

SHARIA IN GREAT BRITAIN

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In Western states with a sizeable Muslim community the introduction of the *sharia* – at least partially, in certain fields – is being raised again and again. In most cases it is not a question of the Sharia overtaking the local legal system or of establishing a parallel legal structure, but rather the implementation of some elements of Islamic law and the applicability thereof. The Sharia councils/courts, authorized within the Muslim community to interpret Islamic law, deal primarily with family law (marriage and divorce, inheritance, etc.).

It should be noted, however, that this is not about the Muslim minorities and their host communities only, but on a more general level has a wider relevance in every religious-cultural community. Namely, how can religious law/rules operate and what is its relation to the official law of the state.

In the past few years, wherever this question was raised (mostly in Great-Britain and Canada), it was followed by hot, emotionally charged debates, in which emotional considerations often suppressed rational arguments. Such debates usually did not focus on the operation of the religious courts *per se*, but rather on the applicability of Islamic law and/or of certain elements of the Sharia. Even more so as the question, besides its legal consequences, has a symbolic relevance over and above the concrete cases. This could serve as a further argument in the debate over the wide-spread narrative of the ‘Islamization of Europe’ and the (forced) expansion of Islam.

There are several topics for debate, even if emotions are put aside/left out of consideration. The question is not only if jurisdiction on a religious basis can co-exist with the local ‘official’ state law, or if the danger of a ‘parallel’ legal system is realistic, or what happens if religious councils/courts pass a resolution in contradiction with the official legal system of the state. Yet, if the values of a minority culture clash or are different on certain points from the established Western values, this may cause not only a threat to the existing domestic order but may even result in erupting violence. (Among European/Western circumstances such an ‘ignition’ could be the situation of women in Islam and the legal consequences thereof.) Another question is how the introduction of only some elements of Islamic law would affect the protection of human rights of the individuals – yet again a very

frequent topic for misunderstanding between the European/Western individual concept and the community-related thinking of Islam.

Interpretations of the Sharia

Sharia is the most important corpus of legal regulations in Islam, but, at the same time, it is “one of the [...] worst defined and most misunderstood terms used today”.¹ It has broader, more theoretic, and narrower, more practical interpretations. According to the former, the Sharia is the combination of law, religion and ethics, a philosophy based on divine principles, it is the divine law itself. In this interpretation it is equivalent to Islam itself. According to the latter, the Sharia is the Islamic (religious) law. Most people use it in this sense. The main difference between Sharia and Islamic law is that the former includes the divine rules, to be followed by all Muslims, while the latter, the Islamic law (*fiqh*) is the interpretation of these by Muslim legal scholars. The Sharia is of divine origin, while Islamic law is the ‘product’ of human interpretation. There is no unified and codified written Sharia. “One cannot go to the library and check out the” Sharia – writes John Esposito, famous scholar of Islamic studies.²

Muslims in the United Kingdom³

The presence of Islam on the British Isles has been defined and impacted by the historical colonization by the United Kingdom primarily on the Indian sub-continent. The first Muslim communities – a direct result of this colonization – were established in Britain some three hundred years ago, primarily by sailors and fishermen. In the beginning they were recruited by the British East India Company from the sub-continent mostly, but later (late 19th – early 20th centuries) from Yemen, Cyprus, Egypt and even Iraq. Settled down in the ports and other cities of Britain (London, Liverpool, Cardiff, etc.), they established their own communities, and since they were typically unmarried men, married British women. In the beginning of the 19th century, they numbered some 10,000 persons, that increased to some 50,000 by the beginning of the Second World War.

The first wave of Muslim immigration reached the United Kingdom after the Second World War, with immigrants arriving mostly from the countries of the British Commonwealth, first from the West Indies, then – following the independence of British India and the establishment of Pakistan – from the Indian sub-continent.

British colonial past, therefore, has a huge role in Muslim immigration, the establishment of indigenous Muslim communities, as well as the position on and

¹ Ramadan 2017:145.

² Esposito & Delong-Bas 2018:34. It should be added, however, that there are several books by Muslim scholars written on the interpretation and implementation of the Sharia, yet none of these is equivalent to the Sharia itself.

³ The chapter is based on Rostoványi, *Az iszlám Nagy-Britanniában* 349–403.

behaviour towards Muslim immigrants, which can be characterized – at least to some extent – as a kind of ‘paternalistic’ approach.

Since most Muslims were planning to return after a while to their home countries, their religious practice was basically restricted to the performance of prayers. However, due to several reasons – including political changes at home or better living conditions in the UK, etc. – the immigrants stayed, especially when the British Nationality Act of 1948 gave the same rights and benefits for those arriving from the Commonwealth as the UK citizens had. In the 1950’s-1960’s, however, in response to the increasing number and continuous stay of the immigrants, the first significant ‘race-based’ demonstrations started. The 1962 Commonwealth Immigrants Act was the first to limit/prevent immigration from South-Asia and Africa.

Though it is difficult to say how big the Muslim community is in the United Kingdom (some 4.13 million, i. e. 6.3% of the population),⁴ it should be noted that they do not make up a homogenous community. There are more than 50 ethnic communities, and they are speaking seventy languages. Some two-thirds of them come from the Indian sub-continent, but approximately half of them were born in the United Kingdom, i. e. are not first-generation immigrants. Consequently, they form smaller communities, sometimes even relatively exclusive ones, mostly on the outskirts of big cities (London, Manchester, Birmingham, etc.).

In the UK there are no legal regulations specifically on religious communities, except for such traditional communities as the Anglican Church or the Presbyterians. The only legal framework in which Muslim organizations and mosques may operate is provided by the regulations on charity organizations. Yet, the question of legality and law – especially in the context of state law and a Sharia, and their relationship – with the explosion of the number of the Muslim communities has emerged with a previously unprecedented force.

The Archbishop of Canterbury and Sharia

Dr. Rowan Williams, the Archbishop of Canterbury, the Head of the Anglican Church gave a lecture on February 7, 2008, in the building of the Royal Courts of Justice,⁵ in front of hundreds of legal experts from all over Great Britain. The lecture most probably would have remained within framework of the academic lectures reaching a narrow audience only, had not the archbishop given an interview on the same day to the World at One program of BBC Radio 4, in which he summarized the most important statements of the lecture. The first question of the reporter was whether the adoption of Sharia law was necessary for community cohesion. “It seems unavoidable and indeed as matter-of-fact certain provisions of Sharia are already

⁴ Islam in the UK – Statistics & Facts.

⁵ For the text of the lecture, see in Williams 2008:262–282. The lecture was given as the introduction to the series of debates under the title „Islam in English Law” with Lord Phillips of Worth Matravers, President of the British Supreme Court in the chair.

recognized in our society and under our law. So, it's not as if we're bringing in an alien and rival system" – was the Archbishop's answer.⁶

The interview – and thus the lecture – raised a huge attention and the topic remained on the front pages of the biggest British papers, and the statements of the Archbishop were resonating for a long while.

Dr. Rowan Williams started his lecture by stating that British society is facing an increasing challenge by the – mostly religious – communities, which while no less law-abiding than the rest of the population, relate to something other than the British legal system alone. The question arises, therefore, to what extent the legal provisions of a religious group can be legalized if at all. This refers not only to Islam and Muslims, but to other religious communities as well. The Archbishop mentioned Orthodox Judaism, but also reminded of the Anglican Church. He went on examining how the legal provisions of religious groups can be implemented in a secular state in general, and how a rational and constructive relationship can be established between Islamic law and the law of the United Kingdom in particular.

The Archbishop – displaying a thorough knowledge of the Sharia and Islamic law – went on enlisting the false simplifications related to Sharia on the basis of which a negative picture has emerged among the wider public, claiming that it is a pre-modern system in which there is no place to human rights. The, Sharia however, is not a monolithic system, "there is no single code that can be identified as 'the' Sharia".

"And when certain states impose what they refer to as Sharia or when certain Muslim activists demand its recognition alongside secular jurisdictions, they are usually referring not to a universal and fixed code established once and for all but to some particular concretisation of it at the hands of a tradition of jurists".⁷

Islamic and British law – the Archbishop went on – are not simply two rival legal systems. On the one hand, Sharia depends for its legitimacy not on any human decision, not on votes or preferences, but on the conviction that it represents the mind of God; on the other, it is to some extent 'unfinished business' so far as codified and precise provisions are concerned.

In answer to the questions following the lecture the Archbishop stated that with regard to the Sharia he was not thinking of parallel legal systems, but was examining how the most fruitful cooperation between the state's law and a 'supplementary jurisdiction' may be established. He went on analyzing this 'supplementary jurisdiction', enlisting arguments for and against.

Some kind of a 'transformative accommodation', i.e., a mutual accommodation by both jurisdictional parties is necessary. Individuals retain the liberty to choose the jurisdiction under which they will seek to resolve certain carefully specified matters

⁶ In full: Rowan Williams interview. 11 February 2008.

⁷ Williams 2008, *ibid.*

(aspects of marital law, the regulation of financial transactions and authorised structures of mediation and conflict resolution).

Ethnically, culturally, and religiously diverse societies are characterized by a ‘multiple affiliation’ since social identities are not constituted by one exclusive relationship or system of belonging. If we are serious in trying to move away from a model that treats one jurisdiction as having a monopoly of socially defining roles and relations, we need to work to overcome the ultimatum of “either your culture or your rights” – the Archbishop quoted Ayelet Shachar, Jewish Professor of Law.⁸

Regarding the Muslims he states that being part of the *umma* (the community of Muslim believers) is not equivalent to political-social affiliation, i. e. citizenship is not equal to being part of the *umma*. Even the mostly Muslim populated states are characterized by the ‘dual identity’ of the Muslims: they are citizens on the one hand, and members of the community of believers on the other.

The lecture of the Archbishop raised strong reactions. There were some who agreed with him, others, to the contrary, rejected his statements on the Sharia. Lord Phillips of Worth Matravers, President of the British Supreme Court, the Lord Chief Justice of England and Wales belonged to the first group, and stated his position in a speech on July 4, 2008, in the Muslim Center in London. Referring to the widespread misunderstanding regarding the Sharia he took the position that in cases when the principles of the Sharia are not in conflict with the legal system of England and Wales, they can be applied. “There is no reason why Sharia principles, or any other religious code, should not be the basis for mediation or other forms of alternative dispute resolution.”⁹ The Archbishop of Canterbury, Dr. Rowan Williams, had been misunderstood when it was reported that he said British Muslims could be governed by Sharia law – Lord Phillips said.

Nowhere in the lecture does Rowan Williams call for the implementation of law Sharia. Rather, he asks how it might be possible for the civil law to accommodate some of the legal procedures by which Muslim communities in Britain have traditionally regulated their relationships and financial affairs, while safeguarding the equality and human rights afforded by modern law for vulnerable individuals (particularly women) within those communities.¹⁰

In 2013 Rowan Williams was substituted by Justin Welby as the next Archbishop of Canterbury. His point of view was exactly the opposite of his predecessor, as Welby held that Islamic law can never become part of British law. In this case it is about much more than family law or inheritance. The Sharia originates from an entirely different legal background than British law. The British law, developed in

⁸ Shachar 2001:113–114.

⁹ Sharia law ‘could have UK role’. Lord Chief Justice Lord Phillips said English and Welsh law would still play a part. BBC News, 4 July 2008.

¹⁰ Beattle: Rowan Williams and Sharia law. /

the past 500 years is based on values and beliefs, which are rooted in Christian culture and history.¹¹

The “Secrets of Britain’s Sharia Councils”

On April 22, 2013, BBC One in its Panorama series broadcasted the “Secrets of Britain’s Sharia Councils”, which raised much attention. On its website BBC promised that “Panorama reporter Jane Corbin goes undercover to investigate what is really happening in Britain’s Sharia Councils – Islamic religious courts.”¹²

The producers prepared secret recordings at Sharia council meetings in mosques and in private homes, as well as several interviews, based on which they saw the supposition confirmed that Sharia councils often pass decisions which are not conform with the regulations of the British legal system. Though these decisions are not obligatory, many feel that they should abide by them either because of their religious beliefs, or under pressure from the family or the community. These decisions, however, may be especially disadvantageous to women who are victims of ill-treatment by their husbands, yet the Sharia council does not allow them to divorce their husbands.

The BBC reporter made an interview with Sonia, a Muslim woman from Leeds, whom her husband regularly physically hurt/beat up. Since Sonia and her husband concluded not only an Islamic, but also a civilian marriage, Sonia filed for divorce. The civilian court approved the divorce and gave the custody of the children to the mother, with a limited access for the father to the children. However, when Sonia turned to a Sharia council seeking an Islamic divorce, in contradiction to the decision of the civilian court, it gave the custody of the children to the father. British law *expressis verbis* forbids that Sharia councils deal with questions related to children. The council only changed its decision when Sonia threatened with turning to the police. Sonia in the interview said that when she argued that children cannot be trusted to a man as violent as her husband, the answer was that the regulations of Islam cannot be contradicted.¹³

The Sharia in the British Parliament

On April 23rd, the day after the broadcasting of the film, the House of Commons held a debate on the role of the Sharia councils in the United Kingdom¹⁴, where the MPs were frequently referring to the BBC program the evening before. Kris Hopkins, a

¹¹ Archbishop of Canterbury: Islamic law incompatible with Christian values. /

¹² The full program is not available anymore, only the title and a one-sentence summary can be read, which identifies the ‘council’ in the title with the ‘courts’.

<https://www.bbc.co.uk/programmes/b01rxfjt> The full program is accessible on YouTube: BBC Documentary 2017 – Secrets of Britain’s Sharia Councils. BBC Documentary. <https://www.youtube.com/watch/3EFP21OldMU>

¹³ Kern 2013.

¹⁴ House of Commons Debates Sharia Councils.

Conservative MP called on the British government to take a position on the Sharia councils and guarantee that the councils cannot operate as an alternative legal system. In her answer Helen Grant, Parliamentary Under-Secretary of State for Justice, emphasized that Sharia law is not accepted in the British legal system. There is no parallel jurisdiction, and the government does not want to change this.

The Sharia, and the relationship between Islamic and British law have continuously been on the agenda in Great Britain. The question has serious practical consequences, since there are several Sharia councils operating in Britain, and some of their publicized decisions are raising heated debates. The British Parliament has discussed the issue several times. In October 2012 there was a debate on an Arbitration and Mediation Services [Equality] Bill, which wanted to limit the activities of the Sharia councils, calling on them to observe equality in court, including women's rights.

Baroness Cox of Queensbury, who presented the bill and who had campaigned against the spread of Islamic law in Britain, pointed out the contradictions of the situation. The bill deals with two – related – questions: the suffering of women oppressed by religiously sanctioned gender discrimination, and a rapidly developing alternative quasi-legal system which undermines the fundamental principle of one law for all.¹⁵ The bill proposed to act legally against all those who claim that *sharia* councils and courts have legal power in family law and criminal cases.¹⁶

The Siddiqui Report

Theresa May, then Minister of Interior, in 2016 established a working group of religious/religious law experts, the task of which was to examine the situation of Sharia law and the operation of Sharia councils in England and Wales. The head of the group, Mona Siddiqui, Professor of Islamic and Inter-religious Studies at the University of Edinburgh in the preface to the report summarized the work: the basic task of the working group was to understand why Sharia councils exist, why Muslim men and women need them and turn to them for advice and opinion.

The number of Sharia councils operating in England and Wales is estimated between 30–85, but closer to the latter. (In Scotland there are no such bodies.) The Siddiqui report draws the attention to the fact that there is no unequivocal definition of the Sharia councils. In the report's definition a Sharia council is "a voluntary local association of scholars who see themselves or are seen by their communities as authorised to offer advice to Muslims principally in the field of religious marriage and divorce."

In a debate material for the May 1, 2019, parliamentary session this has been complemented by such everyday life issues as Sharia compatible finances and Halal food. The Sharia councils have no legal status and have no legal authority. Should

¹⁵ Baroness Cox's intervention. /

¹⁶ The Arbitration and Mediation Services (Equality) Bill.

any of the Sharia council decisions or recommendations be incompatible with British law, the latter will prevail. Councils are not courts either and they should not refer to their members as judges.

The Siddiqui working group published its report in February 2018.¹⁷ It stated that a huge majority – over 90% – of those turning to the councils for advice were/were women, who seek divorce from their husbands, yet had not concluded a civilian marriage [i. e. the only marriage contract they had, was concluded within the Islamic law and Sharia.] For men, divorce according to the Islamic law (*ṭalāq*) is much easier since it can be performed by a unilateral declaration. Women have no such option, except if it is included in the marriage contract.

The Siddiqui report makes several proposals. In an amendment to the 1949 Marriage Act and the 1973 Matrimonial Causes Act it deems it necessary to perform a civilian marriage preceding to “or at the same time as the Islamic marriage [...] bringing Islamic marriage into line with Christian and Jewish marriage in the eyes of the law.”¹⁸ The 1949 Marriage Act could be complemented with the rule that in case of any marriage (including Islamic marriage) it is legally punishable if the parties miss the civilian registration thereof, which thus would become a legal obligation for Muslim pairs, too. The connection of Islamic and civilian marriages would provide protection – under family law – for Muslim women, including the right to civilian divorce, lessening this way the role of Sharia councils.

The report promotes the regulation of the operation of the Sharia councils by establishing “a process for councils to regulate themselves, designing a code of practice for Sharia councils to accept and implement.”¹⁹ The British Home Office, however, rejected the proposal, claiming “the proposal to create a State-facilitated or endorsed regulation scheme for Sharia councils would confer upon them legitimacy as alternative forms of dispute resolution.”²⁰ “Sharia law has no jurisdiction in the UK and we would not facilitate or endorse regulation, which could present councils as an alternative to UK laws”.²¹

Upon the initiative of Member of Parliament John Howell on May 2, 2019, the House of Commons held a general debate about Sharia law courts in the United Kingdom.²² The minutes of the meeting noted that although the media usually mentions ‘Sharia courts’, most of the relevant organizations, as well as the academia refer to them as *ṣarīʿa* councils. The latter is more precise as Sharia councils have no official legal or constitutional role in the UK. The term Sharia ‘court’ can also be

¹⁷ The independent review into the application of Sharia law in England and Wales.

¹⁸ Sharia law courts in the UK. Debate Pack.

¹⁹ Ibid.

²⁰ Ibid.

²¹ UK rejects proposals to regulate sharia councils. The National, February 2, 2018. <https://www.thenational.ae/world/europe/uk-rejects-proposals-to-regulate-sharia-councils-1.701243>

²² Sharia law courts in the UK. Debate Pack.

misleading since it gives the impression that it is a real court, the members of which are judges in the legal sense. Further, this helps fuel the misunderstanding that Sharia would (or could) ‘overwrite’ British law, or that a parallel legal system would exist in Britain.

Parallel legal systems of minority legal orders (MLO)

The question, however, can be looked at from a different perspective, i.e. from the perspective of the ‘other side’, the side of the minority communities within the society, and their ‘law-like’ institutions. According to the report of the British Academy Policy Center prepared by Professor of Law Maleiha Malik, it is misleading to call these ‘law-like’ institutions as ‘parallel legal systems’ – which are threatening liberal democracies – since their activities fit the term ‘minority legal orders’ (MLO) much better.²³

Ayelet Shachar, Professor at the University of Toronto published a much-quoted book on the topic in 2001, in which she analyzes the relationship between the two legal authorities, the state and the “*nomoi* group”²⁴ in multi-cultural societies. She describes two approaches, which developed from the long history of the relationship of state and church: the secular absolutist model, and the religious particularistic model.

Shachar proposed that the clashes of interest between the state and the *nomoi* group should not be perceived as a problem, but rather as an opportunity, which may increase the sensitivity, susceptibility, and responsibility of each entity towards all its members. Shachar proposed ‘joint governance’, which could manage at the same time inequalities both within the cultural groups and among the groups as well. Its preferred form would be a ‘transformative accommodation’, since it could cause a serious problem if because of pro-identity group policies, the status of the identity groups improves, but that of some of its weaker members worsen.

The 2012 British Academy Policy Centre report defines minority legal orders “around two aspects: first, by its distinct cultural or religious norms; second, by some ‘systemic’ features that allow us to say that there is a distinct institutional system for the identification, interpretation and enforcement of these norms.”²⁵

²³ “Minority legal orders – the systemic, distinct, religious or cultural norms of groups such as Jews, Christians, Muslims, and others – are often misleadingly described as ‘parallel legal systems’.” Malik: *Minority Legal Orders in the U*, 4.

²⁴ Under ‘*nomoi* groups/communities’ Shachar means those – primarily religiously-identified – minority groups/communities’ that “share a comprehensive and distinguishable worldview that extends to creating a law for the community.” This definition can be expanded to include minority groups organizing on an ethnic, tribal, or national basis. Shachar focused her analyses on identity-groups which aim at maintaining their ‘nomos’ as an alternative to total assimilation. *Ibid.*, 2. footnote 5. ‘*nomos*’ (plural *nomoi*) is a Greek word, which in this case should be interpreted to mean tradition, law.

²⁵ Malik: *Minority Legal Orders in the UK*, 5.

The report emphasizes that “In terms of political power, the state is the sovereign legal system. Other forms of normative social regulation (promoting particular common values or standards of behaviour) that exercise authority over the lives of individuals are ‘subordinate’ or a ‘minority legal orders’, and are subject to regulation by the state legal system. Nevertheless, there may be some situations where the minority legal order commands greater legitimacy and authority within the minority community than state law”.²⁶

The report enlists the following ways a liberal state can relate to a minority legal order:²⁷

a) Prohibition of a minority legal order.

b) Non-interference with a minority legal order.

c) Recognition of the minority legal order through granting minority group rights or establishing a personal law system.

d) Transformative accommodation: “a system of joint governance that allows individuals to be both citizens with state protected rights and members of a minority group who can choose to enjoy their cultural or religious group membership. Jurisdiction may be divided between the state and the MLO in matters such as family law.” (A special attention should be paid to “minorities within minorities”, since “they may face social pressure to comply with norms within their social group, but they will lack the power to secure their interests.”).

e) Cultural voluntarism as a ‘third way’ between prohibition and non-interference, acknowledging the fact that the individual wants to be part of both the state legal system and the minority legal order.

f) Mainstreaming the norms of a minority legal order within the state legal system.

The different approaches provide practical strategies that can be applied to various situations.

The Archbishop of Canterbury, Rowan Williams, has also been criticized for his clear advocacy of “transformative accommodation”, referring to Ayelet Shachar, but this is only one – although preferred – form of Shachar’s variants of “joint governance”. Russell Sandberg and his co-authors argue that other variants may be more useful in specific cases than “transformative accommodation”.²⁸

Conclusion

Sharia councils in Britain play an important role in the life of Muslim communities. Their work focuses on mediation and the resolution of family disputes. Their services are mostly used by Muslim women who want to divorce their husbands for some reason (abuse, etc.), but their husbands are not willing to do so. The situation of

²⁶ Ibid.

²⁷ In the following summary, we relied on the summary provided by the report, all quotations are from there, 6–8.

²⁸ Sandberg et al. 2013:263–291.

women is much more difficult than that of men, as Islamic law allows men to divorce by unilateral declaration, but women do not have this opportunity.

Sharia councils have been severely criticised for their failure to treat women as equals – for example, considering a man's testimony rather than a woman's – or for not granting divorce despite a woman's explicit request. Despite the shortcomings, the role of the services provided by the Sharia councils cannot be underestimated, as some Muslim women's only opportunity is to turn to the councils for help with domestic violence and can only be granted divorce through the councils.

The situation caused by the Covid pandemic has in a special way strengthened the role of the Sharia councils. Forced lockdowns and isolation have led to a demonstrable increase in divorces worldwide ('Covid divorce'), and this has been the case in Britain. The number of cases handled by one of the most prominent Sharia councils, the Islamic Council of Europe, has increased by 280% within six months from April 2020.²⁹

However, negative stereotypes about Sharia and Islam, the negative perceptions of Muslim minorities in Britain³⁰ and the fear of the creation of a 'parallel legal system' are serious obstacles to the work of Sharia councils in Britain.

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²⁹ Azzouz: Will the UK's sharia councils struggle to meet the challenge of Covid divorces?

³⁰ A survey published by the University of Birmingham in January 2022 found, that Muslims are the second "least liked" group in Great Britain: 25.9% of the British public feel "negative", 9.9% "very negative" towards Muslims. Jones and Unsworth: The Dinner Table Prejudice.

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