

Multiculturalism: A Challenge for Defending Fundamental Rights Case Study: Islamic Legal Norms in Europe: The Examples of Sharia Courts in the UK

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I feel that this case study, “Islamic Legal Norms in Europe: The Examples of Sharia Courts in the UK” is a timely discussion at this conference given the recent events in the UK, indeed even here in Switzerland, Europe and beyond. The issues raised in the introduction to this session have taken up many a column inch in our newspapers and bandwidth on the blogosphere. It can be argued that the implementation of Islamic Legal norms in a multicultural and secular society in theory, should be a relatively straightforward matter given the notions of freedom of thought, conscience, religion and expression as provided for in the European Convention on Human Rights and Fundamental Freedoms. Clearly, the reality is somewhat different. There is little doubt that Islam and Sharia is a hot topic, but as much of the discussion is predefined, antagonistic and at times quite simply hostile and islamophobic no meaningful understanding or progress is made. A quick trawl through the newspapers or political blogosphere in recent months and one will find many headlines, articles and quotes expressing grave fear at the Islamification of the UK and Europe and the takeover and implementation of Sharia and Sharia Courts. The “One Law For All” campaign is a prime example of the reactionary nature of the opposition to the implementation of Islamic Legal norms, citing the oppression of women under Sharia and how Sharia is an affront to the Rule of Law and secular values. Thankfully, the Caux Conference Centre is located in a place of natural beauty and serenity, away from current anxieties and unpolluted, making it just the right venue for such a discussion on multiculturalism and the implementation of Islamic Legal norms in Europe.

Much of the hostile and negative press coverage in recent years and indeed even in some academic circles and amongst some of the establishment in the United Kingdom, against the implementation of Islamic Legal norms came to the fore following Dr. Rowan Williams the Archbishop of Canterbury’s lecture at the Royal Courts of Justice in February 2008. In his lecture entitled ‘Civil and Religious Law in England: a religious perspective’ he suggested that for some aspects of Sharia to be implemented in English law would be inevitable. Then just a few months later the already heated debate was further fuelled by the then Lord Chief Justice, Lord Philips, who also stated that he saw no ‘reason why Sharia principles, or any other religious code, should not be the basis for mediation or other forms of alternative dispute resolution’. It was following this lecture by the Archbishop that the Muslim Arbitration Tribunal (MAT) came to public attention in June 2008 following the official launch of its Forced Marriages Campaign. The launch of the Forced Marriages Campaign was in effect also an unofficial launch for MAT and set the basis and tone for much of the headlines, debate and discussion that has followed since in the United Kingdom. Headlines such as, “Revealed: UK’s first official sharia courts” in the Times and the opening line boldly declaring that, “Islamic law has been officially adopted in Britain” in reference to MAT was typical of the headlines and articles following the launch of the Forced Marriages campaign in June 2008. MAT even formed the basis of a debate in the House of Lords last year regarding the very issue of the implementation of Islamic Legal norms, with Lord Pearson asking the Under-

Secretary of State in the Ministry of Justice, Lord Bach, whether the government supports the implementation of Sharia Law in the United Kingdom. Clearly therefore, since its inception in 2007 and particularly since 2008, MAT has formed the basis of and contributed significantly to, much of the discussion and debate that has taken place regarding the implementation of Islamic Legal norms in the UK, at least.

However, MAT was certainly not established solely for the purposes of starting or contributing to such a debate or discussion surrounding the implementation of Islamic legal norms, although a look at the MAT inbox is likely to suggest otherwise given the numerous emails received from students, academics and journalists all over the world requesting interviews and information about MAT and the implementation of Sharia in the United Kingdom. Its inception in 2007 was brought about by an acute awareness that there was no formal basis for resolving disputes between Muslims who sought to apply the tenets of Sharia in order to seek a resolution to their dispute. Historically, because there have been problems in the Muslim community in the UK which could not be resolved through the civil courts, a number of Sharia Councils sprung up to resolve these matters around the country. The system of Sharia courts as the media likes to refer to them, or councils, which I believe is a much more apt term, as they do not purport to resemble anything like the courts in the UK, were certainly not in a position to resolve complex disputes, although they continue to provide an invaluable service to the Muslim community in matters relating to Islamic personal law, marriage and divorce. Many of these councils tend to operate on a semi-formal basis without any formal application procedure or structure. They are usually based in mosques or the Imams home with the Imam speaking little or no English and having no formal legal qualifications other than being very well versed in the traditional Islamic Sciences. Above all, these councils and Imams rely heavily on the trust and good will of the parties, as any determination or award have no basis in law and cannot be enforced against the other party if the other party refuses to accept or abide by it. Unfortunately, the human ego being the beast that it is, will usually ensure that the losing party does not accept the decision given by the council, thereby antagonising the other party and forcing it to resort to issuing formal legal proceedings. Depending on what it is being sort, such proceedings can become protracted and very costly with the only people benefitting being the lawyers and judicial system. Therefore, whilst matters relating to Islamic marriage and divorce can be dealt with relative ease by such councils or Imams, other types of disputes cannot.

It was in light of such short comings with the existing Sharia councils that MAT was established in 2007 under the supervision and guidance of Shaykh Faiz Siddiqi and other like minded lawyers and Islamic scholars to provide a viable alternative for the Muslim community seeking to resolve disputes in accordance with tenets of Sharia and without having to resort to costly and time consuming litigation. The establishment of MAT is thus an important and significant step towards providing the Muslim community with a real opportunity to self determine disputes in accordance with their faith.

MAT is based upon what is described in law as “alternative dispute resolution”, ADR. This is an alternative to legal proceedings in a court of law. It includes the forms of arbitration, mediation and reconciliation. English civil law uses the adversarial process whereby the loser pays the costs of the winner. However if the loser is legally aided, that is, funded by the state, the winner may be obtaining a hollow and expensive victory as he or she is unlikely to



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recover their costs. For some people, the experience of the courtroom leaves a permanent scar. They do not always appreciate this before embarking on the process. Lawyers and judges are more sensitive than they used to be but the occasional case of insensitivity does occur and receives much publicity.

In the United Kingdom at least, there seems to be very little awareness of the fact that ADR is actually encouraged, especially following the Civil Justice reforms introduced by Lord Woolf a decade ago. In fact a court may also impose a costs penalty on a litigant who fails to consider ADR and even a successful party who refuses to use ADR by depriving them of costs. As mentioned a form of ADR is arbitration. Under Section 1 of the Arbitration Act 1996, parties are free to agree how their disputes are resolved and thus free to apply any law or laws, codes or principles that they so choose, so long as the public interest is not at stake. It therefore follows, that Muslims who seek to resolve a dispute through arbitration applying the tenets of Sharia should not be precluded from so doing. MAT thus offers the Muslim community the regular benefits of arbitration supplemented with the technical expertise to have decisions made according to their faith. It was on this basis that MAT was established.

An example of how ADR works and is used by MAT are mosque disputes. Since mosques are usually registered as charities, such cases inevitably involved the Charity Commissioners leading to cases ending up in the High Court with expensive litigation to the dismay of the community who had made charitable donations in the cause of promoting their religion. Recently the Charity Commission recommended parties to an ongoing dispute to use mediation, and MAT was used. This process started in March 2009 with the nine-year dispute at the main mosque in Walthamstow, London. The mediation strategy adopted by MAT was successful and within a few months elections took place. The process involved discussions with opposing factions and the local police. I believe that this also serves as a good example of how the implementation of Islamic legal norms as a form of ADR can also assist government agencies in dealing with disputes within the Muslim community.

A question often asked by many, is how does MAT operate? MAT has a formal written constitution dealing with its internal structure, operation and administration. At the helm is Shaykh Faiz Siddiq who is the Chairman and founder of MAT and who presides over the Governing Council which meets as required and manages the overall structure and policy decisions for MAT and also performs a disciplinary function over arbitrators appointed to the arbitration panel. There is then a separate Judicial Council which deals with the appointment of judges to the arbitration panel, case management and other legal issues that may arise.

With regard to cases that are submitted to MAT for formal arbitration, there are detailed Procedural Rules which regulate and govern MAT to ensure that MAT operates within defined parameters, that is, under the Arbitration Act 1996 and within the legal framework of England and Wales. Accordingly, all applicants who seek resolution to their dispute must first make a formal application to MAT for consideration, as MAT is confined by law as to what matters it can and cannot deal with, so that criminal offences, formal civil divorce, child custody and inheritance would be precluded. Once an application has been approved, both parties must then enter into a formal arbitration agreement in which they agree to submit to the jurisdiction of MAT. Should the matter then progress to a formal hearing, the Procedural Rules require that the Tribunal must consist of at least two arbitrators, one an Islamic



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Scholar and the other a legally qualified lawyer registered to practice in England or Wales. This provides a form of checks and balances ensuring that both the proceedings and any determination or award whilst applying the tenets of Sharia remain within the provisions of the Arbitration Act 1996 and legal framework of England and Wales. The process is also open to appeal by way of judicial review of the High Court, but as yet there have been no such appeals.

I believe that MAT's primary work and function is indeed the implementation of Islamic Legal norms in the UK through the existing legal framework. MAT provides the medium through which Sharia can be applied to resolve a dispute between Muslims through existing UK law, namely under the Arbitration Act 1996. Section 1 of the Act states that, "the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest". The fundamental point being, that private disputes between individuals may be resolved as they wish applying any laws or principles they so choose including Sharia, which is something that is clearly covered by Articles 8 & 9 of ECHR. The Arbitration Act therefore clearly precludes any jurisdiction over criminal offences and matters of personal status which are for the state to deal with and by which MAT abides.

Without doubt, from discussions with Muslims, the most appealing aspect of MAT is the fact that any determination or award can be enforced through the existing means of enforcement via the civil courts as for any normal litigant. Clearly this would not have been possible had MAT sought to operate outside the existing legal framework as do the Sharia councils who are unable to have any award or determination enforced through the civil courts and therefore being an unattractive option for Muslims. I believe from what I have said thus far, it is clear to see the strategic role and function of MAT in the implementation of Islamic Legal norms in the UK and by extension Europe.

Needless to say, it has not been plane sailing. As I have already mentioned there has been barrage of hostile press and general opposition to Sharia councils and the implementation of Islamic Legal norms. This has been the case for a number of years now, but I believe the hostility and opposition has certainly increased since the inception of MAT in 2007, in the United Kingdom at least. It is unfortunate that in Europe now, any mention of Sharia or Sharia courts tends only to conjure up images of floggings, stonings and beheadings carried out in some Muslim states. The primary criticisms on the implementation of Islamic legal norms tend to focus on the apparent contradiction with human rights law and secular values. Examples and arguments cited in this debate and discussion seem only to want to focus on the treatment of women under Sharia and the penal code. However, for many Muslims who seek the implementation of Islamic legal norms in Europe, they feel that the discussion has been hijacked solely by these issues to the exclusion of all else.

Dealing first with the issue of women: despite the very vocal and strong opposition by campaigns such the "One Law For All Campaign", the fact remains that the majority of applicants to Sharia councils and to MAT are women. On behalf of MAT at least, I can confirm categorically that these women are not the "oppressed uneducated simpletons" who have been forced to go to a Sharia council against their will or for not knowing any better or what their rights are as British citizens. These women are young, educated and certainly not unaware of their rights and what they are entitled to under both Sharia and UK law. In fact

only last week I received an email from a young woman asking if her divorce case can be transferred from the civil courts to MAT. Clearly, if she had felt that she was likely to be treated unfairly under Sharia or was likely to be prejudiced in anyway, I do not believe that she would have made such a request to MAT. She has made this request to MAT bearing in mind that she has formally instructed a firm of lawyers to advise her as to her rights under UK law and represent her in formal divorce proceedings. I would also like to point out that women do also sit as the legally qualified members on the Panel within MAT.

Furthermore, despite the growing criticism of the treatment of women in Islam and under Sharia, the majority of reports and studies on conversion to Islam clearly suggest that more women are converting to Islam than men. In fact only in May of this year an article in the Sunday Times dealing with British women converting to Islam quoted a spokesman for the London Central Mosque as stating that almost two thirds of those converting to Islam are women and who are predominantly aged under 30. Elsewhere, there are reports suggesting that 4 out of every 5 converts are women.

The concerns expressed surrounding the imposition of Sharia penalties and human rights within the context of this case study in particular, I do not believe are relevant, for the simple reason that neither MAT or indeed any Sharia council so far as I am aware seek to implement Sharia penalties. The implementation of Sharia penalties requires a true Islamic state which so far as most scholars of classical Islam are concerned, does not exist and an Islamic court which neither MAT nor the many Sharia councils claim to be, despite what one may read in the press. It is for this reason that I prefer to use the term Sharia council as the term Sharia court has many other connotations. For Muslims Sharia is not simply a legal code, but is considered to be Sacred Law that regulates formal acts of worship and also social interaction.

Within the context of our discussion, it should be evident by now that any implementation of Islamic legal norms in Europe can only really be within the law of member European states which in turn are subject to the European Convention on Human Rights and Fundamental Freedoms. Thus, to the extent that Islamic legal norms may be implemented in Europe, this is curtailed by legislation in each member state. The example of MAT is prime in this regard. As stated earlier, MAT operates under the Arbitration Act 1996 without which it would have no backbone or real basis to arbitrate in disputes between parties who wish to have their dispute resolved through the application of Sharia. MAT is therefore not operating outside the law, but within it, and which in turn is subject to prevailing human rights legislation. To further illustrate the point, prior to 2010 MAT could not operate north of the border in Scotland, as there were no formal provisions for arbitration under Scottish Law. However, since the passing of the Arbitration Act 2010 in Scotland, MAT is now in the process of establishing a presence in Scotland. Again, the point being, that MAT operates under existing legislation and is not operating some kind of parallel judicial system or seeking to implement Sharia or Islamic legal norms through the back door as some commentators would have us believe and thereby seek to evade European human rights legislation.

Article 9 of ECHR provides for freedom of thought, conscience and religion and therefore I believe that there should be no issue at all with two individuals, who with clear intent and full understanding and through their own free will and volition seek to have a dispute resolved



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through MAT applying the tenets of Sharia in accordance with their religious beliefs and practices. It is acknowledged by Article 8 of the ECHR that there is a public and private domain and it is within the private domain that the implementation of Islamic legal norms in this context is sought.

Having been born, raised and worked within the Muslim community in the United Kingdom, there are many practices which are more cultural than Islamic and often it can be such practices that make the headlines and reported as being sanctioned by Sharia or Islam. Not allowing young girls to attend college or university or seek employment, forcing children into marriage and even honour killings for bringing the family name into disrepute can all be cited as examples of this. I believe it is such cultural conflicts and issues coupled with the reports of violence and oppression in the name of Sharia from totalitarian regimes in the Middle East that is undermining the attempts to implement Islamic legal norms in Europe. As a result, other than formal arbitration, MAT has also sought to play an active role in dealing with underlying causes to such social problems within the Muslim community. This is illustrated by its role in forced marriage cases. MAT produced a report as part of its forced marriages campaign entitled “Liberation from Forced Marriages” in which it was maintained that the position of forced marriages are greater in number than even the government had thought, and instead of trying to hide this fact, MAT has described it as a ‘crisis’ in the Muslim community that needs to be dealt with. MAT takes a strong view against forced or coerced marriages and has welcomed the introduction of the Forced Marriage Act 2007 as an attempt to address this issue, and has been involved with discussions with the government, local authorities and police forces.

MAT has also highlighted that in a Scottish civil divorce the judge can make the granting of the divorce conditional upon the parties granting or obtaining their religious divorce at the same time. This is a simple solution to the limping marriage problem in England and Wales that is, where a party is able to obtain a civil divorce but not an Islamic divorce because the other party refuses, but it does not appear to be finding favour with the government as a possible legal reform.

As mentioned previously, the sphere of Sharia in the United Kingdom is restricted to the private and personal domain focusing mainly on formal worship, marriage, divorce and financial disputes. The fact that Sharia councils have been dealing with such matters for the past 30 years or so without any real awareness or opposition, until recently that is, from the general population, is surely proof that there is scope for some incorporation of Islamic legal norms through legislation without infringing anyone else’s personal freedoms or choices. Indeed, with regard to financial instruments that are Sharia compliant these have already been incorporated into UK law by the Treasury so that Sharia compliant mortgages, bank and trading accounts are now available. It is therefore hoped that aspects of Muslim family law, in particular Islamic marriages should be recognised by UK law. Such a move would surely be conducive towards helping the Muslim community to further integrate as a minority within the host community.

I believe that that what allows us to live together in mutual respect and harmony in a multicultural society is the correct legal framework. An example of this may be observed in the United States where religious arbitration is gaining popularity, and courts have generally



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enforced arbitration clauses in contracts where the parties agreed to refer disputes to a religious authority or arbitrator.

One federal district court recently addressed the First Amendment concerns in enforcing religious arbitration awards, and determined that judicial enforcement is, in fact, constitutional. In *Encore Productions v. Promise Keepers*, Encore Productions ("EP") contractually agreed with Promise Keepers ("PK"), a Christian evangelical organization, to provide production and consulting services for a number of PK's religious meetings and conferences. The contract contained an arbitration provision stating that the "Holy Scriptures shall be the supreme authority governing every aspect of the conciliation process." When a dispute arose, EP challenged the clause arguing that the religious arbitration violated the First Amendment. The Federal District Court for the District of Colorado held that the arbitration award was enforceable. The court said that although it could not force parties to settle disputes through religious tribunals, if parties agreed to do so then it would be proper for the court to enforce the agreement.

I believe that the Muslim Arbitration Tribunal since its inception in 2007 has acted as a catalyst in this discussion and will continue to have an important and pivotal role within the Muslim community at least, in the ongoing discussion and debate surrounding multiculturalism, fundamental rights and freedoms, and of course, the implementation of Islamic Legal norms in Europe.