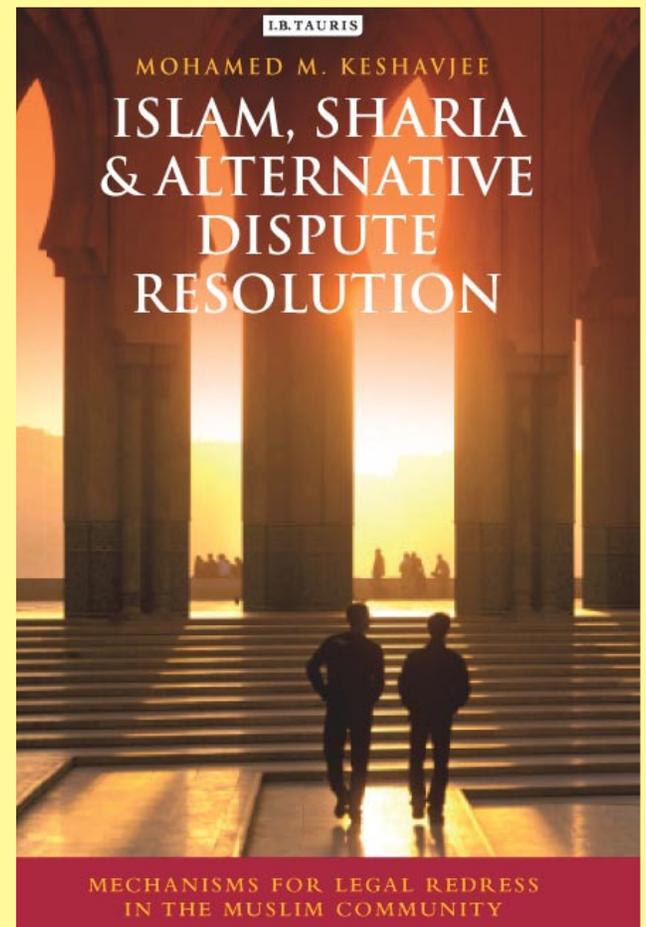


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# AWAAZ

V O I C E S

Awaaz is a magazine published tri-annually out of Nairobi, Kenya. It aims to provide a broad platform for debate and reflection on issues of both contemporary and historical interest. What started off in 2002 as a focus on the role of the South Asian community in the historical, political and socio-economic spheres of Kenya; has now broadened to cover the larger debates on diversity, democracy, human rights and social justice. The magazine also critically examines the role of minorities both as communities in Kenya and East Africa; as well as a concept of human rights in a society be they ethnic, racial, gender based, sexual or political.



## Islam, Sharia and Alternative Dispute Resolution:

### Mechanisms for Legal Redress in the Muslim Community

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Sharia or Islamic law is a much misunderstood system – vilified in some parts of the world and idolized in others. In the Western world it is generally regarded at best with a degree of reticence but paranoia is also evident in some opinion formers. When the former Archbishop of Canterbury, Rowan Williams, hinted at perhaps the English legal system accommodating certain parts

of the Sharia, his speech – which was not actually read by most commentators – created much confusion and dismay in the public domain. The fact is that the Sharia, like all legal processes, is a mixed bag. There are parts – especially those edicts dealing with criminal matters and pertaining to what Westerners regard as human rights – which do not fit comfortably or at all in the modern Western world. But there are other parts, which provide a locus of justice and balanced outcomes which fit the expectations and needs of the communities the Sharia serves.

Mohamed Keshavjee's excellent book - *Islam, Sharia and Alternative Dispute Resolution* (in the interest of transparency, I must state here, that I am cited in the book) - deals exactly with this latter aspect of Sharia. The book covers three linked and overlapping areas, namely, Alternative Dispute Resolution, Islamic law and how it feeds into the practice of ADR, and how these processes meld into the wider legal system of a non-Muslim country such as the United Kingdom. Keshavjee shows how this complex process - which contradicts stereotypical notions of a monolithic faith consisting of dire practices - plays out in terms of justice and in fostering communal balance and harmony creating outcomes that provide satisfactory resolutions to disputes within a diasporic Muslim community.

Keshavjee's ethnographic study will be extremely useful for Western governments and the legal professions, in enabling them to encounter and understand the problems and issues that Muslim minorities face and deal with, on a daily basis. A form of legal pluralism has taken root, at least in the UK, by way of evolution rather than by edict.

The Islamists idolize the Sharia which is thereby ossified and made oppressive. The Sharia in the hands of these people becomes a means of manipulative aggression, an obscurantist and categorical stipulation corrupted by a presumption of virtuous and rightly-guided intent. But this concept of the Sharia is not a source of justice and judicious adjustments to the demands of place and time. Keshavjee's book, on the other hand, discloses a more compassionate interpretation of the Sharia based on the two notions of *maslaha* (public interest) and *darura* (necessity). It sets out to resolve problems, to encourage society to flourish and people to act well towards each other. Like all law it has its sterner aspects, it establishes standards of behavior and limits, it sets out obligations necessary for an orderly society; but an essential element of its purpose, Keshavjee argues, is to mediate a course of sane and generous actions between people. He describes by way of a thorough study of a single Muslim community living in a London suburb, just how the Sharia is incorporated into a non-adversarial process of dispute resolution whereby the community is able to resolve problems through a practice of informal justice incorporating principles of modern ADR practices with traditional mediation processes based on Qur'anic teachings. The community has been able to remain faithful to the Sharia whilst working within the public laws of England, and also

by taking into account some of the cultural issues such as gender equality and the general requirements of human rights.

Keshavjee shows how successfully the Sharia can be used to engender mediatory solutions especially as the traditional processes are derived from underlying principles of the Sharia that guide the purposes of the law calling for the protection of public interest and of the five essential values that are an intrinsic part of Islamic law, namely, the protection of faith, life, the integrity of the intellect, lineage and property-known in classical Islamic law as the *Maqasid al Sharia*. The law is responsive where Muslim scholars and jurists practice *ijtihad* or the application of reason in interpreting the Qur'an so that it remains germane to the problems and issues that people encounter in the contemporary world. Thus the five values are considered in the light of the modern world rather than an imagined past. The work of various fora that deal with legal problems in diasporic Muslim communities, according to Keshavjee, can only work where the ethical principles of Islamic law - equality justice and freedom - are interpreted to respond to contemporary needs and expectations. Interpretation, by its very nature, is open to discussion and contradiction depending on the nature, history and educational status of a community. Some will be open to wider interpretations and others, will remain essentially conservative. But the fact is, as Keshavjee points out, the Sharia, like the faith, is not a static or monolithic construct, it is multifarious and its rich and enriching variety can be seen in the role it plays in the mediatory practices of Muslim communities living in non-Muslim societies.

I cannot do justice to the width and complexity of Dr Keshavjee's scholarship in such a short space. He covers many issues and topics germane to ADR and how Muslims deal with disputes amongst themselves in ways that satisfy their cultural and religious identities, which are simply too many to deal with here. I would seriously encourage readers to read the book which covers so many levels of the Muslim experience as a diasporic minority without the academic obfuscation one often finds in such works. I am sure it will encourage readers to explore this important topic further.

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