



**MARRIAGE AND MATRIMONIAL REMEDIES.** By Mohammed A. Qureshi, 1978. Concept Publishing Company, Delhi. Pp xxii+484. Price Rs. 110.

INDIA IS a land of diverse communities with different religions, culture and customs. No wonder there is a diversity of personal laws governing the family matters of these different sections of the society. A lot has been said and written on the desirability of a uniform civil code for the entire Indian community—an ideal enshrined in the Constitution. Qureshi also builds up a strong case for uniform laws of marriage and divorce for all inhabitants of India in the book under review.<sup>1</sup>

The book is divided into seven chapters apart from the 'Introduction'. In the introductory chapter the author traces the history of the various personal laws in India and laments the diversity prevalent thereunder. The main hurdle towards uniformity in the matrimonial laws is the opposition by the Muslim community. Qureshi, however, feels that this opposition is unwarranted since the Muslim jurists feel that the text of the *Sharia* should be changed keeping in view the time, place and conditions of the people.<sup>2</sup>

In order to find out a common denominator he has analysed the grounds for divorce and the various matrimonial remedies available under the personal law of Hindus, Muslims, Christians and Parsis. In view of certain commonness in these matters he feels that there should be no problem in going ahead with the idea of enacting a uniform code of marriage laws for all communities,

In chapter I entitled "The Role of Personal Laws in Matrimonial Matters" Qureshi deals with general matters like the concept of marriage, marriage age, polygamy and so on under the various personal laws.

Chapter II is entitled "Personal Laws Relating to Termination of Marriage". "It deals with a discussion of restitution of conjugal rights and provisions relating to the same under the various personal laws. Qureshi has also discussed the provisions for judicial separation and divorce under the various personal law statutes.

The next chapter, which runs into over one hundred pages, is a detailed analysis of the various grounds for judicial separation and divorce. The author feels that since desertion, adultery *etc.*, are grounds common to all the communities it should not be difficult to have a uniform code of marriage laws.

In chapter IV Qureshi discusses the laws of maintenance as applicable to the various communities and then goes over to adoption which appears

- 
1. Qureshi, *Marriage and Matrimonial Remedies* (1978).
  2. *Id.* at 16.



to be a little out of place. Discussing maintenance, the author claims that "while Hindu law does not deal with the subject elaborately, the Muslim law is very elaborate on this point".<sup>3</sup> This statement is rather odd. The fact is that the Muslim law on the subject is most inadequate and unsatisfactory.<sup>3a</sup> Not only is the Muslim personal law unsatisfactory, even the provisions under the Code of Criminal Procedure 1973 which are applicable to all the sections of the Indian society, if literally read, hit hard against Muslim women. Under section 127 (3) (b) if a woman after divorce has received the sum payable to her upon divorce under the customary or personal law applicable to the parties, then any order of maintenance made in her favour under section 125 of the Code of Criminal Procedure shall be cancelled. However, there are certain decisions of the High Courts, and in particular the Supreme Court judgement in *Bai Tahira v. Ali Hassan*,<sup>4</sup> which have given relief to Muslim women by a liberal construction of the provision. Unfortunately a private member's Bill introduced in Parliament<sup>5</sup> is trying to nullify this liberal view.

In chapter six the author has discussed the recent trends in the sphere of matrimonial laws of the various communities. He very rightly points out the deficiencies in the Christian, Parsi and Jewish laws, the provisions, of which are rather antiquated and inadequate.

The next chapter again is a discussion of the common denominators under the various personal laws. However, the author does not seem to be clear about the institution of polygamy. While he feels that: "Now the time has come when polygamy must be abolished,"<sup>6</sup> in the same breath he says: "Complete abolition of polygamy is neither possible nor desirable."<sup>6a</sup> He advocates controlled polygamy because according to him, "there may be circumstances in the life of a man when he may be in need of a second wife *i.e.* perpetual sickness of the wife etc."<sup>7</sup> The reviewer would like to know whether the author would advocate or welcome the idea of polyandry in the case of a woman whose husband is perpetually sick, *etc.* Similarly, while discussing the matrimonial remedy of restitution of conjugal rights, the author is hopping between the idea of its abolition and retention. According to him "the positive nature of

---

3. *Id.* at 259.

3a. At p. 264 the author himself states that the "Muslim law is most defective and Muslim wives are the worst affected."

4. A.I.R. 1979 SC 362.

5. Code of Criminal Procedure (Amendment) Bill, 1980. No. 30 of 1980, *Gazette of India* Extraordinary, Part II S.L.P. 138 dated 14 March 1980.

6. Qureshi at p. 389.

6a. *Ibid.*

7. *Id.* at 389-90.



restitution as a legal remedy certainly makes it commendable”,<sup>8</sup> however, the author himself states that “the positive character is only theoretical, in practice it is as negative as the other remedies” and goes on to state: “The concept behind the legal remedy for restitution appears to be quite unnatural and is abhorrent in most cases .... In view of the facts mentioned above the remedy of restitution of conjugal rights should be abolished.”<sup>9</sup>

The author has made some useful suggestions like the setting up of social security departments, the national assistance schemes, family courts and reconciliation courts for providing legal and financial assistance to couples in distress. However, his idea of entrusting an advocate with the duty to act as a mediator and bring about reconciliation between the estranged couple does not appear to be logical.<sup>10</sup> Why will an advocate do something that goes against his own financial interests? The task of acting as mediator should be given to a social worker or family counsellor whose only interest is the welfare of the parties and not anything else.

All said, the book contains a good discussion on the various personal laws of marriage and divorce. There are seven appendices containing extracts from statutes relevant to the study and a detailed bibliography. The book suffers from a number of spelling and printing mistakes. A more careful editing would have certainly enhanced its value.

*Kusum\**

---

8. *Id.* at 392.

9. *Id.* at 393.

10. *Id.* at 396.

\* M. A., LL.M. Assistant Research Professor, Indian Law Institute.



**BOOKS RECEIVED FOR REVIEW**

B. P. BERI, *Law of Marriage and Divorce*, 1982. Eastern Book Co., 34, Lalbagh. Lucknow. Pp. xxxii+718. Price Rs. 100/-.

GY. DIOSDI, *Contract in Roman Law*. 1981. Akademiai Kiado, Budapest, Hungary. Pp. 230.

H. R. KHANNA, *Making of India's Constitution*. 1981. Eastern Book Co., Lucknow. Pp. vii+121. Price Rs. 40/-.

J. A. G. GRIFFITH, *Public Rights and Private Interests*. (V. K. Krishna Menon Law Lectures) 1981. The Academy of Legal Publications, Trivandrum. Pp. 195+iv. Price Rs. 80/-.

JASPAL SINGH, *Indian Penal Code* in 2 volumes. 1981. Pioneer Publications, 12, U. B. Bungalow Road, Delhi. Pp. xxiv+1971+xlili. Price Rs. 220/-.

K. P. CHAKRAVARTI, *Law and Procedure of Prevention of Corruption in Public Service*. 1981. Vora Prakashan, Ahmedabad. Pp. xxxix+524. Price Rs. 80/-.

KUMUD DESAI, *Indian Law of Marriage and Divorce*. 4th ed. (1981) N. M. Tripathi Pvt. Ltd. 164, Samaldas Gandhi Marg, Bombay. Pp. lxxviii+592. Price Rs. 125.

M. S. RAJAN, *The Expanding Jurisdiction of the United Nations*. 1982. N. M. Tripathi Pvt. Ltd., Bombay. Pp. xii+257. Price Rs. 85.

RAMESH CHANDRA, *Controls Over Public Corporations In India* 1981. Delhi University, Delhi. Pp. xx+487. Price Rs. 90/-.

SHAMSUL HUDA, *Principles of the Law of Crimes*. 1982. (Tagore Law Lecture, 1902) Eastern Book Co, Lucknow. Pp. xxxv+455. Price Rs. 75/-.

SHANTILAL MOHANLAL SHAH, *Lectures on Company Law* 18th ed. (1981). N. M. Tripathi Pvt. Ltd., Bombay. Pp. xxxi+555+cccxlvi. Price Rs. 50/-.