

MODERN HINDU LAW (1983). By Ramesh Chandra Nagpal. Eastern Book Company, Lucknow. Pp. liv + 938. Price Rs. 120.

THE WORK under review<sup>1</sup> is meant to be an exhaustive text-book on modern Hindu law. The text is divided into 12 chapters which are well documented. In addition to introductory topics, it deals with Hindu Marriage Act 1955, Hindu Adoptions and Maintenance Act 1956, the Hindu Minority and Guardianship Act 1956, joint family property, alienation of joint family property, law of debt, partition of joint family property, Dayabhaga law of coparcenary, the Hindu Succession Act 1956 with a schedule of three topics, i.e., gift and will, religious and charitable endowments as well as *benami* transactions. In fact, it covers all topics of modern Hindu law. The volume contains an elaborate and informative table of cases, appendices comprising Acts or extracts from Acts relevant to the study of the subject and subject index. These enrich the value of the study.

The law has been analysed with a critical view and some useful suggestions have been made for its development. Treatment of the subject is comprehensive with rich comparative material and case law and up-to-date developments have been incorporated.

One may not agree with all that the author has stated about or commented upon the nature of *Dharmashastras* and sources of Hindu law. The book has been dedicated to "those Hindu thinkers who respect but refuse to be overawed by *Dharmashastras* and believe that they need continued creative revision so that the Hindu Philosophy and system of life may always remain progressive, i.e. humanistic, scientific and ethical."<sup>2</sup> It is to be stated that *Dharmashastras* were neither intended to nor, in fact, overawe any person. A close study of the history of Hindu law will reveal that it has always been dynamic and progressive. From its rudimentary origin in *Vedas* through *Smritis* and commentaries, it flourished into a comprehensive self-contained legal system. *Smritikars* and commentators effected a continued creative revision of Hindu law. They evolved the law with the changing needs of the society. There has been an unparallel assimilation of customs in the body of law which kept it abreast of time. It is a fact of Indian legal history that after the advent of British rule these sources dried out. The decisions of the Privy Council hardened into binding precedents and law became static. Law could be changed only by legislation. The British rulers, as a matter of policy, did not interfere in the personal laws of the natives. The social progress had gone much ahead and law was miserably lagging behind. The casual and patchwork legislative activity did not ameliorate the position.

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1. Ramesh Chandra Nagpal, *Modern Hindu Law* (1983).

2. *Id.* at iii.

Ultimately, after the formation of national government, steps were taken for the reform of Hindu law by legislation and the result is the Hindu enactments in the fifties. There was no fault of *Dharmashastras* for the chaotic condition of Hindu law during the 19th and 20th centuries.

The author criticises G.D. Banerjee and P.N. Sen for not mentioning legislation among the sources of Hindu law in their Tagore law lectures. In fact, in view of the scope of these words, it was not required. The following extract makes it amply clear :

The subject of my proposed lectures being "The Central Principles of Hindu Jurisprudence", all that is at present necessary for me to enquire is what the expression 'Hindu Jurisprudence' must be taken to imply as distinguished from general or abstract Jurisprudence having no special reference to any particular system of positive law. Now, it will follow from what I have already stated about the scope and methods of particular jurisprudence, that the aim and object of a dissertation on Hindu Jurisprudence must be the examination and ascertainment of the Hindu conceptions about the general topics of jurisprudence as unfolded in the works of Hindu law givers of recognized authority, with a view to exhibit the characteristic development of the Hindu law in relation to the essential conceptions and principles common to all systems of law.<sup>3</sup>

The authority of text-books as a source of Hindu law has been discounted by the author.<sup>4</sup> It is to be stated that a particular work may or may not be a source of law but the generalisation of the statement is misleading.

There are flaws in the descriptions of *Smritis* and *Commentaries*. Some of them may be mentioned here. The author has stated<sup>5</sup> *Jinutavahan* as the author of *Mitakshara*. A corrigenda has also been printed.<sup>6</sup> There *Yajnavalkya* has been stated to be the author of *Mitakshara*. On the same page<sup>7</sup> Krishna Tarkalankar has been stated as the author of *Vyavahar Sangrah*. In fact, the name of the book is *Daya-karmasangrah*.<sup>8</sup> Again, the author has described *Virmitrodaya* of Mitra Misra as one of the books of *Dayabhaga* school.<sup>9</sup> This has been held to be so in a number of Privy Council cases.<sup>10</sup> Among the sub-schools of *Mitakshara* it pertains to Benares school.

3. P.N. Sen, *General Principles of Hindu Jurisprudence* 3-4 (1918).

4. *Supra* note 1 at 45.

5. *Id.* at 50.

6. *Id.* at viii.

7. *Id.* at 50.

8. See Mayne, *Hindu Law and Usage* 52 (11th ed. 1953).

9. *Supra* note 1 at 50.

10. See *Gudhanilal v. The Govt. of Bengal*, (1968) 12 Moo. I.A. 448; *Buddha Singh v. Lattu Singh*, (1915) 42 I.A. 200; *Ramchandra Martand Waikar v. Vinayak Venkatesh Kothekar*, (1914) 41 I.A. 290.

In the chapter "Source of Hindu Law" under the heading "Digests" the author enumerates "the *Dharma Ratna* (the famous *Dayabhaga* is a part of it) by Jimutavahan (15th century A.D.)". This information is also erroneous. About it Kane writes : "It appears that these works, (*Kalaviveka*, *Vyavahar Matrka* and *Dayabhaga*) were intended to form part of a vast treatise on *Dharmasastra* called *Dharmaratna* as stated in the *Kala Viveka*."<sup>12</sup> About the time of Jamutavahan he observes : "Hence it follows that the literary activity of Jimutavahana lay between 1090 and 1130 A.D."<sup>13</sup>

At places the discussions are inadequate or deficient. The author, while discussing schools of Hindu law has mentioned only two schools, *i.e.*, *Mitakshara* and *Dayabhaga*. While he mentions a number of books of *Dayabhaga* school, of *Mitakshara* he mentions none except *Mitakshara*<sup>14</sup> He should have mentioned the sub-schools, which are often spoken of as independent schools. If the author has intended to treat them as only one school, such authoritative works as *Virmitrodaya*, *Vyavaharamayukh*, *Smritichandrika*, *Vivadachintamani* and *Vivad Ratnakara* which have been recognised as authorities in different sub-schools of *Mitakshara* should have been mentioned.

The author writes "The law of adoption is given in the *Smritis*, the *Mitakshara* and *Dayabhaga*."<sup>15</sup> In fact, *Dayabhaga* is not a book on adoption, only occasional statements about adoption may be found therein. He has omitted to mention *Dattak Mimamsa* and *Dattak Chandrika* two special works on adoption.

The meaning given by the author to the work *Sadachar*<sup>16</sup> is erroneous. He states that *Sadachara* is the conduct of *Shistas*. It is to be stated that it is not so. He has confused *Shistas* with *Sadhus*.<sup>17</sup> *Shistas* were the persons authorised to interpret or clarify the law on points of doubt. There are ample texts in *Dharmashastras* about *Shistas*.

The author has made a reference to mandatory and directory rules.<sup>18</sup> He has omitted to mention the important point about which there has been so much controversy among the *pundits* of Hindu law, *i.e.*, the criterion to distinguish them. The eminent Indian jurist, V.N. Nandlik, has stated this.<sup>19</sup> However, Ganga Nath Jha has expressed a contrary opinion and pointed out how on the basis of this erroneous interpretation a principle unwarranted by *Dharmashastras* has been established in Hindu law.<sup>20</sup>

11. *Supra* note 1 at 38.

12. P.V. Kane, *History of Dharmasastra*, vol. I, pt. II, p. 699 (1975).

13. *Id.* at 709.

14. *Supra* note 1 at 50.

15. *Id.* at 292.

16. *Id.* at 28

17. *Manu* II 6.

18. *Supra* note 1 at 47.

19. *Hindu Law* 416-506.

20. *Hindu Law In Its Sources*, vol. II, p.v. (1983).

At places contradictory statements appear as, for example, about adoption the author writes<sup>21</sup> "no ceremony was prescribed". But subsequently he states "under the old law it (*Dattak Homan*) was mandatory...."

The author has made numerous suggestions for the improvement of law. Many of them are certainly very apt but some of them may not fit in the general legal framework and are impracticable, as, for example the author's following suggestion for addition to grounds of reasonable excuses as a defence against restitution of conjugal rights :

It is submitted that if a person is grave economic offender (i.e. smuggler, profiteer, hoarder or black marketeer) or is a dangerous criminal, even a white collar one, or is a foreign spy, or a deserter from the army during war, or is habitually negligent towards his official duties, or briefly, is an unworthy citizen, it may also be a reasonable excuse for leaving his or her society. A responsible citizen has good reason not to live with such a person.<sup>22</sup>

There are numerous printing mistakes in the work. The corrigenda also has failed to notice all of them.

However these deficiencies, which are attributable to inadvertence only do not detract the value and importance of the work. The well brought out volume is a welcome addition to the knowledge about Hindu law. The author really has taken great pains to bring together voluminous relevant material and put them at appropriate places with a logically brought out scheme. The book is replete with thought-provoking suggestions. It makes a valuable addition to the study on the subject.

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21. *Supra* note 1 at 342.

22. *Id.* at 101.

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