

SUPREME COURT PRACTICE AND PROCEDURE (4th ed. 1985).
By B.R. Agarwala. Eastern Book Company, Lucknow. Pp. xxxix+
511. Price Rs. 135.

THE BOOK under review is a good compilation of the existing rules, practice and procedure of the Supreme Court. It consists of three parts comprising 13 chapters in 511 pages including the appendix and index.

The first part (chapters I to VIII) is preliminary and deals with the introduction, evolution and development of the legal system of the country. The author has taken pains to trace the history of judicial process since the days of the East India Company with citations.

To comprehend, understand and appreciate the present legal system, it is essential to acquire a background knowledge of the course of its growth and development. The historical perspective throws light on the present system. Law cannot be understood properly in absence of its history. It was rightly said:

A lawyer without history or literature is a mechanic, a mere working mason. . . . [I]f he possesses some knowledge of these, he may venture to call himself an architect.

The first part is devoted to the process of legal development during the British period. India has a known history of over 5,000 years; there were Hindu and Muslim periods before the British and each of these had a special legal system of its own. However, at places only, reference has been made of the pre-British developments wherever they appeared necessary. A chronicle of different events of the British period in the field of law and justice has been rightly included in the first part.

The Independence of India truly brought many changes in the structure of judiciary, the most important being the substitution of the Supreme Court with many powers and functions for the Federal Court (in a way the Privy Council as well) as the final court of the land.

There is a network of courts of different grades spread all over the country to dispense justice, perhaps one of the best legacies the British left behind. The Supreme Court, as the highest court, enforces a high standard of justice and promotes a uniform approach to law. Independence of the judiciary is reasonably and fairly well ensured by the Constitution itself. Special precautions have been taken to enable the courts to discharge their duties impartially. Apart from these highlights, the author has also given the rules relating to practitioners before the court as also the rules laying down procedure for hearing appeals and other allied matters.

The author has described an important role of the Supreme Court as the protector and guarantor of fundamental rights. Under article 32 of the Constitution, the court can even pass a declaratory order where it is deemed to

be the proper relief. The scope of writ jurisdiction under our Constitution is wider than that of the corresponding jurisdiction under British law. The courts in India are not confined to issue prerogative writs only but also directions and orders. The Supreme Court enjoys a broad discretion in the matter of framing the writs to suit the needs of a particular case. The application or petition of a person cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for. If, in a certain proceeding, the court comes to the conclusion that a law passed by Parliament or a state legislature violates any fundamental right, it can strike down the law or any part thereof as unconstitutional. This striking power is an additional power which the court (and High Courts also) possesses but the British courts do not.

For some years past, it has been a matter of controversy whether our courts, especially higher courts, have come up to expectations in issuing directions against executive agencies in various legal proceedings particularly in writ. The "public interest litigation" has given rise to some problem. This particular development has not yet been so documented as it should be. No doubt articles have been published in journals of repute, seminars organised and group discussions held on the subject, but it still awaits an indepth study. Some of the aspects have not yet been fully explored. Public interest litigation recognises the right of a person to sue in public interest, though he himself might have no individual grievance. But society would certainly like to know how, in the process, new remedies have been evolved, new procedures devised and new reliefs invented by the Supreme Court, as the author has also pointed this out while appreciating the liberal interpretation of article 32 by the Supreme Court.

The author has also dealt with original, appellate, extraordinary, advisory and special jurisdiction of the Supreme Court in a lucid style by making a reference of different articles of the Constitution with case law and its miscellaneous powers.

The second part (chapters IX to XIII) relates to civil appellate jurisdiction, criminal appeals, enforcement of decrees, *etc.*, miscellaneous provisions and other allied procedures for professionals and litigants.

Part third contains appendices throwing light on Supreme Court rules, relevant sections of the Advocates Act 1961 and Limitation Act 1983, and important orders of the Code of Civil Procedure 1908. It further gives an exhaustive list of model forms besides subject index, which are greatly helpful.

It is well known that the Supreme Court is the highest judicial tribunal of the land, but for too long it remained a mystery to most sections of the public. In fact the trouble was that the court was "never understood". Now, however, it seems that this book has tried to solve that mystery with the result that even a common man can understand the nature and scope of its functioning. It serves as a legal mirror through which this can be seen clearly by lawyers, judges and law students.

In the opinion of reviewer, the book appears to be the result of research and experience of the author who has not left untouched the current trends and developments in the working of the Supreme Court including public interest litigation. It is a good contribution to the field of constitutional jurisprudence. On the whole, it is very useful to practitioners, judges and law students. Its price is, however, on the higher side and not within the reach of students generally.

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