



## **BOOK REVIEWS**

MUSLIM LAW AND THE CONSTITUTION (2nd ed. 1994). By A. M. Bhattacharjee. Eastern Law House, Calcutta. Pp. 225. Price. Rs 190.

THE BOOK<sup>1</sup> is brilliantly written, with a brilliant Foreword by Justice V.R. Krishna Iyer, and raises thought provoking questions as regards a common civil code. We shall take each of these issues raised by the learned author in this review.

*First*, the author objects to there being polygamy permissible under Muslim law while it is not so under Hindu law and laws governing Christians and Parsis. We agree with this view because the Muslim society in India has gone ahead of this law and there are hardly any cases of polygamy among Muslims. A Muslim contracting a second marriage is ridiculed in the Muslim society. Furthermore, the Holy *Quran* only permits polygamy on the condition that a person taking more wives than one would do equal justice to all of them. Since it is only a permission, a law can be framed and the Muslims may be declared monogamous. It may, however, be pointed out that under the existing Muslim law a woman can at the time of marriage make it a condition that she would be entitled to divorce and maintenance in case her husband contracts a second marriage, or that the marriage would stand dissolved on her husband taking a second wife.

The *second* objection raised by the author is that Muslims are allowed extra judicial divorce while Hindus, Christians, Parsis can effect divorce only through court.

The Holy *Quran* provides that there should be always be attempts by family members of both parties for reconciliation. Pakistan has provided that no divorce shall be effective before three months, that a notice should be given in case of a divorce, and that reconciliation proceedings must commence within one month of such notice. There is not much point in flinging words on each other by the husband and wife in a court of law. The method of reconciliation is therefore much better and superior to judicial divorce. This should be adopted uniformly for all communities.

The author's *third* objection is that a Muslim man can divorce his wife at whim or pleasure while this is not so under the law governing other communities.

Islam considers divorce very odious and the *Quran* recommends the path of reconciliation. A law should therefore be passed for compulsory conciliation in whatever form the divorce may have been pronounced.

The *fourth* objection is that a husband's apostasy from Islam results in automatic dissolution of a Muslim marriage, though a wife's apostasy does not.

Ideally a change of religion should have no effect on marriage as the Christian law provides, and such marriages should after the apostasy be governed by the Special Marriage Act. But if any party objects to the continuance of such marriage, divorce should be easily available.

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1. A.M. Bhattacharjee. *Muslim Law and the Constitution* (2nd ed. 1994).



The *fifth* objection of the author is that a divorced Muslim wife is not allowed maintenance except during *iddat*.

Muslim law provides that at the time of marriage the parties can incorporate provision for maintenance in their contract of marriage. A law that is made with mutual consent is always superior to a law which is imposed. Maintenance to prevent vagrancy should, however be available in all cases.

The *sixth* objection is that a daughter should be given an equal share in the property of the deceased while under Muslim law she gets only half of what her brother gets. This objection should be read with the next objection that a person cannot dispose of one-third of his property by will.

We are of the view that each child should get according to his or her need and that judgment should best be left to the person who owns the property.

*Lastly*, the objection pertaining to the right of pre-emption under Muslim law not being available to other communities, is well taken and should be made available to other citizens.

The book is highly recommended for all law libraries as it contains a wealth of information on Muslim law and the Constitution. But we may in conclusion state that, (i) too much insistence on absolute uniformity is a pedantic approach; (ii) such approach is procurastrean in nature; (iii) the society does not always accept the laws which are imposed on it; and (iv) in such cases there is always the danger of promoting disrespect for the law.

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