BOOK REVIEWS

THE WHEEL OF LAW (2003). By Gary Jeffrey Jacobsohn. Oxford University Press. Pp. xviii + 324. Price Rs.695/-.

THE BOOK[1] under review is a study of "India's Secularism in Comparative Constitutional Context." It places the "Indian case within a comparative trio that includes the United States and Isreal, whose contrasting experiences in secular constitutionalism support an analytical framework that illuminates the complex political interface between spiritual and temporal concerns."[2]

From Ashoka's wheel to Ayodhya, the study is broadly divided into three parts and nine chapters. A glance through the 290 pages shows that everything has been examined in detail. However, the author does not see "the wheel" in the tricolour as a means of movement and progress. To him it is "a religious emblem." The three colours of the Indian flag do not signify courage, purity and life but convey "a message about the conceptualization of secular democracy." He finds that while "religion is emblematically absent in the United States, it is prominently featured on the Indian Flag, albeit in a form that is not readily identifiable with narrow sectarian interest."[3]

Jacobsohn raises issues and gives answers. This give us a peep into our law and lives through an outsider's eyes. The author's analysis is thorough. It should be of interest to every Indian. More particularly, to the students of law, political science and sociology. The present reviewer has reservations about some of the observations. Thus, a brief caveat.

India is a land of immense diversities. Historically, caste, class and custom had certainly conditioned our conduct. Probably, at that time, these factors were relevant. The progeny used to pursue the parents' profession. The system had an advantage. It was good economics. Promoted efficiency and provided expertise. It also ensured employment from generation to generation.

However, after attaining independence, we gave ourselves a Constitution and resolved to be a "Sovereign Democratic Republic.' Everyone, black or white; employed or unemployed; literate or illiterate; male or female; was equal. Every adult was given the right to vote. Guaranteed equality of opportunity. Irrespective of the caste or creed, sex or station in life. Subsequently, even 'socialist' and 'secular' were

1. Gary Jeffrey Jacobsohn, *The Wheel of Law* (2003).
2. *Id*., "Preface" at. xii.
3. *Id*. at 7.

added to the resolve for the rule of numbers. Have we failed in our quest for a secular society? As an Indian, I think No! Why?

Let us look at the national scene. A Muslim is the President of India. A Sikh is the Prime Minister of the country. An Indian of foreign origin is leader of the majority ruling party. A member of the minority community leads the nation's army. Many other members of minority communities hold positions of responsibility. A large number have excelled in their chosen fields. Be it art, cinema, literature, science or technology, the system guarantees an equal opportunity to all. And the contribution that these people have made is a matter of national pride. Some of them (like Dalip Kumar) are widely acknowledged as better Hindus than many of the hard boiled fanatics.

Yet India's secular credentials are suspected. Some still say "if there has been any appeasement in this country it has been of the majority."[4] How? It is no wonder that others are tempted to retort – "inflaming minorities has become lucrative politics."[5] Or demand that "nothing should be conceded to a group or organisation of one religion which is denied to or not available to groups or organisations of other religions."[6]

Is the demand not democratic? Is it not in conformity with the prembulatory promise of 'equality' in the Constitution? If democracy and equality are the basic features, is the majority not entitled to claim parity with the minorities? The Constitution guarantees certain rights to the minorities. Are these meant to be denied to the majority? Is secularism more basic than even democracy or equality? Does it mean all rights and no duties? May I illustrate?

Polygamy was known to the Hindus. Yet, they accepted the Hindu Marriage Act without any fuss or noise. Why should the constitutional directive of uniform civil code embodied in article 44 not bind the others including the Muslims? If numbers are relevant in a democracy, should the minority not follow the lead given by the majority? Would it not further promote the 'ameliorative' process and be conducive to national integration? The question arises and demands an answer.

Jacobsohn is absolutely right when he points out that "For the inhabitants of India, the imprint of religion is deeply etched in the patterns of daily life, such that social structure and religious activity are indissolubly linked." Why did it happen? The years of foreign rule had led India to ignorance and illiteracy. Rites and rituals had become a rule. Superstition had come to have it sway. Resultantly, "the religions of India – in particular, Hinduism" had got "solidly embedded in the

4. *Id*. at 56.
5. *Id*. at 55.
6. *Id*. at 54.
7. *Id*. at 49.

existent social structure." True, some remnants of rites and rituals, suspicion and superstition still remain. But the change is there. Despite the events in our immediate neighbourhood.

And the author acknowledges this. While comparing the three he says, "an *assimilative* model manifests the ultimately decisive role of political principles in the development of the American nation, a *visionary* model seeks to accommodate the particularistic aspirations of Jewish nationalism in Israel within a constitutional framework of liberal democracy and an *ameliorative* model embraces the social reform impulse of Indian nationalism in the context of the nation's deeply rooted religious diversity and stratification."[7]

The western world has faced and lived with the influence of the church. Even during the recent presidential election, the subtle difference that an appeal in the name of church makes was evident. From the days of the ecclesiastical courts, church and clergy have had their part. And just as the US Supreme Court had to undertake a "tortuous maneuvering through the minefield,"[8] the task confronting the Indian judiciary has not been less onerous. But it has done well. Thanks to the judicial statesmanship shown by the judges, the cob webs have been largely cleared.

In the sixties, 'secular' was not a part of the preamble. Yet, Gajendragadkar J had said, "When we think of Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophical concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more."[9] If this view of hinduism is considered to be 'reformist', can we really fault the court for relying upon it in the subsequent cases? Can we suspect the "Justice Verma's foray into religious essentialism served a very different agenda"?[10]

All in all, the book makes us aware of the fact that more effort is needed to fully attain the constitutional goal. It is interesting. Thought provoking. It bears testimony to the author's labour and learning. It should be a welcome addition to the 'study.'

*Jawahar Lal Gupta**

8. *Id*. at 69.
9. In *Yagnapurushdasji* v. *Muldas*, AIR 1966 SC 1119.
10. *Supra* note 1 at 207.

* Former Chief Justice, Kerela High Court.

HANDBOOK ON DIVORCE LAW AND PROCEDURE (2004). By Janak Raj Jai. Universal Law Publishing Co. Pvt Ltd. Delhi. Pp. xxi+282. Price Rs. 210/-.

INDIA HAS a multiplicity of family laws covering an extensive area of personal relations including marriage and divorce. The applicability criterion is primarily the religion of the parties though there are variations depending upon their domicile, community, sect in a particular community etc. Amongst this maze of disparate laws any literature clarifying the applicability of divorce laws in the event of matrimonial discord is very useful. However, the issue of divorce can arise only if there is a valid marriage. It is therefore imperative to analyze the marriage laws in vogue in India, and how can a marriage be solemnized among persons with different personal laws. The book[1] under review deals with laws relating to marriage, and matrimonial remedies like restitution of conjugal rights, judicial separation, divorce, custody of children, maintenance, and uniform civil code. It is divided into 20 chapters and gives not only the legal provisions relating to substantive law but also the procedure and model petitions. Surprisingly, the author deals with the three matrimonial remedies *viz*, restitution of conjugal rights, judicial separation and divorce, ignoring the decree of nullity altogether. The omission stands out as a decree of nullity also puts an end to a marriage.

The author outlines the laws of marriages in vogue in India and briefly tackles the institution of marriage. With respect to the applicability of family laws, the author notes[2] that the Hindu Marriage Act, 1955 applies to (i) persons who by religion are Hindus, Buddhists, Jains and Sikhs and (ii) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that such person would not have been governed by the Hindu Law, if this Act had not been passed. This is misleading as it gives the impression that all Hindus in India are subject to the application of this Act, which is incorrect. The Act does not apply to Hindus who are members of scheduled tribes,[3] Hindus of State of Jammu and Kashmir, Goa, Daman and Diu, and to the Renocants of Pondicherry.

With respect to the applicability of divorce laws to Indian Muslims the author errs, when he refers to the Dissolution of Muslim Marriages

1. Janak Raj Jai, *Handbook on Divorce Law and Procedure* (2004).
2. *Id*. at 2.
3. See s. 2 of the Hindu Marriage Act, 1955.

Act, 1939, further by saying that[4] "prior to the enactment of this Act, two methods, namely (i) mutual implication, and (ii) judicial decision, were the only methods prevalent regarding the dissolution of marriage." This observation is astounding as it is a matter of common knowledge, that Muslims have all along recognized the unilateral extra judicial divorce in the form of *talaq* that does not have any element of mutual connotation. The author further says,[5] "This Act applies to a suit by a Muslim married under the Muslim Law, for the dissolution of marriage." This observation again is presumptive and misleading and needs clarification. This Act is available only to Muslim married women, and not to Muslim men.[6] The Act specifies nine grounds on which a Muslim wife alone can approach the court with a prayer for dissolution of her marriage, a fact which should have been explained by the author. The author is silent with respect to the availability of the Special Marriage Act, 1954. It is a glaring omission, as this is the only Act that can be availed of by any Indian irrespective of his/her religion.[7] The co-existence of multiplicity of religion based personal laws necessitates a clear analysis of which Act is applicable to whom, which ironically is missing in the book.

The author under 'Solemnization of Marriage' in the chapter dealing with "Institution of Marriage" does not deal with solemnization of marriages under various personal laws but confines himself to only Muslim Christian, Jew and Parsi marriages. The author also discusses the concept of Muslim marriages without telling the readers that Muslims are divided into two sects, *Sunnis* and *Shias*, and the rules relating to solemnization of marriages accordingly differ. The author should have dealt with the solemnization of marriages under the Hindu Marriage Act, the Special Marriage Act and the Foreign Marriages Act. In fact there is no mention of the latter two Acts. A discussion on how marriages are solemnized under Hindu law is absolutely essential, as a Hindu marriage must be validly solemnized before it can even be called a marriage. A defectively solemnized marriage will not confer the status of husband and wife on the parties and the children would be illegitimate, and till the marriage is valid there is no question of divorce.

The treatment of subjects like irretrievable breakdown of marriage, divorce by mutual consent, judicial separation and restitution of conjugal

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4. *Supra* note 1.

5. *Ibid.*

6. See s. 2, the Dissolution of Muslim Marriages Act, 1939.

7. Besides this Act, under the Indian Christian Marriage Act, 1872, a marriage of a Christian can be solemnized with a non-Christian, but it remains unavailable to non-Christian parties as such. Similarly, under Muslim law, there is limited permission for the inter-religious marriages.

rights is all but sketchy. It is pertinent to note that while a remedy of restitution of conjugal rights[8] is available under all the family laws in India, the decree of judicial separation is available under the different legislative enactments also.[9] However, the discussion with respect to both the remedies is confined to only the provisions specified under the Hindu Marriage Act.

The author has used titles that are misleading and have little connection with the content of the particular chapter. For instance, under the title "Divorce by Customs and Usages", he says that marriage may be valid without a *Saptapadi*. These references are totally out of place under the title divorce by custom and usage. In the chapter on "Uniform Civil Code", though the author says that UCC is highly desirable he does not give even a single reason why it is desirable, or why at all there is a need for a UCC. Reproduction of statements by scholars like *Muslim Women's Bill is unislamic,*[10] *Muslim Women's Bill will mean a death warrant for Muslim women,*[11] *Indians are in the smallest minority in India,*[12] do not throw any light on the desirability of having a UCC, but merely show the reaction of people to one particular judgment. Besides when and where these observations were made, is not clear as no references have been given by the author.

Under the title "Digest of Important Cases" only two Supreme Court cases have been cited, the rest being high court cases. Almost all cases have been summarized in two to three lines, the longest being *Sarla Mudgal's* case, which is running into over 8 lines, but ironically without stating the main issue whether the husband who converts to Muslim faith and gets married a second time is guilty of committing bigamy. In many cases it is not even clear as to what was the judgment let alone what was the rule of law laid down.[13]

In this otherwise small book, around 96 pages have been devoted to giving statutory extracts relating to Code of Civil Procedure, Code of Criminal Procedure, Indian Evidence Act and the Indian Penal Code. All these provisions except for a lone section dealing with offences against marriage[14] *i.e.*, 498A, the rest are totally irrelevant and have no connection whatsoever with divorce laws let alone family laws as such.

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8. See, the Divorce Act, 1969, s. 32; the Parsi Marriage and Divorce Act, 1936, s. 36; the Special Marriage Act, 1954, s.22.

9. See, the Parsi Marriage and Divorce Act, 1936, s. 34; the Divorce Act, 1969, ss. 22-25; the Special Marriage Act, 1954, s.23.

10. Daniel Latifi, quoted in *supra* note 1 at 161.

11. *Id*., Reshma Sharif.

12. *Id*., Prof Munis Raza. This sentence does not make any sense even otherwise.

13. *Supra* note 1 at 163.

14. *Id*. at 210.

It is beyond comprehension as to why the provisions inherently relating to criminal law have been included in a book titled divorce law and procedure. It is simply amazing to find sections on trial of offences under the Indian Penal Code, like kidnapping for ransom,[15] wrongful confinement,[16] misconduct in public by a drunken person,[17] *etc*.

No cogent reason can be found for writing such a sketchy book with such glaring omissions and unwanted inclusions. Writing book is a serious affair, and should not be resorted to casually with scanty material and with insignificant contribution from the author.

*Poonam Pradhan Saxena**

15. *Id*. at 190.
16. *Id*. at 269.
17. *Id*. at 277.

* Professor of Law, Faculty of Law, University of Delhi.

FAMILY LAW LECTURES – FAMILY LAW II, (2004). By Poonam Pradhan Saxena. Lexis Nexis Butterworths, New Delhi. Pp. lvii + 685. Price Rs.395/-.

FAMILY IS a vibrant institution of society and the society is concerned with a web of social relations. Therefore, sociology of law attaches much significance to the study of family law, which regulates filial relations of human beings. It covers socio-economic relations pertaining to property and matrimonial aspects of life. The law relating to property and succession plays an important role in the progressive development of a civilized society. Economic status of the individual has been measured in the society through 'property ownership patterns'. And one of such patterns is the mode of devolution of property prevailing at a stated time. This is the view taken by the author of the book under review,[1] when she asserts "Eligibility to inherit under the laws of inheritance has an important connection with the secured economic status of individuals that is amply reflected in the property ownership pattern in India."[2]

The author evaluates the role of family law in "an equitable and fair balance of rights and duties" and adopts a critical view of the prevailing socio-economic conditions giving impetus to male hegemony in family affairs. She laments the lagging behind of the law in ameliorating the social position of woman and opines that "with the passage of time, the progress of the society and emancipation of woman at a much faster rate than the development of law, several provisions now appear gender discriminatory and unconstitutional".[3]

The book under review is the second part of the author's lectures on family law. It delves into the evolution and development of law relating to property and ownership including modes of devolution and conveyance under Hindu law and Muslim law. This is divided into three parts. Part one deals with introduction wherein the author has made descriptive assessment of property law evolved under various denominations. Sketching the succession scheme the author highlights the law relating to intestate and testamentary succession and criterion for its applicability under different personal laws in India. Part two of the book contains

1. Poonam Pradhan Saxena, *Family Law Lectures: Family Law II* (2004).
2. *Id.*, "Preface".
3. *Id.* at VI.

chapters relating to Hindu law. It presents a sketch of social institutions and their nexus with mode of property relations. There has been significant progress in the development of Hindu law of property. This aspect has been covered in details. The author dwells on the facts, functions, forces and ideas relating to succession to the property of a male intestate; full ownership in the property for Hindu females; succession to the property of a female intestate, devolution of interest in *Mitakshrara* coparcenary property; general principles of inheritance, disqualifications and special rules relating to dwelling houses.

Attempt has been made under part three of the book to appraise the principles of conveyance of property under Muslim law. The historical sketch of the sources of Muslim law and a thorough and in-depth study of the law relating to gift has also been made. An explanatory endeavour has been made to unfold the complex structural pattern of voluntary conveyance of the property with consideration. Further the book unravels the law regarding gifts made during *Maraz-al-Maut*. and the legal provisions regarding *wasiyat* (wills) *etc*.

The author while dealing with the complex patterns of *Sunni* and *Shia* law of inheritance seems to be in tune with prejudicial orientalists when she asserts that "contrary to popular belief, Quranic revelations were not the starting point of Muslim law. It was in existence even prior to that, but it was systematized, centralized and modified by the revelations and the traditions of the prophet"[4]. The author has made an appreciable attempt to describe the basic framework of Muslim law of intestate and testamentary succession. With aid of illustrations the author has tried to familiarize the readers with the fundamentals of inheritance law.

The annexures of various statutes relating to Hindu law and Muslim law add to the utility of the book. Though there is no dearth of meritorious books on the subject, the book under review is a significant addition to the literature on family law. The book will be of much use to the students, teachers and scholars of family law.

*Furqan Ahmad**

4. *Id.* at 581.

* Associate Research Professor, Indian Law Institute, New Delhi.

COMMENTARY ON THE RIGHT TO INFORMATION ACT, 2005 (2005). By N.K.Acharya. Asia Law House, Hyderabad. Pp. xvi+501. Price Rs.395/-

FOR A citizen to enjoy the basic rights of freedom of expression and of participation in the cultural life and scientific progress of a nation, he has to be empowered by providing access to and use of information and knowledge. For this, a right to information, providing for access by citizens on request to the information held by the government, that is not otherwise made routinely available, is a must. Legislation on right to information must begin with a clear statement that establishes the rule of maximum disclosure and a strong presumption in favour of access. Commitment of the government to provide information depends upon a well-worded objective clause in the legislation, which will assist administrative and judicial interpretation. The Government of India took a small step by enacting the law on right to information, however, it has to take a giant step in order to fulfil the objectives of empowering its citizens with information which would help them realize the basic right of freedom of expression.

In his book,[1] the author has offered comments on all the 31 sections of the Right to Information Act, 2005. At the end of each commentary the author has self-posed questions and has answered them for the benefit of the readers. Unfortunately, the first query itself starts with a printing mistake. The word 'in' has to be replaced by the word 'is' for the query to be meaningful. Most of the questions do offer correct and relevant answers keeping in mind the objective of the Act as whole and the sections in particular. However, certain questions and answers seem rudimentary, for example, the question on the role of preamble and exclusion of J & K from the purview of the Act etc.[2] In the introductory chapter the author has introduced the readers to mechanism provided under the Act for securing information by the citizens from public authorities, which in a nutshell describes the procedure to obtain information.

Though the title of the book suggests that it is a commentary on the Right to Information Act, 2005, it has additionally provided commentaries on the Official Secrets Act, 1923 and the Public Records Act, 1993.

1. N.K. Acharya, *Commentary on The Right to Information Act, 2005.*
2. *Id.* at 10 and 11.

The author could have done well by comparing these legislations with the Right to Information Act, 2005 to justify the title.

The book carries a brief comparison of the Right to Information Act, 2005 with section 123, 124 and section 162 of the Indian Evidence Act, articles 74 and 163 of the Constitution of India and Official Secrets Act, 1923. The original contribution of the author is, however, negligible. Major portion of the book contains extract of rules, notifications, ordinances and list of officers designated as central public information officers. However, the author has done well by giving a "Model Freedom of Information Law" in the end.

Further, one fails to understand as to why the author has printed information only on rules relating to Andhra Pradesh and Maharashtra.[3] The other surprising aspect of the book is that within a span of one month of its publication it has undergone four editions! Moreover there is no uniformity in the presentation of the various sections of the book. Mentioning of case law in the book may have been helpful to the readers. Over all the entire book appears to be a mere compilation of enactments and may be useful to those interested in knowing the procedure for obtaining information from the government.

*V. Sudesh**

3. *Id.* at 156 –167.

* Associate Research Professor, Indian Law Institute, New Delhi.

DISPENSATION OF JUSTICE: ROLE AND ACCOUNTABILITY OF JUDGES AND ADVOCATES (2004). By Ravi Karan Singh. Deep & Deep Publication (P) Ltd., New Delhi. Pp. xv +217 Price Rs. 400/-.

THE BOOK[1] under review is based on empirical research conducted by the author to identify the problems faced by the litigants. The respondents covered in the present study are law students, law teachers, advocates, judges, litigants and other professionals. The area of study is restricted to the state of Punjab, Haryana, Chandigarh and Delhi. The study is a critical evaluation of the legal education, role and accountability of advocates and judges in justice delivery system.

The book covers different issues faced by the litigants and their views about the legal profession. Discussions on lawyer's strike and role of bar council in disposal of complaints against advocates are informative. A critical look has been given to the structure of advocate fee, bar politics and welfare schemes in vogue that provide social security to the advocates at the time of distress. Efforts have been made by the author to identify the issues plaguing the legal system. The problem of over-crowding in the legal profession and bar politics has been succinctly analyzed. Some important cases decided by high courts on the issue of strike and role of judiciary in curbing lawyers strike have been included in the study The book also highlights the role played by bar council, para-professionals, litigants, *munshis* and stamp vendors *etc*. in the dispensation of justice.

The study has been conducted quite seriously and painstakingly. The subject matter has been divided into various heads and sub-heads to enable the readers to find out the topic of his choice. The suggestion for a fresh look at the legal profession in the context of modern technological innovations and changes in the interest of the society is worthwhile. Overall the language of the book is simple and makes a good reading.

*S. S. Jaswal**

1. Ravi Karan Singh, *Dispensation of Justice: Role and Accountability of Judges and Advocates* (2004).

* Assistant Research Professor, Indian Law Institute, New Delhi.

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A. G. NOORANI, *Constitutional Questions & Citizens' Rights* (2006), Universal Law Publishing Co. C - FF - 1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi - 110 033. Pp. lxxi + 396. Price Rs.595/-.

ANUPAM GOYAL, *The WTO and International Law 2006 Towards Conciliation,* (2006), Oxford University Press, YMCA Library Building, Jai Singh Road New Delhi – 110001. Pp. xxvi + 424. Price Rs.695/-.

Col. V. KATJU, JUSTICE MARKANDEY KATJU & Dr. HARISH BHALLA, *Experiments in Advocacy - A Colossus in the Courts of Justice* (2006), Universal Law Publishing Co. C - FF - 1A, Dilkhush Industrial Estate, G. T. Karnal Road, Delhi - 110 033. Pp. xv + 452. Price Rs.550/ .

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UPENDRA BAXI, *The Futures of Human Rights* (2005), Oxford University Press, YMCA Library Building, Jai Singh Road New Delhi – 110001. Pp. xxiv + 339, Price Rs.595/-.

V. VIJAYKUMAR, *Traditional Futures Law and Custom in India's Lakshadweep Island* (2005), Oxford University Press, YMCA Library Building, Jai Singh Road New Delhi – 110001. Pp. xiv + 337. Price Rs.65/-.