

LAW OF EDUCATION AND EDUCATIONAL INSTITUTIONS IN INDIA (vols. 1 and 2, 1982; vol. 3, 1983). By R.D. Agarwal. Law Book Company, Sardar Patel Marg, Post Box No. 4, Allahabad-211001. Pp. 2531. Price Rs. 360.

THE LAW of education is one of the neo-emerging branches of law in India. In the pre-Independence period it did not attract much attention of the lawyers for the simple reason that the court considered temples of learning an untouchable area of judicial review. The lawyers also did not find it a lucrative branch of law. In the post-Independence era the judiciary, and in particular, the High Courts made the start and gradually a sizeable number of cases came before the judiciary. In recent times one finds a flood of educational litigation. This is the result of the explosion in the student and teacher population, widening role of education, fall in the standard of education, commercial motives in education, etc. The last two decades have witnessed extensive enactments by Parliament and more particularly by state legislatures. The work under review¹ fills a long standing gap in the Indian literature on law of education.²

In view of the profuse case law and enormous legislative enactments on the subject, the author has arranged his materials in three volumes, running into 2531 pages.

In the first volume, the author discusses legal education³ without mentioning any case law in this field. There are cases decided both by the Supreme Court and the High Courts pertaining to legal education which could have been of great interest to the law schools. The mass media as a means of education⁴ is mentioned in the introductory chapter but the approaches of the state and the judicial response thereto are not included. The author advocates the introduction of sex education at the middle school level.⁵ It is submitted that the students at the middle school age are not mature enough to understand such instructions. However, the suggestion that moral education should be included in the curriculum^{6a} must be given a serious consideration.

1. R.D. Agarwal, *Law of Education and Educational Institutions in India* (vols. 1 and 2, 1982; vol. 3, 1983).

2. Here mention may be made of the commendable job of the Indian Law Institute in undertaking a project of the Ministry of Education, Government of India on *Case Law in Education 1950-1965* in 1966 and again *Case Law in Education, 1966 to 1982* in 1982. The Institute is also devoting a chapter on Law of Education in the *Annual Survey of Indian Law* from 1981 onwards. The reviewer is the contributor of the 1982 project and the *Annual Survey of Indian Law* (1981 and 1982).

3. *Supra* note 1 at 4.

4. *Id.* at 6.

5. *Ibid.*

5a. *Id.* at 7.

Closure of educational institutions has become an infectious disease. Student unrest is one of the main causes for the disturbances in the temples of learning resulting in their *sine die* closure. The author discusses this point in detail with reasons and procedure for closing the institutions. He says that the problem of closure of the university could be solved by eminent educationists and the government.⁶ According to the reviewer the problem is not so simple. The politiking in the educational institutions is the root cause of all the problems. Unless some code of conduct is evolved for the politicians, we will not be able to do much. The need of the day is that all the consumers of education must sit together and draw a line of action to restore a suitable environment in the educational institutions.

The chapter on grants-in-aid deals with a detailed treatment on the subject which has not been handled so carefully by the academics in law. One finds in this topic, techniques of governmental control in the educational institution through the grants-in-aid system. The author, while making the subject comprehensive, takes in some irrelevant case law also. The two decisions of the *Anglo-Afghan Agencies*⁷ and the *Century Spg. and Mfg. Co.*^{7a} are not decisions relating to education. In the subsequent pages also one finds padding of materials when the author deals with the *Barium Chemicals*⁸ and *Rohtas Industries*.^{8a}

There are a number of cases decided by the Supreme Court and various High Courts pertaining to the minority educational institutions. The judgements of the Supreme Court in many cases have minority, concurring and separate opinions. In some cases the individual judges have written almost a thesis-like opinion on the subject. But such a fruitful area of study is handled by the author casually. The synopsis shows that the author concentrates on the constitutional law problems alone. A mention of atleast the American cases would have increased the value of the work. In spite of the above shortcomings, one finds all the important cases discussed at one place.

The sixth chapter deals with all the important educational authorities and officers. The author deals with the various laws on the subject. But while trying to expose the readers to the wide horizons, he misses to give them the common practice followed by the educational institutions. A student of comparative law of education may find at one place mention of some of the important laws passed by Parliament and various state legislatures and may be tempted to compile an encyclopaedia of the university laws—a long standing need of the educational lawyers.

6. *Id.* at 279.

7. *Union of India v. Anglo Afghan Agencies*, A.I.R. 1968 S.C. 718 ; see *id.* at 451.
7a *Century Spinning and Manufacturing Co. Ltd v. Vikasnagar Municipal Council*, A.I.R. 1971 S.C. 1021; *ibid.*

8. *Barium Chemicals v. Company Law Board*, A.I.R. 1969 S.C. 295; see *id.* at 459.
8a *Rohtas Industries, Ltd. v. S.D. Agarwal*, A.I.R. 1969 S.C. 707 ; *ibid.*

The last two chapters deal with two important topics of admission and reservation. These topics have the largest number of cases. The case law in these areas is mainly from the applicants seeking admission to either the medical college or the engineering college. These disciplines have limited number of seats and their students have bright openings. The author while dealing with the admission problem also touches upon the problem of entry of the anti-social elements. He concludes that the educational institution has a right to refuse admission to undesirable students. Recently the right to education has emerged out of article 21 of the Constitution as a fundamental right.⁹ But the judiciary in *Maneka Gandhi*¹⁰ wavelength must see that the educational institutions do not become a refuge for the anti-social elements. The muscleman tactics for getting admission has to be handled firmly so as to avoid the pollutants eating away the academic atmosphere.

The meritocracy in admission to the educational institution is gradually withering away. The reservation policies have almost closed doors for the meritorious students. The current, and cross-currents of caste, local students, students of the university staff, students suffered in agitations, the generations of the political sufferers and other countless preferential treatments, leave not much room for meritocracy. The question today is not what position a child has in his examination result but to which preferential class he belongs to. In the book under review the readers are exposed to the widening horizons of reservation politics. The author discusses the politics of reservation for the backward caste. He mentions the experience of Mysore.¹¹ He could have discussed at this place the politics of different states as well.

The author discusses the effect of reservation policy and comes out with a concrete suggestion that economic backwardness should be the only criterion for any preferences. He also maintains that merit and brilliance should also be permitted to thrive and flourish in the interest of national progress and prestige.¹² The position at present is that the elite and the impersonators of preferential classes are the main beneficiaries of the compensatory discrimination but to continue the constitutional mandate in their favour would be leading to destructive equality.

The author handles carefully the problems of the scheduled castes and the reservation policy in that regard. However, in his detailed synopsis he misses two points : first, the author has not dealt with the problem as to who can be considered to be a member of the scheduled caste. There have been cases of persons who could not get admission in the medical/

9. *Anand Vardhan Chandel v. University of Delhi*, A.I.R. 1978 Del. 308.

10. *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597.

11. *Supra* note 1 at 632.

12. *Id.* at 637.

engineering colleges in the open competition later on becoming members of the scheduled caste to get preferential treatment. In such cases the judiciary did not give any protection to such impersonators on the ground that it was not enough to simply become members of the scheduled caste for the instant benefit but they should have been accepted by the members of that caste to be their fellowmen.¹³ It may be noted that even though persons claiming to be members of the scheduled caste, having certificates from appropriate authorities to the effect that they belonged to the said caste, but the courts keeping in view the reality, did not allow, and rightly so, preferential treatment in such cases. Second, the problem as to how much relaxation should be made in their favour is another point which required a separate treatment. The number of seats and minimum marks requirement have not been uniformly followed by the medical colleges. The Supreme Court and the High Courts are divided on this point.¹⁴

Now, coming to the second volume one notices a major difference, as compared to the previous volume, in that the author mainly tries to give case law and the relevant statutory provisions. The detailed suggestions, comments and conclusions which had some place in the first volume are almost neglected in the second. In his treatment of the examination problems it seems that the author supports the stand that examination should be conducted with the help of the police authorities.¹⁵ If this view is accepted then every educational institution will become almost a police station! What is actually required is a drastic change in the system of examination and not deployment of police.

The topic of mass copying finds a place in the tenth chapter.¹⁶ Though there are a number of cases decided both by the Supreme Court and the various High Courts wherein the principles of natural justice have been applied by the courts, the author has failed to focus attention in this regard.

The author, while dealing with evaluation of examination result, makes an important suggestion with respect to the entrance examination to the medical and engineering colleges. He observes that as these courses are the most sought after ones "an evaluation procedure free from suspicion of bungling or manipulation is certainly something to be aimed at."¹⁷ This view

13. *J. Das v. State of Kerala*, A.I.R. 1981 Ker. 164. See also *The Principal, Guntur College v. Mohan Rao*, A.I.R. 1976 S.C. 1904.

14. See e.g., *Kumari Nivedita Jain v. State of Madhya Pradesh*, A.I.R. 1981 M.P. 129; *Amalendu v. State of Bihar*, A.I.R. 1980 Pat. 1. For the Supreme Court's view see *State of Madhya Pradesh v. Kumari Nivedita Jain*, A.I.R. 1981 S.C. 2045. See for a detailed discussion on this point, reviewer's articles "Nivedita Jain: A Case of Distributive Justice" (1983) *C.U.L.R.* 422; "State Interference in Medical Education Through Compensatory Discrimination: *Amalendu Kumar v. State*", A.I.R. 1981 *Jour.* 57.

15. *Supra* note 1 at 783.

16. *Id.* at 842.

17. *Id.* at 924.

must be accepted by the faculties of medicine and engineering. This may raise some administrative problems but it will restore confidence of the examinees and make the examiners more alert. The ragging problem is another point which required a detailed treatment by the author. He discusses in great detail the topics of selection and appointment to the educational institution and has included important case law in the area.

Coming to the third volume, it continues with the case law and some chapters are devoted to miscellaneous matters. This volume, like the other two, opens with a lengthy addenda running into about two hundred pages. The opening chapter deals with salary and other financial benefits of the educational staff. The work covers almost all the aspects connected with this matter. The author deals with case law and also takes great pains to give statutory provisions of different educational institutions. However, it may be observed that the author could have avoided repetition¹⁸ and excluded case law which has nothing to do with law of education.¹⁹

The author, while dealing with the withholding of salary, brings out a point for the consideration of the constitution lawyers whether withholding of salary of a teacher would attract the provision of article 23 which prohibits *begar*.²⁰

Compulsory retirement and termination have different consequences but it seems that the author has some doubt²¹ on this point. Leave and transfer are other topics which have been discussed at length. The promotion of educational staff has attracted a flood of litigations. The cases mentioned in the book give an impression that the states of Bihar and Uttar Pradesh had maximum number of such cases. In the present day of favouritism on the basis of caste, yes-man, my-man, etc., the author correctly points out that if we want efficient teachers then "merit and ability should be given top-most preference."²² In the opinion of the reviewer one of the causes for the downfall in the educational standards is the entry of those who fulfil qualifications other than those essential for a teacher.

The termination of services has the largest case law when compared to other matters relating to the educational staff. This topic is discussed in about two hundred pages. While dealing with the problem of termination or dismissal, the author is of the opinion that "[e]ducation is the nidus (*sic*)

18. See, e.g., equal pay for equal work discussed at 1632-33 again at 1641-50.

19. See, e.g., instead of dealing with education staff the book discusses at 1624—judicial officer, at 1633 supervisor in the engineering subordinate service; at 1648 tube well operators in public health department; at 1652 constable of Punjab police; at 1789 train clerk; at 1821 quality inspector.

20. *Supra* note 1 at 1660.

21. *Id.* at 1672-73.

22. *Id.* at 1780.

of industrialization and itself is industry."²³ The author further points out that "it is true that our social values assign a high place of honour to education, but it does not follow from this that education is not a service."²⁴ The author relies on *Rajappa*²⁵ and refuses to accept as correct²⁶ the dictum in *Ram Nath*.²⁷ It may be submitted that in the former case research activities were carried on by the water supply and sewerage board for commercial purposes and therefore, was not a case on law of education unlike the latter where the University of Delhi was itself a party. Further, the author does not take any consistent view in this regard. At one point he advocates the application of the industrial law concept of 'equal pay for equal work'²⁸ but the rule of 'last come first go' according to him must not operate in the present field.²⁹ The reviewer is of the opinion that trade unionism and norms of industrial law should not be brought into educational institutions because they will destroy our ancient heritage in the field of education of which we are still proud of.

The chapter on writ jurisdiction is an important addition in the book on law of education. Unless one knows the remedies available, the discussion of substantive law alone remains incomplete. The author touches upon some aspects of social justice,³⁰ processual justice³¹ and speedy justice.³² One also finds a chapter on the law of taxation relating to educational institutions which is a topic hardly discussed separately in any book on the law of education. The author deserves praise for this. Another welcome addition is the chapter on offences and penalties; however, the author could have avoided materials from law of crimes. Chapter on natural justice could have very well been omitted as it has been discussed in other chapters in great detail. Moreover, at places one feels one is reading a book on general principles of administrative law!³³

The book contains not only case law but also legislative enactments, and discussion of related branches of law. Thus, it is in fact a book on cases and materials on law of education. The treatment of the subject is exhaustive and anybody looking for material on the subject will find it in the book. The table of cases and the subject index are added attractions. However, the exorbitant price of the book may leave the readers to think

23. *Id.* at 1888.

24. *Id.* at 1890.

25. *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, A.I.R. 1978 S.C. 548.

26. *Supra* note 1 at 1891.

27. *University of Delhi v. Ram Nath*, A.I.R. 1963 S.C. 1873.

28. *Id.* at 1642.

29. *Id.* at 1942.

30. *Id.* at 2129-30.

31. *Id.* at 2041-2116.

32. *Id.* at 2115.

33. *Id.* at 2217, 2219-20, 2222-23, 2245, etc.

twice before purchasing it. In spite of this, the book is a timely publication which will be warmly received by the lawyers, the law schools, the educationists, the educational institutions, government authorities, the education community and many more consumers of law of education. Last but not the least, the publishers deserve praise for giving a good get up to the book and printing such a voluminous work with minimum of printing mistakes.

*C. M. Jariwala**

*LL. M., Ph. D, (London), Reader in Law, Banaras Hindu University, Varanasi.