

BIBLIOGRAPHY & BOOK REVIEW

Select Bibliography

V. Raghavendra Prasad

Legal Officer

- 1. B.D. Agarwal**, "Rationalising Land Acquisition Compensation", AIR 1999 Journal 75 - Points out the deficiencies in fixing market value under Section 23 and 24 for acquiring land for public purpose under Land Acquisition Act and suggested, inter alia, for adopting the rate of purchase of the land by the owner as a relevant factor in assessing the amount of compensation.
- 2. Binod Poddar and P.N. Mukherjee**, "Constitutional validity of Service Tax", AIR 1999 Journal 69 - discusses the object of imposition of service tax and power of the Central/State Govts. to impose service tax with the help of case law.
- 3. D.S. Bhonde**, "Review I.T.C. Ltd. Vs. Debt Recovery Appellate Tribunal 1998 AIR SCW 237", AIR 1999 Journal 25 - discusses the reasons indicating how the Apex Court erred in accepting the ITC Ltd.'s view that the company is entitled to receive the money, upon presentation of the Bills, as per the terms of the Letter of Credit and the Bank cannot sue the Company for recovering the amounts paid under the Letter of Credit suggested for the review of the decision of the Court.
- 4. Dr. K.R.Chandratre** "Computation of limit available for Inter-Corporate Investments, Loans, Guarantees and Securities under Section 372-A Case Study", (1999) 19 SCL, 24 (Magazine) - discusses with the help of an example how the monetary limits for inter corporate investments, loans, guarantees and securities in terms of a Company's paid-up share capital or free reserves are to be calculated.
- 5. Dr. V. Balachandran**, "New Prudential Norm for NBFCs - Some Reflections," (1999) 19 SCL 144 (Magazine) - analyses the new prudential norms for NBFCs issued in the month of January, 1998 on the basis of the recommendations of the Vasudev Committee.
- 6. Dr.V.Balachandran** and K.S. Ravichandran, "Maintenance of minutes - Some legal issues", (1999) 19 SCL, 3 (Magazine) - examines the issue under section 193 of the Companies Act, 1956, i.e. whether minutes can be kept recorded in a loose leaf form, in other words, does a loose leaf binder constitute a 'book'?
- 7. Dr. Malkiat S. Rahi**, "Judicial Activism and Judicial Restraint," AIR 1999 Journal 45 - elaboratively discusses the concept of Judicial Activism adopted by the Indian Judiciary during the last couple of decades and suggested that Judicial activism should not lead to judicial adventurism, and judicial restraint should not stifle the voice of justice.
- 8. H.L.Kumar**, "Transfer of 'workman' very limited Jurisdiction of Civil Courts" 1999 Lab.I.C. Journal 12 - discusses the scope of jurisdiction of the Civil Courts to entertain matters of transfer of a workman after amending the provisions of I.D.Act.
- 9. Hon'ble Justice M.G.Palshikar**, "Constitution of India Amended Unconstitutionally. Basic

Structure Destroyed" AIR 1999 Journal 32 - detailed case law discussions commencing from Golaknath's case (1967) to S.P.Gupta's case (1982) from the vibrant and radiant angle of Constitutional Spirit, in the matters of judicial officers appointment. Further the author has made personal adjudication of destroying the basic structure justifying the identity to the title of the article in his own approach and has ultimately reached the goal which the nation never focussed upon.

10. Jayanth M. Thakur, "Recent amendments in directions relating to acceptance of deposits by Non-Banking Companies," (1999) 19 SCL 100 (Magazine) - discusses the favourable changes made by the RBI, making it easier for NBFCs to accept public deposits.

11. Kamleshwar Nath, "Deficiencies in Court Procedures: Remedies" AIR 1999 Journal 1 - a comprehensive study on deficiencies in Court Procedures at different stages of the trial such as a) multiple provisions for Appeals and Revisions, b) too frequent stay of proceedings at all stages, c) adjournments on flimsy grounds etc. and suggests remedies to overcome those deficiencies emphasising on creating an institution of Judicial Ombudsman.

12. M.Krishnan, "Companies (Amendment) Ordinance, 1999 - Inter Corporate Loans, Guarantees and Investments," (1999) 19 SCL, 161 (Magazine) - examines the short-comings of new section 372 A, inserted by the Companies (Amendment) Bill, 1998 and has suggested that appropriate changes be made through the comprehensive companies (Amendment) Bill, 1998, which is pending before the Parliament.

13. M.Krishnan, "Inter-connected Stock Exchange" 1999 19 SCL 106 (Magazine) - provides basic information about the Inter- Connected Stock Exchange which is fully automated institution meant to provide trading facilities at the national level as distinct from the regional level.

14. M. Krishnan, "Companies (Amendment) Ordinance, 1999 : Transfer of Unclaimed/Unpaid dues to Investor Protection and Education Fund," (1999) 19 SCL 147 (Magazine) - examines the new provisions critically, pointing out several shortcomings therein and hoping that when the Comprehensive Companies (Amendment) Bill, 1998 is finally enacted into law by the Parliament, the relevant provisions will be fine-tuned.

15. M.H.Shyama Prasad, "The law relating to Forms and Returns in the Companies Bill, 1997" (1999) 19 SCL 1 (Magazine) - a comparative note on some of the provisions relating to submission of periodical returns by the Company under the Companies Act, 1956 and similar provisions correspondingly appearing in the Companies Bill, 1997 and comments upon the changes proposed to be introduced.

16. M.H.Shyama Prasad, "Companies (Amendment) Ordinance, 1999 - Provisions relating to Inter-Corporate Loans and Investments - A critical analysis" 1999 19 SCL 138 (Magazine) - analyses the provisions of section 372 A dealing with inter-corporate loans and investments as it was first inserted in the Companies Act, 1956, by the Companies (Amendment) Ordinance, 1998 promulgated on October 31, 1998 and opines that provisions of section 372A are fairly liberal as compared with the provisions of section 370 and 372 of the Companies Act.

17. M.M.Ahuja, "Term "Wages" under the ESI Act 1948: An Ignition Point" 1999 Lab I C Journal 16 - suggests after discussing judicial decisions, suitable amendments to the definition of "wages" under section 2(22) of the ESI Act.

18. Ms.Debjani Naskar and Angelina Talukdar, "Lead Manager in the Arena of Corporate Financing," (1999) 19 SCL 89 Magazine) - analyses the role of the Lead manager or the Issue manager in Corporate finance, giving a general description of his duties and responsibilities in the light of current corporate practices and the present legal framework.

19. N. Vija Kumar, "Officers of Government Companies and Public Sector Undertakings - whether 'Public Servants' and prior 'sanction for prosecution' necessary" (1999) 19 SCL 115 (Magazine) - discusses the question whether officers of government companies or public sector undertakings are 'public servants' and prior sanction of the appropriate authority is necessary for their prosecution for penal offences.

20. N.D.Sarkar, "What is the justification behind the Retiring Age of Hon'ble Chief Justice of the High Court being sixty two years" AIR 1999 Journal 27 - examines the constitutional provisions relating to the appointment of Supreme Court and High Court Judges and their retirement under Articles 217, 221 and 124 and opines that law should be enacted amending the Article 217 (1) of the Constitution. and suggests to amend the Article 217(1) of the constitution to enhance the retirement age of the Chief Justice of High Court to 62 years on par with the Judges of Supreme Court since they are in receipt of the same salary of Rs.9000/- per month apart from other allowances and benefits vide Articles 221(1) and 125(1) respectively of the Constitution of India.

18. N. Vija Kumar, "Section 10 of the Companies Act, 1956 - Whether it ousts jurisdiction of the Civil Court," (1999) 19 SCL, 9 (Magazine) - analyses 'ouster clause' under section 10 of the Companies Act, 1956 with the help of Supreme Court and High Court decisions and suggested for re-drafting of Section 10 of the Act.

21. Naresh Kumar, "Need for a Uniform Settlement cycle in stock exchanges", (1999) 19 SCL 109 (Magazine) - makes out for a strong case for a uniform settlement cycle to be followed by all the Indian stock exchanges to safeguard the interests of the common investor as well as to gain his confidence and explains the advantages that will follow from the adoption of a uniform rolling settlement system by all the stock exchanges in India.

22. Nandan Kamath and Ankit Majumdar, "The doctrine of bias and the Indian Arbitration and Conciliation Act, 1996 - Amendment required", (1999) 19 SCL 84 (Magazine) - opines that the Arbitration and Conciliation Act 1996 requires to be amended in certain requests to make the arbitration proceedings, especially those of the commercial variety, bias free.

23. Nilay V. Anjaria, "AIR 1998 SC 184 Affirming AIR 1997 Kerala 291 - A Progressive Law". AIR 1999 Journal 59 - appreciates the Supreme Court decision in Communist Party of India (M) Vs. Bharat Kumar, (1998) as a trend setter [affirming the Kerala High Court decision in Bharat Kumar K. Palicha Vs. State of Kerala (1997)] declaring the act of enforcing 'Bandh' by

political parties and organisations result into violence and prevents the general public from exercising their Fundamental Rights is illegal and unconstitutional.

24. P.K. Pandya, "Buy-back provisions of Companies (Amendment) Ordinance X-rayed" (1999) 19 SCL, 36 (Magazine) - Comparative analysis of legal provisions on section 77A of the Companies Act, 1956 and clause 68 of the Companies Bill 1997 empowering the company to buy-back its own shares.

25. P.K.Prabhat, "The concept of rate of interest in national and international commercial laws", (1999) 19 SCL, 65 (Magazine) - traces the development of concept of "interest" at the national and international levels and bring out the relevance and significance of the related concept of 'rate of interest' in resolution of commercial disputes.

24. P.M. Bakshi, "Counter-offers and the law of contracts", (1999) 19 SCL 81 (Magazine) - explains the concept of counter-offer with reference to the law of contract and the relevant case law.

26. P.Y. Padhye, "The Banking Ombudsman Scheme: A Critique", (1999) 19 SCL 75 (Magazine) - examines the salient features of the Banking Ombudsman Scheme and highlights some of its limitations and briefs the report of the RBI on the working of the Scheme since its inception in June, 1995 upto March 31, 1997.

27. Pinakini Ranjan Rakshit, "Wider Scope of Section 11A of the ID Act, 1947 Stretched out of the Apex Court - Narrowed Down by Hon'ble Calcutta High Court - whether Amounts to Judicial impropriety and Judicial Adventurism", 1999 Labour and Industrial cases Vo.32 Journal 1 - a critical analysis of non-observance of Art.141 of the constitution by the Calcutta High Court against the decisions of the Apex Court while interpreting the scope of section 11A of the ID Act.

28. Prof. C.M. Jariwala, "A Judicial approach in the Fire Works' Noise Pollution: A Critical (1999) 19 SCL 120 (Magazine) - a brief note on Non-Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998. Overview", AIR 1999 Journal 72 - discusses the efforts of the Calcutta High Court in Burra Bazar Fire Works Dealers Association case (AIR 1998 Cal 121) to regulate the law less noise pollution from use of fire works under Article 19(1)(a) read with Art.21 of the Constitution of India.

29. R. Kalidas, "Inter-corporate Loans and Investments - A review of the new legislation," (1999) 19 SCL 173 (Magazine) - a brief note on the new section 372 A of the Companies Act inserted by the Companies (Amendment) Ordinance, 1999 with effect from October 31, 1998 in respect of inter-corporate loans, investments and guarantees and securities and compares the old provisions with the new ones.

30. S.A.K. Azad, "Indian Environmental Law and Urban Development", AIR 1999 Journal 54 - focusses the environmental problems arising out of rapid industrialisation and urbanisation and suggests measures to tackle vehicular traffic, noise, location of industries in urban areas etc.

31. S.K.Gupta, "An Opinion on Bonus", 1999 Lab. I.C.Journals - discusses at length the various issues involved in the Payment of Bonus Act, 1965 for the benefit of employers which will help them in taking corrective measures.

32. S.R.S. Pandey, "Rights and Remedies available to the beneficiary for whom the Land is acquired under the Land Acquisition Act, 1894" AIR 1999 Journal 77 - elaboratively discusses the rights and remedies available to the beneficiaries (i.e. local authorities and companies or corporations) under the Land Acquisition Act, 1894 with the help of Supreme Court and High Court decisions.

33. S. Venugopalan, "Special directors appointed for BIFR on the Boards of Sick Industrial Companies", (1999) 19 SCL, 27 (Magazine) - explains the provisions under section 16(4) of the Sick Industrial Companies (Special Provisions) Act, 1985 where the Board of Industrial and Financial Reconstruction (BIFR) is empowered to appoint a special director or special directors for safeguarding the financial and other interests of the concerned sick company and clearly brings out the rights as well as duties of such a director.

34. S. Venugopalan, "Amendments made to Companies Act by the two Ordinances", (1999) 19 SCL 125 (Magazine) - sketches out the provisions of the Companies (Amendment) Ordinance, 1998 promulgated on October 31, 1998 and Companies (Amendment) Ordinance, 1998 promulgated on January 7, 1999 to give effect to certain urgent provisions of the Companies (Amendment) Bill 1998 and highlights the provisions pertaining to buy-back of their own shares by companies and inter corporate loans and investments and also suggests certain drafting changes, modifications in some of the provisions.

35. S. Venugopalan, "Compounding of offences under Company Law", (1999) 19 SCL 165 (Magazine) - sketches out the provisions of section 621 A which deals with Compounding of offences under the Companies Act and explains in detail the procedural aspects of Compounding of offences and clearly brings out the effect of such Compounding.

36. Sidharth Raja and Gautam Narasimhan, "Options of Futures", (1999) 19 SCL 52 (Magazine) - explains what a derivative is and examine the prospects of introduction of trading in two major types of derivatives viz. futures and options in securities (as distinct from commodities) in the Indian Capital Market.

Subhash Chandra Singh, "Equal Partnership in marriage and Family Relations", AIR 1999 Journal 64 - briefly explains the changing in Status of the Women from female polarized home making role to degree of freedom in the family relations at the advent of the rapid industrialisation and sketched out the various legal provisions under different enactments dealing with marriage, adoption, divorce, succession etc.

37. Surender Sahai Srivastava, "Slavery: Socio- Legal Implications", AIR 1999 Journal 43 - discusses the legal and constitutional provisions relating to slavery in India.

38. Surendra V. Kanstiya, "Acceptance of Public Deposits by Non-banking Financial Companies,"

39. V. Adhivaraham, "DRT Act Versus the Companies Act," AIR 1999 Journal 10 - examines the legal conflict between sections 18 and 34 of DRT Act and section 446 of the Companies Act and suggests, considering the object of S.446 of the Companies Act and the decision of Supreme Court in M/s. Srinivas Agencies case 1996 ISJ (Banking) 479, to read down the power of DRT under section 34 of DRT Act and to establish sufficient number of Company Courts to avoid delay in obtaining leave under section 446 of Companies Act.

40. V. Lakshmipathy, "Unequal Contracts in Industrial Law", 1999 Lab IC Journal 9 - examines with the help of Supreme Court and High Court decisions, the validity of employee entering into a contract with the employer for voluntary termination of service in the light of the provisions of Indian Contract Act and the Constitution of India.

41. Vinay R. and Prakash N., "Contractual Frustrations - Lessons From France", AIR 1999 Journal 28 - Study on Doctrine of Frustration Comparing English and French Legal Systems Vis-à-vis Indian Contract Act.

But courts are not bound to accept the administrative construction of a statute regardless of consequences, even when disclosed in the form of rulings.

- *STONE, Harlan F., in Sanford's Estate v. Comm. of Int. Rev., 308 U.S. 39, 52 (1939).*

One having obtained a writ of certiorari to review specified questions is not entitled here to obtain decision on any other issue.

- *Butler, Pierce, in General Pictures Co. v. Electric Co., 304 U.S. 175, 179 (1938).*

It may be said that in commercial or investment banking or any business extending credit success depends on knowing what not to believe in accounting.

- *JACKSON, Robert H. in Federal Power Comm'n v. Hope Nat. Gas Co., 320 U.S. 591, 644 (1944).*

Hard cases make bad law, but hastily drafted laws make hard cases.

- *COWPER, Francis, London Letter : "The Narcotics Wave", New York Law Journal, Jan. 3, 1968, 4:5.)*

BOOK REVIEW

Private International Law,
Prof. Paras Diwan and Piyushi Diwan, Advocate

DEEP & DEEP PUBLICATIONS

F-159, Rajouri Garden, New Delhi 110 027.
4th Revised and Updated Edition, 1988
Pages 745, Price Rs.650/-.

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The Fourth Revised and updated edition (1988) published by Deep & Deep Publications, New Delhi has focussed on the codification of this sub- continent's own rules of private International Law. In this sub-continent, the growth of private international law is slow and it can be said that it is at the infancy stage. The rules of Indian private International Law are a strange amalgum of statutory law and judicial legislation.

On a review one will definitely note that in some areas there is a total dearth of rules; in some areas rules are so few and scanty that no generalisation is possible; in some other areas the rules laid down by the courts are at variance. Our (Indian) private International law is mainly based on English law.

Prof. Paras Diwan, LL.M. Ph.D., former Director, Indian Institute of Comparative and Family Law, formerly Professor and Chairman, Dept.of Law, Punjab University, Chandigarh, has prepared this fourth revised and updated edition in collaboration with his daughter Piyushi Diwan, B.A. LL.B., Advocate, Punjab and Haryana High Court, for the benefit of members of the legal fraternity.

The entire gamut of private International Law is divided into 25 chapters, in 8 parts - Scope, Nature and Definitions and Historical Development and doctrines followed by Critical comments on the law, including references relating to foreign judgements makes the book interesting, and read worthy and informative.

In the first Introductory part, the authors have stated that on account of basic ideological differences among the countries of the world, it is not possible to achieve unification of private (International) laws. In 1951, a permanent bureau of Hague Conference was constituted under a Charter accepted by many countries and subsequently a forum consisting of Assistant Secretaries belonging to different countries have been set up at the Hague. It's main tasks are: examination and preparation of proposals for unification of private International Law (See pp. 50 and 51). The authors have pointed out that the international social need has given birth to private international law and so long as the need exists, private international law will stay (p. 72).

The Authors have made it clear that under the English and Indian Private International Laws, the application of otherwise applicable foreign laws may be excluded under three heads, namely when (1) foreign law is against public policy (ii) foreign law is penal law, and (iii) foreign law is revenue law (p. 126).

While discussing the topic `domicile', the authors have emphatically stated that `commercial domicile' is a misconception and it is in no sense akin to domicile (P. 180). The authors have rightly stated that as early as in 1894 the privy council got its first opportunity to expound the rules of Indian Private International Law with respect to jurisdiction of Courts connected to inter

parties actions (P. 192).

The authors state that in India, with the exception of Muslims, polygamy is not allowed to any people. In the laws of all communities in India, the marriage is a contract. It is further rightly said that irrespective of the form of marriage, the status and obligations arising out of marriage should be accorded recognition all over the world, unless it is repugnant to some pronounced principles of public policy (P. 252).

On account of diversity of laws in the countries of the world, the status of legitimate and illegitimate children has always been a question as to by which law a child is to be determined as legitimate or illegitimate? The authors have rightly stated that with the help of Lex domicilli of the child the legitimacy of the child can be determined. (P. 339).

The authors have cited recent case law like the case reported in AIR 1994 SC 658, wherein the validity of adoptions was challenged, where adoption was given to a foreigner in violation of the prevailing guidelines. The SC held that the guidelines should have been followed, but it is said that since the children were already abroad and were doing well, non-observance of guidelines could not be the ground to open the matter and cancel the adoptions. (Here the spirit of adoption law was given due weightage - see, P. 362).

The writers clearly and rightly submit that the courts should accord recognition to give effect to a foreign custody or guardianship order passed by a court of competent jurisdiction i.e. the court of minor's nationality or ordinary residence, unless it is found manifestly to the disadvantage of the minor (P. 377).

The authors have not touched the liquidation/amalgamation/absorbition and reconstruction of collaborations between foreign and Indian companies while discussing the corporations. This may be justified as the matter relates to a specialisation financial management and arrangements.

As regards corporate criminal liability, the issues are yet to cristalise in Indian private International law. But as liberalisation of economy has paved way for internationalisation of economic activity, this will be important for the future.

This book is eminently worthy of possession as it presents the Indian and English private international law, principles and jurisprudence including judgements, in a nutshell.

It is far better to act than to talk.

- RANSOM, William L., "The Bar's Duty of the Public", II *Indiana Law Journal* 151, 152 (1935).

The object of the discipline enforced by the court in case of comtempt of court is not to vindicate the dignity of the court or the person of the judge, but to prevent undue interference with the administration of Justice - Bowen, L.J. in Helomore V. Smith (887) 35 Ch. D. AA9, A55.
