



the civil servant and the people, of the need of mutual understanding and co-operation.¹⁰

It is now more than twenty years that the Country has attained independence. But the administrative machinery is growing slower and more corrupt. The general public is being put to greater hardships in its dealings with the administrative set up. Too many files are kept pending and their disposal is inordinately slow, while there is a clamour for more pay, which eventually leads to more taxation, the people do not get proportionately prompt service from the government officers. This fact can be substantiated *inter alia* by those government servants, who after retirement do not get their pensions within a reasonable time. Some of them fail to get the same during their life time. When such is the case with the erstwhile government servants, leave aside the case of the general public. There is, therefore, a need for a change in the attitude of the civil servants. The attitude should be one of service and dedication and in no case should they think themselves to be the rulers or the masters of the citizens. This aspect has not been properly dealt with by the author because it is this aspect alone which has any meaning when we talk about the civil service in a developing society. In view of this observation, a more appropriate title of the book would perhaps be the "Civil Service in Punjab before and after independence." This book would have been very useful to the general public, the administrative officers and the ministers who would have benefited by the suggestions incorporated in the role of the civil service in a developing society like India. A few pages incorporating this aspect would, to my mind, increase the value of the present book immensely. The present effort is commendable and I have no hesitation in remarking that it is a scholarly work of outstanding merit.

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LAW OF BAD LIVELIHOOD. Second Edition. By R. Deb. Calcutta : S.C. Sarkar & Sons (Private) Limited. 1969. Pp. xxviii + 164. Rs. 8.50.

THIS BOOK WAS originally intended, as pointed out by the author himself in his preface to the first edition, as a chapter in his book entitled, "Principles of Criminology, Criminal Law and Investigation." The usefulness of the matter motivated the author to give the material the form of a separate and independent book. The book deals with the various aspects of law and procedure relating to security for keeping the peace and for good behaviour as contained in chapter VIII of

10. *Id.* at 406.

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the Code of Criminal Procedure. The important feature of the second edition is the appendix II which contains "Short Notes On The Law of Bad Livelihood For The Guidance of Junior Police Officers" wherein a very brief and useful summary of the whole book has been made. The book, is divided into twenty three chapters including chapter on conclusion with two appendices. The table of contents are so elaborate as to serve the purpose of subject index as well.

Chapter VIII has been described in various ways by the courts and by jurists. The real purpose of the chapter is to enable the police and subsequently the courts to take preventive measures for the maintenance of law and order. In other words to take effective steps to see that a person may be prevented from misbehaving or from committing a breach of peace. The function of a welfare state is not only to take steps to see to the punishment of the law-breaker but also to see that law may not be broken. This is how order can be maintained in society. It must be said that in India effective steps have not been taken regarding the prevention of crime. There can be various reasons for this, one being that the police strength is inadequate to cope with the big problem of crime prevention in an overpopulated country. Moreover, it has been said that the police lacks the integrity and the efficiency to deal with the big problem of prevention of crime. It is usually said that the police sometimes uses the provisions of this chapter as method of oppressing people who cannot otherwise be punished under the substantive law. Mr. Deb has given enough guidance to police officers to get over the last objection. He has described what are the provisions regarding the breach of peace and what are the provisions regarding misbehaviour, in other words what are the provisions of sections 107, 109 and 110 the Code of Criminal Procedure. There is an impression in the minds of many police officers that the provisions of this chapter VIII can be utilized for taking action against persons who cannot be otherwise successfully prosecuted in criminal courts for regular substantive offences. Mr. Deb clearly mentioned this fact that where allegations amount to specific offences, prosecutions under chapter VIII should be avoided. More over, where, the police has failed to get person convicted for specific offences, prosecution under this chapter cannot be used as a substitute. The very purpose of this chapter is to prevent people from committing offences, to this extent, the provisions of this chapter are not punitive. It is, therefore, essential for the courts to be very careful when examining cases under this chapter to see that miscarriage of justice does not take place. It also sometimes happens that when the police has arrested a person under section 55 of the Code of Criminal Procedure, in order to justify such action security proceedings under this chapter follow as a necessary consequence. Mr. Deb has brought out the harmful and bad effects of unjustifiable proceedings under this chapter which may result in



long detention of persons who would otherwise be entitled to free movement.

While discussing the scope of section 10 of the Code of Criminal Procedure, he well summarized :

Thus, no man can be tried under S. 110 Cr. P. C. on the same facts which failed to satisfy a Court about his guilt in a specific offence. If a man has been acquitted in a dacoity case, *there must be something more than mere evidence of suspicion in the dacoity case to justify action under the preventive section. Unless there is some evidence of bad reputation or record against him prior to his arrest in the dacoity case, it is doubtful if there could be any justification for his rearrest and prosecution under S. 110 Cr. P. C.* On the other hand a man who escapes from the trial of a dacoity case, or any other serious offence by the skin of his teeth, *and against whom a previous record exists*, would be a fit subject for a rearrest and prosecution.¹

Further

Simultaneous prosecutions under the preventive sections of law as well as for specific offence under the Indian Penal Code are neither permissible nor desirable from the point of view of legal propriety. Where a person is convicted of an offence, in respect of a particular incident, he cannot be prosecuted again, under the preventive sections of law in utter disregard of the spirit of the double jeopardy rule. A man should not be put to peril twice on the same act of facts.²

It is true, that section 403 of the Code of Criminal Procedure does not apply to proceedings under chapter VIII but the spirit of the rule has to be kept in mind. The book gives in exact terms what are the circumstances in which the provisions of sections 107 are to be applied and circumstances in which clause (a), (b), (c), (d), (e) or (f) is to be applied. This is important because each one of these clauses deals with different circumstances of preventive action for which a different kind of evidence and material for prosecution would be required. Many prosecutions fail on account of the ignorance of police officers to make this kind of sifting of material and evidence. This elucidation also helps the defence lawyer to see whether the right type of evidence has been given against his client. Moreover, the preliminary proceedings under section 112 which includes preliminary order and the amount and number of sureties required is of very great importance because once a preliminary order has been made, the court has to go by it through out the remaining proceedings under this chapter. The book also throws fresh light on this important matter, namely that if a person has just come out of jail and proceedings under this chapter are immediately taken after his release, action by

1. R. Deb, *Law of Bad Livelihood* 5 (ed. 2, 1969).

2. *Id.* at 7.



courts would be bad because no opportunity has been given to the person to show that he had no intention to break the law after his release. This is a matter which should be kept in mind by all courts and police officers.

Specific guidance has been given in the book as to how proceedings are to be initiated under this chapter and police have been asked to clearly specify the clause of preventive section under which they want to bring their case. A mere prayer for prosecution under section 109 or under section 110 is an improper thing to do. The author feels that the respondent must be kept under surveillance for sometime in order to watch his behaviour and activities before the police makes up its mind to initiate the proceedings under this chapter. The powers to arrest a person under section 55 or under section 151 have been explained at considerable length, but it is not essential that proceedings under this chapter or for specific offence must follow. It is better to let a person go soon after arrest than to let prosecution harass him for months and months. The matter of granting bail in security proceedings is also important and the courts have to be extra cautious because if bail is refused during the pendency of proceedings, it means that the liberty of a person is curtailed which would be unfair and undesirable.

Another important matter which has been discussed, at considerable length, is the question of jurisdiction of a magistrate to take proceedings under various sections of this chapter. This is on account of wording of sub-section (ii) of section 107. "There is within such limits a person who is likely to commit a breach of the peace or disturb the public tranquillity." Similar words have been used in sections 109 and 110. The author dwelt at considerable length on the theory of residence, namely, whether residence means stay for a long time or whether temporary residence is enough to confer jurisdiction.

Another matter of considerable interest, namely, whether a person has no ostensible means of livelihood so as to justify proceedings under sections 109 of the Code of Criminal Procedure, has been fully explained in the light of decided cases. Simply because a person is for the time being unemployed or is dependent on his guardians does not mean that he can be bound down under section 109. The author has very nicely given the list of the circumstances under which a person can be proceeded against under section 107 or 109 or 110. Sometimes, a person may be arrested while moving under suspicious circumstances and yet he may not be intending to break the law. It is, therefore, essential for the courts to examine the nature of evidence produced by the prosecution.

If it is bad to demand security from a person who does not come within the ambit of chapter III, it is worst to start proceedings against a person with insufficient evidence who is ultimately discharged because it encourages not only those discharged but other bad charac-



ters, now no longer restrained by the fear of restriction to continue their career of crime. It affects the prestige of the police and it tends to alleviate the support of respectable people, since they are often made to suffer at the hands of bad character for their public-spirited act is giving evidence. The general moral effect is bad not only within the police circle concerned but often throughout the whole district.

The author discussed at length joint inquiry and the effect of misjoinder of persons. This should be of useful information to the police and to the magistrates.

Another important matter dealt with in the book is about the constitutional validity of detention under chapter VIII within the meaning of article 22 of the Constitution. He is of the opinion that detention under chapter VIII is not rendered void by article 22 of the Constitution.³

One complaint frequently expressed about the security proceedings is that persons who are bound down under chapter VIII are sometimes asked to furnish securities of the amounts and the number which is utterly impossible for the respondent to furnish with the result that it amounts to a person being detained for failing to furnish sureties. The author has rightly pointed out that such demands for sureties should neither be excessive nor prohibitive. I hope his views will receive due attention of the courts. It quite often happens that sometimes only professional sureties can be arranged who keep the respondent at their mercy all the time and at a later stage such sureties apply to the courts for the cancellation of their suretyship. This causes great deal of worry and anxiety to the respondent. This is a matter which requires attention and, may be, provisions in chapter VIII may have to be amended to get over this hardship.

Another matter which requires attention is the question whether security proceedings under chapter VIII should be dealt with by executive magistrates or by judicial magistrates only. The book does not deal with this question but it is worthy of being considered by the various state governments.

Whether the provisions of chapter VIII really provide a useful instrument by which crime can be prevented or whether it is an oppressive method in the hands of the police, all depends upon integrity of the police and the courts. If usefully employed the provisions of chapter VIII can do immense good to the society.

Mr. R. Deb has made a marked contribution to the legal literature by bringing out this book. It provides ample material for the courts and defence lawyers too.

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³ *In re, Seetharaman*, 570 Cr. L.J. 75 (1956) Mad.

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