

Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community

Mohamed M. Keshavjee

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*Reviewed by the Honourable Marion Boyd**

The controversies that have raged during the last decade on the subject of Islamic personal law have resulted in strong academic interest and given rise to many articles, theses and books. Of particular importance in this body of work is a new book by Dr. Mohamed M. Keshavjee, entitled *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community*.¹

Dr. Keshavjee studied law in England (Gray's Inn) and Canada (Queen's University and Osgoode Hall). He has an LLM from the University of London in Alternative Dispute Resolution (ADR), Islamic Law, International Protection of Human Rights and Arab Comparative Commercial Law, and a PhD in Law in ADR from the University of London, School of Oriental and African Studies. For ten years, Dr. Keshavjee worked with the Ismaili Muslim Conciliation and Arbitration Boards, developing and delivering training for ADR practitioners in fourteen countries. More recently, he trained mediators in the European Union to conduct mediation in situations where the Hague Convention on International Child Abduction has not been adopted. Dr. Keshavjee is an enthusiastic and articulate spokesperson for the use of ADR, not only in family and inheritance matters but also in commercial and community disputes. He has lectured throughout the world and has contributed key articles to influential publications on legal pluralism.

* BA, LLD *honoris causa*, former Attorney General of Ontario, appointed Lay Bencher of the Law Society of Upper Canada. Author of *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* (Toronto: Ministry of the Attorney General, 2004).

1. Mohamed M Keshavjee, *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community* (London, UK: IB Tauris & Co, 2013).

Given his history, one might expect Dr. Keshavjee to be an unapologetic cheerleader for the wholesale adoption of Muslim alternative law. On the contrary, *Islam, Sharia and Alternative Dispute Resolution* is a thoughtful and critical analysis that fearlessly explores thorny issues such as forced marriages, “chained spouses”, domestic violence, and child custody and abduction. The complexity of legal interfaces in diverse communities is carefully detailed, stressing the need for cultural competence on the part of mediators and adjudicators, whether they are arbitrators or members of the state-appointed judiciary.

The book is grounded in qualitative research undertaken some years ago for Dr. Keshavjee’s doctoral thesis on how disputes were resolved in a large community of Sunni Muslims in Hounslow, England. He uses examples from that research throughout the book to illustrate how the theory and practice of ADR, as well as the legal processes of English courts, relate to the lived experience of those in the Muslim diaspora. Unfortunately, interspersing this research data with the analytical chapters results in unnecessary repetition and a noticeable change in pace and tone; closer editing of the text would have been helpful. In addition, I wonder how the virulent hostility in more recent years toward the very idea of accommodating Islamic law, not only in Britain but around the world, might have affected the community’s responses to the same research questions if asked today.

For those not familiar with Islamic personal law, this book includes a brief history of the development of the various schools of law in the Sunni and Shia traditions—a history that is readily accessible and supplemented with a careful glossary of terms. Notably, Dr. Keshavjee outlines the strong tradition of privacy in personal law matters and the emphasis on protecting the honour of the family at all times. Equally important is the Qur’anic injunction to seek reconciliation between the parties if at all possible, to negotiate compromise and voluntary agreements when disputes arise, to choose arbitrators where the parties cannot agree, and to consent to be bound by the arbitrators’ decisions. Dr. Keshavjee argues that these traditions make ADR more attractive for those in the Muslim diaspora than reliance on the courts of law in the countries where they live.

However, steeped himself in the common law tradition, Dr. Keshavjee acknowledges the crucial role played by the courts in establishing

precedents that guide adjudication, whether formal or informal. He cites, among other decisions, a United Kingdom Queen's Bench case, *Shahnaz v Rizwan*, which established that the *mahr* (a dower gift owed or owing from the man to the woman at the time of a marriage) arises out of a contract rather than out of the marital relationship itself and can therefore be enforced under British contract law.² Upon the breakdown of a marriage, the man in this case claimed that the *mahr* provisions were contrary to the policy and good morals of Britain because, although the marriage was not actually polygamous, it was "potentially" polygamous in that it occurred in India under Muslim law, which allows polygamy. Justice Winn, referring to the *Transfer of Property Act, 1882*,³ ruled that the right to *mahr* "is far more closely to be compared with a right of property than a matrimonial right or obligation".⁴ This case appears to have been treated as determinative, as there are few reported court cases involving similar disputes over *mahr*.

Two cases, both brought under the *Marriage (Scotland) Act 1977*,⁵ have sought to annul arranged marriages. One was brought on the grounds that the marriage schedule, established by the Act, had been violated because the marriage occurred before the prescribed date. The judge found that there had been no true consent by the young woman, given the pressure on both parties by their families. In the second case, a Scottish court annulled an arranged marriage of a young woman who was taken to Pakistan and forced to marry against her will, on the ground that the law does not recognize as valid a marriage contracted under the age of sixteen. Dr. Keshavjee points out that these precedents have helped to protect vulnerable individuals and have likely prevented many similar incidents.

Most valuable to those interested in ADR, Dr. Keshavjee writes eloquently about the need to educate the diaspora community about the laws of the land in which they live and the Qur'anic injunction that Muslims are required to abide by those laws. He stresses the need to train those undertaking mediation and arbitration in a number of areas: both state and religious laws; techniques of active listening; the impact of power

2. [1965] 1 QBD 390.

3. (India), c 1, s 3.

4. *Shahnaz v Rizwan*, *supra* note 2 at 401.

5. (UK), 1977, c 15.

imbalances on the principles of natural justice; culturally appropriate interventions; and the best interests of the child.

Perhaps most disappointing to me in this book is the very cursory reference to the excellent standards and vigorous training undertaken by volunteer mediators and arbitrators of the Ismaili Conciliation and Arbitration Board. Having read the excellent paper Dr. Keshavjee presented to the Seventh European Conference on Family Law: International Family Mediation, I am convinced this book would have been greatly enhanced by a chapter outlining what I regard as the best practices in Islamic mediation and arbitration.⁶ I hope that Dr. Keshavjee will write more fully in the future for a public audience on the priorities, policies and practices in ADR that protect vulnerable parties while upholding the principles of Islamic law.

In the meantime, this book is a valuable addition to the growing body of literature on the topic of mediation and arbitration. The bibliography alone provides a remarkable resource for those interested in religiously based ADR, and the text itself is accessible, thorough and meticulously researched.

6. Mohamed M Keshavjee, "Family Mediation in the Shia Imami Ismaili Muslim Community: Institutional Structures, Training and Practice" (Paper delivered at the Seventh European Conference on Family Law—International Family Mediation, Council of Europe, Strasbourg, France, 16 March 2009) online: The Institute of Ismaili Studies <<http://www.iis.ac.uk/SiteAssets/pdf/Family%20Mediation%20in%20the%20Shia%20Ismaili%20Muslim%20Community.pdf>>.