

# **BOOK REVIEWS**

**INDIAN PENAL CODE** vols. I & II (1982). By Jaspal Singh. Pioneer Publications, 12 U.B. Bungalow Road, Delhi-110 007. Pp. xxiv + 946 and xlii + 1917. Price Rs. 220.

**THE INDIAN Penal Code (IPC)** is famous in the common law countries for many firsts :

(1) It was drafted in a clear and non-technical language against the tradition of the English drafting which used to be highly technical and involved.

(2) It was meant to be a model of clarity.

(3) It was to be comprehensive embodying the whole of substantive criminal law.

(4) It was to be a reformed version of the English criminal law as suited to the genius of the Indian people.

(5) Sir Rupert Cross has said that :

The Indian Penal Code, drafted by Lord Macaulay between 1835 and 1837, is now in force in most of the Asiatic countries that are or were, members of the Commonwealth, as well as in parts of Africa.<sup>1</sup>

(6) Sir James Stephen was lavish in his praise of the Indian Penal Code as a whole. He said :

The Indian Penal Code is to the English criminal law what a manufactured article ready for use is to the materials out of which it is made.... It is to the French Penal Code and, I may add, to the North German Code of 1871, what a finished picture is to a sketch. It is far simpler and much better expressed than Livingston's Code for Louisiana; and its practical success has been complete.<sup>2</sup>

In assessing the merit of the commentary of the Indian Penal Code, the consideration should be whether the clarity of the Code is continued by the commentary or whether the commentary is not as clear as the Code itself. Judging by this test, the commentary by Jaspal Singh will probably stand out as the clearest one in existence. How has he achieved

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1. Sir Rupert Cross, "The Making of English Criminal Law", *Cri. L.R.* 519 (1978).

2. Cited by G.M. Trevelyan, *The Life and Letters of Lord Macaulay* 418.

this object? The author has been penetrating as well as selective in the explanation of the sections and citation of the case law. He has explained the text of the Code by selecting the judicial decisions and quoting from the heart of them. On each topic he gives pride of place to the Supreme Court decisions as they are the supreme law of the land. In doing so, he has displayed great skill by quoting just those passages which are fundamental and ought to be reproduced.

Take for instance, the recent controversy as to the constitutionality of the capital punishment. An ordinary reader would be puzzled as to where to find it. Sections 299 and 302 do not give any material out of which it could be argued that the capital punishment is unconstitutional. An ordinary commentator would have been at a loss as to where to deal with it. Jaspal Singh has, however, correctly placed it under section 302. While doing so he has cited just the relevant statute law and the relevant case law, namely, section 367 (5) of the old Criminal Procedure Code 1898, and section 354 (3) of the new Criminal Procedure Code 1973, and paragraph 26.10 of the *41st Report of the Law Commission*. Out of the decisions, he quotes from Justice V.R. Krishna Iyer's judgment in *Rajendra Prasad v. State of Uttar Pradesh*<sup>3</sup> just the following passage :<sup>4</sup>

It is constitutionally permissible to swing a criminal out of corporeal existence *only if* the security of State and society, public order and the interests of the general public compel that course as provided in Art. 19 (2) to 19 (6).

He has put the words "only if" in italics and immediately followed this quotation by another most appropriate one from *Bachan Singh v. State of Punjab*,<sup>5</sup> where Sarkaria J. speaking for the Constitution Bench observed : "Our objection is only to the word 'only'." By juxtaposing the two crucial passages from these two decisions, the learned author has immediately put the intelligent reader in possession of the crux of the existing law on the subject in the words of the Supreme Court itself. This has made the commentary clear, precise, interesting and, at the same time, authoritative. For the purpose of a criminal lawyer, this book is a very valuable companion for two reasons : Firstly because of its precision as it comprises the whole law within two volumes and secondly because of its unflinching knack of picking-out the *rationes decidendi* of judicial decisions with appropriate prominence given to the decisions of the Supreme Court. In this respect it has an edge over most other books on the subject.

Now that the learned author has got a firm foundation of this edition of the book which is very good as far as it goes, he will be in a position to

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3. A.I.R. 1979 S.C. 916.

4. *Id.* at 931.

5. A.I.R. 1980 S.C. 898.

add to its dimensions in the future editions. Firstly, he may attempt to give topicality to its contents by dealing with contemporary discussions and controversies. For instance, the controversy about the decision of the Supreme Court in the *Mathura* case<sup>6</sup> has thrown up many facets of the question of proof of rape. Under section 375 IPC could be brought in a discussion of sections 44 and 90 to open out a new vision as to what should be regarded as a true consent of the female who has been subjected to sexual intercourse and whether the consent alleged to have been given by her was valid or not. A reference to the Bills pending in Parliament for the amendment of the law may also be made to keep the information given to the reader absolutely up-to-date.

Secondly, criminal law is particularly a good subject for theoretical discussion. This could be introduced with great profit to the more serious students of law. Writings by Radzinowicz, Turner, Glanville Williams and others and the writings in the publications such as the criminological studies published by Cambridge University and the annual issues of the *Criminal Law Review* published by Sweet & Maxwell from London would enrich the commentary and will give it a juristic content. The learned author is comparatively young and should aspire for further research to make the book really an outstanding contribution by an Indian to the literature on criminal law which should stand comparison with works of others in the field.

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6. *Tukaram v. State of Maharashtra*, A.I.R. 1979 S.C. 185.

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