

BOOK REVIEW

Islamic Jurisprudence - An International Perspective

By
Professor C.G. Weeramantry
(Macmillan Press Ltd London, 1988) 207 PP. £29.50

There are a number of books on Islamic Jurisprudence, but few have been written from a comparative jurisprudential perspective and with an accent on the basic and fundamental notions that exist in the western legal tradition and Islamic Legal theory and philosophy. Professor Weeramantry aptly remarks in the preface of the book¹ under review that the law students in the western world enter the legal profession without any exposure whatsoever to some of the great legal systems of the world. A significant gap in their knowledge is in regard to the Islamic Law, says the author.

Even that great law school namely the Harvard Law School does not include in its comparative law courses, not to speak of the regular or optional subjects, any course on Islamic Law and Jurisprudence.² Comparative law courses are offered by the Law School in Common Law and Civil Law, Soviet-Legal System, Chinese or Japanese law and legal system etc. It is gratifying to know that some years back an Institute of Islamic Studies was established at Harvard University thus bridging 'a significant gap' in the knowledge that this reknowned temple of learning disseminates.

Professor C.G. Weeramantry, a prolific writer and internationally known scholar has now brought out a book which will go a long way in clearing the mist of misunderstanding and misconceptions that surrounds the minds of Western and oriental writers on the State and status of Islamic Jurispru-

¹K.G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (1988) see Preface at xv.

²At least this was the position when I was a student at Harvard in the early seventies.

dence in contemporary world. To put it in the author's own words "The pre-eminence of Islamic Jurisprudence was self-evident. It resulted from the fact that Quranic principles applied to every aspect of law and living, and as such came to be the central concern of scholars in all branches of learning".

Out of the contents of the book some chapters deserve our special mention as they are illuminating and contain a wealth of information and learning which the author has brought to bear on his work. Particular attention must be made to the following chapters of the book under review. They are: The Arabic Resurgence of Learning;³ Islamic Influences on European Legal Philosophy.⁴ Islamic and Human Rights⁵ and Islamic International Law.⁶

The chapter on Arabic Resurgence of learning is a voyage into the Islamic history of synthesis of knowledge. Professor Weeramantry points out the common attitude of the non-Islamic historians and scholars who consider a particular period of Islamic Civilization "as merely a period of preservation by the Muslims of the ancient classical culture of Greece and Rome".⁷ In their view the scientific and philosophical knowledge was only to be transmitted to the west by the Arabs without contributing independently to social sciences and philosophy. Professor Weeramantry challenges these wrong assumptions and convincingly demonstrates by historical facts that Arab's learning and scholarship synthesised, developed and pioneered ideas. He says that Islamic Scholarship was a developer in science, law and philosophy and not only a transmitter or merely a "warming oven".⁸ Included in this chapter is a beautiful account of the great libraries established in Baghdad, Cordova, Damascus and other places.

The section on Islamic Influences on European philosophy and law is refreshing as well as illuminating. The learned author records that Arab's methodology of scientific inquiry

³Chapter 2 of the book

⁴Chapter 6

⁵Chapter 7

⁶Chapter 8

⁷Page 17

⁸Page 18

which was different from western tradition had greatly influenced that great scientist philosopher Francis Bacon. The experimental method "was to blaze a trail for scientific knowledge in general".⁹ We are told by the learned author that Bacon himself quoted Islamic philosophers and scientists such as Avicenna, Averroes, Alfarabi and others in his works. Professor Weeramantry cites an array of jurist-philosophers, like Hobbes, Locke, Rousseau and Montesquieu who were influenced and borrowed in one way or the other many of the philosophical ideas from Islamic thought, be it political, moral, social or legal.¹⁰

There is an interesting story of how Locke who was a student at Oxford showed keen interest by attending the lectures of Edward Pococke, Professor of Arabic Studies.¹¹ The learned author conjectures that it may not be unreasonable to conclude that Locke's enquiring mind must have absorbed the Islamic concepts of sovereignty and law particularly the concept of trusteeship of power for the benefit of the governed. This and other inter-related concepts "were not new to Arabs but basic propositions of their political philosophy".¹² The profound influence of Ibn Khaldun's *al-Muqaddimah* and other Islamic literature relating to social institutions on Montesquieu has been pointed out by Professor Weeramantry by authentic proof and documentation.

Another important reference that is made in this section relates to the position and status of human reason in western theology and jurisprudence. Professor Weeramantry juxtaposes Divine Revelation and human Reason in both the systems; western theology and Islamic tenets. The learned author rightly points out how human reason was entrenched in the ecclesiastical moorings of Christian Orthodoxy which retarded the growth of knowledge in general and legal philosophy in particular. It was after a long struggle in the Christian world that human intellect (reason) unleashed itself from the shackles of Christian dogmas and doctrines.¹³

⁹Page 96

¹⁰Page 105-109

¹¹Page 105

¹²Ibid

¹³Page 94

Whereas in Islamic System and Quranic philosophy, reason has been placed at a very high pedestal. While on the one hand human reason is subordinated to Divine reason in revelation, simultaneously man is exhorted to approach an understanding of Divine reason by exercise of his own and thus pursue and achieve the unscaled heights of human knowledge and fulfilment.

Referring to the two great Islamic philosophers namely Avicenna (Ali Abu Ibn Sina) and Averroes (Ahmad Ibn Rushd) Professor Weeramantry points out that while fully accepting the words of God in *Qur'an* they taught also that there was room for the coexistence of human reason and the word of God.¹⁴ It may be mentioned here that the doctrines of *Qiyas; Ijma, Ijtihad, Istihsan* and *Maslahah* are some of the shining examples of the role reason has played in the development of juristic thought in Islamic Shariah.

Writing on the subject of human rights and drawing a distinction between the concept of human rights in the west and Islam, Professor Weeramantry makes a very important observation. He says:¹⁵

"In Islam, however, one does not view the problem against such a secular setting. The problem is not how man asserts his right against man but how man discharges his duties towards God. It is not preoccupied with the horizontal relationship that subsists between each man and his maker. If the vertical relationship is properly tended, all human rights problems fall automatically into place".

Another important study made by the learned author comes in the section on Islamic International Law. This section should be of particular interest to the International Community and to those who are eager to have a world view of human values. The study takes into its stride the nature of Islamic International Law, the law of war and peace, the oneness of mankind under Islamic Law, Islam and contemporary world order etc. The author draws ample support from Quranic Verses which have a direct bearing on these global concepts.

¹⁴Page 95

¹⁵Page 116

The learned writer has taken pains to displace the wrong notions about *jihad* as an instrument of aggression employed by Islam against non-believers. While placing the concept of *jihad* in the correct perspective, Professor Weeramantry states:¹⁶

"the concept of *jihad* - the war by means of which the *pax Islamica* could spread to territories of the *Dar-al-Harb* - did not necessarily mean war. It could be a war of words, an effort to make the doctrines of Islam accepted and acceptable. The *jihad* could therefore take place by persuasion".

Obviously what the author means is the intellectual *jihad*. The book takes into its stride other important topics such as the origins of Islamic Law, its source etc so that they serve as a backdrop to the study and understanding of Islamic values and ethos from an international stand point. Yet another short but useful chapter is on the value of Islamic jurisprudence to the non-Islamic world. The author demonstrates the importance and utility of comparative law studies. He points out how a different methodology applied to the solve legal problem in different system with 'different historical and cultural background provides continually fresh insights, leading to continually revitalised solutions'. Writing on the growing influence of Islamic world, the author observes.¹⁷

"If better world understanding is to be genuinely and urgently sought, there is no road to it which does not take in, somewhere along the way, an understanding of the basic attitudes of Islam - just as there is no road to it which does not take in the attitudes of Christianity or of Buddhism".

The learned author has commendably achieved the task he set upon himself, firstly, 'to demonstrate the important connections between Islamic Law and Western Legal and Philosophical thought', and secondly, that 'Islamic legal learning made a substantial contribution to the sum total of universal legal scholarship'.

¹⁶Page 146

¹⁷Page 167

The clear perception, breath of views, the pellucid style, and the scholarly pursuit are the hall marks of Professor Weeramantry's book. The bibliography and the references are a rich fodder to the researcher. Inclusion of the written constitution of Madina, the first written constitution in the world in the appendix would have added a wealth of information as it contains 'many a gem of purest ray serene' relating to international perspectives.

It is hoped that the book would be of great interest not only to the legal community but also to anyone who is curious to know about what Islam and its law stand for.

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