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Book Review: Rethinking Muslim Personal Law

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INTRODUCTION

In India, a multicultural country and the largest democracy in the world, where, for the people, the law is not just something from the state but also divine, it becomes difficult to strike a balance amongst multiple communities on one hand and make them submit to a uniform law devised after detailed debate and discussion of legislative bodies. The political game for power gains adds fuel to the problem. This is seen more in the case of minorities which in India is permanently the Muslim community. The Indian Muslim community and their Muslim Personal Law (hereafter MPL) has been a subject of debate, discussion, misunderstanding, and playing politics. The personal law of Muslims in India is incorrectly identified in complete affirmation to Sharia, acting as an obstacle to the achievement of a uniform code to govern civil matters irrespective of community, caste, or gender. There is an urgent need to address these narratives and set the picture right about the Indian Muslims, their understanding of Islam, modern law, and the countrywide politics over them. *Rethinking Muslim Personal Law: Issues, Debates, and Reforms* seeks to draw attention to this through the scholarly papers included in the volume.

ABOUT THE BOOK

The book is a collection of research papers presented in a seminar organized by the Institute of Public Enterprise (IPE) and Centre for the Study of Developing Societies (CSDS), titled 'Making Sense of Muslim Personal Law in Post-Colonial India', in Hyderabad on 20th and 21st of September 2019. This volume is edited by Associate Professor at CSDS, Hilal Ahmed as well as R K Mishra and K N Jehangir of IPE.

SUMMARY OF THE BOOK

In the *Introduction*, Mr. Ahmed rightly states the reasons for having MPL vs UCC debate. He notes that Muslims in India are seen as a single and homogeneous group that is governed strictly by Islamic laws throughout the country. It is assumed that only Muslims are given this exception of being loyal to their religious code over state laws. Moreover, it is also held that ulemas speak for the entire community, and have the sole authority of interpreting religious texts and Muslims follow them unquestionably. These presumptions ignore an evident fact that Islamic doctrines are adopted to the norms of the place and cultural values of the people following the faith in the particular land. This results in the 'localisation of Islam and Islamisation of local Muslim society'¹ which is an interesting observation.

The book has nine research articles divided into three sections. In the first section discussing the legal aspects of MPL, the first paper by M R Shamshad² traces the genesis of personal laws to colonial times. The author elaborates on how despite somewhat codified personal laws, people lived by the customs of their family which were mostly unjust to the women. He tries to prove that Muslims do not only have the privilege of personal law. He also goes on to expose the alleged uniform nature of the criminal law. Mr Shamshad also tells how the courts should actually view the issues related to MPL and how the legislature wrongfully criminalises petty civil wrongs. He talks of reform and ensuring uniformity of laws within the

¹ Hilal Ahmed, "Introduction" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

² M R Shamshad, "Of Statutes & Scriptures: Diversity, Democracy, Personal Laws and Courts" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

community before going on to establish it amongst communities. The second paper³, briefly, says to strike a balance of ensuring freedom of religion for Muslims on one hand and making the community aware of being part of a multicultural society where they are given the freedom to live according to their unique laws without disturbing the national laws and harmony.

Abdul Matin⁴ presents the picture of India's rich diversity and pluralistic nature. He puts light on the usage of UCC as a political tool than a tool to guarantee gender justice. He puts forward the sociological side of the Muslim community by showing that upper caste Muslims (Ashrafs) were favoured upon Ajlafas and Atrafs, thus contributing to the narrative of personal law also. He also gives space to the efforts of an organisation working for Muslim women named Bharatiya Muslim Mahila Andolan (BMMA). BMMA has been vocal about the issues faced by Muslim women due to the dominance of the clergy and patriarchy in the community. He says in the conclusion that the debate of MPL vs UCC can be settled by either implementing UCC in haste as a political move or letting the society gradually move towards it with the aim of social reform. What will prevail is an event of the future.⁵

Furqan Ahmad⁶ explores the human rights side of the MPL debate. The author shows that Islamic law has the scope of reform as a part of its methodologies and how Islamic jurists played a vital role in reforming the religious law in their countries including India giving equal rights to women, which is opposite to the popular notion of Islam being an anti-women rights religion. He acknowledges the great interpretation skills, observation, and knowledge of Justice V R Krishna Iyer, regarding Islamic law and the state laws which helped him decide cases without getting into trouble as the Supreme Court invited in the Shah Bano judgment of 1985. He points out the loopholes of the 2019 Act that the legislature had passed with respect to the direction of the Supreme Court in the Shayara Bano judgment of 2017, which

³ Werner Menski & Kalindi Komal, "Muslim Personal Law from a Cross-national and Comparative Law Perspective" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

⁴ Abdul Matin, "Decoding Uniform Civil Code (UCC): A Sociological Analysis" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

⁵ *Ibid*

⁶ Furqan Ahmad, "Muslim Personal Law Reform and Human Rights" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

criminalised triple talaq. Looking in the direction of progress, Mr. Ahmad suggests the Islamic jurists of modern India take the rein of rationalising the position of the Islamic law in civil matters based on the rightful interpretation of *Quran, Sunna, ijma, qiyas*, and other ways of deriving Islamic law. If not done so, the Muslims and the Islamic law will fall prey to erroneous judgments, incoherent statutes, and general misunderstanding.

The next section of the volume is 'MPL and Politics' where the problems of Muslim politics, media narrative, and political aspects of the MPL/UCC debate are addressed. Nazima Parveen⁷ tries to understand the media representation of Muslim issues and the agenda it propagates. It shows how the media projects the issue of triple talaq or any other MPL issue as 'for and against' only, ignoring the grey area of the dispute. Maidul Islam⁸ lays out the process of the introduction of enactment of the Bill criminalizing triple talaq. He also writes about the aftermath of the Bill. Islam advocates for the reformation of MPL by creating a suitable atmosphere for fair debate, dialogue, discussion, and understanding amongst all the sects of Indian Muslims. This must be done by the progressive section of Muslims who should make the conservative side understand the need to change. Then, Hilal Ahmed⁹ puts forward the place of Muslim Shariat in postcolonial India. It tries to understand the politics surrounding the Shariat.

The last section consists of two chapters discussing the issue of MPL with respect to gender. Misbah Rashid¹⁰ documents the works of the All-India Muslim Women Personal Law Board. It tells how the Board's task of reinterpreting the Islamic laws in a gender-just manner is a challenge to the long-held position of dominance of the male clergy on religious matters. Thus, Rashid argues that one must not assume the Muslim stand on MPL to be uniform throughout

⁷ Nazima Parveen, "Muslim Personal Law and Triple Talaq: Claims, Counterclaims and the Media Discourse" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

⁸ Maidul Islam, "Triple Talaq Bill and Reforming the Muslim Personal Law in India" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

⁹ Hilal Ahmed, "Politics of Shariat in Postcolonial India" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

¹⁰ Misbah Rashid, "Challenging the Hegemonic Discourse: All India Muslim Women Personal Law Board and Gender Justice" (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

the community. The last chapter by Irfan Engineer¹¹ argues for having a UCC for the sake of gender equality and no other purpose. The Code is uniform and not common. It should not be put down the throat of citizens unwilling to follow it. He tells of having diversity and openness in the Code for change despite being equally accepted by all without coercion.

REVIEW OF THE BOOK

The chapters of the book are presented in such a manner that serves the purpose of the volume. The book through the nine scholarly research articles discusses MPL with respect to the law, gender, and politics. It traces the origins of MPL in India, its complexities, the media narrative around it, and other themes related to it. The insights, observations, and comments of the contributors are worthy of thought for the reader. This may be the first attempt of its kind which addresses the present-day debate of the Muslim community, their allegedly outdated law, and politicisation of their social issues which could have been solved by society without being politicised. It also tries to trace the origin of the issues helping the reader make sense of how they took shape in their present form. The volume is critical of the perceptions about the MPL issue, the clergy and the Muslim society, the legislature that brings insensible laws, the judiciary for their erroneous interpretation, and the media and gender injustice. The authors of their respective chapters have done a commendable job of presenting both the big picture and small details of the MPL and the themes with which it is often connected and debated.

CONCLUSION

The book is an academic effort to prepare the ground for a reasonable discussion on the issues of the permanent minority of the country, i.e., Muslims, which are often the target of misunderstanding, half knowledge and just giving opinions on them without having any knowledge of the faith, its followers and its practices. The book will be helpful to law students, lawmakers, constitutional jurists, legal researchers, progressive Muslims, and experts of other social sciences like sociology in taking ahead the discussion and addressing more themes, sub-

¹¹ Irfan Engineer, "Gender Equality Should Guide the Process of Reforming Family Laws and Not National Integration (Hilal Ahmed, RK Mishra & K N Jehangir), *Rethinking Muslim Personal Law* (Routledge 2022)

themes, and issues not covered in this volume. One must give this book a read to get a sensible picture of the debates, its various aspects, and the loopholes of the topic they are always surrounded by the media, politics, and public life in the name of being the only topic of importance and immediate attention sidelining the true worries of the nation.