OUTLINES OF MUHAMMADAN LAW (2008). By Asaf A.A. Fyzee (Ed. Tahir Mahmood). Oxford University Press, YMCA Library Building, Jai Singh Road, New Delhi - 110001. Pp. xvi + 414, Price Rs. 775/-

THE WHOLE gamut of Muslim personal law, as applicable in India, has been a subject matter of interest for anyone having some interest in law. This interest ranges right from appreciation of the reforms brought by Islam to its criticism, by dubbing it as static, parochial and biased against women. Due to the historical reasons, Islamic law, as received today, has reduced, more or less, to the personal aspects of individual[1] and India is no exception to it. Hence, it is a great challenge for any author to discuss the applied aspect of Muslim law in true Islamic perspective; for a book on Islamic law does end up projecting a certain portrait of the religion itself because of the very nature of the subject matter. This classic book, under review, has been attempted to be viewed largely from this perspective.

The present edition has been made more suitable for the today's reader. The book is largely intact in its content and, to keep it elementary and still updated, the editor has, rightly so, put 'Addendum' at the end of each chapter. It is sleek in its presentation because of some intelligent cosmetic changes made by the editor. The book touches upon almost all practical aspects of Muslim personal law in India and it is quite handy. It starts with a slightly elaborate 'Introduction' followed by fourteen chapters and capped by two very useful appendices.

The author has, as he claims, attempted to provide the historic and cultural foreground to the readers, in the 'Introduction', before ushering them to the actual law, unfolding in the book. This portion, which analyses various precepts of the Qur'an and the *Sunnah*, in the present reviewer's opinion, has not been dealt with in the true spirit of Islam. The effect of the same is there to see in the actual treatment of the subject matter. To begin with, the author himself has acknowledged the fallacy of the term 'Muhammadan' for which he has apologised. However, regrettably, he fails to rectify the same and, instead, ends up justifying it by calling it as a *portion* of Islamic law or *fiqh*, applied as personal law in India. It is doubtful as to whether, in epistemological perspective, a fundamentally

1. See, Abdul Hamid A. and Abu Sulayman, *Crisis in the Muslim Mind* (English trans. - Yusuf Talal DeLorenzo) 4-5 (1993).

wrong term 'Muhammadan' – a Muslim submits solely to Islam and not to the Prophet Muhammad – can be part of a true whole, i.e., *fiqh*.

The 'Introduction' has tried to establish that the advent of Islam and its code were largely meant for reforming the then tribal society. The argument raised is that 'many of these (Arab) customs (were) adopted wholly, or with modifications, by the law of Islam.'[2] The argument has been further tried to be cemented by citing an oft-quoted example of the four types of marriages, prevalent in the ancient Arabs, among which Islamic law 'picked up' one of them. Such examples are inappropriate because what Islam has sanctioned is a truly liberal form of marriage, fundamentally based on mutual consent; what may resemble is the mere outer crust. In fact, since then, women never remained a chattel but a party to the alliance. Such an analysis of Islamic law tends to severely restrict the temporal and spatial appeal of the religion itself. It has been observed by a renowned jurist that "from an inductive examination (*istiqra*) of numerous indicants in the Qur'an and the authentic prophetic traditions, we can with certainty draw the compelling conclusion that the rules of the Islamic Shariah are based on inner reasons and causes that devolve upon the universal goodness and benefit of both society and individual, …"[3] Since the present book was never expected to be a commentary upon the very eternity and universality of the divine law, it would have been more appropriate to treat its fundamentals as believed by the Muslims. To give a variant depiction, in a rather cursory manner, is unwarranted. This chapter is replete with examples that try to find tribal roots of Islamic law.[4]

Further, when it is said that "…Muhammadan law achieved on a much wider scale…what the Prophet in the Qur'an had *tried to do*… (emphasis supplied)"[5], it distorts the true firmament of Islamic system. The Prophet did not *do* anything in the Qur'an rather he *followed* the Qur'an, as a model. He was not an author who could *do* something in it. Such phraseology, even unintentionally, tends to change the very revealed factum of the book; it serves no fruitful purpose in any sense.

In fact, the book goes on to blur the Islamic spirit and its precepts when it dubs *tauhid* (belief in the unity of Allah) as a dogma.[6] The book conveniently looks away from the true foundation of monotheism in Islam,

2. Asaf A.A. Fyzee, *Outlines of Muhammadan Law* 4 (2008).

3. Muhammad Al-Tahir Ibn Ashur, *Treatise on Maqasid al-Shariah* (English trans. - Mohamed el- Tahir El- Mesawi) 5 (2007).

4. '…we are mostly concerned with the latter class (of customs which regulated the relation of the individuals to his own tribe)'. *Supra* note 2 at 5.

5. *Id*. at 19.

6. 'The next principle of utmost importance is *tauhid* or the dogma of the unity of God', *id.* at 8.

which is based on free will. *Tauhid* is fundamentally a reasoned belief and not dogmatic; the Qur'an itself invites the mankind, more than once, to reflect and they would find unity in the making of this universe. Hence, belief in monotheism in Islam is invitational and never under duress.

The 'Introduction', nevertheless, provides a very lucid comparison between *fiqh* (jurisprudence) and the *Shariat*. Their intertwined usage has been brought out with some élan. It gives good treatment to the issues of *ijtihad* (evolving new rule) and *taqlid* (strictly following a school of law) and arrives at a heartening conclusion that the road of *ijtihad* is not closed.[7]

The book has given good detail of almost every aspect of Muslim law, as applied in India. It deals with the Muslim law, which has evolved since the British rule, who applied personal law as a matter of policy. Chapter one –'Application and Interpretation' - traces the origin of the above policy and meanders through up to the Shariat Act, 1937. It gives good account of the definition of 'Muslim', in the Indian courts, and the effects of conversion. In fact, the discussion on various sects in Islam is quite illuminating, as it tries to dispel the general confusion over some sects being Muslim or not. Chapter two on 'Marriage' has gone into good and finer detail of the nature, concept and other dimensions of the Muslim marriage, including various disabilities and prohibitions, in India.

Chapter three on 'Dower' makes a fine analysis of the spirit of dower in Islam. It has tried to underline that dower is not a 'price' but a consideration paid to the woman. Still, it is felt that, a more progressive view could be taken, as the true nature of dower is a divine debt in the form of gift.[8] The next chapter on 'Dissolution of Marriage' gives detailed description of various forms of dissolution of marriage. However, the best part is the addendum, wherein it has been, rightly, clarified that '*khula*' is not a divorce by mutual consent but, squarely, at the instance of the wife. It is, in no way, like *mubara'at*; it is *mutatis mutandis* to *talaq*.

The next chapter deals with the concept of 'Parentage and Legitimacy' in Islam. Here again, at one place, the approach appears to be faulty in the analysis of the Islamic law when it says 'adoption is not recognised in Islam as it *was* disapproved by the Qur'an' (emphasis supplied).[9] There is hardly anything which *was* ordained for the past; its commands are forever, especially if it so fundamental a thing like disapproval of adoption.

7. *Id.* at 23-24.

8. 'And give the women (on marriage) their dower as a free gift; …' The *Holy Qur'an* Ch.IV V.4 (English trans. Abdullah Yusuf Ali, 2007).

9. *Supra* note 2 at 152.

Chapters six and seven are rather brief and deal with 'Guardianship' and 'Maintenance', respectively.

The next one is upon 'Gifts', which has been dealt with in fair detail. However, it is felt that more sentences could have been devoted to explain the limitation, or otherwise, upon the right to discriminate, among one's own children, by way of gift. It is so because it essentially circumvents the natural course of inheritance ordained in the Qur'an. The two chapters on 'Law of Pre-emption' and on 'Administration of Estates' have been dealt with required detail.

The ninth chapter, on 'Law of Wakfs', provides a good foreground by giving some lucid historical, etymological, and economic detail. The idea that the wakf in Islam has been a 'mixed blessing'[10] indicates a very commendable treatment meted out to the subject. The eleventh chapter, on 'Wills and Death-bed Gifts' covers almost all the aspects of general concern. The few illustrations therein further make it easy, even for general readers.

The last but one chapter deals with the *Sunni* law of inheritance where the author again underscores that "the Qur'anic reform came as a superstructure upon the ancient tribal law; …"[11] These words are mere extension of the fundamental assumptions with which the book has charted its course, which has been discussed in the preceding paragraphs. However, the detailed discussion on all the relevant aspects of the law of inheritance is quite informative and this holds true for the last chapter, on the *Shia* law of inheritance, as well.

On the whole, the book is quite informative on the personal laws as applicable to the Indian Muslims. The language is pretty lucid and the book hardly wavers from the topic under discussion making it quite compact, as well. The few statutes and tables, at the end, make it fairly useful as a reference book. However, at the ideational level – dealing with the fundamental nature and spirit of Islamic injunctions – the deficiency is rather palpable.

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10. *Id.* at 226.
11. *Id.* at 314.

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