

BOOK REVIEWS

Principles of Mercantile Law, by Avtar Singh, Eastern Book Company, Lucknow (8th edn., 2006), pp.904 + CXXXVIII, Rs. 390/-

The book under review is the eighth edition of the well acclaimed book by a reputed legal luminary. Different topics under Mercantile Law are lucidly explained in this book with the help of case law and statutory materials. Development in these branches of law since the last edition have been incorporated in this edition. Comparative legal provisions from England incorporated in the book enhances its usefulness.

The topics covered by the book include general principles of contract, special contracts like agency, bailment, guarantee and partnership, law of Sale of Goods, Consumer Protection Law, Competition Law, Law on Negotiable Instruments and Company Law. Eventhough a comprehensive treatment of all these topics is an impossibility, the author has strived successfully to provide a fair treatment of all these subjects. Such an attempt would certainly benefit the students of different disciplines like law, management, commerce and accountancy. No wonder, the book is among the prescribed reading materials of various courses in many universities.

The first part of the book dealing with general principles of Contract Law is updated in this edition. Case law especially from areas of government contract, representations and advertisements, hire purchase and credit finance, hypothecation and other areas of commercial importance have been incorporated in appropriate places. This part gives a fair account of the Indian contract law.

The second part dealing with Partnership Law remains substantially the same as that contained in the previous edition. A few decision rendered by courts in this area have been given in the foot notes. A critical evaluation of the Indian Partnership law so as to make partnership form of business an attractive alternative to the cumbersome corporate form of business will be of great advantage to the business community. An analysis of the

models adopted in developed countries could enhance the utility of the book.

The law relating to sale of goods, consumer protection and competition law are discussed in the third part of the book. Law relating to sale of goods has not undergone any substantial statutory changes in India. So apart from including a few additional cases, a brief account of the concept of satisfactory quality introduced in England by the Sale and Supply of Goods Act 1994 is given in the book. In the area dealing with Consumer Protection the important statutory changes brought by the Consumer Protection (Amendment) Act 2002 which came into force from March 2003 has not been properly explained. The amendment was noted by the author. But in the discussion on the subject many important changes are left out. For example the change in definition of “consumer” and the concept of dealing as a consumer does not reflect the amended provisions. Similarly, changes made in the procedures on receipt of complaint are not discussed. It may be due to an oversight which could be corrected in the next edition. Same is the case with the portion dealing with negotiable instruments. The amendments to the Act made in 2002 have not been properly reflected even though it is well acknowledged. For example, the changes relating to presentment for payment, delivery of instrument for payment, payment of instruments with alteration which are not apparent and terms of punishment are not incorporated. In the part dealing with Company law, even though the Companies (Amendment) Act 2002 is mentioned in the preface, and in some portions of the text, substantial provisions are left uncovered. These are areas where revision is needed in the next edition to improve the utility of the book.

The inclusion of competition law is an added advantage of the present edition. A brief account of the provision of the Competition Act 2002 is given in part III of the book. Given the significance of the subject in the present day economy of the country, a detailed and comparative analysis of the law is very useful. The author is the apt person to undertake such a study.

The above limitations do not diminish the value of this standard work. The revised edition of this popular and valuable book gives a comprehensive account of the all important topics of mercantile law. It concorporates the entire syllabus of the subject prescribed by universities and professional bodies for their students. The publisher, the Eastern Book Company deserves commends for its meticulous efforts in bringing out this book without any significant mistakes. The price is very reasonable considering the volume of the book and the coverage of subjects.

A.M. Varkey*

* M.A., LL.M. (Kerala), Ph.D. (Cochin); Reader, School of Legal Studies, Cochin University of Science & Technology, Kochi – 22.

Law of Evidence by Vepa P. Sarathi, Eastern Book Co., Lucknow (6th edn., 2006), pp. LXXXIII+396 Price : Rs.220/-

The Law of Evidence as a part of law of procedure plays a significant role in the course of trial, whether it is civil or criminal. It is according to this law that evidence is made admissible before the Court so as to establish the existence or non-existence of any fact. But there are so many areas in this law that still remains vague and ambiguous. This vagueness and ambiguity creates serious problem in many cases especially in criminal cases. The book under review makes an earnest attempt to find a solution to this by bringing in clarity and consistency.

The book under review is the 6th Edition. The first edition was published in 1960's. The 4th and the 5th edition of this book appeared in 1989 and 2002 respectively. The present edition compared to the other editions is thoroughly overhauled on the basis of the suggestions made by the readers. This itself shows how well the book has been accepted by the readers.

The book consists of 11 Chapters with an appendix. Each Chapter is dealing with the most important aspects of law of evidence. The first two chapters deal with the introductory aspect and theory of relevancy. In the introduction chapter the author gives a very good and brief summary of civil and criminal trial. The importance of study of law of evidence has been illustrated beautifully. The history of law of evidence is provided in this chapter.

In the second chapter, the author describes about different types of evidence with case laws and illustrations. Chapter 3 discusses the relevant facts of which evidence may be given. One of the moot question that may arise in the criminal case is the character of the accused. The author gives an interesting description of this topic in the last part of chapter 3 with supporting legal provisions.

Chapter 4 and 5 deals with the facts for which evidence need not be given and facts for which evidence can't be given. The important

question regarding witness, who are the competent witness and the factors affecting documentary evidence has been traced in chapter 7 and 8. The exclusion of oral by documentary evidence and the weight of evidence are discussed in chapter 9 and 10.

If the trial court has committed any error in admission of evidence and it has been raised by the parties in appeal what should be the procedure ? Can the court send back the case to the trial court for a retrial ? The author has given a good discussion on these kind of questions in chapter 11.

The application of law of evidence to the proceedings before an Industrial Tribunal has been discussed in Appendix-A. Here the author gives a critical analysis of the effect of non-compliance with rules of evidence by the tribunals.

In the 4th and the 5th editions of this book the author discusses about the admissibility of evidence under Sec.25, 26, & 27 in appendix-B. But in the 6th Edn., he removed this and included an article on digital signature. It tries to explain the basic concept with regard to e-documents and various other technologies used.

It is worthy to mention about the style of the author. Most of the books on this subject gives only a section-wise analysis and didn't provide any comparative view on the subject. The author is successful in narrating the important aspect of rule of evidence in an inspiring manner. Instead of giving a dry and lengthy discussion on the various problems in this area, he illustrates it beautifully by narrating some important questions and giving answer to them. Moreover, the literary background of this author seems to be impressive as he has made so many references to English and American cases. To illustrate the principles enunciated by him, he quotes important judgments from foreign countries like U.S. and U.K. The subtitling of each chapter also enable easy comprehension to the readers.

By providing a distinct style and comprehensive analysis the author has made this book an exceptional one. No doubt, practicing lawyers,

students, teachers and researchers would find it quite useful for their varied needs. The attractive layout, comprehensive coverage of topic and competitive price will make this book unique.

P.M. Jasmi*

* B.Sc.(Kerala), LL.B.(M.G.), LL.M. (Cochin); Lecturer, M.E.S. College, Marampilly, Ernakulam, Kerala.

V.G. Ramachandran's Law of Writs, Revised by Justice C.K. Thakker and M.C. Thakker, Eastern Book Company, Lucknow (Sixth edn., 2006), Vol. I and II, pp.XL + 2096, Price : Rs. 1,750/-

The importance of Law of Writs is ever increasing. It is intimately related to Constitutional Law, Administrative Law and Judicial Process. Writ jurisdiction is a major chunk of judicial process. The importance of the subject matter of the book can best be summarized by the following words of Justice M.N. Venkatachaliah in his forward to the book: "The Law of Writs deals with one of the sensitive areas of public law, namely, challenges to and remedies against state action. Judicial review of legislative or executive action provides what Julius Stone called the 'sober second thought of the community', a firm base on which all law must ultimately rest. The need and importance of judicial review in a constitutional democracy whose basic premise is limited government cannot be over emphasized. It has been held to be a basic feature. But then, we may recall what Justice Holmes once said 'I do not think the United States would come to an end if we lost our power to declare an Act of the Congress as void. Constitutions are products of historical evolution and 'behind the written word is a historical lineage'.

Human Rights are valuable to the citizens in a civilized society. Fundamental rights are more cherished and constitutionally protected. It is through the writ jurisdiction that the higher judiciary acts as the guardian of fundamental rights. The over increasing number of writ petitions before the Superior Courts account for the role of Judicial review of administrative and legislative action which may pose threats to freedom. Lawmen know that while *Wednesbury* test of 'unreasonableness' is the criterion for judicial review of administrative or executive discretion, the doctrine of proportionality is invoked to test measures, administrative or legislative, which interfere with human rights and fundamental freedoms and to examine whether such interfering measures are desirable, necessary or excessive. Proportionality, an enhanced and augmented version of 'perversity' in a more intensive test and in applied to cases touching human rights and

fundamental freedoms. It is similar to what constitutional courts do in examining the reasonableness of the restrictions on fundamental freedoms.

Human Rights legislation and international and regional conventions on Human Rights like European convention (though Asian region to which India belongs lags in regional efforts) enhances the role of judicial review and it seems that *Wednesbury* test is giving way to proportionality in this arena though the former applies to the larger arena of judicial review. As again pointed out by Justice Venkatachaliah, the increasing horizons of judicial review call for judicial vision, statesmanship and also self restraint. Judicial review is a potent weapon but the judge should know his limitations and the limitations of judicial process. But restraint in neither desirable nor justified in the matter of enforcement of human rights and fundamental freedoms, that requires a robust, activist approach. The protection and enforcement of such rights and freedoms is both, the power and duty of the court and the grant of appropriate remedy is not discretionary, but obligatory.

V.G. Ramachandran's Law of Writs is well known to men of law and the book is revised by a distinguished Judge of the Supreme Court who combines his judicial responsibilities with academic research and writings of high standard is assisted by his wife Mrs. M.C. Thakker, a meaningful lawyer and co-author with him of many other publications like *Administrative Law* and also *Civil Procedure*. The present sixth edition of the book is a thoroughly revised and substantially enlarged one. The last edition was published in 1993.

The book is in two large volumes of more than thousand pages each. They are divided into five parts and contains several chapters. Part I is introduction which contains historical development of various units which originated in England and have been adopted in India. Part II is on General Principles of Writ Jurisdiction.

Constitutional provisions, locus standi as to who may apply, against whom writ may be issued including the expression 'other authorities', territorial jurisdiction, purposes for which writ may be issued, delay and

latches, alternative remedy, natural justice, Administrative Tribunals, exclusion of judicial review, administrative discretion and judicial review, other limitations of writ jurisdiction and the new jurisprudence of public interest litigations are discussed here with elaborate case law and with comparative study of English and U.S. positions wherever necessary. Discussion of the principle of natural justice appearing in Chapter 8 is very exhaustive and runs into nearly two hundred pages in itself. The doctrine of Judicial Review is part of the basic structure of the Constitution. Discussion of this in chapter eleven is again very exhaustive and included discussion of new doctrines like frond on the Constitution.

Part III contains specific writs, Habeas Corpus in chapter 1, Mandamus in chapter 2 with the help of lot of case law. Right-duty relationship and the doctrine of 'demand and refusal' have been analysed in the area of mandamus. New concepts of continuing mandamus and anticipatory mandamus are also dealt with. Writ of prohibition and its limits, writ of certiorari and governing principles of jurisdictional facts, proportionality, legitimate expectation and writ of 'Quo warranto' and its principles such as 'de facto doctrine', collateral attack, delay and latches, waiver and acquiescence, are also discussed in separate chapters, of course, with exhaustive discussion of case law.

Part IV deals with miscellaneous matters containing Supervisory Jurisdiction of the High Courts under Article 227 of the Constitution in chapter 1, Jurisdiction of the Supreme Court under Article 136 (Special leave Petitions) in chapter 2 and Constitutional amendments concerning writ jurisdiction in chapter 3.

Also as noted in the preface 'Practice and Procedure' appearing in Part V is a special feature of the book. Several topics numbering one hundred and fifty have been included herein. In chapter 1, 'Principles and Procedure', several new points, seldom found elsewhere like, pleadings, parties to writ petition, interveners, letters and telegrams, suo motu exercise of writ jurisdiction, rules of courts, sittings of courts, have been discussed. Likewise in chapter 2, 'facets of practice', topics like preliminary hearing, partial admission, interim relief, premature writ,

infructuous writ, hypothetical questions, academic issues, constitutional issues, disputes between public authorities, trial in open court, oral evidence, oral arguments, written submissions, oral judgements, change in judgement/order, nature of directions, bench hunting, letters patent appeal, speaking to minutes, curative petitions, reading down principle, have been discussed. Writ Proceedings are of a summary character, and therefore, ordinarily, they have to be decided on the basis of admitted facts on or affidavits. Disputed question of facts should not normally be gone into by a writ court. This has been well brought out here. Also discussed are conflicting decisions of the Supreme Court, binding effect of the decisions of the Supreme Court, direction not to treat a judgement as precedent, stare decisis, prospective over ruling etc, which are also common in a treatise on constitutional law or law of writs.

There is an appendix. Supreme Court Rules 1966 appearing in appendix III and Rules framed by the various High Courts under Articles 226 and 227 appearing in appendix IV are useful for practitioners and the model forms of writ petitions under Articles 32 and 226 very useful to law students professors and lawyers in drafting petitions. On the whole the book is a very valuable contribution to the field of law and an able guide for lawyers and law teachers and students and a must for any law Library. The price is reasonable compared with its volume and depth.

G. Sadasivan Nair*

* B.Sc. (Kerala), LL.B.(Delhi), LL.M., Ph.D. (Cochin); Professor and Director, School of Legal Studies,CUSAT, Kochi-22.