "Judiciary and Indian Polity" authored by the editor himself he observed that Indian polity is under severe strain and the faith of the people in the government institutions is gradually getting undermined. He analyses the inter-relationship of the different organs of the state and more particularly the position of judiciary in Indian polity. He delineate on some important aspects relating to democratic polity and the Indian Constitution, parliamentary powers *vis-à-vis* courts, judicial review and due process, parliamentary privileges, anti-defection law, President's rule under article 356, judicial activism and PIL, contempt of court etc. The chapter is reflective of his vast experience as a member of the Constitution Commission (NCRWC) and chairman of its drafting and editorial committee and shows his erudition.

Senior advocate Shanti Bhushan in his article on "Why Had Judiciary Failed?" suggests that the institution of honorary magistrates should be revived. He laments that lawyers tend to make things look complex and complicated and opines that responsible retired people should be pressed into service of the society and the public. Former Chief Justice of India J. S. Verma while writing on "Judiciary and Judicial Reforms" suggests some 21 effective remedies requiring serious consideration for implementation. These include increasing working hours of the courts and reduction in holidays, simplification of procedure in civil cases, improvement of prison conditions etc. Rajendra Sachar a former judge of the Delhi High Court while writing on "Some Aspects of Judiciary" suggests that there has to be a self-disciplinary mechanism installed

somewhere to ensure high quality of justice, honesty and integrity. R. S. Pathak another former Chief Justice of India in his article on "Citizen and Judicial Reforms" welcomes the idea of written arguments in Parliament. Shiv Dayal, a former Chief Justice of the Madhya Pradesh High Court, writing on "Citizenship Values and Quality of Justice" concludes that the end product of citizenship values should be to improve the fourfold quality of justice *viz*, (i) non-polluted justice; (ii) substantial justice; (iii) speedy justice; and (iv) inexpensive justice. In his article on Mechanism for Accountability and Making Justice more Citizen-Friendly, Speedier and Inexpensive, N. Vittal, former Chief Vigilance Commissioner while citing Enron case laments that CVC is only a police man and further quoting Upnishads observes that we should apply our knowledge with faith and conviction and deep thinking.

M. P. Singh, Professor, University of Delhi, in his article argues for the creation of commission for appointment of judges which will obviate some difficulties in the determination of merit in terms of constitutional goals. Senior Advocate P. P. Rao while writing on "Probity in Administration of Justice" emphasizes that honesty and integrity should be the most important qualities we should insist in a candidate for a judgeship. P. V. Indiresan, professor of law, in his article on "Technology and Justice" states that justice and technology share some features in common; both inspire awe and hope and at the same time they arouse fear and despair. With every advance in technology the complications faced by the judges have increased as judicial delays and judicial indiscipline can be checked without much difficulty and at a little cost by simple techniques. Ranbir Singh professor of law writing on "Criminal Justice Administration – Myth and Reality" emphasizes that criminal law has to be situational, emphatic and participatory rather than objectively distanced; it has to be local but being local has also to be total. He points out that cops, prosecutors, delay, corruption, witnesses, judges etc. are the main areas which need attention as these pose a challenge to the criminal justice system in India. Justice Sardar Ali Khan in his article on "Contempt Jurisdiction – Its parameters" emphasizes that the courts in matters of contempt have to exercise jurisdiction with great care and caution. Advocate Prashant Bhushan laments on practical un-workability of the system created by the Constitution as the only method for dealing with judicial mis-conduct by citing V. Ramaswamy's case. He argues that article 19 (2) of the Constitution should be amended to delete the contempt of court power as a basis for placing reasonable restrictions on the freedom of speech. The authors of various articles included in the book under review have been very successful in focusing the attention of the readers to many contemporary and complex constitutional issues relating to the Indian polity. The book is a valuable and welcome addition to any library and

is very useful for lawyers, judges and academicians.

As the editor himself in his introductory article emphasises problems of the judiciary are part of the larger national malaise. Judicial reforms cannot be viewed in isolation and an integrated approach to reforms agenda is the need of the hour. All the three organs of the state, should function in the interest of the people and remain fully accountable to them under the Constitution and the rule of law.

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POPULATION LAW: AN INSTRUMENT FOR POPULATION STABILISATION (2003). By Usha Tandon, Deep and Deep Publication Pvt. Ltd. New Delhi-110027. Pp. XXXIV+470. Price Rs.950/-.

IF ONE were to attribute the ills and travails of our country to any one single potent factor, that is over-population. All welfare measures and governmental schemes to ameliorate and improve the socio-economic conditions of the people are negated because of the unbridled, gigantic and explosive increase in the population. As aptly remarked by Bertrand Russell, "population explosion is more dangerous than hydrogen bomb." R. C. Lahoti, J in one of his judgments showed immense concern and observed:[1]

> The torrential increase in the population of the country is one of the major hindrances in the pace of India's socio-economic progress. Everyday about 50,000 persons are added to the already large base of its population... It is a matter of regret that though the Constitution of India is committed to social and economic justice for all, yet India has entered the new millennium with the largest number of illiterates in the world and the largest number of people below the poverty line. The laudable goals spelt out in the Constitution of India can best be achieved if the population explosion is checked effectively. Therefore, population control assumes central importance for providing social and economic justice to the people of India.

The book under review[2] assumes special significance in this backdrop. The book is a scholarly, in-depth and erudite study which has analysed the issue of over population from historic, social and legal perspective. Emergent need to combat the problem with various meaningful suggestions has been emphasised.

While there has been no dearth of documents, reports and publications addressing the issue and emphasizing the need to find solutions, the author with her legal academic expertise, seeks to encash on the role of law to combat the problem. It needs no saying that law is a powerful agent of change – sometimes it precedes change, at other times law follows changed attitudes and reinforces the change.

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1. *Javed* v. *State of Haryana*, AIR 2003 SC 3057 at 3068.
2. Usha Tandon, *Population Law: An instrument for Population Stablisation* (2003).

The problem of over population as pointed out by the author is multi-faceted and its solutions must be multi-faceted too. However, since law permeates almost every aspect of human behaviour effective solutions to the problem could be sought through the aid of law and that is the thrust of the book.

Apart from tracing the history of population law, the author discusses the causes of population explosion in good detail. These are:

1) Cultural – (i) family style; (ii) inter-spousal communication.
2) Religious factors – (i) concept of marriage; (ii) preference for son.
3) Social factors – (i) economic status; (ii) education (iii) status of women.
4) Psychological factors – (i) infant and child mortality; (ii) myths, fears and beliefs about contraceptives.
5) Political factors.
6) Legal factors.

The co-relation between population and family style has been well brought out in the book. Joint family system facilitates child bearing and rearing because apart from the parents, there are so many other family members around to render help. While joint family system is giving way to nuclear families in the urban areas, in rural areas joint families are still the norm.

Amongst the social factors education undoubtedly plays an important role. The writer's empirical research points out that use of contraceptives improves with education levels of spouses; that educated mothers take up employment thereby leaving them with less time and energy to bear and rear children. Besides, there is better communication between educated couples on the need for family planning. Apart from directly effecting fertility and child birth, education increases and improves health care awareness thereby decreasing child mortality and it is common knowledge that when child mortality rate is high, parents tend to produce more children.

The status of women generally, within and outside family is one important factor in family size. The author suggests various factors which could enhance the status of women. Reference to polygamy as one such factor is, however, enigmatic. Is it oversight by the author or printers play with alphabets – polygamy instead of monogamy – one wonders?

Myths, misconceptions and negative attitudes towards sterilization and use of contraceptives are also some of the factors which inhibit small families. This factor is very evident in rural areas. Preference for

male child adds to number of children in families having female babies until a male is born.

The author has not over-looked the fact that quite often political factors are responsible for not effectively implementing population control measures.

Amongst the legal factors, her statement that "unilateral right of Muslim husbands to divorce their wives on ground of failure to bear children, etc, may encourage high fertility"[3] is vague. One wonders the basis for such statement.

A detailed chapter on the population dilemma with tables, data and figures is not only thought provoking but also indicates the research and labour the author has put into the work. There is also a detailed discussion of population policies and plans in India.[4]

Chapter four of the book deals with laws which indirectly affect procreation. The author has referred to the various small family Acts for civil bodies *e.g.*, The Local Government in Delhi (Disqualification for Membership) (Small Family) Act, 1996, Rajasthan Municipalities (Amendment) Act 1992, Rajasthan Panchayat Raj (Amendment) Act 1995, Orissa Zilla Parishad (Amendment) Act 1993 etc. Some cases under these laws have also been referred to. In this context the apex court in *Javed* v. *State of Haryana*[5] is significant. This was a batch of writ petitions and appeals where the core issue involved was as to the *vires* of provision of section 175 (1) (g) and 177 (1) of Haryana Panchayati Raj Act, 1994 disqualifying a person from holding office of panch/sarpanch if he/she has more than two living children. Emphasising the need for population control the court held that the provision was neither arbitrary or unreasonable nor *ultra vires* the constitutional provisions.

The author has also discussed various constitutional provisions which have a bearing on population. Family laws also affect family size *e.g.* marriage age, adoption etc; these have been discussed too. The need for law against sexual harassment at work place has been aptly pointed out by the author. With more security at work, more girls will take up employment and more working women mean smaller families because of constraints of time and energy of the working woman.[6]

Chapter five is a detailed discussion on laws directly affecting procreation. While there is no law ordaining compulsory sterilization or use of contraceptives, various policies and schemes connected therewith have been discussed.

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3. *Id*. book at 35.
4. *Id*. chapter 3.
5. *Supra* note 1.
6. *Supra* note 2 at 238-39.

While dealing with the issue of sterilisation and divorce the author has referred to *P.J. Boore* v. *Valsa*[7] wherein the wife got a decree of annulment of marriage on the ground that her husband who was a widower with three children had undergone vasectomy, the fact he had concealed from her, and so she could not have a child. According to the court concealment of vasectomy constituted fraud, "one of the sublime objects of married life is to have off spring. This is not merely a traditional view but an established truth which transcends ages and has universal acceptance. Motherhood is one of the cravings of a normal woman", the court observed. On these observations the author has commented "This observation of the court shows the insensitiveness of judiciary towards the population problem of the country."[8]

The reviewer is not inclined to agree with this view. The court only endorsed what is psychologically, biologically, and emotionally normal and natural. Had the court ruled otherwise, it would have reflected utter insensitivity to a most natural and legitimate craving. Legality of an act under the MTPA or the demographic need for small families even when it is the first or second child is no justification for frustrating the natural desires of a spouse. Likewise in *Sushil Kumar Verma* v. *Usha*[9] where the husband got divorce on ground of cruelty because his wife got her first pregnancy terminated without his consent, the author's argument that where termination of pregnancy is concerned under the Medical Termination of Pregnancy Act, it should not be regarded as mental cruelty, does not seem to be logical or fair.[10]

Legality of an act or behaviour on the touchstone of penal or any statute is no justification for not taking cognizance of the same in matrimonial relations. Polygamy is permissible/legal under Islamic and some customary laws but is the same not been viewed as a ground for relief to a wife who objects to it? If the author's argument were to be accepted then no wife would be given any matrimonial relief on the ground of husband's polygamous marriage where the law applicable to them permits such marriages.

There is a detailed discussion on population laws and practices in other countries in chapter six. It is a very informative comparative study with valuable suggestions.

On the issue of sterilization, the author has taken a very balanced view. According to her, "Compliance to the small family norm should be achieved by a package of incentives and disincentives…what is needed is a combination of compulsion, volition, incentives and disincentives".[11]

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7. AIR 1992 Ker. 176.
8. *Supra* note 2 at 360-61.
9. AIR 1987 Del. 86.
10. *Supra* note 2 at 260.
11. *Id.* at 332.

The concluding chapter makes several useful suggestions. Amongst one of the suggestions is that in every industry where there are more than 50 female workers, there should be one class devoted to family planning every month.[12] They should be made to understand the benefits of small family and also the various methods of family planning should be explained to them. But why women only? In fact men need to be equally, if not more, enlightened on the subject because they are in the dominant position in this regard and not unoften women have to submit and succumb. Ideally, both men and women need to be equally enlightened. The need for enacting "Responsible Parenthood Act" has been aptly suggested. Another useful suggestion made by the author is that the parties to an intended marriage should attend a short course on responsible parenthood and production of certificate of having attended this course must be made compulsory for getting the marriage registered.[13]

The book contains seven useful appendices. In this context, the reviewer is of the opinion that the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994[14] which has been reproduced in over ten pages of the main book should have been put as an appendix. List of abbreviations, table of legislations, table of cases and definitions of terms used in the book add to the value of the book. There are a number of spelling mistakes *e.g.* morality for mortality (p.27) martial for marital, clarified for classified (p. 81) (p.117) mantel for mental (p.240) trend for tread (p.331), degree for decree (p. 348) and so on. The use of the word *blind* is not very happy and could have been avoided by referring to these persons as visually handicapped. All in all, the book is informative and useful not only for scholars interested in the subject but also for demographers and policy makers. It is hoped that the book will motivate and guide law and policy makers to take effective measures to tackle the problem of over population in our country.

*Kusum**

12. *Id.* at 369.

13. *Id.* at 365.

14. Now titled Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

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DYNAMISM OF JUDICIAL CONTROL AND ADMINISTRATIVE ADJUDICATION (2004). By Noor Mohammad Bilal, Deep & Deep Publications Pvt. Ltd. F-159, Rajouri Garden, New Delhi-110027. Pp. xvi+375, Price Rs. 990/-.

IN THE field of administration of justice, administrative adjudication is perhaps the most remarkable development of the twentieth century, *a fortiori* because it has happened despite the pre-eminence of the theory of separation of powers and the Dicean doctrinaire approach to rule of law.

In the eighteenth and nineteenth centuries *laissez faire* philosophy was the credo of political economists. Industry, trade, commerce and banking were almost completely left to govern themselves. Individualism propounded by Bentham and Mill had resulted in degrading and dehumanizing the individuals of the lower stratum of society who were the toiling masses and languishing labourers. There was to be absolute freedom of contract; but the complete inequality among the parties not only rendered the political ideology devoid of substance but also became economic quagmire for enslavement and exploitation of the oppressed and downtrodden. The best state was the one which performed the least.

The close of the nineteenth century and the dawn of the twentieth century saw the birth of the polity as a welfare state assuming a pro-active role in the fields of health, safety and general welfare of the society. Rapid growth in science and technology made the state administration more and more complex touching almost every aspect of human life. The administrative process became not only intricate but also all pervasive, a logical corollary of which was administrative adjudication or administration of justice by tribunals.

Administrative adjudication is expeditious, informal, cheap, efficient and less elaborate and cumbersome and more attuned to social needs, aspirations and governmental policy. As a result, there has been a proliferation of administrative agencies with judicial functions whose decisions, both by virtue of their quality as well as quantity, affect the life of the citizens more than the judgments of the ordinary courts.

Despite the fact that administrative process has emerged as an area of immense importance touching individual rights and interests, it has attracted the attention of few researchers and authors in India. The few publications available on the subject do not deal with administrative adjudication in service matters comprehensively. The book under

review[1] tries to take stock of administrative adjudication in India in general and adjudication by the Central Administrative Tribunal (CAT) under the Administrative Tribunals Act, 1985 in particular. It analyses the mechanism of grievance redressal of individuals through administrative agencies, particularly the CAT. The study includes tables of empirical data relating to cases transferred from various sources and fresh cases filed and disposed by the CAT, yearwise from November 1985 to February 2000; all India figure of cases of different benches of the CAT including the principal bench at New Delhi; cases filed, disposed yearwise from November 1985 to July 2000; institution, disposal and pendency of cases at the end of the year 1985 to 1995; statement showing the position of SLPs against the decisions of the various benches of the CAT from 1993 to 1999; statement showing total number of cases disposed of, appeals admitted and dismissed from 1993 to 2000.

The book consists of nine chapters. While dealing with growth of administrative process, the author has, after a brief general survey of the historical perspective, examined the impediments to the growth of administrative law. He has examined Dicey's thesis of rule of law and elucidated the principle in the Indian context. He has also critically appraised the theory of separation of powers, which has been a dominant creed in modern constitutionalism. The importance of the doctrine lies in the fact that while no constitution of any legal system in the world gives explicit recognition or acceptance to the doctrine, every constitution of a democratic polity seems to have made it its professed ideology.

Chapter two deals with administrative adjudication. There has been a huge increase in the socio-economic functions of the government, resulting in the creation of administrative bodies vested with a wide variety of powers and functions including the power of adjudication of disputes. In the chapter on administrative adjudication the author has examined its development, meaning and advantages. He has discussed the character of tribunals and the nature of proceedings before them and has also attempted to lay down tests for distinguishing between administrative, quasi-judicial and judicial proceedings and decisions.

The author has made a comparative survey of the development, procedure, powers and functions of administrative tribunals in the United States, the United Kingdom and India. The position of tribunals in the Indian constitutional scheme, the principles of natural justice and the extent of their application in proceedings before the tribunals, the nature of decisions and their finality have all been critically examined.

The *Droit Administratif* of France has always been a subject of controversy, suspicion and apprehension for lawyers and jurists nurtured

1. Noor Mohammad Bilal, *Dynamism of Judicial Control and Administrative Adjudication* (2004).

and nourished in common law legal culture.

The author has discussed the composition, powers and functions of *Conseil D'etat* and *Tribunaux Administratif* as also the procedure followed by the administrative courts and the scope of review and finality of their decisions.

The author has undertaken a brief comparative study of methods of judicial control and scope of review over administrative bodies in the United States, the United Kingdom and India. In the Indian context, he has discussed and analyzed the constitutional provisions dealing with judicial review by the high courts and the Supreme Court.

The establishment, composition, procedure and jurisdiction of the CAT and adjudication of disputes by it have all been elaborately dealt with by the author. At the time of framing of the Constitution of India, it could never have occurred to the founding fathers to what extent and magnitude the growth and expansion of the civil service law would go. The mode of creation of the service cadre, the principles of pay revision, the method of promotion, the basis of transfer, the principles governing the nature of disciplinary jurisdiction and penalties have all created a true battlefield between the state and its employees. The courts in India are already overburdened with arrears of cases of all variety. India perhaps leads the world jurisprudence in the field of civil service law and litigation.

Realising the imperative need for establishing tribunals outside the judicial system, a great step forward was taken by the Government of India in 1976 to implement the recommendations of the Swaran Singh Committee. The Constitution (Forty-Second Amendment) Act, 1976 was passed adding a new part in the Constitution for the establishment of tribunals. However, no legislation was immediately passed for creation of service tribunals in order to give effect to the changes introduced by the said Act. It was only in 1985 that the Administrative Tribunals Act, 1985 was passed under which the CAT with its principal bench at New Delhi and additional benches at Allahabad, Mumbai, Chennai and Kolkata started working from first November, 1985.

The complex issue of judicial control and functioning of the CAT also finds a place in the book. While it is well settled that in the area of administrative adjudication, the legislature is competent to oust the jurisdiction of the ordinary civil courts by creating administrative tribunals, the courts have consciously not shunned the responsibility of ensuring that the administrative functions according to rule of law and the adjudicatory authorities do not exceed or misuse their power under the guise of finality of decision or ouster clause. The author has critically examined this issue in the light of recent judicial pronouncements.

Major findings of the study are summarised and incorporated in the last chapter of the book. Based on the analysis of these findings and

judicial decisions, many suggestions and recommendations have been put forth for reforming and systematising administrative adjudication, some of which merit serious attention.

The author has succeeded in his effort to give an in-depth and thorough treatment to the subject of administrative adjudication by examining and analyzing certain fundamental concepts which although of frequent occurrence are rarely clearly understood. The book is a good contribution to the jurisprudence of administrative adjudication in general and service law *corpus juris* in particular.

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INDUSTRIAL AND LABOUR LAWS (2ND EDITION, 2004). By Sanjeev Kumar. Bharat Law House Pvt. Ltd. New Delhi. Pp. 613. Price Rs. 300/-.

THE AUTHOR of the book under review[1] has dealt with the entire industrial and labour laws under four broad categories: (I) laws against exploitative order, (II) laws relating to financial protection, (III) laws as social welfare measures, and (IV) laws covering employer-employee relations. The object of the author seems to be to highlight the existing measures relating to legal protection available to workers. Law regarding working conditions are dealt with in chapters 2 and 3. In India, the law relating to regulation of working conditions of the labour class has played a historic role from 19th century onwards. It was to improve the working conditions and protect the labourers employed in factories, that the first Factories Act, 1881 was passed. The author has exhaustively and elaborately dealt with all the factories Acts since then including the present Factories Act, 1948. Considerable space has been allocated to the problem of settlement of wages of the workers. Chapters 12 and 13, contain legal devices regarding the payment of wages. The author has critically evaluated the two enactments, namely, the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948. Adequate coverage has also been given to the Equal Remuneration Act, 1976.

The scope and extent of the law relating to social security measures have been described in chapters 5 to 8. The Employee's State Insurance Act, 1948; Employees' Provident Fund and Miscellaneous Provisions Act, 1952; Payment of Bonus Act, 1965; and Workmen's Compensation Act, 1923 are the legislations which find place in the chapters. The Payment of Gratuity Act, 1972 and the Maternity Benefit Act, 1961 the other two Acts which deal with social security measures also get adequate coverage in chapters 14 and 20.

The fourth broader aspect, namely, the industrial relations law as encapsulated in the Trade Unions Act, 1926; the Industrial Dispute Act, 1947 and the Industrial Employment (Standing Orders) Act, 1940 also gets a fair deal from the author.

The book which contains 21 chapters in all also has three appendices. By giving a detailed synopsis at the beginning of each chapter the author has facilitated expeditious use of the book. The appendices provide a

1. Sanjeev Kumar, *Industrial and Labour Laws* (2004).

question bank and this is very useful for students who are preparing for examination in this subject. The case-law cited is also very helpful as it explains intricacies of the legal provisions.

The book, however, does not take cognizance of the fast changing notions of law relating to industrial relations which have taken place all over the world due to globalization and privatization. The pressure of globalization is creating crisis in the concept, principles and scope of welfare state. The proposals and resolutions of the World Trade Organisation are creating modes for the transformation of protected economic environment to highly competitive atmosphere devoid of co-operative notions. The multi-nationals, since long, have been waiting for amendments in the labour law framework suited for globalised market. These forces are working to actuate a catastrophic decay in the trade unionism and collective bargaining system. The pressure from capitalists is compelling the policy makers to lose sight of the value and significance of the principles contained in the Directive Principles of State Policy. It seems that the author has failed to take note of these developments and their impact on the working class.

On the whole the book under review is a useful addition to the already available legal literature on the subject.

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CASE STUDIES ON MILITARY LAW (2003). By Major General Nilendra Kumar. Universal Law Publishing Co. Pvt. Ltd. Delhi. Pp. xx + 154. Price Rs.150/- .

IN PART I of the book under review the author has discussed case studies on military law revealing shortcomings relating to investigation by court of inquiry; pointing out the drawbacks in the procedures followed while dealing with financial irregularities; flaws generally committed during hearing of charge by the commanding officer; the various procedural errors committed during recording of summary of evidence; while conducting summary court-martial and summary trial. Specific cases of summary trials in respect of junior commissioned officers and military nursing service officers are also discussed. The author has effectively revealed the infirmities committed in progressing/ disposal of such cases in the army. About 100 illustrations mainly relating to disciplinary cases dealt with by the commanding officers and formation commanders have been carefully analyzed. Various procedural errors have been exposed meticulously. The relevant statutory/ non-statutory provisions have been quoted aptly while anaylizing cases. The vast and scattered material have thus been expertly synthesized and presented by the author in this part in a most compact, lucid and condensed manner.

Part II highlights the salient features of procedures required to be followed under the various provisions of the Army Act, 1950, Army Rules, 1954 and orders issued thereunder. The manner of presentation of the subject in this part is unique and handy. It is a useful guide for those who implement the rules and also for those delinquents who are affected as it informs them of their rights.

Part III of the book summarizes the extent of disciplinary power exercisable by various authorities. In this part as also in the previous one the author gives comprehensive statutory/non-statutory references along with material 'points to remember', do's and dont's and aide-memoire for commanders in easily understandable tabular forms. The author has ensured that the readers, who are not lawmen, may be able to understand and grasp the specific principle of procedural law easily.

Through a critical analysis of actual and live situations governing military law, the book is primarily intended to help the commanders[1] to derive expertise in the field. It will fulfil a long awaited need that has perhaps been felt for nearly 50 years.

1. Preface of the book under review at ix.

Since the enactment of the Protection of Human Rights Act, 1993 the National Human Rights Commission and the state human rights commissions are empowered to investigate and check human rights violations. There is an essential need to impart knowledge of law for prevention of human rights violation by state subjects. Army being the front liner state subject, is bound to implement these laws and take precautionary measures against human rights violations. Army Training Manual No.29[2] contains instructions on this subject. It would have been very pertinent if adequate reference were to have been made to it in 'Aide-memoire for Commanders'. This would have helped them to observe the limits in this regard while performing their duties in war/ peacetime, counter insurgency operations and during U. N. peace-keeping operations also.

The book under review, is a novel compilation work, and provides very apt guidelines for enforcing of army law. It is a welcome and very useful addition to the literature on military law and will be indispensable in courses of armed forces law.

*A. K. Upadhyay**

2. Major General SC Chopra, Addl. Director General, Military Operations, Army Headquarters, New Delhi – 'The relevance of International Humanitarian Law to Soldiers operating in Insurgency Areas'. This paper was presented at a Seminar on International Humanitarian Law held at New Delhi on 28-29 Aug.1996. Also see summary of the Seminar Proceedings compiled by the Author and Prof. M. K. Balachandran.

* ILS, Law Commission of India, New Delhi.

BOOKS RECEIVED FOR REVIEW

ATUL M SETALVAD, *Introduction to Law* (2005), Lexis Nexis Butterworths, 14th Floor, Vijaya Building 17 Barakhamba Road, New Delhi, Pp. xl+584, Rs.325/-.

B. S. RAMASWAMY, *Contracts and their Management, (2nd ed.),* (2005), Lexis Nexis Butterworths, 14th Floor, Vijaya Building 17 Barakhamba Road, New Delhi, Pp. xv+331, Rs.325/-.

H. L. KUMAR, *Transfer of Employees under Labour Laws* (2005), Universal Law Publishing Co. Pvt. Ltd., C-FF-1A, Ansal's Dilkhush Industrial Estate, G.T. Karnal Road, Delhi – 110033, Pp. xxvii+212, Rs.195/-.

K MATHIHARAN, AMRIT K PATNAIK, *Modi's Medical Jurisprudence and Toxicology* (2005), Lexis Nexis Butterworths, 14th Floor, Vijaya Building 17 Barakhamba Road, New Delhi, Pp. xxxiv+794, Rs.1195/-.

LATHA R NAIR, RAJENDRA KUMAR, *Geographical Indications A Search for Identity* (2005), Lexis Nexis Butterworths, 14th Floor, Vijaya Building 17 Barakhamba Road, New Delhi, Pp. ix+359, Rs.700/-.

N. D. GUPTA, NAVEEN GUPTA, *Indian Accounting Standards* (2005), Lexis Nexis Butterworths, 14th Floor, Vijaya Building 17 Barakhamba Road, New Delhi, Pp. xvi+825, Rs.650/-.

PARUL SHARMA, *Welfare State, Right to Life and Capital Punishment in India* (2005), Sampark, P - 34, Kalindi Housing Scheme, Kolkatta – 700089, Pp. 200, Rs.450/-.

PHILIPPE CULLET, *Intellectual Property Protection and Sustainable Development* (2005), Lexis Nexis Butterworths, 14th Floor, Vijaya Building 17 Barakhamba Road, New Delhi, Pp. xii+462, Rs.275/-.

SUSHILA SINGHAL & U. N. B. RAO, *Adolescent Concerns Through Own Eyes* (2004), Kanishka Publishers Distributors, New Delhi –110002, Pp. xiii+224, Rs.150/-.