

BOOK REVIEWS

NEW NUTSHELLS Series on different subjects of English law (1979 and 1980). Sweet & Maxwell, London. Price of each book £ 1.50.

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New Nutshells present the essential facts of law. Written in clear, uncomplicated language, they explain basic principles and highlight key cases and statutes.

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The following titles have been published under the series so far :

1979

1. *Criminal law* by Steve Brandon.
2. *Tort* by Geoffrey Samuel.
3. *Contract* by Ian Duncanson.
4. *English Legal System* by Steve Brandon, Ian Duncanson and Geoffrey Samuel.

1980

5. *Family Law* by Victor Davidson
6. *Jurisprudence* by Ian Duncanson and Geoffrey Samuel.
7. *International Trade* by Michael Day.
8. *Land Law* by Christopher Burke.
9. *Company Law* by Francis Roundell.
10. *Employment Law* by Philip Marshall.
11. *Trusts* by C.E.F. Rickett.
12. *Conveyancing* by Angela Tannett.
13. *Sale of Goods and Consumer Credit* by Alan Bond.
14. *Constitutional Law* by Lynda Banks.

1981

15. *Evidence* by Stephen Seabrooke.

16. *Civil and Criminal Procedure* by Elizabeth Stevens.
17. *General Principles of Law* by Josephine Dominic.

The size of each book varies from 80 to 100 pages. In such a short compass it is obvious that only the basic principles of law could be stated and that too with a great degree of brevity. The series are successful in achieving these objectives. The books will certainly act as "revision aids" and "reassuring props for the anxious examination candidate." It appears to the reviewer that since the basic principles of law have been compressed into a comparatively short span, these books rather than "preparing the reader for detailed complementary textbooks" may be more useful as "revision aids". A beginner without some kind of legal background may find the going tough. To the credit of the authors, the brevity and clarity with which the basic principles have been stated demand a thorough knowledge of their respective subjects by them, which is depicted in ample measure in the books.

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HOW TO USE A LAW LIBRARY (1979). Jeane Dane & Philip A. Thomas. Sweet & Maxwell, London. Pp. xvii+182. Price £ 4.25.

THE BOOK under review is yet another welcome addition to the already existing literature on references to legal materials of the U.S.A., U.K. and Australia. Such books are helpful in giving detailed information about legal materials of the country of the author, sometimes of other countries as well, e.g., books by Price & Bitner, Pollock, etc., and also provide guidance for doing legal research. In a country like India where the courts and scholars take recourse to foreign legal materials, such books are invaluable guides to them for facilitating access to such materials.

The chapterisation of the book is well-arranged and classified, and makes it convenient for a reader to locate material that he is looking for. If one follows the guidelines and goes through the vast information contained in the book one will be adequately equipped with "where to look for law and legal writing".

The authors have tried to explain various typical methods of law reports of the U.K. For example, the Weekly Law Reports parts contain different pagination in the same weekly issue. Why is it so? Because, it is explained, the pages marked as of volume 1 are not to be reproduced in the law reports series. Similarly, the difficult method of the English & Empire Digest has been explained in detail and with the help of illustrations. It has been explained well as to what is the meaning of the blue and green band bound volumes of the Digest. "The blue or green band across the back of each volume indicate the topicality of the information contained in the volume. The blue band volumes are being replaced by green band volumes, in which the information is more up to date."¹ Thus a confusing method of tracing the case is well explained.

The authors have explained the significance of round brackets and square brackets. They say that when "*Date [is] in round brackets* : The date is not of major importance, but the volume number is : e.g. (1868) L.R. 6 Eq. 540", and when the "*Date [is] in square brackets* : The date is an essential part of the reference, e.g. [1895] A.C. 229; [1954] 3 W.L.R. 967; [1953] 2 All E.R. 608."²

Very few of us know as to why the English Acts are preceded by "c". The use of "c" before every statute is explained and its history traced. For example, 4 & 5 Eliz, 2, c. 24 : the Children and Young Persons Act 1956 "was the twenty-fourth Act to receive the Royal

1. Jeane Dane & Philip A. Thomas, *How to use a Law Library* 35 (1979).
2. *Id.* at 21.

Assent during the Parliament which commenced sitting in the autumn of the fourth year of her reign. and which continued in session during the early part of the fifth year of her reign.”³

A useful guide has been provided for searching periodical articles with the help of a chart.⁴ Any legal research is incomplete unless all the relevant articles published in various legal periodicals of the world are searched and read. The chart is very useful as it carries the researcher step by step towards that goal.

Similarly other charts and illustrations increase the usefulness of the book. The method of using the Halsbury's Laws of England has been well explained.⁵

A separate chapter on “Community Law” (E E C)⁶ is of special interest. Looking to the development in this field it was necessary as it is bound to affect some of the legal principles in the U.K.

There are a few suggestions for increasing the utility of the book. The authors have not given names and addresses of publishers of the books mentioned. This information would have facilitated the availability of the books to those who are interested. The book deals with legal materials mainly of the U.K. and the U.S.A., and to some extent Canada and Australia. One can understand this, the book being an English publication. But no mention has been made of any material from Asian and other developing countries. Of course, in a work of this kind, all such countries may not be included, but perhaps some information on India could have been given owing to the interest of quite a few British legal scholars in the law and legal developments of the country.

H.C. Jain*

3. *Id.* at 46. “C” means chapter which in turn means : “In the system of citation of statutes long followed in Britain each statute was numbered as a ‘chapter’ in the legislation of that session of Parliament, the session itself being designated by the regnal year or years of the monarch over which it extended. Since 1963 statutes are numbered as ‘chapters’ in the legislation of a calendar year. In very long statutes the term chapter is sometimes used of a subdivision of a Part of the Act dealing with a distinct group of copies.” David H. Walker, *The Oxford Companion to Law*, 206 (1980).

4. *Id.* at 60.

5. *Id.* at 91, 103-107.

6. European Economic Community.

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INDIAN CONSTITUTIONAL AMENDMENTS (1980). By Professor Paras Diwan. Oxford & IBH Publishing Co., 66, Janpath, New Delhi-110001. Pp. xi+268. Price Rs 40.

THE WRITTEN constitution of a country is the supreme law of the land. However, its authority, sanctity and permanence are secure so long as it continues to be a living, vital and dynamic social organism. In other words, though as a fundamental law it is framed to endure for ages, it has nevertheless to be responsive to ever changing needs of the society. That is why some kind of special mechanism for its amendment is devised within the constitution itself.

The India's Constitution is no exception. It is primarily a social document drafted to serve a socially and economically backward and culturally diverse ancient people. The chief mechanism of its tailoring to new challenges is not too rigid. Since its commencement in 1950, it has been altered forty-six times. Most of the amendments were non-controversial; only a few sparked off unprecedented constitutional controversy mainly relating to the nature of the amending power of Parliament. Much has been written and said on this theme. The issue is still alive and perhaps it will continue to be so. It is on this vital subject that Professor Paras Diwan has produced a handy reference work.¹ The book, *inter alia*, explains the scope of the amending power, surveys the first forty-four amendments under different captions, each dealing with the same or similar aspects, and reproduces their texts preceded by their objects and reasons. It seems at present no other work exclusively on amendments is so up to date.²

There are five chapters and an appendix of the first forty-four amendments. Chapter I is introductory. Amending process is the subject-matter of chapter II. Chapter III is devoted to amending power. Amended article 368 is dealt with in chapter IV. The survey of constitutional amendments is covered by chapter V.

In chapter I the author explains briefly the forty-second, forty-third and forty-fourth amendments. Hitting at the slogan of *garibi hatao*, specially in the wake of the twenty-fourth and twenty-fifth amendments,³ he

1. *Indian Constitutional Amendments* (1980).

2. *E.g.*, *Constitution Amendment in India* (1962) (a Lok Sabha publication) goes up to first fourteen amendments. K.C. Markandan, *The Amending Process and Constitutional Amendments in the Indian Constitution* (1972) covers first twenty-four amendments; P.B. Mukharji *The Indian Constitution: Change and Challenge* (1976) deals with forty-fourth amendment bill only; P. Sheshadri and K.R. Acharya, *Constitution Forty-Second Amendment Act 1976* (1977).

3. Twenty-fourth amendment restored constituent power to Parliament and twenty-fifth altered property rights provisions and established primacy of the economic directives.

observes that "poverty itself has become a vested interest of the Indian politicians and the poor have become guinea pigs in our political laboratory." He next says that judicial review of constitutional amendment remains intact in view of *Kesavananda Bharati* decision despite the restoration of unlimited amending power to Parliament and dispensation with the power of such review.⁵ Lastly he welcomes the defeat of the Janata Party move to hold referendum in specified cases for constitutional change as it has preserved the flexibility of the doctrine of basic structure and judicial freedom to apply it in relevant social context.⁶

The next chapter begins with the remark that the Constitution of India "is a controlled constitution".⁷ There is a quote from B.R. Ambedkar's speech which makes a distinction between the Constituent Assembly and Parliament.⁸ Then follow details of various amending processes.

The author explains the scope of amending power of Parliament in chapter III. He well presents two schools of thought—one conceding limitless constituent power to Parliament and the other a limited one. He shows that the latter view is a *fait accompli*.⁹ It seems the author does not indicate his preference, though at one place he says: "In our contemporary society, no one subscribes to the doctrine of sacrosanctness of the constitution."¹⁰

In chapter IV the author traces the history of amended article 368. While doing so, he makes a reference of *Shankari Prasad*, *Sajjan Singh*, *Golak Nath* and *Kesavananda Bharati* decision as also that of the twenty-fourth and forty-second amendment. The forty-fifth amendment bill, in so far as it proposed to recast article 368, also finds a place in this chapter. The author speaks of its rejection and is amazed at its terms.¹¹

The survey of the first forty-four amendments in chapter V makes an interesting reading. The subject has been treated under eleven titles¹² having thirty-eight sub-titles. This classification outright shows how wide has been the sweep of the process of constitutional amendment during a period of about three decades. The author has taken pains in highlighting the causes, including judicial, of various amendments. For instance, under the titles of fundamental rights and directive principles of

4. *Supra* note 1 at 1.

5. *Id.* at 4.

6. *Ibid.* See also *id.* at 22, 29-30.

7. *Id.* at 6. See also *id.* at 14-15 where the author says that the Constitution is partly uncontrolled also.

8. *Id.* at 7.

9. See *id.* at 20-21.

10. *Id.* at 15.

11. *Id.* at 30.

12. *Viz.*, fundamental rights, directive principles of state policy, fundamental duties, reorganisation of state boundaries, Indian federation, legislative lists, Union Parliament and state legislatures, Union and state executives, proclamation of emergency, Union and state judiciary, administrative tribunals and miscellaneous amendments.

state policy the bases of change are predominantly judicial,¹³ whereas under the titles of reorganisation of states, and Union Parliament and state legislatures the reasons are basically political.¹⁴

At places the survey is critical also. For example, in regard to preventive detention the author says: "The obvious conclusion of the Indian experience of preventive detention is that there cannot be more agonising, humiliating times than the times of emergency; nothing can help an individual languishing in preventive detention. Probably at no time the citizen of free India had suffered such colossal deprivation of life and liberty; at no time people were made to suffer such indignities. That this does not recur was obviously one of the priorities of the [Janata] Government...[In] the submission of the present writer, preventive detention of any type is contrary to basic human values and to fundamental tenets of democracy."¹⁵ He also digs at the words that qualify "republic". He says that a republic is always democratic, secular and sovereign. He further says that a qualified socialism loses track of true socialism. He, therefore, prefers an unqualified nomenclature like "republic of India".¹⁶

The new additions to the Constitution have been commented upon by the author. For example, in regard to fundamental duties of the citizens, he says that they are less significant than the directive principles of pre-twenty-fifth amendment era and cannot be enforced by laws. He cites the ancient Indian polity, based on the compendious concept of *Dharma*, which visualised fundamental duties of everybody—of kings, ministers, officers, judges, citizens, and points out that the new part is silent about these dignitaries.¹⁷ As regards administrative tribunals the author laments that there is no separate cadre of judges to preside over these tribunals "with the result that many a time the miscarriage of justice results since [government officials manning them] are under the pulls and pressures of the government department to which they belong (this is apart from the political pressure...). The whole matter, therefore,...needs a thorough examination."¹⁸

Obviously the work under review is a valuable concise ready referencer on constitutional amendments, for which the author deserves admiration. He rightly says: "The primary purpose of the work is to inform the reader of our amendment-making process and power; in its topic-wise treatment of amendments, it helps the reader to locate the amendment on any area that he wants to know; and the text of amendments and objects and reasons behind them, helps him to know the exact text and the objective of the amendment."¹⁹

13. See *supra* note 1 at 34-44.

14. See *id.* at 46-52, 55-60.

15. *Id.* at 41.

16. *Id.* at 86-87.

17. *Id.* at 45-46.

18. *Id.* at 81.

19. *Id.*, preface.

However, there are some errors both of verbal nature²⁰ and of presentation²¹. These could have been avoided by a more careful editing.

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20. Two examples of spelling mistakes are "reoccur" at page 41 (correct is recur) and at the same page "Shivekant" (correct is Shivakant). Taking two examples of captions at pages 66 and 67, they are in italics whereas they should have been in antique.

21. *E.g.*, "concurrence of half of the States" at page 11 could have been presented as "the concurrence of not less than one-half of the state legislatures". Also, "the present government" at page 22 should have been "the Janata Government."

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