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some cases a general discussion of the topic with a survey of the historical development of the law on the point, the more instructive of these being the commentary on Parsee law. The extent of the inclusion or exclusion of Hindus, Muhammedans and the like within or from the operation of the different provisions of the act has been similarly traced and circumscribed.

The author has thus chosen for his treatise a pattern which the commentator finds easy for himself but which generally fails to present a coherent and comprehensive view of the law to readers who are less familiar with and require a systematic approach to the subject. That apart, the book is well written and one may be assured to find herein a correct exposition of the law duly supported by the leading authorities on the subject. Reference these days to all the reported decisions of the High Courts in India is neither possible nor necessary and one cannot as such look for all that in this book. It may, however, be safely relied for containing the decisions of the Supreme Court and the more important ones from those of the High Courts.

The book has for the last about forty years served adequately the need of those belonging to, preparing for or otherwise connected with the legal profession and one will, it is hoped, derive from the book in its present edition the same satisfaction which was available from it in its earlier editions and which may be no less than that from any other commentary on the Indian Succession Act.

*G. P. Singh**

OUTLINES OF INDIAN LEGAL HISTORY. Second Edition. By Dr. M.P. Jain. Bombay : N. M. Tripathi Private Ltd. 1966. Pp. xxv + 746. Rs. 30/-.

DURING THE REGION of the great Moghul Emperor Jehangir, the East India Company — a trading company — was granted a charter on December 31, 1600, by Queen Elizabeth of England with the avowed object of furthering the commercial interests of Britain. With this began the colonization of India. This led to a protracted intrusion into the culture, thought, ideas and institutions of one of the biggest civilizations of the world. Gradually over the years the British ideas, notions, concepts and institutions were transplanted in India and nurtured to bloom on an alien soil.

The syllabi of various universities (during the British regime and after independence), prescribing Indian legal history as one of the subjects in graduate or post-graduate classes in law, inform us that this means the period beginning from 1600 onwards. The Hindu and Muslim periods of legal history have remained thus far largely neglected.

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But Dr. Jain's view that "there is a pragmatic reason for concentrating mainly on the British period, and that is that the present judicial system is what the British created, and it hardly has any co-relation, continuity or integral relationship with the pre-British institutions"[1] is very far from the truth in the estimation of this reviewer. While it is undoubtedly true that British institutions have had an overwhelming influence on the development of Indian legal institutions since independence, to say that there is nothing in the pre-British period of value to us today is quite erroneous. It is difficult to believe that the break with the past has been so complete that the Hindu and Muslim periods of legal history have been rendered redundant. It is an irony to insist that the Indian legal history begins from 1600 onwards and not before.

That the task of writing a legal history of a country is stupendous and fraught with limitations is clearly borne out by Dr. Jain's work. Since the work has been proclaimed to be not more than "a chronicle of events of the British period in the area of law and justice,"[2] the author ignores any attention to the events taking place in the princely Indian states even after the year 1857. Moreover, while dealing with the modern period, his treatment of the legal systems in part B states (soon after independence reorganized states were labelled part B states) is extremely scanty. A study of the legal development of those parts of India which escaped the direct British domination would have been an interesting one indeed. The present work is thus an evolving narrative of events from 1600 onwards of what was before 1947 known as British India. The work, it is submitted, could have been appropriately titled as ***Outlines of Anglo-Indian Legal History***.

This, however, leads to a wider question: whether the legal history of a country should be merely a chronicle of events or something more. Should it not evaluate the subject sociologically? Should we continue to harp upon the great reforms of Warren Hastings, Cornwallis, Wellesley-Amherst and William Bentinck? Should the individual be glorified so much? Should a legal history not deal principally with the development of institutions and concepts. For instance, should it not trace the development of law relating to contract, or torts or evidence? If ever a legal history of India — of its entire period — is written, these fundamental questions should first be resolved.

The second 741-page edition consists of twenty-six chapters, as against the nineteen chapters in the 501-page first edition. While the last chapter has been newly added, the remaining chapters have

1. Jain, *Outlines of Indian Legal History* 2 (2d ed. 1966).
2. *Ibid.*

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been reorganized, revised and enlarged into twenty-five chapters. The titles of some of the old chapters have also been modified.

Under the two charters of 1600 and 1601, the East India Company — clothed with certain legislative, executive and judicial functions — embarked upon developing its trading activities more effectively.[3] It began by establishing factories which later on expanded into provinces. The administration of the factories was initially carried on by a president and a council appointed by the Company. The president had no veto. Under the *firman* of 1615 the Company acquired the right of self-government for Englishmen in India, although in some matters they continued to be governed by Indian law. All transactions and causes between Englishmen and Indians were decided by the local tribunals.[4]

Then came into existence the presidency towns of Madras, Bombay and Calcutta. This marked the first real settlement of Englishmen in India, and the introduction of foreign administration of law and justice in this country. During the period 1639-1726, the so-called administration of justice in the three presidency towns was based more on expediency than on principle. It would be a misnomer to call such a system the administration of justice.[5]

Under the Charter of 1726 some uniformity in judicial and legal institutions was introduced. Appeals could now go to the Privy Council. Thus began the era of the reception of English law into India, culminating in the process of the codification of Indian law begun in 1833, The charter also provided for the establishment of local legislatures for each presidency town. However, even after this charter and until 1773. the courts continued to be manned mainly by non-professional persons and there remained hardly any distinction between the judiciary and the executive. The charter instituted corporations at the three presidency towns. The mayor and the eldermen constituted the mayor's court, which had jurisdiction only in civil matters. Practically no Indian was associated with administration. The Charter of 1753 introduced the Court of Requests.[6]

The eighteenth century witnessed the vast territorial expansion of the East India Company from presidency towns to other places. Clive's recapture of Calcutta made the Company's hold on India firm, since puppets like Mir Jaffar and Mir Kasim were installed on the *gaddi* of Bengal. After the battle of Buxar, the *diwani* of the Bengal Suba (Bengal, Bihar and Orissa constituted one Suba under Moghul rule) was granted to the Company by the then Moghul Emperor, Shah Alam. This was followed by the dual *adalat* system : the *diwani adalats* and the

3. Chapter I.
4. Chapter II.
5. Chapters III, IV and V.
6. Chapter VI.

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nizamat adalats. And at the point the exploitation of India reached its peak. As Dr. Jain observes:

> The Company's servants who had the real power but no responsibility exploited the situation for their own selfish ends to become rich within the shortest possible time. Their capacity knew no bounds; their depredations continued unabated and even the Governor and members of the Council were not free from blemish; they exploited the country in the garb or private trade which they carried on to supplement their low incomes.[7]

Warren Hastings doubted the continuance of this and tried to purge the administration. But all in vain. Dr. Jain says: "A major defect of the scheme was the concentration of too-much power in the hands of the collector who was at once the administrator, tax-collector, civil judge and supervisor of criminal judicature."[8] In 1780 the *adalat* system was reorganized.[9] Cornwallis introduced judicial reforms in 1787, 1790 and 1793 and is credited with having introduced for the first time, "the principle of 'sovereignty of law'."[10] Dr. Jain then traces the development of the legislative changes introduced by the successive line of viceroys down through Lord Bentinck, who assumed his post in July of 1828. But all these so-called reforms and new developments were nothing but calculated attempts to continue British rule in India. They failed to subdue the deep dissatisfaction and anguish of Indians which erupted in the great rebellion of 1857. Dr. Jain's praise ignores this facet of their administration.

Non-separation of judiciary and executive,[11] the court-fee system[12] and a corrupt magistracy[13] are the notable legacies of the British era.[14] In those days the rule of law was also a myth. The Indian Penal Code and some other codified laws, which are still on our statute book, indicate that the main purpose behind codification was to prop up the colonial regime. It is high time that we begin interpreting facts and the resultant laws, rules and regulations sociologically.

Now that—from 1967 onward—the Indian legal history is going to be a compulsory subject for the LL. B. classes, it is necessary that we have a new look at the perspectives of the legal history of India. It should embrace the Hindu and Muslim periods, as well as imperial times. Our break with the past has been not so complete that there is neither any continuity nor any co-relationship with it. There is much in our present-day ideas, notions, rules and institutions which can be traced only to the past past. There is much in the *Naradasmriti* alone

7. *Id.* at 85.
8. *Id.* at 95.
9. Chapter X.
10. *Id.* at 228.
11. *Id.* at 213-14.
12. *Id.* at 221-22.
13. See *id.* at 208-09.
14. *But see id.* at 230.

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on the basis of which modern procedural law can be reformed and adapted to meet the requirements of present-day social context. The entire field of family law cannot properly be comprehended without a knowledge of the Hindu and Muslim periods.

All this is not intended to belittle Dr. Jain's pioneering work. There was practically no work available on the subject when Dr. Jain wrote this book in 1952. Even thereafter there has been hardly a work on the subject to match Dr. Jain's contribution. Its usefulness for students and researchers of Indian legal history can hardly be over-emphasized.

*Paras Diwan**

LEGAL INTERVIEWING AND COUNSELING. By Harrop A. Freeman 1964. St. Paul, Minn. : West Publishing Co. Pp. 253+xxi.

HOW CAN A lawyer face a client when the advice he knows would be best for the client's interests is not that dictated by the law? What does a lawyer do when faced with a client who has a legal problem but whose psychological state forces him to give half-true facts?

For ages such questions have been considered beyond the purview of legal education. But such questions invariably arise to plague the lawyer anywhere as soon as he enters into practice. *Legal Interviewing and Counseling* is a book which attempts to delve into this realm of the meeting place between law, psychology, sociology and commonsense. The days when a lawyer could be said to speak only "the law on the subject" to satisfy his client and himself are gone, if they ever existed at all. Particularly where there is any kind of a continuing relationship between a lawyer and his client, other problems not purely of a legal nature are bound to occur. How far a lawyer should venture to deal with these problems is a very complex question involving even more varied factual considerations than those relevant to the law alone.

Professor Freeman's book, designed as a semester course at the LL. B. level could profitably be used in conjunction with practical student experience in apprenticeship or in a legal aid society. It doing so it does not purport to be a "how-to-do-it" book on interviewing or advocacy, but rather a work which raises a plethora of questions at the very core of lawyer's position and responsibility in society. As the editor expresses it,

> Lawyers are at a crucial juncture in most client problems—the point where client and society meet and influence each other .... We must become aware of the forces at play and know that we ourselves are working with them maturely, not neurotically and exploitatively.[1]

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1. Freeman, *Legal Interviewing and Counseling* 45 (1964).

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