

BOOK REVIEW

Religion Pluralism and Islamic Law: *Dhimmi and Others in the Empire of Law*. By Anver M Emon, Oxford Islamic Legal Studies, Oxford University Press (1st edn., 2012).

IN this present book, the author tries to problematize tolerance for accepting *Dhimmi* rules which governed and regulated non-Muslim minorities permanently residing on Islamic lands. The author expresses a difference of opinion on the question about tolerance. According to Polemicists, Islam is not tolerant religion, whereas some Muslims and others describe Islam as a welcoming and respectful religion. Regarding this he argues that legal treatment under Islam with non-Muslims is indicative of enhancing of their thoughts and actions by focusing a regulated diverse society and indicates *Sharia* as a rule of law. This book provides a complete research study and succeeds in enlightening the polity context wherein, *Sharia* and *Dhimmi* rules were achieved. The question of tolerance and Islam has always been debated. In the view of some jurists, *Dhimmi* rules are biased in nature, if interpreted separately.

According to author, *Sharia* can be legitimately understood as a rule of law for legal arguments with all essential constituents that explain and set the limits therein. Further, the author seems to point out the concept of tolerance in order to understand the meaning and impact of the *Dhimmi* rules regulating the affairs of non-Muslim permanently residents in pre-modern Islamic countries. He further argues that the Islamic legal treatment of non-Muslims is suggestive of a challenge of governing and regulating a society and polity amidst diversity.

The arguments throughout the book give a new analysis of the *Dhimmi* rules governing the approach of Muslim law and their application on non-Muslims. It provides new dimensions to understand the nature of Muslim law and the difficulties of its application in diverse societies and polities. It addresses an interdisciplinary explanation of the problem with the treatment of foreigners under the Islamic law, exploring it from the view point of *Sharia*, in a historical context. Further, the book also enumerates the various problems and perspectives emanated in multi-cultural and multi-religious societies where rule of law and the effective governance is followed and applied. The focus of the author is on the understanding of *Dhimmi* rules which allow us to view the *Dhimmi* rules in a larger context of law and pluralism, which creates new space for

analyzing *Sharia* as one among many legal systems that, suffers similar challenges as other legal systems in diverse society.

The author in the book simplify the challenges to understand the implications on the intelligibility of the *Dhimmi* rules when the imperial assumptions underlying them to give way to the realities of contemporary modes of governance in Islamic states. The book contains two parts, four themes and seven chapters. In the first part, the author emphasized on the history, different doctrines and legal reasoning for enforcing *Dhimmi* rules. The second part of the book discusses the hegemonic potential of the law which is endemic to the very endeavor of governing amidst diversity and gives detailed description of a question whether legal system under such consideration is religious or secular and pre-modern or modern.

This book is organised around four major themes, which are inter-related to each other. In the first theme of the study, the author focused on the limits of tolerance on the pre-modern *Sharia*-based rules for non-Muslims, who are the permanent residents in Islamic lands. The author cited the opinions of some other prominent authors that *Sharia* based rules *inter-alia* so called *Dhimmi* rules were only for the time being and limited to real world application and thereby are not significant for appreciating the tolerant nature of the Islamic tradition today. The second view is bolstered by historical incidents of persecution based on pre-modern rules that discriminated on religious grounds. In the second theme of the book, the author emphasized on *Sharia* as a rule of law. Here the author criticized the general view of public at large where the people describes *Sharia* as the term which refers only the religious law of God. The first approach of the author reflected here is of a contemporary scholar of Islamic law who defines *Sharia* in part by distinguishing it from *fiqh*, which is the set of doctrinal traditions, emerged by jurists over centuries. The second approach focuses less on how to define *Sharia* in legally philosophical terms, and more on the study of the sources that are understood to constitute the corpus of *Sharia*. In this book there is broad discussion about rule of law which refers to the claim space for legitimate legal arguments and, by implication, raises valuable questions about the constitutive features that define and delimit that space. The third theme of this book focuses on the rule of law, history, and the enterprise of government by analyzing the *Dhimmi* rules. Here through this theme author emphasized *Sharia* as legal tradition of both historical import and also contemporary relevance. The author tried to minimize the confusion regarding rule of law

and *Sharia*, namely rule of law for governance of a particular society, and *sharia* as the rule of God. In the last theme of this book author focused on the minority and the hegemony of law concerning the fact where diversity exists. The book reveals the most poignantly, the hegemonic potential of relationship in a context of diversity where minority group of people make claim upon the ruling regime.

The ground-breaking work of scholarship brings about a revolution in the way where non-Muslim minorities are residing in Muslim societies and where *Sharia* law is applicable. The author conceptualised *Sharia* very widely as a rule of law in relation to the enterprise of governance. *Dhimmi*s in Islamic law and governance are viewed and analyzed in a new and more accurate light than compared properly to the governance of diversity within western societies and legal system. This book is significant for the scholars conducting research relating to comparative study of religious Pluralism in Islamic law and eager to gather the knowledge of Islam.

In this book Emon, provides much needed corrective, he takes for study some of the most controversial features of Islamic law, the status of *Dhimmi*s and attitude towards the others and shows how they are the part of a broader project of implementing the rule of law within the diverse society.

Anver Emon's *Religious Pluralism and Islamic Law* is a major contribution to the recent controversial debates on *Sharia* and rule of law and pluralism. There are very few study materials available on this burning issue, *i.e.*, *Sharia* law in pre-modern and post-modern Muslim world. The author analyzed Muslim jurists' discourse on the legal rights of *Dhimmi*s. The author offering the details account of normative framework that Muslim jurists developed to deal with the challenge of *Sharia* in religious legal system, furthermore comparing the legal debates on the *Dhimmi*s with recent legal debates on *hijab*, *naqab* etc in United States, Canada and Europe. The author argues that despite claim for legal pluralism, legal system cannot escape from being hegemonic against the interest of minorities.

In first chapter, author provides a historiographic analysis of the literature on the *Dhimmi* rules and offers a historical backdrop that helped inform the content of the rules and the debates about them. The author focuses on the various political assumptions that thereby contributed to their understanding of law and its content. In this chapter the detailed description is made about two

dominant myths that underlie earlier studies of the field, namely first is myth of persecution and the second is harmony. According to these myths either Islam persecutes non-Muslim or Islam is a faith which is open and warm to non-Muslims. Another concept regarding minorities in Islamic land is prevalent wherethey were treated fairly despite of the implementation of doctrinal rules against them because of their separate religious thoughts.

The second chapter addresses the different theories by which pre-modern Muslim jurists argued that the *Dhimmi* is subjected to Islamic law, with a focus on the argument of contract and obligation. In this chapter author also focuses on the way in which Muslim jurists reconciled *Dhimmi*'s exceptionalism with Islamic universalist concept.

The chapter third analyzes juristic debate on a range of issues related to the regulation of *Dhimmi* in the Muslim regime lands. The chapter starts with an analysis of the *jizya* or poll tax that non-Muslims would pay, and then addresses issues of property and liability for theft, the protection of chattel property, charitable endowments, the development of churches and synagogues, home construction regulations, attire and transport, and the capacity of *Dhimmito* be witnesses in court. It has always been a question why *Dhimmis* had to pay tax (*jizya*). Some are of the opinion that non-Muslims pay these taxes to manifest their commitments towards the social contracts which is there between them and the Muslim community *i.e.*, they will be governed by the Muslim rule.

In fourth chapter, Anver M. Emon offers a close reading of some particular sources and their texts that are invoked to justify various *Dhimmi* rules. It also provides an analysis of early legal proceeding to examine the dynamics of legal argument and reveal the potential hegemony that can be perpetuated in the name of the law. In the continuation of this chapter, number of questions were analyzed in positive manner like; how Islam can claim itself to be a universal faith for all humanity if it was possible under *Sharia*, why non-Muslims were permitted to practice their tradition according to their faith.

The fifth chapter, proceeds with the analysis of the question, what we meant by the rule of law? And, it has been explained it in a significant manner. It highlighted how the fact of diversity forced jurists to contend with important questions about authority, identity and sovereignty. Furthermore, it attempted to give a historical dimension to the analytic acquisition of considering *Sharia* as rule of law. The chapter addresses in inductive fashion various features of pre-modern Islamic law (institutions of adjudication, and interpretive theories). It also contrasts those features

with the contemporary elements that contribute to the legal culture of modern states, and thereby contributes a historical dimension to the rule of law and analytical framework developed in the introduction. The recent contribution to the ongoing debates about the ambiguity of rule of law has also been a striking feature of this chapter.

In the sixth chapter, author addresses two case studies, *i.e.*, how the pre-modern Islamic legal answers have come as the response to the contemporary questions of the governance on the relevancy of *Sharia* law. In this regards the case studies is conducted in the countries of Saudi Arabia and Malaysia. In case of Saudi Arabian, the example concerns how pre-modern *Dhimmi* rule inform the liability structure in wrongful death claims. The Malaysia case was relating to a recent legal controversy about apostasy, where a woman sought to convert from Islam to Christianity. Although the second case is not strictly about the *Dhimmi*, it nonetheless highlights alongside the Saudi Arabian case how contemporary conditions of governance and rule of law give new meaning or intelligibility to pre-modern legal answers in this regard. As it has been enumerated in this chapter that today contemporary conditions of governance and rule of law give new meaning or intelligibility to pre-modern legal system. So the author focuses here that any rule of law analysis of the *Dhimmi* rules today can appreciate their intelligibility that shows *Dhimmi* rules relevancy.

Chapter 7 offers a broad idea about a comparative set of examples to the *Dhimmi* rules by analyzing recent court decisions in France, the UK, and the US that regulate the covered (by *Niqab, hijab etc.*) Muslim woman. By offering a close reading of the cases and examining the jurisprudence used to justify the legal outcomes, the chapter suggests that the dynamics underlying pre-modern *Dhimmi* rules and contemporary legal decisions on the covered Muslim woman who seek an accommodation from the state share more than it might seem apparent. In this chapter finally begins with a discussion of the *Dhimmi* rules, and ends by situating *Dhimmi* in larger dynamic approach. At the end of the book, the readers may find little disappointment due to not finding the solution on the questions raised by some jurists on the application of *Dhimmi* in the present scenario.

Finally to sum up, the book is very authentic on the contemporary issue and will prove to be hilt the best guide, in guiding readers on the important religious issues. The book provides an overview of the arguments, and raises doubts about whether the hegemony of the law can ever be

avoided. In the last it has been suggested that at the intersection of law, governance and the minority claimant, there arises a particularly important imperative to be vigilant regarding the potential for hegemony over and against the interests of minorities (non-Muslims).

*Dr. Qazi Mohammed Usman**

* Assistant Professor of Law, Jamia Millia Islamia, University, New Delhi.