Union of Muslim Organisations of U.K. & Eire

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MUSLIMS IN EUROPE AND HUMAN RIGHTS

1. Introduction :

1.1 The number of Muslims in Europe is growing. Whereas in the past the European Muslims' request to be treated equally under the law has been religiously ignored by secular governments, today this is no longer possible in the light of these governments' own laws.

1.2 The *Human Rights Act 1998* ("the HRA"), which has incorporated the *European Convention on Human Rights* ("the ECHR") into English domestic law, recognises the European Muslims' right to live as Muslims and to educate their children as Muslims. The ECHR places on those governments who have signed and ratified the Convention – including the United Kingdom and French governments – a legal duty to secure these rights.

1.3 This means that in situations where these rights are violated, the law must provide a remedy. It also means that Muslim Personal Law should be incorporated into English domestic law. The following pages consider these two assertions in detail, with reference to the UMO's Ten-Point Bill of Rights.

1.4 The English legal system, being largely the creation of humans, is in constant need of repair. It is always being developed. As social situations change, it has to adapt. It is always in the process of trying to catch up with changes in society. Where current laws are inadequate or outdated or non-existent, balance must be restored by passing new laws. Jeremy Bentham whose utilitarian approach to life profoundly influenced the evolution of English law would agree with this assertion.

1.5 The interpretation and application of existing law and the formulation of new law is usually subject to some form of policy or other – whether it be executive, legislative or judicial, or a combination of these. Since the practice of Islam is still a relatively new phenomenon both in the United Kingdom and in Europe (whose laws are increasingly being introduced into UK domestic law), policies as regards Muslims in the UK and in Europe are still in the process of being defined and formulated.

1.6 It is important therefore that such policies are based on accurate information and understanding – and not on superficial misinformation, ignorant assumptions influenced by false stereotypes and the irrational urge to define decent God-fearing law-abiding Muslims as 'the enemy' who must be terrorised and destroyed by the tolerant secular state.

1.7 The challenge facing the government of the day is to really bring Muslim rights home – not just on paper, but in actual everyday life.

1.8 As regards laws which deal with religious groups, the legal rights of Christians are already relatively well established. For example, Christians have the day off on their collective day of worship and on their main religious festivals. They have their own Ecclesiastical Courts. Christian personal law is legally recognised. This state of affairs is not surprising, since Christianity has been established in the British Isles for many centuries.

1.9 Similarly, the Jewish community enjoys similar but less extensive privileges under the law. For example, it is relatively easy for orthodox Jews not to work on Saturday because this day is part of the established weekend. They have their own courts, the Beth Din, but not all Jewish personal law is legally recognised. This state of affairs is not surprising, since Judaism has been established in the British Isles for several centuries.

1.10 As regards those whom the law describes as 'people of other faiths', the Muslim, Sikh, Buddhist and Hindu communities are by comparison to the Christian and Jewish communities relatively recent arrivals in the UK. As residents and citizens of the UK they are subject to UK law and bound by its duties as well as entitled to its rights. These communities wish to enjoy the same rights under the law as the Jews and the Christians, which is not unreasonable.

1.11 Just as the law has developed through time to accommodate the religious needs of Christians and Jews, so it now needs to develop further in order to accommodate the religious needs of the members of other religions, preferably in a manner which minimises confrontation and conflict and which welcomes equality and diversity.

1.12 In formulating appropriate policies and laws it is important to distinguish between tolerant integration and forced assimilation. Much can be learned, for example, from the history of Spain. At one point in time Muslim, Christian and Jewish communities lived side by side for centuries in relative harmony, each community self-governing in respect of its personal law and settlement of internal disputes – because the Islamic law of the land recognised diversity. At another point, thousands of people were slaughtered and thousands more forced to flee for their lives – because the Catholic law of the land required conformity.

1.13 In our current multi-cultural, multi-racial, multi-religious society, it is important that the lessons of history can be applied wisely by allowing people to be different, within reason. As far as religious groups are concerned, this can best be achieved not only by granting them equal rights under the law, but also by ensuring that these rights are secured by the law – so that they can be exercised under the law with the full protection of the law.

2. The Legal Basis for British Muslims' Human Rights :

2.1 *Article 9* of the *ECHR* – which is incorporated into UK domestic law by *section 1 of the HRA* – guarantees everyone living in Europe including the UK the right to *choose* their religion and the right to *practis*e their religion, subject to reasonable limitations:

9 (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

9 (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

2.2 *Article 2* of the *First Protocol* to the *ECHR* – which is also incorporated into UK domestic law by *section 1 of the HRA* – guarantees everyone living in Europe including the UK the right to have their children educated in accordance with their religious beliefs:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

[The UK has entered the following reservation in relation to this Article:

… in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.]

3. The Legal Duty to Secure British Muslims' Human Rights :

3.1 By virtue of *Article* 1 of the *European Convention on Human Rights* (the *ECHR*), the UK government, as a signatory to the *ECHR*, is under a legal duty to secure (by passing secondary legislation if necessary) the rights guaranteed by the *ECHR* by providing an 'effective remedy' in the English courts 'without discrimination on any ground' for any violation of these rights. Whenever and as long as it fails to do so, the government is in breach of *Articles 1, 13 and 1*4 of the *ECHR*.

3.2 *Article 1* of the *ECHR* states:

1 The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Article 13 of the *ECHR* states:

13 Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 of the *ECHR* states:

14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

3.3 Up to now the UK government has delayed fulfilling its legal duty to secure *inter alia* British Muslims' human rights *firstly*, by not incorporating *Article 13* of the *ECHR* into the *HRA 1998* and *secondly*, by refusing to sign and ratify *Protocol No. 12 to the ECHR* which was adopted by the Council of Europe on the 4th November 2000, in order to give effect to *Article 14* of the *ECHR*, which although incorporated into the *HRA 1998* is not a free standing right against discrimination and can only be invoked in conjunction with one of the other *ECHR* rights.

3.4 *Article* 1 of *Protocol No. 12* provides for a general prohibition on discrimination:

> **1 (1)** The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> **1 (2)** No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

4. Recent Developments Concerning British Muslims' Human Rights :

The Employment Directive

4.1 *Council Directive 2000/78/EC of 27th November 2000* (on the implementation of the principle of equal treatment in employment and occupation – but not in any other spheres of life – without discrimination "on grounds of religion or belief, disability, age or sexual orientation") was adopted under *Article 13 of the EC Treaty* as introduced by the *Treaty of Amsterdam*. This Directive ('the *Employment Directive*') was implemented by the UK government on the 2nd December 2003 in respect of religion or belief, in the form of the *Employment Equality (Religion or Belief) Regulations 2003*.

4.2 In other words, after over 30 years of campaigning, the UK Muslims' *Article 9* rights appear to have been secured in the sphere of employment. This is an example of how balance can be restored by passing new laws where current laws are inadequate or outdated or non-existent.

4.3 The DTI has made it clear that for the time being it does not intend to extend the ambit of this legislation further although it remains 'committed to getting the right framework to support equality legislation' and to that end published in 2002 a consultation paper entitled *Equality and Diversity: Making it Happen*.

Lord Lester's Single Equality Bill

4.4 In the meantime, Lord Lester of Herne Hill QC, who criticised the government's approach as 'piecemeal and minimalist' introduced his Equality Bill as a private members bill in the House of Lords on the 14th January 2003. In the explanatory notes of the Equality Bill it stated that 'the Government has not yet taken steps to replace the present outdated, fragmented, inconsistent and unsatisfactory pieces of anti-discrimination legislation with a single Equality Act' – which is what the Equality Bill sought to achieve by legislating against all forms of discrimination, including religious discrimination, in all spheres of life. This Bill was dropped in

the House of Commons like one of King Alfred's hot cakes on the 11th July 2003, as soon as it was time to consider it seriously at the second reading stage.

House of Lords Select Committee on Religious Offences

4.5 On the 15th of May 2002 the House of Lords appointed a Select Committee to consider and report on the law relating to religious offences. This followed consideration of a proposal that Lord Avebury's Religious Offences Bill [HL], which received a Second Reading on the 30th January 2003, should be committed to a select committee. The Committee considered two main issues:

(i) Should existing religious offences (notably blasphemy) be amended or abolished?

(ii) Should a new offence of incitement to religious hatred be created and, if so, how should the offence be defined?

A record of the written and oral representations made by FAIR, the MCB and the AML can be found at: http://www.publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/2101701.htm

4.6 The Committee completed its deliberations and published its report on the 10th June 2003. It declined to make any recommendation that Muslims should be protected by law from incitement to religious hatred or by an updated law of blasphemy which would apply just as much to Muslims as to Christians. Equality before the law for members of different religions was regarded as a far too delicate and complicated proposition to say anything definite about – and therefore it was recommended that this was a matter for Parliament to debate and decide.

4.7 In other words, they dodged the issue. This is an example of how balance cannot be restored by avoiding passing new laws where current laws are inadequate or outdated or non-existent.

5. The Need for Further Legislation to Prevent Religious Discrimination

5.1 There is a clear need to establish legally a more inclusive protection from religious discrimination which is not restricted to and indeed extends well beyond the sphere of employment.

5.2 The call for protection under the law from religious discrimination has been made repeatedly by members of the British Muslim community during the last 30 years. If British citizens are to be treated equally by the law, then legislation is required for the protection of religious minorities. Basic principles of justice require this far more than other considerations such as, for example, how the Muslim block vote can best be wooed by ambitious politicians.

5.3 British Muslims as well as members of other religious minorities are equally entitled to enjoy the same rights and protection under the law as members of the Christian and Jewish communities – who even themselves are sometimes affected by discrimination on the grounds of religion under the onslaught of the rigid imposition of secular orthodoxy and are accordingly themselves also in need of protection from such discrimination.

Civil Law

5.4 As regards the civil law, it is pointless talking about 'bringing rights home' if these rights are not secured. If there is no protection under the law for those whose rights are violated, and if there is no compensation for those who suffer loss and injury to feelings as a result of such violations, then as far as they are concerned the *HRA* is no more effective than a central heating system without a boiler: even if it is installed in the home, it does not serve its purpose until it is providing warmth.

5.5 Although the *Employment Equality (Religion or Belief) Regulations 2003* will go some way towards providing protection from religious discrimination in the work place, it is clearly unacceptable that people should remain free to discriminate on religious grounds in such other key areas as the provision of services, housing and education.

5.6 It makes such good sense to have a *Single Equality Act* that the government of the day would be well advised to support it rather than oppose it. The research and consultation already conducted by the present government affirms this approach. It is anticipated that Lord Lester's Equality Bill or its successor may well be revived at a later stage, preferably sooner rather than later, and that the DTI will continue the consultation process and consider further exactly how the Equality Act should be framed, worded and implemented.

Criminal Law – Incitement to Religious Hatred & Blasphemy

5.7 At present only the Jewish and Sikh communities enjoy protection from incitement to hatred of them in that they are both regarded as racial groups in the eyes of the law and therefore any incitement to hatred against Jews or Sikhs can be viewed as incitement to racial hatred and prosecuted accordingly under the *Public Order Act 1986* as amended by the *Anti-terrorism, Crime and Security Act 2001*.

5.8 If, for example, an organisation conducts twin hate campaigns against Pakistanis and Jews, a prosecution for incitement to racial hatred is possible in respect of both campaigns. If, however, an organisation conducts twin hate campaigns against Muslims (most of whom happen to be Pakistanis) and Jews, then only the Jews are protected by the law but not the Muslims. The BNP has been swift to exploit this lacuna in the law.

5.9 If everyone really is equal under the law then clearly there should be an offence of incitement to religious hatred so that all religious groups are equally protected under the law from incitement to hatred of them.

5.10 At present only the Church of England and its members are protected by the existing law of blasphemy.

5.11 If everyone really is equal under the law then clearly the law of blasphemy should be amended and redefined so that all *bona fide* religious groups enjoy equal protection under the law from anyone who intentionally makes public words, images or conduct whereby the beliefs, doctrines, practices and rituals of any *bona fide* religion are unreasonably vilified by abusive or violent words or conduct which shock and outrage or are likely to shock and outrage the feelings of the general body of believers who follow any such religion.

5.12 Although it is anticipated that prosecutions for these offences would be few, the deterrent effect of having them on the statute book should not be underestimated.

6. Funding by the Government of Muslim Schools

6.1 The criteria which need to be satisfied by any school in order to qualify for state funding, whether it be voluntarily-aided or grant-maintained, have been defined. If a school which satisfies these criteria applies for state funding, in theory the application should be accepted.

6.2 In practice these criteria can be used either to block or facilitate state funding for schools who apply for it, depending on the policies which decide how they are to be applied. On the whole, the British Muslim community's experience up to now has been that for whatever reason these criteria have been applied restrictively.

6.3 There have been no initiatives to encourage Muslim schools to apply for state funding in the same way that there have been, for example, initiatives to encourage Muslims and members of ethnic minorities to join the police force and the judiciary.

6.4 The reason for these differences in policy is that the respective approaches reflect a perception of what is considered the best approach to maintaining law and order in each of these key areas. At present those who wish to impose uniform social programming wield more power than those who assert that people should be allowed to be different, within reason. The only religious ethos which is openly encouraged by the state is the ethos of secularism.

6.5 Even if the rejection of the theories of Darwin, eating meat which has been drained of blood and daily worship of God is unpalatable to those who identify with apes, eat what they feel like and prefer to worship other than God, experience has shown that schools with a religious ethos – which teach their pupils to behave with care because they will be answerable to God on the Day of Rising and will end up either in the Garden or in the Fire – on the whole cultivate an attitude which asserts that, "God is watching me all the time, so I cannot get away with anything," which results in responsible law-abiding citizens who contribute to the maintenance of law and order and are no threat to their fellow human beings.

6.6 This does not deny the right of secular schools to teach their pupils to behave with care because if they are caught breaking the law they will be answerable to a court of law and might end up in prison – but experience has shown that this can cultivate an attitude which asserts that, "If no-one catches me then I can get away with it," – and which therefore necessitates endless changes to sentencing policy and corrective treatment of offenders, none of which quite seem to have the desired effect.

6.7 With reference to *paragraph 2.2 above*, the inherent danger in policies which either overtly or covertly deny the right of Muslim parents to ensure that the education and teaching of their children is in conformity with their own religious convictions is that they will result in disenchanted parents, disenchanted children – and disenchanted teenagers.

6.8 In other words, the very policies which are intended to force assimilate religious minorities into mainstream secular society whether they like it or not may well in fact be directly responsible for alienating these religious minorities and driving them towards civil unrest and criminal activity rather than leading them away from such anti-social behaviour towards integration based on the acceptance and toleration of different people's differences.

6.9 It would be far more beneficial to society as a whole if government policy (at both national and local levels) was to encourage the creation of faith schools and the provision of state funding once the criteria have been met rather than the present policy of discouraging the creation of faith schools by making the provision of state funding difficult.

7. Freedom of Worship in the Work Place

7.1 Up until the 3rd December 2003 many Muslims were, in spite of the absence of any legislative support, able to negotiate with their employers facilities and time to do the prayer at their work place – as well as facilities and time to break the fast during Ramadan. If 'extra' time was needed, outside the usual meal and snack breaks, then this time could be repaid by working that 'extra' time at a different time. Similarly, many Muslims were able to negotiate an extended lunch break on Fridays so as to be able to attend the Friday noon congregational prayer at the nearest mosque, by means of flexi-time arrangements whereby the 'extra' time was made up at a different time.

7.2 Many Muslims were not so fortunate and were discouraged from or even dismissed for doing the prayer in their lunch break or for going to the mosque on Friday, or even (for ladies) for wearing a hijab or (for men) for having a beard.

7.3 With reference to *paragraphs 4.1 and 4.2 above*, it will be significant to see how working conditions change for Muslim employees with uncooperative employers now that the *Employment Equal Opportunity (Religion or Belief) Regulations 2003* ('the *RBR*') are in force. If, for example, prayer and fast-breaking facilities are denied by the employer, will this constitute 'less favourable treatment' and therefore an act of discrimination or harassment against the complainant which is unlawful?

7.4 The ACAS guide *Religion or Belief in the Workplace* indicates that these matters still remain very much a matter of negotiation and education – the outcome of which will depend on the particular circumstances at any given workplace.

7.5 It will also be significant to see how ease of access to job opportunities improves for prospective Muslim employees now that the *RBR* are in force. The ambit of the *RBR* in this respect is wide and it is hoped that the deterrent effect of these provisions will be considerable – while those who are discriminated against because of their religion when seeking employment should now have a remedy at law.

7.6 No doubt the first complaints concerning religious discrimination in the workplace will be laid before employment tribunals during 2004 – who will have to apply the *RBR 2003* subject to the *HRA 1998*. It is unlikely that any further legislation regarding religion or belief in the employment field will be contemplated until the new regulations have been tested in practice.

7.7 Clearly it is always better to avoid having to go to court at all. This should always be regarded as a last resort, when all other avenues to resolve a dispute have failed. If appropriate guidance regarding the religious needs and rights of employees can be made widely available through ACAS, the CAB, the DTI and the TUC then this should assist greatly in dispelling ignorance, encouraging good practice and avoiding litigation.

8. Participation of Muslims in Decision Making

8.1 It is essential that the UK Muslim community – in accordance with the Sunna – appoints from among its members its own leader. Allah says in the Qur'an :

> You who have iman! obey Allah and obey the Messenger
> and those in command among you.
> If you have a dispute about something,
> refer it back to Allah and the Messenger,
> if you have iman in Allah and the Last Day.
> That is the best thing to do and gives the best result. (*Qur'an* : 4. 58)

And :

> Abdullah ibn 'Umar reported that the Messenger of Allah, may Allah bless him and grant him peace, said, "Each of you is a shepherd and each of you is responsible for his flock. The amir who is over the people is a shepherd and is responsible for his flock; a man is a shepherd in charge of the members of his household and he is responsible for his flock; a woman is a shepherdess in charge of her husband's house and children and she is responsible for them; and a man's servant is a shepherd in charge of his master's property and he is responsible for it. So each of you is a shepherd and each of you is responsible for his flock." (*Sunan* of *Imam* Abu Dawud: 13.1089.2922).

And :

> 'Abd'ar-Rahman ibn Samurah said, "The Messenger of Allah, may Allah bless him and grant him peace, said to me, "Abd'ar-Rahman ibn Samurah, do not ask for the position of amir, for if you are given it after asking you will be left to discharge it yourself, but if you are given it without asking you will be helped to discharge it.'" (*Sunan* of *Imam* Abu Dawud: 13.1090.2923).

And :

> Nafi' reported that 'Abdullah ibn 'Umar visited 'Abdullah ibn Muti' in the days at Harra in the time of Yazid ibn Mu'awiya. Ibn Muti' said, "Place a cushion for Abu 'Abd'ar-Rahman," but he replied, "I have not come to sit with you. I have come to you to tell you a hadith which I heard from the Messenger of Allah, may Allah bless him and grant him peace. I heard him say, 'Whoever withdraws his hand from obedience will have no excuse when he stands before Allah on the Day of Judgement, and whoever dies without having bound himself by an oath of allegiance will die the death of one belonging to the days of the Jahiliya.'" (*Sahih* of *Imam* Muslim: 766.4562).

8.2 The British Muslim 'Abdullah William Quilliam was appointed Shaykh'ul-Islam of the British Isles by Khalif AbdalHamid II. His appointment was endorsed inter alia by the Shah of Persia on behalf of the Shi'a Muslims and by Queen Victoria. The Amir of the Association of British Muslims, Daoud Rosser-Owen, has pointed out, "This means that an Office of Shaykh'ul-Islam has been legitimately established in the UK by the age-old method, and can be revived at any time.' (http://members.tripod.com/~british_muslims_assn/history_of_islam_in_the_bi.html)

House of Lords

8.3 This possibility needs to be explored further, for it may well be feasible to appoint someone who is accepted by a majority of Muslims in the UK as Shaykh'ul-Islam of the Muslim community in the UK, and to appoint him as an 'independent' member of the House of Lords.

8.4 This initiative is only likely to succeed and prove fruitful if whoever is chosen is regarded by the British Muslims as their true representative and leader – and not as a 'stooge' of the establishment. In other words, the UK Shaykh'ul-Islam will have to be chosen by the Muslims, not by the government.

House of Commons and European Parliament

8.5 As regards having more Muslim MPs in the House of Commons and more Muslim MEPs in Strasbourg, Brussels and Luxembourg, this is of course feasible, but it depends firstly, on the main political parties selecting candidates who are Muslims to stand for election and secondly, on those candidates being successfully elected.

8.6 As British Muslims begin to appreciate the influence that a block vote can have and as the main political parties begin to appreciate that the right practising Muslim candidate might attract that vote, it is likely that there will in the future be more Muslim MPs in the House of Commons.

8.7 At present many British Muslims do not bother to vote, because under the present modern secular democratic system political parties once elected seem to have acquired the habit of pursuing policies or making decisions on matters which were never presented as part of their election manifesto and with which those who voted them into power disagree strongly – for example the recent invasions of Afghanistan and Iraq utilising weapons of mass destruction which involved months if not years of forward planning and which were only precipitated after weapons inspectors had confirmed that there were no weapons of mass destruction left in these countries which their inhabitants could use to defend themselves against the invading forces.

Judiciary

8.8 As regards the appointment of Muslims to the judiciary, the Lord Chancellor's Department has launched an initiative to encourage applications from minority ethnic and religious groups. When speaking at the inaugural Minority Lawyers Conference (which is held biannually at The Law Society) in 1997 the Lord Chancellor issued the invitation, "Don't be shy – apply!"

8.9 Clearly any judicial office involves a great responsibility. It is necessary for anyone who fills these posts to have the right qualities and capabilities. Many of the most able Muslim lawyers avoid seeking judicial office, mindful of the following words of the Prophet Muhammad, may Allah bless him and grant him peace :

> Buraidah related that the Prophet, may Allah bless him and grant him peace, said, "Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgement accordingly; but a man who knows what is right and acts tyrannically in his judgement will go to Hell; and a man who gives judgement for people when he is ignorant will go to Hell." (Sunan of Imam Abu Dawud: 18.1339.3566).

And :

> Anas ibn Malik related that the Messenger of Allah, may Allah bless him and grant him peace, said, "If anyone desires the office of judge and seeks help for it, he will be left to his own devices; if anyone does not desire it, nor does he seek help for it, Allah will send down an angel who will direct him aright." (Sunan of Imam Abu Dawud: 18.1340.3571).

Muslim lawyers who have sufficient experience, expertise, judgement and intention are of course free to apply for judicial office and to be appointed on merit – not simply because they are Muslims!

9. The Right of Muslims to have Holidays on the Two 'Eids

9.1 Most religious communities have at least two main religious festivals. Christians are legally entitled to have at least two days off for both their Easter and Christmas festivals in order to facilitate their religious celebrations.

9.2 Since these two festivals coincide with the more ancient pagan European winter solstice and spring equinox fertility festivals, in fact everyone – including Muslims – enjoys these days off together with the Christians irrespective of whether or not they are in fact practising Christians.

9.3 Members of other religions nevertheless wish to celebrate their own main religious festivals on the actual days on which they fall – which hardly ever coincide with Christmas and Easter.

9.4 In order for Muslims and other religious minorities to enjoy equality under the law with their Christian counterparts, the Muslims should have the legal right to have the day off on their two 'Eid festivals in order to be able to celebrate them – and a similar right should be granted to all other religious groups, in order to make it possible for their members to celebrate their two main festivals.

9.5 Since *Article 9 of the ECHR*, the *Employment Directive* and the *RBR* all refer to 'religion or belief', it follows that under the law this new right will in fact have to be granted to everyone including those who believe in all sorts of things or even nothing.

9.6 Since the dates of many religious festivals – including those of the Muslims, the Jews, the Hindus, the Buddhists and the Sikhs are fixed with reference to the

lunar calendar which is approximately eleven days shorter than the solar calendar – this means that they 'move' through the solar calendar year.

9.7 It follows that the only feasible way of dealing with this proposed new right on a statutory basis is by giving *everyone* the right to nominate two days in the year which they wish to have off work in order to celebrate their two main festivals. For the Muslims this would be the two 'Eid days, for the Jews perhaps Hoshana Rabba and Purim, for the Hindus and Sikhs perhaps Diwali and Holi, for the Buddhists perhaps Vesak and the Buddhist New Year.

9.8 The festivals of Christmas and Easter are so well established in the UK that it would be impractical to bring them within the ambit of this new right. In effect therefore this proposed new right would involve the creation of two entirely new holidays – which could accurately be designated as religious festival holy days rather than bank holy days – and to which the Christians would also be entitled.

9.9 It is debatable whether or not these two new religious holidays should be 'paid' holidays in the sense that those who are paid on a weekly or monthly basis should not receive any reduction or deduction in their wages as a result of their exercising this right.

9.10 The position at the moment is that those who are able to negotiate the day off to celebrate the 'Eid day usually do so on the basis either that it is unpaid leave, or that it is part of their annual paid leave, or that they will make up the hours on another day – or if all else fails, that they are 'off sick'.

9.11 The question as to whether or not these two new religious holidays should be 'paid' is a detail to be decided once the decision has been taken in principle to create this new right – which is after all, for Muslims as well as the members of other *bona fide* religious groups, simply an expression of their *ECHR Article 9* right to collectively manifest their religion in practice.

9.12 Not only is the creation of this new right feasible, but also it would help towards creating a more harmonious and less discontented society. Different groups would recognise that they were at last being treated equally by the law – and no longer regarded as second class citizens and a threat to secular orthodoxy.

9.13 Once this right was legally recognised, it would follow that any unreasonable refusal by an employer to allow an employee to exercise this right would be deemed less favourable treatment and unlawful under the *RBR*.

9.14 There will be a need for guidance as to when an employer is entitled to refuse an employee permission to take a particular day off, for example in the context of the provision of essential services, where a lack of manpower at a certain time might endanger life.

10. Male Circumcision under the National Health Service

10.1 Since most medical studies confirm that being circumcised is more hygienic than not being circumcised, there can be no valid reason for not implementing this proposal other than economic considerations.

10.2 Circumcision under the NHS for recently born males should be offered as an option to any parent who wishes to exercise it, both Muslim and non-Muslim, both religious and non-religious.

10.3 Of course for Muslims and Jews and followers of Jesus, circumcision is more than simply a matter of promoting personal hygiene and health. Every Prophet since Abraham, peace be on all of them, including Moses, Jesus and Muhammad, was circumcised and accordingly their followers believe that following their example is part of the prophetic lifestyle which they are legally entitled to follow.

10.4 It can be argued that there is nothing to stop any male being circumcised, but it is not the duty of the NHS to provide this service. It is nevertheless a service which citizens can reasonably and legitimately expect from a welfare state.

10.5 Although circumcision does not take long to perform, however, even if it were performed immediately after birth, it would still add to the time spent in theatre by mother and son. If for whatever reason the circumcision was performed at a later date, this would involve the use of yet more resources and theatre time.

10.6 It follows therefore that there should be an initial consultation with representatives of the NHS hospitals as regards the logistics and extra cost involved, before making any firm decision as to the feasibility of this proposal.

11. The Swift Burial of Deceased Muslims

11.1 The Home Office appointed a body to conduct an independent review of the coronial service in England, Wales and Northern Ireland on the 26th July 2001. The Coroners Review Body Report released on the 10th June 2003 acknowledged the importance for Irish Christians, Jews and Muslims of prompt process of death certification so as to enable a swift burial and also the Jews' and Muslims' desire to avoid unnecessary routine *post mortems*.

11.2 The Report did not actually go so far as to consider specifically the Muslim Burial Council of Leicester's suggested diagnosis of 'natural death, suspicious circumstances excluded' (which would obviate the need for a *post mortem*) but does recommend that the Coronial Council should issue statutory guidance to achieve consistent standards and practices throughout England and Wales on *inter alia* the criteria for ordering autopsies and other investigations; the role of less invasive investigations; quality control arrangements for all investigations; procedures giving families a right of review of decisions to order, or not to order, autopsies and the provisions governing organ and tissue retention in coroners' autopsies.

11.3 The Report also recommends that in cases where the family object to an autopsy it should not be proceeded with unless there is positive indication of the need to investigate a possible crime or lack of medical or other care, or a public health risk that requires the cause of the individual death to be established in order to assist in preventing similar fatalities.

11.4 As far as the Muslim community is concerned, it should become official policy in every coroner's district (of which there are approximately 148) that where there

are no suspicious circumstances and where the death is natural, 'routine' *post mortem* examinations should not be required and death certification and release for burial should be uncomplicated and swift. Where a death has been referred to a coroner, the discretion *not* to order an inquest or a *post mortem* examination should be exercised whenever this is possible and reasonable. Where a *post mortem* examination is needed, the degree of intrusive pathology should be kept to a minimum and wherever possible alternative methods such as MRI (Magnetic Resonance Imaging) scans should be utilised.

11.5 Arrangements should be put in place so as to ensure that certification and release for burial can be arranged at short notice on any day of the year. Clearly this would be facilitated if it could be arranged for Muslim doctors, Muslim registrars and Muslim coroners to be on call outside normal working hours, since they would be least likely to object to such arrangements and most willing to facilitate them.

11.6 It is necessary to understand that the Muslims' traditional burial practices are based on the awareness that it is very important to facilitate the transition of a person's soul from its pre-death situation to its post-death dimension, given that the soul continues to have awareness after it has left its earthly body, and given that its experience of the inter-space between death and the Day of Rising can be experienced either as a state of peace or as a state of torment.

11.7 This is a far more profound and very different balance to the one commonly referred to by the authorities, which is usually described as being a balance between the interests of justice on the one hand, and the feelings of relatives on the other. For Muslims the issue is not that of avoiding upsetting people where possible, but rather – since it is a balance which spans two very different worlds – of ensuring that the soul of the deceased is given as good an onward journey as possible.

12. Problems Caused by the Lack of Legal Recognition of Muslim Personal Law

12.1 With reference to *paragraph 1.3 above*, the legal recognition of Muslim Personal Law by English law (an arrangement which seemed to work perfectly well during the administration of the British Raj in India) is not only necessary but also simply a matter of time.

12.2 For the time being, however, Muslims in the UK continue to face unnecessary hardship because their personal law is not recognised by the secular civil courts. Marriages and divorces conducted in accordance with the Shari'a of Islam are not recognised as valid by the law of the land even though they are acceptable in the sight of God.

12.3 This state of affairs leads to difficulties, especially as regards the duties and rights between spouses and divorcees, the legal status of their children, the ownership of property, eligibility to state benefits and dealing with public authorities in general, especially when travelling abroad and when death occurs.

12.4 If a Muslim dies intestate, his or her estate is not distributed in accordance with the Shari'a of Islam. This leads to difficulties as regards the entitlement to and ownership of shares in the deceased's estate.

12.5 These are yet further examples of statutory *Article 9* rights not being fully secured.

12.6 The main problems currently faced by Muslims in the UK with regard to marriage, divorce and inheritance are as follows:

Marriage and Divorce

12.7 A Jewish marriage performed in Israel which is recognised as a valid marriage by the law of Israel and a Muslim marriage performed in Pakistan which is recognised as a valid marriage by the law of Pakistan are recognised as a valid marriages for the purposes of English law.

12.8 There is no good reason why a Jewish marriage and a Muslim marriage performed in the UK – as well as other recognised forms of *bona fide* religious marriage performed in the UK – should not also be legally recognised as valid in the UK. It should not have to be necessary for religious spouses in the UK to have two marriage ceremonies, one religious and one secular, before they are considered 'married' in the eyes of the law as well as in the sight of God.

12.9 It also follows that where such a marriage does end in divorce, then the divorce should also be legally recognised in the UK. At the moment, for example, both the Muslims and the Jews face similar problems in that since neither their religious marriages nor their religious divorces are legally recognised as creating or ending a marriage, life is made unnecessarily complicated for them not only during marriage but also if it comes to an end.

12.10 There is no good reason why the Muslim *talaq* – as well as other recognised forms of *bona fide* religious divorce such as the Jewish *get* – performed in the UK should not be legally recognised as valid. It should not have to be necessary for religious couples to have to go through two sets of divorce proceedings, one religious and one secular, before they are considered 'divorced' in the eyes of the law as well as in the sight of God.

12.11 A common scenario is that a couple who have had both a religious and a secular marriage are divorced under one system but not under the other – which can mean that neither party is free to marry someone else, even though their relationship is existentially over.

12.12 This is an impossible state of affairs which may drive either or both parties to marry someone else anyway under the system in which they are divorced – even though this constitutes adultery under the system in which they are still married. They may be so fed up that they do not even bother to get married under either system and enter an extra-marital relationship – which, again, is committing adultery, especially if it is the religious marriage which has not been terminated by means of a *get* or *talaq* divorce.

12.13 Although some regard adultery as a sign of freedom and upward social mobility, it is considered a major wrong action by all *bona fide* religious communities since it usually involves deception, breaks hearts, destroys trust, divides families and disobeys God.

12.14 Unfortunately it is usually the 'wife' who suffers as a result of the husband's refusal to give a *get* or pronounce the *talaq* as the case may be. Although the marriage is over, she is not free to marry someone else because the marriage in accordance with Jewish law or the Shari'a as the case may be has not been ended.

12.15 Under Jewish law the husband must freely give and the wife freely accept a *get* before the Beth Din pronounces them divorced. If the husband refuses to freely give a *get*, the wife is stuck.

12.16 Under Muslim law, a husband should pronounce the *talaq* if the marriage has ended and the wife wishes to be free to marry someone else. If the husband unreasonably refuses to pronounce the *talaq*, then the wife can ask the Shari'a Council to grant a *khul* divorce whereby the marriage is ended by the Shari'a Council, sometimes on the condition that she returns her dowry, leaving her free to remarry. Although she, unlike her Jewish counterpart, can escape from her impossible situation by this means, it can take an agonisingly long time.

[In this context the study by Sonia Nurin Shah-Kazemi entitled *Untying the Knot* published in 2001 which considers and assesses the work of the Shari'a Council in London in granting such divorces is useful.]

12.17 Under both Jewish and Muslim law, the husband does not usually find himself in the same predicament, because men are allowed to have more than one wife. This means that a Jewish man (in practice only the semitic Sephardhim still practice polygamy, but not the turkic Ashkenazim) or a Muslim man are free to marry again whether or not the first marriage continues or has ended – unless of course the Muslim man already has three other wives.

12.18 As Mr Justice Munby pointed out, when commenting on the legal status of Jewish *get* and Muslim *talaq* divorces, in paragraphs [112] and [113] of his judgement in *X v X & (1) Y (2) Z (Intervenors) (2002) [LTL 15/4/2002]* :

> '**112** There are no means by which a secular judge, who may himself be an adherent of the same or a different faith or of no faith at all, can evaluate, let alone attribute some pecuniary value to, something as personal and of such religious significance as a get. Nor would it be right to attempt to do so. As I said in a judgement which I delivered a few moments ago concerning a talaq (*Sulaiman v Juffali* at para [47]):
>
> > "Although historically this country is part of the Christian west, and although it has an established church which is Christian, I sit as a secular judge serving a multi-cultural community of many faiths in which all of us can now take pride, sworn to do justice "to all manner of people". Religion – whatever the particular believer's faith – is no doubt something to be encouraged but it is not the business of government or of the secular courts. So the starting point of the law is an essentially agnostic view of religious beliefs and a tolerant indulgence to religious and cultural diversity. A secular judge must be wary of straying across the well-recognised divide between church and state. It is not for a judge to weigh one religion against another. All are entitled to equal respect, whether in times of peace or, as at present, amidst the clash of arms."

113 Accordingly the civil courts should be slow to interfere in the life of any religious minority or to become involved in adjudicating on purely religious issues. So, in my judgement, the civil courts should be slow to interfere in the private religious issues of the Jewish community. As Wall J said in *N v N (Jurisdiction)* (itself a case concerning a get) at p. 762D:

> "My judgement in this case demonstrates the limited extent to which the civil courts can or should interfere in the life of any religious minority."

And as I pointed out in *Sulaiman* at paras [39] and [46] the civil courts do not recognise a get given and received in this country as validly dissolving a marriage.'

12.19 With respect, and for the reasons already given, securing the *Article 9* religious rights of *bona fide* religious groups *is* not only the business but also more to the point the legal duty of government and of the secular courts – but this matter needs the right approach in order to succeed and in my opinion can only be achieved by the recognition of *bona fide* religious courts.

12.20 B*ona fide* religious groups are entitled to more than "an essentially agnostic view of religious beliefs and a tolerant indulgence to religious and cultural diversity" and "equal respect". By virtue of the *ECHR* and the *HRA*, they are entitled to put their religious beliefs – including their religious personal law – into practice.

12.21 At present this is not possible, because the necessary mechanisms have not been put in place. It is not only feasible but also advisable to do so. Only then will justice be seen to be done "to all manner of people".

12.22 This is not a matter of "interference" in the life of religious minorities, but rather it is a matter of securing the rights to which religious minorities are entitled under the law by means of the law – thereby facilitating the life of religious minorities – and in the process fulfilling the government's legal duty to do so.

12.23 If only, as is now proposed, the personal law of the *bona fide* religious groups and the decisions and rulings of their religious courts enjoyed legal recognition in the secular courts, then a great deal of human tragedy could be so easily avoided.

<u>Polygamy and Bigamy</u>

12.24 We live in a society where princes, prime ministers and football managers are given a hard time in the media for committing adultery, whereas if they had been Sephardhic Jews or Muslims they could have been married to both women without any need for secrecy or dissimulation and without having to divorce or reject one in favour of the other – and without attracting salacious media attention.

12.25 We live in a society where according to the latest census women outnumber men by approximately 2 : 1. If every man only had one wife, this leaves many women who will never enjoy the comforts of a balanced marriage.

12.26 Although Muslim men are permitted to have up to four wives – but no mistresses – many freely choose for whatever reason to have one wife.

12.27 If Muslim marriages conducted in the UK are to be recognised as valid marriages in the eyes of the law, this means that the laws affecting bigamy will have to be amended to permit a Muslim man to have up to four wives at any one time without being charged with and convicted of a criminal offence – even if the number of men who actually exercise this right are relatively few.

12.28 At present, in practice, and because Muslim marriages are not recognised as valid marriages by the civil law, Muslim men are free to marry up to four women in accordance with the Shari'a without being charged with bigamy, because in the eyes of the law their wives are no more than 'common law' wives and categorised as 'unmarried partners'.

12.29 There is, nevertheless, a great difference between a Muslim who marries four wives in accordance with the Shari'a and a non-Muslim who has four mistresses, because a Muslim is obliged by the Shari'a to treat his wives as equally as possible and to house, clothe and feed them and their children according to his means – knowing full well that ultimately he will have to answer for all his actions on the Day of Rising to his Creator, Who will send him either to the Garden or to the Fire.

12.30 It is said that the prospect of death concentrates the mind wonderfully, but in fact it is the prospect of what lies beyond death which focuses a sense of responsibility in this world far more.

12.31 The non-Muslim who has four mistresses and who believes that when we die we become dust, may well behave less responsibly towards his womenfolk – and yet as far as the secular law is concerned the Muslim with four wives and the non-Muslim with four mistresses have the same status under the law.

12.32 A Muslim man who accepts and fulfils the responsibilities of marriage with up to four women should not be penalised by the law for doing so – and neither should the women, who should all enjoy equal status under the law, as legitimate wives – not as 'unmarried partners'.

12.33 This dispensation could be extended to any other *bona fide* religious group (such as for example the Sephardhim) which permits a man to have more than one wife – although (bearing the Mormon community in mind) it would be wise not to exceed the divinely revealed upper limit of four.

12.34 As regards those Christians and secularists who believe that a man should only have one wife, as well as any other *bona fide* religious group (such as for example the Ashkenazim) who think the same, the law can continue to be applied as it is at present, including liability to a charge of bigamy where a person is legally married to two partners.

12.35 However common or uncommon, if Muslim marriages conducted in the UK are to be legally recognised, and if legal dispensation is granted to Muslim men to marry up to four wives, then clearly further important considerations arise.

12.36 For example, if the husband becomes unemployed, or falls ill, or retires, to what state benefits are the members of his extended family entitled?

12.37 Similarly, if for example a Muslim man with two or three wives and twelve children seeks to be housed by a local authority, what is their entitlement?

12.38 Similarly, if for example a Muslim man with two or three wives and twelve children dies, what is the legal status of his family survivors – and if he has not left a Will, to what inheritance are they entitled?

Muslim Inheritance

12.39 It is of course always open to any adult Muslim in the UK, male or female, single or married, to execute an Islamic Will which fulfils the technical requirements of the law, and which will therefore be treated as a valid Will by the law – and in which the testator makes provision for his or her estate to be distributed in accordance with the Shari'a. In this case, there are few problems.

12.40 The only problem I have come across in this context is in relation to ownership of a family home which is being purchased by way of a mortgage in the names of both husband and wife. The mortgage deed usually provides that if one spouse dies, then both ownership and responsibility to pay off the rest of the loan automatically vests in the surviving spouse. Now if, for example, the deceased husband is a Muslim who executed an Islamic Will prior to his death, then under the Shari'a the wife may not be entitled to ownership of the entire house, especially if there are other surviving relatives. The main solutions to this predicament that I have been able to suggest are as follows:

(i) the surviving spouse buys the shares in the house to which the other surviving relatives are entitled under the Shari'a, from them;

(ii) the other surviving relatives voluntarily agree to surrender the shares in the house due to them under the Shari'a to the surviving spouse.

(iii) the house is sold and whatever remains after the loan has been repaid is divided between the surviving relatives including the surviving spouse in proportion to the shares due to them.

Depending on a number of variable factors one of these options may appear to be the best in the circumstances.

12.41 In accordance with the Shari'a, a Muslim may bequeath up to one third of his or her estate as he or she wishes, but the remainder must be distributed between surviving relatives in fixed shares which are stipulated in the Qur'an – and which can only be varied if whoever is entitled to such a share freely agrees to such a variation.

[In this context the book by Hajj 'Abdalhaqq and 'A'isha Bewley and Ahmad Thomson entitled *The Islamic Will* published in 1995 by Dar Al Taqwa Ltd (ISBN 1 870582 35 7) is useful.]

12.42 In the normal course of events, if a Muslim dies in a Muslim country without making a Will, then the entire estate is distributed between surviving relatives in the fixed shares which are stipulated in the Qur'an. In the event of there being no surviving relatives, the estate devolves to the Bayt al-Ma'l (the equivalent of the Treasury), to be spent on social welfare.

12.43 If, however, a British Muslim dies intestate in the UK, then the laws of intestacy are applied as regards the distribution of his or her estate – and the shares stipulated by these laws are different to the shares prescribed by the Shari'a, especially when the surviving relatives include wives and children from Muslim marriages not recognised as valid marriages by UK domestic law. Under the laws of intestacy, for example, a second wife who was happily married to the deceased for twenty years and her three children might well be entitled to nothing. If, in the eyes of the law, there are no surviving heirs, the estate goes to the Crown.

12.44 Once the estate of a dead Muslim who died intestate in the UK has been distributed in accordance with the laws of intestacy, then it is of course always open to the beneficiaries to re-distribute what they have received in accordance with the Shari'a – but this is a purely voluntary arrangement.

12.45 It is therefore proposed that the law of the land should be amended so as to enable a deceased Muslim's estate to be automatically distributed in accordance with the Shari'a when he or she dies intestate.

12.46 Of course a similar dispensation could easily be extended to all *bona fide* religious groups.

12.47 Implementation of this proposal is not only feasible but also advisable. I foresee few problems in doing so and envisage the winning of many hearts and minds.

13. The Incorporation of Muslim Personal Law into English Domestic Law

13.1 One way of overcoming all the personal law difficulties currently faced by Muslims in the UK would be to incorporate Muslim personal law into UK domestic law. There is a legal argument and a utilitarian argument to support this proposition.

The Legal Argument

13.2 The *Human Rights Act 1998* incorporates the *European Convention of Human Rights* into UK domestic law. *Article 9* of the ECHR guarantees Muslims the right to believe and live as Muslims and to educate their children as Muslims.

13.3 Although *Articles 1 and 13* have been intentionally excluded from the *Human Rights Act 1998* – and therefore from English domestic law – since it has signed and ratified the *European Convention of Human Rights,* the government remains by virtue of *Articles 1, 13 and 14* of the *ECHR* under an international legal duty to secure these rights by providing a legal remedy if a Muslim's religious rights are violated.

13.4 Up to now the government has only partly fulfilled this duty, whenever prodded by a European Directive – such as, for example the implementation of the Employment Directive which resulted in the *RBR*.

13.5 It is arguable that this international legal duty also includes the duty to secure these rights by incorporating Muslim personal law into UK domestic law, including the legal recognition of Muslim marriages, divorces and inheritance.

13.6 Clearly the same arguments apply to other minority faith-based communities, such as, for example the Jews, the Hindus and the Sikhs who are all just as much entitled as the Muslims to be treated as equally by the law as Christians and secularists.

13.7 If everyone in our present multi-ethnic, multi-cultural, multi-faith society is to be treated equally by the law, then recognition of the various religious communities' personal law is necessary in achieving a balance between equality and diversity.

The Utilitarian Argument

13.8 This approach to treating the members of our multi-faith society equally would not only be welcomed by the parties involved and reduce the work load of the civil courts, but also it would resolve the contradictions faced by civil judges at present whereby they are legally bound to treat the personal law of different faiths equally by 'recognising' all of them – and applying none of them!

13.9 At present witnesses in the secular courts are permitted to hold their holy book in their right hand when swearing to tell the truth, but lawyers cannot base their legal argument on what the holy books say – and judges cannot give judgement in accordance with the criteria or commands and prohibitions which these holy books contain.

13.10 How much simpler life would be for Muslims and members of the other minority religious groups – and for lawyers! – if the law recognised their marriages as legally valid in English law (giving the parties the status of married persons) and their divorces as legally valid in English law (giving the parties the status of divorced persons who are free to remarry).

13.11 As a matter of practicality it is clear that the appropriate place for such religious argument and judgement is not the secular courts but in appropriately constituted religious courts.

Religious Courts

13.12 It should be emphasised that it is *not* being proposed that County Court and High Court judges should become fully conversant with the personal law of all the *bona fide* religions and apply whichever one was most relevant to the parties involved. This would make life far too complicated for our secular judges who are, after all, human.

13.13 What *is* being proposed is the recognition by the law of not only the personal law of the *bona fide* religious groups but also legal recognition of the decisions and rulings of their religious courts. The Christians have their Ecclesiastical Courts, the Jews have their Beth Din, the Muslims have their Shari'a Council, but the judgements of these religious courts are not usually recognised as binding or enforceable in the secular courts.

13.14 There should be a system of registration of *bona fide* religious courts, including civil Shari'a Courts for the Muslims, in order to ensure that standards are maintained and imposters are excluded. Once registered as a religious court, the decision of any of these courts should be recognised as legally binding on the parties and legally enforceable in the County Courts and High Courts.

13.15 Given the differences between Sunni and Shi'a *fiqh*, and also the differences of *fiqh* between the different *madhhabs* within these two main groupings, ideally it should be possible to have Shari'a Courts which represent all the *madhhabs*.

13.16 Clearly a major consideration is the training and selection of *qadis* – who would probably need to be bilingual, ideally trilingual – with a knowledge between them of all the *maddhabs*. Madina al-Munawarra was not built in a day – but it did happen and for the first three generations there was only one *madhhab*, the *madhhab* of Madina!

13.17 This would involve having a statutorily defined presumption that the fact that the religious court had dealt with the parties was conclusive proof that the parties had voluntarily agreed to submit to the religious court's jurisdiction and to be bound by its decision whether they agreed with it or not.

13.18 For example, the agreement to submit to an appropriate religious court in the event of a serious dispute could be made an express condition of a Muslim marriage contract – just in the same way that parties to a commercial contract can agree that in the event of a dispute the parties will go to arbitration before an agreed arbitrator rather than battling it out in a civil court.

13.19 This proposal would only work in practice if the religious courts had complete autonomy in dealing with the cases before them.

13.20 Any right to appeal a decision of a religious court would have to be determined by that particular religious court's terms of reference – not by a secular civil court, otherwise disgruntled parties would be tempted to play one system off against the other.

13.21 As regards non-contentious matters, for example the registration of marriages and divorces and the granting of probate, it would not be difficult to amend the relevant regulations so that these matters could be administered by the current registration and probate court systems.

13.22 On a purely practical level, where a civil probate court determined that the Muslim deceased had died intestate, it would be empowered to refer the distribution of the deceased's assets to the Shari'a Council. Where a civil probate court determined that the Will left by the deceased was a valid Islamic Will, it could when granting probate refer the personal representatives to the Shari'a Council for assistance if they were not sure about how to calculate the fixed shares stipulated by the Qur'an. (In fact there is now a software application in existence which does the calculation for you – see : http://members.aol.com/IslamicSoftware/irthie.html)

Implementation

13.23 Provided that this matter is approached and dealt with in the right way, it is feasible for legislation to be enacted so that:

(i) Muslim marriages (including polygamous marriages up to the maximum of four wives as permitted by the Shari'a of Allah) and divorces are recognised as legally valid by the law of the land.

(ii) since the Shari'a of Islam permits a Muslim man to marry up to four wives provided that he maintains them and their children as equally as is possible, the law of bigamy is amended so as to make allowance for valid Muslim marriages;

(iii) the wealth of a Muslim who dies intestate is automatically distributed in accordance with the Shari'a after his or her death – which would mean that it was no longer necessary to leave an Islamic Will expressing this wish, which is the case at present.

13.24 Similar provision would also have to be made in the enabling legislation for the personal law of other religious groups to be legally recognised. Since the secular legal system already caters for Christians and people of no faith, the enabling statute could be called the *Religious Toleration (Personal Law) Act*.

Further Observations

13.25 This approach can be viewed simply as providing an effective mechanism for multi-Alternative Dispute Resolution by means of religious arbitration which, as is the case with existing ADR systems, would lessen the strain on the main civil judicial system.

13.26 There are some who assert that it would not be possible to have a plurality of laws being applied simultaneously in the realm, when in fact this is already the case in the UK: England, Scotland, Wales and Northern Ireland already have their own laws as well as having shared laws.

13.27 The example of modern Malaysia, where this arrangement works well, should also be considered. The country is a modern technologically advanced multi-cultural, multi-ethnic, multi-faith society. Its legal system is comprised of criminal courts, civil courts and, for the Muslims, Shari'a courts whose jurisdiction is concerned with Islamic personal law.

13.28 The Ecclesiastical Courts and the Beth Din have exercised their distinct jurisdictions for centuries – while the Shari'a Council, although much younger, works. In effect all that I have suggested is that these courts – together with any other emerging *bona fide* religious courts – should be granted an enhanced status by the law. Their decisions should be recognised as binding on the parties who have submitted to their jurisdiction and enforceable in the civil courts.

13.29 This means that the religious courts would complement and assist the existing secular courts, but not supplant them – and in the process assist in securing those *Article 9* rights which the existing judicial system has up to now promised in theory but failed to deliver in practice.

13.30 By these means the difficulties caused by the lack of legal recognition of Muslim Personal Law could easily be remedied to the benefit and satisfaction of British Muslims and without causing detriment to anyone else.

13.31 Until these problems are remedied, the fact that Muslims in the UK are legally prevented from complying directly with these personal aspects of the Shari'a in itself indicates the presence of a form of indirect religious discrimination which is inherent in the English legal system and experienced particularly by Muslims, but also by Jews and members of other religious minorities.

13.32 It should be emphasised that this proposal does not involve an attempt to either undermine or oust the jurisdiction of UK civil courts – but rather it is a strategy to extend that jurisdiction in a practical manner which is designed and intended to keep most of the people content most of the time, a goal which all political parties share and a promise which they all make one way or another when seeking election, even if they are not exactly certain as to how to go about keeping it.

13.33 At the moment the UK legal system favours Christians and secularists over and above members of the other religious minorities. If everyone is equal before the law, then this biased imbalance should be redressed.

14. Conclusion

14.1 It should be clear from this consideration of the UMO's proposals raised in their Ten-Point Bill of Rights that their implementation would involve both profound and welcome changes to our existing legal system and laws.

14.2 These changes would be profound, because they involve the recognition of not only the feasibility but also the advantages of permitting parallel jurisdictions within one system of law.

14.3 These changes would be welcome, because the effect of this would be to acknowledge diversity in a real way by granting different religious groups including the Muslims the equal rights to which they are entitled under the law not only in theory but also in practice.

Hajj Ahmad Thomson
15th Muharram 1425
6th March 2004