

# Understanding Sharia: Islamic Law in a Globalised World

*Rafiq S Abdulla & Mohamed M Keshavjee*

*London, UK: IB Tauris in association with The Institute of Ismaili Studies, 2018*

*Reviewed by Sonia-Nurin Shah-Kazemi\**

These days, there are no dying embers in the flames of intolerance and fanaticism. Keying into Google “Sharia law in Canada” will immediately bring up hits fulminating against sharia and calling for it to be “banned” in Canada—as if it were ever “established” in Canada in the first place. In a news report a few weeks before the federal election in October 2019, Nicole Bogart from *CTV News* wrote:

[O]ver the last week, several memes suggesting that one of Trudeau’s “unwritten promises” upon re-election would be to introduce Sharia law have been shared on right-wing social media accounts, garnering hundreds of shares. In fact, a search for the terms “Justin Trudeau” and “Sharia law” on Twitter returns thousands of results, a large number of which accuse the Liberal leader of being a “closeted Muslim” and placing Sharia law above Canadian law.<sup>1</sup>

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1. Nicole Bogart, “Truth Tracker: No, Justin Trudeau Does Not Want to Implement Sharia Law in Canada”, *CTV News* (18 October 2019), online: <[election.ctvnews.ca/truth-tracker-no-justin-trudeau-does-not-want-to-implement-sharia-law-in-canada-1.4644834](http://election.ctvnews.ca/truth-tracker-no-justin-trudeau-does-not-want-to-implement-sharia-law-in-canada-1.4644834)>.

News agencies and sites such as *Snopes* debunk fake stories concerning the sharia every few months: “One of the most striking things about the stories about Muslims and sharia law and Islam in general is how persistent the misinformation is”, as Brooke Binkowski, an editor at *Snopes*, noted.<sup>2</sup> “The same exact stories get circulated with different names and slightly different details, every few months. If you look at some of the stories we’ve done you can probably see some of the updates to them, indicating how often they resurface. They are nasty and pernicious.”<sup>3</sup>

We need no further justification for the book *Understanding Sharia: Islamic Law in a Globalised World* or the importance of reading it.<sup>4</sup> Does the book answer all our questions? Could any one volume cover subjects such as jurisprudence, the historical development of public and private law, and modern post-colonial discourse and political analysis, as well as current movements for social and global advancement? Well, this book does try to do just that, and, on the whole, it succeeds in delineating the contours for debate, further analysis, and more extensive research. In that sense, it is a remarkable book because it could be presented as essential reading on any undergraduate law course (or indeed within the entire law faculty); equally, the book should be found thumbed at the journalist’s desk. One journalist from the British newspaper, the *Financial Times*, David Gardner, reviewed the book.<sup>5</sup> In response to his review, one of our “educated” *Financial Times* readers immediately wrote, “So Mr Gardner joins the Defenders of Islam brigade. Who needs to read this book when a 2 week holiday in Saudi will teach you everything you need to know.”<sup>6</sup> Another replied, “Sharia is incompatible with secular democracy, and thus is an enemy of the west . . . . Anyone who thinks Sharia can exist as a shadow system of law in the west is at best a dangerous fool, at worse a spineless traitor.”<sup>7</sup>

Use of the emotionally laden word “traitor” exposes the degree to which this debate is fraught with emotion; it seems to elicit responses that question the very nature of western identity, going to the heart of who “we” are. And

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2. Alex Amend, “Searching Sharia: Anti-Muslim Propaganda Ranks High in Google Search” (8 March 2017), online: *Southern Poverty Law Center* <[www.splcenter.org/hatewatch/2017/03/08/searching-sharia-anti-muslim-propaganda-ranks-high-google-search](http://www.splcenter.org/hatewatch/2017/03/08/searching-sharia-anti-muslim-propaganda-ranks-high-google-search)>.

3. *Ibid.*

4. See Rafiqq S Abdulla & Mohamed M Keshavjee, *Understanding Sharia: Islamic Law in a Globalised World* (London, UK: IB Tauris in association with The Institute of Ismaili Studies, 2018).

5. See David Gardner, “Understanding Sharia: Islamic Law in a Globalised World, by Rafiqq S Abdulla & Mohamed M Keshavjee”, *Financial Times* (18 March 2019), online: <[www.ft.com/content/04140232-471d-11e9-a965-23d669740bfb](http://www.ft.com/content/04140232-471d-11e9-a965-23d669740bfb)>.

6. In vino veritas (18 March 2019), comment on Gardner, *supra* note 5 [on file with author].

7. *Ibid.*

while emotional responses are not illegitimate in themselves, emotions need to be processed in accordance with facts, so as to avoid a “bilious reaction to undigested information”.<sup>8</sup> Another response from the *Financial Times*, which I cannot help citing here, is “the trouble with the Sharia is its rules about women, about non-muslims, about homosexuals, about apostasy, about inheritance, about marriage, about divorce, about parental authority, about certain criminal penalties, about witnesses and many other subjects. These rules are simply not compatible with modern Western societies.”<sup>9</sup> But that is what Raficq Abdulla and Mohamed Keshavjee set out to do: demonstrate that the essential aims and values of the sharia, applied with “a new epistemology”, are compatible with modern western societies.<sup>10</sup>

It is a very tall order, and the book is logically obliged to start at the beginning. The introduction states that it is a question of “presenting different perspectives rather than prescriptive answers”,<sup>11</sup> and that there is “no single monolithic understanding of Sharia followed by all Muslims”.<sup>12</sup> With that in mind, the book is comprehensive; it sets out the historical development of the sharia (including a helpful glossary), whilst at the same time informing us about important contemporary debates. In this sense, the book is remarkably informative, signposting many trajectories of modern scholarship and trends in the field, and citing a host of authors spanning the political spectrum. This is amply apparent from the blurbs on the back cover of the book; the fact that both Dr. Maulana Shahid Raza (a traditional imam) and Dr. Ziba Mir-Hosseini (a feminist academic) endorse the book gives us much cause for hope!

The first four chapters do more than set the scene. There are many medieval manuals of Islamic law which have been translated, and there are modern texts which have become standard sources, from Noel Coulson to Raj Bhala.<sup>13</sup> This terrain is a minefield, and the book’s authors must be congratulated for their cartography, as no standard map could have encompassed the charting of the evolution of the sharia alongside an analysis of the prevailing geopolitical forces. The authors maintain the compass coordinates, and one invaluable key is this: they help us avoid falling into the trap of confusing the ideals of prophetic

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8. Abdulla & Keshavjee, *supra* note 4 at 245, citing to Jonathan Wolff, “Don’t Knock the PPE Degree – It’s an Antidote to Fake News”, *The Guardian* (4 April 2017), online: <[www.theguardian.com/education/2017/apr/04/antidote-fake-news-ppe-degree](http://www.theguardian.com/education/2017/apr/04/antidote-fake-news-ppe-degree)>.

9. Scourge of the Economists (18 March 2019), comment on Gardner, *supra* note 5 [on file with author].

10. Abdulla & Keshavjee, *supra* note 4 at xxix.

11. *Ibid* at xviii.

12. *Ibid* at xxi.

13. See NJ Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964); Raj Bhala, *Understanding Islamic Law* (Shari’a) (New Providence, NJ: Matthew Bender & Company, 2011). The 2014 Islamic Law Bibliography, compiled by the Law Library of

guidance at the advent of Islam with the prevailing conditions of the time. This is the pitfall of modern Muslim fundamentalists and Islamophobes alike: they think that the reality of “Islam” is identical to the social, cultural, and political structures and mores of seventh-century Arabia.<sup>14</sup>

As the authors chart the spread of the Islamic empire which expanded in its first hundred years—west to the Pyrenees and east to China—the burgeoning empire comprised such extraordinary diversity that legal pluralism “became a fact, with a range of laws co-existing under the broad rubric of sharia”.<sup>15</sup> Differing local customs and indigenous traditions came to be incorporated within the developing structure of Islamic jurisprudence. This is a point of fundamental importance, which the authors do well to emphasize throughout the book: Islamic law was by no means uniformly imposed on the ethnically diverse groups that made up the Muslim world.<sup>16</sup>

Unusually comprehensive, the book includes a section on the origins of the Shi‘i school of law.<sup>17</sup> What could have been a very dry outline of the differences between the two schools (whilst not omitting to mention the other seven schools of law<sup>18</sup>) is instead enlivened by a practical example from inheritance law.<sup>19</sup> It is this kind of detail, in conjunction with the corresponding principles, that makes this book stand out. The Shi‘i emphasis upon the authority of the imam is explained,<sup>20</sup> but what could be more clearly explicated is the relationship between the distinctively Shi‘i theological tenet of *adl* (justice) and the authority of the imam within a juridical framework. However, this lack of emphasis, and the fact that, as one of the *Financial Times* readers pointed out, Keshavjee is from the Ismaili community,<sup>21</sup> should not in any way prejudice us against the book. As the authors repeatedly and categorically state, this book is not a definitive manual of sharia, much less a “*fatwa*”<sup>22</sup> on the sharia, but a book to encourage “new thinking on sharia and [to allow] it to have a realistic

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Congress (established in 1832) runs into over a dozen pages. See Constance A Johnson, “Islamic Law: A Bibliography of Works Published in English, 2009-2014” (December 2014), online: *Law Library of Congress* <[www.loc.gov/law/help/islamic-law-bibliography/2009-2014.php](http://www.loc.gov/law/help/islamic-law-bibliography/2009-2014.php)>.

14. See Abdulla & Keshavjee, *supra* note 4 at xviii.

15. *Ibid* at 32.

16. See *ibid* sub verbo “*urf*” at 265.

17. See generally *ibid* at ch 7.

18. See *ibid* at xiv–xvii.

19. See *ibid* at 109.

20. See *ibid* at 106–08.

21. See Peter Hawkins (19 March 2019), comment on Gardner, *supra* note 5 [on file with author].

22. For discussion of the vexed question of what a *fatwa* actually is, see Abdulla & Keshavjee, *supra* note 4 at 80–83, 261.

role in the formation of Muslim identity without it being fetishised as its fulcrum”.<sup>23</sup> The authors go on to state, “this [new thinking] is not a revolutionary notion as it has existed in the Muslim world over the centuries, where Islam was never regarded as a monolithic entity but seen as consisting of many cultures serving different dimensions of existence.”<sup>24</sup>

In the field of alternative dispute resolution (ADR), where the delineation of shared normative ethics is key to the success of the process, the interaction between sharia and current understanding of the dispute process has been positive and dynamic. Mediation has been a feature of dispute resolution from the inception of the first Muslim community as the process is enjoined in the Qur’an. Co-operative dialogue is also taking place in the domain of finance where creative ways of enabling sharia principles to function within modern financial instruments are being agreed upon. However, the world of finance is very different from the global arena of human rights, despite the obvious intersection; the alleviation of poverty is first amongst the United Nations’ Sustainable Development Goals (SDG).<sup>25</sup> And in the propulsion towards SDG-aligned nations, the debate about reclaiming the higher ethic of the sharia is of vital importance. In the chapter “Neo-*Ijtihad*” the authors explain the *maslaha* (public interest) and *darura* (necessity) principles regarding sharia and finance,<sup>26</sup> and they argue that “sharia finance is in reality a form of ethical finance where investing is limited to creating wealth, [and] sharing risks” within an accountable structure.<sup>27</sup>

Keshavjee’s substantial experience of ADR enriches the book, especially his involvement in the resolution of child abduction disputes. The work of the Malta IV Conference on Cross-Frontier Child Protection & Family Law Valletta 2016, which built upon the initiative taken by the Canadian diplomat William Crosbie and the Pakistani Justice Tassaduq Hussain Jillani,<sup>28</sup> “was an example where initial reluctance on the part of Muslim countries to engage in the process of resolving disputes between parents who experience the abduction of children was transformed into engagement” because of the conscious effort to involve Muslim lawyers, academics, activists, and government officials of all political shades.<sup>29</sup>

At the outset, the authors justify their inclusion of traditionalist concerns “because they go to the heart of the notion of Islamic identity as they see it . . . [and

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23. *Ibid* at 259.

24. *Ibid*.

25. See “About the Sustainable Development Goals” (last visited 10 February 2020), online: *United Nations* <[www.un.org/sustainabledevelopment/sustainable-development-goals/](http://www.un.org/sustainabledevelopment/sustainable-development-goals/)>.

26. See Abdulla & Keshavjee, *supra* note 4 at ch 9.

27. *Ibid* at 155.

28. See *ibid* at 179.

29. *Ibid* at 180.

traditionalists] continue to represent large and vociferous sections of the Islamic world”<sup>30</sup>. And here is the rub—or perhaps the central “rub” prominent amongst many facets of complexity rendering any appraisal challenging. Focusing on the search for identity in this post-modern era is a key mechanism for unlocking the problems of analysis: “[The] search for identity, which is fixated on a system of law, is problematic not only because it over-simplifies the notion of self-understanding . . . but also because sharia is itself a complex identity made up of different schools of law, different modes of interpretation, and competing and sometimes conflicting modes of implementation.”<sup>31</sup> But, as the recent independent review by Professor Mona Siddiqui demonstrated,<sup>32</sup> the question of Muslim identity is still red-hot. In May 2019, the House of Commons of the United Kingdom debated the question of sharia courts, and in the subsequent Hansard report, the question of perceived and self-perceived Muslim identity is discussed, and the possible “conflict” between Muslim and British values is raised.<sup>33</sup> This crucial theme is discussed in different ways throughout the book.

It is not for nothing that one of the main (although not exclusive) areas of concern in the book is Muslim women. The authors bring to the fore a number of interesting trajectories regarding women and the sharia, and they must be commended for not being patronizing and squeezing the question of women into a single chapter. Any appraisal of the history and formation of Islam cannot but take into account the central dimension of women’s voices, which obviously cannot be exhaustively listed here. Nonetheless, we should mention at least the decisive role of Khadija, the Prophet Muhammad’s first wife to whom he was monogamously married for twenty-five years, who was also his employer, and upon whom he was financially dependent.<sup>34</sup> Khadija supported his prophetic mission in the face of total hostility from his community. There are numerous incidents concerning other women (after the death of Khadija) in the Prophet’s household whose intervention at critical junctures changed the course of the prophetic mission. An undeniably significant proportion of the sayings (*Hadith*<sup>35</sup>) of the Prophet originate from his wife Aisha, whose testamentary capacity has never been (seriously) doubted. If it were not for the fiery, eloquent, and substantive speeches of the Prophet’s granddaughter Zaynab, recorded by the courts of the Governor of Kufa, Ibn Ziyad, and subsequently, the Caliph Yazid, the epic story of the massacre of the Prophet’s grandson Husayn and his

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30. *Ibid* at xxv.

31. *Ibid* at 12.

32. See UK, Home Department, *The Independent Review into the Application of Sharia Law in England and Wales* (Cm 9560, 2018). See also Abdulla & Keshavjee, *supra* note 4 at 176.

33. See UK, HC Deb (2 May 2019), vol 659, col 195WH–214WH.

34. See Abdulla & Keshavjee, *supra* note 4 at 1.

35. For a definition of *hadith*, see *ibid* sub verbo “hadith” at 262.

companions at Karbala would not have entered into Muslim consciousness as it has, and no one can underestimate the importance of that.

Analysis of patriarchal oppression, whether in the name of Islam or not, cannot be adequately discussed in this review, still less in all of the pages of the book. Abdulla and Keshavjee do not shy away from the current controversies regarding Muslim women, female testimony, veiling and dress codes, female genital mutilation (FGM), the criminal codes concerning sexuality,<sup>36</sup> so-called honour killings, forced marriage, and divorce (this is not an exhaustive list).<sup>37</sup> Indeed, in a world full of questions regarding non-Muslim women and their dress codes—that is to say, where multinational advertising agencies use images of women’s bodies to sell mops; where the British newspaper, *The Independent*, revealed in a recent study that 55% of men believe that a way a woman dresses makes her “more likely” to be physically assaulted and/or raped;<sup>38</sup> where in England and Wales an average of two women are killed each week by a current or former partner;<sup>39</sup> and where recent work of the United Nations Office on Drugs and Crime exposes the exponential growth of global human trafficking and controversial debates regarding the status of sex workers<sup>40</sup>—this area is not just a minefield, but a very real, complex, and dangerous battleground in the fight for the security of half of humanity.

The authors take us through each of these controversies sensitively. The book is replete with examples of brave individuals, fighting for and achieving significant progress against oppressive practices committed in the name of sharia, namely Mukhtaran Mai,<sup>41</sup> Nasreen Akmal,<sup>42</sup> and Lina Joy,<sup>43</sup> to name but a few. The case of Amina Lawal, a Nigerian woman accused of adultery, reached global headlines because of the “Miss World” contest which had been scheduled

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36. We are helpfully informed that in the sharia, homicide is a delict. See *ibid* at 22.

37. Each of these areas of concern is listed in the book’s index. See *ibid* at 307–21.

38. Maya Oppenheim, “Majority of Men Believe Women More Likely To Be Sexually Assaulted if Wearing Revealing Clothes, Study Suggests”, *The Independent* (23 February 2019), online: <[www.independent.co.uk/news/uk/home-news/men-sexual-assault-clothes-women-victim-blaming-rape-a8792591.html](http://www.independent.co.uk/news/uk/home-news/men-sexual-assault-clothes-women-victim-blaming-rape-a8792591.html)>.

39. See “The Facts” (last visited 10 February 2020), online: *Refuge* <[www.refuge.org.uk/our-work/forms-of-violence-and-abuse/domestic-violence/domestic-violence-the-facts](http://www.refuge.org.uk/our-work/forms-of-violence-and-abuse/domestic-violence/domestic-violence-the-facts)> (averaging from March 2008 to March 2018).

40. See “Human Trafficking Cases Hit a 13-Year Record High, New UN Report Shows”, *UN News* (29 January 2019), online: <[news.un.org/en/story/2019/01/1031552](http://news.un.org/en/story/2019/01/1031552)>.

41. See Abdulla & Keshavjee, *supra* note 4 at 134.

42. See *ibid* at 147.

43. See *ibid* at 136.

in Nigeria at the time;<sup>44</sup> “what is often not taken into account is the fact that it was the Sharia Appellate court that acquitted Lawal on the basis of sharia evidentiary principles”,<sup>45</sup> which historically had a “high degree of exactitude before a penalty was imposed”.<sup>46</sup> Our attention is drawn to how often sharia penalties are meted out by “military or other autocratic regimes . . . in the name of sharia without any sharia safeguards or due process”.<sup>47</sup>

The authors’ South African background affords them a unique sense of perspective because they have been part of the process by which oppressed South Africans overthrew the seemingly indestructible apartheid regime. In the context of FGM, we are given the example of the Gambian activist, Jaha Dukereh.<sup>48</sup> Her personal experience of raising awareness in the United States and her work in educational programs and with the chief imam in The Gambia demonstrate “how meaningful change can be made through both education and cultural engagement from within”.<sup>49</sup> The authors’ carefully chosen word “within” is indicative of the combined experience and sensitivity the authors manifest throughout the text, so that we are not subjected to the subtle, but acutely perceived, bias by those of us within that prevails in most texts on the subject—the kind of bias that Jane F Collier explains so well: “In writing this review, I face a problem recognized by the authors: how to write about historical transformations in legal systems without invoking, however unwillingly, an evolutionary narrative implying that changes toward contemporary Western models are progressive.”<sup>50</sup>

Throughout, Abdulla and Keshavjee take great pains not to subject the reader to that kind of bias, and they invite us to refrain from the prejudice that “Muslims are unable to engage with modernity”.<sup>51</sup> In their concluding critique, the authors’ legal background informs their analysis:

[W]hether a Muslim country’s laws are exclusively sourced in sharia . . . has significant implications for individual rights such

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44. See *ibid* at 130–34.

45. *Ibid* at 133.

46. *Ibid* at 210.

47. *Ibid*.

48. See *ibid* at 144.

49. *Ibid* at 145.

50. Jane F Collier, “Intertwined Histories: Islamic Law and Western Imperialism”, Review Essay of *The Calligraphic State: Textual Domination and History in a Muslim Society* by Brinkley Messick, *Colonising Egypt* by Timothy Mitchell, *Culture and Imperialism* by Edward W Said, *Law as Metaphor: From Islamic Courts to the Palace of Justice* by June Starr, (1994) 28:2 Law and Soc’y Rev 395 at 397.

51. Abdulla & Keshavjee, *supra* note 4 at 149.



as gender reassignment, same-sex relationships, citizenship, freedom of speech, apostasy, [and] blasphemy . . . because some of these issues have not been covered by sharia or because the *fiqh*-oriented formulations are of such a nature that they come into direct conflict with modern Human Rights principles as understood globally today. However, we often find that *fiqh* formulations are closer to Common Law principles, but also what sometimes passes in the name of sharia is pre-Islamic customary law which sharia itself does not countenance, such as forced marriages and crimes of honour.<sup>52</sup>

In majority Muslim states, “the call for sharia is simply explained as a legitimate demand for justice . . . [but these] notions are often vague, simplistic and, in many cases, misleading”.<sup>53</sup> For Muslims in a diasporic setting, “sharia becomes a quasi-nostalgic yearning for the safety of an identity that is communally ratified within their groups”.<sup>54</sup> The authors observe that in “recent times we see . . . [the emergence of a] dream of an imagined and idealised past inscribed with communal and personal authenticity”.<sup>55</sup> This applies not only to Muslims, as the authors point out: this idealization was at work with the Serbians during the Balkan crisis, and in India in the midst of its Hindutva movement, etc.<sup>56</sup> The issue of identity is thus perceived as central in the struggle to resist the “economic, political and technological drives of globalisation which atomises the individual at the expense of community and communality”, a phenomenon not unique to any one sector of humanity in today’s world.<sup>57</sup>

As I read the book, I could not help thinking that I was watching two sensitive thinkers, appalled by the suffering being perpetrated in the name of their religion, entering into the gladiator’s arena where the mob is shouting loudly, baying for their blood. Abdulla and Keshavjee dare to present a point of view which does not claim to have all the answers but they put forward compelling arguments enabling analysis and promoting change. Do we have the courage to stand by their side? And I say “we” because unless we all stand up and take responsibility, and raise a new voice to shift the parameters of the debate, there will be no end to the conflict.

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52. *Ibid* at 232. For the glossary entry for *fiqh*, see *ibid* sub verbo “*fiqh*” at 262.

53. *Ibid* at 247.

54. *Ibid*.

55. *Ibid* at 235.

56. See *ibid*.

57. *Ibid* at 216.