



INDIAN LAW OF MARRIAGE AND DIVORCE (5th ed. 1993). By Kumud Desai, N.M. Tripathi Pvt. Ltd., Bombay. Pp. xlvi + 579. Price Rs. 320.

THE BOOK under review<sup>1</sup> is an exhaustive documentation of legislations, customary practices and judicial decisions in this branch of law. After being first published in 1964 its successful run into the fifth edition testifies to its usefulness for both legal practitioners and legal academics.

The book is comprehensive in its scope. Thus not only have substantive and procedural laws relating to marriage and divorce been included but the areas appurtenant to marriage and divorce such as maintenance and custody of children have also been dealt with. For optimum utilisation of the divorce materials, systematic presentation was required. The structural division of the book is weak in so far as it does not further organisational unity of materials. This hampers consultation.

In parts I to V the author deals with, (i) the law of special marriage and divorce; (ii) Hindu law marriage and divorce; (iii) Muslim law of marriage and divorce; (iv) Parsi law of marriage and divorce and (v) Christian law of marriage and divorce, respectively. The Jewish law of marriage and divorce;<sup>1a</sup> divorce by custom among Hindus<sup>2</sup> have been dealt with as separate chapters in the general part [part VI] of the book. A note on the Foreign Marriages Act 1969 has been inducted as a chapter in part VI<sup>3</sup> whilst the statute is included as an appendix.<sup>4</sup> Instead of these separate chapters both to facilitate consultation and to enhance structural unity it would have been appropriate if the chapter on divorce by custom among Hindus was incorporated within part II, and the Foreign Marriages Act 1969 and its commentary included in part I, with the Jewish law of marriage and divorce being put together as a separate part.

Issues of maintenance,<sup>5</sup> custody of children,<sup>6</sup> Offences against marriage<sup>7</sup> have been discussed as separate chapters in part VI with the statutes controlling the areas being included as appendices. Integration of the statutes with the commentary would be more useful to the reader.

The special statutory procedures,<sup>8</sup> general civil procedure<sup>9</sup> and Family Courts Act<sup>10</sup> have been disparately discussed. Consequent to this scattered treatment the

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1. Kumud Desai, *Indian Law of Marriage and Divorce* (5th ed. 1993).
  - 1a. *Id.*, ch. XIV at 368.
  2. *Id.*, ch. XV at 370.
  3. *Id.*, ch. XX at 400.
  4. *Id.*, app. XVI at 487.
  5. *Id.*, ch. VII at 313.
  6. *Id.*, ch. VIII at 335.
  7. *Id.*, ch. XXI at 402.
  8. *Id.*, ch. IX at 344; ch. XIII at 367.
  9. *Id.*, ch. XVIII at 379.
  10. *Id.*, ch. XIX at 391.



essential analytical linkage between the various statutory regimes has been inadequately forged.

The conflict of law questions arising in a society with multiple laws are distinct from those surfacing in a society with a uniform civil law. Chapters XI, XVIII and XXII in part X deal with various aspects of conflict of laws. All these aspects dealt within the conspectus of a single chapter would have avoided needless repetition. Insofar as conversion dramatically brings to the fore the conflict issues in a multi-religious society, chapter XXI of part VI could have been appropriately incorporated in this chapter.

The appendix in an amalgam has included, subordinate legislation, state and central statutes. A subject-wise classification of the appendices would have made the presentation attractive and user friendly.

In the preface to the first edition of the book the author stressed the need for a uniform civil code. As a step facilitating a single code, the diverse laws of marriage and divorce have been incorporated by her in one book. In order to stress that there were several common elements in the diverse personal laws such as restitution of conjugal rights, judicial separation, nullity, the various grounds of divorce, she introduced a separate general part in the book.<sup>11</sup> In the general part of the book (part VI) the author has dealt with the judicial decisions occurring under various personal laws at one place. The case for a uniform civil code could have been further strengthened by highlighting the disadvantages of a diverse system. Herein the manner in which conversion makes personal law shopping possible could be highlighted. The role which judicial interpretation plays in allowing access to liberal or restrictive law of divorce could be explored.<sup>12</sup> Also judicial pleas for uniform civil code could be specially focussed on.<sup>13</sup>

Whilst being a commentary on the Indian law of marriage and divorce the book refers quite extensively to English law. In view of the cultural rooting of the law of marriage and divorce, the relevance of English decisions is questionable. However if such cases are being included for the convenience of the lawyer reader because Indian courts do rely upon English decisions, it is essential that all landmark decisions are included and obsolete case law expunged. The path breaking decision on marital rape by the House of Lords has not been incorporated,<sup>14</sup> whilst a number of nineteenth century decisions promotive of the notion of women as property have not even be relegated to footnotes.<sup>15</sup>

The production of the book is commendable as few printing errors could be found. Even the printing of "dual domicile" as "duel domicile"<sup>16</sup> could be argued to be contextually apposite.

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11. *Id.*, at viii.

12. Of special interest herein would be decisions such as *Neelkanthan v. Neelkanthan*, A.I.R. 1959 Raj. 133 and *Aulyn v. Chandrawali*, A.I.R. 1974 All. 278. Whilst the former ruling gave access to Christian parties to a liberal law of divorce, *i.e.*, the Special Marriage Act of 1954, the latter restricted Christian parties to the Indian Divorce Act 1869.

13. Cases such as *Jorden Diengdeh v. S.S. Chopra*, A.I.R. 1985 S.C. 935 could provide such a focus.

14. *R. v. R.*, [1991] All E.R. 483.

15. See, for example, *Saunders v. Saunders*, 1 Robert Eccl. Rep. 549, ed. at 292.

16. *Id.* at 378.



To sum up, the documentation of the book is exhaustive but diffuse. Organisational restructuring would enhance unity of materials and facilitate consultation. In order to provide substantive content to the demand for a uniform civil code, it is hoped that an analysis of the disadvantages of a diverse personal law regime would be initiated by the author in the next edition.

*Amita Dhanda*<sup>4</sup>