

Why is the Law Society promoting Islamic rules and legal services?

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*After attending a seminar held by the Law Society on Islamic rules and legal services, **Sadikur Rahman** reflects upon the Society's desire to develop its members' knowledge of sharia law in the UK and questions how this contributes to Muslim people's freedoms.*

Not satisfied with [issuing guidance on sharia inheritance and succession rules](#), the Law Society it seems is now even more enthusiastic about sharia law than we previously thought. Clearly, none of the criticism it has faced has led to a re-think.

It held a talk on 24 June 2014 called "[Developing services for Muslim clients – an introduction to Islamic rules for small firms](#)" The Law Society was very keen to ensure its members (or those who attended the talk) knew how to apply sharia law provisions for clients who may request such a service.

The talk focused on three areas: wills and succession; Islamic finance; and marriage, divorce and child custody. It was led by a panel of senior lawyers who seemed to have quite a lot of knowledge of the intricacies of sharia law, although it must be said not a particularly "reformist" one.

From a secular perspective I do not see a huge problem with Islamic finance and the products which are being offered by financial institutions as "sharia compliant". Indeed the talk focused on what that might mean and highlighted the fact that so-called "scholars" (who the speakers seemed to have a very high opinion of) might have divergent views on what is "sharia compliant". As long as these products are available to all, then they are simply another form of bond or financial transaction not very different from any other. The proponents of Islamic finance try to argue that it is a form of ethical finance, so for example there would be no investments in gambling, alcohol or pornography. This really is no different from many other "ethical" products/banking services currently in the system. On the whole the products offered such as Islamic mortgages or car finance add an amount to be repaid in addition to the capital sum, which seems to be roughly the same as if interest were charged although of course it is not called that.

It is far more concerning, however, when sharia moves into the personal realm of family life. The debate about sharia compliant wills has been going on for a while, and despite all the criticism it has faced the Law Society do not seem in the least bit concerned that discriminatory practices are being endorsed. It seems to have been accepted by the panel that the sharia rules in relation to succession are discriminatory, again highlighting that, contrary to what many Muslim reformers might argue, there is a long way to go before sharia law is reformed. The panel's point of view was that although it is discriminatory, as we have freedom of testamentary disposition it does not matter that it is discriminatory because people can behave in such a manner anyway in relation to their assets. The right to freedom of testamentary disposition is used as an argument in favour of promoting these services.

What I feel is missed, is that for Muslims or at least those Muslims who feel very strongly about their religion, it is not a choice as to whether to follow sharia or not: they must follow it. If the service is offered, Muslims may feel compelled to use these services as part of their religious

obligations. Surely, this is in fact taking away their freedom of testamentary disposition. These rules are sanctioned by the Quran – there is no freedom for Muslims to distribute their assets otherwise. The only part which is in any way similar to an "English" will is the "freely disposable third". However, that can only be given to charities and not to other members of the family such as a daughter who may have been disinherited by the rules.

By promoting these services for Muslims in England and Wales, they are offering the prospect for Muslims to live according to a different set of rules than other people. From the Law Society's point of view it's simply a matter of choice, but for Muslims, it may not be a matter of choice; in fact the option to choose is being taken away from them, especially if one goes to a solicitor who then tells them their will may not be sharia compliant. I accept that people can discriminate in their wills anyway, but why promote it or bring it to people's attention?

The talk then ventured into even more worrying territory, such as how sharia law views marriage, divorce and child custody. It was made clear that Muslim women can request a divorce from their husband or the sharia council, but it wasn't made clear that a man need not request anybody's permission to divorce his wife. In keeping with the tone of the talk that little bit of fundamental discrimination and inequality was ironed over or studiously ignored. The talk focused on the kind of proofs a wife may need to obtain a divorce and also tackled the "straw man argument" that apparently everyone thinks Muslim men can divorce at will, as if that, rather than the fundamental inequality between men and women was a cause for concern. We were told that this was not the case and in fact the couple should wait a month before each pronouncement of divorce.

With mediation being encouraged by the family courts and becoming the way forward to resolve all marital disputes, it is inevitable that sharia councils and the Muslim Arbitration Tribunal will step in to offer these services in a sharia law setting. Firms approached by Muslim clients will be able to offer their services to represent them at these tribunals. This, I fear, will lead to the operation of a parallel system of law – used solely by Muslims, albeit nominally under the aegis of English law.

Finally, we were advised on the rights of divorcing couples in relation to children. It was pointed out very clearly that all things being normal – no abuse, mental illness, etc – the sharia law position is that children will go to the mother until the age of 7, and thereafter return to the father. It was said the family courts ought to take this into consideration. If someone went to a sharia council to mediate on this, that is the advice they would be given. No thought, it seems, is being given to the fundamental principle in English family law that the interests of the child are absolutely paramount.

Most worryingly the panel seemed completely unaware of the very relevant case of [*EM \(Lebanon\) \(FC\) \(Appellant\) \(FC\) –v– Secretary of State for the Home Department \(Respondent\) 2008.*](#)

The case concerned an appeal by a divorced mother to be allowed to remain in the UK on the basis that if she were forced to return to Lebanon her right to family life under Article 8 of the European Convention on Human Rights would be breached, because of the impact of sharia child custody rules on her and her family. The Lords agreed with her. It is I think worth quoting the relevant paragraphs from Lord Hope in full, as it a clear statement of the incompatibility of certain sharia laws with human rights (emphasis added):

5. There is however one aspect of this case which I have found particularly difficult. The appellant came to this country as a fugitive from Shari'a law. Her son had reached the age of seven when, under the system that regulates the custody of a child of that age under Shari'a law in Lebanon, his physical custody would pass by force of law to his father or another male member of his family. Any attempt by her to retain custody of

him there would be bound to fail. This is simply because the law dictates that a mother has no right to the custody of her child after that age. She may or may not be allowed what has been described as visitation. That would give her access to her son during supervised visits to a place where she could see him. But under no circumstances would his custody remain with her. The close relationship that exists between mother and child up to the age of custodial transfer cannot survive under that system of law where, as in this case, the parents of the child are no longer living together when the child reaches that age. There is a real risk in all these cases that the very essence of the family life that mother and child have shared together up to that date will be destroyed or nullified.

*6. This system was described by counsel during the argument as arbitrary and discriminatory. So it is, if it is to be measured by the human rights standards that we are obliged to apply by the Convention. The mutual enjoyment by parent and child of each other's company is a fundamental element of family life. Under our law non-discrimination is a core principle for the protection of human rights. The fact is however that Shari'a law as it is applied in Lebanon was created by and for men in a male dominated society. The place of the mother in the life of a child under that system is quite different under that law from that which is guaranteed in the Contracting States by article 8 of the Convention read in conjunction with article 14. There is no place in it for equal rights between men and women. It is, as Lord Bingham points out, the product of a religious and cultural tradition that is respected and observed throughout much of the world. **But by our standards the system is arbitrary because the law permits of no exceptions to its application, however strong the objections may be on the facts of any given case. It is discriminatory too because it denies women custody of their children after they have reached the age of custodial transfer simply because they are women.** That is why the appellant removed her child from that system of law and sought protection against its effects in this country.*

The case law is therefore quite clear. Why then was this talk advising us what the sharia law was in relation to these areas of law? It was not simply giving information – which would be understandable. I would even understand it if the talk was giving guidance on say the law in Gulf states or Egyptian law or Bangladeshi law which all have elements of sharia law in them and which one could quite easily point to, by reference to statutes. Indeed there are many clients, for example British Bangladeshis, who would benefit from guidance and advice about Bangladeshi law. Plenty of firms operate in the Middle East and so need to be aware of the laws in those countries. Even if it is based on sharia law, any such country guidance would be based on clear law and statute – not a nebulous concept of "sharia law". The point being that the laws in those countries may not tally with an agreed version of sharia law as there is no such thing, but would nonetheless be a more useful piece of guidance.

So again why is the Law Society doing this? It intends to have more detailed seminars in the future. I feel it is another example of national identities and cultures being subsumed into a stronger religious identity. It seems to me that the Law Society is developing and promoting sharia law because it has been lobbied by groups wanting to promote sharia law. It was positively encouraging the listeners to be aware of these rules so they could advise their Muslim clients when preparing wills, prenuptial agreements or divorce settlements whether financial or in relation to children.

I found the tone of the talk to be one of an unquestioning belief that sharia rules are worthy of being considered law. Sharia is not law, it should not become law and it should not be given the

credibility of being considered as law. If people want to live according to what they consider sharia law in the UK they can do so, as far as is legally possible in the civil matters stated above and they can get advice from the mosque and the internet. It should not, however, be the job of the Law Society to advise us what "sharia law" is

Sadikur Rahman is a member of the Lawyers Secular Society. The views expressed in our blogs are those of the author and do not necessarily represent the views of the LSS or of the NSS.

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