



**LAW OF MALICIOUS PROSECUTION AND DEFAMATION.** By R. Ramamoorthy. 1976. N.M. Tripathi, (Pvt). Ltd. Bombay, Pp. 315. Rs. 45.00

IN THE scanty literature available in India on the law of torts the publication of Ramamoorthy's book on 'malicious prosecution and defamation' is to be rated as a worthy contribution to the legal literature in the law of torts. It has been observed that tort litigation in India has so far been less diversified than in the United Kingdom and the United States.<sup>1</sup> Many causes have been assigned to this phenomenon. The author has well observed that "the torts which are frequently litigated in India are malicious prosecution, negligence and defamation."<sup>2</sup> This, to some extent, explains the rather curious combination of malicious prosecution and defamation as the subject matter of study of this book.<sup>3</sup>

The author has succinctly examined the age old controversy on the need to codify the law of tort. Opinion has been expressed that the common man does not take recourse to the legal remedies because law of torts is a maze of conflicting and often illogical case law. C.P. Ilbert once expressed himself in favour of codification of such torts which frequently come up before the courts with a view to making the law simple, clear and consistent.<sup>4</sup> Ramamoorthy has very rightly come out in favour of this suggestion.<sup>5</sup>

The book is divided into two parts, *viz*, Malicious Prosecution and Defamation. For the most part the approach has been doctrinal. The author has not only frequently relied upon the case law of torts in the United Kingdom and the United States but also defended the reliance upon comparative jurisprudence in the work of this character. A writer of eminence has very well observed that

the Indian thinking on legal problems is often conditioned by the decisions of the English House of Lords or the American Supreme Court....This is, however, inescapable because the Indian law of today is mostly derived from Anglo-Saxon law and the English

---

1. J.M. Shelat, Changing Pattern of Law of Tort, 11 *J.I.L.I.* 403 at 406. (1969).

2. According to the author out of total number of 651 reported cases on torts in the All India Reporter from 1914 to 1974, 191 cases relate to malicious prosecution, 120 cases appertain to negligence, and 91 cases concern defamation. See Ramamoorthy *Law of Malicious Prosecution and Defamation* 284 (1976) (hereinafter referred to as Ramamoorthy.)

3. The author explains that "the injury caused in both these torts is of similar nature and also because laws of defamation are of vital importance in a democratic set-up." Ramamoorthy at v.

4. C.P. Ilbert, India Codification 5 *L.Q.R.* 347 at. 362. (1889)

5. Ramamoorthy at xxxviii



legal concepts have, to a large extent, influenced Indian legal development.<sup>6</sup>

Reliance on the foreign case law has been made critically. The discussion on the cases of *Rookes v. Bamard*<sup>7</sup> and *Cassel and Co. Ltd. v. Broome*<sup>8</sup> is stimulating and penetrating. The author has correctly observed that "there is nothing anomalous in awarding exemplary damages in civil suits."<sup>9</sup> This is supported by case law as well as common sense. Almost all the important cases on malicious prosecution and defamation have been critically studied and their impact assessed in a scholarly manner.

A part of this work relating to law of malicious prosecution was first written as a thesis for Ph.D. in Law for the University of Poona. It is a significant contribution to the subject. All the ingredients of the tort of malicious prosecution have been skilfully analysed and critically discussed.

The part relating to the tort of defamation is equally informative. However, the author has not questioned the relevance of some of the doctrines in the tort of defamation. A litigant in an action for defamation is often lost in the rather confusing state of law. The costs of litigation are high and the time consumed by the courts in disposing of the cases is disproportionately long. Ramamoorthy's study ought to be carried on further by researchers in order to ascertain the causes of delays in tort litigation in general and of defamation in particular.

The present reviewer commends the study of this important work to lawyers, law-teachers and law-students alike. The style of presentation by all standards is excellent. A study of this work is not simply useful for the specialist but also for the sociologist who should conduct empirical studies on some of the conclusions reached at by the author.

A table of cases, an index and a fairly exhaustive bibliography are of immense use to all those who are interested in conducting further studies on the topic. Above all the author's impassionate plea for codification of these branches of the law of torts deserves a careful consideration by our law-makers.

*K.L. Bhatia\**

---

6. O.P. Sharma, *Military Law in India* vii (1973).

7. (1964) 1 All E.R. 367.

8. (1972) 1 All E.R. 801 (H.L.).

9. Ramamoorthy at 257.

\*B.A. (Hons.), LL.M., Lecturer in Law, University of Jammu, Jammu Tawi.



DEVOLUTION. By Harry Calvert (ed.). 1975. Professional Books Limited, London. 1975. Pp. 201. £ 2.15.

THIS BOOK consists of "Papers presented at the Annual Colloquium of the United Kingdom National Committee on Comparative Law at Cardiff in September 1974."<sup>1</sup> The theme of the papers is devolution and they incorporate the experiences of Scotland, Germany, Belgium and Wales in addition to England. There is a paper by Terence Daintith on the Kilbrandon Report.<sup>2</sup> Harry Calvert in his essay entitled "Devolution in Perspective" acquaints us with the conceptual frame-work of devolution. Devolution may be resorted to for various reasons. It may act as a check on the exercise of power or it may satisfy the need for regional autonomy or it may provide greater facilities for public participation in the governmental process. No government can really function without devolution. However, the pattern of devolution is determined by the local conditions of a country.

Although these essays deal with local issues, the broad policy questions that are projected in them are of relevance to any modern government and, therefore, they should help a comparative lawyer gain further insights into the problem of the government. The book is, therefore, a welcome addition to the literature on comparative law.

*S.P. Sathe\**

---

1 Harry Calvert (ed.), *Devolution 1* (1975).

2 Royal Commission on the Constitution 1969-73 Volumes 1 and 2, Cmnd. 5460

\*LL. M., S.J.D. (Northwestern), Principal, Indian Law Society's Law College, Poona.