

BOOK REVIEW

Rubya Mehdi, *The Islamization of the Law in Pakistan*, Nordic Institute of Asian Studies Monograph Series No. 60. Richmond: Curzon Press (1994).

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Pakistan is one of the few countries where the process of Islamization has received wide coverage - both favourable and unfavourable - from its neighbouring Muslim countries as well as the 'western' world. The era of General Zia is closely associated in the minds of many people with his attempts to 'Islamize' not only the state but also, and perhaps especially, society. Yet the intriguing question more often than not centres around the extent to which the state, as a force of implementation, effectively carries out such Islamization efforts, *and renders them law*.

Rubya Mehdi has filled an important gap with valuable, detailed and insightful information as to the process of Islamization of the law and its results in Pakistan. By explaining the various aspects of the legal process and procedures historically and actually, and the social attitudes vis-à-vis law and the courts, Mehdi places the developments in the legal arena within the overall framework of Pakistani statehood, Islamic revivalism, and the pluralistic legal structures and their ties with customary laws and practices. Among the themes running throughout the book is the tug of interpretative wars between 'modernists' and 'traditionalists', and the inherent inefficiency and instability of the laws. Moreover, Mehdi indicates that, despite Islamization efforts, 'Anglo-Muhammedan' law remains quite persistent in many legal formulations and practices.

In the first chapter Mehdi outlines the historical developments in the law, looking at pre-British Muslim rule in India and Anglo-Muhammedan law. The structure of the Pakistani state, the roles played by law and ideology in Pakistani society, and the rise of Islamic revivalism are also discussed as the ground is prepared for the overview of the Islamization of the law and the encounter of revivalism with the existing law. Mehdi argues that Islamic revivalism started with the advent of dictatorship in Pakistan, and essentially had a legitimizing function for the power bearers. Theoretical concepts of inconsistency and instability are outlined in this

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chapter, which Mehdi then proceeds (in her following chapters) to show in relation to the constitution, criminal law, family law, and the procedure adopted for Islamization. As a prelude to what will later become more explicit, Mehdi states that Islamization has been repressive and ineffective:

Behind the facade of Islamization, the majority of Pakistanis living in rural areas live the life of their ancestors, unaware of the laws of the cities. In the villages state laws are bypassed in favour of arbitration or, even more frequently, conciliation according to traditional procedure. The state law would only be effective if people found it was not too different from their own system. State laws involve them in too much litigation, long proceedings, bribery and corruption. (P. 70)

In the second chapter Mehdi outlines the various Islamic provisions in the constitutions of Pakistan - what they were, how they were introduced and their main effects and stipulations. In this chapter Mehdi highlights both the inconsistency and the instability in the Islamic provisions. She argues that the inconsistency existed because Islamic provisions were only provided as compromise clauses which were read and interpreted differently by modernists and traditionalists. The instability is tied in with the seemingly haphazard abrogation of constitutions, as well as the function-related replacing and reinterpreting of Islamic provisions. Mehdi points out that despite all the efforts at Islamization, "the constitution was set out in a modern fashion no different from the one introduced by the British" (p. 108).

In the third chapter the Islamization of the various articles and provisions of the criminal law is described in detail. Mehdi shows that the implementation of the *Hudood* ordinances has been inconsistent, and has not been effective in reducing the rate of crime. Mehdi also points out that *Hadd* sentences are merely symbolic, but "their very existence has a negative effect" (p. 155). Moreover, the author clarifies the opposition to this law on the part of modernists and especially women. The latter, as evidenced by the review of the rape and *zina* punishments, end up with the very rough end of the Islamic criminal law stick. The modernists, as Mehdi clarifies, see the need for codifying Islamic criminal law in the light of modern day developments, "[o]therwise, Islamic law is just a mockery, as we now know from the experience of Pakistan" (p. 155).

In the fourth chapter Mehdi overviews in detail the various sections of the Muslim Family Law Ordinance of 1961 (registration of marriage, polygamy, divorce, women's rights of divorce, maintenance, dower, inheritance, arranged marriage and dowry), and the sociological background behind the various problems. When surveying the conditions for women's right to divorce, Mehdi also refers to

several case studies. The manipulation and corruption, as well as the controversies surrounding the interpretation of the issues involved in the laws and their concomitant lack of effectiveness, are also explained. The author shows that the Muslim Family law Ordinances suffer from the same instability that the other laws are characterised by, namely, that they can be changed at any time there is a suspicion that they "are not in accordance with the injunctions of Islam". Mehdi stresses that the ineffectiveness of these laws is also closely tied to the existing gap between the laws of the state and the plurality of legal practices in Pakistan.

The fifth chapter explains the procedure used in the Islamization of the law, with special reference to the various institutions that were created for that purpose. The difficulties involved in the process of Islamization are further stressed by presenting some examples of cases brought by petition by ordinary citizens of Pakistan, wherein many of them have challenged customary Muslim law. In this chapter Mehdi stresses the inefficiency of the laws and the whole process by clarifying how the process of Islamization was carried out by one man, the President, who severely curtailed the independence and thus the power of the judiciary. Not only was the judiciary thus rendered inefficient, but the various institutions are also shown to have spent much time and effort on debating their roles rather than reaching agreement and settling issues.

In the postscript Mehdi briefly sketches the latest legal developments and indicates how they confirm the analysis presented in the book.

On the whole Mehdi's is a detailed account of what Islamization has entailed for certain laws in Pakistan. The intricacies of the legal processes, and their social effects have been explicitly and clearly outlined in simple and uncomplicated language. The book provides excellent material for those interested in studying the complications inherent in the implementation of Islamic law, as well as any other laws, and the role of the state in the legal application process. Also, as a documentation of the fate of women faced with some of these laws, Mehdi's analysis provides a detailed and well presented reference. The attempt at Islamization on the whole, as portrayed by this book, is seen in all its nuances and potential atrocities. In fact, the whole process of Islamization is then questioned as to its soundness, durability and accuracy.

A notable weakness however is the lack of a comprehensive and in-depth look at the effects that various Pakistani customs have had on the Islamization process. In other words, the book does not fully examine the question, to what extent have certain customs actually interfered, if at all, with the *process* of interpreting Islamic law and trying to fit it into practice? Mehdi very briefly alludes to this as a matter for another study. The point needs to be made, however, that an understanding of the effects of such customary practices on islamization seems

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inseparable from an attempt to understand the process itself. This is shown by the fact that the Pakistani case clearly is not identical to that of, say, Saudi Arabia, which also purports to have achieved some Islamization of its laws. Thus the influence of customary practices is an important factor among those that render Islamization of laws a complex and almost malleable process. In consequence, the country-specific aspect of Islamization is thus unfortunately missed.

Moreover, the emphasis of the book is primarily on the Constitution, Criminal Law and Family Law. One is therefore left wondering why only these aspects of the law have been looked at, to the exclusion of, for example, laws pertaining to trade and commerce, financial transactions, and foreign relations. Is it possible that there was no effect of Islamization on these aspects? An overview of these areas, which also have important social and political repercussions, would have undoubtedly further enriched the informational content of the book.

Though rightly mentioning the point at the beginning, Mehdi does not go into any analytical detail over the extent to which Islamization has contributed to the legitimization of the state. Further, the link between what Mehdi terms "Islamic revival" (a term which itself is never properly defined and seems to be taken as a given) and Islamization is only vaguely alluded to, though the implication and common understanding would seem to suggest that the two are closely connected.

In sum, Rubya Mehdi's *The Islamization of the Law in Pakistan* is a significant contribution to the field of Pakistani legal studies in particular, and provides useful material for the comparative study of Islamization processes of the law elsewhere.