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Loci of Leadership: The Quasi-Judicial Authority of Shariah Tribunals in the British Muslim Community

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Abstract: Leadership and authority were two central themes in the mission statement of the first ever Shariah tribunal to emerge in the UK. When the Islamic Shariah Council was established in 1982, it noted that its founding meeting had been attended by Muslim scholars from a number of mosques in the UK who represented the major schools of Islamic law. This ensured in its own words that it was widely accepted as an authoritative body with regards to Islamic law and that it was therefore able to cater to the basic religious needs of the Muslim community. Since their emergence in the 1980s, Shariah tribunals have played an important role in guiding the Muslim community through the provision of religious services. This paper seeks to enrich the literature on Shariah tribunals by critically assessing how such tribunals have used their expertise in Islamic law to wield quasi-judicial authority in the British Muslim community, within a legal system which does not directly grant legal jurisdiction to religious tribunals. The paper highlights the distinctive characteristics of the authority which Shariah tribunals exercise as religious institutions, which distinguish them from the secular courts of the state despite the judicial functions which both share in common.

Keywords: religious authority; religious leadership; religious tribunals; Shariah tribunals; Islamic law; British Muslims

1. Introduction

Several religious minorities in England have historically established tribunals to serve the religious needs of their members, with prominent examples being the Catholic and Jewish communities (Malik 2012). These religious tribunals all function on a non-statutory basis and are not considered part of the civil court system (D'Auria 2014). Religious tribunals are nevertheless permitted by law to function on a voluntary jurisdiction and rely on the consent of both parties to submit to a particular decision when resolving disputes (Al-Astewani 2016a). The first Shariah tribunals in England emerged in the 1980s for a number of socio-historical reasons (Bowen 2016). One of the predominant reasons was the plight of numerous British Muslim women whose husbands refused to give them a religious divorce when this was required, leaving them in a limping marriage (Douglas et al. 2011; Bano 2004).

For the first two decades following their formation, Shariah tribunals in England were embraced by the state. In the first ever court-case directly affecting them, an English judge expressed positive sentiments about the complimentary services which they were providing to the Muslim community alongside the civil courts of the state (Al-Astewani 2019a). The government explicitly affirmed on numerous occasions that their presence and activities were legal and that they would be allowed to function based on the British value of religious tolerance (Grillo 2015). The government's resolve in maintaining this liberal attitude was acutely illustrated when a prominent member of the House of Lords, Baroness Cox, failed six times in a row to pass a private member's bill which sought to restrict the activities of Shariah tribunals (Al-Astewani 2017). This situation changed with the entry of the 21st century, which marked a gradual change in public attitudes towards Islamic law following the events of 9/11 that has skyrocketed in recent years following the horrific activities of the Islamic State of Iraq

and Syria (Davids 2015). Rising levels of public concern and alarm about the existence and activities of Shariah tribunals reached such an extent that the government was eventually forced to change its position and launch the first formal public review of Shariah tribunals (Grillo 2015). This move, along with the decision of the government to leave the European Union, now raises serious question-marks about the future existence of British Shariah tribunals (Al-Astewani 2019b).

Since its inception in the 1990s, the body of literature that has emerged on British Shariah Tribunals has predominantly focused on the compatibility of Islamic law with Western liberal ideals and the consequent impact this may have on members of the Muslim community who use Shariah tribunals (see for example King 1995; Williams 2008; MacEoin 2009; McGoldrick 2009; Reiss 2009; Brechin 2013). Very little research has been done on the judicial nature and function of these tribunals or on the way in which they are regulated by the English legal system. The author was one of the first researchers in the UK to engage in a detailed black-letter law analysis of the legal provisions which relate to Shariah tribunals as part of his doctoral research which took place between 2013 and 2016 (Al-Astewani 2016b). This included an exploration of the impact on Shariah tribunals of the Arbitration Act 1996 and the Divorce (Religious Marriages) Act 2002, as well as the ramifications of important cases involving the legal status of Shariah tribunals such as *Al-Midani v Al-Midani*, *Uddin v Chaudhury* and *AI v MT*. During this period the author conducted fieldwork at four of the most frequently used Shariah tribunals in England and carried out a number of semi-structured interviews with judges and case-workers at each of these tribunals in order to gain an insight into their personal views about the role and function of the tribunals which they serve, as well as the legal status of such tribunals and their relationship with the state legal system. The full set of interview questions were compiled before the interviews took place and participants were all asked the same set of interview questions. The principal inclusion criterion for participants was the professional capacity of the participant as a judge, case-worker or administrator of a Shariah tribunal. The rationale behind this inclusion criterion was the information that such a participant would have about the nature, function and legal status of the tribunal which the participant serves. The participants were identified on the internet via the respective websites of the tribunals which they worked for as employees. Once they accepted to participate, a date was agreed for the interview and the interviews all took place in the official premises of the tribunals under study.¹ Due to this fieldwork the author was able to develop links with the Shariah tribunals he engaged with and currently acts as the legal adviser for the UK Board of Shariah tribunals, which is the largest umbrella organization for Shariah tribunals in England.

Leadership and authority were two central themes in the mission statement of the first ever Shariah tribunal to emerge in the UK. When the Islamic Shariah Council was established in 1982, it noted that its founding meeting had been attended by Muslim scholars representing the major schools of Islamic jurisprudence who also represented a number of mosques in the UK. This ensured in its own words that it was widely accepted as an authoritative body with regards to Islamic law and that it was therefore able to cater to the basic Shariah needs of the Muslim community (Al-Astewani 2016b). Since their emergence in the 1980s, Shariah tribunals have played an important role in guiding the Muslim community through the provision of religious services. Over the last two decades, a small number of studies have been undertaken analyzing the role which such tribunals play within the British Muslim community from a broad socio-legal perspective (Bano 2004; Douglas et al. 2011; Grillo 2015; Bowen 2016). These studies include the important research of Samia Bano and John Bowen, two scholars who have engaged in extensive socio-legal analyses of British Shariah tribunals, focusing on the social impact which such tribunals have generally had within the religious Muslim communities they were established to serve. This paper seeks to build on such research and enrich the literature on Shariah tribunals by critically assessing how Shariah tribunals have used their expertise in Islamic law to wield quasi-judicial authority in the British Muslim community, within a legal system which

¹ Pseudonyms have been used in this paper when referring to the interviewees for the sake of preserving anonymity.

does not directly grant legal jurisdiction to religious tribunals. The paper highlights the distinctive characteristics of the authority which Shariah tribunals wield as primarily Islamic religious institutions, which distinguishes them from the secular courts of the state despite the judicial functions which both share in common. Understanding the precise nature of the authority which Shariah tribunals exercise and the influence which they enjoy in the British Muslim Community is particularly pertinent for policy makers assessing the future role of such tribunals in the English legal system. It will also more broadly benefit researchers in the human and social sciences as an illuminating case-study of the dynamic ways in which law and religion interact with one another.

The paper is structured into four main sections. Each section captures a particular feature of the quasi-judicial authority which Shariah tribunals enjoy, in order to produce by the end of the analysis a comprehensive and holistic picture of such authority. The first section begins with the socio-religious basis from which the jurisdiction of Shariah tribunals stems by shedding light on two important factors which inspired the formation of such tribunals. The doctrinal basis in Islamic law for establishing quasi-judicial authority in a non-Muslim land represents the first factor, and this is assessed in light of both the views of classical Muslim jurists and the modern British Muslim scholars who pioneered the formation of Shariah tribunals after migrating to Britain. The second factor which is assessed embodies a unique application of this doctrinal discourse and involves the legal environment which South Asian Muslim scholars experienced under British colonial rule, an experience which is particularly relevant to the analysis because of the precedent which it represented for the formation of British Shariah tribunals. The second section explores how the issuing of religious verdicts functions as a manifestation of the judicial authority which Shariah tribunals exercise, and examines the doctrinal distinction in this regard between fatwa (the issuing of religious verdicts) and qada' (judicial adjudication). The third section locates the authority of Shariah tribunals within the context of the English legal system by analyzing how Shariah tribunals have engaged with English law and the English courts. This section begins with investigating the role played by the Muslim Arbitration Tribunal as a pioneering case-study of a Shariah tribunal utilizing the Arbitration Act 1996 to enhance its work. It next considers the important role of Shariah tribunals as expert witnesses in the English courts, in cases featuring an element of Islamic law. The fourth and final section highlights the pastoral and spiritual elements of the services which Shariah tribunals provide, and emphasizes how these elements culminate in a fusion of spiritual and legal authority which distinguish Shariah tribunals from the secular state courts despite the parallels which both share.

2. The Emergence of British Shariah Tribunals in the 1980s

2.1. Quasi-Judicial Authority in a Non-Muslim Land

The Islamic Shariah Council currently based in the London district of Leyton was the first Shariah tribunal to be established in Britain ([Al-Astewani 2016b](#)). A foundational motive for the establishment of the council was to fulfil the Islamic obligation made incumbent on a Muslim community living in a non-Muslim land to provide those religious services which are needed by the community. The basis for this obligation may be found in the thought-provoking discourse of classical Muslim jurists which has been recorded in the classical manuals of Islamic law. The discourse centered on the tricky question of religious authority in the hypothetical situation of Muslims living in a non-Muslim land. The 19th century Hanafi jurist Ibn-Abidin, who enjoyed the patronage of the Ottoman caliphate whilst residing in Damascus, states in his celebrated legal manual *Radd al-Muhtar* for example:

As for those Muslims who reside in a land which is ruled by non-Muslims, then it is permissible for the Muslims to establish the Friday prayer and the Eid celebration, and the judge should be elected by the general acknowledgement of the Muslim community ([Ibn-Abidin 1992](#), p. 175).

Nine centuries earlier, the 11th century Hanbali jurist Abu Ya'laa had passed a similar judgement in *Al-Ahkaam Al-Sultaniyyah*, a work which he compiled on the topic of Islamic public law:

If the people of a land found themselves in a situation where they do not have access to an appointed Islamic judge, then they must agree to appoint an Islamic judge from amongst them (Abu Ya'laa 2000, p. 55).

In the author's interview with a leading judge at the Islamic Shariah Council, this religious obligation for establishing quasi-judicial authority in a non-Muslim land was identified as a key justification for the establishment of Shariah tribunals:

The first thing, which is also a very important question, from where does the authority of the Shariah council come? Because usually judges are appointed by an authority, and in the Islamic state they are appointed by the Islamic government. This is the case in all legal systems. Now in a non-Muslim state, there is no official authority which can elect Muslim judges, as they don't recognise[sic] the Shariah. So what do we do in this case? Muslims are asked to manage their own affairs by themselves, like building a mosque, providing halal meat and so forth. So if the Muslim community set up such a system, we will say the authority comes from the Muslim community itself, and this is how the Shariah council was made. Thereafter, those people who are religiously qualified from prestigious Islamic educational universities or institutions, such as the famous dar al-uloom, or the Islamic University of Madinah-which I am a graduate of-or al-Azhar, or any other institution: [T]hey are eligible to be the judge of such a council. The only condition is that they must be well versed in the Shariah.²

On its website, the council describes itself explicitly as a "quasi-Islamic court".³ This reveals their understanding from the very beginning of their formation that they were not acting as a formal Islamic court, since their judgments did not have legal authority, as would be the case for an official Islamic court in a Muslim country. The website emphasizes that the participation of representatives from across the country in the formation of the council is a proof that the council was "a manifestation of the will of the Muslim community and a reflection of their collective desire to manage their personal affairs."⁴ It also notes that it bases its judgments on "all of the major schools of Islamic legal thought and is widely accepted as an authoritative body with regards to Islamic law."⁵

These two facts are emphasized for several reasons. The council's authority and existence depend entirely on the assent of the Muslim community. The only way the council is able to deliver religious services to the community is because the community recognizes it as a legitimate authority and thus agrees to use and abide by the services it provides. The council is very aware of this fact and hence makes a special point to emphasize the communal authority upon which it relies. As noted above, classical Muslim jurists have also stipulated that institutions in non-Muslim lands should be formed according to the assent of the Muslim community residing in the respective location. This is therefore another reason for the emphasis on communal representation. If the council only judged according to one of the Islamic schools of law, such as the Hanafi school or the Maliki school, this would naturally restrict the pool of clients which the council would have access to and also promote the view that it was not representative of the entire Muslim community. This is part of the reason for the council's emphasis on the fact that it judges according to all the schools of Islamic law.

The quasi-judicial nature of Shariah tribunals and the Islamic legal basis for their authority was significantly acknowledged by an English judge in the case of *Al-Midani v Al-Midani*, the first ever reported case to consider the legal status of a decision issued by a British Shariah tribunal.⁶ The Islamic Shariah Council in London had in this case issued a decision on the division and distribution

² Interview conducted by the author with Mohammad Hussain in the Leyton Islamic Shariah Council on 09/10/2014.

³ <http://www.islamic-sharia.org/aboutus/> (accessed on 12 May 2019).

⁴ <http://www.islamic-sharia.org/aboutus/> (accessed on 12 May 2019).

⁵ <http://www.islamic-sharia.org/aboutus/> (accessed on 12 May 2019).

⁶ *Al-Midani and another v Al-Midani and others* [1999] CLC 904.

of assets in an inheritance dispute between Muslim litigants. Justice Rix decided that the decision had no legal effect because one of the parties had not consented to having the dispute adjudicated by the Shariah Council. The case includes an important account of the nature and function of the Islamic Shariah Council by an English judge. Describing the council during the proceedings of the cases, Justice Rix noted:

The Shari'a Council was, as explained in its own brochure, established in 1982 by scholars representing a number of mosques in the UK. It acknowledges that it 'is not yet legally recognized by the authorities in the UK', but represents itself as gaining recognition and confidence among the Islamic community and at large. It would seem that Islamic divorce and matrimonial questions in general are the focus of its advisory and judicial work . . . It can grant Islamic divorce, but it emphasizes that such divorce nullifies only the Islamic marriage and has nothing to do with the civil contract . . . The bench of the Shari'a Council would seem to provide a welcome facility to the Muslim community of the UK to render decisions on Islamic law, particularly in the matrimonial and family sphere. Its authority appears to rest largely on consent, in as much as it responds to the needs of the community it serves, but it may be that under Shari'a law it has autonomous power, as a religious court, to promulgate decisions in favour[sic] of a claimant even against the will of a respondent.⁷

Not only does Justice Rix affirm from an English law perspective that the decisions of the Islamic Sharia Council are not legally binding, but he crucially also alludes to the quasi-judicial authority of the council under Islamic law, and the authority which it wields based on the assent of the Muslim community.

2.2. The Colonial Experience

Another factor which impacted the formation of Shariah tribunals is the legal environment which South Asians experienced under British colonial rule. This factor is particularly relevant considering the fact that the main Muslim group responsible for the establishment of Shariah tribunals in Britain is the South Asian community ([Al-Astewani 2016b](#)). South Asians who migrated to Britain and decided to set up Shariah tribunals were merely building on the colonial experience which they had experienced back home, where they had been left to manage their private affairs without intervention from the British authorities. British colonial rulers, unlike their French counterparts, decided to delegate private affairs, such as marriage and divorce to the colonized communities ([Kugle 2001](#)). The British governed the affairs of such communities by codifying the communities' own laws and traditions and subsequently appointing judges to apply these personal codes. In the case of a large number of South Asians, this meant a codification and application of private Islamic law. This legal state of affairs encouraged South Asian Islamic scholars to set up their own alternative courts, as they were just as capable as state-appointed judges to apply the law, since it was simply a restatement of Islamic law in statute form ([Mullally 2004](#)).

The specific reason South Asian Islamic scholars actually decided to set up alternative courts during British rule in India was the plight of South Asian Muslim women who wanted to end their marriage, but found that the courts which applied Islamic personal law were now occupied by non-Muslim British judges who could not issue Muslim women with a judicial divorce according to Islamic law ([Masud 1996](#)). Following intensive lobbying from Islamic scholars, the colonial government passed The Dissolution of Muslim Marriages Act 1939 as a solution to the issue ([Khan 2008](#)). Section two of the Act sets out the grounds, many of which are adopted from the Maliki school of law, upon which a South Asian Muslim wife may apply to a court for a judicial divorce. The most significant characteristic of these grounds is their expansiveness. They are far more detailed and extensive than

⁷ Al-Midani and another v Al-Midani and others [1999] CLC 904, pp. 911–13.

the narrow and limited grounds available under the old regime dictated by the Hanafi school of law (Abdullah 1997). They make it much easier for a judge to issue a judicial divorce, due to the number of grounds now available for him to identify in any case. The last ground also allows a judge to cite any other ground which the Islamic schools of law have recognized, providing him with even more leeway when deciding whether to issue a judicial divorce to a Muslim woman. A significant feature of the new grounds was the many parallels they shared with the legal grounds for divorce in English family law (Carroll 1997). South Asian Hanafi scholars played an instrumental role in the passing of the Act by acknowledging that the classical Hanafi jurists permitted applying the provisions of other schools of law if the application of Hanafi law caused hardship on Muslims (Khan 2008).

Bearing this context in mind, South Asian Muslims who migrated to Britain and decided to set up Shariah tribunals were merely building on the colonial experience which they had experienced back home, where they had been able to set up alternative courts and manage their private affairs without state intervention from the British establishment. The 1939 Act and its historical background are particularly pertinent to the emergence of Shariah tribunals in Britain. Both the Act and Section 2 in particular provided a concrete precedent for South Asian Muslims who migrated to Britain and were faced with the dilemma of British Muslim women who urgently needed a judicial divorce. The fact that the reasons set out in section two also had parallels with English family law would have provided a further incentive for using the Act as a precedent, since this fact could be used to give the judicial divorce issued by the Shariah tribunals more legitimacy. The important impact of the colonial experience on the mentality of migrants can be further illustrated by comparing the activities of South Asian British Muslims with North African Muslims who migrated to France. North African Muslims became accustomed to a civil law tradition under French colonial rule where marriage and divorce were public affairs which could only be managed by the civil courts according to French civil law (Bowen 2009). Thus, it was much easier for them to accept on their arrival to France that the law would not allow them to establish Shariah tribunals in order to manage their own personal affairs. This is a limitation which lasts to this day (Al-Astewani 2019a).

3. Issuing Religious Verdicts

An important service provided by Shariah tribunals to the communities they serve is that of fatwa, or the issuing of religious verdicts. In Islamic law, fatwa involves a personal non-binding legal ruling issued by an Islamic scholar in response to a specific question raised by a member of the Muslim community (Nadwi 2011). This service was traditionally provided by scholars to members of the Muslim community on a private basis. Thus, the scholar would typically hold a session in the mosque, and members of the public would be free to attend the session and address their question to the scholar. This role traditionally played by Muslim scholars was markedly different from the role which they traditionally played as judges. Scholars acting as judges would rule upon cases between litigants in an official public court, and their judgements would be binding and enforceable by the Islamic state (Al-Khassaf 2004). Whilst commenting on the European Fatwa Council, a judge at the Islamic Shariah Council clarified this difference between fatwa and qada' (judicial adjudication), stating:

The European Fatwa Council is in all senses a council for fatwa, not a council for qada'. Qada' is to give judgement, but the council do not give judgements in a court, they only issue personal legal rulings in all new matters which the Muslim community are affected by. The European Fatwa Council research new matters facing the Muslim community in the west such as the Mortgage. This is a new phenomenon, and the question arises: [W]ill the Shariah accept it? The council therefore researches into these things, then have an annual conference and release papers to inform the Muslims how to deal with these new matters. Some of the

issues might be very burning issues, upon which the council then issues legal rulings. This is their function; it is different from Shariah councils which are judicial councils.⁸

Since the Islamic Shariah Council employs scholars to deal with religious cases brought before them and gathers them within the bounds of one institution, it became a logical step for the council to also provide the service of fatwa on a professional, institutional basis. This saves a member of the local Muslim community from the burden of trying to gain access to local scholars through their own private means. The website of the Islamic Shariah Council mentions sixteen topics which its fatwa department specifically deals with. It is pertinent to note that many of the topics are novel legal issues in Islamic law which Muslims who migrated to the West are particularly noted to have grappled with, such as pensions, student loans and mortgages.⁹

The Islamic Shariah Council in this regard plays an almost identical role to Islamic fatwa websites online and private fatwa institutions which deal exclusively with issuing personal legal rulings for the Muslim community. Islamic fatwa websites typically receive questions from internet users online, and will then issue the ruling online so it may be viewed by the questioner, as well as other internet users (Bunt 2003). The only difference between the Sharia Council's fatwa service and that of fatwa websites is that the council enables members of the community to physically address Muslim scholars with their questions, which has the additional benefit of allowing the questioner to engage in a discussion with the scholar and seek further clarifications from the scholar to avoid any misunderstandings. Islamic fatwa websites on the other hand do not provide such an opportunity, since they only issue rulings in an electronic format in response to pre-written questions posed by internet users online. It is interesting to note that cases do exist in which clients unhappy with a Shariah tribunal ruling have chosen to resort to a fatwa website in the hope of obtaining a more favorable ruling.¹⁰

During the author's fieldwork visit to the Islamic Shariah Council, he attended a session arranged between one of the council's senior judges and two young Muslim men which aptly illustrates the nature of this service. The two men asked the judge about the permissibility in Islamic law of working as independent business owners for the new business scheme known as the American Communications Network. The two men explained that this was a scheme which had become popular as a quick way to make money. The judge replied that he had heard about the scheme and was in the process of deriving a legal ruling regarding its permissibility. He told the two men to refrain from getting involved in the enterprise until he was able to issue a ruling on the matter (Al-Astewani 2016b). This episode aptly indicates the authority which Shariah tribunals wield in the domain of fatwa and the power they exercise to lead the Muslim community by issuing important religious verdicts which can have a significant impact on the lives of British Muslims.

4. Engagement with the English Legal System

4.1. The Muslim Arbitration Tribunal

Whilst Shariah Tribunals have reiterated on numerous occasions that they are committed to acting within the parameters of the law and complementing the services offered by the state courts, few have attempted to substantively engage with the English legal system (Al-Astewani 2019b). An exception to this is the Muslim Arbitration Tribunal, which enjoys a unique presence in the British Shariah Tribunal landscape. The first of its kind in England, it was formed in 2007 by Faizul Aqtab Siddique, a religious scholar of Pakistani origin who acts as the spiritual leader of a community in Nuneaton known as the Hijaz community (Bowen 2013). Unlike many other religious scholars like him who had decided to set up Shariah tribunals, Siddique was a practicing barrister, as well as being a Muslim scholar. He

⁸ Interview conducted by the author with Mohammad Hussain in the Leyton Islamic Shariah Council on 09/10/2014.

⁹ See <http://www.islamic-sharia.org/fatwa/> (accessed on 12 May 2019).

¹⁰ See for example http://www.askimam.org/public/question_detail/15522 (accessed on 12 May 2019).

therefore realized that the Arbitration Act 1996 provided a legal framework which he could utilize to enhance the services offered by Shariah tribunals, and it was in this way that the Muslim Arbitration Tribunal was born. In the words of the tribunal itself, it was established to provide a viable alternative for the Muslim community by seeking to resolve their civil disputes in accordance with both English and Islamic law. This could be done via alternative dispute resolution mechanisms, which would have the additional benefit of saving the Muslim community from the burden of resorting to costly and time-consuming litigation in the state courts and tribunals (Al-Astewani 2016b).

Several characteristics are highlighted by the Muslim Arbitration Tribunal which in its own view sets it apart from other Shariah tribunals (Al-Astewani 2016b). The first is the tribunal's access to an expert panel of legal professionals who specialize in English law, as well as Islamic scholars well versed in both English and Islamic law. This aims to ensure that the tribunal is able to reconcile between both English and Islamic legal provisions when reaching decisions in any of its cases. It also ensures that any outcome determined by the tribunal will be binding and enforceable via Section 46 of the Arbitration Act. The second is the British background of the scholars and legal professionals who form a part of the Muslim Arbitration Tribunal's panel of caseworkers. This aims to ensure that the cases are dealt with in an appropriate fashion, especially when the cases demand an intimate understanding and experience of modern British society. The third is a formal set of procedural rules developed by the tribunal which systemize and regulate its work, in much the same way as the English civil procedural rules systemize the work of the English courts (Al-Astewani 2016b). By virtue of the Act, the Muslim community was thus given access to a professional service which could deal with their religious needs in an appropriate and culturally-sensitive environment. At the same time, the Act also protected the interests of those who used the tribunal, as the tribunal was bound by the Act's standards of fairness. The success of the tribunal is illustrated by the fact that it now has a headquarters in Nuneaton with several offices and a number of employees, a fully functioning website and a large number of clients from across the country (Bowen 2013).

The current emphasis in English family law on alternative methods of dispute resolution outside of the courts highlights the potential of the model pioneered by the Muslim Arbitration Tribunal. It is now a well-established principle in modern English family law that it is in the best interests of couples to privately settle their matrimonial disputes rather than become entangled in adversarial litigation (Douglas 2015). This principle has become more firmly enshrined by the English legal system in recent years, with the Family Procedure Rules 2010 obligating courts to encourage parties to use an alternative dispute resolution procedure if the court considers this appropriate.¹¹ Justice Baker affirmed this principle in *AI v MT*, a 2013 High Court case involving a Jewish Beth Din tribunal which had important repercussions for religious tribunals.¹² He stated that the resolution of the dispute by non-binding arbitration via a religious tribunal during the proceedings of the case was "largely in accordance with the overriding objective of the Family Procedure Rules 2010" and that "it is always in the interests of parties to try to resolve disputes by agreement wherever possible, including disputes concerning the future of children and ancillary relief of the breakdown of a marriage."¹³ He also highlighted the attractions of arbitration for divorced couples which include "speed, confidentiality and cost ... the parties are able to select the arbitrator as opposed to litigation where the parties are obliged to accept the judge allocated to hear the case."¹⁴ This increased prominence of private arbitration in English family law gives Shariah tribunals the opportunity to settle disputes between Muslim couples and potentially receive a consent order from the civil courts granting legal status to their decisions

¹¹ The Family Procedure Rules 2010, s 3(2). The Children and Families Act 2014 now also obligates couples to attend a family mediation session before applying to court. Muslim counsellors working at Sharia tribunals could therefore qualify as mediators and thus be eligible to mediate between Muslim couples.

¹² *AI v MT* [2013] EWHC 100.

¹³ *Ibid.*, para 37, 30.

¹⁴ *Ibid.*, para 32.

following the precedent of *AI v MT*. At the same time the English courts will benefit from such a development, as their own workload will be reduced (Douglas 2015).

4.2. Expert Witnesses in the English Courts: The Case of *Uddin v Chaudhury*

Another avenue through which Shariah Tribunals have had the opportunity to engage with the English legal system has been as expert witnesses in English cases involving Islamic law. This opportunity most prominently arose in the case of *Uddin v Choudhury*, which involved a financial dispute between a couple who had their marriage dissolved by the Islamic Shariah Council in Leyton at the request of the wife in 2004.¹⁵ The facts of the case are noteworthy as they depict the typical kind of case that Sharia tribunals receive throughout the year. The marriage had been arranged by the parents of both spouses, who had immigrated to England from Bangladesh. As per the usual practice in South Asian culture, the families exchanged gifts as part of the marriage ceremony, including substantial amounts of gold jewelry. These were completely unrelated to the dower (known in Islamic law as the *Mahr*), which was stipulated in the marriage contract as £15,000. This remained unpaid upon completion of the Islamic marriage ceremony.

The couple conducted the Islamic marriage ceremony in 2003 with the intention of conducting a civil ceremony later on, but this never occurred. The marriage did not work out, and so the bride approached the Sharia council a year later to dissolve the marriage. The husband agreed to the procedure as long as the wife agreed to return the jewelry he had given her, as well as the portion of the dower he had paid her. The wife denied she had been paid any dower. The council subsequently dissolved the marriage in December 2004, with its records showing that the decision contained no stipulations concerning jewellery or dower (Bowen 2009). The husband's father, Mr Uddin, decided to pursue the case in the civil courts, and claimed that the bride was obliged to return the gifts and jewellery worth over £25,000. The wife filed a counter-claim in court that she was owed the £15,000 of dower stipulated in the marriage contract.

The court decided to appoint Faizul Aqtab Siddique, founder and chief judge of the Muslim Arbitration Tribunal, as the expert witness on Islamic law. This is a sign of the prestige which Siddique's arbitration tribunal enjoyed very soon after its formation in English legal circles. Siddique advised the judge that the gifts were not owed back to the groom's family according to Islamic law as they were not part of the dower. Moreover, he advised that the bride was due the dower in full because the marriage had not been consummated and this was not due to the refusal of the wife. The judge acted on Siddique's testimony, finding that the gifts need not be returned and that the dower was owed to the wife. On appeal, Lord Justice Mummery affirmed the ruling decided at first instance, stating that the marriage was "validly dissolved by decree of the Islamic Shariah Council" and thus activated the obligation of the husband to pay his wife the financial gifts which had been stipulated in the Islamic marriage contract:

On this point it seems to me that, on the basis of the evidence given by Mr Saddiqui [sic] and the findings of fact by the judge, it was a valid marriage under Sharia law and that it was then validly dissolved by decree of the Islamic Sharia council. This was not a matter of English law. There was no ceremony which was recognised[sic] by English law, but it was a valid ceremony so far as the parties were agreed and it was valid for the purposes of giving legal effect to the agreement which had been made about gifts and dower . . . Looking to the evidence of Mr Saddiqui [sic] as summarised[sic] by the judge in his judgment, it is not correct to say, as Mr Uddin does, that those gifts should be deducted from the dower or that there is no legal right to enforce the dower in the circumstances in which this marriage was dissolved. As a matter of contract, arising out of the agreement which the parties had made,

¹⁵ *Uddin v Choudhury* [2009] EWCA Civ 1205.

I think that the judge was entitled in law to say that this was an enforceable agreement, and therefore he was right to grant judgment on the counterclaim.¹⁶

Mummery LJ's reasoning closely follows that of Justice Winn in *Shahnaz v Rizwan*, who decided to treat the Islamic dower as a proprietary right for the purposes of contract law, stating that "under Mohammedan law such right to dower, once it had accrued as payable, was enforceable by civil action and was regarded as an assignable proprietary right."¹⁷ *Uddin v Choudhury* is a landmark case in relation to the decisions of Shariah tribunals. It confirms that English judges are willing to recognize an Islamic decree of divorce issued by a Shariah tribunal as having legal effect for the purposes of contract law. This is a significant judgement as it opens the doors for Muslim women who use Shariah tribunals to have their financial disputes resolved by the English courts despite not legally registering their marriages. Indeed, in *Uddin* the court was ruling between two litigants who were not married in the eyes of English law, but were simply partners to a financial contract. The case also highlights the important role which Shariah Tribunal judges have the capacity to play in English cases as expert witnesses. In this case the evidence given by Siddique was instrumental in the final decision delivered by the judge.

5. Spiritual Reform through Private Dispute-Resolution

Alongside its use of arbitration, another distinctive feature of the services offered by the Muslim Arbitration Tribunal is their spiritual and pastoral dimension. Bowen cites several cases in which he witnessed Siddique infuse the dispute-resolution process with both spiritual and legal advice. He quotes in this regard one of the clients who eventually decided to join Siddique's Hijaz community as stating:

Shaykh Siddique then gave us guidance, business and investment advice, but also said 'if you run the business only for profit where then is the spiritual benefit?' He asked us to give back to the community. He asked us to serve as role models for young people working in Hijaz community (Bowen 2013).

Bowen also noted how Siddique and his colleagues would insist on helping their clients in resolving all aspects of their case, by actively offering pastoral and logistical support (Bowen 2013). This combination between legal, spiritual and pastoral support succeeded in helping to resolve the disputes between the clients involved, and also led to clients joining the Hijaz spiritual community thereafter.

Siddique's insistence as an Islamic judge on incorporating spiritual and pastoral elements within the legal process may be compared to the attitude of judges working in other religious tribunals in Britain. When a priest at a Catholic tribunal was asked by researchers what personal qualities were necessary for him to fulfil his job, he answered:

An ability to blend the two concepts of the judicial and the pastoral because it is an important role within the Church but one has to remember that one cannot, as a religious minister, it's really swimming against the tide by being a purely judicial figure. We can't simply make religion into a system of laws and rules and regulations, Christ himself was very clear about that and he criticised[sic] the Pharisees and the Scribes and the lawyers of his day for doing that. So what one doesn't want to do is to fall into the trap of becoming locked in a legal mindset, you have to have a legal mindset or the ability to adapt to working within judicial structures and disciplines but at the same time you have to retain a pastoral sensitivity and remember that you are also, in your role as a church lawyer, you are trying to help people and you are trying to help people to re-build their lives spiritually speaking and also emotionally

¹⁶ *Uddin v Choudhury* [2009] EWCA Civ, 11, 13.

¹⁷ *Shahnaz v Rizwan* [1965] 1 Q.B. 390.

and socially after the trauma of the breakdown of a marriage relationship so it requires a certain ability to blend those two skills and to remember that you are a lawyer but you are still a priest and a priest first and foremost (Douglas et al. 2011, p. 23).

This interesting parallel between an Islamic judge working at a Shariah tribunal and a Christian judge working at a Catholic tribunal illustrates the characteristic religious nature of the authority which such institutions harness, and which distinguishes them as a grouping from the secular courts of the state. Indeed, the spiritual and pastoral dimension of the Muslim Arbitration Tribunal's work, which can also be found in the work of other Shariah tribunals albeit to an arguably lesser extent, has led a number of academic commentators to depict Shariah tribunals as religious and spiritual institutions rather than as purely juridical institutions (Bano 2012; Bowen 2013; Billaud 2013). This unique fusion of legal and spiritual leadership arguably makes Shariah tribunals in some cases enjoy more influence and authority over the communities which they guide than the secular courts of the state.

6. Conclusions

This paper set out to critically analyze the multi-faceted nature of the authority and leadership which Shariah tribunals enjoy as British religious tribunals functioning within the contours of the modern English legal system. A number of important themes arose in the course of this analysis in each of the four main sections. An exploration of the socio-historical origins which led to the formation of Shariah tribunals revealed how classical manuals of Islamic law represented the source from which the religious jurisdiction of British Shariah tribunals as quasi-judicial institutions in a non-Muslim land sprang. Within this exploration, the precedent established by Shariah tribunals formed under colonial rule aptly represented the sociological challenges involved in translating this doctrinal guidance into reality within the complex paradigm of human life, engaging as it did a salient partnership between multiple schools of Islamic law and colonial legislation. Next, an examination of the role which Shariah tribunals play in issuing religious verdicts and fusing their dispute-resolution services with pastoral and spiritual elements highlighted the distinctive religious nature in which the authority and leadership of such tribunals manifested itself within the Muslim community which they were formed to serve. Finally, an assessment of how Shariah tribunals have engaged with the state legal system underlined the dynamic ways in which religious and secular law interact with one another and the pragmatic need for religious institutions to engage with secular authority. These themes coalesce together to paint a thought-provoking picture of the distinctive characteristics which Shariah tribunals enjoy as quasi-judicial institutions offering religious guidance to the British Muslim community. Both the doctrinal origins which inspired the rise of the tribunals and the far-reaching impact which their services yield by virtue of the religious elements inherent within them epitomize the powerful role which religion plays in enhancing the authority exercised by religious tribunals. The attempts of Shariah tribunals to constructively engage with the state legal system likewise show how the services offered by religious tribunals have the potential to positively complement those offered by the state courts, thereby augmenting the legal system as a whole.

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