

BOOK REVIEWS

ESSAYS ON THE INDIAN PENAL CODE (2005). By K N Chandrasekharan Pillai & Shabistan Aquil. Indian Law Institute, New Delhi, 110001. Pp xxxv+361. Price Rs 400/-.

THE BOOK under review ¹ is a revised version of *Essays on the Indian Penal Code* (hereinafter the *Essays*) edited by S Govindarajulu and published in 1962 by the Indian Law Institute, New Delhi (ILI). Included in the *Essays* are some of the selected working papers prepared by scholars of law for the seminar organized in 1961 by the ILI to commemorate the centenary of the Indian Penal Code, 1860 (IPC).²

K N Chandrasekharan Pillai, a distinguished teacher and researcher in the field of criminal law in India, and Shabistan Aquil, recalling: (i) the hitherto scanty legislative exercises that have not culminated in overhauling the structural paradigm of the almost one and a half century old IPC, (ii) incorporation of some new crimes in the IPC, (iii) amendments to a few provisions of the Code, (iv) emergence of new economic crimes in the post-IPC period and the use of criminal law for their enforcement, (v) the hitherto judicial discourse on different aspects of the penal code dealt in the *Essays on the IPC* that has made ‘many a part luminous but slippery, humpy and bumpy and at other places straight and clear’, and (vi) the *Essays* published in 1962 is now out of print, felt to revise and update the *Essays*.³

The editors have retained the structural and thematic scheme of the *Essays* intact even though most of the essays are, in the light of judicial dicta and emerging trends, revised with requisite additions to, and deletions from, the earlier version of the essays. However, they have kept the ‘Introduction’ written by S Govindarajulu, the editor of the pre-revised *Essays* untouched ‘to remind the readers of the relevance of the topics (deliberated in the *Essays*) and refresh their knowledge’.⁴

The *Essays* is segmented into four major thematic parts. The first part, comprising of two essays,⁵ gives a comprehensive account of the substantive

1. K N Chandrasekharan Pillai & Shabistan Aquil (eds), *Essays on the Indian Penal Code* (Indian Law Institute, New Delhi, 2005).

2. Act No XLV of 1860. It was brought into force from Jan 1, 1862.

3. See, Preface by K N Chandrasekharan Pillai.

4. See, *supra* note 1 at vi.

5. Tapas Kumar Banerjee, “The Substantive Criminal Law prior to the Indian Penal Code” *id.* at 3-32, and A C Patra, “Historical Introduction to the Indian Penal Code” *id.* at 33-43.



criminal law that was operative in India before the IPC came into existence and offers a sketch of major processes that ultimately led to the drafting and introduction of the Indian Penal Code. The second part, which is devoted to ‘some general principles’, clusters a couple of essays that unravels and delves into the intricacies of, and general principles pertaining to, jurisdiction,⁶ guilty mind,⁷ strict responsibility,⁸ insanity (as an extenuating factor),⁹ inchoate crimes (abetment, criminal conspiracy and criminal attempts),¹⁰ group liability,¹¹ and punishment.¹² While the third part deals with the law relating to two specific offences, namely, sedition¹³ and homicide.¹⁴ Reforms in, and amendments to, the IPC¹⁵ constitute the fourth thematic segment of the *Essays*. The *Essays*, thus, neither revolves around nor pursues a specific theme of the IPC. It merely addresses to, and delves into, ‘a few topics of current interest’ of the penal code.

The first two essays included in the first part of the *Essays* immensely help a student of criminal law to, in the historical antecedents, understand and appreciate structural and thematic paradigm of the IPC in a better way and in the right perspective. The essay on ‘the guilty mind’, written by V Balasubrahmanyam, delves deep into the common law doctrine of *mens rea*, its incorporation in the IPC, its relevance and utility (as an independent doctrine) in the interpretation of offences requiring specific shade of ‘guilty mind’ and in the determination of consequential liability of perpetrators thereof, and its proof in a court of law. In the light of a few leading judicial pronouncements exhibiting sole reliance on the common law doctrine of *mens rea* in interpreting some of the IPC offences requiring specific ‘guilty mind’ and ignoring it, he observed that reliance on the common law doctrine of *mens rea* as an interpretative principle while dealing with offences under the IPC ‘seems to be inconsistent with the scheme of the Code which purports to be itself the general penal law of the country laying down general principles’ and leads to improper appreciation of the scheme of the code in regard to the mental element in criminal responsibility.¹⁶ The essay on ‘strict responsibility’ explains rationale of the doctrine of absolute liability, a statutory exception to, and departure from, the fundamental

6. V Balasubrahmanyam, “Jurisdiction” *id.* at 47-67.

7. V Balasubrahmanyam, “The Guilty Mind” *id.* at 68-90.

8. Eric H Banerji, “Strict Responsibility” *id.* at 91-112.

9. R B Tewari, “Exemptions from Liability” *id.* at 113-145.

10. See, V Balasubrahmanyam, “Abetment” *id.* at 148-163, R B Tewari, “Conspiracy” *id.* at 164-184, and R B Tewari, “Criminal Attempt” *id.* at 217-235.

11. V Balasubrahmanyam, “Group Liability” *id.* at 185-216.

12. V Balasubrahmanyam, “Punishment” *id.* at 236-277.

13. R B Tewari, “Law of Sedition” *id.* at 281-291.

14. V Balasubrahmanyam, “Homicide” *id.* at 292-322.

15. Eric H Banerji, “Reform” *id.* at 325-342.

16. *Supra* note 7 at 76.



principle of criminal liability derived from, and embodied in, the maxim *actus non facit reum nisi mens sit rea*. The editors, recalling the rising number of public welfare offences with absolute liability in India and consequences of the custodial penal sanction provided therefor, plead that punishment provided for regulatory offences should not be heavy. Such regulatory offences, in their opinion, should preferably be subjected to mere fines.¹⁷

The essay titled 'Exemptions from Liability' deals extensively with the law relating to, and issues associated with, insanity or unsoundness of mind, one of the excusable defences enumerated in Chapter IV (General Exceptions) of the Penal Code. Section 84, IPC,¹⁸ which is ostensibly premised on the *M'Naghten* Rules,¹⁹ accords complete immunity from liability to a person if he, at the time of committing an offence, was, 'by reason of unsoundness of mind', incapable to know either 'nature of the act' or that the act was 'contrary to law' or 'wrong'. However, hitherto higher judiciary in India, through its varied judicial dicta on the term 'unsoundness of mind', has perceived the exception with different judicial eye and evolved different tests for determining as to whether the offender had the requisite mental ability to know the 'nature of the act' in question. The essay highlights and deals with the judicial discourse, influenced by, and followed in the footsteps of, the celebrated but outdated *M'Naghten* Rules, on section 84 of the code and issues emerged therefrom. It also makes a plea to 'soften' in India 'the rigour' to the *M'Naghten* Rules.²⁰ Referring to the judicial apathy in India to accommodate 'irresistible impulse' in section 84 of the code and recalling judicial dicta from other jurisdictions, including the UK, the birth place of the *M'Naghten* Rules, reading 'irresistible impulse' in their respective law of insanity as an exception to criminal liability, premised, like in India, on the *M'Naghten* Rules, the essay notes, and rightly so, that 'the law in India has remained static and the courts have not been able in view of the statutory provision in section 84 (of the) Penal Code, to strike new ground for its interpretation during the past one hundred and forty five years that the Code has been in opinion (*sic*)'.²¹

However, recalling the theme pursued in, and contents of, the essay, its caption 'Exemptions from Liability', in the opinion of the present reviewer, seems to be inapt and misleading as it gives an impression to its readers

17. *Supra* note 8 at 112.

18. It says: 'Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law'.

19. (1843) 8 *Eng Rep* 718.

20. *Supra* note 9 at 138.

21. *Id.* at 143.



that the essay deals with *all* the ‘General Exceptions’ enumerated in chapter IV of the penal code, when it in fact deals *only* with ‘the law governing insanity’ and addresses to ‘some of the problems arising with the defence of insanity or unsoundness of mind’.²² The essay, for obvious reasons, warrants a caption that aptly matches with, and relates to, its theme and contents.

The next bunch of three essays deal with ‘Abetment’, ‘Conspiracy’ and ‘Group Liability’. The first two essays, authored, respectively, by V Balasubrahmanyam and R B Tewari, are descriptive and do hardly highlight issues or emerging judicial trends in the interpretation of the provisions dealing with abetment and criminal conspiracy. However, the essay on criminal conspiracy makes a passing reference to the need to ‘re-examine’ the sweeping provision of section 120-A and to ‘eliminate’ irrationality crept into the law of conspiracy in India.²³ Referring to conspiracy to do an ‘illegal act’, which takes into its ambit an agreement to commit an illegal but a non-criminal act, the essay stresses the need to modify section 120-A to limit conspiracy to ‘determinate heads of offences only’.²⁴ The essay on ‘Group Liability’, written by V Balasubrahmanyam, explains principles relating to joint and constructive liability embodied in sections 34 and 149 of the penal code. The key words, namely, ‘common intention’ and ‘common object’ used in section 34 and 149 respectively and inter-relation between these two sections, owing to their peculiar phraseology, have received varied judicial interpretation. The essay aptly unravels these aspects and highlights some of the pertinent issues that have surfaced in the judicial discourse on the principles of constructive liability. It also brings out clearly the inter-relationship between section 34 and 149, IPC.

The essay on ‘Criminal Attempt’²⁵ delves into the idea of attempt to commit a crime and approach of the IPC to criminal attempts. It also delves into the hitherto tests—proximity rule, doctrine of *locus poenitentia*, equivocality test, and social danger test—followed/evolved by courts in India for drawing a line of distinction between the stages of mere preparation to commit a crime and that of attempt. It also addresses the criminal liability for attempting an impossible act and to the law relating thereto in the penal code. In the absence of specific provision in the IPC dealing with impossible

22. *Id.* at 114.

23. R B Tewari, “Conspiracy” *supra* note 10 at 183.

24. *Id.* at 184. For similar suggestion and reasons therefor see, Law Commission of India, *Forty-Second Report: The Indian Penal Code* (Government of India, 1971), para 5.30. For a contrary proposal for reform see, Law Commission of India, *One Hundred Fifty-Sixth Report: The Indian Penal Code* (Government of India, 1997), paras 4.07 & 4.08.

25. R B Tewari, “Criminal Attempt” *supra* note 10.



attempts, except the two illustrations appended to section 511 that, by necessary implication, lay down a rule that a person becomes liable for attempting to commit an impossible act,²⁶ the editors perceive, rightly so, that ‘impossibility of a thing’ does not absolve its perpetrator.²⁷ The essay also highlights the scope of section 511 *vis-à-vis* section 307 (attempt to commit murder) and judicial ambivalence thereon.²⁸ In the same spirit, the inclusion in the essay of judicial perception, rather ambivalence, about attempt to commit rape (section 376 read with section 511) and outraging modesty of a woman (section 354)²⁹ would, in the opinion of the present reviewer, have enriched the essay.

The last essay in part two of the *Essays* on ‘Punishment’ makes a very informative and interesting reading. It not only explains the rationale and different contours of ‘punishment’ but also deals comprehensively with: (i) the types of punishment provided under the IPC; (ii) emerging sentencing policy (reflected in the individual philosophy of judges in their judicial pronouncements) and the penal policy (existing, emerging and proposed); (iii) the emerging principle of individualization of punishment; and (iv) compensating victims of crime in India. In the light of changed outlook and philosophy of punishment, the essay makes a plea for re-examination and re-casting of grading of punishment and of definition of offences vogue in the penal code. It also favours the idea of incorporating in the IPC a set of new forms of punishment, such as community services, externment, disqualification from holding a public office, and public censure.³⁰ It also urges for certain sentencing guidelines.

The two essays on ‘Sedition’ and ‘Homicide’ form the third part of the *Essays*. The former essay traces the legislative history of the law of sedition in India and deals with judicial discourse on the imperatives and constitutional validity of sedition as articulated in section 124-A of the

26. See, *In re T Munirathnam Reddy*, AIR 1955 SC 118.

27. R B Tewari, “Criminal Attempt” *supra* note 10 at 233.

28. *Id.* at 227-231.

29. See, *State of Maharashtra v. Rajendra Jawanmal Gandhi*, AIR 1997 SC 3986; 1997 (8) SCC 386; *Madan Lal v. State of Jammu and Kashmir*, AIR 1998 SC 386; 1998 Cri LJ 667 (SC); *Bhursa Alias Bhursa Kira Alias Prahallad Mallik v. State of Orissa*, [2000 Cri LJ 2722 (Ori)]; *Kamla Nand v. State of Himachal Pradesh*, 2003 Cri LJ 547 (HP), and *Anokhe Lal v. State of Uttaranchal*, 2003 Cri LJ 2602 (Utt).

30. For further insights into these proposals also see, Law Commission of India, *Forty- Second Report: The Indian Penal Code*, *supra* note 24, para 3.25, the Indian Penal Code (Amendment) Bill, 1972; Law Commission of India, *One Hundred Fifty-Sixth Report: The Indian Penal Code*, *supra* note 24, para 2.16, and Government of India, *Committee on Reforms of Criminal Justice System* (Ministry of Home Affairs, New Delhi, March 2003).



penal code. While the latter essay addresses to, and deals with, complexities and niceties of the two major forms of homicides, namely, culpable homicide not amounting to murder (section 299) and murder (section 300), emerged from the hitherto leading judicial pronouncements thereon. It also, though cursorily, refers to the judicial response to euthanasia in India. The essay, with convincing reasoning, suggests that infanticide and diminished responsibility should statutorily be recognized as additional 'exceptions' to section 300, IPC.

The essay on 'Reform', which constitutes the fourth and the last thematic segment of the *Essays*, takes stock of penal statutes, including the IPC, and notes the legislative changes effected in the IPC after its inception. Taking note of the enormous and diverse local and special penal laws enacted in the 20th and 21st century, the essay pleads for their consolidation and transfer of some of the offences from special laws to the penal code for avoiding duplication. Appreciating the admirable compilation of offences in the IPC and their contemporary relevance, it rightly pleads for revision of the penal code in the light of the influx of new socio-economic offences so that the code can be made progressive and pragmatic. With this motto, it suggests (i) pruning (by deletion of obsolete offences); (ii) rearrangement of the existing offences (on the basis of their nature); and (iii) additions of new offences. Supported with convincing reasons, it also suggests re-look at the anti-sodomy laws (section 377), adultery (section 497), bigamy (section 494), cruelty by husband (section 498-A), and rape (section 376). Placing reliance on the Justice Malimath Committee Report,³¹ it stresses the need for revamping and overhauling of the penal code. Showing concern to different emerging forms of crimes, it suggests criminalization, with apt punishment, of new offences, such as false advertisements, destruction of public property, preparation for rioting, disfigurement of monuments and buildings, police atrocities, defaming a person involving character assassination, kidnapping for ransom, and fraudulent financial transactions.

The *Essays*, revised and enriched by the editors, indeed makes an interesting reading. It will be of immense help to a student of criminal law to have further peep and insight into the aspects of the penal code dealt thereunder. Undoubtedly, both the editors deserve high appreciation and compliments for reviving the about four and a half decades' old *Essays* and for enriching it.

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31. Government of India, *Committee on Reforms of Criminal Justice System*, *ibid.*

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