

The Shariah and Muslim societies

Mohamed Nawab Mohamed Osman

2008

Mohamed Nawab Mohamed Osman. (2008). The Shariah and Muslim societies. (RSIS Commentaries, No. 052). RSIS Commentaries. Singapore: Nanyang Technological University.

<https://hdl.handle.net/10356/82544>

Nanyang Technological University

Downloaded on 08 Aug 2022 16:09:50 SGT



**S. RAJARATNAM SCHOOL
OF INTERNATIONAL STUDIES**
A Graduate School of Nanyang Technological University

RSIS COMMENTARIES

RSIS Commentaries are intended to provide timely and, where appropriate, policy relevant background and analysis of contemporary developments. The views of the authors are their own and do not represent the official position of the S.Rajaratnam School of International Studies, NTU. These commentaries may be reproduced electronically or in print with prior permission from RSIS. Due recognition must be given to the author or authors and RSIS. Please email: RSISPublication@ntu.edu.sg or call 6790 6982 to speak to the Editor RSIS Commentaries, Yang Razali Kassim.

The Shariah and Muslim Societies

Mohamed Nawab Mohamed Osman

25 April 2008

There is a lot of misunderstanding of what constitutes Shariah and what does not. The recent flap over the Archbishop of Canterbury's call for the introduction of Shariah in Britain is a case in point. Muslims are partly at fault and can do something about it.

RECENT REMARKS by the Archbishop of Canterbury, Rowan Williams, about the need for some form of Shariah to be implemented in the United Kingdom to ensure that British Muslims are not alienated has opened up a debate on the role of Shariah in Muslim societies. Some have defended Williams while most others have vilified him. He has clearly opened a hornet's nest. The frenzy over the issue revealed an apparent and worrying trend: the Shariah is not well understood at all. The Archbishop's remarks are thus an important wake-up call for Muslims and non-Muslims alike to fully understand the true essence and meaning of Shariah and its role in Muslim societies.

Defining the Shariah

Shariah, literally translated from Arabic, refers to the 'way'. In most definitions of the term, Shariah is often referred to as law based upon the Qur'an, the Sunnah (sayings and actions of Prophet Muhammad), and laws enacted through the consensus of classical Muslim scholars (*ijma*) and analogy (*qiyas*). Herein lies the problem with the definition of Shariah.

This definition lumps together scholarly interpretations (*ijma* and *qiyas*) with what Muslims believe are revealed injunctions (Qur'an and Sunnah). This has created an assumption that scholarly interpretations are unchangeable as are the Qur'an and the Sunnah. Another major problem has arisen because Islamist movements all around the world, from peaceful democratic Islamic political parties like the Islamic Party of Malaysia (PAS) to terrorist groups like Al-Qaeda, have put the implementation of Shariah as their key objective. Worse, the focus of these movements is the implementation of the least important aspect of Shariah - the *hudud* or Islamic criminal laws. As such, the mention of the word Shariah reminds one of the gory sights of amputations of the hands and limbs carried out by the Taliban during their brief rule in Afghanistan.

The Shariah covers many aspects of Muslim lives, including the personal realm such as inheritance

and marriage, as well as in the public realm including Islamic criminal law. Some of these laws, such as the prohibition of gambling cannot be changed while other aspects of the law such as in the realm of criminal laws can change. Muslim scholars such as Muhammad Hashim Kamali note that prior to the implementation of Shariah, one must ensure that the objectives (*maqasid*) of the Shariah, namely the protection of faith, life, lineage, intellect and property, are fulfilled. He suggests that as long as these are not yet fulfilled, Shariah law should not be applied as it can lead to injustices.

Misappropriation of the Shariah

Yet many Islamist movements argue that Islamic criminal laws are uniform, divine and as such cannot be changed. However, examples from Islamic history prove to the contrary. Islamic criminal laws, similar to other branches of Islamic law, have constantly been debated and reviewed by ulama of the past. For instance, the Ottoman courts appointed judges from different *mazhab* or schools of thought to ensure the fair execution of laws. Contrary to the assertion of Islamists about the uniformity and divinity of the laws, the implementation of Islamic criminal laws has always differed. Since these laws were never codified in the way modern secular laws have been, the burden of discovering what the Shariah actually prescribed rests on the courts. These laws may thus change depending on the circumstances of why the crime was committed. For instance, a thief who stole because his family was starving would not have been punished in the medieval courts.

However this is not feasible in the modern court system due to the nature of modern courts. It is also impossible for the modern court to ascertain the motivation of a criminal due to the large number of cases it deals with daily. To work around this problem, the Islamists codify the Shariah, especially aspects of the criminal law, and present it as divine laws that must be adhered to. A codified form of the Shariah cannot be executed with the same spirit of justice as that of the medieval courts.

Shariah Enforced

There is therefore variety in the interpretations and implementation of Islamic law in Muslim societies today. Today, Shariah is enforced in all aspects of jurisprudence in several Muslim countries including Iran, Saudi Arabia and Sudan. Examples from these countries have already shown how a codified form of Shariah laws without considering the principles of Shariah could lead to injustices. In November 2007, a 19-year-old Saudi woman was given a jail sentence and 90 lashes for being in a car with a man when she was gang-raped 14 times. Her assailants were given jail terms of between one to five years.

The Shariah as interpreted by Saudi laws totally ignored the principles of the Shariah. This example is proof that certain aspects of the Shariah, such as the Islamic criminal laws, have become outdated and could result in injustices when implemented. Muslim societies that observe the Shariah maintain a dual system of secular courts and religious courts, in which the religious courts mainly regulate matters related to Muslim personal lives such as marriage and inheritance. Islamic law prevails in the realm of Muslim Personal Law in both Muslim and non-Muslim countries. In Singapore, the Administration of Muslim Law Act governs Muslims in areas such as inheritance and marriage. Yet Singapore remains a harmonious multi-religious secular country in which Muslims in Singapore form a part.

In asking for the implementation of Muslim laws, the Archbishop of Canterbury was referring to the introduction of the Muslim personal law, which may not be necessarily bad for the country. The United Kingdom can look at the case of Singapore that allows Muslims to practice Shariah in the personal realm without adjusting the secular framework of the state.

At the same time, Muslims in Britain should ensure that the radical voices amongst them do not try to push for Shariah to be implemented in other aspects of their lives. This will have a negative impact on

the social fabric of the nation.

The true understanding of Shariah will reveal that there is nothing inherently wrong or cruel about the laws. It is the misinterpretation and misappropriation of the Shariah that have created fear about the law.

Mohamed Nawab Mohamed Osman is an Associate Research Fellow at the S. Rajaratnam School of International Studies and a PhD candidate at the Department of Political and Social Change, Australian National University.