

BOOK REVIEW

FAMILY LAW- VOLUME I: FAMILY LAWS & CONSTITUTIONAL CLAIMS AND VOLUME II: MARRIAGE, DIVORCE, AND MATRIMONIAL LITIGATION, *Flavia Agnes, Oxford University Press, New Delhi, 2011, Paperback, Pages 600+508. Rs. 350+450.*

Matrimonial jurisprudence, being the main theme of the volumes, has been well explored.

The two volumes while claiming to focus on family law, not surprisingly, are devoted to the rights of women. These rights have been dealt with at two levels- while volume-I explores the rights of women in the context of the various family laws of India, volume-II introduces the controversy filled arena of matrimony. Addressing the gendered nature of the family and society, the book refreshingly leaves behind the “neutral” approach which legal scholars adopt while penning books relating to the laws of the family and society. Between them, the volumes cover the treatment of legal presumptions and appreciation of ‘truth’ affecting women’s rights and the popular notions of legality moving beyond the textual context, right from the pre-litigation legal strategies to interim orders and timely negotiations, all of which play a vital role in securing women’s rights, rather than alluring legal principles and theories of justice.

It also provides an objective critique of the Uniform Civil Code (‘UCC’). Art. 44 of the Constitution of India has been examined within a complex rubric of conflicting and contesting claims located within the majority-minority divide. A unique point of view of the UCC has been provided through a study of the various drafts of the development stages of the UCC.

The first volume further provides an overview of the constitutional provisions pertaining to the freedoms and equality provided to women. The rights of Muslim women, entangled within the claims of modernity and national integration on one hand, and the protection of culture and religious freedoms on the other hand have been explored at length.

The second volume explores matrimonial jurisprudence as developed in India since the colonial period. The perusal of judgements and the study of the psyche behind the judgements make for an interesting read. While dealing with the law of marriage and divorce, the author has adopted a stimulating take on judgements relating to the issue of maintenance. It is notable that the studies of the rights of women have not been restricted merely to the socio-legal fabric but have been substantiated with a sustained criticism of the judgements pertaining to the legislations and the situations discussed. Matrimonial rights and procedural aspects of family courts too have been dealt in great detail. Of particular interest is the chapter dealing with marriage and matrimonial

rights, and the legal codes and statutes as determined within the formal court structures through litigation, tracing the transition of marriage from a sacrament to a contract and discussing the matrimonial remedies as provided both under statutory law or codified law— revolving around the four basic arenas of matrimonial relief- annulment of marriage, restitution of conjugal rights, judicial separation and divorce. These remedies are explored through the study of legislations and the five different matrimonial statutes/legal systems available in India. In addition to the personal laws which are recognised and recorded, the author makes a splash with her reckoning of NRI marriages and the ensuing issues and problems. In doing all this and more, the approach undertaken is based on the case study method rather than a theoretical one with the author going through the interface of criminal and evidentiary laws for maintenance and paternity tests. An additional feature is the comparative study of the doctrine of distribution of matrimonial property- this is discussed in the context of various countries and juxtaposed against those of the countries governed by Islamic law- at the same time paying attention to the need versus contribution approach in the division of property after divorce. The volume deals extensively with the custodial rights of women- discussing various kinds of custody disputes. A case well made out is the study of family courts and its comparison with the exclusive and concurrent jurisdiction of High Courts.

All in all, the book has the potential to rejuvenate the teaching methodology in family law courses moving from discourses of pure legal dissemination of prevalent laws of the land and their associated judgements to a narrative methodology by bridging the historical sources of law and the current laws.

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