

LEGAL DEVELOPMENT AND COMPARATIVE LAW (1982). By Zoltan Peteri and Vanda Lamm (eds.). Akademiai Kiado, Publishing House of the Hungarian Academy of Sciences, P.O.B. 24, H-1363, Budapest, Hungary Pp. 365. Price \$ 34.

THE BOOK under review¹ contains selected essays for the Eleventh International Congress of Comparative Law which was held at Caracas from 29 August to 5 September 1982. This is the sixth work of its kind by the Hungarian jurists who had been regularly bringing out the same since the sixth International Congress on Comparative Law held in Hamburg in 1962. As the foreword² acknowledges during the years since the Hamburg Conference of 1962, Hungarian jurists have become convinced of the necessity of the comparative approach to the understanding of legal and administrative developments both at home and abroad. The aim of the work, as stated in the foreword, is to create interest in current socialist, legal and administrative developments and to give some idea of the state of comparative legal studies in Hungary.

In all there are fourteen essays—seven written in French language and seven in English. The present review, for obvious reasons, is confined only to the seven essays written in English. The essays included in the book under review were prepared with a view to present before the International Congress national reports on the area covered by each of the essay. The essays reflect the Hungarian scholar's growing recognition of the importance of the comparative approach to legal studies.

The themes covered by the essays have universal appeal. They are topical and evoke interest of lawyers all over the world. Some of the essays are of immediate relevance to us in India. The one on tax avoidance and tax evasion³ though narrates only the Hungarian experience, has a number of useful suggestions which merit consideration by our tax-planners. The essay on "Logic of law and judicial activity : a gap between- ideals, reality and future perspectives"⁴ should interest all those who are engaged in the study of the Indian system of administration of justice. The essay on international labour relations is very useful to those who are concerned with maintaining amicable industrial relations in a socialist society.⁵ Lawyers practising in civil courts would enjoy reading the essay "The consequence of the failure to appear in court, the avoidance and the removal of the consequences in the Hungarian civil procedure."⁶ Another piece, "The role

1. Zoltan Peteri and Vanda Lamm (eds.), *Legal Development and Comparative Law* (1982).

2. *Id.* at 7.

3. *Id.* at 305.

4. *Id.* at 45.

5. *Id.* at 133.

6. *Id.* at 157.

and functions of legal professions in Hungary”⁷ should interest one and all in the legal profession. Similarly the essay on “State intervention in agriculture”⁸ should interest students of agrarian reform everywhere.

“Logic of law and judicial activity” has an interesting hypothesis to establish, namely, to identify the factors responsible for the crisis of identity because of a growing gap between ideals and actual reality in socialist systems of law. It must be recognized at the outset that the socialist revolution, though establishing a legal superstructure, the socialist law has inherited definite ideals, methods, techniques, skills and culture and also highly developed institutional and conceptual framework of organizing society through the means of law.

The author of this essay, Csaba Varga, begins by tracing the historical background to the development of modern states in Europe as well as the development of modern formal law. The transformation of modern formal law through the feudal and with the rise of middle classes through the bourgeois and then to the first phase of the social revolution in Russia and Hungary has been ably explained. The western and continental influence on Marx, Engels, and Lenin led to the acceptance by the socialist law of the twin concepts of legality and codification in the face of a threat by what may be called a “free law” movement. The threat of repudiation of any formal boundaries in legal processes was met by revolutionary legislation. The revolutionary legislation in turn brought about the mutual substitution of law and politics and even their merger. This was a temporary phase. Soon the codification of law was attempted and suitable machinery devised to administer the law so codified. The machinery devised to administer the law was within the conceptual framework inherited from the bourgeois revolution and hence the sharp dividing line drawn between law-making and law application. The courts were expected only to apply and not make the law.

The author makes out a strong case for the judiciary playing a more socially activist role where social forces so demand. He calls the ideals expounded by Montesquieu as utopian and not in accord with reality in the socialist world. Thus, having established that the ideals and reality are in confrontation, he attempts a statement of the future perspectives. In his view, the way out of the dilemma stemming from the conflict of old ideals and changed needs is to bring about a happy union by the judiciary of formal and the informal in law. Where the formal is insufficient without questioning its adequacy, ways should be devised to supplement it. Legislation should not be enacted for the sake of appearances which is observed more in its breach or is never seriously enforced. Statutes of pure solemnity are other instances in point. There is no point in merely being declarative and declaring pious intentions through legislation lest

7. *Id.* at 187.

8. *Id.* at 213.

legislation becomes substitute for action. The message is-enact only that law which can be enforced or implemented. Pretensions to reform are of no avail when we are not serious about real social reform.

The essay on "*Preticum doloris*"⁹ or moral damages in cases of tort liability examines the working of section 354 of the Hungarian Civil Code inserted in the code in 1977 and suggests extension of the principle to a number of new areas where pecuniary damages are not sufficient to recompense the loss suffered by an aggrieved party. The author, Gyula Eorsi, concludes by saying that moral damages awarded under section 354 is not the same thing as *preticum doloris* under the pre-amendment law and would wish the courts to expand the horizons of the provisions in the code accordingly.

Laszlo Nagy raises a number of interesting questions with regard to applicability of Hungarian labour law or foreign labour law in labour disputes with international ramifications. He refers to difficulties which are likely to arise where the foreign labour law follows a different pattern of dispute settlement or a different system of collective bargaining with plurality of trade unions.

Jozsef Farkas in his article on consequences of failure to appear in court explains the provisions of the Hungarian Code of Civil Procedure and describes various legal ways of avoiding the consequences and remedies available to the parties. While it is obligatory for the parties to appear before the trial court in response to a writ of summons issued in a law suit of civil nature in the court of first instance, there are legal ways of dispensing with the appearance without suffering any loss.

Laszlo Nevai while discussing the role and functions of legal professions acknowledges the contribution of legal profession in the national life. In legal profession are included a variety of people with legal education who are engaged in various kinds of jobs in the legal field, such as a professional lawyer, notary, judge, scholar, law teacher and jurist. He points out that in the peculiar socio-political set up of Hungary, jurists in particular and lawyers in general have very significant role to perform in the economic, political and legal administration of the country.

In the essay on state intervention in agriculture¹⁰ or rather state guidance in agriculture, the authors, Ivan Foldes and Andras Benko, explain the planning processes in formulating the national policy on agriculture and the extent of state control on the various operations. The policy differs according to the level of agricultural holdings and size of operations. The state co-ordinates the agricultural policy with other related sectors such as the industrial policy and the employment policy. The authors describe the structure created to administer the policy, the system of financial assistance and subsidy and international co-operation in the promotion of agricultural development. Of special significance to us in India are the schemes of

9. *Id.* at 109.

social insurance of agricultural workers, training of these workers, which deserve serious consideration for emulation in a form suited to our special needs.

Tax avoidance and tax evasion are problems faced both by the socialist as well as capitalist society. The author, Tibor Nagy, treats the subject under three broad headings, namely, tax on individuals, tax on public corporations, and tax on foreign companies. Collection of tax from public corporations under the socialist system poses no problem. So also from foreign companies which is levied and collected under international treaties and covenants. In the domestic sphere, cases of evasion by individuals are dealt with severely under the penal law of the country. It is in this area that we may take a lesson or two after a serious study of their system.

On the whole, the book is extremely useful to Indian lawyers who are interested in a comparative study of any one of the seven areas discussed in the book.

*M.L. Upadhyaya**

*Ph. D. (London), Professor and Head Law Department, Dean of the Law Faculty, and Principal, University College of Law, Calcutta University, Calcutta.