



BOOK REVIEWS

KELKAR'S LECTURES ON CRIMINAL PROCEDURE (2006). By K.N Chandrasekharan Pillai. Eastern Book Co, Lucknow. Pp lxiv+328, Price Rs 220/-.

CRIMINAL LAW essentially, depending upon the prevalent 'social ethos' and 'public interest', intends to preserve and enforce certain social interests and values. Charged with this motto, it forbids the human conduct that in its perception, actual or potential, is perilous to these social interests and values and labels it as 'crime'. With a view to asserting the 'public interest' and ensuring its observance, criminal law also prescribes certain punitive sanction, a form of 'social condemnation', for commission of 'crime' and 'injury' caused thereby. Criminal law, in ultimate analysis, gives a catalogue of 'wrongs' and provides 'punishment' therefor. The chief concern of criminal law is, thus, to prohibit human behavior that represents a 'wrong' against an individual or against some fundamental social value, interest or institution and to express 'social condemnation' therefor. It defines, rather creates, 'crimes' and stipulates 'punishment'.

The Indian Penal Code, 1860 (IPC), authored by Lord Thomas Babington Macaulay and his colleague law commissioners during the first half of the nineteenth century and came into force in the latter half of the century, still operates as a major penal law in India. Like any other criminal law, it deals with a variety of crimes, clustered under different thematic segments, backed by punitive sanctions. However, it does not provide for a 'mechanism' for its enforcement or lays down 'rules' for determining 'guilt' of the 'wrong-doer' and the consequential 'liability' therefor. Criminal law, howsoever meticulous in crafting 'crimes' and calculating 'punishment' therefor it may be, will for obvious reasons be insignificant, rather worthless, if it is not supplemented with proper mechanism for its enforcement.

The Code of Criminal Procedure, 1973 (CrPC), which overhauled the Code of Criminal Procedure, 1889 (old CrPC), outlines a well-articulated criminal law enforcement machinery. It carves a web of rules through which a criminal proceeding needs to move on and of procedural requirements that need to be met with at different stages of a criminal proceeding. It enumerates a set of rules of procedure to be followed during investigation and in determining 'guilt' of a suspect the consequential 'criminal liability'. It also deals with powers of different components, such as the police, prosecutors and criminal courts, of the criminal justice delivery system (CJDS). It, to be precise, creates the necessary machinery for the detection of crime, arrest of suspects, collection of evidence, determination of guilt



(or innocence) of the suspects, the imposition of punishment on the guilty person, and its execution. It also provides a set of safeguards to the suspect as well as an accused at different stages of his trial. Its main objectives are (i) to provide a mechanism for the administration of criminal law, and (ii) to ensure for the accused a full and fair trial.

Kelkar's Lectures, deal with important aspects of the CrPC, rather than section-wise analysis supported by apt judicial dicta of higher judiciary.

The book under review,¹ which is the fourth edition of the *Lectures*, offers an updated version of the twenty lectures covering all the important aspects of CrPC. Keeping the theme and structure of the original *Lectures* intact, the book under review delves into the basic principles of criminal procedure pertaining to all the major stages of a criminal trial from the arrest of a suspect to the determination of his guilt.² It also deals with 'appeals'; 'reference, revision and transfer of cases', and 'execution, suspension, remission and commutation of sentence'.³ Provisions pertaining to 'preventive measures and security proceedings' and 'maintenance of wives, children and parents' are also discussed.⁴ The *Lectures*, with a view to setting its tone and putting the themes discussed therein in the right perspective, addresses to 'some preliminary' aspects, such as object and importance of criminal procedure, extent and applicability of the CrPC, classification of offences, and functionaries under the Code and their powers and duties.⁵

In the present edition of the *Lectures* Pillai has added to the bunch of original twenty lectures of Kelkar two new chapters, *namely*, Juvenile Justice⁶ and Probation.⁷ Like other original lectures, they are followed by 'exercises' and 'questions' for the students. However, these two lectures are indeed very brief in narration and sketchy in analysis.

The lecture on 'Juvenile Justice' offers the essence of the juvenile justice system designed under the Juvenile Justice (Care and Protection of Children) Act, 2000⁸ for affording 'care, protection, treatment and rehabilitation' to the 'juveniles in conflict with law' and the 'children in need of care and protection'. Noting the absence of the 'Juvenile Justice Board' and 'Child Welfare Committee', envisaged under the Juvenile Justice Act of 2000 for handling 'juveniles in conflict with law' and the 'children

1. K.N. Chandrasekharan Pillai, *Kelkar's Lectures on Criminal Procedure* (2006).

2. *Id.*, Lectures 3-15.

3. *Id.*, Lectures 16-18.

4. *Id.*, Lectures 19 & 20.

5. *Id.*, Lectures 1 & 2.

6. *Id.*, Lecture 21.

7. *Id.*, Lecture 22.

8. Act No. 56 of 2000. It repealed the Juvenile Justice Act, 1986.



in need of care' respectively, in most of the states, he observed that 'the Magistrates of First Class under s 28 of the CrPC try the cases against the children and end up in sending them either to the prison or to some lock-ups' and urged the Central Government and the state governments to 'immediately swing into action for the establishments of the authorities envisaged by the Act'.⁹

The lecture on 'Probation', which is sketchy, neither delves deep into structural nor operational facets of the Probation of Offenders Act, 1958. Nevertheless, the present reviewer comes across a sort of assertive statement that relevant provisions of the Probation Act are rarely invoked 'due to the ignorance of both the Bench and the Bar'.¹⁰ The lecture also does not highlight judicial response to sections 360 and 361 of the CrPC or the issues related thereto. It merely gives a passing reference to the obligation imposed by section 361 of the Code on the sentencing judge to hear the accused and to record reasons, if he decides not to give benefit of probation.¹¹

Both these lectures, the present reviewer sincerely believes, deserved more comprehensive treatment and penetrating analysis. This would have enabled the students to have a deeper insight into the structural and operational facets of the juvenile justice and probation.

Further, keeping in view the emerging emphasis on the need to compensate victims of crime, the underlying legislative intent of section 357 of the CrPC and of section 5 of the Probation Act as read by the higher judiciary in India, and emerging trends in the restorative justice,¹² it is indeed desirable, to include a comprehensive 'lecture' on the restorative justice in the forthcoming edition of the *Lectures*.

All the lectures are written in lucid and simple language knitting principles emerged from, and supported with, leading judicial dicta of the higher judiciary. 'Exercises' and 'questions' given at the end of each of the lectures indeed help students to 'understand' the lecture and to have further insight therein. The author deserves unreserved compliments and appreciation for helping students, academics and professionals alike in understanding the nuances of criminal procedure.

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9. *Supra* note 1 at 300-301.

10. *Id.* at 303.

11. *Ibid.*

12. See, K I Vibhute, "Justice to Victims of Crime: Emerging Trends and Legislative Models in India," in K I Vibhute (ed), *Criminal Justice* Chap 26 (2006).

13. *Supra* note 1 at 305-312.

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