

A TEXTBOOK ON MUSLIM LAW
by
David Pearl
[Croom Helm, London, Paperback \$6.95]

Dr. David Pearl is a lecturer in the University of Cambridge and he has made the Muslim Law of India, Pakistan and Bangladesh his special field of interest. He lectures on Muslim Law and he has been accepted as an expert in a number of cases dealing with Muslim Law in England. He might be said to represent the younger group of lecturers who will succeed such specialists as Sir Norman Anderson and Prof. Noel Coulson. His book on the Muslim Law is therefore interesting as showing how the younger academics in England approach the subject of Muslim Law.

At the outset it may be said that the book suffers from two defects. In the first place it relies almost exclusively on the orientalist who have written on Muslim Law. In his introductory chapter on the Historical Development of Islamic Law, Dr. Pearl relies on the writings of Joseph Schacht and Prof. Coulson. No reference is made to the writings of Muslim scholars, not even to those who have written in English like Prof. Hamidullah, Prof. S.M. Yusuf and Dr. Azmi. The result is that the picture given of the development of Muslim Law is not in line with the Islamic tradition. Dr. Pearl tries to be fair and at page 13 he says "The essential point is simply this: even if the historical criticisms of Schacht (moderated or not by Coulson) are accepted, after Shafii the concept of Sunnah as he had expounded it was accepted by the scholars and the resultant compilations of Hadith become the primary code of Islamic jurisprudence". But why do English scholars ignore the researches of the Muslim scholars?

The second defect is that although the book is called a textbook on Muslim Law it deals mainly with the Muslim Law in India, Pakistan and Bangladesh. Although Dr. Pearl says in his preface that other Muslim countries are not ignored in the book, in fact the book only refers to the law in the other Muslim countries by way of comparison with the law in the

Indian Sub-Continent. In particular no reference is made to the law in Indonesia and scanty reference is made to the law in Malaysia. The author has included the translations of the Iranian and Egyptian laws (taken from Dr. Tahir Mahmood's Family Law in the Muslim World) and has also included the Somalia legislation, but there is little discussion of such legislation and no reference is made to the recent Egyptian legislation. The book appears to be based on the lectures given by Dr. Pearl in Cambridge and one therefore expects the book to be accurate in its details. On a few matters however Dr. Pearl seems to have ignored the latest developments. There is also a lack of balance in that the later chapters or lectures are more complete and upto date than the earlier ones.

At page 33 he refers to the Pakistani case of *Farouq Lievers v. Adelaide Bridget Mary* 1958 PLD(WP) Lah. 431, where as he says Changez J. thought that there was no reason why Muslim Law should govern the dissolution of the marriage, which was celebrated according to Christian rites, even though the husband had been converted to Islam. That case has however been overruled by the Supreme Court in *Marina Jatoi v. Nuruddin Jatoi* PLD 1967 S.C. 580 where a majority of the Court held that a talaq given by the husband to his Christian wife was valid, even though the marriage has been performed in England before a Registrar under the English Marriage Act, 1949. *Jatoi v. Jatoi* is however dealt with by the author later at pp. 182f, where he makes it clear that he does not agree with the judgment.

At page 39 reference is made to the case of *Abdul Ghani v. Taleh Bibi* 1962 PLD (WP) Lah. 531 which held in effect that section 112 of the Evidence Act did not apply to Muslims. This case has now been affirmed by the Supreme Court in *Hamida Begum v. Murad Begum* PLD 1975 S.C. 624.

In a note at page 44 reference is made to the "Malayan" case of *Syed Abdullah v. Shariffa* [1959] M.L.J. 137. The full name of the case is *Syed Abdullah Shatiri v. Shariffa Salmah* and it is a decision of the Singapore Appeal Board, constituted under the Muslims Ordinance. Reference might have been made to the Indian cases of *Hasan Kutty Beary v. Jainabba* 1925 AIR Mad. 1285, *Sayad Mohiuddin Sayad Nasiruddin v. Khatijabbai* AIR 1939 Bom. 489 and *Kummali Abubukker v. Vengatt Maricar*

AIR 1970 Ker. 277, which also purport to deal with the Shafii Law and where the decision was different.

At page 74 of the book, the author refers to the case of *Resham Bibi v. Muhammad Shafi* PLD 1967 AJK 32. This case has been dissented from in the case of *Mubammad Khas v. Zarina Begum* PLD 1975 Azad J & K 27 and is now of doubtful authority.

In dealing with the question of custody of children, the author does not refer to the case of *Rashida Begum v. Shahab Din* (1960) W.P. Lah. 1142 where the matter was considered from first principles. Maybe it is because this case has been the subject of orthodox criticism in Pakistan. He refers to the case of *Mubammad Bashir v. Ghulam Fatima* 1953 PLD Lah. 73 where in fact the Court gave the custody of the child to the father. The learned Judge in fact applied what he conceived to be the rules of the Muslim Law and said that in the circumstances he would presume that the welfare of the minor would be in being restored to the father unless facts leading to a contrary inference were proved. The author refers also to the case of *Fabmida Begum v. Habib Ahmad* 1968 PLD Lah. 1112, but wrongly attributes the principle quoted to that case. The words "It was therefore held" are left out in the quotation in that page and in fact the passage is a summary of what was laid down in *Zobra Begum v. Latif Ahmad Munawar* PLD 1965 (WP) Lh. 695, in turn based on the opinion of the Full Bench in *Khursid Jan v. Fazal Dud* PLD 1964 (W.P') Lh. 558.

At page 96 of the book the author deals with the effect of the Muslim Family Laws Ordinance, 1961. His views have now to be reconsidered in the light of the House of Lords decision in *Quazi v. Quazi*, Times November 23, 1979 where Lord Diplock said that the proceedings were not merely officially recognised but also enforced by penal sanctions. "Without such proceedings the divorce by talaq never became effective". The author refers only to the High Court decision in *Quazi v. Quazi* at p. 107. The decision of the Court of Appeal is noted in the appendix at p. 195.

Chapter 8 of the book deals with the law of Succession. The general review given of the subject does not appear to be very helpful from the practical point of view and in any case the

author deals only with the Hanafi and the Shiah rules of succession. In Malaysia it is the Shafii rule which is relevant.

Chapter 9 of the book gives an interesting account of the law of gifts and waqfs and particularly the development of the Law of Wakaf in India, Pakistan, Bangladesh and East Africa. The attempts in those countries to escape the consequences of the Privy Council decision in *Abdel Fata Mahomed Isbak v. Russomoy Dhur Chowdhry* are interesting, as a similar attempt has been made in Trengganu — see *Haji Embong and others v. Tengku Nik Maimunah and another* [1980] M.L.J. —

In Chapter 10 the author deals with Interpersonal and International Conflict Situations. At page 178 he refers to “the view expressed in Malaysia that a Kitabiyya is confined to a sect of Christianity or Judaism which existed at the time of the Prophet” and says that this has the weakest authority. He does not refer to the case of *Viswalingam v. Viswalingam* now reported in [1980] 1 M.L.J. 10. He discusses the interesting cases of *Yusof Abbas v. Ismat Mustafa* PLD 1968 Kar. 480 and *Jatoi v. Jatoi* PLD 1967 S.C. 580. He also deals with the position of the recognition of Muslim divorces in England and in this respect his view needs to be modified in the light of the House of Lords decision in *Quazi v. Quazi*.

The last chapter deals with Reform in the Muslim World which is a summary of the views to be found in the writings of Schacht, Anderson and Coulson. At the end of the Chapter he refers to the signs of a Muslim fundamentalist revival in Pakistan, Iran, Turkey and Malaysia. He does not mention Saudi Arabia or Libya nor the recent Family Law Act in Egypt.

In summary it may be said that the book has given a useful summary of the Muslim Law as it applies to Indians, Pakistanis and Bangladesh as seen from the point of view of an English lawyer.

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