

FAMILY LAW, Vol. I (1985). By M. Krishnan Nair. The Academy of Legal Publications, Punnen Road, Trivandrum-695 039. Pp. 275. Price Rs. 40.

AS THE uniform civil code for all Indians is not yet a reality, the present volume by Krishnan Nair<sup>1</sup> has tried to cover in separate parts the various aspects of personal laws in India: 'Hindu law' covering marriage, adoption, minority, guardianship and maintenance; 'Muslim law' including within its scope marriage, dower, dissolution of marriage, parentage, legitimacy, minority and guardianship; Special Marriage Act 1954 and Christian Marriage Act 1872. More than half of the book outlines Hindu family law. The author has thus aptly justified that the 'Hindu law' applicable to three-fourth of the total population of the country occupies a place of pride among the various personal laws now in force in India.

As far as chapters on statutory law are concerned, a practice has grown in our country that books on codified law are written in the form of section-wise commentary mainly for the benefit of the law practitioner so that he may not feel handicapped in laying his finger instantly on the relevant law and the particular section he is looking for. This book is a refreshing departure from this practice. The author has quoted the relevant sections under the relevant topics. He has covered Hindu Marriage Act 1955, Hindu Adoptions and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956, Dissolution of Muslim Marriages Act 1939, Special Marriage Act 1954, Indian Divorce Act 1872, with brevity but comprehensiveness which are the hallmark of this work.

The book is divided into three parts. Part I covers Hindu law, which is further divided into five chapters. Chapter I contains introductory material on Hindu law and its sources in the traditional manner while chapter 2 explains a Hindu marriage. In the latter chapter case law has been discussed after explaining the concepts but it is either too brief *i.e.*, *Saroj Rani v. Sudarshan Kumar*<sup>2</sup> or inadequate. It would have been better if the case law had been analysed between the two conflicting views expressed by the High Courts. It is not sufficient to point out that the Supreme Court agreed with the views of the Delhi High Court.

Similarly, a reference<sup>3</sup> has been made to the 'breakdown theory of divorce'. While discussing *Dharmendra Kumar v. Usha Kumari*,<sup>4</sup> it has been pointed out that this ruling of the Supreme Court has impliedly held

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1. M. Krishnan Nair, *Family Law*, vol. I (1985).

2. A.I.R. 1984 S.C. 1562; *id.* at 47.

3. *Id.* at 64

4. A.I.R. 1977 S.C. 2218; *id.* at 65.

that section 13(1A) is based on the 'breakdown theory of divorce'. It would have been better to discuss not only the concept of breakdown theory but also other theories of divorce like 'guilt theory' or 'matrimonial offence theory'; 'fault theory' and 'consent theory'. It would have been in the fitness of things to discuss the report of the Law Commission<sup>5</sup> which recommended "irretrievable breakdown of marriage" as an additional ground to be incorporated in the Hindu Marriage Act. There is also no reference to the Marriage Laws (Amendment) Bill 1981 incorporating the Law Commission recommendation which was introduced in *Lok Sabha* on 27 February 1981, the controversy which it raised and how ultimately it lapsed technically when the *Lok Sabha* was dissolved in 1984.

Chapter 3 explains adoption. 'Relating back theory' has been discussed referring to case law. This also is too brief<sup>6</sup> and not fully analysed and discussed.<sup>7</sup> But the author needs to be complimented for using simple language, apt sub-titles, discussing simple customary forms of adoption and important changes made by the Hindu Adoptions and Maintenance Act in the ancient Hindu law. Chapter 4 covers minority and guardianship. Chapter 5 outlines the law relating to maintenance under the Hindu Adoptions and Maintenance Act.

Part II of the book covers Muslim law, which in India, to a great extent, still continues to be based on the *Quran*, *sunna* the *ijma* and *kiyas* though opinions still differ as to how much is indeed based on ancient resources and how much changed by the civil courts during British rule and thereafter since India became an independent sovereign state. The problem is not of merely saying that polygamy and *talaq* are outmoded but of looking at the entire framework of Muslim law more deeply and dispassionately and to see how much of it is in conformity with contemporary social needs and modern thought. A non-Muslim author can do it in a more objective way and has prospects of success. Krishnan Nair has done it with credit.

Chapter 1 of this part explains the nature of Muslim law, its application, schools and sources. The Shariat Act 1937 has been dealt with reference to brief case law.<sup>8</sup> Chapter 2 explains marriage and dower. Chapter 3 covers dissolution of marriage. Chapter 4 discusses parentage and legitimacy. Chapter 5 deals with minority and guardianship. Chapter 6 covers maintenance, its nature, right to maintenance, maintenance after divorce with brief case law including the widely discussed case popularly known as *Shah Bano's* case.<sup>9</sup> Part III,

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5. *Seventy-first Report on the Hindu Marriage Act 1955* (1978).

6. *Supra* note 1 at 96-97.

7. *Sawan Ram v. Kalawanti*, A.I.R. 1967 S.C. 1761; *id.* at 108.

8. *Id.* at 158.

9. *Mohd. Ahmed Khan v. Shah Bano Begum*, A.I.R. 1985 S.C. 945.

chapter 1, outlines the Special Marriage Act while chapter 2 sets out the Christian law of marriage and divorce.

The book will be very useful for law students since it would equip them with knowledge of the broad and general principles of family law prevailing in India. It will also be very handy for the lay reader or for one not acquainted with the legal system prevailing in the country. The work deserves to be on the shelves of all the libraries.

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## BOOKS RECEIVED FOR REVIEW

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V.M. SHUKLA, *Legal Remedies* (5th ed. 1986 by Avtar Singh) Eastern Book Company. Pp. xxx+350. Price Rs. 40.