

BOOK REVIEWS

FROM SHAH BANO TO SHAYARA BANO (2020). By Janak Raj Jai, *Mohan Law House*, New Delhi, India. Price Rs. 720/.

THE SACROSANCT mandate of the Indian constitutional norms and the instruments of international human rights which convincingly advocate for equality, liberty and dignity as basic human values, sometimes find their inability to cope up with the atrocious application of Muslim personal law in the matter concerning the position of Muslim women under Islamic jurisprudence. Under the tenets of Islamic law, it is experienced that Muslim women have been discriminated almost on every aspects of human life, be it marriage, divorce or property. Their rights are often curtailed or violated in the name of religious freedom thereby denying them to expand and attain the full range of human capability.¹ Interestingly, both the critics and the reformists of the Muslim personal laws aligned their arguments in the mandate of the Constitution itself, but the larger question still remained unanswered about the role of the state *vis-a-vis* the scope of Muslim personal law in secular tradition of India. Though, the court, particularly the apex court of the nation had made some remarkable attempts to answer the application of Muslim personal law over the status and position of Muslim women in a liberal constitutional set up, firstly in *Shah Bano*² (1985) and subsequently in *Shayara Bano*,³(2017) but still significant work is yet to be done.

Furthermore, it is important to note that, [T]hough State and its institutions are under an obligation to prevent gender based religious discrimination but due to the apprehension of massive socio-political repercussion, the state and its institutions deliberately refrain from any intervention in the religious practices thus, allowing the gender-specific discrimination to continue. The observations, find its strength from the sectarian politics played by the ruling government of the time to mitigate the effects of *Shah Bano* decision. However, the Constitution Bench decision in *Shayara*

1 Sumit Sonkar, "From Shah Bano to Shayara Bano: Itinerary of Gender Equality of Muslim women in India" 45(1) 2018 *Indian Bar Review* (2018).

2 In this landmark case, the apex court dealt with the issues of maintenance of the divorced Muslim women under the provisions of Muslim Personal law and the mandate of s. 125 of the Code of Criminal Procedure, 1973. The Supreme Court referred to the holy Quran as the authoritative text with a great emphasis on the friction between s. 125 Code of Criminal Procedure Code and Muslim Personal Law. While the appeal of the husband to not provide maintenance was denied, the same received substantial resistance and was claimed to be against the Islamic law. The then government declared the law to only be valid in the *iddat* period. The case was later upheld by the apex court in further decisions.

3 Majority in *Shayara Bano v. Union of India* 2017 (9) SCALE 178 by 3:2 expressly held that triple – talaq. *i.e.*, *talaq-e-biddat* is invalid relying upon the decision of this court in *Shamim Ara v. State of UP*, (2002) 7 SCC 518 and earlier decisions of High Court of Guwahati in *Rukia Khatton v. Abdul Khalique Laskar*, (1981) 1 Gau LR 375.

Bano case finds its legislative voice and indeed proved to be an eye opener for the *thekeedar* of religion particularly of the Muslim community.

The meticulous contents of the book authored by Janak Raj Jai presents historical, constitutional and analytical observations on the theme of Muslim personal law *vis-a-vis* the position of Muslim women under the democratic liberal regime of the Indian Constitution and their incessant quest for equality and liberty in a culture which is predominantly characterized by male chauvinism. The present work captures legal development on societal position of Muslim women from a political regime which claimed itself to be a well-wisher of Muslim community to a regime which has often been portrayed as antagonist to Muslim faith. The author has presented the legal debates through scholarly works of judges of the Supreme Court, high courts, great academicians including legal professionals and practicing advocates. The present work is enveloped in different chapters and sections. The chapters present the views of John Rutledge Jr, former Solicitor General of India, Soli Sorabjee, Zoya Hasan, Alice Jacob, Karuna Ahmed and the senior advocate P.P Rao including the views of the author himself, where the author has meticulously consolidated the views of different legal scholar and justices on the subject of atrocious application of Muslim personal law *vis-à-vis* Muslim women. The author has also attempted to present the politically motivated legislative attempts⁴ by the Congress regime of that time. Further, one complete section is devoted towards the understanding of the verdict of *Shah Bano* case and its effects through the precious collections of the writings of V.R Krishna Iyer J, Baharul Islam, J, M. Hidayatullah J, Y.V Chandrachud J and many other legal scholars including Tahir Mahmood. This particular section is spread over twenty chapters followed by editorial and articles, where Upendra Baxi has presented his critical analysis on the Muslim Women Bill, 1986 followed by some other prominent scholarly observations.

Further, the author has also presented well researched collections of the writings and observations of judges of the Supreme Court of India and the political bureaucrats including the stand of political parties on the decisions of *Shayara Bano* case. Janak Raj Jai, has presented this section with chapters such as, '*The two brave women Shah Bano and Shayara Bano*', '*The instant Triple Talaq a Criminal offence*', '*The Voices – for and against*' and '*The women behind this historic win against instant Triple Talaq - Shayara bano – the main crusader.*' Further, this section also consists of collections of articles and interviews of the prominent legal personalities including Faizan Mustafa and Ravi Shankar Prasad, the Law Minister of the Government of India, followed by the editorials of the prominent national newspapers, such as Tribune, The Hindu, The

4 On Mar. 3, 1986, a symposium was organized on the Muslim Women Bill, 1986, under the auspices of the United Lawyers' Association and the Indian Law Institute of India. Every one present at the symposium called the Bill – Anti Islam, Anti National, Anti-Secular, Anti-justice and a fraud on the Constitution.

Pioneer, The Economic Times, The Times of India and The Indian Express, where the author has made a remarkable attempt to present the holistic understanding over the issue of *triple talaq* under the Islamic jurisprudence in juxtaposition with the constitutional mandate of the secular tradition of India on the subject.

The author as annexure, in his wisdom has also presented the excerpts of the judgment of the Supreme Court of India in *Mohammad Ahmad Khan v. Shab Bano Begum*⁵ along with the observations of A.K Sen on Muslim Women (Protection of Rights on Divorce) Bill, 1986. The Muslim Women (Protection of Rights on Marriage) Act, 2019 and the Muslim Women (Protection of Rights on Marriage) Bill, 2019.

The present scholarly works begins with a foreword from the desk of the former judge of the High Court of Delhi (Delhi), Justice Jaspal Singh. The judge, in his incisiveness gives a brief idea about the meticulous work of the author. He rightly observed the sanctity of Islamic jurisprudence upon the women of Muslim community and the impact of Islamic Laws on the position of women in the society and how over a period of time, the position has been underwent a revolutionary change. The incisiveness also depicts the sectarian politics played by the ruling government of the time to suppress the legitimate rights of the women, recognized by the apex court through progressive interpretation of the rights of women in *Shab Bano* under the Islamic jurisprudence. The articulations also present the desirability of Uniform Civil Code consistent with freedom and equality of persons and the scope to get enriched from the intellectual experience of Tahir Mahmood, the living scholar of Muslim Law.

The book also presents the views of Manoj Kumar Sinha.⁶ Sinha has captured the historical notions of Muslim community and their existence in non-Islamic polity as minority including their existence in India after post-colonial era, where their struggle for preservation of distinct religious, cultural and linguistic identity is becoming more and more pronounced.

Sinha, in his articulation, incisively presented the arguments advanced in *Shab Bano* case and the observations of the nation's top most court in affirming the secular credentials of the salutary provisions of maintenance engrafted under section 125 of the Code of Criminal Procedure, 1973, though the Muslim community expressed their dissatisfaction over the judgment of the court.

Further, Sinha has also presented his views on the observations of the recent ruling of the apex court in *Shayara Bano v. Union of India*, where the Constitution bench of five judges, led by CJ Kehar has differed in their ratios over the issue of

5 AIR 1985 SC 945.

6 Director, the Indian Law Institute, New Delhi.

triple talaq, talaq-e-biddat. The judgment results in declaring the practice of *talaq-e-biddat* unconstitutional, on account of the authoritative observations of justices Rohinton Nariman and U.U Lalit being violative of the mandate of article 14 of the Constitution and the acumen of Justice, Kurian Joseph, being violative of the sacrosanct mandate of Quran. Though, the CJ Kehar and Nazeer J, took a contrary view and held that the practice of *talaq-e-biddat* is an integral part of Muslim personal law and it is judicially non-reviewable. It is also important to observe that other forms of Islamic divorce (like *talaq al –abasan* and *talaq al –hasan*) haven't been touched by the judiciary not have there been demands to abrogate the said forms of divorce.

The present work of Janak Raj Jai is a good piece of work on the subject of Muslim Personal Law *vis-à-vis* the Muslim Women. The author has presented a holistic understanding over the subject through the scholarly works of the justices of the Supreme Court of India, the high courts of various states, senior academicians and the legal professionals.

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