

## **Islam, Sharia & Alternative Dispute Resolution**

by Mohammed M. Keshavjee (2013) London: I.B. Taurus

### **Book Review** by Ahmad Thomson

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This is an interesting and informative book, both for those who dally in the groves of academe and for legal practitioners dealing with live disputes. Many move from one realm to the other – and some work in both. The book's focus is alternative dispute resolution within an Islamic personal law context in Britain. In the author's own words (p.17), "My hope is that my research will increase understanding of the cultural sensitivities of Muslims in the context of ADR and help to improve the conceptualisation and design of ADR training programmes for Muslims in the West."

Educated to an acceptable level in both English law and Shari'a law, Mohammed Keshavjee identifies the main issues that characterise the interaction between man-made law and divinely revealed law. On the whole the author's translation and understanding of technical *fiqh* (jurisprudential) terms are accurate and non-partisan, thereby enabling his readers to enjoy a shared understanding of key principles in Islamic jurisprudence safe from the ravages and savages of the tabloid press.

Although it was not possible to agree altogether with some of the basic premises inherent in the way in which the subject matter is presented, I nevertheless learnt a great deal from the book – because of the clarity with which it is written, it helped clarify my own viewpoint. I have no doubt that many readers will have a similar experience and so even for this reason alone I commend this book. It is not necessary to be in complete agreement in order to benefit. As William Blake observed, "Without contraries is no progression."

For example, I view English law and Shari'a law as two distinct jurisdictions – each with its own principles and characteristics – which in modern English society and in furtherance of letting justice be done for all who can afford it are capable of enjoying a mutually positive interaction and reasonable accommodation – as opposed to one jurisdiction seeking to oust or subsume the other. The recent case of *Re AI and MT*<sup>1</sup> illustrates this. To quote the author (p.100), "The interesting point is that this process is actually taking place within the context of ADR and not as a result of a clash of legal systems. It can be argued that this approach makes the process more politically viable and acceptable because the Sharia is not being pitted against the laws of the land."

Thus a civil divorce cannot be “Islamized” as the author posits more than once. A civil divorce terminates a civil marriage. An Islamic divorce terminates an Islamic nikah contract. In the event of a marriage breakdown resulting in divorce, whoever has made both marriage commitments must go through both divorce processes. Neither jurisdiction either governs or is subservient to the other – although practising Muslims do tend to conclude that God the All-Knowing is more likely to have got it right first time than many generations of honourable members of Parliament, however learned.

The book has its origins in a PhD doctoral dissertation and understandably it is still characterised by the requirements of the secular academic technique, defined by Shaykh Dr Abdalqadir as-Sufi as, “the ethos of critical examination which submits all scholarship to a methodology which itself is never secunded to doubt and critique.”<sup>2</sup>

This methodology, for example, is only prepared to acknowledge the existence of God as a fundamental concept shared by various belief systems, but not as the One Who is the Source of everything in existence and closer to you than your jugular vein – and it will not condone the expression of love or even respect for the Prophet Muhammad, may Allah bless him and grant him peace, even to the extent of forbidding a postgraduate student from asking for blessings and peace on him in his or her written dissertation or thesis.

The word *din* is translated as “religion” in the Glossary of the book, but a more accurate definition is, “the life-transaction, lit. the debt between two parties, in this usage between the Creator and the created.”<sup>3</sup>

In addition, the content of the book appears to have been confined to the agreed parameters of the original dissertation which of necessity could be neither too broad nor too narrow and which concentrated mainly on one of the “diasporic Muslim communities in the UK” – without taking into consideration, for example, the rapidly growing number of indigenous Muslims from different backgrounds who have willingly embraced Islam in the UK, not in order to retain their socio-cultural identity in a strange land, nor even as a conscious exercise of their ECHR Article 9 rights, but simply because they recognise the *din* as being unavoidably and existentially true.

Since it is evidently based on careful and thorough research, Mohammed Keshavjee’s book will accordingly act as a reliable starting point and springboard for further research into, for example, the present move to unify the different British Shari’a Councils under one umbrella with a shared set of rules of procedure – which like the gradual transformation of the employment tribunals system will need to avoid complexity as it develops.

The book also lays the groundwork for an in depth comparative study of the Jewish, Christian and Muslim religious courts in an ADR context – an initiative already launched by Professor Gillian Douglas and her colleagues at the Cardiff Law School in 2011 which can be developed further.<sup>4</sup>

ADR is not new. Jewish Battei Din have been resolving disputes within the Jewish community in Britain since the 12<sup>th</sup> century CE – and Baroness Cox’s proposed private member’s Arbitration and Mediation Services (Equality) Bill is unlikely to stop them.<sup>5</sup>

Further, as a means of heightening awareness, this book may well help prepare tomorrow’s if not today’s Attorney-General to consider seriously the possibility of recognising Islamic marriages and Islamic divorces as legally valid marriages and legally valid divorces, with an accompanying change in the law governing bigamy, which currently permits more than one mistress but not more than one wife – in contrast to the Shari’a which permits up to four wives but no mistresses! If a nikah marriage registered in Pakistan is recognised as a valid marriage in England, is there any valid reason why a nikah marriage registered in England cannot also receive the same recognition?

Above all, Mohammed Keshavjee’s book is an important step towards illuminating the dawning realisation in “the West” that the Shari’a has much to offer to secular systems of law which are for ever having to change in order to adapt to changing circumstances – this in marked contrast to a straightforward guidance which is not in need of any re-formation, provided by the Merciful Creator of the human situation – a situation which most of us accept is in constant need of compassionate ways and means to regulate it.

People involved in disputes want swift, satisfactory and inexpensive resolutions. When and wherever it has been well established, the Islamic Shari’a has during the last fourteen centuries provided inter alia a well tried and tested means of resolving marital disputes one way or the other by means of what has only relatively recently come to be termed generically as ‘alternative dispute resolution’. Islam was well established long before Europe’s dark ages arrived, as well as being an undisputed source of inspiration for the Renaissance which followed.

As far as assessing the Islamic Shari’a is concerned, it is predictably fashionable amongst those who wish to reject it to provide examples of what happens when the Shari’a is misinterpreted by ignorant people, while studiously ignoring examples of what happens when it is embodied by wise people. As with any revealed teaching, the Shari’a can only be applied well by those who understand and embody it well.

Torquemada the Spanish inquisitor cannot be said to have been a true representative of the teachings of Jesus, peace be on him, any more than the subjection of human

beings to indefinite detention and torture without charge or trial in the Guantanamo Bay concentration camp by patriotic extremists “honor bound to defend freedom” can be asserted as representing a true manifestation of liberal democratic human rights and noble secular values.

In only another fourteen centuries time, if our brave new world still exists, our successors will be in a comparable position to assess how well the European Convention on Human Rights 1953 and the Human Rights Act 1998 have stood the test of time.

As proponents of secular systems finally begin to arrive at an understanding which educated Muslims have always enjoyed in every age, it is clear that secularists will benefit a great deal from studying the Shari’a, especially if false stereotypes and popular misconceptions have been relinquished – and especially since both secular law and divine law in fact have so much in common. Mohammed Keshavjee’s book illustrates this proposition cleanly and concisely and since the author refers to wisdom, knowledge and information, although not in equal measure, we cannot help but recall in conclusion the words of T. S Eliot:

Where is the Life we have lost in living?

Where is the wisdom we have lost in knowledge?

Where is the knowledge we have lost in information?

[Choruses from ‘The Rock’]

**Ahmad Thomson** accepted Islam over 40 years ago and established Wynne Chambers over 20 years ago

#### Notes:

1 *Re AI and MT [2013] EWHC 100 (Fam)*

2 ‘Abdarahman at-Tarjumana, A. and Johnson. Y. (1982) *Introduction* to the English translation of *Al-Muwatta’* of *Imam Malik*. Norwich: Diwan Press.

3 Bewley, A. (1998) *Glossary of Islamic Terms*. London: Ta-Ha Publishers.

4 Douglas , G. *et al* (2011) *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts*: <http://www.law.cf.ac.uk/clr/Social%20Cohesion%20and%20Civil%20Law%20Full%20Report.pdf>

5 Cox, C. (2010-2012) *Arbitration and Mediation Services (Equality) Bill [HL] 2010-12* <http://services.parliament.uk/bills/2010-11/arbitrationandmediationservicesequalityhl.html>