

SHAH BANO (1986). By Janak Raj Jai. Rajiv Publications, New Delhi.
Pp. 204. Price Rs. 50.

THE TITLE of the book,¹ *Shah Bano*, is well chosen. It is so named after the historic decision of the Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum*² better known as the *Shah Bano* case. The book cannot be called a treatise developing a particular legal theory or a research work centring around a particular branch of law; rather it is an edited version comprising comments made and articles published by judges, lawyers, social and political thinkers in the immediate aftermath of the Supreme Court judgment but before the Indian Parliament passed the socially disastrous Muslim Women (Protection of Rights on Divorce) Act 1986, following the agitation of Muslim fundamentalists against the decision of the *Shah Bano* case and political pressure exerted by them on the parliamentarians. The sole purpose of the Act (which is by no means in consonance with the principles of Muslim law) is to keep the Muslim divorced women out of the purview of section 125 of the Criminal Procedure Code 1973, a social legislation crowning the Indian legal arena for more than 125 years, and to appease a section of the Muslim community which resented the Supreme Court decision in the *Shah Bano* case. It must be interjected here that *Shah Bano* is not the only case where the Supreme Court dealt with the maintenance rights of a Muslim divorcee; its earlier decisions in *Bai Tahira v. Ali Hus-sain*,³ and *Fazlunbi v. K. Khaderwali*⁴ also involved maintenance rights of Muslim divorced women. Justice V.R. Krishna Iyer, speaking for the court, had emphatically laid down the same principles in these two cases as involved in *Shah Bano*.

Though evidence of originality is hardly to be found in a book of this type, its immense value lies ahead specially for the posterior research scholars and students who will be interested in knowing the history of section 125 or particularly that of the rights of Muslim divorced women. The study being a compilation of lectures and articles expressing illuminating views of different thinkers does not proffer to be a complete treatise and this perhaps will be the writer's excuse for not giving us indices of statutes and cases as well as bibliography as is the usual practice with law books. Nevertheless, the author's main venture is not concerned so much with technical aspects of a law book as with the mobilisation of opinion of legal thinkers against the introduction of the said Act in May 1986. The book comprises

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1. Janak Raj Jai, *Shah Bano* (1986).
 2. A.I.R. 1985 S.C. 945.
 3. A.I.R. 1979 S.C. 362.
 4. A.I.R. 1980 S.C. 1730.
 5. *Supra* note 1 at 55-60.
 6. Ch. 21.

two parts: in the first part, the author has compiled articles and views of different legal and social thinkers. The article by Justice Baharul Islam "Divorced Muslim Women" is worth reading especially for its penetrative and scholarly treatment. The second part contains, *inter alia*, extracts from statutes, and the full text of the Muslim Women (Protection of Rights on Divorce) Bill 1986.

A case under section 125 is instituted only when an applicant is compelled by dire circumstances to keep her body and soul together. Here the object is not to provide the applicant with a decent maintenance. On the other hand, the sole purpose of the section is to prevent vagrancy or its eventual consequences by providing remedy in a limited way at a summary trial possible only in a criminal process. In a welfare state where the ultimate responsibility of providing food, shelter and health to its citizens lies in the state authority, the question of maintenance is not so much important as in India which cannot look after its citizens from cradle to grave. In India the question of maintenance for a substantial number of dependants is that of life, and death, because if they do not have anything for their maintenance, they will be destitute. To ameliorate destitution and prevent vagrancy along with its evil consequences, this social legislation was brought into existence in the Indian legal field, not by Indians but by foreigners, as incorporated in the Criminal Procedure Code 1861.⁶ It is a pity that the Indian Parliament run by Indians has gone out of its way to destroy a long standing social legislation just to appease the Muslim fundamentalists by introducing the Act relating to maintenance rights of Muslim divorced women in May 1986.⁷ The face saving provisions in the Act for a destitute divorced Muslim woman to resort to charities (*wakfs*) is no substitute for a definite provision in the statute book.

There is no doubt that the book will stand as a witness to the future generation that the controversial Act of 1986, has not been incorporated in the statute book with an easy ride. On the other hand, Parliament faced stiff opposition for its introduction not only from non-Muslim legal thinkers but also from a large number of progressive Muslim legal and social thinkers.

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7. See, Lucy Carroll, "The Muslim Women (Protection of Rights on Divorce) Act 1986. A Retrogressive Precedent of Dubious Constitutionality", 28 *JLLI* 364 (1986).

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