A STUDY OF INDUSTRIAL LAW (4th ed. 1987). By G.M. Kothari and A.G. Kothari. Vol. II, pp. xx+384. Price Rs.90.

THE BAR Council's courses of study for the LL.B. degree attach greater importance to core law than to welfare law. The Bar Council has relegated the few welfare law courses it has prescribed to the arena of optional courses. Not all law schools offer all the welfare law optional courses. And those who do, do not teach them properly. Labour law is one of the optional welfare law courses which is sadly neglected or badly taught. Although the increasing importance of labour law in India is more than obvious, it is taught with the help of exegetical studies and from the uni-dimensional perspective. For reasons not known even research institutes have not produced reading materials helpful in teaching and studying labour law from the inter-disciplinary point of view.

The book under review,[1] which is devoted to a study of labour welfare laws mostly, is essentially an exegetical study. As in volume I, in volume II also, the author says that it caters to the needs of third year law students, law practitioners and several others connected with labour law. This volume covers, among others, the Employees' State Insurance Act 1948, the Minimum Wages Act 1948, the Payment of Gratuity Act 1972, the Payment of Bonus Act 1965, and the Employees' Provident Funds and Miscellaneous Provisions Act 1952, the Factories Act 1948 and the Industrial Employment (Standing Orders) Act 1946.

Cumulatively, these laws seek to secure and ensure for industrial workers, and in some cases, agricultural workers also, just and humane conditions of work, including minimum wages, envisaged in articles 42 and 43 of the Constitution. Way back in the 1960's the National Commission on Labour had reviewed the adequacy of these laws and made comprehensive recommendations to improve them. For example, the commission had drawn attention to the findings in the Five Year Plans as well as the evidence adduced before it that implementation of minimum wages was disappointing. The commission drew attention to the findings in the *Second Five Year Plan* that the ultimate effect of legislation relating to minimum wages was to improve wage levels in rural areas. It also invited attention to some other serious shortcomings in this Act. Likewise in the section on "working conditions", (chapter 9), the commission brought into view the shortcomings in the Factories Act and made suggestions for improving the health, welfare and safety of industrial workers. Similarly, in the section on "social security", (chapter 13) the commission had reviewed the working of the legislation in this area and recommended some changes. It had examined in depth the working of the Employees' State Insurance Act , 1948 and suggested some modifications therein.

As the book under review, which has run into four editions, seems to be popular, the author would have rendered a distinct service to the students if he had discussed in detail the utility and usefulness of the commissions'

1 G M Kothari and A G Kothari, *A Study of Industrial Law* (4th ed 1987), vol II

recommendations and the extent to which they have been implemented, and with what consequences. He could also have paid some attention to the question of payment of minimum wage to agricultural workers. He would, thus, have demonstrated to the student not only the social dimensions of these laws but also the need to evaluate them.

In chapter 7, dealing with the Employees' State Insurance Act, the author has given a very brief account of the history of the social security measures in India. He draws attention therein to the Draft Conventions and Recommendations adopted by the International Labour Organisation (I.L.O.) in 1927 and the pressures brought on the colonial government to accept and implement them. In this connection it is necessary to invite attention to a recent report of the I.L.O.--"*Into the Twenty First Century: The Development of Social Security*". In the chapter on "objectives for the year 2000" the report recounts that social security has passed through three stages, from private charity and public relief for the poor through pension and sick pay for employees to prevention and universality. According to the report, the third stage

> involves not just meeting needs as and when they arise but also preventing risks from arising in the first place, and helping individuals and families to make the best possible adjustments when faced with disabilities and disadvantages which have not been or could not be prevented. (p. 19).

The *Report* has spelled out its proposals on "Prevention and rehabilitation" in chapter 4. Another important recommendation of the majority is

> that countries should progress towards unified systems of disability benefits based on degree rather than cause of disability, as resources permit and as public opinion comes to accept the justice of the case. The minority, while not opposing unification, would retain extra compensation for workers injured in the course of their employment. (p.107).

An examination of the suitability of such recommendations to India would have enhanced the value of the book. This book is, as far as it goes, good enough. But it does not go far enough. If, as Kahn Freund says, labour law can be studied properly from the perspective of class conflict, the critical legal theory provides, as David Kairys and others have shown in their *Politics of Law*, the proper perspective for such a study. Is there no research institute in this country which can prepare reading material on labour law from such a perspective?. Will the author of the book under review undertake this exercise when he brings out the fifth edition?

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NYAYA KE DHAM PAR (1989). By Pawan Chowdhry (under the pseudonym "Manmouji"), Vidhik Seva, New Delhi. pp.110. Price Rs.50.

A DISMAL slide of the "noblest of professions", from its traditional heights of glory, to the abysmal depths of "the meanest of trades", is, in short, the theme of the book under review.[1]

The author, a rebel and a crusader in the legal fraternity, has brought out successfully in bold relief, in his characteristic humorous and readable style, the numerous maladies and afflictions from which the court system suffers, to the detriment of the litigants, as well as, public interest. All pervading corruption, endemic delays, exorbitant costs, shortages of staff, both judicial and ministerial, insufficiency of the necessary infrastructure, widespread inefficiency, gross negligence and the fish market appearance of the so-called "temples of justice", are some of the salient features of what is rather charitably described as the machinery to do justice between the state and the citizen, and between the citizens *inter se*. The vulture-eyed hungry looks of a section of the legal fraternity and the hangers on around the courts, ever looking for their victims, more or less completes the scene that the author has tried to depict in the pages between the two covers. The depiction is brief, to the point, but devastatingly frank, as well as, frightening for the unwary.

The degeneration of the legal system, the stink from it, which is polluting the social environment, the moral decay, at the root of it, are, however, not peculiar to the legal system, but are apparently part of the overall malaise that appears to have overtaken almost all the man-made systems in this country, and perhaps generally, in the third world.

While the author has rendered signal service in exposing the decadent legal system, which is almost at the point of its total collapse, he has not attempted a critical analysis of its infirmities with a view to suggest either in the direction for its reform, or an alternative dispute resolution strategy that may be debated, and if possible, introduced so as to maintain people's confidence in the judicial system, as the ultimate arbiter, and dispenser of justice.

We have condemned the existing systems far too long and time has perhaps come when we might as well seriously ponder over the possible alternatives, even if it becomes necessary to make drastic departure from the Anglo-Saxon model, which we have been working for so long.

Some of the suggestions that deserve consideration should be widely debated, even if they *ex-facie* appear to be revolutionary. The system of "entry fee" for all court proceedings, such as court fees, *etc.*, should be scrapped. Court fees, if any, should be recoverable either from the gains, or from unsuccessful parties, to be paid in a phased manner. A provision for mandatory interim relief should be introduced in all proceedings in courts, subject to final relief that may be awarded. In the criminal justice system, provision

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1. Pawan Chowdhry, *Nyaya Ke Dham Par* (1989)

should be made for immediate relief, to the victims of a crime, including the members of the family of the victim, as well as of the perpetrator of the crime. The system of payment of advance fees to the lawyers should be completely scrapped. The legal fraternity should be compelled to work on a contingency basis. This would mean the involvement of the legal fraternity in the stake of the litigants and would perhaps put an end to the lawyer-chasing that goes on to-day, eliminate frivolous litigation, and would also reduce the heavy arrears, which clog the court dockets. A serious thought should also be devoted to the evolution of a system of mediation under the auspices of chambers, trade associations, local councils, to be manned by men and women of proven integrity and impartiality. There should also be dispersal of judicial functions at the *Panchayat* and area council levels. The introduction of compulsory conciliation machinery at all levels would help in reducing the burden of the court system. A system of legal-care insurance on the lines of medicare insurance deserves consideration and trial. This could involve not only the insurance corporation but also the corporate sector generally as well as the lawyers syndicates. These and some of the other suggestions making the rounds may perhaps call for drastic, even structural changes in the system.

It would be good to remember that time is fast running out and if the rot in the Augean Stables of the judicial system is not stemmed without any further loss of time, people could lose whatever faith they still repose in the system, and may perhaps take to the streets in search of justice Such an eventuality would certainly spell disaster and pose a serious threat to the democratic institutions and social order.

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