FAMILY LAW,VOL I, FAMILY LAWS AND CONSTITUTIONAL CLAIMS and VOL II MARRIAGE, DIVORCE AND LITIGATION (2010). By Flavia Agnes. Oxford University Press, YMCA Library Building, Jai Singh Road, New Delhi - 110001. Pp. xxxi + 215 & xxxi + 377. Price Rs 350 & 450/.

INDIA HAS a multiplicity of diverse family laws, the applicability of which is influenced by several criteria such as religion, domicile, tribe, *etc*., consequently displaying a wide variation *vis-à-vis* each other. Legal provisions governing this exclusive and private sphere of human life are treated as part and parcel of the domestic law. Nevertheless, time and again, extensive challenges in the international scenario surface as love and desire to marry is not confined to religion and national boundaries. Inter country marriages and adoptions, and related problems of matrimonial remedies, custody and guardianship issues crossing human made territories have thrown up important issues of conflict of laws as also validation of decrees pronounced by foreign courts. At home, the family laws show disparity even with respect to their origin, as some are based on scriptures/or have divinity of origin, others are manmade legislations conceived and promulgated in India, while remaining originated in a foreign land but have validity of application in the domestic soil.[1]

The substantive content of the diverse family laws displays a commonality of subjugation of women. It is extremely unfortunate as the realm of family laws not only determines their status and rights but also deals with personal domain that virtually forms their universe. Thus, glimmer of hopes in their hearts of a better treatment at the home front were kindled with the promise of an egalitarian Constitution that proclaims prohibition of discrimination on grounds of sex in all spheres of life. Simultaneously, personal laws witnessed considerable intrusion by the state in the shape of consistent and extensive statutory

1. For instance the Portuguese Civil Code, 1867 and the French Civil Code, 1804, are still applicable to the inhabitants of Goa, Daman and Diu and to renocants of Pondicherry, respectively.

modifications and, in several instances, led to fundamental alteration of the nature of the marriage, and spousal matrimonial obligations towards each other. This raised vital questions of desirability and feasibility of harmonization of inherently and patently discriminately Indian family laws and the egalitarian constitutional provisions. Judicial ambivalence over the applicability of the constitutional norms of gender parity in this exclusive private zone is predominantly visible and of late has shown a positive trend. In this scenario, a book tackling family laws in modern India becomes very relevant, more specifically that visualizes this domestic sphere from the eyes of a feminist in an attempt to test them at the touchstone of the fundamental law of the land, *i.e.* the Constitution.

The book[2] is in two volumes with the first analyzing the family laws from the constitutional angle while the second deals with the laws of marriage, divorce and matrimonial litigation from a feminist perspective. The first volume is jurisprudential in nature and traces the development and history of the laws of marriage and succession of the disparate communities in India, *viz.* the Hindus, Muslims, Christians, Parsis, Jews and also the customary laws. The author argues and clarifies how while codifying Hindu law, women's concerns were consistently ignored, despite the fact that the focal point of initiation of the proposed reforms always indicated gender emancipation. In the formal legislative process, only the *Brahminical* practices received ascendancy over other forms and were recognized as the primary pattern of marriage and sonship among the Indo-Aryans in the *Gagentic plain* and the hilly terrain of northern India,[3] even though in reality there were numerous variations, customs and traditions that placed women on a high pedestal, and were contradictory to *Brahminical* practices. The author also compares the impact of the prevalent practices of marriage and post-marriage in the two major areas, *i.e.* north India and the Dravidian region and demonstrates as to how the rigid adherence to patriarchal culture and control over a woman's complete self was systematically observed through these matrimonial practices in the northern India leaving no room for support structure for a girl/woman throwing her at the mercy of her in-laws. This entire notion of exogamy, *i.e. sagotra* and

2. Flavia Agnes, *Family Law*, Vol. I, *Family Laws and Constitutional Claims*; Vol II, *Marriage, Divorce and Litigation.*

3. *Id.* at 95.

sapinda and fictive kinship applicable to a village or a group of villages that bans marriages among relations and within a village took a girl at a considerable distance from her home of birth after marriage. In addition, coupled with the advocacy of pre-puberty marriage of girls and strict enforcement to post-marriage norms of limited visits of natal family members to a married daughter's matrimonial home and not taking water or meals there, resulted in making a bride extremely vulnerable, isolated her and denied her parental support in times of need, leaving her in an alien and distant environment at an early age. This, as a rule, led to her subservience and her desired submission for the convenience of the in-laws. Her ill-treatment, and humiliation was termed the process of her induction in the new family, and a tacit forced acceptance on her part in the light of a deliberate snatching of every possible alternative termed as her adjustment. Eventually, the whole system made her the carrier of her husband's children relegating her to a very inferior place. On the other hand, the marriage pattern among south Indian Dravidian communities displayed a glaring contrast to the abhorrent practices perpetuating the patriarchal concept in northern India. Here, existing kin ties were attempted to be strengthened through marriage preferably with blood relations like cousins, uncle and niece, *etc*., and were closer to Islamic, Jewish and Zoroastrian traditions. An important aspect of these marriages was the familiar surroundings for the girl/bride with lesser chances of her exploitation and more security than unfamiliar environment of a marriage outside *gotra*/village. Since these marriages were within the families, there were also no ills of dowry and related unfair practices. The author further argues that the Hindu code discarded several liberal customary practices beneficial to women for the sake of uniformity[4] and incorporated customary provisions contradictory to Hindu scriptures, thereby putting an end to the essence of Hindu law yet precariously called the code "Hindu". She also demonstrates how an obsession with statutory law and selective inclusion of customary law has proved to be detrimental to the interests of a woman.[5]

Adopting an interdisciplinary approach, the author dwells into the issues of vital importance for women such as her struggle to acquire even basic learnings of reading and provides an insight into the systematic

4. *Id*. at 103.
5. *Id*. at 103-104.

efforts of social reformers towards women's emancipation through education as also their political participation.[6] She notes the dilemma of women activists in putting forward their demands to authorities comprising men and how they succeeded in convincing them that it would not threaten their *hitherto* exclusive male domain. Very ably, these women projected their agenda as congruent with not only the language of equality in political domain but also in harmony with traditions.

The author then deals with the constitutional validity of personal laws and examines the issue of a uniform civil code, the attitudinal changes and of late jurists' questioning a positive justification of the same as advancing a woman's concerns. Volume II, discusses the concept and substantive provisions dealing with marriage, divorce and matrimonial litigation. The author analyses the judicial pronouncements in the area of maintenance, custody and guardianship and matrimonial property from the perspective of their effects on a woman and shows how the concept of void marriage has failed to check bigamy but has instead worked to the detriment of a woman. The author argues that despite imposition of monogamous norms for a Hindu man, and a firm obligation on him to maintain his wife, he can still evade this economic responsibility on not merely the ground of his wife's bigamy but also his own bigamy.

While dealing with the issue of child marriages, the author argues that the declaration of child marriages as void would further subvert women's rights and help in re-establishing a firm parental control over the lives of children in a typical patriarchal set up. It would take away whatever little space is available to the minors to express their consent in marriage.[7] more specifically in elopement cases. It is, however, difficult to agree with this opinion of the author as unlimited choice expressed by young persons of impressionable age can be to their detriment and in several cases, parental control has helped preventing the adolescent from ruining their own lives. The legislative steps of invalidating a marriage of a minor girl, who was enticed away from the keeping of the lawful guardianship or was married by deceit or otherwise for her sexual exploitation, are both well timed and extremely balanced. At the same time, minimal parental interference with a major daughter's

6. *Id*. at 125.
7. *Id.* at 77-78.

choice of life partner is by and large amply and adequately reflected in the Indian family laws.

The book also explores custody and guardianship issues; NRI marriages and the resulting conflict of law issues. Its highlight is the thought provoking, incomplete journey of a woman from status to contract and the constraints that she faces in being a married woman.[8]

A very informative and well written book, it would prove useful for the researchers, academia and those related with gender studies, who want to understand family laws and its impact on the lives of an Indian woman.

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8. *Id*. at 102-116.

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JUSTICE FOR THE POOR: PERSPECTIVES ON ACCELERATING ACCESS (2009). Ed. by Ayesha Kadwani Dias and Gita Honwana Welch. Oxford University Press, YMCA Library Building, Jai Singh Road, New Delhi - 110001. Pages xv + 677. Price Rs 895/-.

ACCESS TO justice is a basic component of human rights. The notion of justice evokes images of rule of law, of the resolution of conflicts, of institutions that make laws and those who enforce it. Justice implies fairness and the implicit recognition of the principle of equality.[1] The preamble to the Constitution of India mandates the state to secure to its citizens social, economic and political justice.

The book under review consists of papers by eminent scholars and practitioners on the role of access to justice with respect to poor, which have been compiled and edited by two persons. According to the editors, in their introductory chapter, access to justice is a growing concept which comprises of the rule of law, administration of justice, good governance and democratic ideals. Access to justice means equal opportunity in seeking justice from the courts of law. Access to justice seeks to fill the gap between the citizen and law in terms of quality of opportunity and approach in facing issues and providing an appropriate remedy. It adheres to achieve the goal of justice to all which means equal access to justice irrespective of economic status of individuals. Poor people are not able to have equal access to justice due to many reasons like lack of legal information about the dispute resolution systems and effective mechanisms to protect individual human and social rights. The concept of 'access to justice for the poor' has also been recognised as the main objective of the United Nations Development Programme (UNDP) and other developmental agencies. Human development can be achieved through equal access and social justice.[2] A detailed study of the concept of access to justice, rights and justice delivery systems, the role of UNDP in promoting equal access to justice to all, the issues and challenges for access to justice for the poor have been discussed in the

1. John Rawls, *A Theory of Justice* 11 (Harvard University Press, 1971).

2. Ayesha Kadwani Dias and Gita Honwana Welch (eds.), *Justice for the Poor: Perspectives on Accelerating Access* xv-xxii (2009).

book.

The book is divided into five chapters consisting for eighteen papers written by eminent scholars and practitioners of law and justice. The book also contains an epilogue, bibliography and list of contributors. Each chapter is preceded by a well-formulated overview of the papers in the chapter by the editors.

The first chapter deals with the concept of access to justice, its evolution and recognition at the international forum. This chapter comprises of two papers. The first paper written by Ayesha Kadwani Dias on the 'Topic of International Law and Sources of Access to Justice' discusses the concept of access to justice and its recognition as a human right by UNO, main impediments in access to justice, the impact of globalisation on access to justice with special reference to Bhopal gas disaster case, the role of International law in promoting access to justice, challenges ahead and recourse mechanisms. This paper contains five annexures. The second paper written by Upendra Baxi titled 'The Renascent Access Notions: Globalisation and Access to Justice' discusses the impact of globalisation on access to justice. The author has said that access to justice is a jural relationship between a citizen and the state as an independent service provider.[3] He has discussed about various kinds of globalisation like conquest globalisations, colonial globalisations, cold war globalisations, voluntary globalisations, disciplinary globalisations and judicial globalisations.

The second chapter on 'Access to Justice on Plural Legal Systems' contains three papers. This chapter identifies various justice administration institutions at the national and international level.[4] The first paper written by Julio Faundez on 'Community, Justice Institutions and Judicialisation: Lessons from Rural Peru' discusses the evaluation of legal and judicial reform projects in Latin America. He discusses the successful existence of the community systems for the resolution of disputes and its incorporation in national judicial system. The second paper written by Fareda Banda on 'Women and Access to Justice' highlights the position of women for access to justice. She says that women lack equal access and treatment in justice system due to economic, social and cultural conditions. She suggests various methods for access to justice for women. In the third paper, 'Access to Justice and Women's Human Rights: A case study of Application of Hudood Laws in Pakistan' Shaheen Sardar Ali depicts the

3. *Id*. at 72.
4. *Id*. at 103.

picture of women in Pakistan.

The third chapter comprises of three papers. This chapter discusses the relationship between the concept of access to justice and public interest litigation. The first paper of Geoff Budlender discusses the evolution and development of public interest litigation as a means of access to justice in South Africa. The second paper of Shedrack C. Agbakwa and Obiora Chinedu Okafor differenciates social action litigation from public interest litigation in India and depicts the position in Nigeria. The third paper of James A. Goldstone discusses the development of public interest litigation in central Europe.

The fourth chapter includes four papers which are devoted to a discussion of the relationship between democracy, good governance and justice administration and emphasises on independent, effective, responsive and accountable judiciary. The first paper by Jill Cottrell and Yash Ghai focuses on the role of judiciary in development and reduction of poverty and role of Constitution in access to justice in Kenya. The second paper by James Thuo Gathii talks about the judicial and anti-corruption reforms in Africa. The third paper by Mohamad C. Othman emphasises on legitimacy, accountability and independent judicial system for good governance. The last paper by Stephen Golub highlights that international efforts by providing funds for projects for access to justice for the poor have failed and suggests some alternatives.

Chapter five includes six papers elaborating the regional variations in Latin America, Africa, the Arab States Region and the Commonwealth of Independent States with respect to access to justice at the national and international level. The first paper by Francesca Dagnino discusses the experiences of Africa in expanding access to justice. The second paper by David Mcquoid-Mason discusses access to justice through legal aid services in developing countries in the light of South African experience. The third paper by Allen McChesney elaborates the experience of UNDP in Commonwealth states. The fourth paper by Noha EL-Mikawy and Zena Ali Ahmad talks about access to justice in Arab countries. The fifth paper by Silvina Ramirez, Liere Otamendi and Alejandro Alvarez highlights the position in Latin America. Last paper in this chapter by R. Sudarshan discusses the relationship between rule of law and access to justice.

To conclude, the book under review is an excellent collection of papers penned down by eminent personalities. These papers provide an overview of the concept of access to justice to the poor and the problems faced by them in the access to justice. This book would indeed be useful

for research scholars, academicians, judges and legal practitioners.

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