



## BOOK REVIEWS

**FAMILY LAW STATUTES.** Edited by Sweet and Maxwell's Legal Editorial Staff with Jennifer Terry. Second ed. (1978). Sweet and Maxwell, London. Distributors : N.M. Tripathi, Bombay, Pp. viii + 629. Price £6.25.

THIS IS the second edition of Sweet and Maxwell's *Family Law Statutes*. The first edition was published in 1970. Since the publication of the first edition six years ago, significant changes in family law have been made in the United Kingdom. This has made it necessary to bring out a new edition. The enactments included in this edition have been brought up to date to April 1976. Special mention may be made of the fact that the contents themselves range from the Wills Act of 1837 to the Inheritance (Provision for Family and Dependants) Act and the Children Act of 1975.

The primary purpose of the book has been to present all the basic statutory material needed by a student for professional or university examinations on divorce and family law. It will also prove a useful reference book to legal practitioners and to members of professions associated with family law such as social workers.

What to include or exclude in a compilation like this is a problem not easy of solution. So some discretion and consequently some seeming discrimination may appear to have been exercised. The Equal Pay Act, 1970 and the Sex Discrimination Act, 1975 may not be directly relevant to family law as they will have their impact not only on families, but also on those who have no families at all. The Maintenance Orders (Reciprocal Enforcement) Act, 1972, however, appears to be of special relevance and significance in the field of family law.

The Inheritance (Provision for Family and Dependants) Act, 1975 is a welcome addition not only to the book, but also, in a sense, to the law in the United Kingdom. In 1938 some tinkering with the idea of making some provision for family and dependants was done by the Inheritance (Family Provision) Act, later amended by the Family Provision Act, 1966. The Act of 1975 now makes "fresh provision" (as the long title puts it) for empowering the court to make orders for making out of the estate of a deceased of provision for the spouse, former spouse, child, child of the family or dependant of that person. It may be recalled that similar provision have been made on the continent of Europe nearly a century and three quarters ago, if not earlier. The French Civil Code provided for what is called *la réserve héréditaire* or simply *la réserve*, that is, share of a deceased's estate which is reserved for certain heirs, if such exist



when the succession opens. The provisions in the civil code relative to *la reserve* derived partly from the written law and partly from the customary law.<sup>1</sup>

As Indian law seems to have a tendency to play the sedulous ape (to borrow a Stevensonian phrase) to English law and as the recent recommendations made by the Law Commission of India in its *Seventy-first Report* appear to have been inspired by certain provisions of the Matrimonial Causes Act, 1973 of the United Kingdom, a brief reference to these provisions may not be out of place here. The Law Commission recommended that irremediable breakdown of marriage be treated as *one* of the grounds for obtaining a decree of divorce under the Hindu Marriage Act, 1955. The Matrimonial Causes Act, 1973 of the United Kingdom re-enacting a provision of the Divorce Reform Act, 1969 has provided only one ground for divorce, that is, irremediable breakdown, which has to be established by proving one or more of the five facts set out in section 1(2), namely, respondent's adultery, reprehensible behaviour, desertion, five year's separation and two years' separation where the respondent agrees to a decree being granted. The Family Law Act, 1975 of Australia appears to have improved upon the provision in the British statute when it provided that the one broad ground of irremediable breakdown has to be established in one way and one way only that the parties have been separated and living apart for a continuous period of twelve months immediately prior to filing a petition for divorce.<sup>2</sup> Certain matrimonial reliefs such as a decree of nullity of a voidable marriage, restitution of conjugal rights, jactitation of marriage, and judicial separation are no longer available. Further, no action lies for criminal conversation, damages for adultery or for enticement of a party to a marriage.<sup>3</sup>

Another recommendation of the Law Commission is in respect of refusal to grant a decree of divorce if the dissolution of marriage would result in grave financial hardship to the wife and "that it would in all the circumstances be wrong to dissolve the marriage". This undoubtedly derives from section 5 of the Matrimonial Causes Act, 1973. The main difference between the recommendation and the provision in the United Kingdom enactment is that in India it is the wife whose interests are sought to be safeguarded while in the United Kingdom it is the respondent, husband *or* wife, who is secured protection. The reason for this recommendation may be that wives in India are generally regarded as financially dependent on their husbands. Though a legal provision based on the recommendation may be unimpeachable as being a special provision made for the benefit of women under article 15 of the Constitution, there appears to be no good reason why such a difference should be made. It

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1. See Amos and Walton's, *Introduction to French Law* 333 (3rd ed., 1967).

2. The Family Law Act, 1975, s. 48.

3. *Id.*, s. 120.



may be recalled that when making an order of maintenance after a decree of divorce has been passed, the order may be made in favour of any of the former spouses. The language used in the enactment as well as the proposed amendment—'it would in all circumstances be wrong to dissolve the marriage'—appears to leave the refusal or grant of a decree of divorce to the absolute discretion of the court. A question may be posed: Wouldn't it be wrong, whatever be the other circumstances, to refuse a decree of divorce, where irretrievable breakdown of marriage has been established? It may be desirable, as suggested in the proposed amendment, to stay the proceedings for divorce until arrangements have been made to eliminate financial hardship, if that is possible. But these arrangements should, however, be ordered to be made in favour of either party according to the circumstances of the particular case before the court.

The above brief discussion regarding refusal of a decree of divorce appears to be warranted for the reason that a manifestly unreasonable provision has found favour with the Law Commission of India which recommends its adoption with a none too-savoury modification.

Not only students and legal practitioners in the United Kingdom, but also Indian lawyers and academics interested in the comparative study of law will find this compilation of family law statutes of great use and value to them.

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