



## **BOOK REVIEWS**

GENDER JUSTICE (2006). By N.K. Chakrabarti and Shachi Chakrabarty. R. Cambray & Co. Pvt. Ltd. Kolkata. Pp. 558. Price Rs. 400/-.

INTRODUCING GENDER concerns into the legal curriculum have been a fairly recent phenomenon in the legal academe. Disciplines such as the social sciences and the humanities have had the prior advantage of revisiting their disciplines and subjecting the construction of knowledge in their areas to a gender perspective. The setting up of 'Women's Studies' departments in different universities had facilitated this trend. In contrast, legal education in India has been relatively unaffected by newer modes of thinking and analysis as compared to the social sciences.

The 1990 Report of Curriculum Development Centre in Law set up by the University Grants Commission sought, amongst several other things, to make legal education more relevant by introducing pedagogic changes in all existing courses taught at law schools. Critiquing the manner in which "legal reality is presented, by and large, 'as if it were motionless, static, compartmentalised and predictable' thus robbing processes of learning of all adventure and excitement; rendering it barren of creativity and critical reflection...law teaching is usually alienating in a double way; *first*, the existential needs, interests and experience of the taught are usually ignored and *second* lack of careful contextualisation of national level and overseas materials makes legal information both sociologically and historically alien".<sup>1</sup> The need to incorporate the living reality of different sections of the population and to understand how the law differentially impacts them has led, in part, to the Bar Council of India in 1996 to include several new courses into the curriculum including *inter alia* women and law.

Offering an optional (or compulsory) subject like gender justice would require the student to be exposed to the current theoretical discourses on why women's (or for that matter, that of any marginalized section's) standpoint is necessary to test the objectivity and neutrality of the law. It would also require material that analyses Indian law from this standpoint and backed up, where possible, with sound empirical research. The book under review is a partial step to fulfil this need, and attempts to address the lacuna of not having published material for use

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1. *Report of the Curriculum Development Centre in Law*, Vol 1 45 (1990), citing Prof. Upendra Baxi's Working Paper on Socially Relevant Legal Education prepared for the UGC in 1975-76.



by students opting for such newer options in the revised curriculum. The editors have compiled several papers in the volume, the contributors being judges, lawyers researchers and academics drawn from the fields of law and sociology.

Several areas have been covered such as the (need for) gender equality in the law particularly with reference to succession and inheritance matters, the effect of criminal law upon women, the crime situation confronting women, domestic violence, workplace rights, trafficking. The book also contains a report of an NGO on gender equality and the judicial system of West Bengal, along with some “case studies” of domestic workers in Kolkata, the situation of those branded as ‘witches’ and status of working women in the organised sector. Roughly, more than one-fourth of the volume is devoted to appendices that contain international instruments and the texts of statutes relevant to the study of gender justice.

While the editors state in their preface that an “attempt is being made to devide (sic) the writings on the broader themes of Liberal, Socialist and Radical feminism”, such a classification is certainly not discernible to the reader. On the contrary, it appears that several studies, uneven in their quality and academic rigour have been haphazardly placed together in the volume.

It would have certainly improved the quality of the book had there been a sound introduction on the theoretical approaches to the study of gender issues. Instead one gets several contributions in the volume that are merely descriptive or written in a journalistic style, not befitting a volume that aims to serve as basic reader to such a course. These observations hold true for the empirical chapters as well. A volume of this nature could also have served as a model for introducing students of law to the necessity of having well researched, adequately footnoted, and well-argued papers in such an area of study. Unfortunately some chapters have incomplete or no references.

Some of the contributions in the volume stand out. The chapter on ‘Gender Justice or Gendered Justice? A Sociological Exploration or Revelation’ offers theoretical insights into why the law is a contested terrain for feminist analysis. The chapter on ‘Emerging Necessities of Gender Balance in Law’ discusses the shifts in the judicial discourse in India, as also does the chapter on ‘Barriers to Fair and Proper Judicial Decision Making Process in Women Related Issues’. The chapter on ‘Domestic Violence and Crimes against Women in India’ is comprehensive and deals with both the setting and the analysis of the legal provisions. The chapter on ‘Murder of a Witch’ explores a relatively under-studied area in the law and is a meticulous socio-legal study.

It is welcome that the editors have brought out a volume on the question of gender justice. The book jacket and title page indicates that



it is part of a two-volume series for the Calcutta University LL.B. Honours Curriculum Development Programme, the first volume titled “Law and Child” and the latter volume being the book under review. It is heartening that new textbooks, readers and resource material is being generated for the newer courses. It is to be hoped that the future would see more such volumes that could be used with advantage by the teachers, students, activists and practitioners alike.

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LAW OF COPYRIGHT AND NEIGHBOURING RIGHTS: NATIONAL AND INTERNATIONAL PERSPECTIVES (2005). By V.K. Ahuja. Allahabad Law Agency, Plot No. 33, 16/2, Mathura Road, Faridabad. Pp. [xx]+367. Price Rs. 195.

COPYRIGHT LAW is considered to be a part of larger concept called intellectual property rights. Copyright connotes a bundle of exclusive rights granted by law to the creators of original literary, dramatic, musical and artistic works along with sound recordings and cinematograph films. Diverse forms of creativity, such as books, articles, scripts, writings, computer programmes, databases that are original due to the selection or arrangement of their contents, music compositions, audiovisual works, drawings, paintings, photographs, films, etc. are subsumed within the expression 'copyright protected works'. Protection of all these works of creativity forms the essential part of the book under review.

'Neighbouring rights'<sup>1</sup> protect the contributions of others who add value in the presentation of creative works. Performing artists such as actors, dancers, singers, producers of phonograms and broadcasting organizations are protected within the framework of copyright and also form a part of the book.

The book is divided into thirteen chapters and nine appendices. It covers the gamut of copyright discipline which includes subject matter of copyright, rights conferred by copyright, assignment and licences pertaining copyright, copyright infringement, fair use, copyright societies and international copyright conventions. The value of subject index in any book cannot be undermined, but the book fails to contain one.

Copyright is essentially statutory in nature.<sup>2</sup> In India it is governed by the Copyright Act, 1957, as amended last in 1999, the Copyright Rules, 1958 as amended last in 1995 and the International Copyright Order, 1999 as amended in 2000. The book covers the latest statutory amendments in the domain of copyrights and hence up to date in this respect. Over two centuries the law of copyright has been enriched and supplemented by judicial decisions rendered by courts of law. The book thoroughly compiles the Indian cases right up to the year 2005 along

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1. 'Neighbouring rights' are more commonly known as 'related rights'.

2. This position follows from s. 16 of the Copyright Act, 1957 which says, "No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or any other law for the time being in force...."



with a number of important decisions from foreign jurisdictions which have made a mark on the doctrine of copyright.

Copyright, like most intellectual property tools, is national in nature, meaning thereby that the rights granted by national laws extend to the territorial limits of a particular country. However, international treaties like the Berne Convention for the Protection of Literary and Artistic Works, 1886, the Universal Copyright Convention, 1952 and the Agreement on Trade Related Aspects of Intellectual Property Rights, 1994 ensure protection of copyrights of nationals of a member country in all other member countries. India is a member of these conventions and the book contains references of these international conventions at relevant places that equip the discussion with an international perspective. All these international treaties and conventions have also been reproduced in useful appendices.

The development of copyright law has closely followed the developments in technological world. Over the last three hundred years emerging technologies have posed challenges of varying degrees to the copyright regime and the law has developed as a response to such challenges. Copyright law is currently being challenged by developments in the digital world. Most copyright works such as texts, images, sound, video and animation can now be digitalized and once digitalized they can be transmitted across the entire globe over networks such as the Internet at almost no cost. Earlier rights of reproduction and distribution affected only tangible physical copies of a work but the new technologies have brought in non-material reproduction and distribution. Intelligent peer-to-peer networks like Napster, Gnutella and Kazaa have used the information superhighway to transmit valuable copyrighted works like music, songs, movies and computer software the world over free of cost – much to the dismay of the copyright owner. But unfortunately the book contains little reference to such challenges which are being debated the world over by jurists, legislators and lawyers.

Copyright provides the legal basis for generating income from creative effort. What developed as a mode of cultural remuneration for individual creators is now established as integral to the balance sheets of many of the most powerful companies on earth and as such, has become a fundamental part of the world economy.<sup>3</sup> The book is a handbook on copyright covering nearly all aspect of the subject. Considering the volume and information contained in therein, the book seems to have been reasonably priced. There are some inadequacies as mentioned earlier that could be taken care of in the subsequent editions.

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3. See, Shane Simpson, “The Arts, Copyright and New Technologies” speech given to the Sydney Arts Management Advisory Group (March, 1997).



The book will make a useful reading for lawyers, students of law, owners of copyright, consumers of copyright products, and law enforcement personnel.

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TRADEMARKS, PASSING OFF AND FRANCHISING (2004). By V.A Mohta, All India Reporter Pvt. Ltd, Post Box No. 209, Congress Nagar, Nagpur-12 Pp. lxiv + 1608.

IN A global economy where most goods and services arrive from competing enterprises, traders use trademark to distinguish their products and services from that of others. Trademark performs an important role in modern economy by helping diminish informational asymmetry. It triggers off an association in consumers' mind between origin and good value. In the world economy, companies are now investing heavily on protecting their intangible assets including trademark and goodwill than on tangible assets. Continuous offering of high quality goods/services and building a market through trademark have become a must to survive in the competing market. In the globalised era, where goods/services travel across the world, trademark has become a key tool to denote a company's identity in the world market and to attract the consumers' attention to the product. A well-known brand is undoubtedly one of the greatest assets of a company.

The author, in the book under review, presents an excellent exposition of Trademark Act, 1999.<sup>1</sup> The book opens with a carefully woven introduction, which gives an insight into the subject matter of the book. In the first part part, by drawing the historical and legislative backdrop of the amended Act, the author sets a sound platform for the work. Here the book provides a splendid account of how the trademark system prevailed in primitive human society in the form of signs and symbols. The author beautifully captures the significant changes that took place in the trademark law in tune with the global development and changed marketing scenario. While discussing the Indian legislative history the book gives an insight as to how even before the enactment of old Trademark Act, India provided protection to trademark proprietors by invoking the provisions of Specific Relief Act, 1877 and Indian Penal Code, 1860. The book also gives a succinct sketch of other forms of intellectual property and international legal instruments relating to trademark.

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1. With the WTO and the consequent TRIPs Agreement, the Indian trademark law has undergone a sea change. The Trade and Merchandise Act, 1958 has become obsolete with the conclusion of TRIPs. To bring her law in conformity with the global law and TRIPs requirement, India amended her old Act in 1999.



The second part of the book contains a comprehensive section wise analysis of the Trademark Act 1999. The narration of each section contains a reference to the corresponding section of the old Act.<sup>2</sup> The comparative table of sections of the old and new Acts proves to be highly useful for an easy comparative study. Apart from this, the analogous English law with text is given. It is followed by reference to the relevant rules<sup>3</sup> and this exercise makes the work interesting, authentic and remarkable.

Every section is followed by a detailed discussion on case laws. Though the author analyses many English decisions, the most attractive feature of the book is the meticulous reference to relevant Indian cases not only of the Supreme Court but also that of the high courts.

In the realm of trademark the most contentious issue is that of infringement and passing off. Many principles in the law of trademark have evolved and is still developing through infringement and passing off actions. And hence special treatment is meted out to infringement and passing off actions under separate chapters. The author has also taken extreme care to address all related topics such as limitation, cost, procedural law, contempt of court, revision, reviews etc.

In this globalised scenario the new market is heavily depending on franchising. Franchising has become a modern formula for business community to expand and conquer new horizons of the market. Hence it has been dealt exhaustively in the book. This chapter<sup>4</sup> treats franchising in relation to (i) basic laws such as Contract Act, Sales of Goods Act, (ii) competition law, and (iii) intellectual property laws. Relevant sections relating to franchise in banking and finance laws, labour and service laws, taxation laws, corporate laws, liquidation and insolvency laws etc. are discussed in detail. This heavy cross-reference to all relevant provisions in other statutes is seen through out the book.

The appendix contains various Acts related to trademarks and trade names which are applicable in India including the Geneva Convention Act, rules including various high court rules, regulations, orders, and agreements, conventions, directions, protocols and reports. It comprehensively presents trademark law in a single volume.

The painstaking work done by the author unquestionably makes the book the best on the subject for academicians, researchers and students. The book will be highly useful for the bar as well as the bench.

*Lisa P. Lukose\**

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2. The Trade and Merchandise Mark Act 1958.

3. The Trademark Rules, 2002

4. The author acknowledges in the preface that the chapter on franchising is independently written by his son Justice Anoop V. Mohta

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**BOOKS RECEIVED FOR REVIEW\***

ASHWANI KR. BANSAL, *Law of Trademarks in India* (2006). Cliptrade, 13, Hakikat Nagar, The Mall, Delhi 110 009. Pp. lxxi + 1307. Price Rs. 1120/-.

V. NARAYANA SWAMY, *Atrocities and Untouchability against SC & STs* (2006). MJS Publications, Magadi Main Road, Bangalore 560 023. Pp. xiv + 154. Price Rs. 130/-.

V. NARAYANA SWAMY, *Commentary on the Family Courts Act, 1984* (2006). MJS Publications, Magadi Main Road, Bangalore 560 023. Pp. xiv + 192. Price Rs. 150/-.

V. NARAYANA SWAMY, *Bounced Cheque and the Negotiable Instruments Act, 1881* (2006). MJS Publications, Magadi Main Road, Bangalore 560023. Pp. xxxii + 360. Price Rs. 300/-.

K.D.GAUR, *Commentary on Indian Penal Code* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. clvi + 1695. Price Rs.1395/-.

B.R. SHARMA, *Scientific Criminal Investigation* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. xxxiv + 562. Price Rs. 595/-.

ASHWINIE KUMAR BANSAL, *Arbitration Agreement and Awards* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. xxxiii + 634. Price Rs.750/-.

S.BHAT, *International Environmental Law* (2006). APH Publishing Corporation, 5 Ansari Road, Daryaganj, New Delhi 110 002. Pp. xiii + 288, Price Rs. 695/-.

PREETI MISHRA, *Domestic Violence against Women* (2006), Deep & Deep Publications Pvt. Ltd. F-159, Rajouri Garden, New Delhi 110 027. Pp. xxxviii + 606, Price Rs. 1150/-.

RICHARD A. POSNER, *Frontiers of Legal Theory* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi 110033. Pp. 453. Price Rs.450/-.

M.P. SINGH, *Outlines of Indian Legal & Constitutional History* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. xx + 220. Price Rs.125/-

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



COUNCIL OF EUROPE PUBLISHING EDITORS, *Human Rights in International Law* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. 538. Price Rs.525/-.

H.K. SAHARAY, *Dutt on Contract* (2006). Eastern Book Co. 34, Lalbagh, Lucknow - 226001. Pp. 1036. Price Rs. 850/-.

BIMAL KUMAR CHATTERJEE, *Law in not an Ass and other Essays* (2006). Eastern Book Co. 34, Lalbagh, Lucknow - 226001. Pp. 14 + 230. Price Rs.150/-.

TAPASH GAN CHOUDHARY, *Mitra's Legal and Commercial Dictionary* (2006). Eastern Book Co. 34, Lalbagh, Lucknow - 226001. Pp. 13 + 928. Price Rs.675/-.

M.R. MALLICK, *Goyle's The Law of Partnership* (2006). Eastern Book Co. 34, Lalbagh, Lucknow - 226001. Pp. 67 + 748. Price Rs.750/-.

JUSTICE C.K. THAKKER AND M.C. THAKKER, V.G. *Ramachandran's Law & Writs* (2006). Eastern Book Co. 34, Lalbagh, Lucknow - 226001. Pp. CLXXVI + 1017. Price Rs.1750/-.

PARAS DIWAN, *Law of Intestate and Testamentary Succession* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. cv + 1075. Price Rs.850/-.

Dr. JUSTICE A.R. LAKSHMANAN, *Voice of Justice* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. xiv + 449. Price Rs.550/-.

M.V. PYLEE, *Constitutional Amendments in India* (2006). Universal Law Publishing Co. C-FF-1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi 110 033. Pp. xlvi + 1061. Price Rs.875/-.

C. RAJ KUMAR & D.K. SRIVASTAVA, *Human Rights and Development: Law, Policy and Governance* (2006). Sweet & Maxwell Asia, Hong Kong. Pp. xxiv + 550.

C. RAJ KUMAR & D.K. SRIVASTAVA, *Tsunami and Disaster Management: Law and Governance* (2006). Sweet & Maxwell Asia Hong Kong, Pp. xvii + 274.

K.N.C. PILLAI, R.V. *Kelkar's Lectures on Criminal Procedure* (2006). Eastern Book Co. 34, Lalbagh, Lucknow - 226001. Pp. LXIV + 328. Price Rs. 220/-.