



BOOK REVIEWS

HINDUISM AND DIVORCE-FROM DHARMSASTRAS TO STATUTORY LAW – A CRITICAL STUDY (Vol.1& 2) (2000). By Hari Dev Kohli. Decent Books, Najafgarh Road, New Delhi – 110 059 Pp. xv+xi+650 Price Rs. 1200/-.

THE BOOK is a research work. It presents a detailed study of *sastric* Hindu law as well as the statutory law on the subject of marriage and divorce. Vol.1 contains *sastric* law for divorce and global perspective and Vol.2 contains statutory divorce under Hindu law.

The work has been divided into following chapters: Vol.1 (1) Status of Women, (2) Hindu Marriage – Concept and Nature (3) Divorce under Hindu *Sastric* Law, (4) Emerging Global Perspective.

Vol.2: (5) Statutory Divorce under Hindu law (6) Critical Appraisal. These chapters indicate the range of study on the subject.

It is to be stated that the marriage has been a time honoured institution of Hindu society. Strange says: “By no people is greater importance attached to marriage, than by the Hindus. It is among them, with one sex, (the female), indispensable. On the other, it constitutes order of Housekeeper (Grihastha), the second, and most respectable of the four, by which with the different periods of human life are distinguished. It completes for the man the regenerating ceremonies, expiatory, as is believed, of the sinful taint that every child is supposed to contract in the parents’ womb ...”.¹

Therefore, in *Dharmasastras* most elaborate rules on the topic of marriage are found. *Dharmasastras* consider marriage as a holy union between a male and female and it is basal in the attainment of all four *pursarthas*, the coveted objectives of life for a Hindu.

The author has taken up for study this important branch of Hindu law for which he deserves credit. The author has correctly pointed out that women enjoyed exalted position in Hindu society and has cited numerous texts from vedic literature and *Dharmasastras* to support it. In fact, since vedic times the women have been held in very high esteem in Hindu society. A married female particularly enjoyed an honoured position in the family. It was in later times, when due to continued foreign invasions and subsequent establishment of foreign rule in the country that their position came to suffer.

The concept, nature and philosophy of Hindu marriage has been described very briefly in the following statement² :

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1. Strange, *Elements of Hindu Law* Vol. 1 34 (1825).
 2. B.N Mani, *Laws of Dharmasastras* 37 (1989).



Marriage has been the most respected, time-honoured institution of the Hindu society. It was indissoluble sacred union of a male and female with lofty ideals. It is to be stated that ancient literature abounds in instances where persons dedicated to these ideals achieved godliness. History bears testimony that men sacrificed their lives to protect the honour ... and women ascended to pyre to safeguard their chastity. This institution has preserved what is best in the Hindu social life. The virtuous matrimonial life imbibed that parenthood which nurtured that myriad of great men of which the nation is proud of.

The author laments the growing increasing westernization of the sacred institution of Hindu marriage and its evil effects. It is stated³ :

How far the Western culture is responsible for social upheaval in Hindu society...a specific plant or crop has its growth in particular climate and soil. Transplantation of organ requires matching blood group and tissue compatibility. Similarly, institutions based on specific cultural ideology if planted in discordant cultural ethos will result in a great failure and consequently social equilibrium will become erratic and rhythmic oscillations will be swayed by the tidal waves of inconsistency in well-established moorings.

It is to be stated that fast globalization of political, legal and social ideas and institutions may not allow traditional cultural values to remain unaffected. In order to preserve it, it is necessary that the younger generation should be educated about its merit and usefulness for the stability and progress of society.

The get-up and printing of the book are fine.

However, there are certain shortcomings in the book. There are numerous spelling/printing mistakes. To refer to a few, 'floodates', (p.495 last para) (it should be flood gates) 'vas smrti' (p.503) (it should be 'Vyas Smriti') 'sanctified Act' (p.507) (it should be 'sanctified act'). 'Weaker section' (p.517) (it should be weaker sex). 'pile' (p.532) (it should be pyre).

At places the language is defective. A few instances are given below: "Whether divorce is the solution to solve the social evils created due to showing disregard to women" (p.513).

"If we look to the various verses of the code of Manu, apparently they appear to be symbols of self-contradiction" (p.516)

"Manu and other *smritikars* took the view of the physiological basis of women and even today she is known as a 'weaker section' and not

3. Hari Dev Kohli, *Hinduism And Divorce-From Dharmasastras To Statutory Law - A Critical Study* 508(2000).



from a sociological angle". (p.517).

"Important social legislation relating to women were brought in, which covered the internal situation of her position in parental or matrimonial home or in the external situation of acquiring education, skills, profession, employment etc." (p.519)

There are other mistakes also. In many instances the extracts given in the book are not correct.

The author refers to a judgement of Supreme Court at p. 518 of the book. The name of the judge is not correctly written. The extract from the judgement is also incorrect. It is stated that 'while delivering judgement in the harassment case of a woman, Manu has been quoted, "In good olden days where the women are honoured there is the abode of god". (p.518).

In fact, the said judgement states "...in this holy land of ours where in good old days the belief was: (where woman is worshipped, there is abode of God).⁴

In numerous instances references are incomplete or erroneous and not in the established and recognized form. It appears that the author, in many instances, has consulted secondary sources regarding the works referred to in the book.

It is hoped that in the next edition of the book the author will take care and rectify the defects.

The author has pointed out in detail the lacunas existing in the Hindu Marriage Act, 1955 and has made valuable suggestions for reforming the law.

As stated earlier, the book presents a detailed study on the subject of Hindu marriage and divorce. The appendices, bibliography and index add to the utility of the book. The book will certainly be very useful to and enlightening to those who are interested in a deep study of the subject.

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4. AIR 1996 SC 67.

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