

BOOK REVIEW

Abdul Haseeb Ansari, 2018, *Comparative Jurisprudence: A Comparative Appraisal of Western Jurisprudence and Islamic Jurisprudence*, Serials Publications, New Delhi, India

The book entitled *Comparative Jurisprudence: A Comparative Appraisal of Western Jurisprudence and Islamic Jurisprudence* fills the matrix where there was a gap until publication of this book. There existed host of scholarly work in the form of book and articles on Western jurisprudence and Islamic jurisprudence, but there were scarce of intellectual exercise of this kind. Prof. Dr. Abdul Haseeb Ansari, a senior Professor at the Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM) has made an incredible intellectual endeavor to venture into almost unexplored field of research, which was actually demanded by comparative law scholars, and which will be certainly esteemed by them. The book reflects his protracted teaching experience and insight in the matters discussed in various chapters. The book is thus quite pertinent and useful.

The style of writing this book is palpable in the sense that it covers a vast area of jurisprudence in both the disciplines. It is pertinent in the sense that the author has highlighted most of the relevant socio-legal issues from the point of view of the Western societies and the societies of the East and South, which are mainly overwhelmed by the three popular religions of the world – Islam, *Sanatan Dharm* and Christianity - pertaining to a variety of topical subject matters. But the exposition in the book is limited to Islamic *fiqh*.

The book has 13 chapters. It starts with meaning, scope and relevance of jurisprudence. This chapter has an interesting segment where the author highlights the criticisms leveled by mainly orientalist against certain aspects of Islamic jurisprudence and has aptly presents rebuttal to them. It is a good reply to them as they have written either out of ignorance of Islamic jurisprudence or out of vengeance.

Chapter 3 sheds light on various aspects of natural law theories and discusses about the traditionalists and revivalists. Actually, natural law

theory has been discarded by western jurists, as law for them is neither found nor does it have basis of any absolute sources; it is made by competent law-making authorities within the framework of constitutions. Natural law in its original form exists only in Islamic States.

Chapter 4 pertinently presents an appraisal of the 'command theory' of certain Western jurists and the *hukm Shar'i* of the Islamic *fiqh*. It compares the two diametrically opposite paradigms.

Chapter 5 discusses about the plausible relationship between law and morality. The author has ably demonstrated that the morality in the West changes with the change of time and space; whereas, in Islamic *fiqh*, most of the moral rules are eternal, universal and immutable because they are derived from Qur'an and *Sunnah* and thus are based on Divine wisdom.

Chapter 6 highlights and discusses certain pertinent issues relating to law and justice relationship. Justice for Western scholars is pure legal. But in Islam the position is that justice is an act of *ibadah* (worship) and a sacred *amanah* (trust) from Allah (*s.w.t.*). For example, distributive justice has to be practiced by States, welfare States or others, based on law made by them for this purpose. In Islam, economic justice is in-built in the religion as *zakat* (obligatory) and *sadaqa* (optional) to be given to economically backward classes (*asnaf*) of society. *Zakat* is an act of *ibadah* and purifies *mal*.

Chapter 7 discourses on various issues pertaining to rights, duties and their relationships. It also sheds some light on the concept of 'absolute duty' propounded by Austin. It has rightly been pointed out by the author that since most of the rights in Islam are derived from the Qur'an and *Sunnah*, they always have element of justice in them. Islam rejects the idea of 'absolute duties', which is also a matter of controversy in the West; right and duties are always related to each other. For Western jurists rights are legally permitted actions; in Islam, Allah has ordained most of them. Certain man-made rights, which are compatible with the Qur'an and *Sunnah*, are acceptable in Islam.

Custom is a source of law in the commonwealth countries and certain other countries. It is not accepted as a source of law in civil law countries. But custom is a weak source of law. Legislature and courts have precedence over it. Islamic *Shari'ah* provided entirely different system for it as '*Urf*'. It is a source of law operative under different conditionality. These are discussed under chapter 8.

Chapter 9 deliberates over judicial precedent. As we know, the doctrine of judicial precedent has relevance only in commonwealth countries; it is rejected in the civil law system and not followed in Islamic legal system. But the author highlights that the reasons for its non-applicability is different. In civil law countries, it is not applied because all laws there are codified. In the Islamic legal system, it is not followed because Umar (*r.a.*) by writing a letter asked *qadhis* to decide cases on their own merits. There was no express prohibition by him. For this reason, the author argues that looking at the beneficial aspects of the doctrine, it is better to follow it also in Islamic legal systems.

Chapter 10 fairly covers almost all conundrums of ownership and possession in common law and the *Shari'ah*. The author has pointed out the basic difference with respect to ownership. Actually, in Islam everything between the skies and the earth have been created for the benefit of humankind but they are actually subject to the concept of *amanah* (trusteeship concept), the actual owner is Allah (*s.w.t.*) and in eyes of law of *muamalat* (transactions) things are owned by the person who has actual claim on them. This aspect of Islamic law has properly been highlighted and discussed.

Chapter 11 presents a comparative exposition of rights and duties of women. It clearly demonstrates that most of the rights which women in the West and in South Asia got after a long struggle, Islam provided those rights from the initial years of its advent. The chapter discusses host of contemporary right related problems that women around the world are facing with amicable suggestions to solve them in the greater interest of the society. On all these issues, Islamic viewpoints with comparative input are also given. There are certain issues even in the Islamic countries as well, e.g. women to lead prayers, women as head of State, women as head of family and women as judge, which have lots of controversies, have also been competently discussed.

Chapter 12 deliberates on certain common jurisprudential issues, which the contemporary third world countries are facing, e.g. importance of various theories expounded by jurists of schools of thought, protection of rights, unemployment, eradication of poverty, land reform, and prevalence of hosts of social evils. These have been discussed at great length and hand efforts have been made to offer agreeable solutions to them.

The last chapter 13 thoroughly discusses about various facets of terrorism, like its meaning, State-sponsored terrorism, funding to

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terrorists, preventive detention and judicial solicitude on it. The author also deliberates on the unfounded belief and based on surmises that Islam encourages terrorism. The author convincingly establishes that Islam is for peace, amity and tolerance. It is at peace with other religions, thus, it encourages people to live in harmony, where all innocent people coming from all religions are protected. He also vehemently rejects the notion that those who are killing and terrorising innocent people, including children and women, are *jihadists*. They are actually committing crimes, and they should be indicted and subjected to appropriate penalty, including death penalty. They are not carrying out any kind of *jihad*. To call them *jihadists* is a great mistake. It will rather be counterproductive. The chapter also discusses about preventive detentions around the world in the name of protecting the integrity and sovereignty of States. After giving examples of some State practices, the author pleads that detention for indefinite period or even for a long period is a grave violation of human right. States should strive to strike a balance between protection of human rights and State security by reviewing detentions by a designate judicial authority from time to time but not later than one year. It means review by an administrative authority should not be acceptable. The chapter goes on further to discuss as to what extent States are responsible for international terrorism, and concludes, after discussing some prominent instances, that actually State-sponsored terrorism is the root cause of organised terrorism in most cases. Chapter further concludes that the international community should have enough political will to address the root causes of terrorism instead of giving symptomatic treatment to the evil State actors.

As stated above, the book is a useful work. It can be beneficial to students of jurisprudence, teachers, researchers and policymakers. It is a worthy piece of work helpful for Islamisation and harmonization of knowledge. There are some typing errors and faults in contracting sentences, which can be corrected in future editions of the book. I would suggest, if possible, to the author to include some more contemporary issues like protection of the environment, drug and human trafficking.

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