

Clash of Shari'ā with National Law

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Abstract

This paper undertakes a praxiological study (practice based approach) of Muslim “religious tribunals”, Shari'ā Councils and Muslim Arbitration Tribunals (MATs) not part of the UK law. Some Western scholars maintain that traditional shari'ā law is discriminatory on issues of gender equality, in particular, with reference to Muslim family law. It is important to examine the shift from the “true narratives” of the Qur'ānic Model (QM) to the “living practice”; co-construction of “true narratives” with the QM. This paper argues that discrimination can be eliminated through the QM by adopting the interpretive/hermeneutical approach. Praxiological/practice based approach (PBA) in this study has identified that discrimination does exist in the “living practice” of traditional shari'ā law.

This study treats the Qur'ān-Sunnā as complementary sources to each other because this has important implications with reference to “wife beating” verse in the Qur'ān (Q.4:34). PBA enabled to identify the specifics of discrimination that occur. The secular-religious debate has been politically influenced, for example, inequality issue for women seeking advice from RTs. Baroness Cox has introduced the Arbitration and Mediation (Equality) Services Bill (HL) 2014-15 that went through its first reading on 11 June 2014. The Bill addresses gender discrimination within Muslim religious tribunals and the parallel legal system.

Keywords: Gender, praxiological, pluralism, Qur'ānic Model, religious tribunals, shari'ā.

Introduction

This paper undertakes a praxiological (practice based approach (PBA)) study of Muslim religious tribunals in the UK and examines the Islamic juridical decision making process within these tribunals, and its compliance to the Qur'ānic (hermeneutical) Model (QM). It is “gender neutral” and seeks to achieve egalitarianism (justice and equity). This paper examines whether discrimination exists in the “living practice” of traditional shari'ā.

The visibility of the shari'ā debate in Western scholarship is very extensive and diverse. In Europe, religious persecution is rare and religious freedom test cases centre predominantly on the issue of religious symbols in the public sphere, for example, the veil ban in France, religious tribunals emerging in the UK.

Dr. Rowan Williams has re-visited the lecture he delivered in 2008. (Williams, 2008). Dr. Williams' lecture on ‘civil and religious law in England: a religious perspective’ discussed shari'ā law being accommodated as part of family mediation in Muslim religious tribunals and referred to ‘supplementary jurisdictions’. Dr. Williams said, ‘...I would want to say very firmly that I am not talking about parallel systems, but about how the law of the land most fruitfully, least conflictually, accommodates practice, and that will I think involve a degree of transparency on the part of communal practice...’. (Williams, 2008) The lecture by Dr. Williams attracted much criticism in the media and this led to polemic views about shari'ā law perceived as barbaric because of the hudud punishments, such as limb amputation and op-

pression of women. This obviously shows a lack of appreciation which prevails in the UK's rule of law.

In the UK, the earlier generations were practising Islam in the private life of their homes and were less visible to the public but now with the change in migration (diverse ethnic communities) in the UK, there has been an increased number of religious tribunals evolving due to faith marriages and divorces. This in turn has resulted in an increase in Muslims turning to these religious tribunals and causing concern on a political level as is addressed by Baroness Cox, a member of the House of Lords. (Telegraph, April, 22, 2014). Baroness Cox is defending British Muslim women after the recent decision of the Law Society to publish a “good practice” note for solicitors on making wills compliant with shari'ā (Thomson, March, 2014) but this has now been withdrawn in November 2014. Baroness Cox believes it can deny women equal shares of inheritance and exclude children born out of wedlock (Telegraph, April, 22, 2014).

In relation to discrimination, Anver Emon identifies that non-Muslims (dhimmi's) and women are discriminated against (Emon, Ellis and Glahn, 2012). Emon further examines the Qur'ānic notion of huquq al-ibad (human rights) from the Qur'ān and how a discriminatory system exists which is integral to this research in answering the question of upholding a different balancing of norms than the conventional use of traditional shari'ā.

Samia Bano, in her empirical field study of Shari'ā

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Councils, undertook a feminist approach to examine Muslim Pakistani women resorting to religious tribunals, and her research also contributed to interdisciplinary and multicultural theory (Bano S., 2004). Cardiff University undertook an empirical study on religious tribunals from Catholic, Jewish Beth Din and Muslim Shari'ah Councils and MATs (2011-2013); this study contributed towards legal pluralism along with civil law, multicultural theories and the "joint governance" model. The study uses Shachar's definition as 'the people who use the tribunals 'jointly belong to more than one community...' (Sandberg, Douglas, Doe, Gilliat-Ray, and Khan, 2013). Furthermore, this study examined the work of Ayelet Shachar and, in particular, her "transformative accommodation" model designed to encourage group authorities themselves to reduce discriminatory internal restrictions' (Sandberg, Douglas, Doe, Gilliat-Ray, and Khan, 2013). However, the empirical study of all three faith tribunals concludes that the umbrella concept of 'joint governance' and its other variants can be developed in a way that could prove to be more useful than the 'transformative accommodation' model (Sandberg, Douglas, Doe, Gilliat-Ray, and Khan, 2013).

The Legal Framework Approach

Praxiological (practice based approach) study is being conducted of Muslim religious tribunals (RTs), Shari'ah Councils and Muslim Arbitration Tribunals (MATs). Some authors use "praxeology" but this study uses praxiology (that is, a study of human actions in practice as in legal studies chapter by (Dupret B., 2012). Western scholars maintain that traditional shari'ah law is discriminatory on issues of gender equality, non-Muslims (dhimmis) and freedom of expression/religion (Emon, Ellis & Glahn, 2012). It is important to examine the shift from the "true narratives" of the Qur'anic Model to the "living practice"; co-construction of "true narratives" and adherence to the Qur'an-Sunnah. This study defines "true narratives" as the narratives of the Qur'anic Model and "living practice" as the Islamic law practiced by religious tribunals in the UK.

The Qur'anic Model has been constructed incorporating the Qur'an-Sunnah and human rights from the Qur'an-Sunnah. The human rights from the Qur'an are basic rights protecting human dignity, right to life, equality and justice. The human rights from the Sunnah are more specific such as the rights of employees, ownership of property. The Qur'an-Sunnah is an important source for Muslim RTs promulgating Islamic rulings and decisions. Discrimination can be eliminated by complying with the Qur'anic Model (figure 1 below) by adopting the interpretative, critical hermeneutical approach, and this paper has identified through PBA analysis that discrimination exists in the "living practice" traditional shari'ah relating to women and even non-Muslims. This study defines "traditional shari'ah" as either Islamic law or shari'ah law referred to by mainstream scholars in the West. The PBA study is combined with a hermeneutical project.

This study treats the Qur'an-Sunnah as complementary sources to each other whereas most scholarly research undertaken for example by some Muslim feminists such as Amina Wadud (Wadud, 1995-1996) and by another recent Muslim feminist, Dr. Ayesha Chaudhry (Chaudhry, 2013) has treated them individually is not good; and thus, neglect-

ing some important implications, in particular, the references to "wife beating" in a verse in the Qur'an (Q.4:34). This paper examines the "wife beating" verse as its interpretation surrounds a lot of controversy in relation to Islam condoning domestic violence against women and secondly, it conflicts with UK law. The practice of different "versions" of Islam has further complicates practice based study.

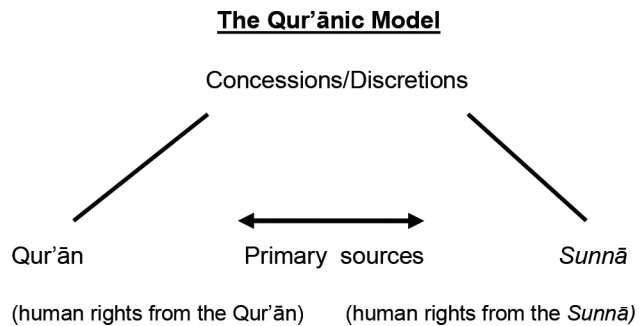


Figure 1: The Qur'anic Model

The Qur'anic Model

Muslim religious tribunals (RTs) have restricted access for research purposes and solving the problem of this study was a challenge, and generally family proceedings are private. This meant that observation as a researcher was not possible but as a practitioner, it was possible to observe real cases. The other method used was interviews of women and Muslim RT staff. PBA was the only way to obtain an insider's view.

This study used concessions/discretions as these give flexibility to Muslim RTs. These concessions/discretions may vary according to each school of Sunni thought (majority of Muslims in the world belong to Sunni school of thought). This notion is from the UK Immigrations law comprising of concessions and discretions. Concessions are usually when the government or a court responds to numerous similar situations that have arisen, and eventually a concession is granted outside the normal rules. Discretion is when a specific situation warrants diverging from the general consensus reached by either the court or Muslim jurist belonging to different schools of thought. For example, in a domestic violence case, a woman is forced to apply for divorce so she is allowed to retain her financial gift/dowar. This is the discretion to the normal rule of forfeiting the financial gift. This would not be something new, as Caliph Umar ibn al-Khattab (584/589-644 CE) suspended limb amputation during the famine period (638 CE) in Arabia, Palestine, Syria and Medina despite the Qur'anic injunction on this (Miller and Hashmi, 2001). As justice and compassion are two important values that the Qur'an prescribes, the ruling in that context did not fit in with the overarching principles of Islam, so were changed. Caliph ibn al-Khattab exercised istihan (personal opinion) which is an integral part of shari'ah. Istihan is supported by three of the Sunni schools, Hanafi, Maliki and Hanbali. Istihan is close to equity in law. The Caliph exercised discretion outside the normal rules of "true narratives", that is, suspension of limb amputation for theft during the time of famine.

Theoretical Framework

This study adopts an interdisciplinary approach to the study of law, drawing upon secular-religious divide, and it makes references to Talal Asad (2003), legal pluralism (Griffiths, 1986), the interpretative approach, (Rahman, 2010) grounded theory (Glaser, Barney, Strauss and Anselm, 1967) praxiology (Dupret, 2012), literature on minority groups (Emon, 2006), critical hermeneutical tools (Duderija, 2008) and promulgation of traditional shari'ā law. An interdisciplinary approach provides conceptual tools to explore the complex relationship between "actual law" (dominant feature of the State) (Williams, 2008) and "unregulated law" (Bano, 2004) (other religious legal orders that are not enforceable) (Williams, 2008), and the social conditions in a "post-secular" society. Secular lawyers in the UK are facing an increasing demand to provide specialist advice on aspects of shari'ā law and conventional Courts in the UK are unable to assist Professor Werner Menski (2014) examines that "plurality-consciousness" not so bad but can be a tool to handle the growing challenges in the world. If states wish to keep control then, they have to learn about "the other" (this means about other legal or religious orders interacting alongside with state laws) in the law itself. Menski points out that there is a greater effort in bringing together theory and practice to achieve a deeper understanding of the legal pluralities in Europe and in the UK. Menski refers to the case of *Al v MT* [2013] EWHC 100 (Fam). This case was a matrimonial dispute arising between a Jewish couple with two children and the parties opted to enter into negotiations by way of a dispute resolution process overseen by the New York Beth Din (Jewish religious arbitration and mediation for family matters). The main issues to be determined were the habitual residence of the parties and children. The unique feature of this case was that the parties were able to resolve their dispute through their religious authorities and when finally the matter was referred back to English court then, the court merely navigated the process (Menski, 2014). Post-secularism is witnessing the rise or return of religion in society. Also, this study investigates whether there is adherence to the QM, which seeks to eliminate internal and external discrimination. In conclusion, it can be inferred from these findings that if there is non-adherence then there exists a flawed system which is far from reaching perfection, let alone capable of standing up to scrutiny. The conceptual and theoretical frameworks link to the debate on Muslim RTs and identity to explore how cultural and legal diversity is characterised by difference and complexity.

Secular-Religious Tension

Muslims are divided whether to turn to religious tribunals or to a secular legal system. The debate surrounds the role of religion and whether it should be kept in the private or public sphere. Secularism (separation of the Church and the State) has a different meaning for Muslims in the Middle East than in the West and it is not one associated with democracy, as Islam has no problem with democracy. In the UK, there are many different "versions" of Islam, and this study defines this as radical or political Islam, fundamental Islam and secular state. In addition, there are different schools of thought within the Sunni and Shi'a branches of Islam but this paper focuses on Sunni schools of thought because majority of the

Muslims belong to the Sunni school.

The secular lawyers in the UK are facing an increasing demand to provide specialist advice on aspects of shari'ā law and conventional Courts in the UK are unable to assist. The police are not able to assist victims of abuse from minority groups subjected to polygamy because religious laws are not recognized under English jurisdiction.

There are tensions between secular and religious law, so how should a "reconciliation point" (this is harmony between secularism and religion but also between Western and Islamic laws) be reached? The answer lies in cross-cultural dialogue. Abdullahi Ahmed An-Na'im, a leading contemporary Muslim scholar, has written extensively on cross-cultural dialogue and followed the footsteps of Taha (Mahmoud, 2006) on making shari'ā law compatible with international human rights law. (An-Na'im, 2008 p.53). An-Na'im sets out two models of the relationship between the state and religious institutions. (An-Na'im, 2008, p.53). He uses the Prophet's example from Medinan period where political, military leadership was accompanied by religious leadership. The other model is complete separation of religion and political authority. (An-Na'im, 2008, p.53). An-Na'im says that most Muslim rulers sought to follow the Prophet's model as closely as possible, although that particular example of Islamic leadership is by its nature impossible to produce. This reflection from An-Na'im demonstrates the prevalent practice within Muslim majority countries seeking to apply shari'ā in present times.

Bassam Tibi analyses that shari'ā regime would result in totalitarian regimes (Tibi, 1994). However, cross-cultural approach defines international standards of human rights (An-Na'im, 1995) and An-Na'im proposes a universal consensus on the formulation and implementation of human rights through internal reinterpretation of cross-cultural dialogue. He uses the example of hudud (shari'ā punishments of limb amputation, death penalty) punishments as a norm in Islamic culture but a violation in Western human rights. (An-Na'im, 1995, p.21) An-Na'im makes a profound contribution on the cross-cultural dialogue to diffuse such tensions, even if on a superficial level. An-Na'im proposes that an agreement should be reached on Qur'ānic punishments and if this agreement is sought with sufficient sensitivity, the general status of human rights will be improved (An-Na'im, 1995, p.21). These tensions are also referred to as "times of turmoil", meaning tensions between secularism and religion (Murphy, 2006). The events of 9/11 have only aggravated these tensions but generally speaking, most communities are co-existing peacefully. This means that most tensions are politicised and this creates a culture of "fear" and "difference", as Katherine Brown maintains (Brown, 2012).

What should the UK do to ease tensions, and is there a middle path to relieve the tension between the conflicts amongst secular-religious norm? These tensions have been politically influenced, such as the veil (face covering/concealment by a cloth) prohibition in France, equality for women seeking advice from Muslim religious tribunals and faith-based Islamic schools emerging in the UK. Political Islam is an international issue since the 9/11 attacks and, in particular, the Islamic radical ideologies emerging or being imported, such as Wahhabism (true Islam) and Salafism

(pure Islam)/jihadi Salafism (combination of Wahhabi/Salafi ideology) from Saudi Arabia and al-Qaeda in Afghanistan.

In the UK and France, considerable controversy exists over Muslims seeking to practice Islam not just in the private sphere but also in the public sphere. For example, the veil (face-covering) and headscarf issue has raised considerable tensions between the State and the individuals. In the UK, there is also a shift in the paradigm of religious-secular debate within the context of Muslim females at universities and the threat to the British way of life, this relates to the emergence of different cultures and different legal orders (Brown, 2012). In the case of *S.A.S. v. France* (Application no.43835/11) (2014) in July 2014, a 23 year old French citizen filed an application against France to challenge the veil ban (veil is face-covering, a practice adopted by Muslim women and the French authorities prohibited this). She argued that as a woman wearing a face veil, the ban constitutes a violation of her right to private life, freedom of religion, freedom of expression and her right not to be discriminated against.

France contested that the applicant did not exhaust domestic remedies and that she cannot be a victim under the European Convention on Human Rights (ECHR) 1950, since she filed her complaint on the day, the law came into force in April 2011 in France. It was accepted that the law could lead to an interference with freedom of religion (Article 9 ECHR 1950) when a face covering is worn out of religious reasons. However, the French government argued that the law and sanctions imposed are proportionate to the aims pursued. There were reasons of identity fraud and security issues, so the person should be 'identifiable when required'. The second aim is 'the minimal requirements for living in a society'. The French government argued that it valued the expression of religious diversity in public space but this must be compatible with the principle of 'secularist pluralism' and that the law is not discriminatory towards women. On the contrary, it seeks to eliminate gender discrimination as the veil is not a widely accepted practice within the Muslim community.

France argued that there were two legitimate reasons – firstly public safety, including identity fraud and security issues, which meant that a person should be 'identifiable when required' to be so, and, secondly, to encourage the aim of 'living together' in an open democratic society.

It was therefore concluded by the ECtHR that the veil ban did not violate the ECHR 1950. The case differs from previous cases, as the law imposed a blanket ban which extended to the social space.

Mixed Methods

This study has used mixed methods but the dominant method is practice based approach (PBA) or praxiology. This PBA is combined with a hermeneutical project. Hermeneutics determine how best to discover the meaning of the text and is generally referred to as the "theory of interpretation" (Little, 2008). This study uses hermeneutics to understand the text of the Qur'an from the inside and to take the best possible meaning of the text. It is my contention that dis-

crimination against women can be eliminated through the Qur'anic Model by adopting the interpretive/hermeneutical approach. I am particularly interested in the "wife beating" verse interpreted by mainstream Muslim scholars.

Mixed methods are a combination of deductive and inductive approaches. Mixed methods approach is considered controversial to researchers and students because "defining" is a problem and "designing possibilities" also are a challenge (Creswell, 2011). This paper aims to convince its readers of the benefits in using such an approach to solve a problem, and help policy makers appreciate a micro-analysis of religious laws emerging in European countries. Islamic law is not monolithic and varies from region to region and state to state. Micro-study of such practices can assist the macro-debate and the paradigm shifts of Muslim law emerging in European countries.

Mixed methods have become common in recent years, for example, *Journal of Mixed Methods Research* by Sage Publications is dedicated to mixed methodology (Bryman, 2012). Mixed methods are defined as integrating quantitative and qualitative research methods in one. Creswell and Plano Clark argue that integrating methodological approaches strengthens the overall research design, as the strengths of one approach offset the weakness of the other, and can provide more comprehensive and convincing evidence (Guest, Emily, Namey, Marilyn and Mitchell, 2013). It can also encourage the use of inter-disciplinary collaboration and use of multiple paradigms (Guest, Emily, Namey, Marilyn and Mitchell, 2013).

The most common arguments against mixed methods approach is that certain methods carry epistemological positions of a positivist who studies rules that govern behaviour in a society through a scientific lens to find out the natural laws of human behaviour within society (Raddon, 2014) or interpretivist, which looks at how the society is shaped by the interpretation of the world (Bryman, 2012).

Praxiology is an approach to studying praxis, which is empirical reality. The praxiological (micro-methodological) study of the Muslim RTs can help understand the "living practice" as these appear in the practice of the tribunals.

Ethnography

Ethnographic studies can be useful but they lack the deductive approach which is necessary to observe the living practice and specific factors contributing to discrimination in the religious tribunals. Ethnographic studies are widely used in social sciences and other disciplines to study a phenomena and it involves the researcher working and living closely in the field.

Ethnography is sometimes referred to as 'thick description', a term attributed to a key anthropologist and ethnographer, Clifford Geertz, who wrote on the idea of an interpretive theory of culture in the early 1970s. Ethnographer has a dual role as a "participant" and as an "observer" in field study. (Geertz, 1973)

Differences – Praxiology/PBA and Ethnography

It is useful to know the difference between the two methods as Dupret (2012) actually refers to praxiological ethnographical approach. I have given brief differences to help understand that both approaches may produce very different results.

Praxiology is deductive and it is a study of human actions in practice and their ideologies are implemented in the study. It adopts continuous cycles of praxis. It studies the subjective world Theory is tested from hypothesis. Ethnography is inductive and ethnographers live with participants in field studies. Ethnographers have a dual role as a participant and an observer. Researcher shares own experiences and multiple methods used for data collection. Theory emerges from general observation.

These differences are important as human actions are open to individual actors as well as the effect of socialized structures. PBA is very versatile and this is not just in the context of social theory but from a methodology perspective and in empirical use. Dupret (2012) refers to Wittgenstein style and there are advantages to its diversity.

Hermeneutics and Grounded Theory

This paper uses hermeneutics and grounded theory, although these are very different. Grounded theory is a methodology that researchers use to develop theory inductively from data.

Classical Islamic scholarship has failed to explore the hermeneutical importance in relation to the social and Qur'anic milieu period for Q.4:34 (Duderija, 2013). In pre-Islamic times, domestic violence was an accepted norm and Q.4:34 revelations came to curb and challenge this norm that existed amongst pre-Islamic Arab community.

An interpretative/hermeneutical approach and in addition to this, grounded theory (Glaser, Barney, Strauss and Anselm, 1967) is considered when data is collected which enables me to theorise the results. There are several approaches that fall under the interpretive umbrella; This grounded theory and hermeneutics. Walsham uses Orlikowski and Baoudi's definition that 'interpretative studies assume that people create and associate their own subjective and inter-subjective meanings as they interact with the world around them. Interpretive researchers attempt to understand phenomena by accessing the meanings participants assign to them' (Walsham, 2006). Generally, interpretative research method rests on epistemological and ontological assumptions, assumptions about the nature of knowledge and about the kinds of entity that exist (Packer, 2013).

Since there is a hermeneutical investigation and this remains within the context of the "wife beating" verse (Q.4:34), time and effort has been invested to interviewing Muftis and contacting international Muftis to understand the exact grammatical syntax of the verse. There is a special need to understand the historical background to the verse as the

socio-cultural and ethico-religious culture in the revelatory period of the Qur'anic verse is important. This paper argues that it has to be examined within the context of the QM and especially, since the Sunnā mirrors the Qur'ān. If the Sunnā mirrors the Qur'ān then the two are to be treated as complementary sources to elicit the best possible meaning using hermeneutics to bring justice and equality.

Critical Hermeneutics

In this research, the Qur'ān is interpreted using critical hermeneutical tools, which is a method that, '...deals with theory and practice of interpretation but the method is also critical in the sense that enables self-conscious reflection on social conditions surrounding the production and reception of text (Phillips, Nelson, Brown and John, 1993). The Qur'anic verse, Q4:34 (wife beating), is analysed in this research using critical hermeneutics and the problem lies in the interpretation of the verse.

Jonathan Roberge says, '... cultural messages 'show and hide'; that is, how the ambiguity of meaning always allows for a group to represent itself while opening the door for distortion and domination' (Roberge, 2011).

What is Praxiology/Practice Based Approach (PBA)?

General praxiology originates from Aristotle (384 BC) and the term used is Phronesis (practical wisdom/reflection) and praxis (action) to develop a world view. Praxiology is a term associated with Ludwig von Mises (Rothbard, 1997), from the Austrian school of Economics. In legal studies, Baudouin Dupret is the leading scholar who has undertaken work on the praxiological approach (Dupret, 2012). This paper adopted a practice based approach (PBA) which is close to the general method of "praxiology" and Dupret (2012) uses this method.

Definition

This paper defines PBA as "being legally involved in the day to day actions/processes of the religious tribunal's proceedings seeking judicial decisions and working the judiciary (qadi) staff". It was not possible to obtain access as a researcher and most researchers are not granted access anymore. However, as a practitioner, it was possible to obtain a bias-free observation because the Muslim RTs were not acting under artificial conditions, meaning that they were not being observed for research or compliance purposes. This study of praxiology is unique from other praxiological studies undertaken. In legal studies, the most prominent scholar is Dupret (2012). Dupret studies the narratives of actual Islamic law practiced and this paper studies and observes the compliance to the "true narrative" of the QM. Praxiology studies people living their daily lives and how they understand and interpret law. Muslim personal law is practiced daily in a Muslim's life; these practices vary from person to person and never coincide with the "true narratives" of the QM.

Praxiology demonstrates that people do not use logical reasoning or follow a set of rules. This is because each person understands law differently. Muslim judges and jurists are people and what has been observed is that they bring their fundamental values and beliefs into judgments. In this respect, the praxiological study can be invaluable to identify their values and beliefs. PBA understands values and power in all actions and interactions.

The praxiological study enabled to identify the specific factors and compare this to the QM and determine adherence to the QM. There are many “versions” of Islam in existence and thus a praxiological study is a very useful methodology to study the empirical praxis of the religious tribunals. The main difference between ethnographic study and practice based approach is the former requires living and participating directly with the people on the field. The latter is an interaction of observance with people directly and is an action orientated research method.

Objectives and Skills for PBA

It is useful to discuss objectives and skills required for PBA. It challenges internal procedures through a critical stance and promotes a culture of transformation. PBA studies people living their daily lives and how they understand and interpret law. Muslim personal law is practiced daily in a Muslim's life; these practices vary from person to person and never coincide with the “true narratives” of the QM. PBA demonstrates that people do not use logical reasoning or follow a set of rules. This is because each person understands law differently. The following skills such as self awareness/self critique, interpersonal skills and being a team member, political/ethical, knowledge transfer skills are required to extend the range of voice and explore different ways of reporting and discussing, and being experimental and going beyond traditional research methods.

Data Collection in PBA

Since UK RTs are considered, data is collected from London, Birmingham, Bradford, Manchester and Glasgow. These have RTs with an increased number of Muslims resorting to them. Other cities have Mosques dealing with such cases and there was an issue of religious duties/worship taking precedence so interviews with the Imams and scholars in these places proved more difficult as Mosques are places intended specifically for worship as opposed to Shari'ah Councils conducting cases.

There are several diverse methods of data collection but this study chose to use practitioner based case excerpts to evaluate the pattern in real human actions and explanations for the “living practice” in Muslim RTs. There is a restriction on observing real cases; this information has been posted on the Shari'ah Council website. The only method is interviews and the responses to the questions can be arbitrary so the interview responses alone can produce unreliable results but to resolve this problem, a practitioner based approach is used to observe real situations rather than conduct observations in an a more orchestrated environment. The results from each method are discussed and conclusions

drawn separately to explain the overall research problem and answer the questions.

The focus group was women aged 18-55 year olds and data is collected by both conducting PBA of case excerpts from my practice and undertaking a hermeneutical investigation of domestic violence cases of the “wife beating” verse. In addition, inductive methods: semi-structured questionnaire, interviews with Muslim women and judiciary staff, Muftis (promulgate legal opinion and can set precedents), scholars and judges (qadis – hear cases and make decisions) of religious tribunals. The purpose is to link these data sets in analysing the results to gain a complete picture.

Practitioner case excerpts have been very useful and the anonymity element enables results examining some of the live issues and problems prevalent in these RTs. There has been a long attachment to these practitioner cases and investigating each stage of the case progression.

Fusion of Inductive and Deductive Methods

The methods that this study used are a fusion of inductive and deductive methodologies. The inductive method is sometimes called a “bottom up” approach that is open-ended and exploratory. The deductive method starts from the need to test a theory. The deductive method is also called a “top down” approach. On one hand there is the “experimentalist” or “positivist” approach, and on the other the “naturalistic”, “contextual” or “interpretative” approach. Haider Ali, a lecturer in Marketing at Cranfield University, demonstrates that researchers can combine elements of both inductive and deductive approaches in a consistent way by starting with a priori specification of constructs in the form of a model (Ali, 1998). In practice both inductive and deductive methods are used by scholars and mixed methods are gaining prominence across all disciplines of research and policy. A practice based study and hermeneutical approach was adopted that begins from generalisations of shari'ah law being a set of rules that discriminate on gender issues, and then it investigated the specific factors of discrimination.

General reluctance exists regarding the mixture of both methods because the design requires careful consideration but my main thesis question is best tackled by mixing both methods. The deductive method of a micro-methodological (praxiological) approach examines the specifics of discrimination and could have a macro relevance to understanding different “versions” of Islam practiced as a whole, and with reference to UK Muslim RTs. The main advantage of using a praxiological approach is that it enabled to study the specifics of practice amongst real actors and critically understand the reasoning behind certain actions. This study aimed at observing the articulation of the “living practices” in religious tribunals to evaluate the level of adherence to the “true narratives”. Complete compliance to the “true narratives” is virtually non-existent, even in the Saudi model which claims total compliance. An example of this is the differentiation in the treatment of an Arab Muslim and non-Arab Muslim living in the Saudi Kingdom. The main limitation of adopting a micro study is that it is specific and narrow in scope. These two distinct methods of legal compliance-based analysis that takes the “true narratives” and their benefits granted on

one hand, and ethnographic analysis of systems of meaning and relations on the other, do not necessarily contradict one another.

This study argues in favour of applying a fusion of the interpretative, grounded theory and critical hermeneutical. A key scholar, Dr. Adis Duderija, who is a lecturer in Gender Studies at the University of Malaya identified flaws within classical scholarship failing to address gender inequalities and his approach assists to address the research problem of this paper. This study proposes the new QM's hermeneutical tool to eradicate gender inequality. Duderija's theory is that the classical scholars did not reflect on the socio-cultural and ethico-moral assumptions prevalent when the Qur'ān was revealed (Duderija, 2013). Duderija says, '...the classical Islamic scholarship failed to explore the hermeneutical significance of these assumptions (ethico-moral assumptions prevalent in the Qur'ān's revelatory period) and therefore did not engender a Qur'ānic hermeneutic and Islamic legal theory that hermeneutically privileges an ethico-religious and purposive based approach to the interpretation of the Qur'ān and Sunnā. This process is referred to as a shift from the Qur'ān-Sunnā interpretive dialogical approach to that of Sunnā -hadith episteme' (Duderija, 2013).

Samia Bano (2004), in her empirical field study, undertook a feminist approach to examine Muslim Pakistani women resorting to religious tribunals, and her research also contributed to interdisciplinary and multicultural theory.

Cardiff University undertook an empirical study on religious tribunals from Catholic, Jewish Beth Din and Muslim Shari'ā Councils and MATs (2011-2013); this study contributed towards legal pluralism along with civil law, multicultural theories and the "joint governance" model. The study uses Shachar's definition as 'the people who use the tribunals jointly belong to more than one community...' (Sandberg, Douglas, Doe, Gilliat-Ray and Khan, 2013). Furthermore, this study examined the work of Ayelet Shachar and, in particular, her 'transformative accommodation' model 'designed to encourage group authorities themselves to reduce discriminatory internal restrictions' (Sandberg, Douglas, Doe, Gilliat-Ray and Khan, 2013). However, the empirical study of all three faith tribunals concludes that the umbrella concept of "joint governance" and its other variants can be developed in a way that could prove to be more useful than the 'transformative accommodation' model (Sandberg, Douglas, Doe, Gilliat-Ray and Khan, 2013, p. 263).

However, this study investigated Muslim RTs from a very different perspective that has not previously been explored in the UK or internationally in this particular field.

Critics of Praxiology

Marinos Diamantides maintains that Dupret's argument suggests that societies that label themselves 'Islamic' actually do not make consistent use of "religious law" (Diamantides, Marinos and Gearey, 2012). Diamantides makes reference to Herbert Lionel Hart on positive law: 'every society needs a regime of positive law, which officials enforce regardless of whether they agree with its substantive content' (Diamantides & Gearey, 2012, p.51). Here, the Qur'ān-Sunnā is the

model or the QM. In practice, we find many "versions" of Islam and shari'ā models.

However, the different practices of Islam need to be studied at a 'micro' level which makes a constructive contribution to the 'macro' debate on Islam and shari'ā.

Results and Data Collection Analysis

Data was collected and evaluated during the interviews of staff members at the religious tribunals for traditional shari'ā rulings and evaluate the basis of legal reasoning. Interviews with Muslim females were conducted and they were asked to complete questionnaires of their experiences; anonymity is allowed for the purposes of their protection and to build trust by keeping confidentiality. The interviews and questionnaires are used to observe and build a theory and link this to the PBA investigation of Muslim religious tribunals.

This study enabled to assess the gap of non-compliance with the QM and an internal "culture of discrimination". This study defines "culture of discrimination" as discrimination towards women within religious tribunals. This is associated with women being treated unfavourably in comparison to men and discriminated against on grounds of gender, and discrimination towards other Muslims. The PBA gives an insight into the specifics of the non-compliance, emergence of pluralism within Islam (different versions of Islam) and legal practice of shari'ā law, and factors such as the judges' beliefs and values are examined.

An in-depth study was conducted and lengthy interviews with 25 women from the UK. These women were located in the cities of London, Bolton, Manchester, Glasgow, Southampton, Portsmouth, Bournemouth, Leicester, Wolverhampton, Dewsbury and Reading. This gave a mixed response. All the women asked for anonymity and did not want digital recording.

Most women interviewed explained that non-registration of their marriages left them unprotected under state law in the UK and were victims of violence. Most had complained that their husbands had legal wives under English law. One young woman felt that the verse in the Qur'ān (Q.4:34) was almost a God given right to beat wives over any matter. She said:

'My husband began to beat me, shortly after my marriage. My husband said, I have a bent nose and he did not like me because it was an arranged marriage. I was beaten everyday and I have been brought up to believe that husbands can discipline wives and it's in the Qur'ān'.

This particular young woman was 19 years of age with 2 children from her marriage and withdrew her complaint from the police for fear of being divorced.

Another woman said, 'my husband would get aggressive and told me that if I didn't obey him, then I would not earn a place in Paradise. He would often use the Qur'ānic verse and tell me that God only created women to obey men! If I dare questioned or argued then, my husband would slap me across my face and told me that since I lost my virginity

and as a divorcee, I wouldn't be accepted in the society'.

This study examined, domestic violence, religious contestations of verse Q.4:34 Muslim RTs and the remedies sought and sadly, these women had all challenged these misogynistic readings of Islam. Compliance to the QM is far from being reached not just within these patriarchal family relationships but there was little evidence of it even in the Muslim RTs. However, the Mosques were more flexible in terms of their approach by making direct references to the primary sources of the QM.

The purpose of this research is not to undermine such tribunals but to observe what justice is delivered, whether these tribunals are adhering to the QM or Islamic law by their own claim. The people approaching these tribunals place their trust and leave it to the "judges" to apply the relevant Islamic law. There is in fact a generalisation of all four Sunni schools of thought followed. In addition, female scholars or judges are not available and it is inappropriate for a female to sit in an all male Court without being accompanied by a male relation (mahram). These are serious issues of concern and need to be addressed within these tribunals if the trust of women is to be promoted and the correct procedures to be followed. There is a need to follow a code of conduct and this code of conduct is one of the QM. The RTs cannot evade these issues because these are live issues pertinent to providing services and delivering justice to protect individual's rights. PBA investigates the practice of religious tribunals. During the study, it was found that Muslim judges and jurists are people bringing their own fundamental values and beliefs into judgments.

PBA reveals Islamic and legal pluralism evolving within the British Muslims in the UK. In other words, different "versions" of Islam are emerging. Muslim religious tribunals demonstrate that "living practices" are those that unfold daily and are different to the "true narratives" of the QM.

PBA revealed that the "living practices" of individual Muslims are in much closer adherence to the QM than the "living practices" in a judicial setting of Muslim religious tribunals. In terms of ethical issues, the most difficult part was to establish trust from research perspective. However, having a dual role as a practitioner and a researcher was the most invaluable aspect and advantage in undertaking this research study.

This study carried out a critical hermeneutical investigation of the "wife beating" verse. Less discomfort was discovered with the ethical side of physical discipline used by husbands. In cases where, the wife was accused of adultery, there was no reference to meeting the condition of producing four witnesses to prove adultery. It was based on the husband's word against the wife. A common pattern that emerged in terms of the abused victims is that nearly all the women were accused of unchaste character and physically beaten over this issue. Majority of the women claimed that they were falsely accused by their husbands.

Conclusion

PBA can be invaluable to identify judges' values and be-

liefs. According to the PBA, people are not rule-driven, that is, following a set of rules of the QM or Islamic law. PBA is a versatile method and studies the subjective world. PBA is grounded in real world situations and acknowledges the unpredictability of human beings.

The Qur'anic Model, inter alia, is important not just for Muslims as being timeless, but is crucial to the twenty-first century debate on human rights. More importantly, within the context of Muslim RTs, observance could deflect criticism away from their operation as being biased and unjust towards women. The Qur'an-Sunnā are complementary sources and must not be treated in isolation, and thus adherence to the "true narratives" of the QM can eliminate internal and external discrimination.

In Muslim RTs, there are different "versions" of Islam practiced and legal pluralism emerging within these RTs. Baroness Cox has raised concerns and brought this to the table of political discourse by sponsoring the Arbitration and Mediation (Equality) Services Bill. Lawyers are facing demands from family clients seeking and interacting with Muslim RTs. This means that different "versions" of Islam and legal pluralism within the practice of Islamic jurisprudence needs to be understood on a national and international level. As much as this study resists Baroness Cox's designation of discrimination against Muslim women resulting from shari'ā, this study acknowledges that problems exist within Muslim RTs on the non-compliance issues to the QM, non-registration of marriages and within the Qur'anic exegesis creating tensions. A vehement response to this would be that one must revert to the "true narratives" of the QM than to the "living practice". This paper's objective is not to redeem that Islamic law brings total gender equilibrium but to delineate the importance of compliance to the QM could potentially bring gender equilibrium. In the world today, no Muslim state is in total compliance.

At present, the Muslim RTs have different legal orders interacting with the State law but also within these different legal orders, there are different "versions" of Islam and laws interacting side by side and not complying with the QM. Secondly, these religious laws are clashing with the State law and have come under political scrutiny.

Abbreviations

QM – Qur'anic Model
 RT – Religious Tribunals
 PBA – Practice Based Approach
 MAT – Muslim Arbitration Tribunal
 ECHR – European Convention on Human Rights 1950
 CE – Common Era or Christian Era

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