

LAWS OF MARRIAGE AND DIVORCE (2nd ed. 1984). By H.K. Saharay. Eastern Law House, Calcutta. Pp.[83]-+815. Price Rs. 130.

THE INSTITUTIONS of marriage and divorce and the rules regulating them reflect upon the development of human civilisation and, therefore, it is but natural that the subject has engaged attention of numerous scholars on such an important aspect of human life. In India, as a result, we find several writings which deal with these institutions mostly with reference to a particular religious community. Somehow, with the emergence of comparative methods of studying such institutions, a new set of works has emerged lately and the book under review may be said to be an addition.

The book is primarily meant for practitioners although it cannot be ruled out that it has value for academic lawyers as well. From the scheme of its contents it appears that the author has intended basically to make it a useful tool for practitioners. Out of total 898 pages, first 83 have been devoted to half title, full title, contents and table of cases cited. The table of contents (pages 7-51) is quite exhaustive. According to the scheme of contents the book is divided into eight parts. Part I deals with general aspects, part II Hindu marriage and divorce law, part III special marriage and divorce law, part IV Indian divorce law, part V foreign marriage and divorce law, part VI Muslim marriage and divorce law and part VII Parsi marriage and divorce law, and part VIII covers appendices. The contents, excluding appendices, are distributed into 10 chapters and each part contains one or at best two chapters depending on the subject matter which the author intends to cover. In essence, the contents covered by parts I to VII (pages 1-545) deal with the texts of certain statutes as well as the views of the author in the light of judicial pronouncements. In effect this portion can be treated as the main part of the work where the author has exercised his liberty to express his views.

Part VIII (pages 546-799), which covers appendices, contains the texts of various High Courts rules on the Hindu Marriage Act 1955 (appendix 1), Registration of Marriage Rules (appendix 2), Foreign Marriage Rules 1970 (appendix 3) and Parsi Marriage and Divorce Act: Bombay High Court Rules (appendix 4) as well as a model forms of petitions and defences under various matrimonial and divorce laws of the country (appendix 5). This part is extremely useful for a busy lawyer who is often looking to suitable material for his client. Here the author has done a good job by providing a valuable collection of all relevant rules and forms of petitions, *etc.* at one place.

The scheme of the book can hardly be said to be pedantic. Rather one may see it easily that the commentary, provided by the author in most of the parts, covers laws regulating a particular religious community. The reference of the laws of Hindus, Muslims, Christians and Parsis has not been made in a way which may be called a comparative treatment of the subject. Rather the author has collected statutes or general statement of marriage and divorce

laws of a particular community and made them the subject matter of treatment in a single part of the book. This deprives the reader of having a comparative view at a single place; so long he does not study the entire work, he cannot understand Indian law on a particular aspect of marriage or divorce.

In his comments with respect to section 17 (punishment for bigamy) and section 27 (disposal of property) of the Hindu Marriage Act, which appear to be fairly accurate, the author has not used the guarded language while explaining implications of the decisions of the Supreme Court. For example, he uses the expression "contracted" for "solemnized", which does not cover the same ambit. But generally, while traversing various provisions of different statutes he has shown utmost restraint and explained them with the help of suitable case law. One may, therefore, rely on the statements made in the book.

Two statutes which need one's attention are the Foreign Marriage Act 1969 and Dowry Prohibition Act 1961. The first is relatively of recent origin and has been brought on the statute book by Parliament to fill up an important gap in matrimonial laws. The author, while explaining its object and scope, has rightly noticed its shortcomings. He states: "But a problem will arise when a foreign aircraft will fly over Indian territory. Will that aircraft be considered to be of foreign country for the purpose of this Act?" This problem he poses because the definition of "foreign country", as given in the Act, states that "foreign country" means a country or place outside India, and includes a ship which is for the time being in the territorial waters of such country or place. The author's view that the definition suffers from lacunae is correct and this leaves enough scope for judicial interpretation. Besides, if one looks carefully, the definition has no answer to a situation given rise to by a marriage performed on board an aircraft of foreign origin while flying over Indian territory or an aircraft of Indian origin flying over a foreign territory. These are some moot points which the judiciary may deliberate upon ultimately or which Parliament may meet by amending the statute. As pointed out by the author, the situation is obviously confusing and, although the legislation is based on existing English and Australian legislation, it would have been better had Parliament defined "foreign country" with precision.

In part VIII the author has dealt with the Parsi marriage and divorce law. In fact, as the title of this part suggests, it would have been more appropriate for him to cover only Parsi law relating to marriage and divorce. But in chapter 10, which falls within this part, he deals with the Dowry Prohibition Act which is incompatible with its caption. However, it cannot be denied that the author has taken pains in collecting various amendments to the Act made by several state legislatures at one place. This is useful material not easily available to readers. Thus the book provides source material on the law of prohibition of dowry.

1. H.K. Saharay, *Laws of Marriage and Divorce* 461-62 (2nd ed. 1984).

Absence of bibliography or for that matter table of statutes and rules is a negative aspect of the book. This is not so in foreign works. Had it been provided, it would have enhanced its value and utility and served as a useful referencer to readers. One may hope that the author would take note of it and provide it in the next edition.

The author has done a service particularly to students of family law by collecting relevant material on marriage and its dissolution at one place. The book should be useful to those who are interested in acquiring knowledge of the most complex and intricate rules governing these institutions in a multi-religious society.

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