

ISLAMIC LAW OF DIVORCE: REMEDYING THE MALADY AND THE MISCONCEPTIONS (2021) by Furqan Ahmad. Satyam Law International, New Delhi. PpIvi+376. Price Rs.1195/- & US \$55.

IN *Shayara Bano v. Union of India*,¹ a constitutional bench of the Supreme Court of India, composed of five judges from different religious backgrounds, declared the Muslim practice of triple *talaq* unconstitutional and illegal, though not without some disagreements. Some books already discussed this case.² The present study by Furqan Ahmad is useful for readers who are interested to understand the whole field of the Islamic law of divorce, which is widely perceived as misunderstood, misinterpreted and distorted. This study follows an earlier book by the same author, which was also designed to expose academic errors and enrich the understanding of Muslim personal law, already specifically focused on triple *talaq*.³ The present study discusses the triple *talaq* problem after *Shayara Bano v. Union of India*.⁴ It also contains commentary on the subsequent *Muslim Women (Protection of Rights on Marriage) Act* of 2019.

The introduction by Emeritus Professor Werner Menski puts these agonised Indian debates about the triple *talaq* into a wider global context, suggesting that ‘exceptionalism’ of Islamic law has become a general trend and a form of dramatic performance (*tamasha*). This is witnessed not only in Asia, but now also in Europe, especially after 9/11,⁵ as the developing multicultural societies of Europe now also nervously debate the management of plural forms of citizenship and law, often especially focused on Muslims.⁶ He suggests that India’s unique characteristics of socio-cultural-religious-legal pluralism and conditions require very sophisticated balancing of competing expectations.

Chapter 1 of the book goes into the much-debated complex historical background of concepts, historical development and forms of Islamic law of divorce. It deals with scholarly distortions, misconceptions of judgments, judicial ignorance, faulty exposition even by recognised authors, incorrect and misleading opinions and also includes the views of *Maulvis*. Ahmad gives various examples of misinterpretation by

1 [2017] 9 SCC 1.

2 See especially M.K. Sinha and F. Ahmad (eds.) *Dispelling Rhetorics. Law of Divorce and Gender Inequality in Islam*. (New Delhi, Indian Law Institute 2019).

3 See F. Ahmad, *Triple Talaq: An Analytical Study with Emphasis on Socio-Legal Aspects*. (New Delhi, Regency 1994).

4 *Supra* note 1.

5 See W. Menski, “The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda”. In M. McLaren (ed.) *The Many Faces of India. Law and Politics of the Subcontinent* 136—82 (New Delhi, Samskriti 2012).

6 W. Menski, “European Islam in the Age of Globalisation and Legal Pluralism: Not Easy Being European” *10 NaveinReet: Nordic Journal of Law and Social Science (NNJLSR)*, 187-210, (2020), available at <https://tidsskrift.dk/nnjlsr/issue/view/9133> (last visited 8 July 2022).

Muslim law authors and cases to prove how triple *talaq* has been misunderstood for a long time. He also criticises the blatant notions of colonial British judges that only Muslim men have the right to divorce, whereas he asserts, with theological examples of Muslim law, that various kinds of divorce options or strategies are also available for women. Ahmad contends from the outset that the Prophet wished to see personal matters resolved in the family, therefore a judicial process is not usually adopted. The basic lesson here is that traditional Islamic law does not involve the state in such disputes, and that going to the state itself seems to be part of the *tamasha* that this book's introduction highlighted.

Chapter 2, titled 'Comprehending the Triple Talaq Conundrum', uses this separate chapter well to achieve better comprehension of the complexities around the triple *talaq*. This chapter shares jurisprudential details from the different schools of Islamic law, pertaining to several aspects associated with triple *talaq*, *talaq-e rajai* and *talaq-e-mughballazab*. This part of the book also explains quite well the schools of Islamic law, and the various opinions of Islamic scholars on this topic and thus encapsulates all the major arguments regarding the effectiveness and risks of triple *talaq*.

Chapter 3 examines the triple *talaq* in the context of significant judicial and legislative developments in the Indian subcontinent. Here, Ahmad discusses the judicial precedents of the Privy Council and Supreme Courts of India, Pakistan and Bangladesh. Muslim jurists' views are also examined. The legislative developments explained range between the *Dissolution of Muslim Marriages Act* of 1939 and the *Muslim Women (Protection of Rights on Marriage) Act* of 2019. Since the most recent judgement in *Shayara Bano* forms the core of this chapter, the author analyses this judgement and predicts that it increased the problem of handling the conundrum of triple *talaq* rather than giving a viable solution. Ahmad also criticises the criminalising provisions in the *Muslim Women (Protection of Rights on Marriage) Act* of 2019. Specifically, he indicates the difficulty of the apex court to decide cases on triple *talaq* as a criminal law matter in *Rahna Jalal v. State of Kerala*.⁷ The insertion of criminal law into the personal law of marriage and divorce is also criticised, as a form of legislative overkill, by Saptarishi Mandal,⁸ who wrote his perceptive critique already before the 2019 Act became law. This seems to show that even when insightful academics provide useful practical guidance, *tamasha*-focused law-making tends to prevail.

In chapter 4, Ahmad explains *khula* and analyses the marriage dissolution rights of women in classical Islamic jurisprudence. He confirms that *khula* is an inherent part of Islamic law and this principle also translates into modern legislation as codified in

7 (2020) SCC online SC 1061, mentioned at 149.

8 S. Mandal "'Taking a Gun to Kill the Mosquito'. Gender Justice, Deterrence and Protection in the Legislative Debate on Criminalising Triple Talaq" 2 *The JMC Review: An Interdisciplinary Social Science Journal of Criticism, Practice and Theory* 1-18(2018).

the colonial period. Explaining *kbhula*, *liaan* and *fashk*, he argues that these principles and concepts have been applied in Muslim countries including Pakistan and Bangladesh, but there remains lack of awareness about these principles and their implications among Indian Muslim women and in many other Muslim countries.

Chapter 5 is a very wide-ranging, informative part of this book. It distils the strategies and actual reforms in the contemporary Muslim world, providing numerous examples of methods of personal law reform, including codification (*tadmween*) and legislation (*tashree/tawdeen*). Ahmad also helpfully discusses prominent hybrid techniques of reform adopted across the Muslim world, such as *takbayur* and *talfeeq*, in the wider context of *siyasashariyah*. He notes in this context that the triple *talaq* was abolished in several Muslim countries (p. 259), often facing allegations of interference in political and religious rights of local Muslims. Dissociating himself from the reform process of Islamic countries, Ahmad is also critical of *Maulvis*, as well as India's Muslim Personal Law Board, for misinforming the public and state authorities regarding provisions of *talaq* (p. 261). The volume critically analyses the vested interests of traditional Islamic powers, which also ignored the 'true essence' of divorce, but Ahmad does not clarify or specify for the general reader in which way reforms would be suitable. Reading between the lines, it is not unreasonable to suggest that the above-mentioned advice of the Prophet to stay away from formal proceedings would be best Islamic practice.

Nobody tells us clearly that the current Indian law on post-divorce maintenance for Muslim wives already contains empowering provisions for Muslim wives who find themselves deprived of their due entitlements. These are found in section 3 of the *Muslim Women (Protection of Rights on Divorce) Act* of 1986, connected to the *tamasha* around the *Shah Bano* case and its lengthy aftermath.⁹ Ahmad does not go into this topic, regrettably. A somewhat helpful hint of this alternative route to tackle the problems of triple *talaq* is subtly indicated in an older study, focused on the unification of divorce laws in India.¹⁰ In that study, the intersecting maintenance laws are rightly portrayed as benefitting from judicial activism, but its author dismisses the legislative activism of the above-mentioned 1986 Act.¹¹ Thus, Singh argues: 'The judicial approach towards the maintenance of the spouses under various personal laws is more realistic and pragmatic to that of legislative approach in achieving the cherished goals of welfare state to secure social and especially gender-justice'.¹²

In Ahmad's book, the position of India on *talaq* is the centre point of the study throughout all chapters. He touches on the position of India regarding personal laws with reference to triple *talaq*, but does not offer a detailed analysis (pp. 259-60). His

⁹ *Mohd. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945, 1985 (2) SCC 556.

¹⁰ S.S. Singh, *Unification of Divorce Laws in India* (New Delhi, Deep and Deep 1993).

¹¹ *Id.* at 380.

¹² *Id.* at 381.

conclusions indicate that he is concerned about the future of Islamic Law and the personal laws of India. He has dedicated his life to seeking deeper understanding of the complex divorce concepts of Muslim law and his academic position on this topic is unique, honest and appreciable. This book provides timely information about blatant distortions, confusions and erroneous misinterpretations of Islamic Law of divorce, but goes also further and is quite informative. The carefully critical position taken in this book demands diligent study and the reader will then be rewarded by gaining a deeper understanding of Muslim laws on divorce and the challenges of reforming Muslim personal law.

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