

BUSINESS LAW IN INDIA (1979). By Surajit Sengupta. Oxford University Press, Faraday House, Calcutta-700 013. Pp. ix+872. Rs 47.50.

WE ARE all concerned with some aspect of law or the other everyday. In business, involvement with the law is enormous. And this involvement becomes important, for instance, when sites are bought and leased, machinery installed and staff employed ; when questions of observance of safety standards, quality of goods produced, trade marks and patent. and violation of contractual and other civil obligations arise. Apart from commercial legislation, industrial, taxation and consumer protection legislation is equally relevant. It is, however, simply not possible to include everything in one single volume, particularly if a book is to be priced reasonably.

In the present collection,¹ the author has put together some main enactments affecting business law in India. Among the statutes discussed in detail are the Indian Contract Act 1872, Indian Sale of Goods Act 1932, Negotiable Instruments Act 1881, Carriers Act 1865, Indian Railways Act 1890, Carriage of Goods by Sea Act 1925, Bills of Lading Act 1856, Carriage by Air Act 1972, Life Insurance Corporation Act 1956, Marine Insurance Act 1963, Arbitration Act 1940, Presidency Towns Insolvency Act 1909, Provincial Insolvency Act 1920, Indian Companies Act 1956, Factories Act 1948, Industrial Disputes Act 1947, Employees' State Insurance Act 1948, Workmen's Compensation Act 1923, Trade Unions Act 1926, Payment of Wages Act 1936, Minimum Wages Act 1948, Industrial Employment (Standing Orders) Act 1946, Industrial Statistics Act 1942, Apprentices Act 1961, Monopolies and Restrictive Trade Practices Act 1969 and Foreign Exchange Regulations Act 1973. Amendments to these Acts and references to repealed statutes have also been made. Besides, relevant international conventions have been examined.

The author has given indexes of topics and cases, but surprisingly a table of statutes is missing. Although full citation of cases digested in the book appears in the index, the text only contains the names of the cases and the years of their decisions. Since this book is primarily designed for commerce and not law students, this method seems quite satisfactory.

There are three parts of the book. In part A, besides the introduction, several enactments dealing with commercial law have been discussed. Part B is devoted to the study of important labour legislation. Some of the economic laws have been discussed in part C. In the first part there are nine sections. Each section is sub-divided into chapters. The section on

1. Surajit Sengupta, *Business Law in India* (1979).

the law of contract contains thirteen chapters, sale of goods six, partnership five, negotiable instrument six, carriage three, insurance three, arbitration two, insolvency three and companies twelve.

The introduction contains a brief discussion on definition of law, origins of law and scope of business. Six sources of law, namely, custom and usage, Roman law, English common law, Acts of British Parliament, Acts of Indian Parliament and judicial decisions have been examined. The author does not, however, mention the Constitution of India which lays down the supreme law of the land.² Further, Roman law has been given less importance.

The topicwise arrangement of the subject matter in this part is logical. Law of contract, which forms a necessary background to the understanding of other subjects, has been examined first. In this, as in other sections, the author, in main, attempts to explain the statutory provisions with the help of Indian and foreign (mainly English) cases and sample illustrations. It is important that English cases be referred to explain the provisions of the Indian Contract Act. By and large, the Act had codified the then established English common law principles many of which have been judicially considered and reconsidered in England after the passing of the Indian Act. No doubt, the author has neglected some areas, but he must be complimented for presenting this vast subject with clarity within a space of 115 pages. Hopefully, the book will provide the necessary grounding needed by a student of business law.

Some of the case summaries are not, however, appropriately given. Referring to the leading case *Balfour v. Balfour*,³ the author says: "In this case the court stated that an intention to create legal relationship may be implied from the subject-matter of the agreement. When the parties have no such intention it may be implied from their conduct, particularly social and family relations." The agreement in this case was made between husband and wife, and the important rule of law laid down by the court was that agreements such as those between spouses and near relatives are outside the realm of contracts because they are not intended to be legally binding. Again the discussion of *Lampleigh v. Brathwait*⁴ is misleading. The author states that in this case "B was sentenced to death. He requested L to obtain the King's pardon for him. When the pardon was obtained B promised a reward. Held, no promise to remunerate voluntary services can be made recoverable." At another place the author again says that it was made clear in the case that "no voluntary service done by a person can later be adopted as consideration..."⁵

2. See art. 372. See also *Builders Supply Corporation v. Union of India*, A.I.R. 1965 S.C. 1061.

3. [1919] 2 K.B. 571 in *supra* note 1 at 7.

4. (1615) Hob. 105 in *supra* note 1 at 25.

5. *Supra* note 1 at 29.

It may be pointed out that in this case the court decided in favour of the plaintiff, holding that the services rendered by him were not a mere voluntary courtesy but were undertaken on a request by the defendant.

Certain important and relatively recent developments in the area of contract, considerably relevant to all branches of business law, have not been discussed, for example, the standard form contracts and the use of exemption clauses. Standard form contracts are to be found in every walk of life. They are imposed by the stronger party on the weaker and the latter has no choice or freedom of contract. Organizations supplying goods or services use such a device. One can see examples of this on air, railway and bus tickets, dry cleaners's receipts, and receipts of supply of electricity and gas. Nobody can be compelled to travel or to get clothes dry cleaned or to have a gas or electricity connection. However, if one wants these facilities he must contract on the terms and conditions far more favourable to the supplier of goods and services than to him. One significant feature of such contracts is the presence of an "exemption clause" which exempts or limits the organization's liability in virtually any circumstances.⁶ Even the important protection offered by legislature⁷ has been rendered otiose by the use of this ingenious device. Several attempts have been made by courts throughout the common law world and, to some extent, by legislatures to alleviate the sufferings of the consumer. The doctrine of fundamental breach is an illustration as to how the courts are trying to protect the consumer. According to this doctrine, "however extensive the exception clause may be, it has no application if there has been a breach of a fundamental term."⁸

The section on insurance, particularly the part dealing with general principles of insurance, gives sufficient background information on the subject. However, it would have been better if the author had devoted a few pages to the history of insurance and on the composition, powers and functions of the general insurance corporation.

In the section on the Indian Companies Act, the author has done well to discuss in its introductory part the doctrine of corporate veil which is the most fundamental legal feature of the modern registered companies. Various provisions of the Act have been lucidly explained by taking into account its subsequent amendments made in 1960, 1965, 1966 and 1969.

6. See *Indian Airlines v. Madhuri Chowdhuri*, A.I.R. 1965 Cal. 252.

7. See, e.g., s. 14 of the Indian Sale of Goods Act 1930.

8. *Karsales (Harrow) Ltd. v. Wallis*, [1956] 2 All. E.R. 866 at 871. See also *Suisse Atlantique Societe d'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale*, [1967] A.C. 361; *Harbutt's "Plasticine" Ltd. v. Wayne Tank and Pump Co. Ltd.*, [1970] 1 Q.B. 447. Recently this doctrine has been rejected by the House of Lords in *Photo Productions Ltd v. Securicor Transport Ltd.*, [1980] 1 All. E.R. 556. See also ss. 2, 3 and 4 of the Unfair Contract Terms Act 1977 of the UK which render exclusion clauses invalid under certain situations.

In other sections of this part the author has presented the law on sale of goods, partnership, negotiable instruments, carriage, arbitration and insolvency within a reasonable compass, examining statutory provisions and judicial decisions.

In part B of the book, the author has dealt with ten industrial laws. The Factories Act 1948 has been discussed first. Chapter one of this section contains a brief introduction—historical background and application of the Act—and several definitions. Statutory provisions concerning health, safety, welfare, working hours, employment, holidays and annual leave of workers have been discussed in chapters two to seven. The concluding chapter deals with some special provisions like powers of state governments to apply or exempt the provisions of the Act in case of certain premises and direct enquiry into cases of accident or disease. The author has indicated the areas where the Act is silent and where other statutory provisions may be looked into. For example, he states that “[t]he Act does not give an exhaustive list of holidays and leave available to workers in a factory. Besides the provisions of this Act, holidays and days of leave may be made available to workers under any other legislation or under any contract with the employer.”⁹

In the next section of this part, the author has dealt with the Industrial Disputes Act 1947. This is the most important piece of legislation in the area of labour law, and since its coming into force, there have been several important amendments and judicial decisions. Yet the author begins the analysis of the Act straightway with definitions and then goes on to deal with other aspects of the Act. He does not give any introduction or historical background of the Act or a list of major amendments in the beginning as he has done while dealing with some other Acts.¹⁰ Nor does the author highlight amendments which have rendered many important judicial decisions ineffective and out of date.

Section III of this part deals with the Employees’ State Insurance Act 1948. This is a piece of social welfare legislation offering various kinds of benefits to factory and other workers. It is good that the author has included this legislation in his book.

Sections IV, V, VI and VII analyze the provisions of the Workmen’s Compensation Act 1923, Trade Unions Act 1926, Payment of Wages Act 1936 and Minimum Wages Act 1948.

Section VIII is a commentary on the Industrial Employment (Standing Orders) Act 1946. Without a discussion of this Act, the labour law part would have been incomplete. Statutory definitions and certification of standing orders are dealt with in this section. The reviewer, however, feels that the author should have given some model standing orders to enable students to better appreciate the provisions of the Act.

9. *Supra* note 1 at 562.

10. See, e.g., the section on the Indian Companies Act 1956 in *supra* note 1 at 380.

In the next section, the author explains the provisions of the Industrial Statistics Act 1942, which was passed to facilitate the collection of statistics relating to industries. The Act enables the statistics authority to require any person to provide statistics among others on any of the following matters, namely, price of commodities, living conditions, wages, hours of work and industrial and labour disputes. This Act became necessary as it was felt that mere goodwill and voluntary supply of information by industries and individuals were not enough.

The last enactment considered in this part is the Apprentices Act 1961. In dealing with this Act, the author hardly does anything more than reproduce some of its provisions. It would have been better had he explained the object of the Act.

Part C deals only with two enactments, namely, the Monopolies and Restrictive Trade Practices Act 1969, Foreign Exchange Regulations Act 1973, and regulations made under the latter. The Monopolies and Restrictive Trade Practices Act was passed, as the author states, "with a view to regulating anything in the nature of concentration of economic power...[and] monopolistic trade practices that may be prejudicial to public interest." It may be mentioned that in India till the passing of this Act, trade agreements and practices were to a greater extent subject to the provisions of the Contract Act and common law rules of torts. However, in the United States since 1890¹¹ and the United Kingdom since 1948¹² several statutory measures have been adopted to regulate such practices.

The Indian Act, while making provision for its peculiar socio-economic needs, has embodied some of the legislative devices and judicial precedents of these countries to foster freedom of competition. Since the Indian law of monopolies and restrictive trade practices is still in its infancy, judicial decisions of the United States and the United Kingdom could prove quite useful. The author has not, however, taken any significant assistance from foreign precedents in this area.

The section has seven chapters. The first chapter contains introductory materials, including various statutory definitions. Chapter two deals with composition, powers and procedure of the Monopolies and Restrictive Trade Practices Commission. Concentration of economic power, monopolistic trade practices, and registration of agreements relating to restrictive trade practices are discussed in chapters three, four, five and six respectively. Chapter seven examines some miscellaneous, though important, matters, such as powers of the authorities under the Act, the powers of the Central Government and the commission to make rules and regulations

11. See, *e.g.*, the Sherman Act 1890, Clayton Act 1914, Federal Trade Commission Act 1914, Robinson-Patman Act 1936, Anti-Merger Act 1950, McGuire Act 1952 and Antitrust Improvements Act 1976.

12. See, *e.g.*, the Monopolies and Restrictive Trade Practices (Inquiry and Control) Act 1948, Restrictive Trade Practices Act 1956, Resale Prices Act 1964, Fair Trading Act 1973, European Communities Act 1972 and Restrictive Trade Practices Act 1976.

and offences and penalties for the contravention of the provisions of the Act.

The Foreign Exchange Regulations Act 1973 and regulations made thereunder are discussed in the second and last section of this part. The author gives a brief historical background of the Act and appositely states that "the main purpose of exchange control is to restrict the demand for foreign exchange so that it remains within the limit of available supplies."¹³ Knowledge of this Act is essential for persons who deal in export or import of goods or foreign currency. The author has rightly included this legislation in his book since many multinationals conduct business and commercial activities in India and, on the other hand, Indian businessmen and professionals work outside.

Over the years a variety of commercial laws have made their way. Many aspects of these laws are also in a process of change to cater to the new socio-economic order envisaged by the leaders of the country. It is indeed a formidable challenge to keep abreast of the legislative developments and judicial response to various aspects of this branch of law. The book under review covers approximately thirty areas of the Indian commercial law. The reviewer, however, considers that the value of the book will be considerably enhanced if the author includes a section on introduction to law and legal system of India taking into account the relevant provisions of the Constitution. Of course, the author has dealt with definition and origins of law in the introductory section of the commercial law part, and with law and society and the rule of law in the appendix. It must, however, be pointed out that since the book is designed for business law students, they must know the basic constitutional framework under which business laws operate in the country. The other area which has been completely ignored is that of the law of torts and crime. The law of torts covers a much wider field of civil obligation than the law of contract. During the last fifty years, particularly since the decision in *Donoghue v. Stevenson*,¹⁴ this branch of law has expanded enormously, and is too important to be ignored by any business. Many civil cases coming before the courts today seek relief under this branch of civil law. Criminal law should also have been briefly discussed to enable students to have some idea of the three different sources of liability.

The reviewer also feels that many sections of the work have not been adequately introduced,¹⁵ and that it would be better to preface those sections with proper background informations to put the ensuing discussions into a right perspective. Further, a work such as this should contain a table of statutes with page references of the sections. The advantage of such a table is considerable. It will provide a handy reference

13. *Supra* note 1 at 795.

14. [1932] A.C. 562.

15. See, e.g., the sections on the Trade Unions Act 1926, Industrial Employment (Standing Orders) Act 1946 and Apprentices Act 1961.

for professional advisers and make it a first rate guide for students and others who need a quick answer to a problem.

At times, some of the statements made in the book are difficult to appreciate. For example, while dealing with the doctrine of consideration, the author states: "In English law, distinction is made between valuable consideration and good consideration. Good consideration is anything that is either emotional or affectionate, and it is never enforceable."¹⁶ Perhaps, the author is emphasizing that moral obligation cannot constitute consideration.¹⁷

Spelling mistakes and printing errors are also found here and there.¹⁸ In particular, there are quite a few spelling mistakes in the names of Acts and cases.¹⁹ Further, when cases have been referred in the text, generally the year of their decision has been mentioned, but several of them have also been mentioned without it.²⁰ It is submitted that the author should have followed a uniform style.

These defects do not, however, detract from the basic quality of Sengupta's informative book. It makes an easy reading, and is a good addition to the existing literature on the subject. It is certainly a useful

16. *Supra* note 1 at 23.

17. The earlier theory that moral obligation could amount to consideration was rejected in 1840 by Lord Denman C.J. in *Eastwood v. Kenyon*, (1840) 11 A & E. 438.

18. *E.g.*, *supra* note 1 at 3, the Bill of Lading Act 1956 should read as the Bills of Lading Act 1856; at 13, *Fitch v. Snedakar* should read as *Fitel v. Snedakar*: at 270, the Bills of Lading Act 1856 should read as the Bills of Lading Act 1856; at 143 "break" should be read as "breach"; at 319, "Uberrima fides" should read as "Uberrimae fidei"; at 348, "status" should read as "statutes"; at 523 from "case" should read as "cases".

19. The reviewer has not been able to check all the spellings from law reports. However, spelling mistakes are obvious from the fact that the spellings in the text are different from those in the index of cases. The following chart of some selected cases will illustrate the comment :

Spelling in the text	Spelling in the index of cases
<i>Rajlukhy v. Bhootnath</i> (at 27)	<i>Rajluklay v. Bhootnath</i> (at 868)
<i>Bholanath v. Mul Chand</i> (at 65)	<i>Bholanath v. Mulchand</i> (at 858)
<i>Periamianna Marakkayar v. Banians & Co.</i> (at 104)	<i>Periamianna Marakhonyar v. Bamiars & Co.</i> (at 867)
<i>Shanker Dass v. Bhanoo Dial</i> (at 152)	<i>Shanker Dass v. Banoo Dial</i> (at 869)
<i>Mollow, March & Co. v. Court of Wards</i> (at 179)	<i>Mollwo March & Co. v. Court of Wards</i> (at 866)
<i>Moore v. Smit</i> (at 190)	<i>Moore v. Smith</i> (at 866)
<i>Parsotam v. Bankey Lal</i> (at 230)	<i>Parsottam v. Bankey Lal</i> (at 867)
<i>Heilbert v. Neville</i> (at 242)	<i>Heilbut v. Neville</i> (at 862)
<i>Munster v. Cammal Co.</i> (at 468)	<i>Munster v. Cammell</i> (at 866)
<i>Bharat Khand Textile Manufacturing Co. Ltd v. Textile Labour Association</i> (at 593)	<i>Bharat Khand Textile Manufacturing Co. Ltd. v. T.L. Association</i> (at 858)
<i>Madhya Pradesh Mineral Industry Association Nagpur v. The Regional Labour Commissioner</i> (at 711)	<i>M.P. Mineral Industry Association v. R.C. Commissioner</i> (at 865)

20. See *supra* note 1 at 20, 23, 50 and 280.

guide for lawyers, businessmen, professional advisers, insurance agents and, of course, for business law students.

It is hoped that some of the suggestions made will be acted upon in the next edition.

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