

CASES ON MUSLIM LAW OF INDIA, PAKISTAN, AND BANGLADESH (2015). By Alamgir Muhammad Serajuddin, Oxford University Press. Pp. xxxix+ 491. Price Rs. 995/-.

THE BOOK under review is an extremely important, significant and remarkable piece of work as Muslim law governs the personal lives of millions of Muslims living in south Asia. Therefore, the Muslim law, especially its case law form a major component of the south Asian legal system and have intrinsically helped in developing the application and interpretation of law.

Progressive interpretation and liberal judicial decisions are continuously shaping the content of Muslim personal law around the world. Case law from the judiciary of south Asian countries have been playing a major role in the interpretation, application and development of Muslim laws. Professor Alamgir Muhammad Serajuddin's book, *Cases on Muslim Law of India, Pakistan and Bangladesh* is a consolidation and restatement of the Muslim law through cases. This is an authoritative book on Muslim law developed through case law. The book under review may be considered as a companion volume of author's earlier two books¹ on Muslim law. The legal systems of Bangladesh, India and Pakistan are largely characterized as mixed legal systems. Major components of these legal systems are common law legacies left by the British colonizers; as well as the Muslim, Hindu and Christian religious laws confined to the spheres in personal lives.

The introduction of the common law principle 'doctrine of precedents' has made a lasting impact on administration of justice in south Asia both in secular laws and religious laws, especially Muslim law. Thus, the binding force of precedent is firmly rooted in south Asia. Along with divine and statutory principles, the rules of Muslim law and case law play a significant role in interpretation, application and development of Muslim law in south Asia.

The book under review analyses cases on Muslim law of India, Pakistan and Bangladesh, demonstrating how religion-based rules of personal law have been interpreted by secular courts at certain times in history and how the trend of interpretation has changed over time. The author, an eminent senior scholar, makes a valuable and timely contribution to present a rejuvenated approach to the study of Muslim personal law. The book is distinguished by its clarity, depth of critical analysis and objectivity.

1 See Alamgir Muhammad Serajuddin, *Muslim Family Law, Secular Courts and Muslim Women of India, Pakistan and Bangladesh* (Oxford University Press, 2011), see also, Alamgir Muhammad Serajuddin, *Sharia Law and Society: Tradition and Change in the Indian subcontinent* (Oxford University Press, 2001).

Through a selection of principal judicial decisions and significant fact situations from pre and post-independent India, Pakistan and Bangladesh, this volume provides an easy access to the basic principles and rules of Muslim law, and shows how case laws act as a social barometer and an instrument of change.

The cases discussed cover such diverse areas, such as, sources and interpretation of law, institution of marriage, polygamous marriages, dower, restitution of conjugal rights, *talaq*, *khula*, irreconcilable breakdown of marriage, legitimacy, guardianship, and maintenance of wives and divorced wives. Among the important legislations, it covers Dissolution of Muslim Marriages Act, 1939, Muslim Family Laws Ordinance, 1961 and Muslim Women Act, 1986. The book also shows how religion-based rules of personal laws have been interpreted by secular courts during certain epochs in history and how the trend of interpretation has changed over the last 150 years.

This is an era of unprecedented changes in societies everywhere. Muslim law, like personal laws of other religious groups, is today facing several challenges from within the community as well as from outside. Unfortunately, Muslim legal scholars differ among themselves on different points of law relating to social needs, changes, transformation and challenges of social justice. One group observes that only the *Quran* and teachings of the Prophet Muhammad should make up Muslim law. A rival group, however, argues that the Muslim law should also include the reasoned opinions of qualified legal scholars.

Muslim law of south Asia remains largely uncodified. The few legislative enactments, like any other laws, are themselves subject to interpretation and exposition by courts. Thus, judicial interpretation of Muslim law by secular courts has emerged as an important source of Muslim law in south Asia.

Against this backdrop, study of Muslim law through cases can hardly be over exaggerated. Through a selection of principal judicial decisions and significant fact situations the author has shown how 'doctrine of precedent' is not only firmly rooted in south Asian Muslim law jurisprudence but also plays a major role in interpretation, application and development of Muslim law.

This book is very important in a precedent bound legal system of south Asia. The book is an excellent tool for teaching and for research. It not only represents a sampling of judicial philosophy and thought, but also offers the readers an excellent opportunity for observing and learning how the judicial mind and process operate in a given situation and time.

To demonstrate the major changes in the Muslim family laws of India, Pakistan and Bangladesh, the author has cited cases from each jurisdiction. The book also offers a unique opportunity for the scholars to examine whether the incremental reform of Muslim laws through the judicial process by secular judges and courts is within the

bound of *Quran* and *Hadith*. The author has referred to some cases which are not only misinterpretation or misunderstanding of substantive Muslim law, but also led to disturbing legal and social consequences.

The author has stated that the development of Muslim law jurisprudence through cases have been different in India, Pakistan and Bangladesh, despite the fact that these three countries having inherited the same legal history and tradition, legal institution and laws, including Muslim personal law of pre-1947. The author's contribution by way of consolidation and restatement of Muslim law through cases is a major step forward to provide an easy access to the basic principles and rules of Muslim law.

The book is conveniently divided into two major parts, providing case summaries and commentaries in part I, while part II contains the original texts of these decisions. Both parts are then subdivided into four sections each. The book contains gist of altogether 61 cases from the three jurisdictions under three headings: the issues of law involved in each case, case summary of the decisions and short comments, respectively.

India is a secular republic, Pakistan an Islamic republic and Bangladesh a people's republic with Islam as state religion. In the section on comparative survey of Muslim personal law in south Asian countries, an assessment is made of the differences in judicial trends between pre-independence and post-independence decisions and also the similarities and dissimilarities in judicial rulings delivered in the post-independence period by the three separate judicial regimes. In view of the fact that the three countries have inherited the same legal history and tradition, legal institutions and laws, including Muslim personal law, of pre-independence India, another issue that is discussed is whether they can share their post-independence experiences. It is suggested that in a number of cases, they can.

The book is, therefore, not only suitable for legal community but is also equally important for sociologists, social reformers, social historians and scholars possessing interest in Muslim laws. By studying a variety of legal cases readily available in this book, law students and law practitioners can learn how to apply the principles of law to various fact situations they may encounter in their everyday lives and profession.

The unique thing about the scholarly work under discussion is that it discusses the gist of the important, notable and relevant case law, covering issues of law, case summary, decision and comments. What is observed in this book is uniformity,

systematic progression of thoughts and in depth analysis of the existing Muslim laws.² Sociologists, social reformers and historians, by studying the book, can map out why and under what changed circumstances the south Asian courts were required to take cognizance of the social needs and reconcile Muslim law with the changing needs and trends so as to meet the challenges of social justice.

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2 See Alamgir Muhammad Serajuddin, *Cases on Muslim Law of India, Pakistan and Bangladesh* 4 -154 (Oxford University Press, 2015).

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