



LAWS RELATING TO PARTITION. By Manindra Nath Das. 1972.
Eastern Law House, Calcutta. Pp. 323. Rs. 30.

THE INSTITUTION of joint Hindu family succeeded in promoting the harmony of the Hindu society so long as it was untouched by the vagaries of a complex and advancing civilization. The hostility of aggressors, the impact of alien cultures, the legislative interventions and the application of a different set of principles in the administration of law, have all made such a dent on the system that to-day it has retained only its outer 'shell' losing the spirit of its sustenance. The utility of the institution in contemporary India is a debatable issue.¹ However, the legislative policy reflects the typical dichotomous thinking of the Hindu mind, namely, the desire to preserve the ancient moorings while keeping pace with the changing times. Such a paradoxical approach² in handling a very important area, namely, property rights has given rise to numerous difficulties in the interpretation of legislative provisions.

A book relating to partition has necessarily to examine the joint Hindu family in its conceptual framework, the legislative inroads on the traditional provisions, the judicial interpretation in resolving the conflicts relating to family property and the ultimate picture emerging out of this process. The reviewer is, however, disappointed by the approach of the learned author. A mere reading of the contents of the book reveals that the author could have handled the topic in a more systematic manner. Since the author has chosen a very wide canvas and has attempted to cover it within 276 pages, continuity of ideas is the first casualty. The two brilliant Tagore Law Lectures³ by Bhattacharya and Mitra could have been utilized more usefully by the learned author in preparing his format.

1. The reviewer had earlier strongly advocated the reorientation of our national policy for preserving the institution. See 1 *Ban. L.J.* 33-77 (1965). However, he desires to recant from that position. We have indeed reached a stage when it is impossible to restore the institution to its pristine glory. With the rapid process of industrialization and urbanization that is going on in this country and the allurements for establishing nuclear families, it may not be possible to retain the joint family even in its present form. For a delightful sociological study which portrays the tensions and dilemmas of modern Hindu family life see Aileen D. Ross, *The Hindu Family in its Urban Setting* (1973).

2. We may cite two examples in this connection. The Hindu Succession Act, 1956, while conferring the right of succession on females even with regard to the coparcenary property, has however retained the doctrine of survivorship (of course, in an attenuated form) in s.6. Such a provision together with the continuation of the right by birth reveals the hesitancy of the legislature to break with the past. S. 23 of the Hindu Succession Act also exemplifies the aforesaid attitude of the legislature, for, while a female is given a share in the family property, she is restrained from seeking a partition of the dwelling house. In case she competes with a single male heir she may be even deprived of her share in the dwelling house. See for instance *Vidyaben v. J. N. Bhatt*, A.I.R. 1974 Guj. 23.



A reader is confronted with a number of inaccuracies and obscurities throughout the book. The reviewer, however, is not inclined to make their catalogue. For instance on page 2 it is stated that :

The rule of Hindu law is well settled that the property which a man inherits from any of his three paternal ancestors, namely, his father's father, father's father's father is ancestral property....

Obviously the printer has omitted father, before father's father. On page 3 it is stated that "the normal state of every Hindu family is joint, presumably joint in fund (?), worship and estate...." It is indeed food and not fund, for fund is taken care of by the term "estate". On page 5, the learned author states :

According to the Dayabhaga school of Hindu law the right to property accrues by reason of one's relationship to the owner on the extinction of the owner's right. In other words, it entirely depends upon the religious efficacy of the successors.

The reviewer is unable to understand how the doctrine of *uparama swatvavad* is the same as "religious efficacy." In view of the fact that any intensive study of the various topics of Hindu law is a welcome addition to the existing literature, the reviewer hopes that the learned author would revise these and many other obscurities while revising the book.

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3. K.K. Bhattacharya, *The Joint Hindu Family* (1885). R.C. Mitra, *The Law of Joint Property and Partition in British India* (1886). Incidentally, these two works are very extensive in their treatment. Obviously, a study of these topics in 1970's involves a coverage of voluminous case-law.

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