



A TEXTBOOK ON THE CRIMINAL PROCEDURE CODE, 1973. By S.D. Balsara. 2nd ed. (1977). S.D. Balsara, 226 Tardeo Road, Bombay. Pp. iv+133. Rs. 12.50

IN THE interstices of procedure lie the protective mechanism of the rights and interests of a person who is indicted to face a criminal charge. The mechanism improvised under the Criminal Procedure Code, amongst other things, is designed to insure a sufficient degree of fairness to meet the accusation, with an added emphasis on the assertion of the privileges that are now well entrenched in our adversary system of trial.

Besides the emphasis on privileges of the accused as well as the concern to ensure a fair trial to him, there has been a constant complaint of certain deficiencies being present in the procedural laws ever since the Code of Criminal Procedure, 1898 was enacted. Piecemeal amendments were introduced from time to time to remedy the defects. A measure to streamline the procedure through a comprehensive legislative amendment was taken in 1955. However, the debates and discussions to overhaul the criminal judicial administration continued.

The First Law Commission set up after independence sought to focus attention to the problems of criminal judicial administration,¹ but it did not seize itself with the task of going into a detailed scrutiny of the provisions of the then existing Code of Criminal Procedure. It did make certain recommendations. The thread was picked up by the subsequent Law Commissions.

The need to revise the Indian criminal jurisprudence was felt for many reasons. The Indian code on penal law and procedural law had become antiquated with the passage of time. The conflicting judicial interpretations of the various High Courts on various provisions relating to criminal procedure also indicated that there was a gap between the rules of procedure and the requirements of the day in the light of the changed values. The newer consciousness had grown with the conferment of the rights and freedom on the individual. The growing concern for the respect and dignity of the human personality was being intelligibly understood on a national and international plane. The issues were brought to the fore with the declaration of human rights by the United Nations. The march of behavioural sciences had been unfolding newer concepts and recommending correctional programmes to deal with the individual behaviour.

The First Law Commission dealt with the problem of the administration of criminal justice generally. No concerted attempt was made to tackle the problem till a later date. In the meanwhile difficulties arising out of the

1. *The Report of the Law Commission on the Administration of Justice—14th Report*, in 2 vols. (1958).



enforcement of certain provisions were referred to the Law Commission for report and recommendation, e.g., the difficulties relating to the matter of evidence of officers about forged stamps, currency notes, etc., was considered and consequently section 509 of the then Criminal Procedure Code, as recommended by the Law Commission, was amended.² The question of appointment of sessions and other judges formed the subject-matter of review and recommendations by the Law Commission in another report.³

The complexities of the current problems warranted urgent attention to deal with them. Accordingly, the prognosis of the relevant law was made from time to time and necessary measures to amend the same were taken. Thus, in the *33rd Report* of the Law Commission it was urgently required to propose a new provision to substitute section 44 of the Code of Criminal Procedure, 1898 imposing a duty to report bribery and to disclose all facts in investigations. The law of bails was also subjected to scrutiny and recommendations.⁴ The process of revision had thus begun but the vastness and importance of the subject-matter led to the preparation of *37th* and *40th Reports*. All these reports and recommendations were subsumed in the *41st Report* of the Law Commission which sought to completely revise the procedural laws in the administration of criminal justice and thus replace the Code of 1898 by the 1973 Code.

The book under review is based on the contents and provisions of the new code of procedure. The first edition of the book was brought soon after the passing of the Act in 1973. It aimed at making the students understand the procedure adopted at the pretrial, trial and post trial stages of a criminal proceeding together with other provisions of the Code of Criminal Procedure.

As stated above the book is intended for the students of law, commencing to learn their lessons of procedure in criminal cases. The entire subject-matter has been dealt with in thirty-two separate chapters. Each chapter is devoted to one aspect of the criminal judicial process. The topic-wise treatment of the subject thus enables the student to know the basic rules and finally have a complete integrated picture of the system. In doing so the author seems to have taken pains to pack his scholarly wisdom and his experience as a law teacher of long standing. But for this it was not possible to elucidate the principles with that meticulous accuracy which is spread over the entire book. The littering of case law to overawe the student has been carefully avoided, but the statement of legal principles are largely based on the judicial precedents. The sparing use of observations from the case law has enabled the author to put forth the legal principles in an intelligible manner. Even where the principles are interwoven around the case law the propositions have been reduced to crystallised formulations,

2. The Law Commission of India, *Twenty-Fifth Report* (1963).

3. *Id.*, *Thirty-Second Report* (1967).

4. *Id.*, *Thirty-Sixth Report* (1967).



e.g., the enumeration of categories where sanction for prosecution is necessary.⁵ Likewise, the discussion on joinder of charges as well as the offenders have been stated succinctly and illustratively.⁶ In discussing the law of maintenance of wives and children the author has not lost the perspective of discussing the civil law as against the criminal law.⁷

The new Act introduced certain significant concepts. Some of these are providing legal aid to indigent accused in the case triable by court of session, to pay compensation by the accused to the victims of crime, opportunity to the accused to be afforded to make representations against the punishment being imposed, anticipatory bail and the like. These provisions are being invoked and subjected to judicial examination in a number of cases. These concepts are thus gradually being crystallised into definitive rules. A critical examination of these rules would be helpful to the students. The author seems to have discussed some of the basic postulates that govern the code generally in chapter 20 of the book under review, but the newer concepts, as noted above, also require a similar treatment at the hands of the author in a separate chapter or at appropriate places.

Brevity and clarity are the chief merits of the book. The author's skill to present an accurate and concise statement of law, and to shorn the bulk off the book makes it very useful for students preparing for a career in law.

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5. Balsara, *A Textbook of Criminal Procedure* 62 (1977).

6. *Id.* at 71-76.

7. *Id.* at 36.

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