Islam, Shari'ah Courts, Islamisation and the Far-Right

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The controversy sparked off by the Dutch MP Geert Wilders [1] being denied entry to the UK (he boarded a plane and landed in Heathrow only to be sent back), may have generated more publicity for his film, and therefore for his anti-Islam message, than Wilders could have hoped. It has also, arguably, fuelled the propaganda of those on the far-right who say that Muslims are succeeding in their campaign to give Islam a privileged position within British Society. They contrast Wilders' exclusion to those extremist Islamists [2] who have long found in Britain a home. [3]

Anti-Islam and anti-Muslim sentiments have been expressed in various influential quarters across Europe. Extreme factions on the right who hold such views have been gaining much influence in the last few years. In one debate involving the Danish immigration minister and another MP, they decided, for the sake of brevity, that it would just be easier to describe themselves as 'anti-Muslim.' [4] Wilders wrote that 'The core of the problem is fascistic Islam, the sick ideology of Allah and Mohammed as it is set out in the Islamic Mein Kampf: the Koran' and 'I have had enough of Islam in Holland: Not one more Muslim immigrant should be let in. I have had enough of the reverence for Allah and Mohammed in the Netherlands: There should not be even one more mosque. I have had enough of the Koran in the Netherlands. Ban that wretched book.' [5]

The rise of an anti-Islamic right across Europe, and recent debates surrounding the incorporation of Shari'ah and Shari'ah 'courts' [6] into European legal systems, are not unrelated phenomena. Indeed an odd symbiosis has been established. Islamist and extremist ideological movements push, fantastically, what they would describe as an 'Islamisation' agenda, seeking to Islamize Europe. Some on the far-right, equally fantastically, argue this has already taken place, or is about to take place.

At the heart of the fear whipped up by the far-right is the Islamists demand for a separate and parallel legal system based upon 'Shari'ah' or, rather, a number of specific interpretations of the Shari'ah – for there are different 'schools' [8] which have existed for over a millennium, each interpreting the religious code of the Muslims,

traditionally called Fiqh [7], i.e. human interpretations and understandings of the Shari'ah. As this raises the question of who should decide which Fiqh Muslims should follow, or indeed which is acceptable for them to follow, it would plainly be absurd for the British government to seek to define the religious interpretation which should be adopted by a Shari'ah court.

This demand has reinforced existing fears that Muslims cannot exist within non-Muslim legal traditions and political systems, and instead of accommodating themselves, must either have separate legal systems, or change existing legal and political frameworks. In short, all Muslims, especially women wearing a veil, as one MP in Denmark stated, must be fifth columnists [9] seeking to bring down every other political order and take over the world.

In this article I would like to look at some of the arguments surrounding Shari'ah courts and provide a mainstream Islamic perspective, explaining why they are not necessary and why most Muslims, guided by mainstream Islam, do not share the Islamists designs on the UK. Europe, and the UK in particular, can be considered by Muslims as places where they can live and interact as citizens within society, as it is.

Arbitration by Shari'ah: The basic argument

Arbitration by Shari'ah is necessary for matters pertaining to marriage, divorce and conflict resolution, or so it is argued by proponents of Shari'ah courts. These courts, or more accurately 'tribunals,' they say, must have a Muslim scholar of Shari'ah and a legal expert (which even moderate conservatives have insisted should be a Muslim), in order to ensure that the resolution is both legally and 'Shari'ah' compliant. They would issue binding settlements – as the parties have in principle agreed to the binding nature of the decision. Protagonists of Shari'ah courts have argued that these settlements are legally binding according to the Arbitration Act 1996 [10], and thus enforceable. Others have stated that this should be recognized as a parallel and alternative legal system. [11] These arguments are based on a series of flawed assumptions.

Four Flawed assumptions

1. 'Shari'ah courts can operate under the Arbitration Act'

This is the first fundamentally flawed assumption made by the proponents of Shari'ah courts. Firstly, it is not the remit of the Arbitration Act to deal with statutory issues

which are already laid out within family law, or criminal law but within civil law areas. [12] Secondly, the scope of the act does not cover issues which are raised in this regard, which are mainly to do with statutory legislation which cannot be contravened. Any agreement reached through this mediation process (note, not 'arbitration' as it would still be subject to a UK court) which is not a just resolution in the view of a UK court would be immediately overturned and not be considered binding.

2. 'Muslims need Shari'ah Arbitration'

The idea that arbitration is somehow a Shari'ah matter is another error. Since medieval times Muslim scholars have recognised that resolving disputes does not require a Shari'ah expert, or even anyone familiar with the dictates of the Shari'ah. Rather, they cite incidents from the prophetic era that demonstrate that it was acknowledged that wise people who had influence in their respective communities would be able to resolve disputes. [13] In fact, pre-modern Muslims scholars went further in stating explicitly that arbitration did not require a Muslim, but rather someone of sound intellect – whether he [14] or she was a Muslim was not relevant. [15] Arbitration is not about enforcing a ruling from the Shari'ah, so there is no requirement for a either a Muslim Shari'ah expert to apply a judgement, or a Shari'ah court. What is needed is the skilful resolution of disputes by trained mediators.

3. 'Without Shari'ah, Muslims can't get an Islamic divorce'

This is a particularly problematic aspect. Muslim women are informed that they cannot get a divorce, and so remain religiously tied to their husbands, until they have either received a divorce from their husbands or from a Shari'ah court. This has left women at the mercy of courts that are not authorized through any legal recognition [16], do not operate according to any explicit standards, and are unregulated. These courts are dominated by the opinions of a man who may refuse to grant a divorce to a woman even after the woman is divorced according to UK law. This has led to many women being trapped in horrible circumstances, their religious sentiments abused for many years before the self-appointed religious authorities sanction a divorce.

And yet the truth is that Muslim scholars have traditionally advised Muslims to seek divorces from courts within the legal system that they live in, and that these would be legitimate divorces both on religious grounds and according to the law of

the land. Pre-modern scholars have long advocated this for Muslims living in areas which have a majority non-Muslim population or even in fact where non-Muslims were judges in Muslim-majority countries. [17]

4. 'British Law is not binding on Muslims according to mainstream religious edicts, so we Muslims need a parallel legal system'

In fact, the opposite is true. Most Muslim scholars explicitly cite religious edicts making it binding upon Muslims, from a religious as well as a moral and legal perspective, that they should adopt the prevailing legal norms and standards within their own contractual undertakings. Sheikh Abdullah Bin Mahfudh Bin Bayyah, a leading contemporary authority on Shari'ah, explained this from a Shari'ah maxim which states 'a well known custom is considered similar to a stipulated condition.' In other words, Muslims in all of their undertakings come within the framework of British law, or the law of whichever country they happen to reside in, and therefore the laws of that country are the rules they should abide by. He explicitly states that you are married and divorced according to the laws of those countries. [18] He also cites the concept of *Maslaha* or public benefit, and that this also necessitates Muslims adopting the laws of the country they reside in.

In our case it would mean that UK law and courts would be binding from a Shari'ah perspective. This should remove the call for a parallel legal system and quash the hysterical idea that 'Muslims' are seeking to Islamize the UK. Seeking to Islamize the law is not an inherent aspect of the Islamic faith to do so. [19] As I have shown, quite the opposite is the case.

Final thought

We face an odd situation in which a series of misleading notions – misleading in the eyes of the mainstream Muslim tradition and for most Muslims – are in danger of becoming accepted, pushed by a symbiotic alliance of Islamists and Wilders-types: the notions that Muslims need, and must seek, Shari'ah courts and a parallel legal system, that Islam must seek to establish its own legal and political order, and that Muslims, therefore, are the bearers of a deep-seated desire to achieve their own political hegemony over non-Muslims. [20] The opposite, I have shown, is true. For Muslims, the UK is their homeland where they can practice their faith and live by Islamic principles.

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Notes

[1] http://news.bbc.co.uk/1/hi/uk_politics/7885918.stm

[2] 'Islamist' and 'Islamism' will be used throughout in order to differentiate that phenomenon from mainstream Islam. Islam is a diverse faith with many different traditions contained within it. Islamism is an intolerant political ideology which seeks to establish a global expansionist Islamist State (the *al-Qaeda* vision of a caliphate), with a medieval and single interpretation of Shari'ah. The caliphate would initially be created in Muslim-majority countries, but would then take over other countries through diplomacy and a Jihadist foreign policy. This vision is shared by all Islamists though strategies differ – ranging from entry level political Islamists, such as *Jamat-e-Islam*, revolutionaries like *Hizb ut-Tahrir*, and militants like al-Qaeda.

[3] The recent invitation to Ibrahim el-Moussaoui, an advocate for suicide bombing in Israel, to lecture on 'Political Islam' at the School of Oriental and African Studies, in London, poignantly makes this point. See: http://www.lebanonwire.com/0206/02060802DS.asp

[4] In a May 2008 debate between Søren Krarup and the Danish Minister for Immigrants, Refugees and Integration: 'We are opponents of Islam's fanatical and fundamentalistic movement towards the West and Christianity. To be a Muslim is to profess to Islam. So, when the journalists demanded a quick response we had to say that we were anti-Muslim.' http://www.danskfolkeparti.dk/S%C3%B8ren_Krarup_MUSLIMER_-_med_hilsen_til_Birthe.asp

[5] For more of Wilders' opinions, see: http://www.militantislammonitor.org/article/id/3094

[6] Shari'ah is usually translated as 'Islamic Law,' which is not an entirely accurate translation and fails to capture the rich understanding of the term within Islam. Literally it means 'a path leading to water' and terminologically refers to 'Gods speech to do with human conduct' by Muslim specialists of Shari'ah. (See Imam Shawkani's '*Irshad ul-Fuhul ilaa Tahqiq ul-Haq min ilm ul-Usul*' or other classical works of the Principles of Shari'ah (*Usul*) for this definition).

[7] Fiqh is defined by scholars of *Usul* as 'the knowledge of practical Shari'ah rules' which will range from how a Muslim should wash before prayers to broad principles regarding marriage and divorce. It is defined separately from Shari'ah, as Shari'ah technically refers to the expression contained in the text, and Fiqh to human understandings of the Shari'ah. These understandings are subject to huge disparities, affected as they are by the background, environment and tradition of the scholar. The scholar's judgements are the opinion of an individual and should not be considered sacred and unquestionable.

[8] The term *Mazhab* literally means 'way' and is used to mean an understanding of the Shari'ah in a given question (small m), or the general method of interpreting Shari'ah or school of fiqh (capital M). Though there are four mainstream orthodox schools within the Sunni sect of Islam, there are also heterodox non-aligned schools such as the Wahhabi movement – a 19th century attempt at a puritanical return to original scriptures without recognizing the authority of the extant schools. Similar different traditions exist within the Shia schools.

[9] Søren Krarup MP to Politiken.dk in Nyhedsavisen 19-04-2007:

'In so far as one says that the swastika is the symbol for Nazism so is the case of Islam's veil. The veil symbolises a totalitarian ideology's demand that everyone who does not share its points of view and attitudes is an infidel and rightly ought to convert, and if they refuse they must be exterminated.' *For så vidt som man siger, at hagekorset er symbolet på nazismen, så er det jo altså af samme art som Islams tørklæde. Tørklædet symboliserer en totalitær ideologis krav om, at alle der ikke deler dens synspunkter og holdninger, er vantro, og de bør rettelig omvende sig, og hvis de ikke vil det, så de skal udryddes*.

[10] http://www.opsi.gov.uk/Acts/acts1996/ukpga_19960023_en_1

[11] http://www.islam21c.com/british-affairs/shariah-courts-given-an-unfair-hearing.html

[12] As noted by the Conservative Shadow Home Secretary, and lawyer, Dominic Grieve (see his comments in John O'Sullivan's *New York Post* article 'Sharia-UK: Brits Head Towards Islamic Law.' That article made sweeping assumptions about the 'Shari'ah' as monolithic. In fact, there are many interpretations of issues affecting women's rights, whether in relation to political position, religious leadership, testimony, custody, financial maintenance, and domestic roles – all of the mainstream schools have various different views. For some examples, though not exhaustive, see *Forensic Psychiatry in Islamic Jurisprudence* by Kutaiba S Chaleby (International Institute of Islamic Thought).

[13] An incident which demonstrates this point took place when a man (Hani bin Yazid) – known affectionately in his tribe as Aba al-Hakam (the father of wisdom/judgment), a name he gained prior to his embracing Islam – came to the Prophet Muhammad (may peace and blessings be upon him) and said: 'O' Messenger of God! My people, when they dispute about a matter, they bring it to me and I arbitrate between them, and both parties are happy!' To which the Messenger replied, 'what a wonderful thing that is!' (Narrated in Fat'h al-Qadir, volume 5, p. 498, by Kamal Ibn al-Hammam, [d. 861H]).

[14] Invariably, Shari'ah courts and arbitrations are led by men in the UK. This is so even though approximately half of the UK Muslim Pakistani population belongs to the Deobandi tradition of Islam, which traces its origins to the Hanafi *Mazhab*, which has held that women can take the position of judge, indeed, according to the one of their leading scholars, Ashraf Ali Thanawi, may take positions of ruling (as mentioned in Imdad al-Fatawa). This was also the position advocated by the very first commentator and exegete of the Qur'an, Imam Ibn Jarir al-Tabari (d. 923CE). See *Tafsir al-Tabari: al-musammá Jami' al-bayan fi ta'wil al-Qur'an*, new edition published in 12 volumes by Dar al-Kutub al-'Ilmiyah, Beirut, 1997.

[15] To quote another leading scholar from the Hanafi school: 'It is a condition that the arbitrator possess sound intellect (Aqil) and it is not conditional that he is a Muslim.' (Kamal ibn al-Hammam *Fat'h al-Qadir* volume 5, p. 499.)

[16] This is precisely what the Archbishop Dr Rowan Williams was advocating, i.e. a means of regulating existing practices and subjecting them to the UK legal system, and setting parameters which would not allow abuses within communities to take place. He explicitly stated that he was not supporting the creation of parallel legal systems within our own but regulating existing practices and a debate about how this should take place within a pluralistic society. See: http://www.archbishopofcanterbury.org/1594 and http://www.archbishopofcanterbury.org/1575 for the full contents of the speech. Some have mistakenly taken this to mean some kind of accommodation of Shari'ah 'law' into UK law.

[17] Sheikh Abdullah Bin Mahfudh Bin Bayyah, a renowned Muslim scholar who is well respected by almost all traditions of Islam, stated in a Fatwa (religious edict):

This is because when such a Muslim undertakes such a contract of Marriage, he does so in a way that is in harmony with the laws (of that country) other than the Islamic rules ... this

necessitates that he is accepting of the consequences, a part of which are: this contract cannot be repudiated except by a judge ... This is possible from the perspective of what is considered by the scholarly majority (Jumhur) as being permitted in the Shariah, namely delegating this to the Judge – be it by implication and not explicitly. This is because of the Fiqh principle which states, 'a well known custom is considered similar to a stipulated condition' (Maruf 'urfan kal-mashrut shartan'). Also, because executing laws, other than Islamic rules, is permitted [to] bring about interests (masalih) and deterring harms (mafasid)... as is stated by more than one erudite scholar, including al-Izz ibn Abdul-Salam (Shafi *Mazhab*), Ibn Taymiyyah (HanbalI *Mazhab,* and Shatibi (Maliki *Mazhab*). (*The Ruling of seeking a Divorce from a non-Muslim Judge*, pp. 358-9 of *Sana'aat ul-Fatawa wa Fiqh ul-Aqaliyaat*, Dar ul-Minhaj, Saudi Arabia).

Imam Izz ibn Abdul-Salam's Fatwa was actually speaking of the situation within *Muslim-majority* countries, and can be found in his work *al-Qawaid ul-Anam fi-Masalih ul-Ahkam*. Sheikh Bin Bayyah cites religious authorities from the main religious schools to which almost all Muslims belong. This should establish there is no need for Shari'ah courts in a Muslim-minority country such as the UK!

[18] The famous Muslim Hadith master and Polymath Ibn Hajar al-Asqalani states in his collection of Fatawa, that even in countries that have a hostile relationship with other Muslims, 'though they are hostile peoples (harbiyoun) one may not cheat them nor deal in unjust transactions with them...' (*al-Fatawa Ibn Hajar al-Asqalani*, volume 5, pp. 245-6).

Muslim scholars from all schools have stated that in any country where Muslims safely reside they are forbidden to break their agreements and the implicit social contract which exits (*aman* – is how it is referred to in traditional literature) and which obliges them to respect the laws of these countries. (See *Kitab al-Umm of Imam Shafi'I*, volume 4, p. 248; Imam al-Shaybani's *Kitab al-Siyar*, volume 2, p. 507, Ibn Qudama in *al-Mughni* volume 10, pp. 515-6 for a spectrum of the various *Mazhab's*).

[19] In fact when Sayyed Ahmad Barelvi of the strict scripturally literal Ahl al-Hadith Mazhab was asked about whether it was necessary to overthrow the British colonial government, he replied,

'The British Government – although a disbeliever in Islam – does not treat the Muslims with any cruelty or high-handedness, nor does it prevent them from attending to their religious obligations or observing the obligatory acts of worship. I preach and propagate (the Faith) in their kingdom but they never impede or oppose it. Rather, if someone commits any excess against us, they are ready to punish him. Our real task is the propagation of Tauheed – the Unity of God – and the renaissance of the Sunnah –precepts – of the Chief of all the Messengers, which we perform without let or hindrance in this country. So why should we wage a Jehad against the British Government and, contrary to the principles of our Faith, needlessly shed blood on either side.' [*Swaaneh Ahmadi, by Maulvi Muhammad Ja'afar Thanesari*, p. 71.]

Alongside him in his own *Mazhab* was Maulvi Muhammad Hussain Batalvi, who repeatedly made the same point. 'For Muslims of India, opposition to or rebellion against the British Government is unlawful (haram).' (*Risaala Isha'at-us-Sunnah*, vol. 6, no. 10, p. 287) in fact he condemned the 'Mutiny' stating, 'Those Muslims who participated in the Mutiny of 1857 A.D., they acted very sinfully and, under the injunctions of the Holy Quran and Ahadith, they were promoters of disorder, and were rebellious and of evil character.' (*Risaala Isha'at-us-Sunnah*, vol. 9, no. 10) 'Fighting against this government, or in any way aiding and abetting those who are fighting it (even if they are our Muslim brothers) is clearly mutinous and unlawful (haram).' (*Risaala Isha'at-us-Sunnah*, vol. 9, no. 10, pp. 38-48).

The Sufi-Beralawi Hanafi Imam, Ahmad Reza Khan Barelvi, gave a similar verdict: 'This humble one has proved with conclusive arguments in "I'alaam-ul-I'alaam be-Anna Hindustaan Daar-

us-Salaam" that India is "Dar-us-Salaam" (peaceful territory) and it is certainly not correct to call it "Dar-ul-Harb" (territory under war).' (*Nusrat-ul-Abraar*, p. 29; Published by Sahafi Publishers, Aitcheson Ganj, 17 Rabi-ul-Awwal, 1306H, 1888 CE.)

[20] On a final note, Shihab ul-Din Ibn Hajar al-Haytami, one of the leading authorities of one the mainstream Mazhab's, namely, the Shafi'I school of *Fiqh*, issued a Fatwa stating that when Muslims are allowed to live and practice their faith in a land then the security of such a land is also a responsibility on all of the Muslims worldwide – if an aggressor attacks that land, they are obliged to defend it militarily, a premise for international co-operation and security which tied nations together. (*Fat'h al-Jawad* volume 2, part 2, p. 346, Mustafa al-Bab al-Halabi Edition: Cairo).