

BOOK REVIEWS

CRIMINAL LAW : CASES AND MATERIALS (2nd ed. 1985). By K.D. Gaur. N.M. Tripathi Pvt. Ltd., 164, Samaldas Gandhi Marg, Bombay-400 002. Pp. xxxii + 811. Price Rs. 250.

CRIMINAL LAW is a thought provoking subject for theoretical and practical discussion. It provides for diversity in approaches and variety in perceptions. In this field the sources may be the same, the presentations may be different. It is an intellectually stimulating subject blending of society and man, sociology and law, justice and law, psychology and criminology, penology and prison justice, *etc.* As an author of precision K.D. Gaur ranks as one of the foremost among writers in criminal law. His chief merit lies in clearly grasping the subject, clarifying and analysing the topics. As law grows constantly by legislation and judicial decisions, the book deserves revision. The author has done so extensively in the second edition. It contains many implicit and explicit messages. The author¹ has been penetrating as well as selective in the explanation of the sections of different criminal codes along with citation of the case law. He has explained the text of the codes by selecting important judicial decisions and quoting from the core of them. Each topic gives pride of place to the decisions of the highest court of the land as they bind all other courts in India. The author has discussed landmark decisions of the High Courts and the Supreme Court which have given a new dimension to criminal jurisprudence.

In the foreword M. Hidayatullah observes, "The book is not only a mine of information for the students but also a valuable handbook for the teacher."² He adds that it is useful to the practitioners and judges. Gledhill has also rightly pointed out³ that this book is important and helpful to the student "to think and search for himself by propounding in relation to... catena of sections questions for discussion and consideration." At the end of each chapter model questions give guidelines for discussion. The controversial questions also test the capacity of the student to understand the specific problem in relation to a particular set of facts. It is gratifying to note that the author has boldly criticised the judicial decisions which do not suit the conditions of the society. He has divided the book into two parts, *viz.*, the fundamentals of criminal law and the specific crimes. The first part deals with, (i) the nature and concept of crime; (ii)

1. K.D. Gaur, *Criminal Law: Cases and Materials* (2nd ed. 1985).

2. *Id.* at vii.

3. Foreword to the first edition of the book, *id.* at viii.

the doctrine of *mens rea*, criminal liability, their scope and extent; and (iii) the preliminary crimes and the extent of the application of the Indian Penal Code 1860 (I.P.C.). Part two has covered in detail the study of offences against, (a) human body; (b) property; (c) reputation; and (d) society and the state. The author has carefully abridged the cases keeping in view the need and limitations of the students. Regarding selection and presentation of cases, emphasis has been placed on the subject matter. The explicit message of the book is that it has pioneered in the modern technique of case method enabling students and teachers to take advantage of latest advances in the field. It is heartening to note that the student of criminal law has got a text-book which provides wider perspectives and useful material about criminal jurisprudence. Sometimes the comparative analysis of the material in the United Kingdom, the United States, Australia, Canada, New Zealand and socialist countries gives a new dimension to the book.

Before analysing the contents of the two parts it will be appropriate to list a few disappointments experienced by the reviewer, while reading the book. It excludes the analysis of the role of substantive criminal law prior to the I.P.C. The author should have first introduced students to the code with the introduction of historical social perspective so that they could grasp the message of the book. The reviewer is of the opinion that the history of criminal law as given by the author is too short to get a clear idea. Moreover, the anthropological, psychological and sociological theories⁴ deserve elaboration. The journals of the Royal Anthropological Institute would have enriched the material of the book giving it anthropological and sociological contents. Marxist and Leninist theories explaining crime and social phenomenon have not been touched upon by the author. It may be noted that although the book reached the reader in 1985, the important cases of 1984 are missing. Hence an improvement of the book in the next edition is hoped for by incorporation of the latest classic cases.

The author has not done justice to the subject of probation and parole. The Probation of Offenders Act 1958 plays an important role in the criminal judicial system and social defence. In his analysis on punishment under the I.P.C.⁵ the author has not mentioned the connection of section 360 of the Criminal Procedure Code 1973 and sections 4 and 5 of the Probation of Offenders Act, which is a social legislation meant to reform juvenile offenders so as to prevent them from becoming hardened criminals by providing an educative and reformatory treatment by the government.⁶ Furthermore the concept of penology has in recent times undergone an ideological change of far-reaching impact. All men are born good and

4. *Id.* at 340-341.

5. *Id.* at 342-343.

6. *Musakhan v. State of Maharashtra*, A.I.R. 1976 S.C. 2566.

criminality is a curable disease. Keeping this in view the Act gives an opportunity to the convict to correct himself.

In dealing with section 82, I.P.C., *doli incapax*⁷ the author has not explained the concept of juvenile delinquency. The Children Acts are indispensable enactments without which the discussion remains incomplete. The reviewer hopes that the author will incorporate a separate chapter on juvenile justice.

Another glaring omission in the book is its neglect to discuss the economic offences elaborately. The author has only abridged four case laws⁸ regarding Foreign Exchange Regulation Act 1947, Essential Commodities Act 1955, Sea Customs Act 1878, Income-tax Act 1961 without explaining the nature of economic offences. He has neither defined economic offence, nor distinguished between this and other offences. There are other Acts which deal with economic offences, e.g., excise and custom Acts, Monopolies and Restrictive Trade Practices Act and so on.

Again one cannot fail to notice the near total omission of procedural laws in the book where the author deals with specific offences. The analysis of the I.P.C. would have been more helpful to judges and lawyers had the author slightly touched upon the procedural viewpoint.

These comments are not intended to be taken as criticisms. They are submitted to evoke the interest of teachers and students who can gather wisdom from the book. The scheme of this edition is the same as before. Part I consists of eight chapters, dealing with general principles of crime while part II has seventeen chapters. Chapters 13 and 25 are the new and most important additions considering the need of the society and newly evolved areas in criminal law.

It is interesting to note that the author has made an illuminating analysis of cruelty towards wives by husbands or their relatives.⁹ The topic is one of burning importance at present. The author has tried to show the decisive reflection of the consciousness of the society. Section 498, I.P.C. is one of the mirrors of the moral and social thinking of the community. The section proves Friedmann's¹⁰ view in criminal law. This law is particularly sensitive to changes in social structure and social thinking, and is the barometer of social thinking. The author has boldly pointed out that our criminal judicial system "oppressively operates on the weaker sections of the community notwithstanding constitutional guarantee to the contrary".¹¹ He goes on to add that "there is none to pressurise the government and the legislature to amend the laws to protect the weak and the poor".¹² To protect the interests of the poor, in recent years, the Supreme Court has come forward with a helping hand to give some relief to victims of the

7. *Supra* note 1 at 125-128.

8. *Id.* at 75-93.

9. *Id.* at ch. 13, pp 635-36.

10. Friedmann, *Law in a Changing Society* 143 (1970).

11. *Supra* note 1 at 780.

12. *Ibid*

criminal judicial system. Having briefly referred to all the important decisions,¹³ the author has aptly named them as contribution to revolutionary judicial jurisprudence. Chapter 25 includes, (i) public interest litigation; (ii) bail justice jurisprudence; (iii) prison justice; (iv) compensation of victims of crime; and (v) legal aid and legal services. The author gives an incisive but brief analysis of each head. Though the discussion is revealing and informative, the reviewer hopes that in the next edition greater attention is paid to this revolutionary jurisprudence which applies to the life of a large body of people, and also that the author would discuss criminal judicial system and social defence in the background of sociology of law and poverty. Similarly, statistical presentation of problems of prison and bail justice could have enriched the chapter. As to protection of prisoners' right to live with dignity the author has appropriately chosen *Sunil Batra*¹⁴ The penological questions for discussion are really thought provoking.¹⁵ Again, poverty is an important factor in the causation of crime in India. As regards legal aid and legal services, the reviewer is in agreement with the views of the author¹⁶ in respect of interpretation of article 21 of the Constitution which implicitly guarantees fundamental right of the indigent to get legal aid. The legal aid movement which has waged "war against poverty" has been briefly discussed by the author but it is hoped to have some further empirical probing and analytical view from the author who is one of the legal luminaries in Indian criminal law.

The author's schematic presentation¹⁷ through diagrams has helped to crystallise the difficult problems. Thus, he has succeeded in transmitting necessary information and has communicated well the intricate problems pragmatically. Legal education will certainly profit from Gaur's invaluable contribution.

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13. *Id.* at 781-795.

14. *Sunil Batra v. Delhi Administration*, A.I.R. 1980 S.C. 1579.

15. *Id.* at 361-367.

16. *Id.* at 785-787.

17. *Id.* at 17, 96, 265, 398, 507.

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