



MUSLIM LAW OF MARRIAGE AND SUCCESSION IN INDIA (1998). By S.A. Kader. Eastern Law House, Calcutta. Pp. xxxii + 166. Price Rs. 220.

MUSLIM LAW of Marriage and Succession in India the maiden book of a former Madras High Court Judge, S.A. Kader, is in fact, an edited compilation of the author's lectures delivered at academic seminars at Madras. The work begins with three elementary, yet engaging, chapters that go on to explain – in short and plain terms – the origin of Islamic law, its division into various schools and its sources and interpretation. Making a distinction between what he calls “legal laws” and “moral codes”, the author puts across the idea that law in the Qur'an stands on an entirely different footing than morality in the holy book. He maintains that only about 80 verses in the Qur'an deal with “law proper” and while appreciating them “one should not lose sight of the period in which and the circumstances under which they were revealed”.¹ The book further goes on to explicate how Islam, centuries ago, laid down a legal code more rationale and progressive than what the Indian Parliament has, of late, enacted in the form of Hindu Law.

Six informative chapters on the Muslim law of marriage, divorce and succession, their judicial interpretation in India and their codification in the Muslim world, are followed by an interestingly piquant chapter called “Gender Justice”. Here the author comes down heavily, on the Muslim Personal Law Board calling it “a self-appointed body of *ulemas* (sic), *moulanas* and *moulivis*, who claim to be the custodians of Islamic law” and sharply denouncing it for “allowing conservatism to overthrow rationalism”.² He also graphically presents the oscillating status of Muslim women from pre-Islamic times to the present, attacking sharply, though not wrongly, the clergy for their successful attempt to disparage the grandeur of womanhood in Islam by issuing preposterous *fatwas*. He rightly regrets that while progressive Islam came as a saviour of the oppressed woman, its self-appointed custodians are today leaving no stone unturned to present it as just the converse.

Making a clarion call for the codification of Islamic law in India, as most Islamic countries have done, Kader goes on to discuss the ongoing debate amongst the academia and the bench in the country on a uniform civil code. An advocate of the code, the judge is disappointed that, “having been communalised to the core... a uniform civil code has to remain a distant dream”.³ He, therefore presents an option in the form of an “optional civil code”. The author terms the Special Marriage Act 1954 as an “optional civil code” and vehemently opposes in it the introduction of section 21A which nullifies the provisions of section 21 in so far as they relate to marriage solemnised under the Act of any Hindu, Buddhist, Sikh or Jain with a person who professes the same religion. Calling it a “retrograde step” he blames the legislature for “taking one step forward and two backwards”⁴ and challenges the amendment as being violative of the fundamental right to equality guaranteed by article 15(1) of the constitution. The book concludes with a suggestion to introduce an optional provision by way of section 3A in the Succession

1. S.A. Kader, *Muslim Law of Marriage and Succession in India* 6–7 (1998).

2. *Id* at 88.

3. *Id* at 110.

4. *Id* at 116–17.



Act 1925 – the draft of which is also provided by the author. The drafted section gives an option to every Indian who is *sui juris*, irrespective of his religion to be governed by the provisions of this Act. It is a bit surprising that in an almost 200-page book sub-titled “A Critique with a Plea for an Optional Civil Code” has only nine pages to offer on an “optional civil code”.

Rather than a piece of original research and ideas on Muslim Law of Marriage and Succession in India, this book with nearly 80 pages of prefixes and annexures, is more of a compilation of views on the subject of eminent scholars, especially Syed Ameer Ali, Asaf Asghar Ali Fyzee and Tahir Mahmood. While judicial pronouncements on polygamy, divorce and succession have been extensively reproduced, both legislative developments relating to them in the Muslim world and the debate on a uniform civil code have almost been duplicated (of course with proper acknowledgments) from Tahir Mahmood’s *Statutes of Personal Law in Islamic Countries and Uniform Civil code – Fictions and Facts*.

Whatever be the author’s style of presenting his views to be his readers, the book is surely a storehouse of academic and judicial opinions that must be, and usually are, known to everyone interested in the mine field called Muslim Law and what more commendation does it require than a laudatory foreword by none other than V.R. Krishna Iyer.

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