

# Oklahoma ban on Shariah unconstitutional

Muslims are paying the price for Timothy McVeigh detonating a truck bomb in front of a federal building

L. ALI KHAN & JASMINE ABOU-KASSEM | ARAB NEWS

ON Nov. 2, 2010, an overwhelming majority of Oklahoma citizens (slightly more than 70 percent) approved State Question (SQ) 755, as a state constitutional amendment, forbidding Oklahoma courts from “considering or using” international law or Shariah law. Oklahoma State Representative Rex Duncan, the amendment’s principal author, characterized the Shariah as a “cancer that must be removed with a pre-emptive strike.” A petition has already been filed with the United States District Court to seek a temporary restraining order against the enforcement of SQ 755. It remains to be seen whether the federal courts will strike down the amendment under the supremacy clause of the United States Constitution.

This commentary highlights the practical implications and legal effects of SQ 755 to conclude that the Oklahoma courts would be unable to surgically remove the Shariah from the myriad of legal relations emanating from the laws of the Qur’an and the Prophet’s Sunnah, the primary sources of the Shariah law. Given the omnipresence of the Shariah law in Muslim life and its inseparability from practicing the religion of Islam, SQ 755 will go down in history as an ill-informed proposal that deceived the people of Oklahoma into voting for an illegal constitutional amendment, singled out the Oklahoma Muslim community for religious indignity, and tried to obligate Oklahoma courts to do what they, in good conscience, and as a matter of law, simply can not do.

SQ 755 impinges upon religious rights protected under the US Constitution. The application of Shariah law is necessary to protect Muslims’ civil rights and religious freedom under the US Constitution. Take a simple case of supplying halal food for Muslim inmates in the Oklahoma prisons. The Shariah obligates Muslims to eat halal food much like Judaism obligates Jews to eat kosher food. In Massachusetts, Muslim inmates filed a civil rights action against the Department of Corrections for not providing halal food, alleging violations of the First and Fourteenth amendments. The United States District Court held that refusal to provide halal food to Muslim inmates (and likewise a ban on their weekly group prayer services) “substantially burdened Muslim inmates’ exercise of their religious beliefs.” Relying on this holding, the Superior Court of Massachusetts extended the provision of halal food “to all inmates who have demonstrated a sincere belief in the tenets of Islam.”

NOW suppose this case were to arise in Oklahoma. SQ 755 would require the state courts to deny, as a matter of summary judgment, the Muslim inmates’ petition for halal food simply because granting such a petition is tantamount to “considering or using” the Shariah law. But would the Oklahoma courts, in order to give effect to SQ 755, set aside the inmates’ civil and religious rights protected under the US Constitution? The courts would inevitably conclude that SQ 755 cannot override the US Constitution.

Furthermore, SQ 755 impairs the freedom of contract. In a dynamic global economy, legal systems accommodate parties’ considered decision to choose a law that would govern their contract and allows the parties to choose a forum to resolve potential contract disputes. The Shariah is the choice of law in numerous international contracts. In 1995, a Saudi Arabian corporation entered into a multimillion-dollar contract with an American telecommunication company. The parties agreed to subject the contract to the Shariah law. Ruling on a breach of contract lawsuit, a US court enforced the Shariah law as the parties’ choice of

law — and rendered a Shariah ruling that was indeed favorable to the American corporation. Under SQ 755, Oklahoma courts would be obligated to disregard the parties’ choice of law if it were the Shariah law. Even more importantly, SQ 755 inaccurately presumes that Oklahoma businesses, which may opt for the Shariah law in international transactions, would always be better off under the Oklahoma contract law than they would be under the Shariah law. In doing so, SQ 755 disregards Oklahomans’ freedom of contract to make legally savvy and profitable business decisions. SQ 755 will also have a chilling effect on international investments. The ban on Oklahoma judges’ discretion to consider international or Shariah law will discourage international businesses from investing in Oklahoma or consenting to the jurisdiction of Oklahoma courts.

Thousands of Muslim families, derived from diverse ethnic groups, domestic and foreign, live in various cities of Oklahoma. Some of these families are native to Oklahoma, and some have migrated from Muslim states, including Egypt, Palestine, and Pakistan. For centuries, US common law has recognized marriages contracted in foreign countries. Accordingly, a marriage that is valid under the law of the state or country where it is celebrated is valid in Oklahoma unless it is repugnant to public policy. Under SQ 755, marriages contracted under the Shariah law of Egypt, Palestine, or Pakistan would no longer be valid because their validity will depend upon “considering or using” the Shariah law that SQ 755 specifically prohibits. For example, a couple married in Egypt will be unable to enforce their marital rights in Oklahoma because the Shariah marriage cannot be recognized under SQ 755. This invidious discrimination regarding the recognition of Shariah marriages will greatly impact the marital and family rights of numerous law-abiding Muslim citizens of Oklahoma. The nonrecognition of Shariah marriages will also undermine the rights of children from these marriages who are born in Oklahoma.

**An overwhelming majority of Oklahoma citizens has approved State Question (SQ) 755, as a state constitutional amendment. This means a couple married in Egypt will be unable to enforce their marital rights in Oklahoma because the Shariah marriage cannot be recognized under SQ 755.**

WHILE Oklahoma courts have been burdened with the impossible task of removing the Shariah law from the daily life of Muslim communities, SQ 755 spreads bigotry and prejudice throughout the state. Since 1995, when Timothy McVeigh, a US Army veteran, detonated a truck bomb in front of the Alfred P. Murray Federal Building in Oklahoma City, Muslims in Oklahoma have been singled out for unfair treatment and

blatant discrimination. Muslim women have been denied jobs and drivers’ licenses for wearing the head scarf. A number of Oklahoma newspapers have detailed discrimination stories against Muslim men and women. Additionally, politicians, including Rex Duncan, a lawyer by profession, continue to stir hatred against Muslim citizens of Oklahoma. Duncan’s commentary on SQ 755 shows that the amendment is certainly focused on Shariah law and not international law. SQ 755 is an attempt to demonize the Muslim population in Oklahoma. Ironically, in an effort to ensure only the application of Oklahoma law and US constitutional law, SQ 755 itself violates Article VI, Clause 2 of the US Constitution’s mandate that all treaties and laws of the United States (including customary international law) be the supreme law of the land and binding on all state judges — notwithstanding any contrary state law. Fortunately, many Oklahoma residents, civil liberties and human rights organizations alike have recognized the unenforceability of SQ 755. A significant 30 percent of Oklahoma voters voted against SQ 755. We hope that the Oklahoma courts will find a way to discard SQ 755 from the fabric of the law.

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## A follow-up on my fifth-grade essay

RAMZY BAROUD | ARAB NEWS

RECALL the first sentence of my fifth grade essay on education and youth. It might have read something like this:

“Youth is the backbone of any nation, and education is essential to arm the youth with the knowledge they need to lead their societies toward change, progress and prosperity.”

The grayish blue pencil I used to write my essay with was one of several items handed annually by United Nations Relief and Works Agency (UNRWA) staff to refugee children in many schools scattered throughout the Gaza Strip. My Arabic teacher was Abu Kamal Al-Hanafi, a wonderful man with a terrible temper, who was also the imam of the local mosque. My classroom had exactly 62 students. My desk was as old as the Israeli occupation of Gaza, if not older. The roof was filled with holes, creating an exciting spectacle as birds flew in and out, often nesting in available spaces. Watching these scenes made the British Arabic grammar lessons bearable, and eased the fear caused by Abu Kamal’s bouts of anger and the occasional Israeli gunfire in and around the refugee camp.

I remembered my essay as I read about the first World Education Forum (WEF) in Palestine, which took place in several regions throughout historic Palestine, including Jerusalem, Nazareth, Jaffa, Bethlehem and the Gaza Strip. Those who were denied access by Israeli authorities had their own conference in Lebanon. The event, which started on Oct. 28, lasted four days.

The problems faced by the education system in Palestine were difficult enough during my childhood. Now they have been compounded, with the educational sector divided between two educational ministries in Gaza and the West Bank, the former under Israeli siege and the latter under military occupation. Were it not for UNRWA, the already severe obstacles would have become insurmountable long ago. But today even UNRWA is struggling with depleting funds and political haggling between competing Palestinian authorities and an ever-atrocious occupation.

According to statistics provided by the United Nations IRIN news agency and recently cited by IPS, 39,000 children in Gaza had no available school to attend following the recent Israeli war. Some 280 schools and kindergar-

tens were destroyed or severely damaged by the Israeli onslaught during the 2008-2009 war. Considering earlier problems of a barely standing educational infrastructure, malnourished pupils and devastated family incomes, one can only imagine the impact of the latest blow. As if the damage caused by Israel was not enough, the Palestinian Authority has also done its fair share of harm.

According to the Palestine Monitor, the head of the Ministry of Education proclaimed in his message to the conference: “Through education we will become a prosperous nation, and will obtain a life that allows us to live in freedom. We are a people who can live and learn despite the problems we encounter. We will continue to improve education, so that future generations can live peacefully.”

This statement is much more impressive than my fifth grade proclamations. But as well meaning and accurate as the assessment sounds, one can hardly absolve the Palestinian leadership of its own share of the blame.

Following the clashes between Fatah and Hamas, which led to the ousting of Fatah from Gaza in 2007, thousands of teachers refused to return to work. The Hamas government had to fill the vacant posts at very short notice. Many schools were also destroyed during the war, and many teachers and students were killed or wounded. Since the families of most students were poorer than ever under a harsh Israeli siege, bringing the educational system in Gaza back to its old status was almost impossible. But the education debacle in Palestine hardly stops in Gaza. With every extra mile added to Israel’s gigantic annexation wall, and with every new military checkpoint, more and more Palestinian students in the West Bank are held back — from school, from opportunities, from a better life. Palestinians living in Israel also have numerous challenges to overcome.

The World Education Forum conferences were accurately named “Education for Change.” But in order for this change to take place, the Palestinian factions must not politicize education. More, regional and international solidarity is essential to help Palestinians achieve a semblance of normalcy in their educational system under the current circumstances.

## Tamils in Sri Lanka

This is a rejoinder to Nivedita Louis’ letter, “Tamils in Sri Lanka” (Nov. 16). First of all we should realize that Sri Lanka was waging a war against the terrorists, not against the Tamil community. It was within the boundaries of the island. Therefore it was strictly an internal matter and no foreign intervention can be welcomed.

There are powerful countries that invaded other sovereign countries and committed all sorts of war crimes but all what we heard from the UN secretary-general was a polite “please investigate” plea. If there is not going to be a UN panel to investigate these crimes why question Sri Lanka for putting an end to a 30-year-old menace that was killing civilians, Tamils as well as Sinhalese, and assassinating leaders of both communities?

In the last stages of the war the Liberation Tigers of Tamil Eelam (LTTE) used nearly half a million civilians as human shields to protect its soldiers, including child soldiers. These children were forcibly grabbed from the helpless parents. Escaping civilians were mercilessly shot by the Tigers. The ethnic cleansing in the east and north of the island was carried out by the LTTE and not by the government. In one case some 200,000 Muslims were evicted within 24 hours. They had to leave all their possessions behind. The Tamils who found living under the LTTE tyranny unbearable too migrated in large numbers to Sinhalese-dominated Colombo and its suburbs. Now, all those who were forcibly sent by the LTTE to Tamil Nadu in India to make a case for intervention in Sri Lanka by the international community are returning to their homeland in large numbers.

The Sri Lankan government will always be grateful to its neighbors, India and Pakistan, for helping it in every way in its fight against the Tigers. China also played a big role to see an end to the terrorist madness.

Although Sri Lanka won the war it seems to have lost the propaganda war to LTTE. From what some people write we can see how far it has worked. Lies travel fast but ultimately truth will prevail.

Sam Silva  
Colombo

2  
Like BBC and Al Jazeera, Nivedita

## LETTERS TO THE EDITOR

### The girl without blanket

I read with great interest Abdulateef Al-Mulhim’s article, “At \$150 a barrel, a young Saudi girl had no blanket” (Nov. 14) and also a previous one regarding Rizana Nafeek. People who travel and see the world have a different perspective of events and people than those who never leave their shores. Al-Mulhim is fortunate!

Is Saudi Arabia the only country where lingerie shops are run by men? My guess is that the owners are men and engage only men as they aren’t allowed to have “close contact” with female employees. Solution: Lingerie shops can only be owned by women.

From my perch, it seems that universities in Saudi Arabia and the UAE were built in response to parents’ requests to educate their daughters “at home.” In the past, all students desiring a higher education went to study in Europe or the US. I heard from a very reliable source that a Muslim female student is applying for US citizenship so she can work (no need for male guardian) over here. I think most Saudi parents want their daughters to be better educated than themselves so they can be of real value to their “spouses and children.”

It’s an irony of life that Saudi Arabia imports uneducated foreign household workers and may have to export their educated women to sustain their own families “at home.” A Shakespearean tragedy/comedy (depending on perspective) created by fatwas?

I don’t have to read tea leaves to predict what will happen.

Olga Pitcairn  
New Hope

Louis seems to be a victim of the false propaganda war being waged by the Tamil Diaspora.

Sri Lanka denied visas to the correspondents of BBC and Al Jazeera because these two organizations were publishing lies put out by the Tigers without checking them.

Would any government kill unarmed, innocent civilians when it took steps to rehabilitate more than 20,000 Tamil Tiger combatants including child and female soldiers? Most of the child and women soldiers have been reunited with their families. Louis should know that two leading Tiger members, Daya Master, the media chief, and George Master, LTTE supremo Prabhakaran’s interpreter are now cooperating with the government along with former arms procuring chief Kumaran Pathmanathan.

In fact, both Human Rights Watch and Amnesty International were invited to testify before the Lessons Learned and Reconciliation Commission. They declined, most probably due to their inability to prove the allegations.

The Sri Lankan government is renovating all places of worship (Hindu, Buddhist, Catholic or Muslim) that were completely or partly destroyed by the war or purposely destroyed by Tamil Tigers to wipe out the Muslim and Sinhalese presence in these areas. This is rewriting history, according to

Louis. At the same time she does not have to say anything about the ethnic cleansing carried out by the Tigers in Tamil areas by forcing the Muslims and Sinhalese to flee their homes. And this ethnic cleansing has been going on ever since the conflict started.

At present the government, with the help of United Nations, India, China, the US and many other countries are doing its best to resettle the displaced Tamils and to develop the areas devastated by war. This is not to deny that there are still problems to be sorted out and people to be rehabilitated.

Stanley A. Mayadunne  
Riyadh

### Crisis in Lebanon

This refers to your editorial, “Crisis in Lebanon” (Nov. 13).

Why is the US so much interested in Rafik Hariri? Is it out of concern for the late Lebanese prime minister or part of an attempt to implicate Hezbollah, an enemy of Israel? Would the US ask for an inquiry into the assassination in Dubai last January of Mahmoud Al Mabhouh, a Hamas commander? There are several Palestinian leaders who died in mysterious circumstances. Why is the US not interested in them?

Syed Mohiyuddin  
Taif

### Saudi charities

I found the article, “Saudi charities top Gulf web list” interesting. I’ve been searching the Internet quite extensively to find any information on charities in Jeddah but failed. It would have been useful for me and many others if you had provided the links to the websites you speak of. There will be many like me who are very interested in being a part of a charity in Jeddah.

Jenna  
By e-mail

### South Asian twins

After reading Aijaz Zaka Syed’s article, “Obama’s passage to India” (Nov. 12), I shook my head in bewilderment. How is it that a journalist who does not live in India or Pakistan is able to write such a beautiful, articulate and balanced article on Indo-Pak relations?

I fervently hope that those manning the Foreign Ministry in New Delhi and Islamabad would read and imbibe hid messages of faith.

Maybe you have to scream yourself hoarse, but I am sure voices like yours will finally be heard and then and only then will peace and prosperity will return to South Asia.

Keep up the good work.

Shovan  
By e-mail

### ARAB NEWS WELCOMES FEEDBACK FROM READERS

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