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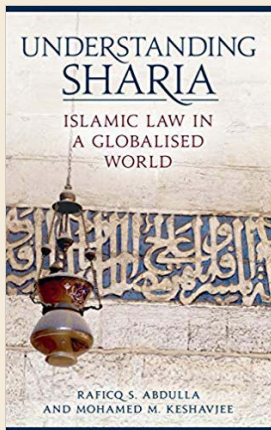
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LEADING DISPUTE RESOLUTION IN CANADA
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Understanding Sharia, Islamic Law in a Globalised World

Raficq S. Abdulla and
Mohamed M. Keshavjee

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Canada, as a country committed to pluralism, today stands as a beacon of hope for all mankind. At the same time, there is much debate on the role of religion in the public sphere, most particularly in the field of private justice where arbitration and mediation are practised. Faith communities have generally shown a preference for ensuring that the ethics and values of their faith are engaged when disputes arise and their resolution is attempted. However, legitimate concerns with regard to human rights are expressed by those in Canadian society who feel that alternative forms of justice can be prejudicial to vulnerable groups such as women, minorities and children or those who are on the wrong side of the power balance. Alternative Dispute Resolution (ADR) has both supporters and detractors in these cases.

Over the years the issue of alternative forms of justice has become contentious with regard to family dispute resolution and the role Sharia, as portrayed in the popular media, plays in its deliberations. Sharia is viewed as a draconian, punitive and pre-modern system that has been defined over the years by a patriarchal interpretation. The deeper ethical values of Sharia are obfuscated and the fact that it has an inbuilt mechanism to

respond both to necessity (*darura*) and to public interest (*maslaha*) and that each day in the Muslim world these mechanisms are used, is often overlooked.

Understanding Sharia, Islamic Law in a Globalised World is a book by two common law lawyers, a Canadian lawyer mediator and an English barrister, which has been written for the educated lay reader and which is both accessible and informative. The authors do not side-step the controversial issues associated with Sharia but address them with reason, thought, and understanding.

Abdulla and Keshavjee have provided a welcome text setting out the origins of Islam, Sharia and their development from the classical period to modernity within the context of other civilizations and other legal systems. The authors saw a need for a clear and easy to read text. Sharia has been a source of misunderstanding both within and outside the Muslim world.

The authors take the reader from pre-Islamic Arabia to the present. They point out that less than ten percent of the Qur'an is made up of verses of a strictly legal nature. Yet, we find a large body of law evolving over the centuries since the time of the Prophet. From 661-750 a rapid

expansion occurred into many lands together with the early development of law under the Umayyads. The new demography encompassed a mixture of different cultures, races and creeds and all of these changes took place within 100 years of the Revelation. From the years from 750-1258 brought the consolidation of the Schools of Law under the Abbasids, who came to power claiming descent through al-Abbas, an uncle of the Prophet.

The tenth century saw the rise of the Fatimid empire (909-1171), the first Shia dynasty from the family of the Prophet (ahl al bayt) ruling a maritime empire that stretched from the Atlantic coast of Africa into the southern Mediterranean encompassing also the Arabian Peninsula. This was an empire ruled by the Ismaili Imam Caliphs, ancestors of the Aga Khan, and where Shia law was state law but where legal pluralism was encouraged and practiced.

We are transported in the text to Morocco, where far reaching changes enable a marriage to be dissolved by the

husband or the wife. The authors take us to Tunisia, where similar changes in Family Law have led toward gender equality. Changes in the 1970's led to the emergence of ADR as an alternative to litigation, leading diasporic Muslims, mainly in the UK to establish Sharia councils to deal with family disputes (see Islam, Shari'a and Alternative Dispute Resolution: Mechanisms for legal redress in the Muslim community by Mohamed M. Keshavjee, London: I.B. Tauris, 2013). The authors carefully detail the differences in interpretation of God's law between Sunni and Shi'i using examples of inheritance, divorce and marriage.

In the chapter "The Multiple Manifestations of Sharia" the authors delve into Sharia rulings that are offensive to many Muslims themselves. Examples include apostasy (*riddah*) that remains a capital offence or one punishable by long term imprisonment in many countries of the Islamic world (page 119) and blasphemy, which in the case of Islam, constitutes words or actions that intend to harm or abuse God, His Prophet Muhammad and others, including the good reputation of Aisha, wife of the Prophet (page 125). The authors point out the toxicity that an accusation of blasphemy can bring to bear upon minorities such as Christians, Yezidis, and Shi'i Muslims in Sunni-majority countries. Several well known cases such as that of Asia Bibi and Amina Lawal are reviewed and analyzed in the context of sharia and cultural principles.

In discussing Sharia finance the authors make the point that money should not be a means of making money. It is to be used as an instrument of exchange, not a product in itself. Emerging Sharia-compliant vehicles of finance are explored and explained. In terms of relevance today, the authors point out that ADR as a process fits in well with Sharia provided always that the public laws of the countries where Muslims reside are fully respected both in spirit and in letter. The Qur'an supports ADR which Muslims have

been practicing for centuries (page 173), and believers have been encouraged to enter into negotiated settlement known as *sulh*, rather than legal process. All ADR processes seek justice by enabling the disputants to find a solution that allows both to obtain a level of satisfaction by encouraging compromise, and understanding the interests of the other (page 178).

The reviewer noted with great interest the authors' comments regarding the absence of Muslim countries as signatories to the Hague Convention on the Civil Aspects of International Child Abduction promulgated in October 1980 (Hague Convention). The Canadian government promoted a dialogue between an equal number of Western and Muslim countries. This endeavor, which this reviewer participated in on behalf of Canadian Foreign Affairs, was set up in 2009 following what was known as the Malta 3 Conference. Meetings were held over several years, which resulted in a framework of collaboration between judges in Muslim countries, scholars and other institutions (page 179). Since this process began, Morocco joined the Hague Convention, as have various other Muslim countries. The impact of this endeavor promoted largely through dialogue, mu-

tual respect and a genuine intention to find new solutions to resolve common human problems (*maslaha* in Sharia law) 500 million Muslims today are part of the Hague Convention when formerly there was antipathy towards it.

The authors discuss Sharia and human rights and make the point that Islamic scholars working in Western academic institutions of higher learning are able to critique Western notions while developing a human rights discourse from an Islamic point of view which highlights the higher purpose of Sharia (*maqasid*) at the cost of its rigid time marked *fiqh* (jurisprudential understanding). No doubt, this could be useful as the human rights debate evolves. Finally, the authors argue, that Sharia contains a degree of flexibility, supported by doctrines such as *maslaha* (public interest) *maqasid* (purpose), and *darura* (necessity) but emphasize that ongoing interpretation of texts lies at the heart of all religions as well as laws –secular and religious.

The book is of value to both Muslim and non-Muslim readers providing an insight into a legal system which, in one way or another, affects some 1.8 billion people in 58 countries of the world. An informative and enlightening read. 🏠

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