

BOOK REVIEWS

Dr. Avtar Singh, Company Law (II Edn.), 1996 (Lucknow, Eastern Book Company) pp 569, Price Rs. 150.

*Apurva Agarwal**

Company Law is one law which is being modified almost everyday either by the judiciary or by the legislature. It being one of the largest statute in the Indian legal system, a comprehensive work done by the author is really a commendable job.

This book has entered its eleventh edition since it was first published in 1966, i.e., in a span of thirty years, the text had to be redrafted eleven times. It just goes on to show how much this branch of law changes and the details which the author has gone into. Between the first two editions of the book there were three amendments to the act. The parliament set up a tribunal for company matters which was soon revoked and s. 108 was amended to curb the practice of blank transfers. By the time the third edition was brought about, managing agency system was abolished along with a ban on contribution by companies to political parties. The ban on contribution to political parties withered away in 1985, because the experiment had failed. The contribution obviously were still made through the back door. Amendments continued to be made but it was to strengthen regulatory controls. The 1988 amendment was the largest amendment in terms of the volume and to have a very good regulatory grip. 1991, saw the economic liberalisation policy being followed vigorously by the Government of India. This meant that a diluted form of free market policy to be adopted, i.e., the legislature brought about the changes involving relaxation, decontrol and delicensing. The licencing raj was sought to be forgotten. MRTP companies became non existent, FERA companies become diluted, and ceilings on managerial remuneration was dropped.

Due to these frequent amendments, it has generated problems and a lot of uncertainties. Therefore the author felt the need to rewrite and amend his book so many times. To simplify and present a book on a comprehensive law such as Company Law is obviously a challenging task. Recent judicial decisions of Supreme Court, High Court and of England have been cited to elucidate and explain the area.

Chapter 1 of the book deals broadly with the corporate personality. The chapter begins with the attempts to define a company. The chapter then goes into the history and how it evolved in the present day form. Then the discussion is centred around nature of corporate form, its advantages and disadvantages. Amongst this the concept of corporate veil is also discussed which is the talk of the legal circles today.

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Chapter 2 of the text takes the reader into the area of registration and incorporation of the company, the procedure of registration and the various certificates required including the certificate of incorporation and the certificate to commence the business.

Chapters 3 and 4 deal with the two most essential components of a company in its formative stage. These two components are the Memorandum of Association and the Articles of Association. While the former is referred to as the constitution of the company the latter is more a contract between the company and the members of the company.

Chapters 5 to 9 of the book deal with the prospectus of the company, promoters of the company, the shares, shareholders and members. Chapters 10 and 11 deal with the position of directors and the various managerial positions in the company. Chapter 12 discusses the meetings of the Annual General Meeting, its quorum, business to be transacted, power of company law board to call meetings etc.,

Chapters 13-15 deals with the financial aspects of the company. While discussing dividends, the author has explained the rule in *Lee v. Neuchale*¹ and its applicability in India. The different types of debentures of a company has been dealt with in good detail.

The next few chapters deal with the rights of shareholders and the debate regarding majority powers v. Minority Rights has been brought about in an excellent manner. The judicial decision of *Foss v. Harbottle*² has been discussed with a view to show its incorporation in the company laws of our country. Chapters 19 and 20 deal with the various kinds of companies and the reconstruction and amalgamation of the company. Chapter 21 deals with defunct companies.

Chapters 22-24 deal with the winding up of companies. Chapter 22 deals with the types of winding up which are due to some fault of the company. Chapter 23 deals with voluntary winding up of companies. Chapter 24 deals with the process of winding up of companies. The main criticism of the book is that the author has just stuck to one statute i.e. the company law and has not referred to any other laws related to the corporate world . This has given the readers only one perspective of the corporate laws in the country and not a holistic perspective as would have been desired. The book would have a more fruitful meaning if a study on all the relevant corporate laws are done together and presented to the readers.

In all the author has followed a particular pattern while writing the text. The topics are arranged in a manner as if there is a continuous flow. This digest which has entered its eleventh edition is an excellent text and is a must reading for everybody interested in company law.

1 (1886-90) All ER Rep 947.

2 (1843) 67 ER 189.

Justice in International Law. By Stephen M. Schwebel, Cambridge: Grotius Publications, 1994, pp. xiii, 630. Price £ 80 (Hardcover)

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Stephen M. Schwebel, the Vice President of the International Court of Justice has served on the World Court since 1981. The author of many separate and dissenting opinions, Judge Schwebel has made a significant contribution to the growth of International Law, through the jurisprudence of the World Court at the Hague. The book reviewed which is Schwebel's fourth, is a collection of essays that have emanated from this great scholar in international law through the years. They have appeared in the past in various journals and law reviews of repute that are devoted to the study of the subject, such as the British Yearbook of International Law, the American Journal of International Law and the International Lawyer. Also included are contributions that Schwebel made to *festschriften* in honour of eminent jurists in international law like Manfred Lachs, Shabtai Rosenne and Jiménez de Aréchaga.

The pieces chosen range from the earliest period of Schwebel's four decade long writing career to his contemporary writings. Therefore some of them would appear to the undiscerning reader to be out of touch with the present day and perhaps in need of gross revision. As Schwebel himself admits in the Preface, the essays "are republished as initially written. That is not to say that many of them would not benefit by revision, for hindsight is illuminating, particularly in a field which has developed as much as has international law in the last forty-five years". Schwebel is also candid about the fact that some of the writings included in this volume do not reflect his present viewpoints, but he has not changed his method. He remarks "I do not subscribe to all the views they (the essays) express, but in the main, I do; it is chastening to acknowledge that neither the substance nor the style of my analysis has much improved.

The book is divided into five parts, which contain essays on select themes. These themes are the International Court of Justice, International Arbitration, the United Nations, International Contracts and Expropriation and Aggression, under Compliance with and Development of International Law. The essays have been carefully chosen under each theme, with one or two general essays on the concept itself and others which raise and discuss important controversies in each theme. The Part on the International Court of Justice is an example of this editing. The first essay is on Schwebel's broad reflections on the International Court of Justice. The next one concerns the relations between the International Court of Justice and the United Nations. The article that follows is Schwebel's oft cited analysis in the British Yearbook of International Law on whether the capacity to request an advisory opinion was wider in the Permanent Court of Justice than it is in the

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International Court of Justice. Thereafter the Schwebel treatise on authorising the Secretary-General of the United Nations to request advisory opinions of the International Court of Justice is reproduced. The chapter also deals with the important issue of the Chambers of the World Court by the inclusion of a piece that Schwebel wrote in honour of Shabtai Rosenne.¹ The important analysis made by Schwebel of the human rights record of the Permanent Court of International Justice and the International Court of Justice that was originally written for the Indian Society of International Law's volume in honour of Judge Nagendra Singh, is also incorporated in the book.²

The part on International Arbitration is a significant addition for it caters to a discussion on an important area of international law that is of considerable importance to international lawyers. Similarly the inclusion of the chapter on International Contract and Expropriation with the seminal article by Schwebel that narrates how the resolution on the Permanent Sovereignty over Natural Resources³ came to be passed in the United Nations General Assembly is noteworthy. This work is compulsory reading for the novice who seeks to learn the fascinating subject of International Development Law and the New International Economic Order. The incorporation of Schwebel's writings on the use of force gives the book credence as a comprehensive collection of materials relating to significant areas in international law.

While the volume is fairly comprehensive in relation to the major writings of Schwebel, it is not perhaps exhaustive as an indicator of the jurist in international law of the present day that he indeed is. His important statement during the 1979 Proceedings of the American Society of International Law⁴ made while he was a legal advisor at the U.S. State Department, on why most resolutions of the General Assembly of the United Nations lack any considerable legal effect does not find place, though it has been referred to in some other pieces that are included. Neither have any of judge Schwebel's judgments been covered, including his famous dissent in the *Nicaragua Case (Merits)*,⁵ where he was virtually isolated by his brother Justices in their condemnation of the 'illegal' involvement of the United

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- 1 Chambers of International Court of Justice Formed for Particular Cases in Justice in *International Law* 93 (1994) (Originally published in Dinstein & Tabory (eds.), *International Law at a Time of Perplexity : Essays in Honour of Shabtai Rossene* (1989).
 - 2 Human Rights in the World Court, in *Justice in International Law* 146 (1994) (earlier published in R.S Pathak & D.P. Dhokalia, (eds), *International Law in Transition: Essays in Honour of Judge Nagendra Singh* (1992).
 - 3 The Story of the United Nations Declaration on Permanent Sovereignty over Natural Resources, In *Justice in International Law* 401 (1994) (first published in the American Bar Association's Journal).
 - 4 S.M. Schwebel, The Effects of Resolutions of the United Nations General Assembly on Customary International Law, 73 *Am. S. Int'l. L. Proc.* 301 (1979).
 - 5 Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States*), Merits, Judgment, 1986 ICJ 3 at 259. (Dissenting Opinion).

States in Nicaragua. Even those who opposed strongly the United States' position in that case will find it difficult to pay no heed at all to the elaborate and scholarly opinion that Schwebel wrote, not so much in defence of his country's action but on why the Court had to rule otherwise than it did. In the first essay, of the book under review, Schwebel remarks, in obvious reference to the case, that he reminisced the happier days of his involvement in the Office of the Legal Advisor of the State Department for those were times when "the United States was plaintiff rather than defendant in the International Court of Justice".⁶ The reports that Schwebel wrote as a Special Rapporteur to the International Law Commission on the law concerning non-navigable water courses, during 1977 till 1981, have also been omitted from this volume.

In sum, '*Justice in International Law*' is a valuable assortment of disparate but important writings that have been collected from various sources, all which may not have been readily available to scholars and researchers in academia associated with international law.

6 Reflections on the Role of the International Court of Justice in *Justice in International Law* 3 (1994) (a speech that was delivered at the Washington University, later published in the *Washington Law Review*).