



## Islam in Britain, Part II: The Call for *Shar'iah* Law

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The London *Sunday Times* reported on September 14, 2008:

Islamic law has been officially adopted in Britain, with *Shari'ah* courts given powers to rule on Muslim civil cases.

The government has quietly sanctioned the powers for *Shari'ah* judges to rule on cases ranging from divorce and financial disputes to those involving domestic violence.

Rulings issued by a network of five *Shari'ah* courts are enforceable with the full power of the judicial system, through the county courts or High Court.

Previously, the rulings of *Shari'ah* courts in Britain could not be enforced, and depended on voluntary compliance among Muslims.

It has now emerged that *Shari'ah* courts with these powers have been set up in London, Birmingham, Bradford and Manchester with the network's headquarters in Nuneaton, Warwickshire. Two more courts are being planned for Glasgow and Edinburgh.

Sheikh Faiz-ul-Aqtab Siddiqi, whose Muslim Arbitration Tribunal runs the courts, said he had taken advantage of a clause in the Arbitration Act 1996.

Under the act, the *Shari'ah* courts are classified as arbitration tribunals. The rulings of arbitration tribunals are binding in law, provided that both parties in the dispute agree to give it the power to rule on their case.

This is no mere symbolic matter. It has profound constitutional significance according to some analysts and also has a serious spin-off for the Jewish community. To take the latter

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point first, and using the same article,<sup>2</sup> “Inayat Bunglawala, Assistant Secretary-General of the Muslim Council of Britain, said: ‘The MCB supports these tribunals. If the Jewish courts are allowed to flourish, so must the *Shari`ah* ones.’” The *Sunday Times* had declared,

Jewish Beth-Din courts operate under the same provision in the Arbitration Act and resolve civil cases, ranging from divorce to business disputes. They have existed in Britain for more than 100 years, and previously operated under a precursor to the act.

Parallels to the Jewish community’s position appear reasonable until scrutinised further. The Bible is a fundamental in the history of the development of British jurisprudence and underlies much of the English legal system. Punishments fitting the crime and being proportionate and so appropriate represent just one, somewhat crucial, example and apply the Lex Talionis in so being. So too, equality before the law is by no means applied in all Muslim societies or countries (where dhimmitude has historically meant disadvantaged and women have suffered inferiority). Nor have Jewish terrorists, neither as doctors nor as those resentful of Western foreign policies,<sup>3</sup> ever acted from within Britain against it and its values. So history and juridical distinctions do not suggest equality between Jewish and Muslim law and the societies from which they derive.

In examples of treatment of domestic violence and inheritance, there are clear differences between English law and that of *Shari`ah*. Both are in a sense mainstream legal issues. Operating a separate entity might not only mean a precedent for a different system for other groups (for example, Hindus), but also represent a foundation on which to build rulings from *Shari`ah* which involve, for instance, mutilation. The *Sunday Times* reported:

There are concerns that women who agree to go to tribunal courts are getting worse deals because Islamic law favours men.

Siddiqi said that in a recent inheritance dispute handled by the court in Nuneaton, the estate of a Midlands man was divided between three daughters and two sons.

The judges on the panel gave the sons twice as much as the daughters, in accordance with *Shari`ah*. Had the family gone to a normal British court, the daughters would have got equal amounts.

In the six cases of domestic violence, Siddiqi said the judges ordered the husbands to take anger management classes and mentoring from community elders. There was no further punishment.

In each case, the women subsequently withdrew the complaints they had lodged with the police and the police stopped their investigations.

In terms of the legal and political contexts, however, there are further issues:

Politicians and church leaders expressed concerns that this could mark the beginnings of a “parallel legal system” based on *Shari`ah* for some British Muslims.

Dominic Grieve, the shadow Home Secretary, said: “If it is true that these tribunals are passing binding decisions in the areas of family and criminal law, I would like to know which courts are enforcing them because I would consider such action unlawful. British law is absolute and must remain so.”

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<sup>2</sup> To be found at <<http://www.timesonline.co.uk/tol/news/uk/crime/article4749183.ece>>.

<sup>3</sup> See <<http://www.dailymail.co.uk/news/article-1095591/So-Britain-able-expel-terror-case-doctor.html>>.

Douglas Murray, the Director of the Centre for Social Cohesion, said: “I think it’s appalling. I don’t think arbitration that is done by *Shari`ah* should ever be endorsed or enforced by the British state.”

Establishment figures have made it clear that the direction in which they think the legal system may be travelling. In July 2008, the head of the judiciary, the Lord Chief Justice, Lord Phillips, said that *Shari`ah* could be used to settle marital and financial disputes. This, following the outspoken comments by the Archbishop of Canterbury to similar effect, previously, has produced a considerable number of raised eyebrows. However, the possibility of a deep division in public life is very real. A writer for the left of centre *Guardian* has commented, tellingly,<sup>4</sup>

To talk about it splintering the UK is plain ridiculous. We already have several legal systems – there is Scottish law for one, and the Channel Islands have their own legal system. And these jurisdictions are entirely different legal systems, unlike what is being discussed in relation to *Shari`ah* or Jewish religious law.

But there is an important long-term issue here. If Phillips helps to promote our understanding of *Shari`ah* courts, that would only help them to come out into the open. Muslim lawyers and imams need to explain the processes of *Shari`ah* courts and together with those outside the Muslim community, ensure that there is no discrimination against women and that their interests are protected.

That is a matter of great importance to Muslims and to non-Muslims, so it seems to me that there is work to be done more effectively on this issue, with *Shari`ah* courts acknowledged by the state and perhaps even receiving some funding to ensure better standards of procedure and training. But who is going to be brave enough to propose state funding for *Shari`ah* courts?

What lies behind all this, is a creeping acceptability, a stealthy Islamicisation and a failure to recognise that the take-over of societies must mean a transformation in their legal systems. Once state funding and education of the public in *Shari`ah* occur, then already Islamic law and mores have recognition and scope for future growth and will only have to submit to the universal law of the land where there is direct conflict with existing law.

An idea of the view taken by one significant group may be estimated from this comment:

The audience overwhelmingly supported the following resolution at the end of the plenary: The conference calls on the UK and European governments to bring an end to the use and implementation of *Shari`ah* law, which is discriminatory against women and children in particular, and to guarantee unconditional equal citizenship rights for all.

The group? The Council of Ex-Muslims of Britain.<sup>5</sup>



<sup>4</sup> Madeleine Bunting, “Lord Phillips: Talking Sense on *Shari`ah*”, *The Guardian*, July 4, 2008, at <<http://www.guardian.co.uk/commentisfree/2008/jul/04/islam.religion>>.

<sup>5</sup> At their first international conference, October 10, 2008, at <<http://www.ex-muslim.org.uk/eng/pressreleases/press-pages/Conference-Report-October10-2008.htm>>.