

TEXTBOOK ON MUSLIM LAW (2011). By Rakesh Kumar Singh. Universal Law Publishing Law Co. Pvt. Ltd. C-FF-1A, Dilkhush Industrial Estate, (Near Azadpur Metro Station) G.T. Kernal Road, Delhi-110033. Pp xxxv + 371. Price Rs. 295/-.

HISTORICALLY SPEAKING, divergence between legal theory and legal practice is discernable in the progressive development of Muslim law and its enforcement. The extent of divergence had differed from place to place and from time to time. This was the result of the process of acculturation, which eliminates the elements of stagnation in the legal system of Islam and constructed way for mobility and dynamism in the precepts and practices in the legal institution of Islamic social system. The development of Muslim law in South Asian countries, particularly in the Indian sub-continent, has taken place through the interpretation of Muslim legal principles by the judicial committee of the House of Lords and the Muslim scholars of Indian origin. While the Privy Council separated morality from law and gave distorted version relating to various concepts of Muslim law, Indian scholars seem to be apologetic defending the legal norms as applicable in India. Some of the non-Muslim scholars belonging to legal fraternity try to look at the Muslim law in its true perspective. The book under review<sup>1</sup> is such an effort as the author has asserted that the “Muslim law could be seen as an admirable system of jurisprudence providing, as it did, many rational and revolutionary concepts that could not be conceived by the other systems of law then in force at that distant date”.<sup>2</sup> The author has dispelled the mythic misconception of some of the non-Muslim thinkers that Muslim law consists of practices expounding numerous legal concepts of the Muslim law. Rakesh Kumar Singh is an author with a difference holding the view that Muslim law has “failed to earn the appreciation which the Muslim law in its modified frame rightly deserved because of its rational, realistic and pragmatic approach in many respects”.<sup>3</sup>

The book under review is the result of the efforts of the author to present a detailed account of Muslim law in about 365 pages. The work is divided into 13 chapters. First chapter relates to ‘Origin and Historical Development of Muslim Law’. While putting the basic feature of Islam on record, the author gives his own exposition of religion and law. He lays down that “there is

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1. Rakesh Kumar Singh, *Textbook on Muslim Law* (New Delhi, 2011).

2. *Id.*, “Preface” at 5.

3. *Ibid.*

differences between the Islamic religion and the positive Muslim law (*Fiqh*). So far as Islamic religion is concerned, it may be said that it was completely established at the time of Prophet's death. But Muslim law developed further".<sup>4</sup> He has presented the history of development of Muslim law in a lucid manner. While discussing the *Quran* and *Hadith* as primary sources, the author asserts that "((T)he last ten years of the Prophet's life was the most important period so far as the first two sources of the law, the *Quran* and *Hadith*, are concerned".<sup>5</sup> The author is of the view that the last period of the Prophet's life is called "legislative period" of Islam when laws were enacted by the divine legislature and promulgated in the words of *Quran* or by the precepts of the Prophet.

Introducing the history of development of Muslim law, the author tells the readers about the collection, authenticity and veracity of *Hadith*. He then explains the true nature of *Ijtihad* and *Ijma*. He also describes the relative significance of *Rai*, *Qiyas* and *Ijma*. He also discusses various techniques and objectives related to the *Ijtihad* like *Istihsan*, *Istislah*, *Masleh-al-Mursalah* and *Islidlal*. Dealing with the emergence of various schools of Islamic jurisprudence, the author appreciates the efforts of numerous jurists-consults who made contribution to the development of *Fiqh*. The author says, "The legal system of Islam is replete with plural views and conflicting juristic verdicts in the matter of legal details". Evaluating the contribution of various jurists, the author has also appreciated the efforts made by Imam Abu Hanifa. In the words of the author, "Abu Hanifa's main contribution was that instead of accepting each and every tradition as law, he tried to find out the law in the texts of *Quran* itself through analogical deductions. In this manner he preferred scientifically concluded private judgments based on *Quran* over a blind reliance on the traditions. According to him the law must be formulated in accordance with the changing needs of the society".<sup>6</sup>

Dealing with the significance and relative utility of the 'Sources of Muslim Law' under chapter 2 of the book, the author reiterates the prevailing popular belief in the academic fraternity that "*Quran* is the primary and supreme source of law".<sup>7</sup> In this book, whenever and wherever the author explains *Sunnat* and *abadiths* (Prophet's sayings and doings), he has showed supreme respect to the Prophet of Islam by saying after his name *Sal-lal-lahu Aleh-i-Wassallam* (Peace be upon him) which shows the author's dignity and adherence towards ancient Indian principle, *i.e. sarva dharma sambhav*. This is the practical spirit of

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4. *Id.* at 12.

5. *Id.* at 13.

6. *Id.* at 19.

7. *Id.* at 33.



secularism which is enshrined in the Constitution of India. While discussing the Muslim law of marriage, the author expresses his views based on some authentic sources that “Islam, unlike other religions, is a strong advocate of marriage, there is no place for celibacy like, for example, the Roman Catholic priests and nuns”.<sup>8</sup> The author is of the view that under the Islamic social system “family starts with marriage hence the institution of marriage is regarded as the central idea of the branch of Family Law of every community”.<sup>9</sup> The author deplors the deliberate distortions of the polygamous nature of the marriage of Islam. This dispels the misconceived notion and the impression that every Muslim enjoys unbridled rights to have more than one wife and that there is no in-built restraints in the exercise of concession in the arena of polygamy. The author considers this view as completely misconceived for which he has profusely quoted various sources which strictly prohibit such type of social evils.<sup>10</sup> The author also narrates various situations wherein polygamy may become a necessity.<sup>11</sup> The book under review contains an interesting account of rites and rituals observed by some of the Muslims before and after the solemnization of *nikah*. These includes: *Rasam Mebdi*, *Sangeet*, *Sebra bandi*, *Nawaḡ* after *Sehrabandi*, after *Nikah Salaami*, *Rukhsat*, *Chanthi* and so on. These and other wedding ceremonies prevailed in the Muslim community while no place has been given to them in the Islamic social and legal system.

In the era of new culture and civilization, where tension, depression and suicidal tendencies are raising their heads and the institution of marriage has been destabilized, giving rise to extra-marital relations, adherence to Islamic law of divorce has become a device to save the disintegration of the society. The financial security, self-reliance and dignity of women are the basic requirements of civil society. The Islamic legal system covers both under the provisions of *mehr* and *talaq*. That is why in chapter 3 and chapter 4, the author discusses the significance of *mehr* and the utility of divorce, respectively. In the present social order, “the marriage does not seem to be all about life-long togetherness anymore. More over young couples head towards the divorce courts, perhaps due to the “me-first”, mentality that makes compromise and adjustment impossible”.<sup>12</sup> This situation provides credence to the Muslim law of divorce which permits divorce in the last resort for the dissolution of marriage and that too with kindness. Islam disapproved unkind behavior adopted by the spouses in the process of dissolution of marriage. The author lucidly and correctly

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8. *Id.* at 57.

9. *Ibid.*

10. For a detailed exposition in this regard, see *id.* at 61-64.

11. *Ibid.*

12. Nona Walia, *Times of India* [New Delhi, Sunday edition] July 24, 2005.



presents the law of divorce under Islamic system as a means of keeping social solidarity intact and moral. The author makes endeavors to correct deliberate distortions, awful misgivings and utter ignorance of the Islamic law of divorce.

Chapter 6 of the book presents an interesting account of law of maintenance. It contains a comparative view of the law relating to maintenance as provided under the uncodified Muslim law, the codified Muslim law and the codified secular law as embodied under the classified Islamic law, the Protection of Muslim Women (Protection of Rights on Divorce) Act, 1984 and the Code of Criminal Procedure, 1973, respectively. Under classical Islamic law, the right of maintenance is linked with moral obligations and individual property rights while under non-religious law of maintenance, it has been delinked from the property rights. The author has taken a critical view of classical Islamic law holding that “it may be noted that taken together, the two basic principles of Islamic Law of maintenance may appear to be contradictory to each other. This is because the texts and the authorities on Muslim Law have not clearly separated the moral obligation from the legal one”.<sup>13</sup> The author seems to be in favour of law of maintenance as contained in the Code of Criminal Procedure. It is surprising that such a well-versed writer has ignored the utility and significance of the doctrine of *nushuz* (disobedience) disentitling the wife from the maintenance.

Chapter 7 of the book is related to the rules pertaining to guardianship and custody. The author has reiterated the established legal position in this arena. Under chapter 8, the author has traced the pre-Islamic notions of establishing the parentage of the child. The author has sifted the legal position as available under Islamic law but favoured the legal position given under Evidence Act, 1872. Chapter 9 of the book deals with the law of gift under the Islamic system. Legal matter has been presented in a simple way and under chapter 10 where the author describes the law of *wasiyat* (will) and death bed transactions, gift, *waqf*, etc. The law of *waqf* has been made part of the chapter 11. The author has asserted, and correctly so, that the institution of *waqf* did not exist in the pre-Islamic Arabia. Through the institution of *waqf*, the Islamic system envisages a channel to promote social and educational interest of the deprived section of the people, protecting them from vagrancy. This institution converts the private ownership into diverse meaning (public ownership). The institution of *waqf* consists of socialistic overtones. Chapter 12 of the book deals with the law of pre-emption, that is to say, *shufa*. While putting the Muslim law, customary law and legislative law on record, the author

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13. *Supra* note 1 at 158.

gives his own exposition of the constitutional provisions and judicial rulings. The last chapter of the book deals with the law of inheritance or succession. The author analyses the legal provisions and provides a comparative view when he says that “In pre-Islamic customary law of succession some changes were introduced by the Prophet and this super imposition of the principles on the customary law of succession has led to divergence of opinion among *Sunnis* and *Shias* resulting into the emergence of two different systems of succession. The law of succession is a unique aspect of Muslim law, though it is complicated and not easily understandable yet it is rational and to a great extent suffices Muslim communities.”<sup>14</sup>

The reviewer is of the opinion that the book under review makes a good attempt to prove useful to the legal academic fraternity. But the reader, at many times, comes across mistakes and errors, which may be called proofreader and printer’s omissions but these mistakes change the nature of law itself and, therefore, they have their own significance for the students of Muslim law. That is why these mistakes and errors along with their correct words may be broadly mentioned as follows:

<b>Mistake</b>	<b>Correct Version</b>	<b>Page</b>
Quarish	Quraish	5
Abdul Mualib	Abdul Muttalib	5
Abu Lahad	Abu Lahab	5
Raid-ud- Mukhtar	Radd-ud-Mukhtar	19
Kitab-ul-Ummar	Kitab-ul-Umm	21
Zyadiaz	Zaidiyas	22
Zyadiaz school or severs	Ismailis or seveners	22
Majmu-ul-Diqh	Majmu-ul-Fiqh	24
Malik-Ibn-Amas	Malik-Ibn-Anas	35
Tahzd-ul-Ahkam	Tahzib-ul-Ahkam	35
Imad-al-Fatwa	Imdad-ul-Fatawa	43
Zawaj	Azwaj	58
Sarsah Sulaiman	Sir Shah Sulaiman	60
Talal-ul-Biddat	Talaq-ul-Biddat	122
Halal	Halala	125
Quire	Quite	165
Shalid	Shahid	168
Divorce	Divorcee	170
Ruddual- Mukhtar	Radd-ul-Muhtar	195
abstate	apostate	195

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14. *Id.* at 313.



Shariat Act, 1957	Shariat Act, 1937	218
Mahub lahu	Mohub Ileh	226

Another significant omission is that not a single matter has been given in indented form. A serious researcher or writer does not depend on the websites for his writings when he refers a famous books, for example, Abdur Rahman's book on marriage which is found everywhere but the author has referred to it from the website. Similarly, Shams Pirzadah, a very famous writer for his book on talaq<sup>15</sup> has also been referred from the website. These books would be commonly available in any good library such as the law/oriental studies libraries of Lucknow University, where the author is working, the oriental library, known as Shibli Nomai Library of famous oriental institution Darul Ulum Nadwatul Ulema besides Lucknow University (Old campus). The book lacks a bibliography which is an essential ingredient of a book providing a valuable source to the readers to check or to gain a detailed knowledge on the subject.

It is hoped that in the next edition of the book, the author will surely take care of the omissions and undertake necessary corrections. The reviewer, however, must admit that the book is a commendable work. Unlike some other writers on the subject, the author did not anywhere in the book misinterpret or distort the Islamic legal notions. Instead, he has shown a great reverence for the *Sharia* and its propounders/compilers for which the author deserves appreciation.

*Furqan Ahmad\**

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15. See, for example, *supra* note 1 at 59 & 113.

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