

SHARI'AH AND RELIGIOUS ARBITRATION IN ENGLISH COURTS

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Abstract

There is an emerging paradigm shift in English courts' attitude towards Islamic law principles from cheer hostility in the colonial era towards modern convergence in the birthplace of common law. This situation might be a result of the heterogeneous nature of contemporary British societies, with its growing immigrant and religious communities, and their quest for an effective dispute resolution mechanism suitable for their religion and satisfy their cultural sensitivities. This paper seeks to examine English courts' general attitude towards religious courts and tribunals, particularly the current state of convergence between common law and Shari'ah in England and Wales. The role of the UK Arbitration Act 1996 and English case law in regulating religious arbitration and the natural convergence established in recent years in England is also analysed. The paper finds that developments in recent years, including the proliferation of Muslim Tribunals in England, have heralded a new theory of convergence of Shari'ah law and common law in the aspect of Family Law and Marriage in contemporary English courts. These developments have contributed to reshaping the evolution and relationship between these two major world Legal systems.

Keywords: Common law; Shari'ah; England; Comparative law; Muslim tribunal.

Intisari

Telah muncul perubahan paradigma sikap pengadilan Inggris terhadap prinsip-prinsip Hukum Islam dari karamahataman era kolonial menuju konvergensi modern di tempat kelahiran *common law*. Situasi ini dapat merupakan hasil dari sifat heterogen dari lingkungan Inggris yang kontemporer, dengan bertumbuhnya imigran dan komunitas religius, dan pencarian mereka akan penyelesaian sengketa yang cocok dengan agama mereka dan memenuhi kepekaan budayanya. Penelitian ini berusaha memeriksa sikap umum dari pengadilan Inggris terhadap pengadilan agama dan tribun, terutama dalam konvergensi *common law* dan *Shari'ah* saat ini di Inggris dan Wales. Peran dari UK Arbitration Act 1996 dan yurisprudensi Inggris dalam mengatur arbitrase keagamaan dan konvergensi alamiah yang telah disahkan dalam beberapa tahun terakhir di Inggris juga dianalisis. Penelitian ini menemukan bahwa perkembangan dalam beberapa tahun terakhir termasuk proliferasi Pengadilan Muslim di Inggris telah menggembar-gemborkan teori baru tentang konvergensi Hukum Syariah dan Hukum Umum dalam aspek Hukum Keluarga dan Perkawinan di pengadilan Inggris kontemporer. Perkembangan ini telah memberikan kontribusi untuk membentuk kembali evolusi dan hubungan antara dua utama dunia sistem hukum ini.

Kata Kunci: Common law; Shari'ah; Inggris; Komparasi hukum; pengadilan Islam.

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A. Introduction

The legal origins and principles of *Shari'ah*-Islamic Law¹ are fundamentally different from the English common law practices, which have their origin in England. A convergence of the two worlds legal system in any subject or aspect of the law is quite unimaginable, considering the early encounter between the two legal orders. In the colonial British Empire, the common law and principles of equity posed a challenge to the Islamic legal order in the former colonies of India, parts of Africa, and Asia. English Legal Comparatist cannot fathom the convergence of convergence between the English common law and Islamic law on English soil.

Ordinances and reception clauses were passed to ensure that only common law and principles of equity become the basic law of the land except for the local people's religion and customs. However, the local people's religion and custom are subject to some rather vague validity test (of repugnancy) and in accordance with principles of natural justice equity and good conscience.² Therefore, Islamic law was subjected to repugnancy tests in many Muslim countries, thereby subscribing the Islamic courts to limited jurisdiction in personal status, such as family law, marriage, guardianship, and divorce. This can be seen, for example, in the first family law being enforced in the Straits Settlement, namely the Muhammadan Marriage Ordinance of 1880 and other writings in old *Jawi* by regional Islamic scholars on the subject of Islamic family law and based on the *Shafie* school of thought. However, the British-administered colonial courts successfully relegated the local legal order to personal matters and excluded criminal law.³

The dynamics of immigration and citizenship have made the United Kingdom home to a diverse population with their beliefs, culture, and customs, where mostly of Asia, African, and middle eastern origin. However, recent developments in England show a seeming revival among the growing number of adherents of Islam and the Jewish faith to be governed by their canon laws.

When friction of legal culture beckons for a solution, coupled with the quest for an effective dispute resolution platform or religious tribunal, it is hard not to search for convergence of legal systems that fuse cultural and religious differences under the court system.⁴ Perhaps this was the intention of the Chief Justice of Britain, Lord Chief Justice Nicholas Phillips, on July 3, 2008, when he stated that:⁵

“There is no reason why *Shari'a* principles, or any other religious code, should not be the basis for mediation or other forms of alternative dispute resolution [with the understanding] [...] that any sanctions for a failure to comply with the agreed terms of mediation would be drawn from the Laws of England and Wales.”

The Archbishop of Canterbury's position⁶ to the effect that some aspect of the *Shari'ah* law in the United Kingdom is ‘unavoidable’ in family and business dealings supported the statement of the Chief Justice of Britain. The Archbishop opened his lecture⁷ by noting that the very term *Shari'ah* is not only misunderstood but is the focus of much fear and anxiety deriving from its ‘primitivist’ application in some contexts. He said that *Shari'ah* was a method of law rather than a single complete and final system ready to be applied wholesale to every situation. It should also be noted that there

¹ Islamic law has its Islamic traditions contained in the *Qur'an* and *Sunnah* teaching and practices of Prophet Muhammad (peace be upon him). Other sources are *Ijma'a*, *qiyas* and interpretations of Muslim scholars.

² Derek Asiedu-Akrofi, “Judicial Recognition and Adoption of Customary Law in Nigeria,” *The American Journal of Comparative Law*, Vol. 37, No. 3, 1989, pp. 571–593; Akintunde Olusegun Obilade, 1979, *The Nigerian Legal System*, Sweet & Maxwell, London.

³ Tan Sri Datuk Ahmad Mohamed Ibrahim, “Recent Developments in the Administration of Islamic Law in Malaysia”, *Yearbook of Islamic and Middle Eastern Law Online*, Vol. 3, No. 1, 1996, pp. 117–129.

⁴ Maria Reiss, “Materialization of Legal Pluralism in Britain: Why Shari'a Council Decisions Should Be Non-Binding,” *Arizona Journal of International & Comparative Law*, Vol. 26, 2009, p. 739.

⁵ East London Mosque and London Muslim Center, “Britain's Most Senior Judge Assures Muslims in Their Right for Equality Before British Law”, Press Release, <http://www.eastlondonmosque.org.uk/uploadedImage/pdf/ELM-LMC%20PR%20-%20LCJ.pdf>, accessed in July 4, 2008..

⁶ BBC News UK, “Sharia Law in UK Is ‘Unavoidable’”, <http://news.bbc.co.uk/2/hi/uk/7232661.stm>, accessed June 11, 2015.

was room, even within Islamic states which apply *Shari'ah* for some level of 'dual identity', where the state is not religiously homogenous. In his lecture, the Archbishop sought carefully to explore the limits of a unitary and secular legal system in the presence of an increasingly plural (including religiously plural) society and see how such a unitary system might accommodate religious claims.⁸

The plurality of legal systems has been permitted to emerge in the United Kingdom. The Jewish communities have the *Beth Din* that has existed for many years. The Muslims have religious bodies and other similar organisations that have effectively solved the family dispute and contracting marriages for their adherents.⁹ Although the Islamic *Shari'ah* Council (ISC), with around 85 branches in England and Wales, has been resolving family disputes for a long time, the Muslim Arbitration Tribunal (MAT) just had its award legally binding until 2007 since its operation as an arbitral tribunal under the UK Arbitration Act 1996.¹⁰

The paper will examine the phenomenon of faith-based arbitration among religions in the United Kingdom *vis-a-vis* Islam, Judaism, and Christianity. Particular reference will be placed on the ISC and MAT in England and Wales.

B. Discussion

1. Multiculturalism in Contemporary British Society

¹¹In its early precepts, multiculturalism has long served the cause of unifying various economic, political, and sociological programs that place a high value on culture and cultural groups.¹² The recent trend within the multicultural framework lies toward the "new multiculturalism," which focuses not only on principles of recognition and inclusion but also on broader group autonomy, cultural identity, and self-actualization.¹³

In the context of the United Kingdom, the character of British societies began to be transformed culturally during the post-migration era with the influx of immigrants from Commonwealth countries such as India, Pakistan, and the African continent in the late 1980s.¹⁴ The idea of 'colour-racism' has defined the relationship, where it was a black-white racial dualism with Asians categorized as black.¹⁵ Later, the rise of religious identities like Sikh and Muslim developed a more pluralistic situation.¹⁶ The election of Sadiq Khan as the Mayor of London in 2016 attests to the prominence of Muslims in British political and social life, which could extend to justice delivery.

Contemporary British societies have become more diverse with different ethnic, religious, and cultural diversity. However, early discourse on the multi-character nature of England has been applauded for the ability to condone and tolerate different race; a twist has been introduced from the applause of multiculturalism to monolithic

⁷ BBC News UK, "Archbishop's Lecture - Civil and Religious Law in England: A...", <http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/archbishops-lecture-civil-and-religious-law-in-england-a-religious-perspective>, accessed June 11, 2015.

⁸ Rowan Williams, "Sharia Law What Did the Archbishop Actually Say?", <http://rowanwilliams.archbishopofcanterbury.org/articles.php/1135/sharia-law-what-did-the-archbishop-actually-say>, accessed June 11, 2015.

⁹ Maria Reiss, *Op. cit.*; Gillian Douglas, *et al.*, 2011, *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts*, Report of a Research Study Funded by the AHRC, Cardiff Law School, Cardiff.

¹⁰ Abul Taher, "Revealed: UK's First Official Sharia Courts", *The Sunday Times*, 14 September 2008; Gillian Douglas, *et al.*, *Op. cit.*; Maria Reiss, *Op. cit.*

¹¹ Timothy J. Hatton and Massimiliano Tani, "Immigration and Inter Regional Mobility in the UK, 1982-2000", *The Economic Journal*, Vol. 115, No. 507, 2005, p. 342-358.

¹² Sarah Song, "Majority Norms, Multiculturalism, and Gender Equality", *American Political Science Review*, Vol. 99, No. 4, 2005, p. 473; Michael A Helfand, "Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders", *New York University Law Review*, Vol. 86, 2011.

¹³ Timothy J. Hatton and Massimiliano Tani, *Op. cit.*

¹⁴ Tariq Modood and Fauzia Ahmad, "British Muslim Perspectives on Multiculturalism", *Theory, Culture & Society*, Vol. 24, No. 2, 2007, pp. 187-213.

¹⁵ *Ibid.*

¹⁶ Tariq Modood, "Anti-Essentialism, Multiculturalism and the Recognition of Religious Groups", *Journal of Political Philosophy*, Vol. 6, 1998, p. 378-399.

nationalistic accolades of intolerance of other culture.¹⁷ Citizenship and 'Britishness' achieve prominence and subject of public discourse in recent times to decry the growing trend of declining British culture among immigrant communities.

The term 'multiculturalism,' featured in British society in the 1970s as a positive effort towards acculturation and cultural involvement in the changing societal landscape.¹⁸ The initial policy focus was primarily on schooling but later extended to the educational curriculum as an institution, to include features such as 'mother-tongue' teaching, black history, Asian dress and – importantly – non-Christian religions and holidays, religious dietary requirements for Jews and Muslims, etc.¹⁹

On the quest for religious court among immigrant communities, it must be noted that religious courts or any form of dispute adjudication are practically as old as religion itself. Such avenue serves the purpose of expressing and supporting the presumption of many of its adherents to prescribe and enforce a normative order for their members. This phenomenon and sense of spiritual attachment do not change when religion encounters liberal democracy. The issue of religious adjudication has been brought to the forefront by the prevalence of cultural and religious minority groups in industrialized, immigration-absorbing countries like the United Kingdom, the United States and Canada.

²⁰ However, such religious adjudicatory bodies are either explicitly protected by legal, rights-based protections of conscience, speech, and religious exercise, or merely within a "private" arrangement of no state involvement or regulation. Thus, communities of shared religion continue to practice internal adjudication in fields of life such as family and personal status that are deemed significant for

the preservation of shared values, doctrines and commandments of the religion.²¹ These are succinct justification for religious laws within multicultural societies like the United Kingdom. This further justifies the need to create the necessary natural convergence framework, rather than rejecting the apt reality of a multicultural society.

The potential for conflict occurs when the state presumes to make laws to govern all matters of family and personal status for the furtherance of family and other values without considering the sensitivities of other components of the society. Other contentious matters may include: citizenship, gender equality (or domination) and maintain jurisdictional control over the procedures of family making and family dissolving, as well as in the resolution of disputes that arise out of these procedures.²² Laws are made to govern relationships; will it be justiciable for one law to regulate the acknowledged varying culture of the society such as Britain?

Comparative lawyers would rather suggest that a plural multicultural society should have a regulation which tends to harmonise or unify the various existing notion of family law including religious law within a state. Disregard of the idea of a pluralistic society is an impetus for natural convergence of laws as presently happening in English courts.

2. Recognition of Religious Law and Position of Courts in England and Wales

Religious laws have found their ways into recognition by the English Courts in several ways.²² For instance, religious law may enter the courtroom as part of the facts of the case, and religious law may be introduced into the courtroom by expert witnesses. Pieces of State law may give effect to

¹⁷ Tariq Modood, 2005, *Multicultural Politics: Racism, Ethnicity, and Muslims in Britain*, Edinburgh University Press, Edinburgh.

¹⁸ Tariq Modood and Fauzia Ahmad, "British Muslim Perspectives on Multiculturalism", *Op. cit.*

¹⁹ Amanda M. Baker, "A Higher Authority: Judicial Review of Religious Tribunals", *Vermont Law Review*, Vol. 157, 2012; Ori Aronson, "Out of Many: Military Commissions, Religious Tribunals, and the Democratic Virtues of Court Specialization", *Va. J. Int'l L.*, Vol. 51, 2010, p. 231.

²⁰ Ori Aronson, *Ibid.*

²¹ *Ibid.*, p. 240.

²² Russell Sandberg, "Islam and English Law," *Law & Justice*, Vol. 164, 2010, p. 27; Gillian Douglas, *et al.*, *Op. cit.*

provisions of religious law or, more typically, religious practices. For instance, there are special rules on slaughter for Muslims and Jews and concerning the Sikh turban. The attitude of English courts towards religious doctrine and tribunal can be examined through case laws on various subject matters which have been referred to it for adjudication. The summation of decided cases shows that English courts are generally reluctant to become involved in adjudicating internal disputes within religious groups or concerning religious laws.

Several instances abound to exemplify this position of the English Courts. In *His Holiness Sant Baba Jeet Singh Maharaj v. Eastern Media Group Ltd*²³, Eady J., held that, the well-known principle of English law to the effect that the courts will not attempt to rule upon doctrinal issues or intervene in the regulation or governance of religious groups“ constituted a self-denying ordinance, applied as a matter of public policy”.²⁴ He further held that such disputes as arise between the followers of any given religious faith are often likely to involve doctrines or beliefs which do not readily lend themselves to the sort of resolution which is the normal function of a judicial tribunal”.

The Queen’s Bench Division decision above is not the first of its kind where the court has declined to rule upon religious doctrines or intervene in religious laws. In a 2003 case of *Blake v. Associated Newspapers Limited*,²⁵ the claimant, a former Anglican priest, sued in defamation. The fact of the case was on the status of a bishop; i.e., an episcopal lineage which must be decided before proceeding to rule on defamation alleged by the defendant. The defendant argued that the claim was non-justifiable since it would require the court to adjudicate on

matters of faith and religious doctrine. Gray J. Held: The claim could not be heard. He further said:

“[...] that the court will not venture into doctrinal disputes or differences. But there is authority that the courts will not regulate issues as to the procedures adopted by religious bodies or the customs and practices of a particular religious community or questions as to the moral and religious fitness of a person to carry out the spiritual and pastoral duties of his office.”

A multitude of overlapping laws and court decision exists to recognise religious groups and individuals under English law, enabling them to benefit from legal and fiscal advantages, most notably in the form of exceptions from otherwise generally-applicable laws.²⁶ Religious buildings and centres can be registered place of religious worship under the Places of Worship Registration Act 1855 and for the solemnisation of marriage according to Marriage Act 1949, s.41. This allows a religious group to contract marriage between its adherents, guaranteeing that such union and ancillary matters could be legally determined by such a duly registered religious body. Besides, there are special rules on slaughter allowing a Muslim method for the food of Muslims by a Muslim who holds a licence²⁷ and financial provisions allowing Islamic banks, *Shari’ah*-compliant mortgages and Islamic Bonds²⁸ provide positive recognition of religious laws and practices.

3. *Shari’ah* and Other Religious Courts in England

There are attempts to know the precise number of existing Islamic institutions, organisations and tribunal dispensing religious justice according to *Shari’ah* legal norms in the UK today. There

²³ England and Wales High Court (Queen Bench’s Division), 2010, 1294.

²⁴ *Ibid.*, Para. 5

²⁵ England and Wales High Court (Queen Bench’s Division), 2003, 1960.

²⁶ Russell Sandberg, *Loc. cit.*, pp 27-44; Gillian Douglas, *et al.*, *Op. cit.*

²⁷ Welfare of Animals (Slaughter or Killing) Regulations 1995 (SI 1995/731).

²⁸ In Financial Services Act 2003, the Islamic Finance Task Force (IFFTF) is a Ministerial-led Task Force setup to promote the UK as an Islamic financial centre and to attract inward investment and give effect to Islamic finance contracts. See also UK Trade & Investment, 2013, *UK Excellence in Islamic Finance*, UK Trade & Investment, London.

is significant use of informal forms of dispute resolution within Muslim communities, particularly in the context of Muslim family law.²⁹ There is no evidence to show that the popular religious tribunal is running an exclusive parallel justice devoid of state law. In a recent 2009 report for Civitas, it was asserted that there are at least 85 *Shari'ah* Councils operating mainly out of mosques around the country with 13 tribunals operating within the network administered by the ISC based in Leyton, and there are three tribunals run by the Association of Muslim Lawyers.³⁰

Binding religious arbitration creates a relationship between the community and governmental institutions. It also enables members of the religious community to resolve disputes according to their religious beliefs with a feeling of ownership over solutions while acting within the boundaries of government and integrating into broader society. Religious groups in Britain are treated legally as voluntary associations and charity, which means that the rules and structures of voluntary associations are binding on members who join freely. This contractual bond may be legally termed as the doctrine of "consensual compact".³¹ This binding effect helps to prevent haphazard non-binding dispute resolution from continuing in private circles under the radar of government regulation. It is also often understood that these rules and structures are also binding on the association itself.³²

The following section will briefly examine the existing bodies and organisations involved in religious arbitration in England and Wales. *First*, the MAT. The MAT was established in 2007 to provide a viable alternative for the Muslim community seeking to resolve disputes in

accordance with Islamic law and without having to resort to such *Shari'ah* Councils or costly and time-consuming litigation.³³ MAT operates within the legal framework of England and Wales thereby ensuring that any determination reached by MAT can be enforced through existing means of enforcement open to normal litigants. Although MAT must operate within the legal framework of England and Wales, this does not prevent or impede MAT from ensuring that all determinations reached by it are in accordance with one of the recognised schools of Islamic law. MAT will, therefore, for the first time, offer the Muslim community a real and true opportunity to settle disputes in accordance with Islamic law with the knowledge that the outcome as determined by MAT will be binding and enforceable.³⁴

Second, the ISC. The ISC was established in 1982 in a meeting attended by various scholars representing several mosques in the UK.³⁵ The ISC was formed to solve the matrimonial problems of Muslims living in the United Kingdom in the light of Islamic family law. The composition of experts in the council shows that the council is not specifically attached to any major *mad'habs* (Islamic legal thoughts).³⁶ In other words, this is accommodative of a pluralistic law within Islam as all members from all of the major schools of *mad'habs* which is widely accepted as an authoritative body with regards to Islamic law. Although existing for more than 30 years and does not claim to operate under the UK Arbitration Act 1996, existing legal authorities.

According to available information, the main function of this council is to guide the Muslims in the UK in matters related to religious issues as well as solving their matrimonial problems

²⁹ Maleiha Malik, 2009, "Muslim Legal Norms and the Integration of European Muslims", Working Paper.

³⁰ Denis MacEoin and David G. Green, 2009, *Sharia Law Or 'one Law for All?*, Civitas: Institute for the Study of Civil Society, London.

³¹ B. H. McPherson, "The Church as Consensual Compact, Trust and Corporation," *Australian Law Journal*, Vol. 74, No. 3, 2000, pp 159–174.

³² *Ibid.*

³³ B. H. McPherson, "Muslim Arbitration Tribunal", [http://www.law.cf.ac.uk/clr/networks/Muslim Arbitration Tribunal.pdf](http://www.law.cf.ac.uk/clr/networks/Muslim%20Arbitration%20Tribunal.pdf), accessed June 11, 2015.

³⁴ *Ibid.*

³⁵ B. H. McPherson, "Islamic Sharia: A Step Closer to Helping the Islamic Community", <http://www.islamic-sharia.org/>, accessed June 11, 2015.

³⁶ Gillian Douglas, et al., *Op. cit.*

which are referred to it by Muslims in the United Kingdom.³⁷ As the Muslims normally conduct their marriages both Islamically (known as the *Nikah* ceremony which is conducted by an Imam at any mosque or Islamic Center), and by registering with the civil authorities, this council deals only with the Islamic *Nikah*. The ISC has caveats to the public regarding the procedures and status as follows: i) ISC has nothing to do with the civil marriages which are dissolved by the British Courts and not by the Council; ii) The Council does not intervene in civil marriage contracts; iii) The Council is a welfare and non-profit making charity.³⁸

There is a need to examine *Shari'ah* cases which have been enforced in English courts to establish a new theory of natural convergence of laws in England. The case, *Uddin v. Choudhury & Ors*, was decided in the Court of Appeal for England and Wales, Civil Division, at the Royal Courts of Justice, on October 21, 2009.³⁹ The case involved Muslim parties who immigrated to England from Bangladesh. The appeal was from a judgment rendered in the Central London County Courton on March 20 2009 regarding dower (*mahr*) that accompanied an Islamic marriage i.e., *nikah*, carried out in 2003 in London. The appellant, Mr Uddin, was the father of the groom; the respondent, Ms Choudhury, was the bride. Through an arranged marriage, after negotiations between both families, gifts were exchanged and upon the marriage contract, the *mahr* was stated to be £15,000 which was stated as unpaid at the time of the contract. The marriage was unregistered and the relationship failed. Subsequently, the bride requested that the ISC in Leyton dissolve the *nikah*. The husband agreed that the marriage is dissolved upon the bride's return of

the gift worth £25,000 and part of the *mahr* which was paid. The court invited a jointly agreed single expert, a barrister – Faizul Aqtab Siddiqi, to inform the court about the content of “*Shari'ah* law”.

The judge held that the gifts need not be returned, and thus decided against the claimant – the groom's father. In upholding the validity and enforceability of the marriage contract celebrated through an Islamic wedding ceremony, the court found the bride in her counterclaim and awarded her the £15,000 in *mahr*. Nevertheless, the court upheld the dissolution of the marriage following the decree of the Islamic *Shari'ah* Council.

John Bowen rightly observed that the English court did not inquire into the ruling of the council, on its legal effect or otherwise. An expert witness was only called by the court to attest and proof the fact on the principles of marriage contract in the *Shari'ah* and not as a scrutiny of the procedure of the Islamic *Shari'ah* Council.⁴⁰ The use of the expert is likened to a question referred to by *Muftis* in Islamic countries for expert determination or legal analysis on religious ruling on a particular subject, otherwise known as *Fatwa*.

4. Reasons for Criticism of *Shari'ah* Arbitration

Non-Muslim citizens of England and other Western countries feel uncomfortable with the idea that different laws should be applied to certain segments of the population. This has led to a series of campaigns against *Shari'ah* law both in the media and the internet.⁴¹ Although democratic values in the United Kingdom guarantees freedom of religion for all⁴² and strengthened by the provision of the European Convention on Human Rights (ECHR)

³⁷ B. H. McPherson, “Islamic Sharia: A Step Closer to Helping the Islamic Community”, *Op.cit.*

³⁸ *Ibid.*

³⁹ England and Wales Court of Appeal, 2009, *Uddin v Choudhury & Ors* Civ 1205.

⁴⁰ John R. Bowen, “How Could English Courts Recognize Shariah?”, *University of St. Thomas Law Journal*, Vol. 7, No. 3, 2010.

⁴¹ BBC News UK Magazine, “The End of One Law for All?”, http://news.bbc.co.uk/2/hi/uk_news/magazine/6190080.stm, accessed June 11, 2015.

⁴² United Kingdom is a signing member of the ECHR, and in 1998, passed the Human Rights Law to incorporate the provisions of this convention into UK law. In Peter Cumper, “United Kingdom and the UN Declaration on the Elimination of Intolerance and Discrimination Based on Religious or Belief” *Emory Int'l L. Rev.*, Vol. 21, 2007, p. 13.

which was domesticated via the Human Rights Act 1998. Article 9 of the ECHR guarantees the freedom of religion, which are now part of English Law enforceable in domestic courts.

Perhaps the apprehension of anti-*Shari'ah* campaigners can be related to widespread Islamophobia and media backlash which suppresses the prominent themes and principles within the *Qur'an* and reiterated in *Shari'ah* and the *Hadith*, such as mercy, compassion and social justice. It is this narrow, reductionist view of the Islamic law that is been flared in the media to the general public.

A cursory look at the arguments of media and cyber campaigners against *Shari'ah* Arbitration in the UK includes 'One Law for All'⁴³ and the National Secular Society (NSS).⁴⁴ Various campaign have been held and efforts by the NSS in the UK against any kind of religious law or any law which tends to give special right or treatment to any religious group. The NSS position is that the state should be separate from religion "as an essential element in promoting equality between all citizens and is ready to challenge the disproportionate influence of religion on governments and in public life".⁴⁵ However, the extent to which Britain attain the status of a secular state is mootable, considering the position of the Church of England as a recognized institution that has been performing the judicial role, and its decision being subject to judicial review.⁴⁶

5. Legal Pluralism in England: Towards a New Theory of Convergence of Laws

The modern British legal system has been influenced by several factors far beyond the shores of the United Kingdom. This is not unrelated to the changing landscape of cooperation and alignment

of regional blocs such as the European Union. To this end, it seems apt to assert that the notion of 'British law' might technically be non-existent. According to Russell Sandberg, there is no such thing as British law as 'one law for all' or one law for all British citizens. He elucidated this fact when he mentioned:

"The argument that two systems of law cannot run alongside each other is plainly incorrect. EU law and the decisions of the European Court of Human Rights at Strasbourg are recognised as part of the English legal system and have been for some time. Admittedly there are sometimes clashes but in a sophisticated democracy the intermeshing of laws created at different levels can surely function without being 'a recipe for chaos'. Moreover, it is already the case that religious laws, including Islamic law, do exist alongside the law of the land. And they have done so for some time. An argument has been made that the Church Courts were the earliest courts in England which looked like a court of law. Their decisions have shaped key areas of English law to this day, especially in relation to family law. In the case of the Church of England, its law is part of the general law of England are Pieces of Church law - called Measures - are created by a religious body (the General Synod of the Church of England) but are then considered by the Ecclesiastical Committee of Parliament. Once given Royal Assent they have the same effect as an Act of Parliament."

The pivotal role played by the religious court has been applauded particularly in family matters. A convergence of Laws and legal harmony between religious law and English legislation exist under the Divorce (Religious Marriages) Act 2002. This has enabled courts to require the granting of a religious divorce before a civil divorce can be granted. The

⁴³ Read more at One for All website <http://www.onelawforall.org.uk/>.

⁴⁴ National Secular Society, "National Secular Society - One Law for All Campaign Launches with Call for New Legislative Curbs on Sharia Courts", <http://www.secularism.org.uk/onelawforallcampaignlauncheswith.html>, accessed June 11, 2015.

⁴⁵ *Ibid.*

⁴⁶ The decisions of the Church of England courts are subject to judicial review (since it is established by law). Section 81 of the Ecclesiastical Jurisdiction Measure 1963 states that the High Court has power to enquire into contempt of the consistory court upon certification by the chancellor and recognises the supervisory jurisdiction of the High Court over the ecclesiastical court. It has been held that mandatory and prohibiting orders (as they are now styled) lie both to prevent and compel the exercise of jurisdiction by the ecclesiastical courts of the Church of England (See e.g. *R v North, ex parte Oakey*[1927] 1 KB 491)..

situation is that where a man refuses to grant a religious divorce although the wife had obtained a divorce under English law then the woman was still seen as married in the eyes of the faith and therefore unable to remarry under religious law.⁴⁷ However, English law has sufficiently provided for the necessary framework for convergence of religious law under the legislative provisions.

6. Religious Court and The UK Arbitration Act 1996

The UK Arbitration Act 1996 is a principal provision in which *Shari'ah* Tribunals have placed utmost reliance for giving legal effect to their decisions. This has extended protection to *Shari'ah* tribunals through the machinery of English Law. There is now at least one clear example of an Islamic court operating under the UK Arbitration Act 1996 i.e., the MAT which makes it clear that they operate under the UK Arbitration Act 1996. The UK Arbitration Act 1996 is a key piece of legislation the latest in a long line of similar statutes. It has been observed that the provision of the arbitration UK Arbitration Act 1996 laid more emphasis on the party-driven process is focused upon the parties and not the nature of the forum chosen by the parties for settling their disputes.⁴⁸ The basics of the UK Arbitration Act 1996 are stated in Section 1 which provides that parties should be free to agree on how their disputes are resolved, subject only to such safeguards as are necessary for the public interest, something like a delegation of certain legal functions to the religious courts of a community-led to media fears of unaccountable courts or private tribunals passing sentences on criminal liability in ways that undermined the whole of British democracy.

In October 2008, the Government seal of approval more overwhelming than ever took place. Bridget Prentice, Parliamentary Under Secretary of State in the Ministry of Justice, was careful to say

that the Government does not 'accommodate' any religious legal systems. However, she confirmed that *Shari'ah* courts are operating under the UK Arbitration Act 1996, which allows private disputes to be settled by an independent arbitrator and that *Shari'ah* rulings on family matters could be given the authority of a British court by seeking 'a consent order embodying the terms' of the *Shari'ah* court ruling.⁴⁹

C. Conclusion

The attitude of English courts and its non-interference in religious matters, doctrine and practices has served as a buffer to the establishment of religious tribunals by various religious minorities including the Islamic Community. *Shari'ah* Arbitration has been tolerated for so many years similar to the Jewish Beth in resolving family and personal status disputes. Under English law, a multitude of overlapping laws has been enacted to recognize religious groups and individuals enabling them to benefit from legal and fiscal advantages, most notably in the form of exceptions from otherwise generally-applicable laws. Religious tribunals have not run to preclude the state from intervening in its decision. This is further strengthened by Article 18 of the Universal Declaration of Human Rights and Article 9 of the ECHR which emphasised freedom to practise one's religion.

The situation is passive harmonization of two systems working to achieve the common good of contemporary multicultural and multi-religion societies. Islamic Law as a major Legal system has come to the fore of global debate to serve as the desired alternative for resolving family disputes in the West. This should be viewed as a new theory of convergence rather than with the scepticism of a desert law coming to usurp the legal system of England.

⁴⁷ Russell Sandberg, *Op. cit.*

⁴⁸ Gillian Douglas, *et al.*, *Op. cit.*

⁴⁹ Denis MacEoin and David G. Green, *Op. cit.*

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