

Preface

“To be conscious that you are ignorant is a great step towards knowledge.”
— Benjamin Disraeli

RA Nelson’s commentary on the Indian Penal Code, 1860 is serving the legal fraternity for over a century. Its Tenth Edition is in your hands. The readers of the law books are not ordinary readers and come from myriad walks of life. They are law professors, lecturers, judges, criminal lawyers, public prosecutors, law officers of public and private institutions etc. who are in search of judicial opinions of the higher courts on various topics to suit their needs. Therefore, the task of an author revising a law book is time-consuming and cumbersome. He has to dive deep into the sea of case-laws handed down by the Apex Court and different High Courts to bring pearls of wisdom in the form of a commentary under variant appropriate headings of different sections of a statute.

RA Nelson’s commentary on the Indian Penal Code has stood the test of time. For the first time, these commentaries were presented in four volumes in the Ninth Edition. Certain special features were added in the previous edition. A few of them to mention are alteration of conviction from a higher offence to a lower offence, contradiction between medical evidence and the eyewitness account, the important aspect of medical jurisprudence, forensic science, and the instances where in a murder case the eyewitnesses were found unreliable. More than fifty instances were given where such contradiction between the medical evidence and the eyewitness account resulted into the acquittal of the accused in murder cases. Such instances were provided in Section 302 in the heading *Contradiction between medical evidence and oral evidence—accused may be entitled to acquittal*. The heading *Unreliable witness(es)* in Section 302 is also helpful to find out those instances where the witnesses were held unreliable. Similarly, the instances when the evidence of prosecutrix was found unreliable were also given under Section 376 in the heading *When prosecutrix should not be believed—Instances*. These features are further amplified in the present edition.

Although the space is limited but I would like to emphasise upon one important legal aspect that in cases where an accused is charged with a serious offence, it is not necessary that he would end up being convicted for the same offence in case there is credible evidence produced by the prosecution. The readers will find in this book that where the accused was charged with a grave offence, there are instances when the conviction of the accused by the trial court for that offence was altered by the higher courts in appeal to a conviction for a lower offence considering the facts and circumstances of the case. In what circumstances it should be done is highlighted in this book in all grave offences in the final bunch of headings under different sections so that the readers may look at them for use in similar circumstances. It is needless to point out that if an accused is charged with a major offence but convicted for a minor offence, it is a credible achievement of a defence lawyer though of a lesser degree as compared to the acquittal of the accused. Moreover, the prosecution can also have solace

that at least the accused has not gotten off scot-free. The court is also required to appreciate the facts and circumstances of the case and apply the legal provisions and case-laws to arrive at the correct conclusion whether the major offence for which the accused was charged is really proved or any minor offence in relation to such major offence is established by the prosecution for which he should be convicted.

The tabular description of sentence under Sections 302 and 376 of the Indian Penal Code is given under the commentary of these two sections. Cruelty against women which is relevant for Section 498-A and Section 304-B is described in different facets of cruelty in twenty four headings in the commentary of Section 498-A. The instances of cases/acts which amount to cruelty are given under a separate heading. Similarly, the instances of the acts which do not amount to cruelty are given under a separate heading in Section 498-A. The 26 instances where the benefit of doubt is given to the accused in dowry death cases are given under a different heading *Benefit of doubt* in the commentary of Section 304-B.

Certain amendments have been made in the Indian Penal Code in 2005 whereby certain new provisions have been inserted. Section 195-A has been inserted by the Criminal Law (Amendment) Act, 2005 which deals with the offence of threatening a person to give false evidence. The Code of Criminal Procedure (Amendment) Act, 2005 has inserted some provisions as a consequence of the amendments in the Code of Criminal Procedure, 1973. Section 153-A has been inserted to punish those persons who knowingly carry arms in any procession, mass drill or mass training. The Section has been inserted to give effect to Section 144-A of the Code of Criminal Procedure, 1973 which has been inserted by the same Act. Similarly, Section 174-A has been inserted to punish those not appearing in response to a proclamation published under Section 82 of the Code of Criminal Procedure, 1973. Another provision viz. Section 229-A has been inserted to punish those persons released on bail or on bond without sureties, who fail to appear in Court in accordance with the terms of the bail or bond without any sufficient cause. All these new provisions have been incorporated in the present edition.

Due to voluminous work on account of presentation of these commentaries in four volumes in the previous (ninth) edition as against the two volumes in the Eighth Edition, certain editing errors crept in the Ninth Edition, which have been removed in this Tenth Edition. The interrelated headings in different sections have been correlated to make the book cohesive. Considering the importance of sub-headings in different sections given in the previous edition, the same have been presented as the main headings in this edition. There is overhauling of all the four volumes of this book keeping in view the interest of the readers. The commentary of various provisions of the Code of Criminal Procedure, 1973 such as sanction for prosecution and bar under Section 195 of that Code is deleted from this edition and the readers may feel it convenient to read Sohoni's Code of Criminal Procedure for this purpose.

The readers are welcome to give their suggestions.

1 May 2008

SK SARVARIA

Preface to the Ninth Edition

'Criminal punishment has never been effective in eliminating or reducing crime, yet society believes, it has no other means to substitute for punishment' —Norman Morris

The Indian Penal Code which deals with crime and punishment, fulfils this belief of the society. Although more than one hundred and forty years old, this classic has stood the test of time. It represents the basic criminal law prevalent in India, defining the offences against society and laying down respective punishments. The other Acts dealing with criminal law, such as Indian Opium Act, Indian Arms Act, POTA, NOPS Act, FERA etc, are dwarves before this Code.

Nelson's commentary on the Indian Penal Code commenced soon after the Act came into force. Upto the fourth edition, the author RA Nelson revised his own work. Thereafter, eminent jurists, judicial officers and judges, namely SS Sastry, SD Singh, SN Mullah, CL Gupta, Justice BP Singh and Shri GS Sharma showered their wisdom and revised the work from time to time.

My heart feels overwhelmed with joy in presenting the ninth edition, of RA Nelson's commentary on the Indian Penal Code before the esteemed readers.

In the eighth edition of the work, it had been planned to revise this commentary and make it a four-volume work, but only two volumes of the eighth edition were published and a nelson's eye was somehow turned to the remaining two volumes. The enormous task of revising all the four volumes, was left to me by destiny. All the fruits of past efforts have been retained, case-law updated upto the end of 2002 and new synopses in different sections added. Each chapter starts with a topical introduction and almost every section has a synopsis. To save time and facilitate easy reference, the readers have been provided with sub-heads under important topics, summarising the central idea contained in the introductory paragraph of each sub-head.

A great emphasis has been laid in the present work to explain to the readers the essential ingredients of the offence as given under different sections of the Code and also to elaborate, what is an offence and who is an offender under these sections. The relevant provisions of Cr PC are also dealt with at different places.

A number of synopses have been added to different important sections of the Code and though it is not possible to explain them in the preface, yet, I cannot resist the temptation of describing a few of them.

The plight of the victim under our system is pitiable. He and his family suffer alone, the physical, psychological and financial hardships that follow the crime.

The Apex Court has on several occasions emphasised the liberal utilisation of powers vested in the courts for granting compensation to the victims and/or to the persons entitled to recover damages. The provision of law in this regard is under-utilised by the courts. A new synopsis pertaining

to the said aspect of compensation is added to section 304 with updated case-law.

Another synopsis which has been added to section 304 is 'Supreme Court's jurisdiction (SLP under Article 136 of Constitution)', which deals with the scope of the Supreme Court's jurisdiction relating to criminal matters.

It is experienced that seasoned lawyers at the time of final arguments in a criminal trial direct their efforts towards acquittal of the accused and at the same time address alternative arguments to minimise the rigour of the offence and the punishment to their clients. Though emphasis of their arguments is towards acquittal of the accused, alternative arguments are addressed, requesting for conversion of offence from an offence punishable with severe punishment to one in which lesser punishment is prescribed, eg in a murder trial, besides arguments of claiming acquittal, alternative arguments are advanced for conversion of offence from section 302 to section 304, Part I or Part II. Courts are also duty-bound to examine whether on given facts, section 302 or section 304 is attracted, to impart justice. Therefore, not only distinction between culpable homicide and murder which assume importance is elaborately discussed, but also the legal position pertaining to conversion of offence from Section 302 to section 304 and vice-versa are discussed in detail and a number of latest pronouncements of various High Courts and the Apex Court are added for the benefit of the judicial fraternity.

Custodial death cases are discussed under a new synopsis under section 302 with many decisions of the apex court. Similarly, cases pertaining to crime against women are dealt with under sections 354, 366, 376, 406, 498-A etc supported by a number of new cases under new synopsis.

The commentary is now being presented in four volumes. The first volume deals with sections 1 to 160 and the second from section 161 to 298. The rest of the sections are dealt with in the remaining two volumes. The third volume deals with the most important offences of the Indian Penal Code such as culpable homicide, murder, simple and grievous hurt, rash and negligent acts, rape, kidnapping, abduction etc.

The third and fourth volumes are full of new additions both in terms of case-law as well as new synopses under different sections.

By the grace of the Almighty God, the present work is seeing the light of the day. I believe that this edition will be useful to the bench, Bar, prosecutors, police officers, law-professors and other readers alike.

December 2002

SK SARVARIA

Preface to the Eighth Edition

The sixth edition of the celebrated and classic commentary on the Indian Penal Code by Nelson in three volumes was published as far back as in 1966. Its revision, which was already overdue became indispensable after the drastic changes introduced in procedure, nomenclature and hierarchy of courts and the norms of punishment by the Code of Criminal Procedure 1973, which came into force with effect from 1.4.1974. Before the time could widen this gap and keeping in mind the great inconvenience being

experienced by the readers, the seventh edition of the book had to be published in two volumes in 1981. As there was a persistent demand for a more exhaustive commentary and many years had rolled by in the mean time, we undertook the task of bringing this book up-to-date.

Notwithstanding the publication of the intervening two volumes of the seventh edition, with a view to make this edition more exhaustive and useful, we have practically revised the sixth edition to prevent the omission of any important case-law, which has successfully withstood the test of changing trends and is still as good as before. The Indian Penal Code and the Code of Criminal Procedure are the twin Codes which supplement each other and without the deep study of one, the knowledge of the other is incomplete. We have taken special care to notice all the relevant changes in the adjective law and all the references of the repealed Cr PC have been replaced by the references of the Code of 1973 in this edition. The existing matter has been rearranged wherever found necessary and the matter obsolete has been discarded. At the same time, care has been taken to retain the special features of this work, which made it so popular, for the first time in the history of Criminal Law in India the provisions as to limitation were introduced in Chapter XXXVI (Section 467 to 473) of the Code of Criminal Procedure, 1973 bearing cognisance of petty cases punishable with imprisonment for a term not exceeding three years. The period prescribed for taking cognisance of the offences has been stated and suitably dealt with from volume two onwards.

Besides giving the topical introduction at the beginning of each chapter and the synopsis at the beginning of each section, with a view to facilitate the search of the relevant case law, we have introduced the marginal notes in this edition incorporating the words and expressions used in the decided cases. We hope this will not only facilitate the work of the busy readers but will also save their valuable time.

Another feature of this edition is that case-law of the Supreme Court has been printed in bold letters again for the sake of the convenience of the readers as the decisions of the Apex Court can now attract their eyes at a glance.

In the first three volumes, the index of each volume appears at its end and a consolidated index of all the four volumes will appear at the end of the last volume.

As a very large number of judicial pronouncements and many of them of important points of law of far-reaching consequences, have been handed down by the Supreme Court and the various High Courts since the publication of the previous publication in three volumes, it was not possible to contain them in three volumes, therefore an additional volume became unavoidable. Some new sections of great significance, which were necessitated by the changed conditions and pattern of crime in the country have been inserted in this Code too by way of amendments. The up-to-date statutory changes including State Amendments and latest case law have been incorporated in this edition to make the book exhaustive and more useful.

We ardently hope that this edition of Nelson's commentary on the Indian Penal Code will be able to meet the expectations of the esteemed members of the Bench and Bar, Public Prosecutors, Police Departments and all others who are in anyway concerned with this branch of law and will be received

with the same warmth and affection as extended to the previous editions.

15 February 1996

BP SINGH & GS SHARMA

Preface to the Fourth Edition

The detailed revision, to which the work has been subjected in preparing this new edition, has necessarily increased its size by over a hundred pages, as compared with the third edition, and the number of cases cited as authorities, has risen from some 1,650 to 2,200. Cases, both English and Indian, officially reported up to the date of publication, have been incorporated, and all the decisions, collected in Wier's Criminal Rulings, the Criminal Law Journal of India Reports, and the various series of English Law Reports, in so far as they are applicable to the Indian Penal Code, have been included. Whilst mindful of the interests of the Law students of the Universities of Madras and the Punjab in their prescribed text-book in Criminal Law, every endeavour has been made to make this new edition of the greatest practical utility to practitioners in, and administrators of that, of all grades.

Law College

RAN

Madras, 23 December 1907