

Written evidence submitted by Ahmadiyya Anjuman Isha'at Islam Lahore

I. Summary of the submission:

- The term “Sharia law” is inappropriate, illogical and liable to misunderstanding.
- The verdict or opinion of a Sharia council is not a judgment from God, as their clients appear to think.
- The Muslim community in the UK as well as British legal, judicial and parliamentary bodies need to be informed of the real teachings of Islam in regard to the rights of women and marriage and divorce in Islam.
- **Our interest in this Inquiry:** Our Islamic organization, formerly working as the Woking Muslim Mission, ^[1] has been involved in the propagation of Islam in the UK since 1913. It has an interest in correcting misconceptions about Islam in the minds of the public and the authorities, particularly in relation to its teachings about marriage and divorce. Our organization has produced a vast amount of scholarly literature on these subjects.
- *Note:* Our Movement, **the Lahore Ahmadiyya**, is distinct and different from what is known as the “Ahmadiyya Movement in Islam” which is led by a *khalifa*. We believe that Hazrat Mirza Ghulam Ahmad, Founder of the Ahmadiyya Movement, was a Reformer (*Mujaddid*) and **not** what is called a “prophet” in Islam. We do not consider any person after the Prophet Muhammad to be a prophet. No *khilafat* (caliphate) can solve the problems of the Muslims, but they must seek light from the Quran and the life of the Prophet Muhammad.

II. Submission:

a. Sharia and Sharia Councils

1. The Arabic word Sharia (*sharī'ah*) means ‘a clear path’ for a people to tread, i.e., their laws and traditions. The Quran addresses all mankind as follows:

“For everyone of you We appointed a law (*shir'ah*) and a way. And if Allah had pleased He would have made you (all mankind) a single people (*ummah*), but that He might try you in what He gave you. So vie with one another in good works. To Allah you will all return, so He will inform you of that in which you differed” (5:48).

According to this statement, different people have their own Sharias. In Islamic literature the laws of Moses are known as the Jewish Sharia and laws based on Christianity are known as the Christian Sharia. Therefore the laws of the UK are in fact the British Sharia, and the UK Parliament is a Sharia-making body!

2. Nowhere in the Quran is the word *Sharia* used in its later sense of Islamic law. Nowhere in Hadith did the Prophet Muhammad use the word Sharia to mean Islamic law.
3. The term ‘Sharia law’ makes no sense. It should be ‘Islamic Sharia’ or ‘Islamic law’.

^[1] For full details and history of the Woking Muslim Mission, 1913–1968, please visit its website: www.wokingmuslim.org

4. The problem with using the word 'law' in this context is that it creates the impression, as seen in the press and media, that it is a law parallel to British law and Muslims wish to live under a different legal system from the established one in the UK. It is highly advisable therefore to use terms such as 'Islamic Sharia' and 'Islamic practice' instead of 'Sharia law'.
5. There is no priesthood in Islam which can deliver judgments that have Divine sanction. Muslims are having recourse to Sharia councils because they are under the impression that they can only follow the Divinely-revealed teaching by acting according to the rulings of the Sharia councils. They are under the misapprehension that this absolves them of personal responsibility before God for their actions. Such attitudes are directly contrary to Islamic teachings. According to Islam each individual, man or woman, is responsible before God for his or her own actions. Bodies such as Sharia councils or religious scholars (*ulama*) should only provide knowledge, guidance and advice, leaving it up to their clients to make their own decisions according to their understanding and conscience.
6. There is no one collection of Islamic law or teachings under the name Sharia. Sharia consists of inferences and conclusions drawn on the basis of the Quran and the practice and sayings of the Prophet Muhammad. Different schools and sects draw different conclusions, sometimes conflicting ones, especially on issues of women's rights and marriage and divorce. For instance, some hold that a woman requires the permission of the father or a guardian to marry, others hold that it is not an essential requirement; some give the father or guardian the power to betroth a girl who is minor, others believe that a girl cannot be betrothed until she has reached the age of majority and is capable of expressing consent.

b. Rights of women in Islam

7. Sharia councils in general are dominated by those whose views about the rights given to women by Islam are based much more on practices and customs of Muslim societies than on the teachings of the Quran and Hadith. They hesitate and fail to give Muslim women their legitimate rights as granted by Islam, when their proper role should be to educate Muslim men and women about the real teachings of Islam.
8. According to the Quran (33:35), every good moral quality can be attained equally by men and women. It also indicates that men and women have the same intelligence and power of reasoning to study the working of nature and to reach the conclusion that Islam is a religion from God; and their efforts and exertions in this regard are equally accepted by God (3:190-195), Who responds to them by saying: "I will not let the work of any worker among you to be lost, whether male or female; each of you is as the other" (3:195). The Quran says that male and female Muslims are equally rewarded by God in this world and in the Hereafter (4:124, 16:97, 40:40). What God does is a model and example for human beings to follow.
9. Explicitly according to the Quran: "For men is the benefit of what they earn. And for women is the benefit of what they earn" (4:32). A little prior to this statement, the Quran gives an instance in which a wife, receiving some property from her husband as her right at marriage, can dispose of it according to her own pleasure and will (4:4). The next two verses direct Muslims not to allow those persons who do not have mental competence control of their

own property, but to maintain them out of it, and in case of minors to hand them their property when they reach maturity of understanding (4:5-6). A comparison of 4:4, which allows a wife full charge over her property, with these two verses shows that according to the Quran women in general do possess mental competence and maturity of understanding to be in full control of their property, just like men.

10. The mutual relationship in society of men and women is described in the Quran as follows:

“And **the believers, men and women**, are friends of one another. They enjoin good and forbid evil and keep up prayer and give the due charity, and obey Allah and His Messenger. As for these, Allah will have mercy on them. Surely Allah is Mighty, Wise. Allah has promised to **the believers, men and women**, Gardens (of the after-life), in which rivers flow, to abide in them, and goodly dwellings in Gardens of perpetual abode. And greatest of all is Allah’s goodly pleasure. That is the mighty achievement.” (9:71–72)

This means Muslim men and women work together for the betterment of society.

c. Islamic teachings on marriage

11. What a Muslim man and woman should seek through marriage is stated in the Quran. It tells them that they both are created by God from the same “essence”, so that they may find comfort in one another, and “He put between you love and compassion” (30:21). It says to men about their wives: “They are an apparel (i.e., attire or clothing) for you and you are an apparel for them” (2:187). This shows the reciprocal relationship between husband and wife — a person’s clothes are in the closest contact with him or her, and they are a means of protection and adornment. Such should be their relationship.

12. The basic teaching of Islam on how a man should treat his wife is as follows: “And treat them kindly” (4:19). In case a man takes a dislike to his wife, the same verse goes on to say: “Then if you hate them, it may be that you dislike a thing while Allah has placed abundant good in it” (4:19). The Quran, whenever dealing with divorce, tells husbands to treat their wives with kindness, whether they are going to continue the marriage or to terminate the marriage:

- i. “...then keep (them) with kindness or let (them) go with kindness.” (2:229)
- ii. “...then retain them with kindness or let them go with kindness and do not retain them for injury so that you exceed the limits.” (2:231)
- iii. “...retain them with kindness or part from them with kindness” (65:2)

13. Marriage in Islam is a contract between the husband and the wife, like any civil contract between two parties. Any legal conditions agreed by the two parties may be stipulated in it. A marriage according to Islam is very much a match made on earth by humans, even though it requires a religious ceremony. Being a contract, it requires the free consent of both the man and the woman, and before marriage they both must satisfy themselves that each will have a desirable partner for life in the other. As it is a contract, *a British court in the UK legal system is an appropriate forum* for resolving disputes relating to its fulfilment.

14. The Holy Quran lays down expressly, addressing men: "...marry such women as seem good to you..." (4:3), that is, those whom you like. Reciprocally, the same applies to women, and a woman may offer herself in marriage to a man. Likewise, referring to re-marriage of a man and woman again to one another who had divorced, the Quran says: "...do not prevent them from marrying their husbands if they agree among themselves in a lawful manner" (2:232). This has been generalized by some commentators of the Quran to mean that whenever a man and woman agree to marry one another, doing so within the moral and legal boundaries of Islam, then no one has the right or power to prevent them from getting married.
15. Forced marriage, or marriage without seeking consent of each one of the two persons who are getting married, is disallowed in Islam. The Prophet Muhammad himself acted as the 'Forced Marriage Prevention Unit' of his time, to whom women could appeal if they had been forced to marry. It is recorded: "A girl came to the Prophet and said: My father married me to his brother's son so that he might raise his status thereby. The Prophet gave her the choice (to end the marriage), and she said: I approve of what my father did, but I wanted women to know that their fathers have no right to do that" (Ibn Majah's collection of Hadith, h. 1947).
16. Childhood marriages and betrothals, and promising your child to be married in a particular family when he or she has grown up, are not valid practices according to the Quran. In fact, it speaks of an age of marriage which it identifies with the age of majority:

"And test the orphans until they reach the age of marriage (*nikāḥ*). Then if you find in them maturity of intellect, make over to them their property, and do not consume it extravagantly and hastily against their growing up." (4:6)

Here the *age of marriage* and the *age of maturity of intellect* are identified with the *age of majority*. Marriage is a contract the assent to which can only be given by the parties who make the contract, i.e., the couple who are getting married. Before attaining to puberty, a boy or a girl is unable to exercise his or her choice in sexual matters and hence is not capable of giving assent to the contract of marriage.

17. Polygamy (i.e., a man having more than one wife) is only mentioned in the Quran in connection with widows and their fatherless children. It allows polygamous marriages in order to look after widows and their children, but adds: "...if you fear that you will not do justice, then (marry) only one..." (4:3). In cases of polygamy, which should be exceptional, Islam requires the husband to treat his wives with justice, i.e., with strict equality.
- i. In Pakistan, under the Muslim Family Laws Ordinance of 1961, introduced by the Ayub Khan regime, a man who is already married and wishes to marry a second wife must by law apply for written permission from an "Arbitration Council" to do so. The man and his existing wife are both represented on this Council, and the Council must be satisfied that the proposed marriage is "necessary and just", and may also impose other conditions.
 - ii. In the UK, if a Muslim man who is already married enters into an Islamic marriage (*nikah*) with another woman, then the latter is disadvantaged because she is not

recognized as his wife in UK law, while the first wife is so recognized. The second wife does not have the rights of a wife under the law of the country in which the husband is living. Therefore, he is not doing justice between his wives, and can never do justice between them under UK law. It means that the *nikah* with the second woman violates the Islamic requirement to treat the wives equally.

- iii. *Nikah* to take a second or subsequent wife is being used by unscrupulous men to legitimise adultery and to give Islamic justification to what is, in fact, a sin in Islam known as *zina*. They know that these “wives” have no rights in British law, and can be discarded by pronouncing *talaq* (“I divorce you”) three times. Sharia councils, far from condemning this exploitation of both the legal wife and the wife who married only by *nikah*, regard it as legitimate.

18. It may here be added that (leaving aside polygamy) marriages are taking place in the UK only by means of conducting a *nikah*, without formally registering the marriage in British law. In many such cases, wives are given the impression that the *nikah* is sufficient, since in Islam it legitimises sexual relations between the man and the woman. This is being used as a ruse and deception to deprive women of their marital rights.

d. Divorce in Islam

19. On the subject of divorce, as allowed by Islam, there are many serious misconceptions even in Muslim countries where divorce between Muslims takes place according to the country's interpretation of Islamic law. In the UK, Muslim couples have usually married both by *nikah* and formally under UK law. If they divorce under UK law only, the woman would have difficulty in marrying in the Muslim community unless the *nikah* was also terminated. (It does not affect the man since he can have another *nikah* even while his first *nikah* remains.) This is the area of much of the work of Sharia councils, i.e., certifying divorce.
20. The plain fact is that in cases where a couple mutually agree to a divorce under UK law, they have agreed to a divorce as such! Since in Islam divorce is by mutual agreement, and the religious teachings of Islam do not force a married couple to remain married under some principle such as “what God has joined, let no man put asunder”, it follows that the intention and act of divorcing under UK law constitutes a divorce under Islam.
21. In cases where a Muslim woman has obtained divorce under UK law but the husband and Sharia councils do not consider that she has valid grounds for divorce under Islam, it would then become a forced marriage as its continuance is against the woman's will.
22. Regarding the divorce procedure in Islam, it is a common misconception that the husband, by saying to the wife three times “I divorce you”, can end the marriage at his whim in an arbitrary manner, while the wife has no right to initiate divorce.
23. The procedure for divorce is clearly laid down in the Quran.
- i. The first step is as follows: “And if you fear a breach between the two (i.e., the husband and the wife), appoint an arbiter from his people and an arbiter from her

people. If they both desire agreement, Allah will effect harmony between them” (4:35). The case must first be referred to two arbiters and their decision is binding.

- ii. Arbitration failing, a divorce is pronounced, but it must not be pronounced during a period of menstruation because in that interval there is a cessation of sexual relations between the husband and the wife.
 - iii. The divorce (if it is the first or second such occurrence between the same couple) is followed by a period of waiting (65:1) which is three periods of the menstrual cycle, or three calendar months for women not menstruating, or till delivery for pregnant women (2:228, 65:4). During the period of waiting the couple may, by mutual consent, re-establish marital relations without *nikah*. After this period is completed, they may still marry one another again by *nikah*.
 - iv. The procedure described in (iii) is only applicable after the first and the second occasions that the same couple divorce (2:229). If a third divorce takes place, the same couple are not allowed to marry one another again (2:230; this prohibition is removed if the woman, after the third divorce, marries another man and is subsequently divorced from him, this being a genuine marriage and divorce).
24. Some early Islamic jurists have combined the three quite separate divorces mentioned above into a single divorce, pronounced three times on one and the same occasion, after which the couple can never marry one another again (unless the woman marries another man and is subsequently divorced from him). Many interpretations of the Sharia allow this type of divorce, which is, in fact, contrary to the clear teachings of the Quran.
25. Finally, and most importantly, three verses from the Quran have already been quoted in Point Number 12 above (“...retain them with kindness or part from them with kindness”), which require kind and considerate treatment of women by husbands who divorce them. To these the following must be added:
- i. “And for divorced women, provision (must be made) in kindness. This is incumbent on those who have regard for duty.” (2:241)
 - ii. “Lodge them (i.e., divorced women) where you live according to your means, and do not injure them in order to impose hardship upon them. And if they are pregnant, spend on them until they lay down their burden. Then if they suckle for you, give them their recompense, and enjoin one another to do good; and if you disagree, another will suckle for him. Let him who has abundant means spend out of his abundance, and whoever has his means of subsistence restricted for him, let him spend out of what Allah has given him.” (65:6–7)

e. Violence in the family

26. So-called honour killings or other lesser violence of this kind are sparked by two kinds of behaviour which is regarded as impermissible and bringing shame upon the family. One kind is the committing of some action which, while allowed in Islam, is against the social codes of society; for example, a boy or a girl rejecting an arranged marriage or marrying out of their

own choice against the family's wishes. As the action of the boy and the girl is allowed in Islam, the family's reaction to it is not a religious question, and any Sharia council should strongly warn that the use of any force by the family is *absolutely against Islam*.

27. The other kind of such behaviour is the committing of some immorality which is against the teachings of Islam, and may even constitute a criminal offence in Islam but is not illegal under UK law. Here for guidance we may refer to Hadith reports of the highest authenticity which show that the Prophet Muhammad strictly forbade any husband from inflicting his own punishment on a man if he caught his wife with him in the sexual act, or from making allegations of this kind against his wife without bringing any witnesses. He instructed that the due process of law should be invoked to establish guilt and award punishment. He warned those who would take the law into their own hands that they themselves would be punished. From this, it follows more generally that no person is allowed in Islam to kill or attack another person by accusing him or her of an illicit sexual act, even if he claims to have seen it taking place.
28. A man accused his wife of having sexual intercourse with another man and brought the case before the Prophet Muhammad. It is reported:

“The Prophet said (to him): Either you bring forth a proof or you will receive the legal punishment on your back (for slandering his wife). He said: O Messenger of Allah, if anyone of us saw a man with his wife, would he go to seek after witnesses? But the Prophet kept on repeating: Either you bring forth proof or you will receive the legal punishment on your back.” (Bukhari, h. 4747)

When it was reported to the Prophet that a man called Sa'd had said: “If I found a man with my wife, I would kill him”, the Prophet said:

“Do you wonder at the sense of honour of Sa'd? I have a greater sense of honour than him and Allah has a greater sense of honour than I have.” (Bukhari, h. 6846)

The Prophet meant that since Allah and His Messenger, who are the greatest guardians of honour, decency and morality, do not teach the action the man wants to take, how can it be moral for him to do so?

29. A verse of the Quran is used to justify a husband “beating” his wife, albeit lightly or symbolically. The verse in question (4:34) says that in case of disloyalty and morally wayward behaviour by wives, their husbands should: “...admonish them, and leave them alone in the beds and *idribū-hunna*”. These three actions are advised according to the severity of the breach of marital fidelity, i.e., cautioning, breaking off sexual relations, and finally the action of *ḍarb*. The words *idribū-hunna* have been generally translated as “beat them”, “hit them”, “strike them” and “chastise them”. However, the action of *ḍarb* is mentioned frequently in the Quran with a variety of meanings, so much so that it was written in a classical dictionary of Quranic Arabic that *ḍarb* is used to indicate all kinds of action except a few. Translators of the Quran into English are now increasingly translating these words of this verse as “go away from them” (Laleh Bakhtiar), “depart away from them” (Safi Kaskas and David Hungerford),

“strike a temporary parting” (Tahir-ul-Qadri), “bring forward to them (the suggestion for dissolution of marriage)” (Kamal Omar), and “separate from them” (Bilal Muhammad).

The writer of this submission, Zahid Aziz, in updating Maulana Muhammad Ali’s famous translation of the Quran, has expressed this as “turn them away”, and interpreted it as meaning either “turn them away (from wrong-doing)” or “turn them away (from yourselves by divorce)”.²

It is not merely a technical matter of translating the action *ḍarb* in a different way than “beating”. To beat or strike the wife seems to be clearly contrary to the general exhortations given in the Quran on how a husband should treat his wife. Some texts have been quoted earlier but may be repeated here with others: “...then retain them with kindness or let them go with kindness and do not retain them for injury so that you exceed the limits” (2:231), “...Nor should you cause them hardship by taking part of what you have given them, ... And treat them kindly” (4:19), “...retain them with kindness or part from them with kindness, ... and do not injure them in order to impose hardship upon them” (65:2, 65:6).

30. *Enacting new laws for women’s rights*: An incident is recorded in the Quran that a woman appealed to the Prophet Muhammad after her husband separated her from him through an old Arab custom by calling her as his mother. Under this unjust custom, she ceased to hold the status of wife but she was not divorced and therefore not free to marry elsewhere. And the husband could take her back whenever he wanted. The Prophet replied that he could not intervene as he received no revelation about this custom. Then a revelation came to him beginning with the words: “Allah indeed has heard the plea of her who pleads with you about her husband and complains to Allah”. The revelation then denounced that custom in the strongest terms and prescribed that those husbands who then wanted to take back their wives must first repent by performing some act of general charity as penance (58:1–4).

The voice of an ordinary woman was thus heard by God Himself and He sent His ruling to His Prophet to redress her complaint. This is a precedent on the basis of which Muslims can support the making of laws, in their country of residence, to abolish unjust customs oppressive to women.

31. *Sources*: The explanations from the Quran and Hadith, which are summarised above, are based primarily on the English translation of the Quran with commentary by Maulana Muhammad Ali, first published from the UK in 1917 and revised in 1951, and on his voluminous book *The Religion of Islam*, published in Lahore in 1936. Reviewing this latter book, Marmaduke Pickthall, who was himself a famous translator of the Quran into English, and a British Muslim convert, wrote: “Probably no man living has done longer or more valuable service for the cause of Islamic revival than Maulana Muhammad Ali of Lahore. ... the present volume is his finest work. ... It is a description of Al-Islam by one well-versed in the Sunna who has on his mind the shame of the Muslim decadence of the past five centuries... Such a book is greatly needed at the present day...”³

² At the time when I made this revision, I was unaware of any of the translations whose examples I have cited here.

³ *Islamic Culture*, Hyderabad Deccan, India, October 1936, pp. 659–660.

III. Recommendations:

1. The role of so-called Sharia councils must only be to provide education, guidance and advice.
2. Sharia councils must be required to make clear to their clients that they are not dispensing Divine judgments but giving human judgments in accordance with human interpretations and knowledge of Islam.
3. Members of Sharia council panels should be required to have appropriate religious and counselling qualifications, or be assisted by a member of the legal profession.
4. Sharia councils must not discourage their clients from enforcing their legal rights, especially where the client has been the victim of a crime or is suffering violence.

Zahid Aziz, Dr.

On behalf of:

Ahmadiyya Anjuman Isha'at Islam Lahore (UK)
15 Stanley Avenue, Wembley, HA0 4JQ
(Registered Charity: 278963)