

## BOOK REVIEWS

CRIMINAL LAW AND CRIMINAL JUSTICE: ADVANCED LEGAL WRITINGS (2022), B.B. Pande. Eastern Book Company, Delhi. Pp. 336. Price 945/-, ISBN 978-939-07-1557-2.

CRIMINAL LAW and criminal justice are fascinating branch of knowledge, both as a law course and as a means for understanding the nature of a given society. A collective study (of criminal law and criminal justice) transgresses into area of social regulation “where norms of behaviour are most invested with moral judgment and political contention, where the reference to norms most strongly suggests that those who do not comply with norms are deviant.”<sup>1</sup> In fact, criminal law has been the most attractive and exploited medium by which lawmakers have purported to offer solutions to cultural disorder or antisocial behavior.

In this backdrop, Professor B.B. Pande has added a useful source of material to criminal law jurisprudence.<sup>2</sup> The manuscript is an outcome of the twelve devoted lectures that was mainly aimed at broadening the horizons of criminal justice knowledge. The first nine writings relate to substantive criminal law and the later three on the procedural law themes. Each of the writing is devoted to exploring the select core theme in terms of certain vital inquiries/issues.

The book is introduced by former Chief Justice of India, Justice M.N. Venkatachaliah, wherein he remarked highly about the author’s thoughts and philosophical foundation on the subject. He writes:<sup>3</sup>

Prof. Pande’s contemplations in these brilliant essays transcend the familiar discourse and touch not merely upon what the limits on the institutional power of the State on its individuals should be but on the more fundamental question as to what kind of power the State should at all have over its citizens... Uniqueness of Prof. Pande’s writing lies in their ability to transverse from the primitive criminal law/criminal justice concepts to the contemporary forms.

In the introduction, the author succinctly presented the thematic break-up of his *progressus scientia*. He writes:<sup>4</sup>

Criminal Law/criminal justice is a fascinating branch of knowledge, both as a law course and as a means for understanding the nature of a

1 Robert Weisberg, “Norms and Criminal Law, and the Norms of Criminal Law Scholarship”, 93(2/3) *Journal of Criminal Law and Criminology* 468 (2003). See also K.N.C.Pillai, *General Principles of Criminal Law* (Eastern Book Company, Lucknow, 2011).

2 B.B. Pande, *Criminal Law and Criminal Justice: Advanced Legal Writings* (Eastern Book Company, Lucknow, 2023) [hereinafter *Criminal Law and Criminal Justice*].

3 *Id.* at viii-ix.

4 *Id.* at xiii.

given society. Because criminal law and criminal justice perform the task of legitimisation of violence in human interactions, their knowledge attracts the rulers and the ruled equally.

Following introduction, the volume uncovers 15 key understandings. The Part A covers four chapters (*Writings I, II, III, and IV*), which reflects on the historical evolution of English and Indian criminal law. In these *Writings*, the author made few pertinent inquiries, for instance, rationalisations of criminal law,<sup>5</sup> State monopoly on criminalisation,<sup>6</sup> and enforcement of morals through criminal law.<sup>7</sup>

Thereafter, in Part B (*Writings V and VI*), the two chapter reflects upon elemental debates on *actus reus* and *mens rea*. Herein, the author examined the issue of priority or sequencing of elements of criminal liability,<sup>8</sup> and referred Herbert L. Packer, who discussed *culpability and conduct* before *culpability and excuses*.<sup>9</sup>

Part C (*Writings VII, VIII, and IX*), delve into another ignored arena of criminal law, namely the disillusionment with criminal law and criminal law system,<sup>10</sup> and the need for evolving rich body of critical criminal law scholarship (CCLS) in global south. Professor Pande is of the belief that while in the global north there has been considerable inquiries made for CCLS;<sup>11</sup> such efforts find limited attention amongst the southern scholarship.

In Part D, which covers three chapters (*Writings X, XI, and XII*), the author explored procedural law aspects of criminal justice. The author woefully registers that while procedural law constitutes the “cutting edge” of criminal justice, yet it is kept out from the substantive criminal law formulations.<sup>12</sup> Considering this fundamental aspect in mind, the author explored the forgotten and ignored premise of procedural justice. The book highlighted some of the pressing issues. For instance, legality of arrest,<sup>13</sup>

5 *Id.* at 35.

6 *Id.* at 58.

7 *Id.* at 38.

8 *Id.* at 76. The author rightly highlighted that elemental precedence debate had witnessed limited thinking and debate.

9 See Herbert L. Packer, *The Limits of the Criminal Sanction* 79 (Stanford University Press, Stanford, 1968).

10 *Criminal Law and Criminal Justice*, *supra* note 2 at 128.

11 *Id.* at 133-140. Prof. Pande suggest two readings namely Andrew Ashworth, “Is the Criminal Law a Lost Cause” 116(2) *Law Quarterly Review* 225-256 (2000); and G.R. Sullivan, “Is Criminal Law Possible” 22(4) *Oxford Journal of Legal Studies* 747 (2002).

12 *Criminal Law and Criminal Justice*, *supra* note 2 at 196.

13 *Id.* at 247-253. Particularly after 2009, Code of Criminal Procedure (Amendment) Act, 2008 (No. 6 of 2009), available at: [https://www.indiacode.nic.in/repealed-act/repealed\\_act\\_documents/A2009-5.pdf](https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A2009-5.pdf); and 2010, Code of Criminal Procedure (Amendment) Act, 2008 (No. 41 of 2009), available at: [https://prsindia.org/files/bills\\_acts/acts\\_parliament/2010/the-code-of-criminal-procedure-\(amendment\)-act,-2010.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2010/the-code-of-criminal-procedure-(amendment)-act,-2010.pdf). Also see, *Arnesb Kumar v. State of Bihar* (2014) 8 SCC 273.

conditions of remand,<sup>14</sup> bail jurisprudence,<sup>15</sup> compensation for the victims of abusive/excessive criminal process,<sup>16</sup> extra-legal encounters,<sup>17</sup> etc. In that context, the book appears successful in presenting a broader and critical view of criminal law and criminal justice, particularly when many related issues remain marginalised in law curriculums.<sup>18</sup> However, there are others factors which demand close attention too. For instance, post 9/11, measures adopted by nation-states demand careful attention, particularly when the belief that terrorism warrants sweeping departures from established norms has grown unwarily.<sup>19</sup> Similarly, other issues, including human dignity in an age of mass incarceration,<sup>20</sup> or ambiguity surrounding death penalty,<sup>21</sup> demand assiduous scrutiny.

Overall, the book under review is a worthy addition and compels scholars of criminal law to dig deep into the extensive arena of criminal law. Professor Pande does not hesitate to recommend to his readers, in each chapter, a resort to: inquiries under focus, followed with additional references, and lastly pertinent issues for discussion. In this regard, the Book acts as a necessary and helpful supplement to case-study and class-lecture. The book is moderately priced and deserves to be part of the collection of law school libraries and individual book shelves.

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- 14 *Criminal Law and Criminal Justice*, *id.* at 253-254.
- 15 *Id.* at 254-257. See also Shuvro Prosun Sarker and Prakash Sharma, *Treatment of Foreign National Prisoners Applying for Bail Under Indian Criminal Justice System*, in Salman Khurshid *et al.* (eds.), *Taking Bail Seriously: The State of Bail Jurisprudence in India* 191-214 (LexisNexis, Gurgaon, 2019).
- 16 *Criminal Law and Criminal Justice*, *id.* at 262-267. The author analysed two contrasting decisions, namely, *S. Nambi Narayanan v. Siby Mathews* (2018) 10 SCC 804 with *Shiv Kumar Verma v. State of Uttar Pradesh*, 2021 SCC Online All 414.
- 17 *Criminal Law and Criminal Justice*, *id.* at 267-282.
- 18 See Prakash Sharma, “Critical Legal Studies and Research in India”, in Manoj Kumar Sinha and Deepa Kharb, (eds.), *Legal Research and Writing: New Perspectives* 15-33 (LexisNexis, Gurgaon, 2022).
- 19 See Dan E. Stigall, *Counterterrorism and Investigative Detention: International and Comparative Legal Evolution* (Edward Elgar, Cheltenham, 2021). See also S. Sivakumar and Prakash Sharma, *National Investigation Agency: India’s Security Reform for Prevention, Preparedness and Response* (Thomson Reuters, Gurgaon, 2023, *forthcoming*).
- 20 Mugambi Jouet, “Mass Incarceration Paradigm Shift?: Convergence in an Age of Divergence”, 109 (4) *Journal of Criminal Law and Criminology* 703-768 (2019).
- 21 R. Venkata Rao and Prakash Sharma, “Death Sentence in India: Is it Rare Yet Arbitrary?”, 49(3) *Indian Bar Review* (2022, *forthcoming*).
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