

PSA PILLAPS CRIMINAL LAW (2017). By K I Vibhute. Lexis Nexis, 14<sup>th</sup> Floor Building No. 10, DLF Cyber City, Gurgaon -122002. Pp. cxxv + 1111. Price Rs. 895/-.

THE CRIMINAL law of India was codified in 1860 by Lord Macaulay and it is a testimony to the greatness of this enterprise that the Indian Penal Code (hereinafter Code) continues (with amendments) till date. The book<sup>1</sup> under review deals with this very important law that impinges on the life of every societal member. The members of a civilized society are expected to conform to certain norms and behaviour and in cases of violation the state through its criminal law punishes the deviant member. The core and primary function of criminal law is to protect rights of individuals, by declaring punishment for those who violate these rights. It also has a subsidiary function that of deterring people from acting in ways that are inimical to the public interest. The book under review deals with all aspects of the Code in great detail as the author in the “Preface” succinctly puts it that it offers textual and in-depth analysis of the criminal law. The reviewer has been a dedicated reader of *PSA Pillai’s Criminal Law* revised by the present author K I Vibhute and can vouch for it that though the revising author has consciously retained the original format but has repeatedly ensured that each edition is revisited meticulously in light of the developments in the field and the restatement of the provisions through judicial pronouncements.

The book has been divided into 51 chapters and more or less the sequence of sections has been followed as per the scheme of the Indian Penal Code. However, the first four chapters form the introduction to the basic principles of criminal law wherein certain fundamental principles which have withstood the test of time have been discussed. The question “what is a crime” which is an intellectual minefield is discussed at length to set the tone of the book where views of varied criminal philosophers including Andrew Ashworth have been discussed and deliberated.<sup>2</sup> The Code has held good since 1860 but lot of amendments have taken place and lot of controversies have been generated, for example, around homosexuality and adultery. So it is very important to deliberate as to what, in the absence of a precise definition of crime, could possibly be covered under criminal law. And this chapter acts as a guiding light in that direction. The author in this endeavour spells out the difference between civil and criminal proceedings and more importantly engages in a historical background of penal laws in India. This historical perspective becomes important in engaging with the nuances of the Code and helps the readers to appreciate the Code much better. The introductory chapters also lay out the thematic scheme which will be very helpful to students of criminal law.<sup>3</sup>

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1 K I Vibhute, *PSA Pillai’s Criminal Law* (LexisNexis, Gurgaon, 13<sup>th</sup> edition, 2017).

2 *Id.* at 7.

3 *Id.* at 24.

The book addresses the “Constituent elements of crime” and “*Mens rea*” as part of the introduction. Engagement with these fundamental principles become extremely important in a book as the courts have been very reluctant to deal with these principles or deal with them superfluously in their judgments and leave it to the imagination of the public! This puts a huge burden on scholars including the present author to address the nuances of these principles which form the very foundation of criminal law to bring in more clarity. The book in the traditional style deals with the concept of ‘*mens rea*’ and ‘*actus reus*’<sup>4</sup> and perhaps the author may consider, in the future edition, borrowing from other scholars of Indian Penal Code where they deal with ‘fault element’ and ‘physical element’.<sup>5</sup> For the simple reason that why get bogged down with complicated Latin terms when Macaulay himself advocated a precise clear Code and was opposed to ambiguities. The concept of ‘fault element’ is also perhaps more inclusive. Contemporaneity and causation are other aspects which are little complicated and nuanced and a bare reading of the provisions may not be helpful and hence a more detailed scholarly treatment may be very useful. The chapter on *mens rea* deals *inter alia* with vicarious liability where the concept is succinctly explained and still judges in their judgments continue to use the expression ‘vicarious liability’ for sections 34 and 149 whereas that is a case of constructive liability.<sup>6</sup>

The author in the chapters which follow the introductory four chapters has given the constituent of each section of the Code along with judicial treatment of the section. The author has painstakingly discussed catena of cases to deal with each and every section of the Code. It is a very unique blend of legislative definitions, theoretical framework and applicability in fact situations resulting in the judgment of the court. The crime situations are very complex and no matter how precise the language, it is almost impossible to have clear cut answers and solutions and so engagement with case law is a fascinating experience. The author due to his vast experience and years of intensive research and critical engagement with criminal law has been able to do this exercise with such élan that makes the book a classic treatise on criminal law. The range of cases is amazing from pre-independence decisions to judgments delivered in 2017 both from the apex court and the high courts. Each provision is discussed in detail and there is a very smooth blend of his analysis and the judicial discourse supplemented by a very rich case law in the foot notes. This technique ensures that the reading is not impeded and wherever required the reader may refer to the case. Where necessary, cases from other jurisdictions have also been discussed.<sup>7</sup> Such an intensive

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4 *Id.* at 267-294.

5 Neil A. Morgan *et al*, *Criminal Law in Malaysia and Singapore* 67-107 (lexis Nexis, Singapore, 2012).

6 *Id.* at 5.

7 While discussing section 511 the book recognizes the fact of paucity of cases and draws on the Malaysian case to understand the impossible attempts. *Id.* at 207.

scrutiny of the judgments on every issue makes the book a classic commentary on the Code. The humongous variety of cases which have been referred is amazing and shows years of criminal law scholarship. Such a wealth of critical engagement with case law makes this book shine out among various publications on the theme.

Another very important feature of the book is that at the end of the chapter “proposals for reform” has been included. But what was little disappointing was that the proposal for reform are ones that have been advocated by the Law Commission of India. Those reforms may be problematic and not everyone may agree to them and given the scholarship of the author it would have been very useful if the author had suggested the reforms which in his estimation was the necessity of the times and circumstances of the country. For example the author’s take on diminished responsibility may have been more intellectually enriching for the readers than the Law Commission reforms of S.84.<sup>8</sup> It is only in case of section 85 that the author seems to have put a categorical seal of approval on the proposed reforms when he says “The proposal seems to be convincing. However, in the present submission, it would be more appropriate to replace (3) by Explanation.”<sup>9</sup> In cases where Law Commissions differ in their views like in the case of attempt (fifth and fourteenth Law Commission) a decisive recommendation by the author would have saved the confusion and have helped the future Law Commissions.<sup>10</sup> Apart from this confusion some of the Law Commission reports have had vague<sup>11</sup> and problematic recommendations.<sup>12</sup>

Another very important chapter is “of punishments”<sup>13</sup> where the opening para sets the tone of the chapter where the disparity in sentencing is lamented. The author has made a departure in this case and dealt with Illustrative case law. This is of immense importance given the debate on death penalty and the contentious sentencing post *Sbraddananda* case<sup>14</sup> of giving sentence of life imprisonment without remission and the controversy around life sentence. The constitutional bench judgement which (un)settled

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8 *Id.* at 118.

9 *Id.* at 127.

10 *Id.* at 213-214.

11 The Twenty First Law Commission recommended 153 C to handle ‘hate speech’ and used the word “sexual orientation” in the section at a point where criminality still existed for a display of such orientation. In such circumstance what was the rationale to include the expression – was it a real concern or was it just thrown in there to sound progressive! *Id.* at 446.

12 The 262nd Report of the Law Commission recommended that the death penalty be abolished for all crimes other than terrorism related offences and waging war . A discussion on this should have been included in the book.

13 *Id.* at 297. The book has another chapter titled “of punishment’ – in singular tense to deal with punishment for culpable homicide! *Id.* at 699

14 *Id.* at 715.

these issues in *Sriharan*<sup>15</sup> is dealt in great detail. The chapter on sexual offences is given a detailed treatment keeping in mind the 2013 amendments. A very detailed analysis of the 2013 amendments form part of the book.<sup>16</sup> The book not only familiarizes its readers with the provisions but also in a very lucid manner trains its readers to appreciate the nuances of the provisions with a case law method. And by this method not only the theory but the practical application of the Code is also brought to scrutiny.

The book is a must read for anyone interested in criminal law especially masters and Ph.D. scholars, teachers and lawyers and most importantly judicial officers.

*Jyoti Dogra Sood\**

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15 *Id.* at 716-717.

16 Unnatural offences has been read down by the judiciary and adultery has been held unconstitutional after the publication of the book and we look forward to a detailed discussion in the next edition.

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