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I. OUR WAYS OF THINKING ABOUT RELIGION

Our ways of thinking about religion as individuals must cede before the constitutional reality in each country, and the social and historical dimensions with profound roots in the culture of citizens.

I read in the introduction of “The power of Religion in the public sphere”: Many of ours dominant stories about religion and public life are myths that bear little relation to either our political life or our everyday experience. Religion is neither merely private, for instance, nor purely irrational”1.

Roland Robertson also said: “Specifically, the secularization thesis is dismissed here as being a modern Western myth, within the context of elaboration of ideas concerning the present phase of the overall globalization process”2.

The conclusion of a sociological and juridical book is: “Religion’s social importance goes beyond just its influence on politics. Religion plays a role in our history, culture, rituals, spirituality, social – control mechanisms, aggression, personalities, thought processes, forgiveness, and even, according to some studies, psychological stability and well-being. Yet Religion is, among many things, a multifaceted social and political phenomenon that permeates society and politics on multiple levels in multiple ways”3.

The main explanation for this phenomenon is the sense of identity, believing in belonging4. In countries like Italy, Spain or the United Kingdom (UK), there is a sense of belonging still not attending religious services or strictly following the principles of the various Christian denominations, justified by a cultural framework and a specific social context. Nonetheless, many religious believers have a self – identity, fruit of a personal reflection, very authentic and growing in implication.

Both aspects of the same matter go hand to hand to explain the revival of religious consciousness in old religions, and new religious movements seeking truth, the inner peace, or a new path in their lives. It could be emotional or rational, consequence of frustration and despair or a free choice, brainwashing or a mediated psychological process. Anyway, it is the current reality.

What about the constitutional reality, the law and religious freedom policies? Religion returns to European society while the modern democracy in Europe rests on the cornerstone of secularism5. Citizens demand a state commitment that allows citizens to have religious freedom in positive and negative way.

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However, the commitment of the State depends on the model it has to relate to religion and religions: separation, cooperation, established church or extreme secularism.

II. ESTABLISHMENT CHURCH SYSTEM FACING PLURALISM

In the UK coexist many Churches, we know Religion and Church are always the two faces of the same coin, a human being believing alone or living the faith in community (institutional or not). There are two main churches in the UK, the Church of England which is an Episcopal Anglican Church, and the Presbyterian Church of Scotland. The first part is governed by the common law of England, but also has its own measures approving the General Synod of the Church, and once they are submitted to the vote in the Ecclesiastical Committee of Parliament and sanctioned by the Queen, have the force of law by Parliament. The courts of the Church of England only address and resolve internal affairs.

Because blasphemy laws and other legal provisions, it had been denouncing the lack of space for other religions: “Most legal provisions are, however, implicitly based on the Christian faith or Christian ethics, and can therefore sometimes hamper the free observance of the worship of other religions”.

Tolerance and religious freedom have had to go on tiptoe to settle permanently, supported by special laws and treaties ratified, although tolerance law from 1689. Currently, other religious groups coexist inside this country.

In 2007 the statistics showed that the attendance of church services of the Catholics was much higher than that practiced by the faithful of the Church of England and could be read on Telegraph newspaper: "Britain has become a Catholic Country".

However, Muslims have also been installed in the hand of religious freedom, and it is estimated that in 2050 UK is a Muslim country, percentage-wise, and the application of its law is already unavoidable.

Neither Muslims nor any other religious group must register with created for this purpose, however, their existence consist through the requirements of other laws, such as the need to register to open a place of worship, called "the General Register Office", or entering into a marriage with certain assumptions, set out in the Marriage Act of 1969, subsequently amended by the Marriage Act 1994, or for setting up a non-profit association or "Charity", according to the law "Charitable Uses Act 1601", which has undergone several reforms in

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8 “As for the United Kingdom, one should first of all point out that it has no written Constitution. The principle of religious freedom has been crystallized in special laws and international treaties to which the United Kingdom is a party” (W.A.R. Shadid and P.S. Van Koningsveld. Religious freedom and the position of Islam in Western Europe. Opportunities and obstacles in the acquisition of equal rights. The Netherlands, 1995, 19).
9 http://www.telegraph.co.uk/news/
1992 and 1993, until the last of 2006\textsuperscript{13}, and determines which can be set to "advancement of religion", provided they are registered properly, and specifying some highlight worthy, that the word religion includes: a) a religion which involves belief in only believe in a god; and b) a religion that does not involve a belief in a god\textsuperscript{14}. If we start with these legal premises, therefore, these voluntary associations can be recognized by statutes to logistical issues to build places of worship and use of certain properties as such, regardless of legal status as a religious body.

Andrea Büchler do see acts performed pursuant to "the better law", are not easily recognizable if not granted independence to people to decide what will be the applicable law: "Basing applicable law on the individual’s closest social and cultural ties – called the 'better law' or 'proper law' approach- permits a case-by-case determination, though this places considerable undirected and unstructured powers in the hands of the courts. Such an approach can also impinge considerably on the predictability of the outcome, since the territorial and personal coverage of a law in open to judicial discretion. Possibilities for allowing the individual to choose the law which is applied do, however, constitute a promising alternative approach in this regard. The concept of party autonomy is gaining increasing support, particularly as a means of constraining the nationality principle and of precluding any unpredictability and uncertainty with respect to the conflict – of – laws rules and legal norms to which the parties are expected to comply. Giving the parties the freedom to choose applicable law relies on their will and their willingness to exercise that freedom, and trusts that they will autonomously reach the best decision as to which legal system is appropriate for governing their relationship”\textsuperscript{15}.

Religious groups also have the right to enjoy their own autonomy under a legal system that obligate to whom freely have adhered to it, is the theory proposed as "consensual compact”\textsuperscript{16}. The doctrine, principles and theology of a church or religious body, requires a secular state, a rule of non-interference, hence that state courts cannot judge on religious issues, although some of its members have gone to supranational justice as Peregrini v. Italy happened\textsuperscript{17}, a key pronouncement face to analyze problems of recognition by the state law of the judgments of the ecclesiastical courts, in EU countries such as Italy, Spain, Portugal and Malta, which in turn are part of the European Convention Human Rights (ECHR).

This case brings to the fore what are those cases in which there can be no internal interference in the autonomy of the confessions, but a correction of the legal and social consequences that flow from a court decision that applies specifically under its norms, also traditions and religious rituals. Ecclesiastical Court decisions in which religious affiliation is no concerned as the individual who exercises his individual religious freedom, and also other fundamental rights attached or independent, demanding equality and non-discrimination in a fair trial. All of them are protected in the UK through the source of law called Human Rights Act 1998, in implementation of the European Convention on Human Rights, 1950.

\textsuperscript{13} Cfr. En http://www.legislation.gov.uk/ukpga/2006/50/contents

\textsuperscript{14} 2. “Meaning of Charitable purposes. 3. (i)a religion which involves belief in more than one god, and (ii)a religion which does not involve belief in a god” (Charitas Act 2006)


\textsuperscript{17} [2001] ECHR 480. HRA 1998.
However, it should be noted that the UK is reluctant to get on domestic issues of Churches, except in the case of property or any interest involving fiscal, economic or commercial items; besides is more often adapt certain religious customs to state regulation as the sacrifice of animals in the law: "Welfare of Animals (Slaughter or Killing) Regulations 1995"\(^\text{18}\), the use of some symbols like the turban for what had to be amended employment law and traffic\(^\text{19}\), and the law of recognition of religious divorce held with the law: "Religious Marriages Act 2002"\(^\text{20}\), among other examples.

III. TARGETING THE DEBATE ON RELIGIOUS COURTS AS AN EXPRESSION OF IDENTITY

The rise of pluralism amid globalization is given a context of interfaith dialogue and it is a work of engagement with religious expressions in democratic political systems.

Thomas Banchoff emphasized that the reflection should go beyond interfaith dialogue to interfaith interaction around global policy challenges. However, as the Cairo and Beijing examples make clear, says, interfaith interaction should not be equated with cooperation. Conflicting interests, ethics, and identities can divide traditions internally and from one another. And sensitive issues ranging from abortion and female circumcision to capital punishment and global warning can and do generate cross cutting alliances of religious and secular forces\(^\text{21}\).

The problem is not religion but the human being who profess a religion, then It is really a hard objective to reach interfaith interaction and maybe the world forces need, how a World Banks book title says, “Development and Faith: where Mind, Heart and Soul work together”\(^\text{22}\).

This paper focuses on religious courts as an attitude of respect for a religious identity in a globalized and plural world, while will realize the risks of having a separate status, as a rule of law within the legal framework of the country in which it resides.

Although there are also courts of other religions, the issue of reference will be the Islamic courts. Muslims in the United Kingdom constitute a large part of the population, proud to be from the country\(^\text{23}\) but also its religious culture rooted in their lives for familial transmission. Islam has the capacity to fuel social action, and is not limited to the exercise of religion in private life or worship a God, its consistency is like a spider web that surrounds and protects their space from intruders, drawing on divine imperatives rules. Whatever the democratic state in which they are, Muslims seek to live their religion which is a unitary whole, especially in Law and Religion, inside a territory that has its own secular legal framework.

\(^{18}\) Cfr. \url{http://www.legislation.gov.uk/uksi/1995/731/contents/made}

\(^{19}\) See, Employment Act 1989; Road Traffic Act 1988.


The legal consequences of identity are sometimes dramatic due to the globalization of human rights, hence the religious courts constitute a valve of safety for Jews, Muslims and Catholics in the UK, enabling them to resolve matters by agreement, as religious traditions or binding mandates of their sacred texts.

When I make mention to the consequences of identity, I am referring to the Western reading of Human Rights. Religious freedom is protected in the UK under the Human Rights Act 1998, in force since 2000, due to running the European Convention on Human Rights of 1950, but neither individuals nor groups can operate unlimited under its beliefs invoking the right to religious freedom. In addition, this law is reinforced with other norms protecting to equality and non-discrimination on women and minors, despite the tendency to not interfere in religious fields, especially in regard to theological and doctrinal issues.

In family matters, there is a tendency to privatize family law in the name of religion and religious law, anyway these issues are covered with shadows on a rigorous legal order according to secular family law in the UK, hence the religious courts have a limited range and, in fact, the UK experiences a phenomenon of clashing rights.

Facing a chimeric approach, the arbitration Act appears in 1996 as a reasonable accommodation, a remedy to find solutions in legal disputes between the parties, avoiding delays and costs, both monetary and moral, through the called "faith-based arbitration". The Western pressure on Islam produces the revival of religion, this evidence makes more reasonable the accommodation, besides "When you put a cat into a corner, it might turn around as a tiger".

In this paper we focus on Islamic religious courts, with some notes comparing to other courts. Well, in the UK there are 85 Islamic courts, applying the Shari'a inside an Anglo-Saxon system with deep Christian roots, and some Hebrew traditions. The truth is that these religious norms being implemented in British soil, certainly only are imposed on Muslims who freely welcome them.

How does this legal and social reality in the UK? Menski Werner formulates a question in this regard and answers himself: Can and should state-centric law really regulate all aspects of family law, and what can legal systems and their personnel do when new groups of migrants bring in their own forms of family regulation and predictably, as we should also know by now, begin to order their legal universes on their own terms even though they are living in Britain? Simplistic assumptions about assimilation of migrants like salt into water

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25 In short, the mandatory religious rights standards and codes of conduct, pillars of different cultures, claiming cultural and interfaith mediation which some experts claim repeatedly, since the only relevant official bodies to promote harmonious relationships are “Commission of racial Equality and the Equal Opportunities Commission “, but its powers relating to issues of racial and sexual discrimination, which indirectly comprehend religious elements, not contemplating the urge interfaith dialogue, or at least, cultural mediation in UK (Urfan Khaliq, Islam and the European Union: Report on the United Kingdom. Islam and the European Union, de VVAA, Leuven, 2004, 253 – 254).


27 Religious Courts coexist in UK: England Church Courts, the Catholic Courts, the Jewish Benth Din Courts, and Sharia Courts.

28 Lisbett Christoffersen makes a quote from a Bulgarian Scholar in an International Seminar. Is Shari’a Law, Religion or a Combination? European Legal Discourses on Shari’a. En Sharia’a as discourse. Legal traditions and the encounter with Europe, AAVV, chapter 5, Great Britain, 2010, 57.
are manifestly wishful thinking, because simple common sense suggests that the water itself changes its quality when the salt dissolves. Regardless, we know what Meski called new legal hybrids that contradict the theory of one law for all.

IV. LEGISLATIVE ITINERARY IN ARBITRATION AND MEDIATION SERVICES

1. A new legal space or a wider legal space?

Canon Law is applied in the UK as a common practice and there is no one canon law for all of Christian people, like in Christianity there are different branches, each with its own law, not the same canon law of the Catholic Church than the Church of England or the Orthodox Churches; regardless Menski also reminds us that in other religions the same phenomenon occurs: “Hindu and Islamic Law are pluralistic legal system rather than a solidly uniform legal system”

Religious law is applied traditionally and historically in the UK. Moreover, England and Wales allowed the creation of religious courts with the Arbitration Act 1996, reformed recently, implemented in Scotland in 2010, this law enforcement may have been following what some authors call "the Indian solution".

However, in implementing Islamic law, Russell explains how the road has had to acquiesce slowly, after a public exchange of political opinions and religious authorities:

“The initial media and political reactions to the Archbishop of Canterbury’s lecture provided a clear reason why reason why religious law ought to be ignored. It was commonly suggested that the current law gave no recognition to Islamic law or other systems of religious law. For instance the then Prime Minister Gordon Brown was said to be clear that in Britain, British laws based on British values applied; while the then Culture Secretary Andy Burnham commented, on BBC 1’s Question Time on the same day, that: ‘You cannot run two systems of law alongside each other. That would be a recipe for ‘chaos’. These comments suggested that giving some recognition to Islamic law was impossible: the choice was simply between completely recognizing all aspects of Islamic law or giving no accommodation at all’

J. Witte ponders the historical progression: “The current accommodations made to the religious legal systems of Christians, Jews, First Peoples and others in the West were not born overnight. They came only after centuries of sometimes hard and cruel experience, with gradual adjustments and accommodations on both sides. Many modern lessons can be drawn from these experiences for sharia advocates”.

In the UK has always had a moderate secularism, although breathing fear religious

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33 "In Britain, the public character of religion and arguments in favor of pluralizing the linkage between state and religion have emerged as part of the more general discourse about multiculturalism to become what one scholar calls a moderate rather than absolute secularism. For many, this trend is misguided as it tends toward a (deeper) state endorsement of religion. But for others, it almost seems to be the only way to address the discrepancy between the already existing institutional role of religious conscience in state affairs and the failure
pluralism, for a country where uniformity has reigned until repealed blasphemy laws that protected only encompassed religions in Christianity\textsuperscript{34}, replaced today by Racial and Religious Hatred Act 2006, which applies equality to all religions.

The Arbitration Act 1996 allows resolving disputes "outside courtroom", and is not often granted the opportunity to appeal a verdict decided by an arbitrator, unless it is established that it has incurred some imperatively prohibitions enforced by the Act 2011, as gender discrimination, lack of free consensual, etc.

2. Western democracy making Amendments

Much of literature on religious freedom simply fails to address the correlation between constitutional provisions and state practice, the link between Constitution and governmental behavior\textsuperscript{35}, but in this case, the UK has no written Constitution, so we must study all the laws involved in the existence of religious courts, mediation or arbitration and its legal consequences.

After fifteen years of experience from 1996, the UK acknowledges the risk of agreements subject to religious rules and introduces some amendments to the Arbitration Act and other laws, in defense of women, children and, in general, \textit{in favor of equality and discrimination only as prevention, not as an attack on religion}.

We speak of the Arbitration Law and Mediation Services, which took effect in 2011\textsuperscript{36}, not without controversy for cutting rights and inhibiting the will of the people who want to submit such rules. The law begins advocating teleological purpose: making legal pressures on arbitration and mediation services in the implementation of equality legislation, in order to protect victims of domestic violence and abuse, and any purpose on or in connection with this purpose. These objectives will produce amendments: a) Amendments to the Equality Act 2010; b) Amendments to the Arbitration Act; c) Amendments to the Family Law Act 1996; d) Amendments to the Criminal Justice and Public Order Act 1994; e) Amendments to the Law on Courts and Legal Services, 1990.

2.1. The Equality Act 2010\textsuperscript{37}

In the provision of mediation services is amended as follows: a) a person cannot pay for mediation or arbitration services doing something that involves committing discrimination, harassment or abuse on the basis of sex; b) in order to prevent discrimination prohibited action is considered to assess more evidence or the testimony of a man than a woman; c) procedures are illegal distribution of property and inheritance among children, whether male or women, not equitable, d) is also prohibited inheritance procedure in which the property rights of women are lower than those of men.


\textsuperscript{36} The law is known in its original text as "Arbitration and Mediation Services (Equality) Act 2011".

The provisions to eliminate or minimize disadvantages suffered by persons who share the characteristics described, must be the same as the steps to take for those who are married according to certain religious practices or living in polygamy, without legal protection. These legal measures should include, in other cases, the obligation to inform individuals who have to get official recognition of their marriage to be protected legally, they must also be informed that polygamous coexistence is illegal.

It is designed to avoid or correct some Islamic practices regarding inheritance as the following: a) is inherited only between people of the same religion, and the woman was married to a non-Muslim husband never inherit your family or b) this inequality also affects children in the field of heritage, as the daughters receive only half the inheritance, while males inherit whole, justifying that the children should take economic responsibilities in marriage and the family, while that women receive financial support after marriage.

2.2. The Arbitration Act 1996.

In the provision of mediation services, the Act 1996 is amended as follows: a) a person cannot pay for mediation or arbitration services doing something that involves committing discrimination, harassment or abuse on the basis of sex; b) in order to prevent discrimination prohibited action is considered to assess more evidence or the testimony of a man than a woman, c) procedures are illegal distribution of property and inheritance among children, whether male or women, not equitable, d) is also prohibited inheritance procedure in which the property rights of women are lower than those of men; e) No question about family or criminal matters may be the subject of arbitration.

Rudolph Peters analyzes the Islamic legal system in different countries to show that does not conform to the standards established in international human rights instruments, specifically Islamic criminal law, even though some authors consider some religious figures have a translation into secular law. Maybe this is the main confrontation to not give leave to pass the criminal Islamic court decisions.

2.3. The Family Law Act 1996.

The orders made by a court on previously negotiated agreements should be based on mutual consent hence it will be invalid if it is proven that there was no real consent. This statement on the lack of freedom on agreements can be made by a party or a third party, or any other person with the permission of the Court, if the judge finds connection with the case, have


4:11. Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases (‘s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah. And Allah is All-knowing, All-wise.


knowledge of the circumstances, and therefore the feelings of parties as their desires are reasonable.

To know if the consent is true, the court must determine whether the parties were informed of their legal rights, including alternatives to mediation or other negotiation process, if a part was manipulated or suffered some kind of psychological coercion, or has been induced to participate in a negotiation process.

2.4. The Criminal Justice and Public Order Act 1994\textsuperscript{44}.

This Act is also amended at section on intimidation of victims of domestic abuse, and establishes the prohibition of intimidating witnesses and jurors.

2.5. The Court and Legal Services Act 1990\textsuperscript{45}.

The Courts Act 1990 also suffers an amendment that punishes a person exercising judicial function dictates falsely or unfair rules, or resolves an issue that is not within its jurisdiction or competence.

As a result of these amendments, the court must decide considering forecasts of equality between men and women under the Equality Act 2010, hence any negligence in the administration of these equality measures will result in the verdict has no application.

V. FAMILY MATTERS REQUIREMENTS TO RELIGIOUS AND STATE COURTS

1. Islamic Family Law in the private and public British sphere

Although it has always been said that the realization of justice is a point where faith and politics are close, it is an arduous task to reconcile the religious law and civil law in matters of family law.

Islamic jurisprudence on family law is abundant and religious courts are more reluctant to accommodate the secular law. So Sameer Ahmed:

“Those British Muslims who support legal recognition of Islamic law are almost universally referring only to Islamic family law- the fiqh- pertaining to marriage, divorce, inheritance, child custody, and other family-related issues. The reasons for preserving aspects of Islamic family law in the United Kingdom have both historical and practical significance. Left relatively untouched by colonial rulers in the late nineteenth century, family law remains one of the only areas of law in many Muslim-majority countries still based on centuries of Islamic jurisprudence. While many of the twentieth-century postcolonial Muslim states adopted European criminal and commercial laws, most developed their own family law codes inspired by Islamic legal rulings. Thus British Muslims, many of whom immigrated to the United Kingdom since the 1960s, have attempted to adapt their Islamic family law traditions

\textsuperscript{44} Cfr. http://www.legislation.gov.uk/ukpga/1994/33/contents

The same author presents different theories that advocate on the need to recognize Islamic family law or not, and assumes the risks when different schools and therefore interpretations are concurring, not all Islamic courts apply the same law, hence the British government would be giving legal force to contradictory provisions in order to respect the freedom of Muslims requiring to undergo its own right, as its own statute and at the same time, in order to not interfere on internal autonomy\footnote{Idem, 491 – 497.}, as Dane says: “the effort by secular law to make sense of religious self – governance”\footnote{Perry Dane. The varieties of religious autonomy in Church autonomy. A comparative survey 117 (Gerhard Robbers, ed., Peter Lang Publishers 2001) (Collected Papers of the Second European/American Conference on Religious Freedom: Church Autonomy and Religious Liberty, held in 1999 at the University of Trier).}. This secular effort was defined in a judgment, Sulaiman v. Juffah\footnote{Sulaiman v. Juffali (2002) 2 FCR 427 at par. 47.}, as the agnostic view of religious tolerance and indulgence toward the religious and cultural diversity.

In defense of Islam, I should say not only Islam differs from some prevailing approaches on women rights; as expressed Durham, feminism has created new perspectives that sometimes even transform the “nature” of certain rights:

“Tension between religious beliefs and women’s rights exists across a broad range of issues – abortion, ordaining of women to religious offices, religious influence on the shaping of social roles for men and women, religious rules on marriage and divorce and their influence on roles within the family, and countless others -. Feminism has brought new perspectives on the many ways such issues mold or distort not only legal institutions, but our notions of the nature of rights themselves and the methods of resolving tensions and conflicts”\footnote{Jr. W. Cole Durham Brett G. Scharffs. Law and Religion. National, International, and comparative perspectives, New York, 2010, 345.}.


While Rebecca Probert described: "In 1753 the Clandestine Marriages Act was passed to put an end to the celebration of marriages outside the Established Church in England and Wales"\footnote{Rebecca Probert and Liam D'Arcy Brown. The impact of the Clandestine Marriages Act: three case studies in conformity. University of Warwick institutional repository: http://go.warwick.ac.uk/wrap}, Elisabeth B. Crawford and Ianeen M. Carruthers made to note that currently polygamous marriages are recognized for practically all purposes in Scots and English law, albeit such recognition is of relatively at all. They keep in mind that Lord Pensance in Hyde remarked: “it is obvious that the matrimonial law of this country is adapted to Christian marriage…”\footnote{The place of religion in family law: The international private law imperative. VVAA. The place of religion in family law: A comparative search, Cambridge, 2011, 38-39.}

According to the balance of authorities, the character of a union is determined initially by the \textit{lex loci celebrationis}, and polygamous marriages began to be recognized by the UK Courts gradually over an increasingly wide field from 1945, including for the purposes of certain
social security benefits, and similar conflicts in relation to the effects of marriage, not in reference to marriage itself\(^53\).

The UK position is one of tolerance and recognition of polygamy, therefore, for those whose personal law permits it, and where the marriage took place abroad, but could withhold the approval (subject to the Private International Act 1995) for those whose personal law, established by means of domicile, is Scottish or English.

Increasing the plurality of marriage rites and although civil marriage is required under secular law, all marriages formalized under Islamic Sharia, without previously or subsequently contracted a civil marriage, reflect the reality of polygamy in the British society. Even if the successive marriages are held abroad, the second, third or fourth wife would never go into the country, taking advantage of the figure of family reunification.

Capacity to marry rest therefore on the personal law of the parties ascertained at the point of marriage was celebrated, and in accordance with the content of that/those law(s) at that date. Nonetheless, when religious matters becomes led to the submission of state justice, then it turns to experts who are obviously religious ministers, imams or religious leaders concerned.

In \textit{Uddin v. Choudhury & Ors}\(^54\), Mr. Uddin marries in Bangladesh with Mrs. Nazim Choudhury, through a marriage known as "arranged marriage", and according to Islamic rite. The marital coexistence fails and the Islamic council "Islamic Sharia Council," gives a decree of divorce dissolving Islamic marriage.

So, Mr. Uddin claimed that the gifts to his fiancée before marriage were returned, describing them as a part of the unpaid dowry of the bride. Moreover, the woman, in turn, believes that once dissolved the marriage, remained “unconsummated” by the will of her husband, according to Islamic law of Sharia causes no longer obligation of paying the dowry (mehar).

The court finds that the decisions made by a religious court on a marriage solemnized according to Islamic law, no civil way, can only be checked by the intervention of an expert in the field, hence seek the opinion of Mr. Siddiqui, who reaches several conclusions: 1) On the evidence, it appears that the certificate of marriage under Islamic law is valid; 2) The gifts cannot be returned as they were not subject to any conditions, such as the possibility of marital failure, and were not a part of the dowry, 3) There was agreement which set pay a sum of money from him, not her, and British courts have no reason to deny legal effect to the agreement of a marriage celebrated as a religious right; 4) Reject the appeal request to Mr. Uddin.

English courts were applying religious law by the rules of international law, have accepted polygamy, religious family rules, prohibition of adoption, etc. Then, we need to wonder if to not admit judicial decisions based on religious law because they are given in the British territory is an attitude of hypocrisy.

2. Restrictions to decisions given under Arbitration Act

2.1. General premises

\(^{53}\) Idem, 39.
\(^{54}\) Uddin v. Choudhury & Ors, Court of Appeal - Civil Division, October 21, 2009, [2009] EWCA Civ 1205.
The main limitations to decisions given under the requirements of Arbitration Act are focused on: a) The need to be really an agreement freely consented to by both parties; b) Is beyond the arbitration any matter of a criminal nature, as the sentencing always correspond to the state courts; c) The religious divorces are permitted, but only if they are validated awarded abroad, so it is necessary civilly divorced, although you can come to value economic issues, division of property or inheritance.

In fact, corrective measures of equality are applied to England and Wales, to be channeled into religious matrimonial practices of Jews and Muslims, groups deeply rooted in British society.

This law has some important limitations, including the inability to solve criminal cases (b), such any imprisonment or corporal punishment for a religious offense could not be recognized by an English court, but there are other issues that have a unique complexity and require applying limits as well as the denying civil effects to these agreements.

Islam is accused of applying theology of intolerance\textsuperscript{55}, not only for acts of terrorism, but the substantial difference in the condition of Muslim or non-Muslim in some countries. Definitely, there is no religious market in Islam, different legal schools of a single identity. This reality is according to the serious social consequences of apostasy offense constituent\textsuperscript{56}.

2.2. Validity of Marriages

2.2.1. Odd Marriages

It’s a daunting task to reconcile the religious law and civil law in the field of family law, and respect the rights of women. Some types of marriage with polygamy situation or not, are not recognized, as are the misyar or Urfi, spouses do not live together.

In the second case, the part of the husband family has no financial obligation to support his wife. This may cause a lack of correspondence between the spouses.

The failure of duty to help each other and support the family, substantially limits the wife to divorce, because they do not have the means to take into account the costs of the process.

2.2.2. Forced Marriages – Arranged Marriages

The UK Muslim Arbitration Tribunals (MATs) have publish a report on "forced marriages" very detailed and realistic, with information on the origin of these marriages, cultural and ethnic characteristics, differentiating the arranged marriages concluded under duress and forced an entire building discourse on method free from this bondage, and expressing it


\textsuperscript{56} For apostasy is a valid measure required a number of conditions: a) must be made voluntarily, ie not be coerced or compelled to apostatize; b) it must be a healthy person and not legally incapacitated or ill. The apostasy of a person who has been declared legally incompetent is invalid, since in this case religious loyalty issues do not apply, or is accused of a neglect of religious duties. There are some disputes on the apostasy of a person in general, and has a complex meaning and has several related terms and blasphemy (Sabb Allah and Sabb al-Rasul), heresy (Zandaqah), hypocrisy (niftaq), and unbeliever (Kufr), among others.
clearly opposes such unions to:

“The Judges of MAT have also faced a number of instances where the idea of an arranged marriage was being mooted as one akin to forced or coerced marriage. It was made clear that arranged marriages have some grounding in Islamic Law, but forced or coerced marriages have no foundations in Islamic Law and shall be nullified under the edicts of Islamic tenets” 57.

Perhaps the implementation of the agreements reached in that judgment, *Uddin v. Choudhury*, adopted according to Sharia law, because it was an "arranged marriage"58, not a "forced marriage", since in this case the lack of consent of one or both parties, it would be impossible to give a translation civil, because a law was passed in 2007: "The Forced Marriage (Civil Protection) Act 2007", which requires an amendment inserted in Part 4A of "the Family Law Act (FLA) 1996", to create the figure called "Forced Marriage Protection Order (FMPO)".

The main objective is to legitimize the family courts to prevent forced marriages and stop the attempts to force young people, depriving a person of freedom in the choice of marital status and the person you want to enter. If the marriage has already taken place, the family court may issue an injunction to protect the victim and help extinguish such status. Only the victim can apply for the order, or a competent authority in the case of minors, also NGOs, and even family and friends with leave of the court. These orders may involve not only the perpetrators, but accomplices and anyone who cooperates with the implementation of a forced marriage under duress and threats that seek to condition a person psychologically. Have effect in UK and other countries, especially the European Union.

Orders may require very different action shots: withdraw the passport, restrict intimidating or violent behavior of the parties or third parties, controlling a person's home, preventing the victim is taken abroad, avoid contact or switch behalf. In the event that violence was used, the author may be held without bail.

First, although mediation is also used to try to get an agreement, many women have been killed while trying to arbitrate and / or mediate. Nor are many applications for orders, since a large percentage of women do not know the language, they fear reprisals or simply and naturally unwilling to report his own family to justice.

Moreover, in the UK it was found that many parents come to enter forced marriages as "as a long-term care option for people with learning disabilities", as in *KC and another v. City of Westminster Social & Community Services Dept*59, which was decided on the validity of the marriage solemnized through a phone line between a national of Bangladesh UK (NK) suffering from severe mental disabilities, and a Bangladeshi woman (IC), concluding that: “… has not the capacity to understand the introduction of NK into his life and that introduction would be likely to destroy his equilibrium or destabilize his emotional state… Were IC’s parents to permit or encourage sexual intercourse between IC and NK, NK would

58 “Arranged marriages are also often advocated by young men and women from immigrant backgrounds who have grown up in Europe and, though their own involvement in the search for and selection of future spouses and in the various negotiations between the families varies considerably it is in many cases substantial” (Andrea Bücher. Islamic Law in Europe. *Legal Pluralism and its limits in European Family Laws*, England, 2011, 42).
be guilty of the crime of rape under the provisions of the Sexual Offences Act 2003. Physical intimacy that stops short of penetrative sex would constitute the crime of indecent assault under that statute. This marriage was considered invalid for UK law, though valid under Sharia.

2.2.3. Temporary marriages

Although Islamic temporary marriages are celebrated with a free consent, it is an unrecognized figure in Western law. Indeed, in the Koran allowed temporary marriage—the mutation can be due to various reasons, the simple pleasure or legitimize unlawful sexual intercourse, among others. For this marriage contract to be valid must be set period of time, whether a day, a month, a year or a specified number of years, and must be set the amount of the dowry. If you lack the latter requirement should prevent the marriage. By contrast, setting the dowry but no fixed term or period of time of marriage, the contract can become a permanent marriage. Being a temporary contract no right to divorce because ipso facto dissolved upon completion of the period of time for its duration. The use of the dowry will be one hundred per cent, or fifty per cent, depending on whether the marriage is consummated or not.

No case of a marriage which has added a temporary clause, even though Islam is declared in principle opposed to divorce and the Koran makes every attempt possible to make divorce difficult and expensive (cf. Koran, Sura 2 ayat 229-230), in actual practice, Muslim marriage as a civil contract can be broken, also under the same terms of the Qur'an (cf. Koran, Sura 2 ayat 229), either unilaterally by one spouse or bilaterally.

2.3. Validity of Islamic divorces decisions

The acceptation of divorces depends on EU or Non-EU Divorces. EU divorces are regulated by Brussells’ Normative (Brussels libis). Non-EU divorces are called overseas divorces.

Religious courts have a very limited room for maneuvering in terms of family, however, when attending a religious right to the criterion of domicile, is given legal effect to what has been called "religious Overseas Divorces", recognized in another jurisdiction. In this course, you will enter a very delicate area because several factors concur.

If the parties were married according to religious tradition, or prescribed by any other religious tradition, State must cooperate in order to the marriage be dissolved under the same traditions, provided the statement of both parties confirming that have followed all the steps according to such uses and freely.

The recognition of divorces by the English courts is governed by the law: "Family Law Act 1986 (FLA 1986)." Under this law, divorce, annulment or marital separation UK granted by a civil court is automatically recognized nationwide. On the pulse of power between state and religious groups, it reserves the right to examine the conditions under which a marriage is dissolved, either by divorce or death, so that at the time of the termination of marriage order is reversed and requiring a religious divorce before the civil, to proceed with a reasonable accommodation, as is clear from the law: "Religious Marriages Act 2002", or legal effect correction unfair or unequal conditions between men and women.

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60 Cfr. &. 32.
Under Islamic law, a husband is permitted to divorce his wife without any reference to a civil court (Extra – Judicial Divorces). Such a divorce, by talak (or talaq), merely requires him state unequivocally three times this intention to repudiate the marriage. In some countries, no further formality is required than this bare talak. In case, Sulaiman v Juffali\(^61\), a couple of Muslims, of Saudi nationality, divorce through the figure of talak on UK soil, registering it in court "Saudi Sharia Court". The English Court rejected the recognition of divorce because it took place outside the country: "Informal Divorces Obtained in This Country, that is Divorces Obtained Otherwise than by proceedings in a court of civil jurisdiction, are not to be recognized".

In another case of Jewish divorce, Berkovites v Grinberg\(^62\), if it came to validate, because the call "get", was formally recorded in writing in the UK, but was pronounced orally in Israel.

If the divorce, annulment or separation has occurred abroad, they have to prove that at least one of the parties at that time was domiciled or habitually resident was the country in which it was obtained or, simply, was a national of that country.

Moreover, it should be noted that sometimes divorces are not granted after a trial, then the requirements are getting more stringent recognition: you have to check that was obtained under the law of that country, the date on that was achieved, which one of the parties is domiciled in that country, and that neither party was habitually resident in the UK during the period immediately preceding the date of the divorce, annulment or separation\(^63\).

Although these requirements concuring denying the validity of a religious divorce if not notified of all legal steps to both parties and their nature, the most reasonable, and if no party has been given the opportunity to take part in the process. In the event that took place without a trial, can also be denied the civil effects if there is an official document certifying that divorce, annulment or legal separation and made the country according to law, if one party was domiciled in another country at the time and has no document concerning the validity of the termination of the marriage under the law of that country, or when the application for recognition of divorce, annulment or separation clearly violating public order\(^64\).

When divorce begins and ends in a country formally and officially in another - divorce-transnational, civil recognition of its validity would depend on the law of the country where the divorce took place.

Once formally recognized religious divorce in another country, the UK courts will have jurisdiction and authority to resolve "financial matters", if requested authorization.

d) Cause of marital contract extinction

The UK Courts does not matter on marital divorces causes, neither in Spain or France because divorce has no a divorce causes relation in the Civil Code, but these court decisions analyse the causes of nullity scrupulously.

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\(^61\) Sulaiman v Juffali (2002) 1 FLR 479
\(^62\) Berkovites v Grinberg [1995] 1 FLR 477
\(^63\) FLA 1986 s 46(2)
\(^64\) FLA 1986 s51(3)
A French Court denied the validity of a marriage annulment due to the woman was not virgin\textsuperscript{65}. The qualities are taken in account according to the social consciousness of the current epoch, at that point the virginity is not admitted as a determinant requirement of the consent effectiveness.

The Spanish Supreme Court doctrine supports the interest of the subjective aspect of a human being choosing spouse, but it is in contradiction with the emphasis on the social values to estimate certain qualities. Virginity, is considered obsolete and it cannot be appraised in a civil marriage annulment decision\textsuperscript{66}.

If we focus on the civil marriage between Gypsies, we would understand that women are more appreciated for their virginity and fidelity, their values are entrenched to ethnicity and culture. If a gypsy would invoke an application for annulment of Article 73.4 of the Spanish Civil Code, this would be the exception to the rule because it is an irrefutable proof that that tradition is very intense in the gypsy family life. Nonetheless, some people defending women equality are to consider that traditions are made to be broken\textsuperscript{67}.

In the other side of the coin, Germany endures the tradition and makes prevalent a religious choice. In the case of a woman from Morocco, married to a Muslim, who sought help to initiate divorce proceedings, invoking the unceasing abuse and mistreatment she received from her husband, the district court judge denied relief, and his judgement reasoning was based on the precept of Quran, Surah: 4, verse: 34, to express that allowed men from countries like Morocco the right to punish their wives if they were disobedient, and she would have apperceived this when he decided to marry her husband\textsuperscript{68}. As anyone can observe, this decision is another type of punishment inflicted on that woman who chooses a particular religious rite; the German judge forgot that human rights are inviolable and universal as based on human dignity.

The UK statistics show that women turn to Sharia courts that perform the most conservative interpretations of Islam, and by contrast the UK the obligation to verify the guarantees of a due process, independence, transparency, and legitimacy of their representatives, under the legal philosophy of gender equality and the rules of procedural law, in trying to ensure arbitration decisions are fair and non – discriminatory. The concurrence among Sharia Law and secular law is tense in these circumstances.

VI. ISLAMIC LAW AND SECULAR LAW.
The encounter among different roots and sources

In cases where the law allows legal force of decisions as Islamic religious divorce decrees, Archbishop Williams, also believes there should be a reasonable accommodation to the conscience of believers who do not want to participate in processes where Religious law is applied: “Williams takes is to recommend the accommodation of those believers who wish to

\textsuperscript{65} Tribunal de Grande Instance de Lille, 1 April 2008, JCP 2008 (nº 26) 35.
\textsuperscript{66} FJ 3, TS, 20 de febrero de 1997.
\textsuperscript{67} Vid., Irene María Briones Martínez. Las causas de nulidad del consentimiento para conyugarse. Un análisis de la doctrina, la legislación, y la jurisprudencia en el Derecho Canónico y de Derecho Civil. Granada, 2012, 177.
\textsuperscript{68} Andrea Bücher. Islamic Law in Europe. Legal Pluralism and its limits in European Family Laws, ob.cit., 60.
exercise the liberty of conscientious opting-out from collaboration in procedures or practices that are in tension with the demands of particular religious groups”69.

Some Scholars do not agree with an unlimited accommodation, under the political perspective based on separation of Religion and State. Greeawalt warns referring to the religious clauses in US: “Permissible accommodations to religious practice are typically seen as other than support or endorsement. But some attempted accommodations cross over the line. They support and endorse religion and constitute forbidden establishments. The determination of when accommodations involve impermissible support and endorsement is one of the most complicated problems in the law of the religion clauses”70.

Another drastic solution was adopted by Canada as Combalía explains: "So, in Canada, the current system in Ontario from 1991 to 2005, allowed the arbitration to resolve family matters and, in fact, some religious communities had their own courts arbitration under this legislation. However, when in late 2003 it was the Islamic Institute of Civil Justice to Canadian Muslims who wished could resolve disputes according to Islamic law, it sparked an intense debate in the country. The reasons given for opposing were that there is no single, but different interpretations of Islamic law and that some of them are inspired by patriarchal, harmful to the equality of women”71.

The Ontario government passed the law "The Family Statute Law Amendment Act 2005", which amended the Arbitration Act 1991, and was implemented by "Family Arbitration Act 2007", in order to avoid an arbitration system that was detrimental to the most vulnerable people.

We can conclude along these lines of reasoning a bond among Religion and Islamic Law, questioning the secular role of a State allowing Islamic Law in a civil society, in the private and public sphere of Muslim and British citizens. It is always a confrontation between Religion and modern society72. Nonetheless, this speech is partly wrong, State Courts and Islamic Courts are applying Law, with diverse foundations, and consequently some different solutions on the same grounds, but unquestionably Law.

It is also unquestionable the link of Islamic Law for Muslim People living a religious identity in implementation of religious freedom, then, religion provides an identity and is also the main source of a legal tradition, as Mumtaz points: “Religious freedom is thus taken to imply a right to the recognition of that sovereignty, understood as a God – given natural right from which the law derives”73.

The cultural identity of Islam and Islamic Law are blurred with UK legal traditions and European standards, it is a challenge in a globalized world. Globalization leads us to two extreme risks: the uniformity or the pluralism that migrates with people. Nevertheless, a reasonable accommodation in Europe indicates that some Western legal traditions are reforming Islam. Religious Courts in UK are a part of this common effort, and despite the limitations in "family affairs": “A network of communicative processes, of equal ranking discourses on the codes of right and wrong, which in turn generate normative expectations and are thus part of the legislative process. Family law is an area in which the communicative process has a special effect”.

INDEX. Key Definitions in Arbitration Act

1. The purpose of arbitration is to achieve a "just resolution" and the parties are free to decide how to resolve disputes before an impartial tribunal within the limits of the public interest.

2. The term "seat of arbitration", the place to be designated by the parties to the agreement, by an arbitration institution or person to arbitrate, or person vested with powers to do so by a court of arbitration, or authorized by the parties.

3. What is meant by agreement? Arbitration agreement relates to a covenant that has to be submitted in present or future disputes, contractual or not. It may be a clause that serves to arbitrate the dispute or a document containing an arbitration clause. A domestic arbitration agreement is one that affects residents or persons or institutions based in UK.

   The agreement will be effective only if in writing, that is, as a test requires written, signed, and to appreciate the exchange of written communications. Also considered valid unless referral to a written agreement, which will not be rejected by the other party.

   Furthermore, unless the parties decide otherwise, death does not affect an agreement has already been reached, and may be enforced against the legal representatives of the deceased, except a law provides is extinguished.

4. Arbitrators or mediators. The parties are free to agree on the number of arbitrators or mediators that establish the court and if there will be a moderator. If there is no agreement, there will be a single mediator. Parties also have full freedom to choose how to contact mediators, and if it fails, they will have to follow the rules of law. The arbitrator shall not be responsible for their decisions, unless proven his bad faith. The parties may request that the arbitration be consolidated with another.

   The court may, with the agreement of the parties, request reports from experts or legal advisers to assist with technical references. The parties may make comments and clarifications on the reports issued by such advisers.

5. The arbitral tribunal shall decide the dispute according to the law chosen by the parties, understanding that should not be in conflict with the substantive laws of the country. May, among other things, order the payment of a sum of money, order an action or omission, execute a contract, rectify or cancel any provision of a contract. In the implementation of the

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75 Andrea Bücher. Islamic Law in Europe, ob.cit, 128.
decisions taken, they can apply the New York Convention and the Arbitration Act of 1950, passed after the ratification of the Geneva Convention.

6. Everyone has the right to appeal decisions, even if they did not take part in the case, but it affects them. The petition of appeal may request a review of the performance and competence of the court, or the infringement of the parties rights when substantially affects the rights of one party or more, if is an issue that the court had to determine, if on investigations of the facts, it is shown that the decision was obviously wrong, or is public and general importance, and the decision is at least open to serious doubt, and when fit despite the agreement of the parties, is right and proper that the court resolves itself the subject of the dispute. Moreover, it should be governed by procedural rules of common logic, that the decision is reasoned and motivated and make a decision on all issues of the case raised, etc.

The Secretary of State may order to reject or amend the provisions that we have been discussing. An order established in these forecasts may be a statutory legal instrument, not decreeing another unless approved by resolution of the House of Parliament. This law also applies to agreements in which the Crown has been, whether his Majesty, Baron of Lancaster or the Duke of Cornwall.

In the event of not being a result of an internal agreement verdict, a "domestic agreement", one can examine whether it has been taken on the basis of a settlement reached abroad according to the rules of the Convention New York.

7. As implementation of the Arbitration Act 1996, a faction of Muslims in the UK created an arbitration tribunal in 2007, Muslim Arbitration Tribunal (MAT) -, on whose website you can read its objectives:

“The Muslim Arbitration Tribunal (MAT) was established in 2007 to provide a viable alternative for the Muslim community seeking to resolve disputes in accordance with Islamic Sacred Law and without having to resort to costly and time consuming litigation. The establishment of MAT is an important and significant step towards providing the Muslim community with a real opportunity to self-determine disputes in accordance with Islamic Law”.

8. Although 95% of the Islamic court decisions are based on the application of Islamic family law, found legal full correspondence in the UK, as they often cooperate with British family counselling services. I do not know if this is a transposition of Islamic law into British law, or if there is no longer really a univocal concept of marriage.

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76 Cfr. En http://matribunal.com/
77 “I reject all these alternatives and suggest, instead, that it is time to abolish civil marriage. The law should not define, regulate, or recognize marriage. Marriage-the structured, publicly-proclaimed, communally-supported relationship of mutual commitment-should become solely a religious and cultural institution with no legal definition or status. I favor the abolition of civil marriage from a pro-marriage perspective” (Edward A. Zelinsky. Deregulating Marriage: The Pro-Marriage Case for Abolishing Civil Marriage. Cardozo Law Review, Vol. 27 (2005-2006), 1163).