

### **Book Review**

Alamgir Muhammad Serajuddin, *Muslim Family Law, Secular Courts and Muslim Women of South Asia: A Study in Judicial Activism*, Oxford University Press, Oxford, 2011

Muslim family law has undergone profound transformation around the world over the last decades to accommodate social change and demand. Such transformation is necessitated by the need to address the classical Shari'a law on family relations which leads to legal and social discrimination against women. The discrimination is especially evident in many important areas such as marriage, divorce, maintenance, guardianship and custody of children and inheritance. Progressive interpretation and liberal judicial decisions are continuously shaping the content of the Muslim family law for better protection of women rights and ensuring gender equality within the Islamic legal framework. Judiciary of South Asia is no exception. The book under review unfolds the development of the Muslim family law emphasizing the protection of Muslim women's rights by the judiciary in South Asia. The author, an eminent scholar in this field, makes a valuable and timely contribution to the cause of a rejuvenated approach to the study of Muslim family law. The book is distinguished by its clarity, critical analysis and objectivity.

The book is conveniently divided into six chapters. Chapter 1 explains the broad theme of the book and examines the concept of judicial activism and creativity, especially, in the context of South Asia. Chapter 2 deals with the rules of interpretation of Shari'a law as laid down by the Privy Council, the application of the rules by the colonial courts prior to independence of India in 1947 and the introduction of the English common law doctrine of *stare decisis*. The author notes that contrary to Islamic tradition, Shari'a law was interpreted and applied in South Asia by a hierarchy of secular courts, the judges of the higher courts generally being British, who had no expert knowledge on Islamic law. As a result, sound exposition of Shari'a law suffered from certain drawbacks during colonial rule.

In Chapter 3, the author traces the evolution of Muslim family law in India during the period of 1947-1970. Through analysis of many judicial decisions delivered during this period, the author noted that the Indian court had taken a rigid approach to the interpretation of Muslim family law. Chapter 4 contains evolution of Muslim family law in Pakistan during the similar period. In contrast to India, during this period, the higher judiciary of Pakistan had adopted rather more proactive and liberal approach to the interpretation of the Muslim Family Law. According to author, this period had witnessed far-reaching changes in two important areas of Muslim family law, first, the higher judiciary asserted their right to independent interpretation of the Qur'an and second, their right to differ from the doctrines of traditionally authoritative legal texts which are not based on any specific injunctions of the Qur'an and Sunnah.

Chapter 5 highlights the development of judicial decisions on Muslim family law in Bangladesh in general and judicial interpretation of Muslim women's legal rights in particular. In this chapter, the author has argued that Bangladesh has demonstrated remarkable judicial maturity and activism regarding Muslim personal law since 1971 as courts are responsive to the new social needs and realities.

Chapter 6 underlines the necessity of judicial activism in the realm of Muslim family law as some rules of the traditional Muslim family law relating to polygamy, divorce, maintenance, custody and guardianship of children, inheritance are incompatible with the changing social conditions of the present times and degrading to Muslim women's legal status and social position. As the legislature is reluctant to amend, alter or reform these laws to meet the demands of a modern, progressive society, the judiciary has to step in to fill up the void in legislation. Even though some beneficial legislation were enacted to address this problem, mere enactment of such laws cannot solve the problems of society at large, unless the judges keep in mind the intention of the legislature and liberally interpret and apply the law. Judicial activism has made it possible to make Muslim family law to adapt with changing needs. Judicial activism has brought about beneficial changes in many areas of Muslim personal law in India, Pakistan and Bangladesh though it has not gone unchallenged. Judicial activism has emerged as an important instrument of creativity in interpretation of law and policy by judges around the world and tool of redressing injustice when legal formalism fails to take into account the demands of justice. But what is a legitimate form of judicial activism that strikes a proper balance between

judicial excessiveness and self-restraint has generated scholarly debate. Therefore, the author has reminded the proper demarcation of judicial activism and sounded a caution against too much judicial law-making which is often ad hoc and piecemeal in nature.

The main contribution of the book lies in the fact that it not only takes a comparative perspective on the development of judicial decisions on Muslim family law in three countries- India, Pakistan and Bangladesh but also offers a clear exposition of vast literature and numerous case laws on the subject. The author rightly emphasizes the necessity for collaboration of the three jurisdictions and the mutual advantages of harmonized approach of addressing the vital issues of reform and modernization of Muslim family law. The author has presented the most up-to-date cases and analysed those from diverse perspectives. In this way, the book is a unique blend of pedagogic value and practical aspects of the issues discussed. The book offers a comprehensive account of development of judicial activism on Muslim personal law in South Asia and examines contours of the concept of balanced judicial activism. This is an important study that illuminates an important dimension of Muslim family law that is less explored in Bangladesh. The book also avoids technical words and legal jargons, which make it extremely readable. No doubt this excellent book will be of great interest to anyone, researchers, practitioners and academics alike, with an interest in Muslim family law.

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