

MUSLIM FAMILY LAW : A SOURCEBOOK (1984). By Keith Hodgkinson. Croom Helm Ltd., Provident House, G-20 Burrell Row, Beckenham, Kent, U.K. Pp. 401. Price £ 14.95.

THE BOOK under review is an up-to-date commentary and critique of the Muslim family law of India and Pakistan, accompanied by a comprehensive selection of statutes, cases and other materials which emphasise modern judicial thought, legislation and academic studies in the post-Independence era. The book seeks to set out the sources adapted to the sub-continent against the constitutional background of the Secular Republic of India and the Islamic Republic of Pakistan. It looks at the treatment accorded by the courts to legislation inherited from the days of British rule. It then goes on to consider legislation and judicial reforms of Muslim law since Independence, particularly as affecting the law of formation and dissolution of relationships of husband and wife, parent and child.

Current trends in India and Pakistan concerning these laws are compared. Besides a summary of the law as applied in practice, readers will find a selection of the legislative texts and leading decisions of the courts, with a substantial bibliography. The book comprises an introductory chapter and chapters on validity of marriage, husband and wife, dissolution of marriage, as also, parent and child.

The manuscript was converted into its present book form by D.P.S. Computer Services of High Wycombe. This participation of computers in the preparation of the book emphasises its modern bent. But such computer processing of the manuscript has its own limitations. One of these is that in the otherwise useful index, the entry, under the generic title, *Dissolution of Marriage*, of the species of such dissolution known as *talaq al tafwid* directs the reader, correctly to pages 222, 250 where the Arabic term is used, but omits to advert to pages 105-6, where the statutory prescribed form of *nikahnama* is set out, touching the same topic, in its English rendering "delegated power of divorce." The relevant item is "(18) Whether the husband has delegated the power of divorce to the wife, and, if so, under what conditions..." This statutory form of *nikahnama* carrying express reference to power of divorce delegated to the wife is of special interest.

The possession of such a right by the wife is fast becoming a badge of honour among young educated brides in India and Pakistan who consider this a status symbol. In these circumstances the computer compiling the index to the book appears to have missed the item due to the phenomenon known as "computer imbecility".

One may note the very next item, namely the question, "(19) Whether

the husband's right of divorce is in any way curtailed...." This is one of the suggestive questions. In the guise of procedural form, these questions materially affect daily practice and, in the long run, the content of substantive law.

Hodkinson's book is excellent for a number of reasons. He has made a well selected compilation of authorities foreshadowing the emerging trends in Muslim jurisprudence. An interesting judgment included¹ is the unreported but not unnoticed pronouncement of Baharul Islam J. (as he then was) in *Jiauddin Ahmed v. Anwara Begam*.² Hodkinson rightly refers to this as a potentially revolutionary judgment. This decision is founded on certain ordinances of the Holy *Quran*.³

This approach receives powerful support from the *ratio* of the recent judgment of the Supreme Court of India in *Shah Bano Begum*⁴ wherein, Chandrachud C.J., speaking for the Constitution Bench considering the husband's obligation under the Muslim personal law to provide maintenance for divorced wife, observed:

There can be no greater authority on this question than the Holy Quran....Verses (Aiyats) 241 and 242 of the Quran show that there is an obligation on Muslim husbands to provide for their divorced wives. The Arabic version of those Aiyats and their English translation are reproduced below....⁵

Thus, the Supreme Court examined for itself the text of the Holy *Quran* and its translation by Yusuf Ali and other scholars (which were substantially identical) and concluded:

These Aiyats leave no doubt that the Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. The contrary argument does less than justice to the teachings of the Quran. As observed by Mr. M. Hidayatullah... the Quran is Al-furqan, that is, one showing truth from falsehood and right from wrong.⁶

From the *ratio* of this decision it appears that the Supreme Court of India, (unlike the Privy Council), holds that it may, wherever appropriate, resort to the text of the Holy *Quran* and enforce it as law. This is an eminently reasonable but paradoxically revolutionary view.

1. Keith Hodkinson, *Muslim Family Law: A Sourcebook* 259 (1984).

2. Criminal Revision No. 199 of 1977 decided on 31.3.1978 by the Assam High Court. See also Tahir Mahmood, "An Unreported Judgment on the Islamic Law of Divorce", 2 *Islamic C. L.Q.* 38 (1982).

3. Sura IV, verse 128-130.

4. *Mohd. Ahmed Khan v. Shah Bano Begum*, A.I.R. 1985 S.C. 945.

5. *Id.* at 951.

6. *Id.* at 952.

Baharul Islam, now off the Bench, has welcomed the decision in *Shah Bano* but rightly criticised it for two *ex parte* pronouncements (fortunately only *dicta*) made on questions not before the court on which there was no occasion for it to hear argument. These are two *dicta* of Chandrachud C.J. namely (i) "Undoubtedly the Muslim husband enjoys the privilege of being able to discard his wife whenever he chooses to do so, for reasons good, bad or indifferent"⁷ and (ii) "It is too well-known that a Mahomedan may have as many as four wives at the same time...."⁸

Baharul Islam J. has pointed out that both these statements can be challenged on the touchstone of the *Quranic* texts that Chandrachud C.J. has cited, and that according to the law now declared by the Supreme Court, these are admissible and cogent.

Perhaps the Supreme Court on a suitable occasion may have to reconsider the matter. In such an event the materials assembled by Keith Hodgkinson in this book may prove useful.

Another important discussion on general principles, included in the book under review, is a judgment of the Federal Shariat Court of Pakistan, *Md. Riaz v. Federal Govt.*⁹ Although functioning under different constitutional parameters to those in Pakistan, jurists in India having to face similar social problems, as those facing the courts and people of Pakistan, of retaining the basic principles, while modernising the practical workings of the rules of the Muslim law, may read this with profit.

Of interest is the observation, that "the principle of common good and justice, equity and good conscience...is the same as the principles of public good (*Masaleh Mursila*) of Imam Malik and principle of Istihsan of Imam Abu Hanifa...."¹⁰ This, it is submitted with respect, should be adopted by Indian courts.

These and many more interesting authorities not generally accessible to Indian lawyers make this small volume valuable. The chief distinction of the author is that he seems to have identified the emerging modernistic consensus among contemporary Muslim jurists. Thereby he has done a service. The book should find a place in every serious law library in this country.

Danial Latifi*

7. *Id.* at 947.

8. *Id.* at 949.

9. *Supra* note 1 at 82.

10. *Id.* at 86.

*M.A. (Oxon), Bar-at-Law; Senior Advocate, Supreme Court, New Delhi.