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Activities of Islamic Sharī'ah Council and Muslim Arbitration Tribunal to Apply Islamic Law in England and Wales

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Abstract

The UK is a Christian majority country with several minority religious groups like Muslims, Hindus, Jews and Sikhs who have been living there for a long time. All faith groups have their own laws. Likewise, Muslims also have their specific laws called “Sharī'ah law” or “Muslim Family Law”. This paper attempts to represent a prospect of how Islamic law deals with the issues faced by the Muslims in England and Wales. There are many “The Islamic Shari’ah Council (ISC)” and “Muslim Arbitration Tribunal (MAT) to solve the family concerns in England and Wales, for instance, marriage, child custody, divorce and other issues related to their matrimonial life. These councils play a prime role in implementing Islamic law among Muslims in Britain. Since ISC and MAT play a crucial role in applying Islamic law, it will be the focusing component of the paper. This study examines how ISC and MAT resolve the legal problems of the Muslim families and to which extent sometimes it is allegedly not compatible with England and Wales's domestic legal settings. Moreover, the main aim and object of the paper is to find out the internal functions and the processes of the Islamic Sharī'ah Council and Muslim Arbitration Tribunal in England and Wales.

Keywords: Islamic Sharī'ah Council; Muslim Arbitration Tribunal; England; Wales; Functions and Processes

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Introduction

According to a census of 'Office for National Statistics,' 3,372,966 Muslims is living now in England, including native and diaspora¹. Islamic or Muslim religious law has been highly criticized in the UK for decades. This dispute mostly came into limelight and focuses the UK government's attention after a positive comment by Archbishop of Canterbury Rowan Williams and a retired chief justice of England and Wales about *shari'ah* law. Rowan Williams, the most senior figure in the Church of England, said that giving Islamic law official status in the UK would help achieve social cohesion because some Muslims did not relate to the British legal system². Afterward, the UK government conducts a report on applying Islamic law in the UK consists of several renowned legal experts and academicians. This study will develop further. This paper will be an endeavour to answers to the following questions:

- How is Islamic law implemented in England and Wales?
- Which institution deals with Islamic law?
- What is the historical background of the application of Islamic law in England and Wales?
- What are the functions of those institutions?
- What are the claims against institutions deal with Islamic law in England and Wales?

Literature Review

Due to spreading of Islamophobia and various claims against Islamic law by the western world, the topic "Application of Islamic Law in England and wales: Functions and Processes" is immensely discussed issue today. Many works have been done on applying Islamic law in England, but most of the works are not academic. It has been conducted either by the UK government or different news agencies such as: The BBC, the Independent, and The Guardian and so on.

¹ Office for National Statistics, <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/muslimpopulationintheuk/>, accessed om 6 January 2020.

² World Religion, <https://www.theguardian.com/uk/2008/feb/07/religion.world>, accessed on 2 January 2020.

The UK government published a few review reports in 2018 wherein basically discussed concepts of Islamic law among British people, society and government. They also mentioned in those reports several specific claims against the Islamic shari'a Councils arose by individuals and put forwarded some recommendations in order to develop the system of application of Islamic law in England and Wales. Similarly, the British broadcasting corporation BBC published a few articles written by some researchers, which basically discusses different application features of Islamic law.

House of Commons's Library examined in a Briefing paper, the Muslim marriages which are usually conducts in mosque of their religious settlements and is not registered by the British authority, is not legally valid as per British law. They recorded, in 2014, 46 out 50 women did not registered as civil marriage under the British system. The research, furthermore, stated that more than 90% of women using The Islamic Shari'ah Council to seek the religious divorces.³

Islam Uddin,⁴ identified *Niqah* is the only approved marriage and he described the importance of the marriage from the Islamic point of view. He examined the types of divorce in Islamic tradition in his. Based on qualitative research, furthermore, he examined that most of the Muslim women in the UK intend to solve their matrimonial problem in her own surrounding circles of friends, family or relatives. Few go to The Islamic Shari'ah Council to have an Islamic divorce. The Islamic Shari'ah Councils are quasi-legal, unofficial bodies that function to mediate, arbitrate, and issue Muslim divorce certificates, he found.⁵

Based on the aforementioned literatures, I consider a gap in all the previous works that I found lack of encompassing way of acting the Islamic legal institutions in England and Wales. Thus, due to the demand of time and obvious gap, more study was needed about activities and internal processes of dealing with the cases filed by Muslims in The Islamic Shari'ah Council and Muslim Arbitration Tribunal. I believe my present paper will give a broader insight into the intuitions' internal functions and activities, which deal with the Islamic legal systems in England and Wales.

³ Fairbairn, "Islamic marriage and divorce in England and Wales", 2020, 17.

⁴ Islam Uddin is a researcher of School of Law, Middlesex University.

⁵ Uddin, "Nikah-only Marriages: Causes, Motivations, and Their Impact on Dispute Resolution and Islamic Divorce Proceedings in England and Wales", Oxford Journal of Law and Religion 7, no. 3 (2018): 401-426.

Research Methodology

Both primary and secondary data has been used for this study. The methodologies are including close readings, interpreting, and comparing the secondary sources which are collected through the library and internet-based research. Historical materials, including books on contemporary British legal studies, also are used for this research. One more interview have been taken from the members of the Muslim community in Wales In order to get deep insight about the issue. Websites of several legal institutions those deals with Islamic law are also was source of information. To illustrate the fact, both historical and contextual approach is implemented in this study.

What is Islamic Law?

Islamic regulations oversee all features of a Muslim's life. Islamic law originates from the teachings of the Holy Qur'an and Sunnah. It is applied to variable degrees in different Islamic countries- from the beheadings of Saudi Arabia to the comparatively liberal social traditions of Malaysia⁶ (Citation omitted). Islamic law is not *Shari'ah* itself, but, it is compiled from Shari'ah. *Shari'ah* is divine guidance, which never changed. Islamic law is based on *Shari'ah* but, it is changeable according to time and place.

Islamic Law or jurisprudence is always based on someone's interpretation of the Shari'ah (which off course is an interpretation of the Qur'an and Hadith). Because it is a human interpretation, Islamic Law can mean different things in different places and at different times in history⁷. For this reason, different school of thought or Madh-hab is established in the Islamic legal history.

In Arabic, Shari'ah refers to "the clear, well-trodden path to water". The linguistic meaning of Sharia reverberates in its technical usage: just as water is vital to human life, so the clarity and uprightness of Sharia is the means of life for souls and minds⁸ (Citation omitted). It can be found in the Holy Qur'an. Qur'an says- "Thus we put you on the right way of religion. So follow it and follow not the whimsical desire of those

⁶ *Islam*, <https://www.theguardian.com/world/2002/aug/20/qanda.islam>, accessed on 25 December 2019.

⁷ An-Naim, "Is Islamic Family Law Today Really Based On Shari'a," <https://www.mpvusa.org/sharia-law>, accessed on 27 December 2019

⁸ BBC, http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml#h3, accessed on 20 December 2019.

who have no knowledge”⁹. The sacred law of Islam is an all-embracing body of religious duties, the totality of Allah’s commands that regulate every Muslim's life in all aspects¹⁰. In Islam, Shari’ah law considered as guidance of God and his messenger prophet Muhammad (pbuh).

Shari’ah is a religious code for living, in the same way that the Bible offers a moral system for Christians¹¹ (Citation omitted). BBC said in an article-“Islamic law is based on a combination of sources, including the Qur’an, the Hadith or Sunnah (sayings and actions of Prophet Mohammad), and Islamic jurisprudence and rulings or fatwas issued by scholars”¹². A review says- Shari’ah is written jurisprudence and law developed on the basis of a diversity of opinions among jurists in the classical period of Islam¹³.

Historical Background

To the Muslims, Religion is the way of life rather than some set of codified rules and regulations. In England and Wales, Islamic law does not work in that sense as Muslims expect. Before finding out the limitations to do that, let me put a historical background of Islamic law in England and Wales. Initially, arriving flow of Muslims to Britain started after the world war second. Among all other Muslims in UK, most of them are from South Asia. Most of the South Asian Muslims arrived in UK as labour migrants during 1950s and 1960s¹⁴. After a number of Muslims arrived in UK their demand on integrating Islamic law into English law was came into light. Their demand was for official recognition of Islamic law. Though minority laws were present but that were not sufficient for them. Islamic law has always been claimed as not compatible with English secular legal system. Muslim community leader was thinking to about it and finally they established Islamic Sharia council in 1982 in order to solve their own legal issues.

⁹ Al-Qur’an, 45:18

¹⁰ Schacht, “*An Introduction to Islamic Law*”, London: Oxford University Press, 1982, p.13

¹¹ *Islam*. <https://www.theguardian.com/world/2002/aug/20/qanda.islam>, accessed on 22 December 2019.

¹² *Sharia*, www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml, accessed on December 19, 2019.

¹³ UK Government, “*The Independent Investigation into the Application of Sharia Law in England and Wales*,” *Statistical*, (London 2018), p. 4.

¹⁴ Werner F. Menski, “Muslim Law in UK,” *Journal of Asian and African Studies* 62, no. Issue: 62 (2001): P.130

Functions and Processes of Application of Islamic Law in England and Wales

To the Muslims, Shari'ah meant in various ways and varied the different levels of understandings and is two ways used for applying Islamic law in applications in England and Wales. One is The Islamic Shari'ah Council (ISC) and another one is Muslim Arbitration Tribunal (MAT). These functions have many social impacts among the Muslims in UK. Since the Islamic law is not officially recognized law in UK, these two institutions create a value among religious and cultural practices in the social life of Muslims. For this reason, whole of my article discusses about these two institutions. In order to preserve religious values and obeying the Islamic laws, Muslims need to go first to ISC or MAT then to the British secular court.

The Shari'ah council is a liberal and independent domestic mini court that deals with Islamic law or Muslim family law in specific and the commercial dispute in an Islamic way. It is not part of the British civil court or does not apply any general law prescribed by the British constitution, and it does not have any legal status. If any judgment or decision of the sharia council is inconsistent with British domestic law, the decision of council will be invalid.

A review committee about these councils defines sharia councils as a voluntary local association of scholars who see themselves or are seen by their communities as authorized to offer advice to Muslims principally in the field of religious marriage and divorce¹⁵. If it can be compared between the MAT and the ISC we can observe some apparent differences. The MAT incorporates different perspectives from the British domestic law where the ISC neither adds them nor submit to any of its conditions.¹⁶

After consulting with Raisul Islam,¹⁷ it has been noticed that one of the cases filed to Islamic Sharia council. His friend and another member of the community applied

¹⁵ UK Government, "The Independent Investigation into the Application of Sharia Law in England and Wales," *Statistical*, (London 2018), p. 7.

¹⁶ Coste, "Muslim Arbitration Tribunal and Sharia Courts: Objectives and Legal Jurisdiction within England and Canada" Academia, https://www.academia.edu/17321834/Muslim_Arbitration_Tribunal_and_Sharia_Courts_Objectives_and_legal_jurisdiction_within_England_and_Canada, accessed on 5 January 2020.

¹⁷ Raisul Islam is a British government employee and an active member and responsible of Bangladeshi Muslim community in Wales.

in order to have a religious justification about the mortgage (Type of loan you can use to buy or refinance a home). He submitted his application to ISC explaining his financial condition and family need. Usually, in terms of mortgage it is taken into account whether it is Necessity (*Darurah*) or Need (*hazah*) for someone. After carefully reviewing, the ISC decided that he can take mortgage from the bank. This is one of the examples of how Islamic law functions through the ISC.

Function of The Islamic Shari'ah Council

The Islamic Shari'ah council was first established in 1982. In the following year, ten (10) representatives and Imams from different Islamic centers and mosques of the United Kingdom attended at Jami'a mosque in Birmingham and decided to establish Islamic Shari'a Council to deal with Muslim family matters. The founding ten organizations/centers are following:¹⁸

1. London Central Mosque and Islamic Cultural Centre, London.
2. Muslim World League
3. Markazi Jamiat Ahl-e-Hadith, UK
4. UK Islamic Mission
5. Da'watul Islam, UK
6. Jamia Mosque & Islamic Centre, Birmingham
7. Islamic Centre, Glasgow
8. Islamic Centre, Didsbury, Manchester
9. Jamia Masjid Hanafiya, Bradford
10. Muslim Welfare House, London

The idea of ISC first generated by late Syyed Mutawalli Ad-Darsh (former Imam of Regents Park Mosque at the time) and Suhaib Hasan (current Secretary of ISC)¹⁹. Syed Ad-Darsh was an Egyptian trained at Al-Azhar, and in 1971 had been sent by that institution to London to serve as an Imam at the London Central Mosque near Regent's Park²⁰. This was not just the first shari'ah council in Britain but also in Europe a²¹. The exact number of the shari'ah council is unknown but, a review said, this figure is about

¹⁸ Islamic Sharia Council, www.islamic-sharia.org/aboutus/, accessed on 1 January 2020.

¹⁹ Islamic Sharia Council, http://test.islamic-sharia.org/?page_id=26, accessed on 2 January 2020.

²⁰ John R. Bowen, "On British Islam Religion, Law, and Everyday Practice in Shari'a Councils" (London: Princeton University Press, 2016).

²¹ Islamic Sharia Council, www.islamic-sharia.org/aboutus/, accessed on 2 January 2020.

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30-85 in England and Wales²². The council comprises members from all of the major schools of Islamic legal thought (*Mad'hab*) and is widely accepted as an authoritative body regarding Islamic law. During establishing ISC, Deobandi and Ahl-al-Hadith scholars were there, as were followers of Maududi's Jamaat-e-Islami from Indian sub-continent.²³ ISC has different departments for different issues, Fatwa department one of them. The fatwa department deals with the following:

- Organ donation
- IVF treatment
- Inheritance/will
- Verbal or written Talaq
- Insurance
- Abortion
- Validity of Nikaah
- Pension
- Student Loans
- General fiqh of purification
- Fasting
- Mortgages
- Transaction
- Zakaah
- Salah, Halaal food and medicine.²⁴

The Objectives of the Council

The objectives of the council were not just to guide the Muslims in matter of their religion and issue fatwas when needed, but also to create a bench of ulama' who would function as Qadhis in issues such as matrimonial disputes that were referred to the²⁵. The goals and objectives of the Islamic Shari'ah Council are:

1. To assist the Muslims in the UK by:

²² "The Independent Investigation into the Application of Sharia Law in England and Wales," 12.

²³ Bowen, John R. "*On British Islam: religion, law, and everyday practice in shari'a councils*". Vol. 62. Princeton University Press, 2016.

²⁴ Islamic Sharia Council, <http://www.islamic-sharia.org/fatwa/>, accessed on 3 January 2020.

²⁵ Islamic Sharia Council, http://test.islamic-sharia.org/?page_id=261, accessed on 3 January 2020.

2. Fostering and encouraging the practice of the Muslim faith according to the Qur'an and the Sunnah.
3. Providing advice and assistance in the operation of Muslim family life.
4. Establishing a bench of scholars to operate as the Islamic Shari'ah Council and to make decisions on matters of Muslim family law referred to it.
5. Promoting an enlightened practice of the Islamic faith by Muslims living in the UK.
6. To educate the public generally regarding Islam and to dispel negative stereotypes.²⁶

How Does Work the Islamic Shari'ah Council?

As stated before, ISC led by several scholarly persons who make decisions about concerned issues. Those Muslims faces any kinds of family problems, they apply to ISC through concerned Application Form that can be found on council's official website. Council has four types of application form such as:

- Talaq Application Form
- Khula Application Form
- Wali Change
- Nikah Application Form

After duly filling it, applicants send their application stated their complexity and call for further procedure and then the council discusses about that. Majority (over 90%) of people using sharia councils are women seeking an Islamic divorce²⁷ . After a certain period of applying, applicants go to council and concerned responsible asks several questions related to his/her case.

Since establishing in 1982, The Islamic Sharia Council has decided on more than 7,000 cases in that time, with 95% relating to divorce²⁸

²⁶ Ibid.

²⁷ The Secretary of State for the Home Department, *"The Independent Investigation into the Application of Sharia Law in England and Wales"*, 2018, ISBN 978-1-5286-0178-8, p.12.

²⁸ NAMAIE, Maryam. *"Sharia Law in Britain: A Threat to One Law for All and Equal Rights"*, One Law for All, London 2010." P. 1-34.

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Picture 1: Members of ISC are talking to an applicant²⁹



Photo-2: A British Shari'ah council presides over marital cases at their east London Headquarter³⁰.

How Does Muslim Arbitration Tribunal Work?

Arbitration is a system which resolves the private dispute and it is not a court, but takes place outside of formal court. Islamic Shari'ah Councils are not the sole organizations to deal with the problems related to Muslims in England and Wales, Muslim Arbitration Tribunal also an individual body for it. MAT was founded in 2007 by

²⁹ BBC, <https://www.bbc.com/news/uk-36587665>, accessed on 7 January 2020.

³⁰ The Independent, <https://www.independent.co.uk/news/uk/politics/sharia-courts-in-uk-face-government-probe-over-treatment-of-women-a7049826.html>, accessed on 7 January 2020.

Sheikh Faiz-ul-Aqtab allowing different kind of disputes to be solved by using the Islamic Sharia Law³¹. British government officially recognized MAT in 2008 stating that the decisions of the MAT would be applied by the secular court.

All areas of civil and personal religious law can be dealt by MAT. The only areas of law that MAT cannot deal with are divorce proceedings (other than a religious divorce), child custody and criminal matters, as MAT does not have jurisdiction to deal with such matters³². MAT's are seen as more concern because they are classified as arbitration tribunals under the Arbitration Act 1996, which makes their rulings binding in law, provided that both parties in the dispute agree to give it the power to rule on their case³³. There are several types of application system within arbitration on their website; those are following.³⁴

- Matrimonial
- Mosque Dispute
- Contract
- Property
- Others

For each application needed to pay £300.00 by bank payment with cheque as application and processing fee³⁵.

Arbitration is a form of alternative dispute resolution (ADR) where the parties submit their cases to an impartial third-party for a better resolution. MAT was founded by Sheikh Faiz Siddiqi, a barrister and the founding principle of Hijaz College, and Shamim Qureshi, a practicing Muslim and a Judge of British district court, to provide British

³¹ Costle, "*Muslim Arbitration Tribunal and Sharia Courts – Objectives and legal jurisdiction within England and Canada*", p.1

³² Cardiff University, <http://www.law.cf.ac.uk/clr/networks/Muslim%20Arbitration%20Tribunal.pdf>, accessed on 8 January 2020.

³³ NAMAIE, Maryam. "*Sharia Law in Britain: A Threat to One Law for All and Equal Rights*", One Law for All, London 2010." 1-34.

³⁴ *Muslim Arbitration Tribunal*, <http://www.matribunal.com/application-form.php>, accessed on 9 January 2020.

³⁵ Ibid.

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Muslims with a more active way of dispute resolution in accordance with Islamic law.³⁶ Majority of the issues solved by MAT is about commercial transactions. Very few of the matters about marriage and divorce they deal with.

MAT conduct their activities within the legal framework of England and Wales thereby ensuring that any extermination reached by MAT can be enforced through existing ways of enforcement open to normal litigants. Although MAT must operate within the legal framework of England and Wales, this does not prevent MAT from ensuring that all decisions taken by it are in accordance with one of the recognized Schools of Islamic Law. MAT therefore, for the first time, offer the Muslim community to have the real opportunity to resolve disputes based on Islamic Law. They always do not require legal advisor or legally qualified person for the applicants to submit any case.

MAT consists of two members; one is legal expert and another one is an Islamic scholar who is well-known about the Islamic legal affairs. Legal advisor should be a barrister or regular practitioner. Prior to submit any case, applicants should forward a CV of them, so that the authority can confirm his or her religious or business identity. Surely, MAT is playing an important role to resolve the disputes of the Muslims outside of the formal court in England and Wales.

Claims against the Islamic Shari'ah Council

Sometimes several claims arise against ISC. In a great number of articles, newspaper headings and different kinds of magazines described the idea of Islamic law has been officially adopted in Britain and the government has silently authorized powers for Sharia judges to direct and run different divorce cases. Government also concern about activity of ISC. One of the main issues which stand against MAT within the public and media sphere is potential human rights violations and fears about vulnerable people (e.g. women) being coerced into tribunal cases . For example, Sharia Councils will often ask people to sign an agreement to abide by their decisions. The Shari'ah Councils often fail to inform their 'clients' that the English civil divorce is acceptable in many relevant jurisdictions (such as Pakistan and Bangladesh).

³⁶ J. Broyde, Bedzou and C.Pill, 2014. "*The Pillars Of Successful Religious Arbitration: Models For American Islamic Arbitration Based On The Beth Din Of America And Muslim Arbitration Tribunal Experience*" p.42

Conclusion

It has been demonstrated by aforementioned discussion that, by mainly two Islamic legal organizations Islamic law is applied in England and Wales. I repeatedly mentioned throughout the paper, whole the processes of Islamic law implemented in England and Wales through these institutions. Both The Islamic Shari'ah Council and Muslim Arbitration Tribunal have many aspects and categories of their own proceedings. The MAT is distinct from the Islamic Shari'ah Councils because it is governed under a set of procedural rules and comes under the Arbitration Act 1996. Many Islamic scholars, legal experts and community leaders engaged to run these two Islamic legal institutions. Both these two institutions has certain set of procedure and the applicants need to follow those rules and procedures duly. As there is no scope for Muslims to deal with their family issues according to British civil law, ISC and MAT are playing a vital role for Muslims living in England and Wales. Amidst immense of media propaganda and claims by various organizations, they are operating their activities.

Recommendations

The outcome found in my study is the internal functions and working policy of ISC and MAT. Many limitations I faced during the study, for instance, not being able to take direct interview from the concern authorities and the applicants to those institutions. It has not been possible to theorize or contextualize from eye-witnesses or victims. However, the study suggests taking face to face interviews from the peoples who engaged both in operating and those are clients. Based on the study by analyzing the internal functions and processes the institutions deals with Islamic law in England and Wales, this paper makes the following recommendations:

- Improving professionalism of ISC
- Developing the website of the ISC
- Institutionalizing of the ISC
- Digitalizing of the ISC
- Recruiting well-trained staffs who is capable to give instant suggestions
- Trying to get recognition as a valid legal authority of the UK government

For further study on this issue, need to consult with the direct responsible of concerned institutions. Besides, applicants to those institutions also can be contacted in order to listen to their direct experiences.

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List of Abbreviations

Shari'ah Law- Islamic Law based on Islamic revealed text.

Niqah - Marriage

Talaq- Religious Divorce

Qur'an – The Holy book of Islam

Madh-hab – School of thought within Islamic jurisprudence

Qadhi - Judge of Islamic court

Zakaah – Alms to the poor people.

Jamaat-e-Islami – A modern Islamic revivalist movement founded by Syed Abul A'la Mawdudi in 1941 in British India.

Deobandi – A traditional Islamic revivalist movement within Sunni Islam which was founded in Deoband, India in 1866.

Ahl-al-Hadith- A pro-Salafi movement based in Indian sub-continent who adhere to go back the teachings of the early generations of Islam.

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