

## **BOOK REVIEWS**

MUSLIM LAW – AN ANALYSIS OF THE JUDGMENTS RENDERED BY JUSTICE V.R. KRISHNA IYER WITH STATUTES AND COMMENTS. (2006). By Sebastian Champappilly. Southern Law Publishers, Cochin – 22. Pp. xi + 150. Price Rs.210/-.

THE BOOK under review is yet another useful book both for the advocates and students of law. The author has attempted an excellent exposition of the judgments of Justice V.R. Krishna Iyer pertaining to certain important aspects of Muslim personal law. Justice Iyer has his own philosophy and inimitable writing style. He is the architect of social justice and humanism. By using his interpretative skills he has enlarged the ambit of articles – 21, 14 and 15 of the Constitution. The present author while keeping the sentence and paras of the judgments intact has explained the facts of the case in his own lucid style. By adding explanatory note by way of conclusion he has made the readers to understand judgments as well as its implications clearer.

The book is divided into two parts. In the first part, the author has analyzed nine judgments – seven of which were delivered when Justice Krishna Iyer was a judge of Kerala High Court and the two, namely, *Bai Tahira* and *Fuzlunbi* when he was the judge of the Supreme Court. While delivering his judgment in *Shahulameedu*, Justice Iyer has observed: “The Criminal Procedure Code is a law of the land and not of any community. If there is a conflict between the law enacted by the legislature and the personal law, then the former prevails. The legislature will be supreme in this land unless controlled by the Constitution. There is no constitutional guarantee to respect the personal law of any community.” The clarity of thought in his judgments is amazing.

Justice Iyer’s opinion as expressed in *Yusuf Rowthan v. Sowramma* speaks volumes about his concern for the weaker sections of the society, women in particular. He said, “The interpretation of the legislation, obviously intended to protect a weaker section of the community, like women, must be informed by the social perspective and purpose and within its grammatical flexibility, must further the beneficent object.” Justice Iyer was keen that the mandate in article 44 must be fulfilled at the earliest. While delivering judgment in *K.P. Khader v. K.K.P. Kunhamina* and others he observed:<sup>1</sup>

Every time an outdated rule of personal law is upheld in an Indian court the thought comes up that the integration of the Indian people on the legal front is being held back to some extent by the failure of courts to free the present law from the

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1. Dr. Sebastian Champappilly, *Muslim Law – An Analysis of the Judgments Rendered by Justice V.R. Krishna Iyer with Statutes and Comments* 27-8(2006).



archaic rules of the many personal laws which, like ghosts with their clanking chains stand in the path of unification of laws and failure of the legislatures to evolve a complete common civil code for our secular society in fulfillment of the mandate in article 44 of the Constitution.

The author while analyzing the judgments has made it clear that Justice Iyer has been championing the cause of human rights and social justice through his humanistic approach and that he seldom hesitated to criticize legislations, which have done more harm to the constitutional framework. The author strengthens this view by quoting from an article, "The Shahbano Debate" written by K.N. Chandrasekharan Pillai, Director, Indian Law Institute, wherein he states that, "if Shahbano would have been decided by Justice Krishna Iyer, perhaps the Muslim Women (Protection of Rights on Divorce) Act, 1986 would not have been a necessity as judicial craftsmanship of Justice Iyer would have perhaps silenced the fundamentalists as happened after *Bai Tahira* and *Fuzlumbi*."

In analyzing Justice Iyer's judgments, the author has conveyed to the entire country that, "Sections 125-127 of Cr.P.C. is a secular code deliberately designed to protect destitute women who are victims of neglect during marriage and after divorce. It is rooted in the states' responsibility for the welfare of the weaker sections of women and children and is not confined to members of one religion or region, but the whole community of womanhood". From the various judgments of Justice Iyer what comes out loud and clear is that he is above religion and community. As upholder of the Constitution he practices and preaches the constitutional philosophy even today through his writings.

By incorporating three important enactments governing Muslim personal laws along with commentary and important case law in the second print of the book, the author has enhanced the utility of the book to the students of law and the legal practitioners alike. He has also included the Muslim Women (Protection of Rights on Divorce) Rules, 1986 and a comment on the recent judgment of the Supreme Court of India, *Seema v. Ashwini Kumar* on registration of marriage.

The author, a senior member of the bar and also a teacher keeping the reader in view has kept the discussion of the case brief and to the point. It must also be mentioned that the foreword by a renowned academic, K.N. Chandrasekharan Pillai is very erudite and illuminating. The publisher should also be congratulated for their pains in bringing out the book so neatly. In sum the book is a useful addition in the area of Muslim personal laws and will serve as a guide to researchers in the field.

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BHAUMIK ON THE RAILWAYS ACT 1989. (8<sup>th</sup> Edition- 2003). By H.K.Saharay. Eastern Law House, Pvt. Ltd., New Delhi 110 002. Pp 52+645, Price Rs.480/-.

THE RAILWAYS had always been and still is one of the easily available means of transportation and communication to the passengers and traders alike. The development of the railways played a significant role in the transformation of balkanized India into one unit. The economic and commercial growth, political stability, territorial integrity and social cohesiveness have all been attained since the introduction of the railways. The railways made the remote areas of the country accessible thereby expanding horizons for trade and commerce. It is in this context that it becomes important to study the law relating to railway administration, its origin, growth and relevance in modern India. The book, under review is being assessed in the light of this rationale and logic. Its 8<sup>th</sup> edition amply stands testimony to its utility and relevance today. The author persuades the readers to focus on the point that the book is a commentary<sup>1</sup> on the entire law as contained in the Railways Act of 1989. The author traces the evolution and the development of the railways statutes when he enunciates:<sup>2</sup> “The century old Railways Act of 1890 stood repealed by the Railways Act of 1989 introducing important changes in the working of the Railways system in order to increase efficiency in the administration and safety of passengers and vesting the Central Government with extensive powers.”

The author highlights the two important objects of the 1989 statute which are to replace zones under the old railways system by new zones to enhance efficiency of the railways administration and to vest overall administrative powers in the Central Government to run the railways in India.<sup>3</sup> The material legislative changes brought by the new Act of 1989 are appreciable as they are made to attain “efficiency of administration and safety of passengers.”<sup>4</sup> The old Act of 1890 was found inadequate to meet the requirements of the changing times including the fast globalization of marketing, technology and means of communication.

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1. H.K. Saharay, *Bhaumik on the Railways Act, 1989* (2003).

2. *Ibid.*

3. *Id.*, “Preface” at 5.

4. *Supra* note 1.



The book containing 16 chapters and 23 appendices having significant material related to railways is a self contained tome serving the purpose of a ready reckoner. The significant aspect of railway law is the incorporation of the provisions pertaining to the carriage of passengers and carriage of goods .The duty of the railways is to exercise due care and skill in carrying passengers. It must take all reasonable care to see that passengers are not exposed to undue danger but not all unforeseen dangers.<sup>5</sup> In support of this view the author takes the help of Blackburn<sup>6</sup> and Sir James Mansfield<sup>7</sup> who have held that railways are not bound to carry passengers safely and securely *at all* events. The undertaking of the railways is only to the extent as far as human care and foresight can provide for their safe conveyance.<sup>8</sup> As regards carriage of goods, it is incumbent upon the railway administration to keep and maintain at each railway station rate book and other documents for carriage of goods from one station to another.<sup>9</sup> The railway administration has been given powers to impose conditions with respect to receiving, forwarding or delivering of any goods.<sup>10</sup> However, it cannot lay down conditions absolving it from responsibility as a carrier.

The author broadly discusses the law relating to responsibility and liability of railway administration as carrier. He takes cognizance of the principle that law makes a distinction between strict liability and liability due to negligence. The Railways Act of 1989 has enumerated the principle of reasonable care as that of the bailee under the Indian Contract Act. The railway administration is exempted from liability and protected from loss in cases of materially false description and where fraud has been practiced regarding the goods to be carried. The liability of railway administration for death and injury to passengers due to accidents has been clearly dealt with. The provisions relating to penalties and offences has also got adequate coverage. An important issue in connection with ticket is, whether it is a criminal offence to travel without a valid ticket. The author discusses this query and lays down that when a person travels without a valid ticket he cannot be evicted from the railway carriage.<sup>11</sup> However, if he is found to travel with intent to defraud the railways he is liable to be convicted under section 112 of the Act of 1989 and in other cases may be prosecuted under section 138.

The most noteworthy feature of the book under review is that the author has explained the intricacies of legal notions by incorporating

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5. *Id.* at 106.

6. *Gee v. Metropolitan Railways Co.* (1873) LRQ 161.

7. *Christie v. Griggs*, 2 Comp. 79.

8. *Supra* note 1 at 106.

9. The Railways Act, 1989, s.61.

10. *Id.*, s. 62.

11. *Supra* note 1 at 370.



case law under relevant sections. Conflict of opinion in judicial decisions has also been pointed out. The work is an objective analysis, which makes the book an interesting reading and offers comparative insights into the substantive, procedural and operational aspect of the Railways Act, 1989. It is a good commentary covering every conceivable aspect of the subject. Though the get up and printing of the book are fine but one feels the absence of an introductory chapter in explaining the circumstances, logic and rationale which necessitated writing of the book.

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CODE OF CRIMINAL PROCEDURE (ALONGWITH JUVENILE JUSTICE ACT AND PROBATION OF OFFENDERS ACT)(2005). By N.V. Paranjape. Central Law Agency Pp. 1x+654. Price Rs. 240/-.

ONE OF the main difficulties with the teaching of procedural law at the university level is that there aren't many experienced practising lawyers available for teaching the same. The reason being that either they have no time or the remuneration/honorarium that is paid is not attractive enough. As a result procedural law is largely either left to be taught by pure academicians who have never practised law or by struggling lawyers who take up the job of lecturing to sustain themselves during their early years at the bar. In both the cases students find it difficult to understand not only the details of the procedural law but also its proper place in the justice delivery system. Thus, procedural law remains elusive to the students. Under these circumstances a book on the Code of Criminal Procedure assumes great importance. No doubt the book under review can never be a substitute for the real experience (for that matter no book can ever be) yet it certainly can evoke interest of the students in the subject, and that itself is an achievement for the author of the book.

Principles of criminal procedure are extracted from the cases decided by the courts over a long period of time. Necessarily, an extensive discussion of case law is a *sine qua non* for a book dealing with procedural law. Though there is a large pendency of cases in the courts and justice is often delayed and many a time denied, yet vast number of cases are still decided regularly by the courts. Bulk of cases, on any branch of law, decided every year is so huge that all of them cannot be included in a book that is primarily meant for the students. This situation prompts a careful selection of cases in accordance with their importance and contextual relevance. They need to be selected, edited and explained in such a manner that the value they hold and the space they occupy, are taken care of. The author of the book under review has accomplished this task by selecting and including the most relevant classical as well as current cases and then editing and explaining them in such a manner that the reader easily grasps the principle as well as application of the principle.

As law courses have taken a major shift in India in changing from three-year post graduation pattern to five-year post intermediate pattern, the task of contemporary textbook writers has become more challenging. Unlike other professional courses that are taken up post intermediate, a



study of law requires a deep understanding of life. Contemporary legal textbook writers need to adapt their style keeping in mind the average age of the general reader of their work. A textbook written for such students needs to employ simple language and precise exposition. Paranjape's book precisely and lucidly presents the subject and, therefore, shall definitely find favour with the young students who need to learn six to seven subjects in a short time of four to five months of a semester.

Though topic wise discussion in essay type chapters is more conducive to analytical and comparative study, yet the method of writing section wise commentary, which is employed in this book, is very convenient for young students, especially from their examination point of view. Incorporation of all amendments, including state amendments, under appropriate sections, as also of full text of the first schedule containing various offences under the Indian Penal Code and other laws and the second schedule embodying various forms is an added advantage of this book. The book is definitely informative; with a little more analysis it could have become thought provoking and more useful for higher studies as well.

However, clubbing commentary on three different Acts in a single volume has some necessary pitfalls. Inevitably, the author could not pay equal attention to all of them. Juvenile Justice Act and Probation of Offenders Act have apparently remained neglected in this book. The importance of these Acts and the coverage given to them are not adequate enough.

The book, no doubt, is a good option for those LL.B. students who want to possess a handy text book. It may also prove to be helpful to teachers in zeroing in on the ideas and also in making a selection of some ideas and leaving others for the classroom discussion. For the young practising lawyers the book may be useful in updating their knowledge of recent cases. One hopes that after reading the book the readers will not only be acquainted with the rules of criminal procedure as such, but will also be able to appreciate the importance of the criminal procedure in maintaining the rule of law as it is the fairness of and strict adherence to the procedure that is capable of eliminating arbitrariness.

The book is carefully designed and neatly edited. The table of contents and the table of cases are exhaustive and properly placed. There are hardly any spelling or grammatical mistakes. Not providing an index at the end, however, is an omission in the book. A complete bibliography at the end instead of select bibliography in the beginning would also have been very valuable. The book is reasonably priced

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**BOOKS RECEIVED FOR REVIEW\***

DR. N.V. PARANJAPE, *Public Interest Litigation Legal Aid & Services, Lok Adalats and Para Legal Services*(2006). Central Law Agency, 30, D/1, Motilal Nehru Road, Allahabad. Pp. xxiii+370. Price Rs.160/-

P. LEELAKRISHNAN, *Envrionmental Law Case Book* (2006). Lexis Nexis Butterworths, 14th Floor, Vijaya Building, 17th Barakhamba Road, New Delhi – 110001.Pp. xxvii +466.Price Rs. 275/-.

DR. S.S. SHARMA, *Legal Services, Public Interest Litigation & Services* (2006). Pp. xvii+ 440 Price Rs. 165/-.

RINA VERMA VILLIAMS, *Postcolonial Politics and Personal Laws* (2006). Oxford University Press, YMCA Library Building, Jai Singh Road New Delhi – 110001. Pp. vi+214. Price Rs. 595/-

B.L. ARORA, *Law of Speedy Trial in India* (2006). Universal Law Publishing Co., C - FF - 1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi - 110 033. Pp. xxiv+528. Price Rs. 525/-.

JUSTICE K.A. ABDUL GAFOOR, *Law of Private Defence* (2006).Universal Law Publishing Co., C - FF - 1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi - 110 033. Pp. xvi+172. Price Rs. 225/-.

MICHAEL HEAD AND SCOTT MANN, *Law in Perspective: Ethics, Society and Critical Thinking* (2006). Pp. vi+421. Price Rs. 450/-.

DR. N.V. PARANJAPE, *The Code of Criminal Procedure alongwith Juvenile Justice (Care and Protection of Children Act) & Probation of Offender Act 2006* (2006). Central Law Agency, 30, D/1, Motilal Nehru Road, Allahabad.Pp. xvi+714. Price Rs. 260/-.

O.P. MALHOTRA, INDU MALHOTRA, *The Law and Practice of Arbitration and Conciliation* (2006).Lexis Nexis Butterworths, 14th Floor, Vijaya Building, 17th Barakhamba Road, New Delhi – 110001. Pp. cxxxvi+1849.Price Rs. 1970/-.

PRITI SURI AND ASSOCIATES, *Open Source and the Law*(2006).Lexis Nexis Butterworths, 14th Floor, Vijaya Building, 17th Barakhamba Road, New Delhi – 110001. Pp. xxiv+321. Price Rs. 750/-.

ASHOK K. JAIN, *Law and Environment* (2006).Ascent Publication, 21/29, Shakti Nagar, Delhi – 110007. Pp. xxiii+303. Price Rs. 495/-.

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\* The *Journal* reserves the right to be selective in reviewing the books listed.