COFEPOSA (1974). (1988). By Haroon S. Kably. N.M. Tripathi Private Ltd., Bombay. Pp. 204. Price Rs. 110.

IT IS one of the ironies of the Indian Constitution that one of the shortest articles in the Constitution, namely, article 21, which deals with personal liberty is followed by one of the longest articles in the Constitution, namely, article 22 which deals with preventive detention. In India, preventive detention on a large scale has its genesis in the Defence of India Rules promulgated during the second world war. No doubt, earlier on during British rule, there had been occasion for taking recourse to preventive detention authorised by certain Ordinances (temporarily) or by certain Regulations (which were permanent laws). But a large scale statutory framework authorising preventive detention and spelling out its details is a legacy of the second world war. The coming into force of the Indian Constitution, while it declared personal liberty to be a fundamental right, did not put an end to the laws authorising preventive detention, for reasons political and non-political. We have become used to preventive detention. After independence, a plethora of enactments authorising such detention at the Union level have been seen on the statute book. The year 1950 saw the Preventive Detention Act. 1971 saw the Maintenance of Internal Security Act. 1974 saw the COFEPOSA Act, a corollary of which was the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. The year 1980 witnessed the enactment of the National Security Act and the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act. Serious disturbances in certain parts of the country led to the enactment of more recent legislation relating to areas affected by terrorists.

The commencement of the Constitution did not make one difference. Although the Constitution has authorised preventive detention under law made by the legislature, it has also inserted certain safeguards as to the grounds on which detention can be ordered, the communication of those grounds to the detenu, the supply of other relevant material and documents to the detenu, the affording of a reasonable opportunity to the detenu for making a representation against his detention, the need for consulting an advisory board for continuing the detention, and so on. To this catena of safeguards resulting from the constitutional provisions, an important addition was made by the emergence of certain doctrines in administrative law as applied in India. These doctrines, both as they evolved in the sphere of personal liberty and as they have been applied in other spheres of governmental action which are not concerned with personal liberty but with other aspects of human life, have superimposed some more safeguards on official actions. Important among these added safeguards are those which insist that official acts should be *bona fide*, should be based on relevant considerations and should not be perverse.

Thus, developments in public law through judicial decisions, which constitute a commentary on the Constitution and on the relevant statutes, have now

created a rich and multi-hued picture in which personal liberty sometimes comes in the limelight, sometimes darkens into a shadow and sometimes gives an impression that liberty and its enemies are playing hide and seek with each other. From the point of view of legal texts, documentation and authorities--which are the usual grist for the academic mill--the position is equally baffling. To ascertain the correct legal proposition applicable to an individual case, where preventive detention has restrained personal liberty, one must have a command not only over constitutional doctrines and statutory texts (not to speak of a host of statutory instruments), but must also have a mastery of case law. And what a variety of case law presents itself, if a *mastery* is to be attained! One has the Supreme Court decisions and the High Court decisions. One has some decisions of overseas courts. In the Supreme Court, one has a daily proliferating series of law reports, official and non-official. As regards the High Courts, there is not only the All India Reporter series traditionally familiar to lawyers, but there are many parallel publications. Some of these parallel publications happen to specialise in criminal law. And, since, for some reason, preventive detention has been assumed to fall in the domain of criminal law, these law journals naturally regard it as legitimate to report High Court decisions on preventive detention.

It is in this manner that a whole jurisprudence of preventive detention threatens to come into existence as a sub-discipline of the law. The busy lawyer fighting the case on behalf of a detenu, the legal adviser in the government called upon to advise regarding, or to draft a document concerned with, preventive detention, the activist in the field of civil liberties espousing the cause of freedom, and each individual detenu who has been confined in prison, rightly or wrongly--all of them must strive to keep up-to-date with the evergrowing law on the subject. This is mentioned here to show the serious need for a dependable and reliable book on the law of preventive detention. The need is not theoretical but practical.

To come, now, to the book under review, it seems to be an honest and sincere attempt to give the readers as much as possible of the judicial exposition of the law on the basis of decisions under the COFEPOSA Act. What has been said above shows how formidable and difficult the task of a commentator on preventive detention law would be. No doubt, the COFEPOSA Act deals with only a small segment of the law of preventive detention Nevertheless, it is an important segment. In any monthly issue of a law report one is sure to find two or three important cases elucidating one or the other aspect of the COFEPOSA Act. Of course, everyone knows the principles; but no one can master or be confident about the application of those principles in concrete cases without the help of a friendly guide. The author of the book under review has made a serious attempt to put before the public precisely such a guide. As far as can be seen, most important judicial decisions have been dealt with in the book. Of course, the book is in the usual form of a commentary, giving the gist of the case law, section by section. To

the lawyer who, in the rush hour, is in need of a reference book which he can consult hurriedly, the book will be useful. The arrangement of comments sectionwise has its utility because in the end, before the court, most legal propositions, in a field where the law is statute based, would be pigeonholed under a specific section.

However, the trouble arises when using the book in any concrete case--a problem which is entirely due to a weakness in respect of arrangement and style. First, as to arrangement; at several places in the book, the matter is so long that one definitely feels the need for a suitable heading, and sub-headings too. To take a random example, pages 28 to 34 all carry matter under the heading of "Subjective satisfaction and judicial review". The substance is good; but the mind gets exhausted when it has to wade through six pages before a particular point can be finally located. These pages could have been further sub-divided under appropriate sub-headings, such as, general position regarding limitation on court jurisdiction, sufficiency of materials, inquiry into grounds and so on. Even if such sub-headings overlap one another, they have considerable utility. Incidentally, in these pages, Supreme Court decisions and High Court rulings jostle with one another. A suggestion which the reviewer would like to make is that important propositions should come first and their elaborations and elucidations can follow. Another aspect of arrangement which requires improvement in the next edition is one arising out of pages 76 to 79, primarily concerned with non-supply of documents and pages 71 to 74 under the heading "Supply of documents" and pages 74 and 75 under the heading "Delay in supply of documents". Obviously, delay and non-supply are two different kinds of defects in administrative action. A discussion regarding delay cannot be interposed between discussion regarding supply and non-supply of documents.

Some serious problems also arise in regard to style, diction and grammar. The reviewer has come across several spelling errors. A sample list may be given--"inuntiated" (page 9), "construeing" (page 11), "admissable" (page 11) and so on. At places, the sentence structure seems to create confusion. For example, on page 27, lines 8 to 19 which constitute one whole paragraph comprise only one grammatical sentence, imposing a strain while reading. At page 29, there is a sentence which reads as under:

> The Supreme Court while laying down the law in the subject observed that the *courts* must be careful in substituting *its* opinion about what is enough for the subjective satisfaction of the detaining authority with which interference would be justified only if it is clear that no reasonable person could possibly be satisfied about the need to detain on the grounds given, in which case the detention would be in excess of the power to detain.

Obviously, the length of the sentence has obscured the fact that the plural "courts" is wrongly followed by the singular "its". A similar problem arises

in page 56. The page begins as under:

> On this topic the Supreme Court..... has observed that the *principles* emerging from a review of the cases cited *is* that the ordinary criminal process is not to be circumvented by ready resort to preventive detention.

The plural "principles" goes ill with the singular "is". At page 65, in the middle, there occurs a paragraph of which the first two sentences are as under:

> Where the petitioner made his representation immediately after the service of the detention order. The contention was that he is illiterate and had put his thumb impression.

The defect in sentence structure is obvious.

Some comments may incidentally be made about material given in the book otherwise than on the basis of case law. Pages 3 to 8 of the book give a general history of preventive detention law in India, which is a convenient and useful treatment. In the Appendices, the author has given texts of the Maharashtra Conditions of Detention and of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, which also should be useful. At page 19, there is a short treatment of the meaning of "Indian customs waters" and the text of the provision in the Customs Act is conveniently quoted. India's proclamation to extend territorial waters to 12 nautical miles is duly mentioned. The author could also have mentioned parliamentary legislation relating to territorial waters, maritime zones, etc.

All in all, practitioners will find this a useful book. But its utility would be greatly enhanced if, in the next edition, more attention is paid to questions of style and structure, form and arrangement, headings and classification, grammar and diction. Probably, in a busy professional life or even in a busy academic career, there may not be much time left for these minute activities. The author might like to enlist the services of some editorial expert for the purpose.

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