

# STATE VERSUS MINORITY GROUPS: CAN EQUILIBRIUM ON GENDER EQUALITY BE REACHED?

## Research Aims & Objectives

Issues addressed are the interaction between state and private international law in the UK and the Netherlands with reference to religious tribunals in the UK. Should the State wish to keep control, then they have to learn about 'the other' in the law itself.

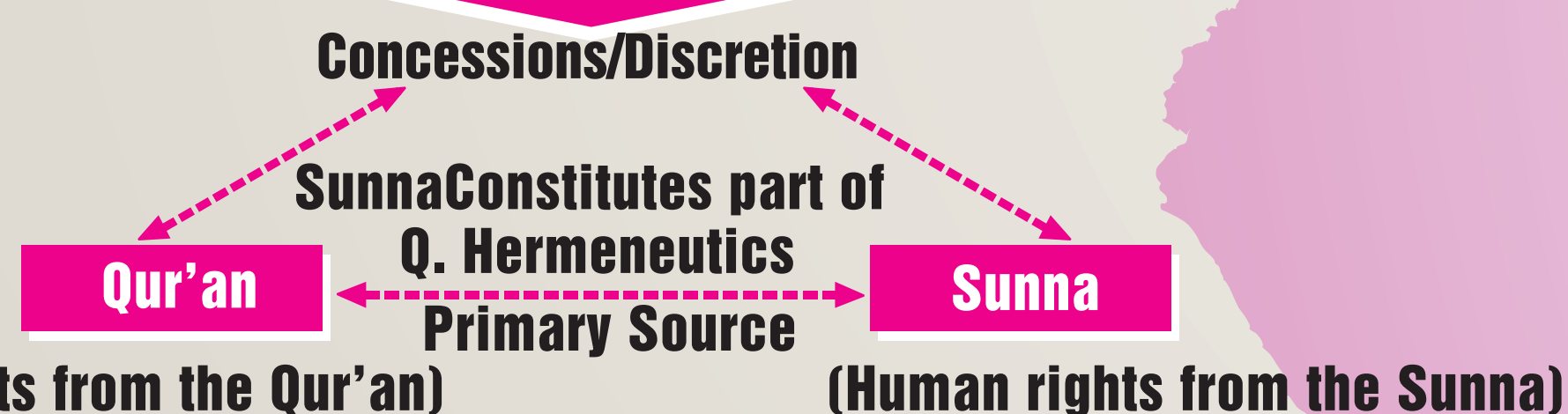
- Gender Discrimination against women. My PBA study is combined with a hermeneutical project. Hermeneutics >>>>> 'theory of interpretation'
- Marital Captivity and the Law and Religious Legal Orders in the Netherlands
- The religious-secular debate in Europe has been politically influenced, for example, inequality issues for women seeking advice from Muslim RTs and the veil (face-cover) ban in France. Both resulted in state intervention. (UK Bill by Baroness Cox & the French ban on veil in public.)

## Definition of Minority Rights

Minority groups - defined by UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992 UN Declaration) and the Framework Convention. Minorities as based on ethnic, cultural, religious and linguistic identity and provides that State should protect their existence. Religious minorities are covered in human rights protection offered by minority rights.

- European Convention on Human Rights (ECHR) - seeks to protect RM under Article 9.
- 1995-2006 - UN sponsored the annual week-long meeting of the UN Sub-Commission Working Group on Minorities.
- The Council of Europe's Framework Convention for the Protection of National Minorities (Framework Convention) to protect minority groups in Europe.
- From UN Commission on Human Rights to UN Human Rights Council meeting for 2 days per Annum since 2008 as the Forum on Minorities Issues.

## The QUR'ANIC Model(QM)



- Qur'an and Sunna are primary sources; these are not immediately ready for use. (Rudolph Peters & Peri Bearman (2014) They need interpretation & reasoning in order to formulate the rules they were meant to convey.
- Concessions /Discretions give flexibility to RTs. For example, in a domestic violence case, a woman forced to apply for divorce as a result of violence, she can retain her financial gift/dower. This is discretion to the normal rule of forfeiting the financial gift. This varies according to each school of thought.
- I treat the Qur'an and the Sunna as complementary sources. My research explores the potential Qur'anic Mediation/Alternative Dispute Resolution (ADR) model. The Qur'an-Sunna and its value systems provide us with an opportunity to develop one as modern mediation/ADR principles accord with Qur'anic ethics. Islamic ADR: sulh (negotiation/mediation Q.49:10 & 49:9; takhim ( arbitration); med-arb (combination of sulh & takhim); muhtasib (ombudsman Q.3:110; 3:114; 9:71; 31:17); informal justice by wali al-mazalim (chancellor); fatwa of muftis (expert determination). Shari'a Councils mediation model needs to be understood & described

## RESEARCH METHODOLOGY

The tools used to solve the problem adopts a mixed approach

- Discrimination can be eliminated through the QM by interpretive/hermeneutical approach. The study is interested in the 'wife beating' verse and this is analysed using hermeneutics. Praxeology and hermeneutics: begins from generalisations of shari'a law as a set of rules that discriminate on gender issues, moving to the specifics.

Data Collection - Focus group is women

Data is collected from London, Birmingham, Bradford, Manchester & Glasgow.

PBA conducted of case excerpts.

Semi- structured questionnaire for interviews used (Muslim women, tribunal staff, muftis and RT judges). Also, grounded theory is used.

## THE SHARI'A DEBATE IN THE UK

On 22 April 2013, the BBC Panorama programme made a covert documentary on Muslim Shari'a Councils operating in the UK; this attracted a lot of controversy about the inequality issues against Muslim women resorting to these Councils to seek advice on religious divorce and violence. Baroness Cox, a politician who introduced the Arbitration and Mediation (Equality) Services Bill [HL] 2014-15 that just went through its first reading on 11 June 2014. Bill addresses gender discrimination within RTs and the parallel legal system.

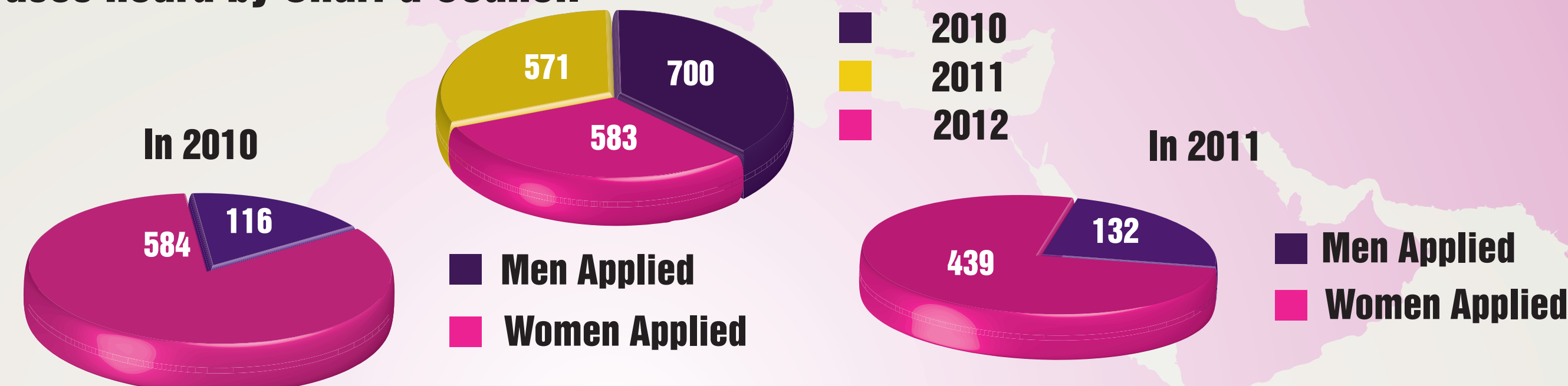
Background to Shari'a Councils - these were formed to address family problems of Muslims living in the UK in light of Islamic family law. The Council is made up of members from all major school of Islamic thought. It was established in 1982 in a meeting approved by various scholars & Mosques in the UK. Misogyny and discrimination exists in the culture rather than the shari'a law.

The main areas they specialise are:

Divorce, children, finances, domestic violence and mediation.

## STATISTICS

Cases heard by Shari'a Council



## THE INTERDISCIPLINARY APPROACH

I adopt an interdisciplinary approach to the study of law secular, legal pluralism, praxeology (practice-based) literature on minority groups, interpretative approach and promulgation of shari'a law.

Some Western scholars maintain that traditional shari'a law is discriminates on issues of gender equality, non-Muslims (dhimmis) and freedom of expression/religion. Anver Emon, Marks Ellis & Benjamin Glahn 2012 My research has identified through PBA analysis that discrimination does exist in the 'living practice' traditional shari'a. (Islamic law or shari'a law) The PBA study is combined with a hermeneutical project. Two Studies undertaken: Dr. Samia Bano (Senior Lecturer SOAS)-investigated the experience of South Asian British Muslim women using Shari'a.

Cardiff University - undertook an empirical study on religious tribunals from Catholic, Jewish Beth Din and Muslim Shari'a Councils and MATs (2011-2013).

Others studies

Dr. Mohammed Keshavjee (Hounslow MLSC small community).

Machteld Zee - conducting Secular-Religious study of UK RTs. & Arshad Muradin - (NOSR) Making Islam work in the Netherlands. Focuses on: 1. religious authority & leadership 2. creation & application of Islamic law in the context of counseling and mediation, experiences of Muslims in the Netherlands.

## S.A.S. v. France (Application no.43835/11)

Secular-Religious Debate in Europe

The ECtHR in the case of S.A.S v. France (July 2014) a French Muslim woman filed an application against France to challenge the veil ban in public places. It was concluded that the ban was not unlawful. Article 9 ECHR has challenged and exposed 'secular' norms that upon review are seen to unjustifiably limit religious beliefs or practices. There can be good reasons for social cohesion and security, which receives priority depending on the circumstances.

Human rights cannot provide a remedy for all cases involving religious pluralism. Human Rights are limited to protect the rights of minority groups. The UK and the Netherlands have different models of religious laws emerging.

What does this interaction between state and Islamic laws mean?

State laws must create space within its existing framework and recognise and adapt to the complex religious diversity & pluralism. How may the State respond and/or what pragmatic solutions exist?

## RELIGIOUS DIVERSITY AND CONFLICT BETWEEN EU AND PRIVATE LAW

In Europe, Islam seems incompatible with secular Europe. This workshop focuses on the Emergence of ADR (Shari'a Councils) in the UK. Conflict arises when these ADR bodies undermine principles of justice, equality before the state or EU law.

Religious diversity presents challenges to Europe. Marie-Claire Foblets & Katayoun Alidadi (2012) undertook a study of framing multicultural challenges in Europe within the human rights language, and in particular in terms of the freedom of thought and religion.

It argues that Muslims stand to benefit from the human rights rules as long as they accept to mould, shape and limit their claims to fit dominant conceptions. This study is based on case law collected through RELIGARE project network. This project undertakes a study on religious diversity and secular models in Europe. It seeks to enhance interdisciplinary cooperation in the area of religious pluralism and secularism. Judges are reluctant to participate in the debate on legal-religious issues or accommodate parallel legal system met with negativity.

Case law involving human rights issues can serve to demonstrate how concrete disputes, state legal institutions handle unfamiliar or foreign concepts and arguments, & to what extent recognition is given to these. One example, is so long as these do not conflict with state law such as gender equality

## RESULTS & DISCUSSION POINTS

Muslim judges/jurists are people bringing their fundamental values/beliefs into judgments. A gap identified of non-compliance with QM & an internal 'culture of discrimination'. RTs demonstrate 'living practices' are those that unfold daily; different from 'true narratives'.

Both in the UK and the Netherlands different models of religious laws are emerging and this workshop examines these, Shari'a Councils. Legal pluralism & interaction of different legal orders in the UK provides a space for critical thought and room for reflection - relationship between law, culture and religion. It raises questions about power and where it is located.

Prof. Menski is the 1st to document Islamic legal practice in the UK. He says, if state wishes to keep control, then they have to learn about the 'other' in the law itself to understand legal pluralities.

WHAT DO THESE DIFFERENT LEGAL ORDERS MEAN?

Some argue that in a multicultural society, there are heterogeneous, cultural diversity & pluralism. The emergence of Shari'a Councils (SC) challenges the hegemonic power of state and EU LAW.

Dr. Bano investigates the plurality of law in the UK with reference to S.C. UK law fails to understand religious and cultural frameworks upon which litigants of minority ethnic communities act to resolve their dispute. State law must create the space within its existing framework and recognise/adapt to the complexities of diversity & pluralism.

## CONCLUSION / PROPOSALS

Equilibrium on gender equality is therefore far from being reached unless there is compliance to the QM. On the other hand, gender equilibrium from the State's interpretation is through Western interpretation of human rights & in the UK Baroness Cox has sponsored the Equality Bill. The UK family courts and Shari'a Council could work in partnership but through legislated empowerment to monitor & conduct a more just & equitable dissolution of marriages. Supplementary jurisdiction - requires TRAINING & is costly and therefore, not very practical unless careful state regulation introduced for compliance. More women need to be genuinely involved. Finally, Equality Services Bill introduced should seek consultation from the Shari'a Councils and be given the opportunity to put forward their views & reflect any amendments to serve the Muslim community so long as they do not clash with state laws. What model is appropriate for Muslim communities needless to say the Western model does not suit the Muslims cultural temperament. On the other hand, a model that focuses primarily on fiqh may also not accord with the needs of the present day. This is why, out of the box thinking may be called for but always within the ethics of Islam & not on any rigid formulations when it comes to Shari'a Councils.