

MODERN HINDU LAW. By R. C. NAGPAL. [Lucknow: Eastern Book Company. 1983. liv+938 pp. Rs. 120.00]

TO one whose legal education has been confined within the western secular positivist tradition of law, the very concept of a religious legal system appears alien, and evokes the response that, *e.g.*, Hindu, Islamic or Jewish law cannot really constitute "law" but are more accurately deemed religious or moral codes of conduct. However, as alternative theories of law, which look less to the form of the purported law and legal system and more to the reality of their impact on society and social order, become increasingly influential on western legal thinking, it becomes correspondingly easier to acknowledge what has been obvious to their adherents for generations, that is, that these are legal systems imposing legal norms of conduct upon those bound by them. Even once this is accepted, there is still very little room for the inclusion of religious legal systems in the overcrowded syllabi of most western law schools; there is perhaps a passing reference in a comparative law course or in interpersonal conflicts situations and, in some institutions, a specialist course, normally at the postgraduate level. There is a great ignorance among western trained lawyers as to the form, sources and substance of a system such as Hindu law. Further, as Hindu law is one of the most ancient legal traditions still forceful today it has

necessarily undergone centuries of evolution and adaptation, making its study appear an overwhelming task.

However, with respect to modern Hindu law within Indian jurisdictions there has been a formal codification process so that it is now primarily contained within the four major statutes of 1955-6: The Hindu Marriage Act 1955, The Hindu Adoptions and Maintenance Act 1956, The Hindu Minority and Guardianship Act 1956 and the Hindu Succession Act 1956. This simplification and rationalisation of Hindu law through the codifications forms the substance of this book. It covers that part of modern Hindu law that is contained within this legislation and which forms the personal laws of Hindus within India, as defined by the Codes. It does not attempt to discuss those areas of Hindu law within India that have remained outside the Codes, nor modern Hindu law in other jurisdictions. The book is written from the positivist viewpoint of accepting these statutes as the primary source of modern Hindu law; while acknowledging the continuing validity of a historical or sociological approach the author asserts that the reality is that today Indian courts apply the Codes and supplementary legislation, and only in rare instances fall back on other residuary sources of law. This approach greatly facilitates the understanding of a non-Hindu lawyer.

The book is in form a running commentary on the four major pieces of legislation listed above. Each one is systematically reproduced, with a synopsis and commentary presented on a section by section basis. The commentaries focus upon the traditional concepts of Hindu law and on showing where and how the statutory provisions modify traditional law. Ample references to (and translations of) the ancient texts are given to aid this task. Reasons for the changes are outlined and where the Indian Law Commission was instrumental in their formulation their views are noted. There is also extensive reference to the case law that has built up around the legislation. In some instances a comparative approach has been utilised, so that relevant provisions of the legislation constituting the personal laws of the Indian Muslims are analysed alongside those pertaining to the Hindus. This is invaluable in aiding the development of a truly Indian jurisprudence in the context of personal law. Effective use has been made of simple diagrammatic illustrations to clarify complex family relationships and their legal significance.

These commentaries are supplemented by introductory chapters on the applicability of the Codes, the traditional sources of Hindu law and the schools of Hindu law. These three chapters allude to a number of interesting themes, including the relationship between modern Hindu law and the Indian Constitution, the role of the Judicial Committee of the Privy Council in moulding the final shape of Hindu law prior to codification and the unifying impact of the codification on the doctrines of the diverse schools of Hindu law and whether these now retain anything other than historical significance. Unfortunately these three very short chapters (57 pages altogether out of 850 of text) refer to so many aspects of these subjects in such a short space that they become rather difficult to follow for one not already well versed in the topics.

Finally there are a number of appendices containing supplementary legislation from both before and after the 1955-6 period, this time without commentary.

This book is well produced and well written, although occasionally expressions are used that do not sound natural to an English-born English speaker. These in no way detract from the book's clarity. It is an impressively thorough presentation and the systematic layout makes it an efficient tool of reference. It should prove to be extremely useful to practitioners in modern Hindu law and would be a useful text for a course in Hindu law. Unfortunately, outside of India, these are not very common and so the market is probably limited.

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