

BOOK REVIEWS

PERSONAL LAW IN ISLAMIC COUNTRIES (1987). By Tahir Mahmood. Academy of Law and Religion, New Delhi. pp.330.

THE *QURAN*, the sacred book of Islam, is al-furqan *i.e.*, one showing truth from falsehood and right from wrong. This holy book is believed to be of divine origin and comprises the total of the revelations communicated to Prophet Mohammed by Gabriel. The Muslims, therefore, believe that no modifications to or alterations of the principles embodied in the holy book can be made by any human agency. This belief in the immutability of the holy *Quran* has attached much rigidity to the tenets and philosophy it embodies.

We in India have a secular society. The Muslims are a minority community in this country. They are one in resisting change in their family law. We know, that in the Supreme Court of India,¹ Shah Bano found stiff resistance in the hands of the All India Muslim Personal Law Board to her claim for maintenance under section 125 of the Code of Criminal Procedure, 1973 from her husband. The Board asserted before the court that "it is irrelevant to inquire as to how a Muslim divorcee should maintain herself" and that "the personal Law has devised the system of Mahr to meet the requirements of women and if a woman is indigent, she must look to her relations, including nephews and cousins, to support her".² This is notwithstanding article 44 of the Constitution which provides that "[t]he State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". But any attempt to disturb the Shariat Act, 1937 which applies to the Muslims in India in a number of important matters in the field of personal law is likely to meet with stringent opposition from the Muslim community in India. It is sad, that Shah Banos and Mary Roys are lone voices in a country which has its ideal, a secular society and a democratic polity. The Supreme Court expressed its anguish in *Mohd. Ahmed Khan v. Shah Bano Begum*³ which is worth quoting in this context.

It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting

1. See *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

2. *Id.* at 954.

3. *Supra* note 1.

ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.⁴

The battle for a uniform civil code should, therefore, begin; the Constitution and its commands cannot be forgotten.

The author has brought out a very informative book.⁵ The subject of the study in the book is the statutory personal law of the contemporary Islamic countries starting with Algeria and ending with Turkey. The book deals with the various phases of development, codification and reform of the personal law in the 22 countries which are known as "Muslim states".

The four sources of Islamic law are (i) *Quran* (ii) *sunna* or tradition (iii) *ijmaa* or consensus of opinion and (iv) *quiyas* or analogical deductions. Both *Quran* and *sunna* are considered immutable by the attribute of divinity to them. *Ijmaa* and *quiyas* have flexibility to some extent. Even so, winds of change which blew during the second half of this century, necessitated, as a preliminary step, the codification of the law. The attempt to codify the law had led to legal reforms and in major Islamic countries the personal law has evolved as a separate and independent branch of jurisprudence.

The author had made an earnest attempt to trace the history of codification and development of the law in the major countries of the Muslim world in one volume which enables the reader to have a panoramic view of the different systems in other countries without much effort. One notices the desire for reform from the history of the codification process and the legislative activity. By the middle of this century, legislation had made inroads in various aspects of personal law in most countries. The Algerian Family Code of 1984 made notable provisions relating to the age of marriage, 21 for men and 18 for women and damages for arbitrary divorce by the husband. Egypt has a modern statute law which provides for maintenance of at least two years to a divorced wife from the date of the decree and a right to residence

4. *Id.* at 954.

5. Tahir Mahmood, *Personal Law in Islamic Countries* (1987).

to be provided by the former husband subject, of course, to certain conditions. A similar provision giving right to residence is found in the "Law on divorced Wife's right to Residence" enacted in Iraq in 1983. *Talaqs* pronounced by one who is intoxicated, insane or imbecile, under duress or not in his senses due to anger, sudden calamity, old age or sickness do not dissolve marriages in Iraq. In certain countries, polygamy has been prohibited. The Code of Personal Status, Syria provides that "the Quadi shall not permit a married man to marry again unless there is some legal justification for it and he is capable of maintaining two wives". In Tunisia, plurality of wives is strictly prohibited. Turkey was ahead of times and adopted a foreign Civil Code in 1912. Personal law in Turkey from then, ceased to be a religion-based entity.

The reviewer has attempted to focus the reader's attention to the changes taking place elsewhere while the Muslim community in India resists changes in Shariat law. If reforms are taking place securing gender justice in countries in which Muslims are a demographic majority, there is hardly any justification to resist changes in the personal law of the Muslims in India.

In this background, the reviewer considers that the author has done a great service to the public and particularly to the legal fraternity in bringing about a compendious collection of the personal law in the countries of the Muslim world. The epilogue makes a comparative study of the provisions of law in different countries which is at once informative and educative.

There is no doubt that this book will prove to be extremely useful to the Bar, the public and many a research student.

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