

ANDHRA LEGAL DECISIONS

1999 (2)

JOURNAL

ALD

REVIEW OF THE BOOK

LAW RELATING TO FORNICATION (ZINA) IN THE ISLAMIC LEGAL SYSTEM - A COMPARATIVE STUDY -

Written by Mr. Syed Ahmed

By

—Ms. SUBBU LAKSHMI, Journalist

The 50th Year of the Declaration of Human Rights rightly deserved a few publications. Text of these publications are precious in the nature of insight that they put into the Declaration. The basic human needs are hunger and sex. Once these wants are met with, the individual is at peace with himself and can co-ordinate a harmonious living with greatest philanthropy. No man lives by himself, similarly no man can be a law unto himself. Certain social dictums are to be observed to continue the society with family as a base. Religion and culture are the wings of the family that assail it towards progress.

Today's society has greater number of negative trends in varied abnormal sexual relations such as heterosexuality, homosexuality, lesbianism and masturbation and sexual crimes like Prostitution, Adultery, Rape *etc.*, but unfortunately all of us watch these vices helplessly. It falls upon the law-makers to weed out such evils which are fast growing and proving to be detrimental to an individual in a healthy normative society. Mr. *Syed Ahmed*, a respectable citizen of global society takes upon himself the task of educating against such abnormal sexual behaviour and their evil effects on the human race, in his book entitled "Law Relating to Fornication (Zina) in the Islamic Legal System - A Comparative Study". In simple and lucid language he elaborates upon the Islamic Jurisprudence with regard to Fornication (Zina). The text consists of six chapters besides an introduction, conclusion and carefully listed Bibliography

which makes the reading of the book more analytical and speaks volumes of the various sources referred to.

The Author is a versatile Siddha (one concerned with spiritual uplift) who inculcates his sagacious wisdom into the text. The salient features of the book were elaborately discussed by Justice Mohd. Sardar Ali Khan, at the book release function held on 14th February, 1999 at Hotel Jaya International, Hyderabad, amidst applause and ovation from the audience.

Down the ages the holiness of pilgrimage has been extolled to purify one's soul and repent whole heartedly and to become a righteous person. Haj pilgrimage is most enviable from the onlookers point of view. Society through centuries has been exposed to charity and charitable disposition in Man, who have performed Haj. Blessed be the Author, whose Haj trips have made him a philanthropic '*sathwic*', as he has developed a compassionate attitude towards spiritual degrading society here, he cross checks on all possible paths of erroneous conduct.

Readers agree with the Author who says that the development of law has been influenced by morals, sometimes slowly through judicial process and sometimes openly through open legislation.

The Islamic law of fornication also needs appreciation in the light of the above discussion. The legal system of Islam which has a Divine sanction takes the entire aspect of illicit co-habitation into its domain without,

in any manner giving concession to the element of consent. Islam strictly forbids the very act of sexual intercourse outside the marital tie. It is here that a marked distinction can be formed in the modern law relating to sexual behaviour *vis-a-vis*, the Islamic law.

The working of Islamic law even today in certain isolated places stands testimony to the fact that the contemporary social problem of Man, insofar as sex is concerned can be solved to a greater extent through adherence to the laws of Islam. Dexterously compiled examples are many in this volume. One such instance is that of an Egyptian village, which is a remarkable example of how well the Quranic law of fornication has worked there.

Robert K. Merton and Robert Nisbet quote from Hamed Ammar's article "Growing up in an Egyptian village" thus

"each family bases its reputation on the sexual purity of its women. Each household exerts the utmost vigilance to prevent the unmarried girls from committing any 'sexual indiscretion, chastity as a moral and religious ideal, implies the avoidance of any stimulating pleasurable influence from opposite sex. Sexual pleasure of any kind outside the marriage tie, is forbidden by the Holy Quran. Manifestation of this excessive repression and fear of sex are obvious in the veiling of adolescent girls and women and the hiding of their breasts contour with extra pieces of cloth. In this community no cases of adultery or illegitimate children were noted for the last thirty years."

The first chapter on the concept of Chastity and Adultery is excellently written. Morality touches the individual conscience and slowly but steadily leaves an impact upon the collective consciousness. Religious dictum inculcates from childhood the need to be truthful and abide by the dictates from the Almighty. The Authority lays much emphasis on Istezan and privacy of homelife. Quoting from the Holy Quran on page 129 in the book (Foot note 79 & 80).

The Holy Quran speaks of 'Ghasse Basar' *i.e.*, to lower the gaze, which aims at putting a check upon the lustful men and women from falling into the trap of the devil (who according to Islam dwells in the hearts and blood of Man and always tempts him to follow the wrong or prohibited path).

The literature deserves global readership and is not to be confined to the Twin Cities of Hyderabad and Secunderabad.

Hindu epics throw light on women and possessions of whom they can bet upon. Five husbands dared Droupadi as a possession whom they lost in the game of dice. Did any one in the Court of Hastinapur raise a question in her favour. Kings made kingdoms, won wars but no one made laws regarding women's status.

Bastard children, kids of unwed mother, grown up people who always have a shadow in their memory of their miserable past are in abundance in any society. Traumatic childhood shattered homes, Battered wives, are the ugly segments which still exists in all sections of society.

A human being essentially needs food and sex. "If food is for sale, is it wrong if sex is for sale? " Asks the hungry maiden, the nursing mother, the weary professional women, to whom the word 'Sex Worker' has been assigned by the U.N. The impoverished situation, the hand to mouth existence, has led to sex trade. In whose hands does the key to every such situation lie ? What else but hunger, *Roti, Kapda aur Makan*, are not these the basic needs alike for men and women ? The purpose of most 'sex workers' is to pull through. They are intelligent enough to know that it is bleak future for their children whose condition is pitiable as they lack the love and protection of a father.

'The world of 'Suse Wong' raised doubts for many social reforms, who made the prostitute ? Came the reply "Not my father". The wife knew the husband's ways, but the daughter as an innocent girl did not know.

Prostitution requires a pair. It takes two to commit the 'crime'. Women are truck loaded men go scott free and the wage earner *i.e.*, the sex worker losses money in wriggling to get back to trade. Professional rivalry being so high and to stay in the same place one must be on heels.

The Author describes on (page 139) that Fornication as such has not been prohibited in the Indian Law. The Indian Law steps in when prostitution assumes the form of a commercialised vice, that is an organised means of living.

The Author referred to Section 497 of the Indian Penal Code which deals with the crime of adultery. He pointed out that under this Section, if a person has illicit sexual relations with the wife of another person, with her consent, it does not amount to rape but punishable with five years imprisonment, or with fine or both. But the woman as an equal partner of the offence is not at all punishable. The reason behind this Section for not punishing the woman as was given by the law interpreters was treating her as *res* (thing) and the act of the person as theft in which the property (wife) belonging to one man (husband) was being stolen by another. The Author says there is a need to amend this Section which was constituted centuries back. It is unbecoming to treat the woman as a chattel in the present world.

Similarly the Author says, under the Suppression of Immoral Traffic in the Woman and Girls Act, that while a woman involving in illicit cohabitation for commercial purposes is punishable and a woman involving in the same heinous sexual act for pleasure is not punishable. It is interesting to note that in the Act, the visitor (male) of the brothel house is not punishable when he is very much involved in the sex trade as a customer. These impediments of the laws in the country need immediate amendments to check the sexual offences effectively. The Government of Andhra Pradesh is contemplating to launch a massive drive for reviewing and revising the

innumerable age-old Manuals, Codes and Acts *etc.*, for effective administration which can meet the challenges of modern age.

Now young women have clearer sky above them when reformists like the Deputy Secretary, Mr. *Syed Ahmed* has reached the destitute women giving them their right to work, a respectable work which elevates their position in the society. Kudos, to the Author who considers women as human beings with minds.

He takes time off from brick breaking and pens as the Chief Editor of Budokan Update, a monthly Martial Arts magazine. Member of the Lions Clubs International District 324-C 2 are lucky to be interacting more often with him as the District Chairman. The Author is a life member of Red Cross Society. Assuredly a staunch puritan in out look, gregarious in nature, benevolent by temperament this elegantly dressed man *Syed Ahmed* is the Secretary General of All India Budokan Karate Federation and World Budokan Confederation.

The old adage "Industry and intelligence are the two blades of a scissors to cut the way to success" seems quite aptly applicable in his case. By his continued and untiring efforts he did achieve success in a short time, compared to his counterparts, placed in similar situations. This speaks of nothing but the sincerity and sense of devotion and conviction with which he took and accomplished any task assigned to him. Mr. Ahmed is an outstanding teacher, a frank and fearless leader, a genius with a keen urge for learning and knowing and a commander, with latent qualities of compassion, humaneness, sympathy, zeal, zest, gusto and always a sanguine and optimistic gentleman. Recently the author participated in the International Karate Meet at Kaula Lampur and brought laurels to his home land.

Salutations to his parents for their son's excellent work (to whom he dedicates this literary work), more specifically to his mother a lady who hails from the respectable family of Sadaate-e-Bani Hashim.