PRINCELY STATES AND THE REFORM IN HINDU LAW (1990). By Arun Mohan. N.M. Tripathi (Pvt.) Ltd., Bombay. Pp. xv + 479. Price Rs. 325.

THE BOOK under review probes into a hitherto unexplored area pertaining to Hindu law, *viz.*, the development and application of law relating to former rulers of princely states. The subject of study coalesces itself with aspects relating to constitutional developments, constitutional law and at a peripherial level even with international law. The seeming bulk of the book ought not to deter a discerning reader, as only 252 out of the 479 pages cover the main text, that too in bold and elegant print, and the other pages constitute appendices containing important judgments dealing with succession to the properties of princely rulers.

To briefly recall the central features of the book, in chapter III, the author examines "the short question as to whether the rules of princely states were 'soverign rulers' or not."[2] After noting the constitutional precedents and judicial decisions he comes to the conclusion that "it cannot be doubted that the Ruler of a Princely State was an absolute monarch and a sovereign ruler, who continued as such till 1948-49, when he signed the Covenant in favour of the Union of India and gave up his sovereignty."[3]

Chapter IV is devoted to an exposition of concepts under the head "Concepts in General". Here the author draws an important distinction between "sovereign impartible estate and non-sovereign impartible estate"[4] as in the former the holder is an absolute owner. He also raises the point whether an ancestral impartible estate is the individual or family property of the holder. According to him this question can only arise in the non-sovereign estates. He states the view that in so far as ancestral impartible estate of a sovereign is concerned, such an estate is neither joint family property nor held in coparcenary property but that it is his "individual property." He notes that to say that a sovereign ruler could be the *karta* of a coparcenary, where the sons would be in a position to demand partition, would be a contradiction in terms and relies heavily on the decision of the Gujarat High Court, delivered by P.N. Bhagwati J. (as he then was), in *Meramwala's* case.[5] Arun Mohan proceeds to examine the opposite view, referred to as the second school, based on the contentions, *first*, that no custom of primogeniture was prevalent among the ruling families and that on the ruler all his property devolved by survivorship according to Hindu law; and

1. Arun Mohan, *Princely States and the Reform in Hindu Law* (1990).
2. *Id.* at 24.
3. *Id.* at 35.
4. *Id.* at 43.
5. *D.S. Meramwala* v. *Ba Shri Amarba*, I.L.R. 9 Guj. 966.

second, that even if the rule of primogeniture applied, it applied to the title only and not to tangible assets.[6]

The fifth chapter examines, as its title aptly suggests "Character of the Holding and the Custom of Succession." It has been argued in this chapter that the juridical concept of sovereignty does not admit of any coparcenary; that as far as the property of the sovereign is concerned, there is no distinction between "public" and "private" property.[7] The writer rejects the contention of the second school that even if primogeniture applied to the "Rulership" it did not apply to the tangible moveable or immoveable property of the ruler and puts forward seven arguments in support of his view. Among these, the objection to the view based on the observations of the Privy Council in *Secretary of State* v. *Kamachee Boye Sahaba*[8] has been dealt with and rejected as an *obiter.*

In the subsequent chapter, "1947-50 Events", the author considers the question : "Does the property of the former Ruler get converted into coparcenary property in 1947-50 or does it continue as an absolute Impartible Estate until abolished by the statute?"[9] After a consideration of the arguments, he rightly concludes :[10]

> It is one thing to say that the custom of impartibility and primogeniture were never in existence. It is quite a different thing to say that the custom was there, but ceased to exist on a particular day, and for a particular reason.

The next critical question one encounters in this branch is dealt with in chapter VII:

> Whether an impartible estate (which a present holder succeeded to by the Rule of Primogeniture prior to 17-6-1956) would cease to be impartible and become coparcenary property with effect from 17-6-1956 or will the estate continue to be impartible till the death of the last holder after 17-6-1956?[11]

On this a Division Bench of the Calcutta High Court consisting of Sabyasachi Mukherjee J. (as he then was) and Guha J. in *C.I.T.* v. *U. C. Mahatab, Maharaja of Burdwan*[12] held that the Hindu Succession Act 1956 did not

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6. *Supra* note 1 at 77.
7. *Id.* at 99.
8. 7 M.I.A. 476.
9. *Supra* note 1 at 112.
10. *Id.* at 116.
11. *Id.* at 160.
12. (1981) 130 I.T.R. 223.

affect the position and character of impartible estates; and that an estate which was in existence before the coming into operation of the HSA would continue its character during the lifetime of the holder even after the coming into force of the Act. But the Gujarat High Court in *Pratap Sinhji N. Desai* v. *C.I.T. Gujarat*[13] and the Patna High Court in *Rameshwar Singh Deo* v. *Hemant Kumar Singh*[14] took the view that with effect from 17-6-1956 the impartible estates were abolished. The author points out the flaw in the Gujarat and Patna view, *viz.*, that impartibility and primogenture are two distinct concepts; that the former is a continuance process while the latter comes into operation only at the time when succession opens and the Gujarat and Patna High Courts mixed up the two concepts.[15]

Three chapters, IX, X, XI, have been devoted separately to each of the following topics : "The Tax Scene", "The Testamentary Instrument" and "The Constitution and its 26th Amendment." The final chapter XII deals with "A Few Judgments."

It would be uncharitable to carp on a book so closely argued and so neatly produced. If one may say so without derogating from the value of the book at places, lawyer Arun Mohan overpowers scholar Arun Mohan. For example, one comes across the statement : "The Ruler being the maker of law or the creator of law was above law." This plainly is an overstatement. The Hindu rulers whether in theory or in practice were not above the law. To illustrate, law was referred to as "king of kings."[16] No Hindu king ever claimed or exercised a power to expropriate land belonging to a temple. No doubt the decisions of the Privy Council and the Supreme Court referred to the rulers as "absolute sovereigns." But then, one must bear in mind, the distinction between king as a natural person and king as a political person and the term "absolute" is to be understood in its historical meaning. Holdsworth observes :

> Thus the term "absolute" when applied to the king did not mean that he was freed generally from legal restraint; but merely that as to the particular act to which the adjective was applied he had a free discretion as to the question whether he would do it at all or, if he would do it. But the term "absolute" even more than the term "inseparable" gave countenance to the idea that the king had a large and indefinite reserve power which he could on occasion use for the benefit of the state; and the constitutional controversies of the seventeenth century gave a very definite meaning to this idea.[17]

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13. (1983) 139 I.T.R. 77.
14. (1986) 186 I.T.R. 229.
15. *Supra* note 1 at 164.
16. See generally, Mulla, *Principles of Hindu Law* (15th ed. 1982).
17. W.S. Holdsworth, *A History of English Law*, vol. IV, pp. 206-7 (1923).

The merits of the book are many. Arun Mohan has handled the subject competently and with scholarship. After going through the book two thoughts cross the mind. *First,* when unclear, jargon loaded language is being passed off as a hallmark of scholarship, it is cheering to note a scholarly work in clear, simple and effective style. *Second,* it is redeeming to note that a busy lawyer thought it fit to devote some of his time to scholarly writing. All in all the book under review is a valuable contribution to the legal literature

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