



**OUTLINES OF INDIAN LEGAL HISTORY** (5th ed. 1990). By M.P. Jain. N.M. Tripathi (P) Ltd., Bombay. Pp. xxx + 728. Price Rs. 150.

**THE STUDY** of the past as a systematic discipline may generally be described as history. This should not be confused with a mere chronicle or narrative of events. What historiography requires is a comprehensive explanation or interpretation of the entire historical process in regard to a particular subject matter or matters.<sup>1</sup> For that serves the purpose to understand the present and determine the future. This rule applies perhaps more forcefully to the discipline of law which interacts with all human activity, whatever its nature and form. Hence the history of the development of legal doctrines and institutions has to be so written as to impart a dynamic sense of legal evolution<sup>2</sup> by exploring the inter-relationship, rather interdependence, of law and social sciences<sup>3</sup> at various stages of the advancement of civilisation. The historical perspective constitutes a natural and inevitable part of the legal process, helps resolve controversies between constancy and change, and determines the relevance and role of the past in serving the present and shaping the future.<sup>4</sup> This explains the importance of writing and teaching what Roscoe Pound terms as “social” or “sociological” legal history.<sup>5</sup> Some idea of such a work may be had from the following observations:

Legal history (as with all law) is.. no such closed area of study which belongs exclusively to the legal profession. While historians have long debated the merits of defined versus loose boundaries, the history of thought and of ideas transcends the narrow disciplines of modern requirements; so legal history invokes and spawns principles and concepts which other fields use. And while its votaries may exhume the past without thought of the present or the future, still, in their primary mission, legal historians must be aware of man and his needs. The content of legal history is therefore not solely of law, and the use of

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1. See David L. Sills (ed.), *International Encyclopaedia of the Social Sciences*, vol. 6, pp. 368-69, 428-29 (1968).

2. J.H. Baker, *An Introduction to English Legal History*, preface to the 1st ed. p. vii (2nd ed. 1979).

3. Morris D. Forkosch (ed.), *Essays in Legal History in Honor of Felix Frankfurter*, introductory in part IV on “Interrelationship of Legal History and the Social Sciences,” at 405 (1966).

4. See Weaver W. Dunnan, “Time, Place and Circumstances,” in *id.* at 39; O.W. Holmes, “The Path of the Law,” in *Collected Legal Papers 194-95* (1920, reprint 1952); Felix Frankfurter, “Twenty Years of Mr. Justice Holmes’ Constitutional Opinions,” 36 *Harv. L. Rev.* 931 (1923).

5. *Interpretations of Legal History* 115 (1967).



legal history is likewise not solely for law; to the extent that disjunctives seek to constrict man's mind, knowledge breaks through, and to the extent that specialization seeks to dismember it, life refuses. So the other disciplines shed light upon legal history which, in turn, illumines them. And the explication of a legal, or political, or economic, or historical, or analogous institution or rule of conduct cannot be contained within one discipline, although it may be so studied and even practiced; today's cross-disciplinary approach eventually compels the stuff of life to spill over onto the legal, or other, hermit.<sup>6</sup>

There is, however, a caution:

[N]either legal history nor contemporary social information can eliminate the necessity of a juristic analysis of the fundamental aims at the basis of the different legal institutions.<sup>7</sup>

The task of undertaking the work as contemplated is fairly difficult but surely it is of tremendous worth to a developing country like India whose Constitution has laid down standards of both individual and state conduct in relation to the integral development of the society and its constituents.<sup>8</sup> Surprisingly, no law school, no research institute, no student of Indian legal history has ever attempted it. The eminent author of the book<sup>9</sup> under review has failed to touch it even in its pages on law reform; so also other authors on the subject like the present reviewer.<sup>10</sup> As the task is arduous, an individual may not embark on it but certainly the Indian Law Institute can. In fact "Social Indian legal history" has already been lying unattended on its research agenda for some time. It would be worthwhile to take it up now in right earnest. On an individual level, scholars of the repute of M.P. Jain are eminently suited to initiate the process in a gradual and systematic manner; they may at least begin with the law reform of the nineteenth century and post-Independence era.

The book under review is, however, a great work in its own right. It was first published in 1952. It was largely responsible for bringing the subject of Indian legal history into prominence and for making it as one of the compulsory subjects for LL.B students the country over. It also stimulated studies in the subject at LL.M. level and at the level of independent research and writing. The fourth edition of the book appeared about a decade back. A perusal of the current edition indicates substantial revision, rewriting and expansion of the preceding edition. Some new additions

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6. "What is Legal History," in *supra* note 3 at 4.

7. *Ibid.* quoting M.R. Coben, *Reason and Law* 184 (1950).

8. Preamble, and parts III, IV and IVA dealing with fundamental rights, directive principles of state policy and fundamental duties respectively.

9. M.P. Jain, *Outlines of Indian Legal History* (5th ed. 1990).

10. J.K. Mittal, *An Introduction to Indian Legal History* (7th ed. 1982).



have also been made. For example, chapters on modern judicial system, Privy Council, High Courts, development of law, codification of law, personal laws of Hindus and Mohammedans, law reporting and legal profession have been expanded. The chapter on codification has been bifurcated into chapters on codification of law and some select codes. The chapter on the present Law Commission has been enlarged and retitled as law reform. Two new chapters on legislatures in India and legal education have been added. The text has thus recorded an increase of about 200 pages over the earlier edition. The revision and additions made are the result of meticulous research on the part of the author over a period of time. He deserves compliments for the revised and enlarged version of his pioneer work.

There is scope for further improvement, revision and expansion of the book despite its wide coverage. A qualitative improvement may be brought about if the author explicitly addresses the issues of legal and political theory to which a work on legal history is always linked. According to one writer:

Legal historians unfortunately have associated objectivity with a brand of untheoretical antiquarianism. Yet, since political and legal theory are intimately involved in issues of legitimation of the way things are, and of how we got to where we are, they inevitably draw legal history into the debate over how we arrived at the present and whether there are "lessons" that can be learned from the past.<sup>11</sup>

It is hoped the author would make some attempt "to bridge the chasm between legal [and political] theory and legal history."<sup>12</sup>

To begin with, the role aspect of the judiciary, especially at the district and village level, in a developing democracy like ours may be given priority while revising relevant chapters for the next edition. Despite some indigenisation after Independence, the Indian legal system continues to be basically English. It would add to the clarity of the book if the author explains briefly in the next edition the typical English concepts, institutions and terms, as he has already done at some places.

Lastly, chapters on personal laws prior to the advent of the British in India, public interest litigation and socio-economic offences may be useful additions in the next edition.

The book is an excellent narrative of legal developments, interspersed with analysis and comments, since the day the East India Company

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11. Morton J. Horwitz, "History and Theory," 96 *Yale L.J.* 1825 (1987).

12. *Id.* at 1835.



embarked on its trading career in India. It can provide more insight into the historical perspective of the Indian legal system if some of the suggestions of this reviewer are accepted by the author for the subsequent editions of his book.

The publishers deserve commendation for a nice cover, paper and printing, and stout binding; also for pricing it moderately.

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**BOOKS RECEIVED FOR REVIEW**

ARUN MOHAN, *Princely States and the Reform in Hindu Law* (1990). M/s N.M. Tripathi & Co., 164, Samaldas Gandhi Marg, Bombay-400 002. Pp. xv + 479. Price Rs. 325.

BHARAT DESAJ, *Water Pollution in India: Law and Enforcement* (1990). M/s S. Kumar Lancers Books, P.O. Box 4236, New Delhi-110 048. Pp. xiii + 282. Price Rs. 225.

G.B. PAJ, *Law of Employment Volume I* (1990). M/s Balaji Law House, No. 5, Sunkurama Chetty Street, Madras-600 001. Pp. cxxxiv + 718. Price Rs. 450; £ 50.

HANS RAJ, *The Constitution of India* (2nd ed. 1990). Surjeet Publications, 7K Kolhapur Road, Kamla Nagar, Delhi-110 007. Pp. 422.

H.C. ARORA AND SANJEEV MALHOTRA, *Law of Retirement (Compulsory/Voluntary) and Resignation* (1991). Bahri Brothers, 741 Lajpat Rai Market, Delhi-110 006. Pp. xx + 286. Price Rs. 135.

H.C. AROA AND S.L. SACHDEVA, *Law Relating to Suspension of Employees* (2nd ed. 1990). Bahri Brothers, Delhi-110 006. Pp. xiii + 178. Price Rs. 90.

HEINZ SCHAFFER, ATTILA RACZ (ed.), *Quantitative Analyses of Law: A Comparative Empirical Study* (1990). Akademiai Kiado, Priele Karnelia, U. 19-35, H-1117 Budapest. Pp. 404. Price \$ 38.

MARKANDAY KATJU, *Domestic Enquiry* (4th ed. 1990). M/s N.M. Tripathi & Co., Bombay-400 002. Pp. xxxi + 204. Price. Rs. 110.

R.C. HINGORANI (ed.). *Humanitarian Law* (2nd ed. 1991). Oxford & IBH Publishing Co. Pvt. Ltd., 60, Janpath, New Delhi-110001. Pp. viii + 156. Price Rs. 145.

SALIL K. ROY CHOWDHURY AND H.K. SAHARAY. *Mulla & Pratt's The Indian Stamp Act* (7th ed. 1990). M/s N.M. Tripathi & Co., Bombay-400 002. Pp. xxxv + 479. Price Rs. 130.

SATISH SHASTRI, *Pollution and the Environmental Law* (1989). Pratwell Publishers on behalf of Rupa Books (P) Ltd., S-12, Shopping Complex, Tilak Nagar, Jaipur-302 004. Pp. xv + 206. Price Rs. 175.

S.C. SRIVASTAVA, *Industrial Relations and Labour Laws* (1990). Vikas Publishing House Pvt. Ltd., 576, Masjid Road, Jangpura, New Delhi-110 014. Pp. x + 649. Price Rs. 125.