



EQUALITY BEFORE THE LAW

Speech by Lord Phillips,
Lord Chief Justice

3 July 2008, London Muslim Centre

Contents

Introduction	3
Welcome speech	4
Opening remarks	6
Equality before the law	7
Questions and answers	22
Closing remarks	26



INTRODUCTION

This was an historic evening. Never before had a Lord Chief Justice of England & Wales visited the London Muslim Centre – the “LMC” – home to so many of the Muslim faith. His message of “Equality before the Law” was one with resonance and currency for Muslim and non-Muslim alike.

Appropriately his audience was Muslim and non-Muslim alike. For the evening was about more than the speech, just as “ProBono in the LMC” as a project is about more than free legal advice. The evening, as with the project, was also about strengthening links and understanding within our mixed community.

The importance of understanding was brought out so clearly by the Lord Chief Justice. It was also apparent from the many conversations that flowed that evening. It is our sincere hope that friendships will have formed that evening that will last.

Of course the extensive national press and television that followed focussed on what was said (or not said) by the Lord Chief Justice about Sharia Law. That part of Lord Phillips’ speech was obviously important. But those who were there, or who can take the time to read this copy of the speech, will see that it was also about much, much more. And so too, rightly, were the valuable opening remarks of Dr Abdul Bari, Chairman of the East London Mosque and London Muslim Centre, also contained in this booklet.

The hospitality shown by the London Muslim Centre underlined the wider point that Muslim and non-Muslim alike are welcome in the Centre. The hospitality combined warmth and modesty – from the welcome given by the Imam, to the willing display by the charities, schools and community organisations based in the Centre of the work they do, to the verse read at the commencement of the speech.

This was an evening and a speech that, I hope, will have a positive legacy. Our deep thanks to the Lord Chief Justice are recorded elsewhere in these pages.

Robin Knowles CBE, QC

Chairman, ProBono in the LMC



WELCOME SPEECH

Dr Muhammad Abdul Bari
Chairman, London Muslim Centre

In the name of God, the Compassionate, the Merciful.

Lord Chief Justice, Lords, Excellencies, Sisters, Brothers, Ladies and Gentlemen. Assalamu Alaikum and Good Evening. Welcome to the London Muslim Centre.

It is my pleasure to welcome you all to tonight's event, the first lecture of its kind organised by Pro Bono and the London Muslim Centre and sponsored by Islamic Bank of Britain. I am delighted, Lord Chief Justice, that you have chosen our Centre to speak on a subject that is of central importance not just to the Muslims in the UK, but to the whole of the British society.

This Centre, inaugurated four years ago, was built by the Muslim community in the East End of London, whose determination and philanthropic spirit led to the raising of some £8 million. Today, the fruits of that labour are found in the many projects housed here, including Pro Bono, our joint host. I am proud to say that the users of this Centre are not only Muslims, but people of other faiths and none.

Given the current sad state of affairs in most of the Muslim world, it might come as a surprise to many of our non-Muslim friends to know that the notion of Rule of Law in Islamic jurisprudence is the same as that in the English legal system. Equality before the law and equal protection of the laws are the most cherished and central pillars of the Islamic legal system. Out of the many references on this issue in the Noble Qur'an, please allow me to quote two verses:

**Whenever you judge between people, you should judge with justice. (Ch4: V58)
And if you judge, judge with justice between them. Verily, God loves those who act justly. (Ch5: V42)**

Today, in the context of discussions on the future of a plural Britain, the notion of Equality in Justice could not be more important. Muslims seek equality before the law, and sometimes challenge, as they are entitled to in our democracy, the manner in which the State treats or is perceived to treat Muslims. Unfortunately, this bona fide expectation often results in hysterical media overreaction, as we witnessed with the Archbishop's thoughtful remarks on the role of Muslim personal law in Britain or when we make legitimate criticism of some of the draconian anti terror legislation.

If we as Muslims have any quarrels, these are with politicians and not the Judges. We are not unaware of the difficulties that the judiciary has had with the government in a number of areas and cases. Lord Chief Justice, you are among friends and admirers. You lead an independent and robust judiciary and it commands our respect and confidence. I should like to make one plea though. I believe I speak for a vast majority of Muslims when I say that we do not want separate Courts or a parallel legal system. What we do want is a judiciary that is sensitive to our divine laws on personal relationships and family matters. Judges involved in family matters need to have knowledge of our rights and obligations as Muslims in Sharia law.

In addition, there are 3 key areas of particular importance to us:

- 1 The right to religious belief, practice and representation on a par with other faith communities in the UK.**
- 2 The right to be protected from discrimination, disadvantage, harassment and vilification on grounds of religion whether perpetrated by individuals or institutions.**
- 3 The right not to be targeted or disproportionately impacted upon by particular legislation or how it is implemented – for example, in the fight against terrorism.**

Lord Chief Justice, you speak to us today at a particularly poignant time. The difficulties and challenges we face as a nation and the Muslim communities as part of this nation can be overcome by mutual effort and understanding and most importantly by honest discourse.

Lord Chief Justice we are grateful and indebted to you for coming here and speaking tonight.

As Lord Chief Justice, the head of the judiciary in England & Wales, and head of the Courts of England & Wales, your views on Equality and Justice are of paramount importance and we look forward to hearing from you.



OPENING REMARKS

Robin Knowles CBE, QC
Chairman of Pro Bono in the LMC
(and Chairman for the Lecture)

Thank you Dr Abdul Bari. And thank you London Muslim Centre.

Our immediate audience is very welcome. We welcome also a wider audience through the BBC, Sky, and a number of other television channels, as well as through the national, regional and local press.

Our immediate audience comprises Muslims and non-Muslims; members of the general public; leaders from politics, education, religion and journalism; judges, lawyers and students; ambassadors, doctors, academics, police officers and charity workers. Our wider audience will be equally diverse.

Lord Phillips of Worth Matravers is the Head of the Judiciary across England and Wales. He joins us with his wife Lady Phillips. His visit could not be more welcome, timely or important. Your Excellencies, members of the community, friends – the Lord Chief Justice.



EQUALITY BEFORE THE LAW

Speech by Lord Phillips, Lord Chief Justice

In 1903 two young immigrants arrived in England. They were Sephardic Jews and had eloped to this country from Alexandria because they understood that England was a country in which they would enjoy freedom. Not merely freedom from their families, who did not approve of their marriage, but freedom under the law from all forms of discrimination. They believed that England was a country where all were treated equally, regardless of their colour, race, religion or gender. They were my maternal grandparents, and to a large extent they were correct. England was a country that prided itself on the freedom accorded to those who lived here. But, as we shall see, this very freedom permitted some who lived here to discriminate in the way that they treated others. It is only in my own lifetime that the law has moved to outlaw almost every form of discrimination, so that those who live in this country really are entitled to be treated as equals.

I propose to explain to you the ways in which the law has changed, with the result that Muslim men and Muslim women are entitled to be treated in exactly the same way as all other men and women in this country. And there is, of course, another side to this coin. Rights carry with them obligations, and those who come to live in this country and to benefit from the rights enjoyed by all who live here, also necessarily come under the same obligations that the law imposes on all who live here. The title of my talk is 'equality before the law', and it may be helpful to consider at the outset what 'the law' is. The law that I am to talk about is the set of rules that govern how we live in society. They are rules made by those with authority to make them and rules that are enforced by those with authority to enforce them.

In some countries those who make the law are the same as those who enforce it. In this country that is not the case. We have what is known as the separation of powers. Parliament makes our laws. The government administers the country in accordance with those laws and, if anyone alleges that an individual or a government authority has broken the law, it is the judges who have to determine whether the law has been broken or not and, if it has, to rule on what sanction or remedy is to be imposed.

The judges of this country are independently appointed. We are fiercely proud of our independence. When we are appointed we take an oath or affirmation that we will administer justice 'to do right to all manner of people after the laws and usages of this realm'. We act in accordance with that oath. We treat equally all who come before us, regardless of whether they are men or women, regardless of their race or religion and whether they are rich or poor.

We are not influenced by the wishes of the government, and no Government Minister would dare to attempt to influence a judge to decide a case in a particular way. Each individual judge is independent, which means that I as Lord Chief Justice would not think of directing another judge how to decide a case.

So I can give you this assurance. Any man or woman who appears before a judge in this country will receive equal treatment in the administration of the law. The judge will treat each litigant in the same way. But the judge's duty is to apply the law, whether he agrees with the law or not. So the important question is not 'does the judge treat everyone equally?' but 'does the law treat everyone equally?' In any society the answer to that question depends upon the motives, the beliefs, the attitudes, the prejudices or lack of prejudices of those who make the law.

At this point, you will forgive me I hope, as I must say a little about history, for our law today is, to some extent, a product of this country's history. Before this country became a democracy, those responsible for the laws were not very enthusiastic about equality. There is a popular perception that the freedoms that we all enjoy had their root in the Magna Carta. That is a misconception. Before the Magna Carta England had a feudal system, in which the King was supreme. Below the King came the noblemen and below the noblemen the serfs. The law imposed by the King was imposed for his own benefit and made very substantial demands on his noblemen, who themselves made exacting demands on their serfs. The King's rights included, by way of example, the right to dictate to whom the widow of a nobleman should be re-married. Ultimately the nobles revolted against the demands made on them and the Magna Carta set out an agreement made by King John in 1215 that he would moderate those demands. Thus Chapter 8 of the Charter provided 'no widow shall be forced to marry so long as she wishes to live without a husband'.

It is not for provisions such as these that the Magna Carta is remembered, but for the following pledges:

“No freeman shall be arrested or imprisoned or disseised or outlawed or exiled or in any way victimised, neither will we attack him or send anyone to attack him, except by the lawful judgment of his peers or by the law of the land. To no-one will we refuse or delay right or justice.”

This came to be regarded as setting out the fundamental rights of British citizens. King John subsequently renounced the agreement that he had made in Magna Carta, but later Kings agreed to abide by an amended version and so this became an important part of the law. Magna Carta dealt with relations between the subject and the State, in the form of the monarch. Other laws dealt with disputes between the King's subjects. How were these laws created? Initially they were created by

judges, appointed by the King to act on his behalf in resolving those disputes. The law created by the judges came to be called the 'common law'. The common law covered aspects of life common to most societies – the right to own property, rules in relation to inheritance, the right to compensation if one person injured another and so on. These are aspects of what we call civil law; the law governing the reciprocal rights and duties of citizens towards each other. But the judges created another kind of common law – the law that we call criminal law. This law exists not for the benefit of the individual citizen, but for the benefit of society as a whole, and it lays down acts that are prohibited because they are antisocial. Those who break those laws commit crimes against the state and are liable to be punished by the state. In the old days we used to talk about crimes as being a 'breach of the king's peace'. Examples of acts that have always been recognised as crimes are murder, rape, assault and theft.

The common law still exists and, indeed, it is the foundation of the law that is applied today. But it has been largely replaced by statute law, that is law enacted by Parliament, and that is the usual way that laws are made in a democracy. The supremacy of Parliament dates back to 1689 when King William III signed the Bill of Rights this provided for free elections and freedom of speech in Parliament and removed the power of the King to suspend the laws which Parliament had passed. Under the parliamentary system the people elect representatives who then make the laws that govern the people.

I said earlier that laws tend to reflect the motives, beliefs, attitudes and prejudices of those who make the law. Parliament tends to enact legislation that reflects the attitudes and wishes of the majority of the electorate. If everyone has the right to vote that is a fact that tends towards laws which apply equally to everyone. But for a very long time not every citizen of this country had the right to vote. Men tended to dominate society and to consider that they were more important and superior to women. When parliamentary democracy was introduced to this country, it was a very biased democracy, because only men were allowed to vote and only men were allowed to become members of Parliament. So it is perhaps not surprising that the laws passed by Parliament tended to discriminate in favour of men.

Slowly there was a change in attitude, a change that was partly brought about by protests of the women themselves. In 1918 Parliament voted for a limited right to vote for women and permitted those eligible to vote to become Members of Parliament. In 1928 women gained the right to vote to the same extent as men. Thereafter, so far as relations between the citizen and the State were concerned, women came to be treated equally with men.

There were other respects in which prejudices on the part of those who made the laws resulted in inequality of treatment of citizens of this country. This was certainly true of religion. Historically Christianity has been the religion of the majority of the British

people, but the United Kingdom has a long tradition of accommodating other religions. This has not always been the case however. Jews came to this country with William the Conqueror in 1066. But in 1290 all Jews were expelled from Britain by the Edict of Expulsion proclaimed by King Edward I. They were allowed back in 1656 by Oliver Cromwell and have since then been a valued element of our society. Paradoxically at that time we had a much less charitable attitude to some members of the Christian faith. The history of the Christian religion has been marred by schism and, in particular by strife between the Protestant and the Roman Catholic branches of the faith.

King Henry VIII broke with the Catholic Church in 1534 and after that, with one or two very short exceptions, Protestant Christianity has been the official religion of this country. In 1700 an Act of Parliament provided that the sovereign had to be a member of the Church of England and that remains the position to this day. Laws were passed that discriminated severely against Catholics, so that they were prevented from owning property, inheriting land, joining the army, holding public office or voting. It was only at the end of the 18th Century and the beginning of the 19th Century that a series of Acts of Parliament were passed removing all these disqualifications.

I have so far been concentrating on the negative side of our history; areas where our laws have positively discriminated on grounds of race, religion or gender. In general, however, the approach of our law has been that of liberty. As Sir John Donaldson, one of my distinguished judicial predecessors, put it in this way:

“The starting point of our domestic law is that every citizen has a right to do what he likes, unless restrained by the common law or by statute.”^[1]

That statement today is true not merely of British citizens but of anyone who is lawfully within this country. Personal liberty is a right to which the courts of this country have long attached the highest importance. Anyone who is deprived of his liberty, whether by the state or by anybody else, can bring proceedings in the courts to challenge the legality of his detention. One way that he can do so is by the writ of habeas corpus, a remedy that has existed since the 17th Century. A famous example of this remedy was *Somerset's Case* in 1772. A Mr Stewart had purchased an African slave called Somerset in Jamaica and had brought him on a visit to England, not bringing him ashore but keeping him detained in the ship which was to take them both back to Jamaica. A gentleman called Granville Sharpe, who was vehemently opposed to slavery brought habeas corpus proceedings before the English court claiming that Somerset was being unlawfully detained. His claim succeeded and Lord Mansfield ordered that Somerset should be released. This set a precedent and led the Lord Chancellor to say in a subsequent similar case “As soon as a man sets foot on English ground he is free”.^[2]

But freedom of individuals from State interference can itself lead to unequal treatment in the way that those individuals behave towards each other. Life in a modern society involves the interdependence of those who live and work together. There is scope for discrimination in many areas if the law does not place restraints on the way people may behave. I have already described how women were not given the vote until 1918. But this was not the only way that a male dominated society tended to discriminate against them. The first university college for women was not opened until 1869. By 1910 there were over a thousand women students at Oxford and Cambridge, but they still had to obtain permission to attend lectures and were not allowed to take a degree. It was not until 1918 that the first woman became entitled to qualify as a barrister, and the first woman solicitor was not admitted until 1922. Until more recently employers were permitted to refuse to employ women, or to offer women employment on less generous terms than male employees.

It is only in my lifetime that Parliament has legislated to stamp out discrimination in all areas and aspects of society. The catalyst for change was perhaps the horrifying racism of the Nazi regime in Germany before and during the Second World War. This led in 1948 to the Universal Declaration of Human Rights, which included the following statement:

“ recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

More significantly, the United Kingdom helped to draft and, in 1951, signed the European Convention on Human Rights. This required all the signatories to ensure that there was no unlawful interference with the fundamental human rights set out in the treaty. Furthermore Article 14 of the Convention provided:

“ The enjoyment of the rights and freedoms set forth in the 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.”

The requirement to ensure equal treatment applies in respect of the fundamental human rights protected by the Convention. In 1998 the Human Rights Act was passed which requires all public authorities to comply with the Convention, so that individuals now have a legal right to compensation if they are subject to discrimination by agents of the government in relation to their fundamental human rights.

In 1976 the United Kingdom ratified a Convention that imposes a general obligation to prohibit civil and political discrimination. Article 26 of the International Covenant on Civil and Political Rights provides:

“ All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

I propose to outline some of the laws that Parliament has passed to ensure that people in this country receive equality of treatment. I say some of them, because in 2000 it was calculated that there were no less than 30 Acts of Parliament, not to mention statutory Regulations and Codes of Practice, dealing with discrimination.

The prohibition against racial discrimination is a good place to start. There has been legislation prohibiting discrimination on the grounds of race for over 40 years, but the most important statute is the Race Relations Act 1976. This prohibits anyone from treating a person less favourably on the grounds of race; that means on the grounds of ‘colour, race, nationality or ethnic or national origins’. No longer could a landlady hang a sign in her window saying ‘Bed and Breakfast. No blacks or Irish’.

Perhaps the most significant area where the prohibition against discrimination matters is in relation to employment. People cannot be refused employment on the ground of their race. There has been quite a lot of litigation, however, as to what constitutes a racial group for the purposes of the Act. Jews, Sikhs and gypsies have all been held to be protected by the legislation. In 1976 the House of Lords ruled that it had been unlawful for a school to exclude a Sikh boy on the ground that he refused to cut his hair.^[3] The House of Lords held that Sikhs were historically descended from a recognised group and thus qualified as a racial group.

That case can be contrasted with a decision of the Court of Appeal ten years later. A Rastafarian had been refused a job as a van driver because he refused to cut his hair. The court held that Rastafarians did not constitute a racial group.^[4]

Muslims have been held not to fall within the definition of a racial group. In a decision in 1998 The Employment Appeal Tribunal observed that “Muslims include people of many nations and colours who speak many languages and whose common denominator is religion and religious culture”.^[5] Thus they form a group defined

by religion rather than race. I shall refer to legislation that prohibits discrimination on the ground of religion in a moment. First, however, I would like to deal with discrimination on the ground of gender.

The Sex Discrimination Act 1975 forbids discrimination against women and provides that a person discriminates against a woman if he treats her less favourably than he treats or would treat a man. Once again the most important area where this applies is probably the field of employment, but the prohibition is of general application. I remember a famous case when I was practising at the Bar where a woman brought proceedings against a well known wine bar frequented by barristers and journalists in Fleet Street called El Vino. They had a strict rule that only men were allowed to drink standing at the bar – women would only be served if they were sitting at a table. This rule was supposed to be out of consideration for women, but the court held that it constituted wrongful discrimination. This may not seem to be a case where the right involved was of great importance, and it is a fact that many of the cases brought to court have not involved the most serious forms of discrimination, being concerned with dress, or length of hair.

I now want to consider the protection that the law provides against discrimination that can be of great significance; discrimination on the ground of a person's religion.

Article 9 of the Human Rights Convention provides:

“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 life, to manifest his religion or belief, in worship, teaching, practice or observation.”

This human right is one that, as I have already said, this country has long recognised. In this country everyone is free to follow their own religion. The different Christian denominations can build their own churches, Jews can build synagogues, Hindus can build temples and Muslims can build mosques, of which the mosque here is a magnificent example, and each of these is free to practise his own faith in his own way.

There is another fundamental human right that is relevant in this context, and that is freedom of speech. Article 10 of the Human Rights Convention provides:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference.”





Freedom of speech has long been prized and protected in this country. Any person is free to preach the merits of his own religion, and freedom of religion includes the right to change one's faith, or apostasy.

These religious freedoms of which I have been speaking relate to the relations between those practising a religion and the State. Many States are less ready than the United Kingdom to permit the practice and preaching of religions other than that officially recognised by the State. But, just as in other fields, it is possible for one citizen to discriminate against another on the grounds of a person's religion or belief. Until recently there was no law in this country that prohibited such discrimination. European Law was ahead of English law, and it was in order to give effect to a European Directive that, in 2003, Regulations were introduced that prohibited discrimination in the field of employment on the ground of a person's religion or belief.^[6] In 2006 the Equality Act extended the prohibition against discrimination on the ground of religion or belief to cover other areas such as the provision of goods, facilities and services, the letting of premises and the provision of education.

Let me try to summarise the position. British law has, comparatively recently, reached a stage of development in which a high premium is placed not merely on liberty, but on equality of all who live in this country. That law is secular. It does not attempt to enforce the standards of behaviour that the Christian religion or any other religion expects. It is perhaps founded on one ethical principle that the Christian religion shares with most, if not all, other religions and that is that one should love one's neighbour. And so the law sets out to prevent behaviour that harms others. Behaviour that is contrary to religious principles, but which is detrimental only to those who commit it, is not, in general, contrary to our law. A sin is not necessarily a crime.

Those who come to live in this country must take its laws as they find them. British diversity is valued and the principles of freedom and equality that the law protects should be welcomed by all. Laws in this country are based on the common values of tolerance, openness, equality and respect for the rule of law. Whilst breaches of the requirements of any religion in the U.K. may not be punished by the law, people are free to practise their religion. That is something to be valued.

I said that the law sets out to prevent behaviour that harms others. In a modern society there are many ways in which the behaviour of some can harm others, and there have been passed thousands of laws and regulations that are designed to try to prevent such behaviour. These laws and regulations can run into conflict with the freedoms that I have been discussing. The law can sometimes, quite unintentionally, have an adverse impact on a particular minority. Where this happens we will sometimes be able to make exceptions in order to prevent this. Let me give you two examples. Regulations require special headgear to be worn in a number of different

situations. Advocates are expected to wear wigs, policemen to wear helmets, servicemen to wear caps, construction workers to wear safety helmets. These regulations would have a discriminatory effect on Sikhs, who could not comply with them because they do not cut their hair but encase it in the turban, and so Sikhs have been given an exemption from complying with these requirements.

Principles of Sharia prohibit the earning or paying of interest. This means that a conventional mortgage offends the principles of Islam. The banks managed to devise an alternative system of financing house purchases that did not offend Sharia principles. This involved the bank itself buying the house and then reselling it to the Muslim purchaser. There was one problem with this. English taxation law charges stamp duty on a house purchase and under this system of mortgage stamp duty had to be paid twice, once on the sale to the bank and again on the resale to the purchaser. This was not fair and so the law was changed in April 2003 so that stamp duty only had to be paid once on an Islamic mortgage.

This example brings me onto the topic of Sharia law. It is not a topic on which I can claim any special expertise, but I have been reading quite a lot about it in preparation for this talk. I have also recently been on a visit to Oman and discussed with lawyers there the manner of the application of Sharia law in that country. It has become clear to me that there is widespread misunderstanding in this country as to the nature of Sharia law. Sharia consists of a set of principles governing the way that one should live one's life in accordance with the will of God. These principles are based on the Qu'ran, as revealed to the Prophet Muhammad and interpreted by Islamic scholars. The principles have much in common with those of other religions. They do not include forced marriage or the repression of women. Compliance with them requires a high level of personal conduct, including abstinence from alcohol. I understand that it is not the case that for a Muslim to lead his or her life in accordance with these principles will be in conflict with the requirements of the law in this country.

What would be in conflict with the law would be to impose certain sanctions for failure to comply with Sharia principles. Part of the misconception about Sharia law is the belief that Sharia is only about mandating sanctions such as flogging, stoning, the cutting off of hands, or death for those who fail to comply with the law. And the view of many of Sharia law is coloured by violent extremists who invoke it, perversely, to justify terrorist atrocities such as suicide bombing, which I understand to be in conflict with Islamic principles. There can be no question of such sanctions being applied to or by any Muslim who lives within this jurisdiction. Nor, when I was in Oman, did I find that such penalties formed any part of the law applied there. It is true that they have the death penalty for that intentional murder, but they do not apply any of the other forms of corporal punishment I have just listed.

It remains the fact that in Muslim countries where the law is founded on Sharia principles, the law includes sanctions for failure to observe those principles and there are courts to try those who are alleged to have breached those laws. The definition of the law and the sanctions to be applied for breach of it differ from one Muslim country to another. In some countries the courts interpret Sharia Law as calling for severe physical punishment. There can be no question of such courts sitting in this country, or such sanctions being applied here. So far as the law is concerned, those who live in this country are governed by English law and subject to the jurisdiction of the English courts.

In February this year I chaired a lecture given by the Archbishop of Canterbury in the Royal Courts of Justice on the topic of Civil and Religious Law in England. It was a profound lecture and one not readily understood on a single listening. It was, I believe, not clearly understood by all, and certainly not by sections of the media which represented the Archbishop as suggesting the possibility that Muslims in this country might be governed by their own system of Sharia law. That is certainly not what he was suggesting. On the contrary he made it plain that there could not be some subsidiary Sharia jurisdiction which, I quote, “could have the power to deny access to rights granted to other citizens or to punish its members for claiming those rights”. Speaking more specifically of apostasy he said “In a society where freedom of religion is secured by law, it is obviously impossible for any group to claim that conversion to another faith is simply disallowed or to claim the right to inflict punishment on a convert”.

A point that the Archbishop was making was that it was possible for individuals voluntarily to conduct their lives in accordance with Sharia principles without this being in conflict with the rights guaranteed by our law. To quote him again “the refusal of a religious believer to act upon the legal recognition of a right is not, given the plural character of society, a denial to anyone inside or outside the community of access to that right”.

The Archbishop went on to suggest that it might be possible to contemplate, and again I quote, “a scheme in which individuals retain the liberty to choose the jurisdiction under which they will seek to resolve certain carefully specified matters”. He suggested by way of example “aspects of marital law, the regulation of financial transactions and authorised structures of mediation and conflict resolution”.

It was not very radical to advocate embracing Sharia Law in the context of family disputes, for example, and our system already goes a long way towards accommodating the Archbishop’s suggestion. It is possible in this country for those who are entering into a contractual agreement to agree that the agreement shall be governed by a law other than English law. Those who, in this country, are in dispute as to their respective rights are free to subject that dispute to the mediation of a

chosen person, or to agree that the dispute shall be resolved by a chosen arbitrator or arbitrators. There is no reason why principles of Sharia Law, or any other religious code should not be the basis for mediation or other forms of alternative dispute resolution. It must be recognised, however, that any sanctions for a failure to comply with the agreed terms of the mediation would be drawn from the laws of England and Wales. So far as aspects of matrimonial law are concerned, there is a limited precedent for English law to recognise aspects of religious laws, although when it comes to divorce this can only be effected in accordance with the civil law of this country.

Those who provide financial services in this country are subject to regulation in order to protect their customers and that regulation accommodates financial institutions or products that comply with Sharia principles. There are three Islamic banks authorised by the Financial Services Authority to carry on business in the United Kingdom. A number of Sukuk issues have been listed on the London Stock Exchange. In May this year Europe's first Islamic insurance company or "takaful" provider was authorised by the Financial Services Authority. Speaking earlier this year, Kitty Ussher, the Economics Secretary said:

“We want to make sure that no-one has their choice of financial services limited by their religion, and to help ensure that Muslims have the same access to financial services as anyone else in Britain.”

Having heard what I have had to say this evening, some of you may be thinking 'this equality in law is all very well, but some of those in authority with whom we come into contact do not treat us as equals and, anyway, how can we be expected to know our legal rights when we are not lawyers?' As to the first point I am well aware that Muslims sometimes feel that they are being unfairly singled out simply because a small minority, who purport to share their religion, have ignored its teachings by turning to a violent extremism that is a threat to society. There are I know here this evening some whose job it is to enforce the law and to them I would say this: It is not enough that all in this country are entitled by law to equal treatment. It is up to you to make sure that you, and those for whom you are responsible, treat every man and woman on equal footing, entitled to the same personal dignity and respect.

As to the problem of knowing what your rights are, that is a problem shared by most citizens who are not in a position to pay for legal advice. Happily here the London Muslim Centre has supported the provision of a 'pro bono' legal advice service; that is, the provision without charge by volunteers of legal advice and representation to Muslim and non-Muslim alike. I strongly commend that service and those who generously provide it.

There are now about 1.6 million Muslims living in this country. They form a vital and valued element of British Society. They are well represented by a variety of groups and individuals, including the Muslim Council of Britain, whose aims include the fostering of better community relations and working for the good of society as a whole. That aim is undoubtedly promoted by this impressive Centre, whose buildings appropriately embrace one of the East End's oldest synagogues, fostering Jewish-Muslim relations which have been described as the best in the country. I know that this centre does much to encourage inter-faith relations and community cohesion – one of its stated aims. It has – as I said at the beginning – been a privilege to have been invited to talk to you here today.

If I may summarise the message that I have sought to give, the courts of this country offer the same justice to all who come before them, regardless of gender, race or creed. The point is sometimes made that this is not easy to accept when the judiciary is not representative of those whom they are judging. Judges are now appointed by an independent appointment Commission and they are appointed on merit. The Equal Treatment Advisory Committee, whose members represent all parts of the legal profession, is working hard to assist judges in recognising the role of social and cultural differences in the determination of cases before them. There has, however, been a dearth of applicants from the ethnic minorities for appointment to the bench. Both the Appointments Commission and the judiciary are concerned about this. I have no doubt that there are, in the Muslim community, many men and women alike who would make outstanding lawyers and outstanding judges. It is important that they should recognise that they have a valuable potential role to play as judges, administering the law of this country to all who come before them, without fear or favour, affection or ill-will.



The speech was organised by *Pro Bono in the LMC*, in association with the London Muslim Centre.

With heartfelt thanks to Mr. Robin Knowles, Ms. Khadija Ali, Mr. Mizan Abdulrouf and Mr. Shaynul Khan.

www.pblmc.org | www.londonmuslimcentre.org.uk



QUESTIONS AND ANSWERS

RK: Robin Knowles CBE, QC **LCJ:** Lord Chief Justice

RK We will now have an opportunity for questions. If anybody has completed a question slip, can you please hand it to one of the marshalls. If that can be done reasonable crisply – thank you very much!

In the hope that Lord Phillips has had a chance to catch his breath, I'll ask him back to the rostrum here so he can provide answers to some of the questions we are getting...Lord Phillips.

LCJ I shall provide the answers, provided that Robin can select the questions that I will be able to answer!

RK The first question beautifully comes from an 11-year-old Muslim girl: "In the future will a Muslim be the big judge?" By that I think she means Lord Chief Justice!

LCJ And the answer is a simple one...I very much hope so!

RK A question from a lawyer: "You mentioned the position of those who cannot afford to pay for legal advice, so that they may know their rights and can enforce them. In what condition is our legal aid system and how does that affect achieving equality in justice in practice?"

LCJ Our legal aid system has been quite significantly cut back in recent times, particularly in relation to legal aid that is provided for civil litigation, that is disputes between citizens. In its place there is a scheme under which lawyers can agree to act on the basis that if they win they would be paid twice as much for their services and if they lose then they will be paid nothing. I do not believe that is an adequate replacement for legal aid in some circumstances. It means lawyers will be prepared to act on this conditional fee basis if they think there is a very good prospect of success, but sometimes it is desirable that a litigant have legal aid to fight a case which ought to be fought even though the prospects of success are not all that good. It seems to me that at the moment we do not cater for that.

RK The next question: "Are judges too remote? Do they have sufficient opportunity to learn about different cultures and circumstances, and not just about law?"

LCJ I think there's probably a danger that any professional man may be remote from the man in the street, and that is true of lawyers. But judges do their best to compensate for this by the training that is provided in relation to the

way other religions, other ethnic groups live, and behave and react. As you work as a judge, in fact, you gather very great experience of the very wide range of people and situations because these are the people and situations that come before you. And so after a judge has been in practice for a while if he hasn't acquired this knowledge and experience, as a practicing lawyer, and many do, he is likely to acquire it as a judge. But you must remember that all judges are drawn from the practicing legal profession, and many who practice law have a very great experience of all sectors of society.

RK “Is the equality enjoyed in law between men and women, equal to the equality enjoyed in law between Muslim and non-Muslim?”

LCJ The answer is, in theory yes, East London has a great and proud tradition of popular movements and results and revolt. Does the law follow the people or do the people follow the law? I think a bit of both, I think and hope that people do follow the law and have regard to the law, but sometimes the law follows the people in as much as judges in their behaviour tend to reflect popular opinion, one sees this sometimes in the field of sentences judges impose. Their job when sentencing to some extent is to reflect the values that the public have in relation to behaviour.

RK “How can we overcome media overreaction?”

LCJ If anyone can give me the answer to that I will give them at least five pounds!

RK “What if any observation be made about an approach to 28 days detention?”

LCJ I think that's really a question that is more one about politics than about law. In so far that the question is about law it's a question on which I might at sometime which may have to rule, and therefore I won't attempt to give an answer to it.

RK Lord Chief Justice...A call here really for re-iteration or clarification of one component of your speech. It comes from a member of the Islamic Sharia Council. “Can we conclude from your talk that the legal system will accommodate some elements of Muslim personal law, for example in the area of marriage for those that choose to follow that way of conviction?”

LCJ The law of marriage is very clear. I think the only non-Christian marriage that is recognised by the law of this country, I am talking about marriage that takes place in this country, is a Jewish wedding. That under our law is recognised. Any other wedding that takes place in this country must satisfy our civil law as to the requirements of matrimony. If the marriage has taken place in another country, then we will look at the law of that country to

decide whether the marriage is valid or not. There is an Act of Parliament which also makes provision in relation to divorce; I am not an expert in matrimonial law, but I think that Act allows those of a particular religion to apply for a rule that the civil divorce will not be recognised unless there has first been a religious divorce. I think that has been a right which has been sought again by the Jewish faith, but no other religion has sought to avail themselves of that statutory right.

RK “If there has been a true separation of powers, including a truly independent judiciary, how is it that a minister can suggest to judges that they should sentence by reference to the numbers of prison spaces?”

LCJ We the answer to that as I said, is that we have got freedom of speech and ministers can say anything they like to judges. Whether its proper for ministers to attempt to give directions to judges as to how they sentence is another matter. I am not aware that any minister has directed judges that they should impose sentences having regard to prison places.

RK “Is there ever a case for restricting freedom of speech in the name of religion?”

LCJ I don't there is a case for restricting freedom of speech in the name of religion. There is undoubtedly a case for restricting freedom of speech when the freedom is abused, as for instance by incitement to racial hatred, or all sorts of other forms of incitements – incitement to commit crimes – and the law prohibits such behaviour.

RK This gives us time for one last question, I have sought to absorb the main themes – thank you so much for the quantity of questions – but the last one is a fitting one. “Is it possible to get a print out so that we can study your valuable speech?”

LCJ The answer is, if you apply to my office they will provide you with one, either electronically or in hard copy.

RK Thank you so much

LCJ Could I end by saying that I believe this evening has been largely due to the initiative of those who provide the pro-bono services, and I have visited them; they are doing a fantastic job here and I would like to commend them for their devotion to giving those services and the initiative that has led to this evening, and I would also very much like to thank the London Muslim Centre for providing this room and these facilities for this evening's talk.



CLOSING REMARKS

Robin Knowles CBE, QC, Chairman of Pro Bono in the LMC

May I confine my closing remarks this evening as follows.

I pay public tribute to Khadija Ali and to Mizan Abdulrouf. We have them above all to thank for the initiative that is known as Pro Bono in the LMC. Pro Bono in the LMC has quietly been making sure that there is better access to legal help, and that the community has better knowledge of the law that affects it. This has brought non-Muslims into this great centre, and has enhanced the readiness of Muslims to access facilities outside it. It has been my privilege to look on as Mizan and Khadija have given themselves to this work. I have nothing but admiration for them, and for the many volunteers that assist them. And I have nothing but praise for London Muslim Centre, for Muslim Council of Britain and for London Borough of Tower Hamlets for supporting their work.

And it is their work that has led to tonight. So may I therefore move on to express gratitude to the Lord Chief Justice. If ever there was an important speech, the one we have just heard is it. May I suggest we have the opportunity not leave that speech here tonight. It is open to each of us to take with us what we have heard and commit to using it. Equality and understanding – every one of us can do something to improve equality and help understanding. That is the way to a strong, safe and fair future. The Lord Chief Justice affirms the commitment of the judiciary to it. Let our thanks to him be not just by our applause tonight but by our actions tomorrow.

That said, perhaps we should not overlook the applause tonight!
Lord Phillips, thank you.





www.pblmc.org
www.londonmuslimcentre.org.uk

46-92 Whitechapel Road, London E1 1JQ, United Kingdom.