



NATIONAL RESEARCH UNIVERSITY
HIGHER SCHOOL OF ECONOMICS

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IS SHARIA COMPATIBLE WITH CONTEMPORARY RUSSIAN LAW?

BASIC RESEARCH PROGRAM

WORKING PAPERS

SERIES: LAW

WP BRP 49/LAW/2015

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The analysis of the interaction between *Sharia* and legislation in action along with the compatibility of *Sharia* with contemporary Russian law is important from both a scientific and a practical point of view. There are several reasons for the increasing interest in this issue: the renaissance of Islam, the activity of Muslim communities outside the regions where Islam has traditionally spread, the threat of Islamic extremism, and the increasing influence of *Sharia* upon the political and legal development of the Muslim world.

Russian researchers do not have a common attitude to *Sharia*'s relation to Russian legislation. They put forward different arguments for and against including *Sharia* in the official legal system. Along with these, some Russian lawyers make attempts to find the legal possibility or even necessity of including *Sharia* in contemporary Russian reality, including norms, principles and institutions in the legislation.

There are three modes of possible interaction between *Sharia* and state legislation. The first is represented by the direct inclusion of *Sharia* norms into the legislation. The second is legal acts which refer to historical or local traditions. The third is that *Sharia* provisions can be used for solving issues which are provided for by dispositive norms of state legislation.

JEL Classification: K10

Keywords: *Sharia*, legislation, Russian law, historical and local traditions, *adat*, polygamy, *waqf*, *Sharia* court, local government, dispositive norms.

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* This study was carried out within The National Research University Higher School of Economics' Academic Fund Program in 2014-2015, research grant No. 14-01-0113 "State, Law and Islam in Modern Russia".

Introduction

Recently the issue of the place of *Sharia* in the legal life of contemporary Russia has been attracting more and more attention, for a number of reasons; first and foremost the awakening of Islam in Russia which has been continuing since the 1990s. Another reason is related to the fast growth of Muslim minorities outside the Islamic world. In this country this tendency is obvious through the example of the Muslim communities outside the areas of the traditional spread of Islam like the Volga Region and North Caucasus. As these groups become a more conspicuous element of social and political life, this frequently entails conflicts, which draw special attention to *Sharia*.

A third reason is the threat of Islamic extremism and religious terrorism under the banner of Islam. This danger has touched Russia as well. The programme and actions of Muslim extremists are guided by *Sharia* arguments [See (Sykiainen 2011)].

Nor should the impact of the “Arab Spring” be disregarded. Initially this was followed by the strengthening of *Sharia* positions in the legal systems of some countries. This tendency has affected the discussions about the possible place of *Sharia* in Russia.

Further, there have recently been numerous discussions about the negative experience of *Sharia*'s impact on the Western world, where it is represented as a factor leading to the clash of western and Islamic cultures, lifestyles, civilization [See (Denis MacEoin 2009)].

These reasons explain why the issue of the possible inclusion of *Sharia* norms into the Russian legal system causes disputes. Muslims initiate such discussions and very often they do not limit themselves to demanding “*Sharia* enforcement” but undertake practical steps towards this.

***Sharia* Implementation in Light of the Legislation**

There are a few models addressing *Sharia* and its implementation in contemporary Russia in juxtaposition to the working legislation. The interaction between *Sharia* and positive law (*lex lata*) can be taken as a criterion for the classification of such modes. These two systems of social rules can directly contradict each other, interact within the same system of legal norms or exist separately side-by-side without crossing.

The most extreme option is the implementation of *Sharia* norms, institutions and concepts by Muslim extremists and separatists. They view *Sharia* in direct opposition to Russian legislation and view *Sharia* as means of achieving their political goals. In this respect the most indicative example was when in summer 1996 Chechnya adopted a criminal code which was

actually the codification of the *Sharia* norms [See (Starostina 2002, p. 70-76)]. Another attempt to introduce *Sharia* was made in Dagestan, where in 1997–1998 some Islamic radical groups began active implementation of *Sharia* in several settlements of the Kadar area and in the summer 1998 they proclaimed the foundation of an independent territory within which Russian legislation was replaced by *Sharia* enforced by a *Sharia* court.

These extremes represent their complete opposition where the impact of the Islamic norms symbolizes the secession from the Russian legal framework. Goals of a different nature were pursued by the initiatives announced at approximately the same time by the state authorities of independent regions of the Russian Federation which found the introduction of *Sharia* and its implementation not only possible but necessary.

On July 19, 1999 Ingushetia passed the Decree of the President No.166 according to which male citizens gained the right to conclude up to four marriages with unmarried females. On July 31, 1999 the People's Assembly, the Parliament of Ingushetia, passed the law "On the regulation of some issues related to matrimonial relations in the Republic of Ingushetia". With reference to the demographic situation and the traditional tenor of life, it enacted the provision of the presidential decree regarding polygamy.

In virtue of this decree within about one year a few dozen polygamous marriages were registered [See (Albakov 2004)]. In 2006 it was abolished but the legislation of Ingushetia, although not explicitly, may refer to *Sharia* when regulating marital relations. In August 2000 there was an amendment to Article 37 of the Constitution of the Republic in accordance to which citizens of Ingushetia are entitled to conclude marriages and build family relationship in terms of the national traditions and customs. In principle, these traditions include *Sharia* norms.

Attempts to legalize polygamy at this time were not limited to Ingushetia. For instance, the Parliament of Bashkortostan has been regularly raising this issue since the mid 1990s [See (Sitdykova 2000; Bakirov 2000; Abashin 2000)].

In Ingushetia, in December 1997 a law on Justices of the Peace was adopted, which took effect in February 1998, stipulating several provisions explicitly reflecting the *Sharia* norms.

It is important to keep in mind that the Ingush legislature directly consolidated the principle of the compatibility of the respective *Sharia* norms with the Russian legislation. In particular, this act states that justices of the peace are independent in the effectuation of justice, being subject only to the Constitution of the Russian Federation, the Constitution of Ingushetia, and federal and republican law (Article 3). In the meantime Paragraph 3 to Article 8 of the above mentioned act stipulated that in conducting court proceedings justices of the peace must take into account the customs and traditions of the people of Ingushetia, and the norms of conventional law and *Sharia*.

The provisions of the law strengthening the link between the justices of the peace, the norms of conventional law, and *Sharia* did not remain in force for long. Already in May 2000 some amendments were made to exclude references to *adat* and *Sharia*. Current Russian law might seem to disaffect any norms explicitly related to *Sharia*. However, legislative practice testifies to something different.

An example in this respect is the law of the Republic of Tatarstan “On the freedom of conscience and religious associations” dated July 14, 1999. Article 18 of this act initially stipulated that religious organizations were entitled to *waqf* endowments. However, in 2007 the republican prosecutor’s office concluded that this norm did not conform to Russian law, since legislative control of proprietary rights is subject to the Russian Federation but not its constituent territories. In July 2008 the republican body of legislative power made an amendment to Article 18 of the law of 1999: “Religious organizations are entitled to *waqf* endowments, the legal status of which is regulated by federal law”. But even after this amendment, the *waqf* situation remained the same and it has not become a legal institute.

These examples demonstrate the opposite model of the interaction between *Sharia* and positive law which, according to its supporters, are not in conflict but interact and can coexist free of conflict. To be more precise, this means that the *Sharia* provisions become a common element of Russian legislation. Although, so far this has been practically non-existent.

However, in the traditional Islamic regions (specifically in the Caucasus region) there is a conceptually different practice of *Sharia* implementation. It involves the functioning of certain of its norms in combination with the local customs independent of the legislation. It is quite common when *Sharia* is used to solve issues which fall within the scope of Russian law. However, for a variety of reasons the legislation is consciously neglected and state institutions designated to enforce it are inefficient or deprived of their functions.

Against this background, the role of traditional institutions of dispute resolution existing in the Soviet era and recreated in a modified way at the end of the previous century has become enhanced. They are not state judicial bodies and not stipulated in Russian legislation but they are supported by Muslim communities and empowered to resolve legal conflicts and other legal issues. For this purpose they traditionally act with recourse to the *Sharia* norms and customs existing beyond the official legal system. This pattern of *Sharia* implementation represents another model of its interaction with the Russian legislation. It is characterized by parallel and independent operation of the *Sharia* norms and positive law.

One more form of *Sharia* within the legal framework in contemporary Russia which is close to that mentioned above, is related to the activity of Muslim religious organizations. In particular, the statutes of most of them stipulate that within their internal activity they are guided

by *Sharia* rules. For example such provisions are included in the official documents of the Central Spiritual Board of Muslims, the Spiritual Board of Muslims of Tatarstan Republic, and the Council of Russia's Muftis. Besides, in certain Muslim organizations there is the position of *qadi* (judge) who has the power to pass judgment and give recommendations based on *Sharia*. Of course, they have no legal efficacy but as they frequently take into account the way of life of some Muslim communities, these positions tend to be more legitimate in the eyes of Muslim people rather than official court decisions [See (Albogachieva 2012)].

In this respect an example of this is the functioning of the *Sharia* court within the structure of the Spiritual Directorate of the Muslims of Ingushetia. This body, founded at the end of the 20th century, was initially officially supported and later it began functioning as a public religious institution. Formally its activity does not contravene the acting legislation since its documents have no legal force. However, the position of this court based on *adat* and *Sharia* sometimes squeezes official court decisions.

Another practice of *Sharia* implementation beyond the legal boundaries which also concerns the acting legislation is the tradition for Muslims polygamous marriage which was outdated in Soviet times yet which exists openly in contemporary Russia. It is a commonly-known fact that this custom is widely spread not only in the Caucasus but also in other regions of the country [See (Babich 2004)].

Recently *Sharia* implementation as a special competitor to Russian law tends to occur outside the Caucasus. In particular, multiple projects launched in Saint Petersburg at the beginning of 2010, and then in Moscow in 2012 and targeted the foundation of *Sharia* courts are perceived by the Russian public as an aspiration to make *Sharia* part of the legal system of Russia [See (Sykiainen 2012)].

And finally the *Sharia* issue has become especially acute in relation to the *hijab*—the right of female students to wear the traditional Muslim headscarf in Russian schools. The respective court decisions banning *hijab* in state schools did not end the disputes but highlighted the issue.

Arguments For and Against *Sharia*

These examples illustrate the large variety of ways *Sharia* norms are implemented and the uses of *Sharia* institutions in the legal life of contemporary Russia, or in the areas related to the law in force. Against this background what acquires a particular interest is the attitude of the Russian government and certain representatives of authority to *Sharia* in its relation to the legislation. There is no common understanding of this issue. Babich particularly, based on a case

study in Kabardino-Balkaria, gives three basic approaches shared by governments, law enforcement authorities, deputy corps and civic movements. The first one acknowledges the existing state of affairs, the currently active norms of *adat* and *Sharia* without legislative recognition but also without an artificial revival of past traditions.

In the second approach the legislation specifies the local traditions which play a positive role. The supporters of this solution believe that the reformation of the judicial and legal system with due regard to traditional rights has always been a cornerstone of the mutual relations between Russia and the Caucasus.

And finally most officials and members of local parliaments uphold the unity of the legal system built in contemporary Russia and consider that the lifestyle of the native population has drastically changed having reduced the impact of old traditions to a minimum. They consider there to be no reason to talk about some active system of *adat* and *Sharia* norms and their revival and that their legalization is not an acute problem [See (Babich 2000; regarding different positions on this issue see also Teunov 2010)].

Along with this there are the positions of those Russian lawyers who make attempts to find legal feasibility and even necessity of *Sharia* in the contemporary Russian reality, including its norms, principles and institutions in the legislation. Liverovsky offers the most detailed concept how to solve this issue on the theoretical, historical, legal and constitutional levels in the context of the North Caucasus [See (Liverovsky 2012)].

Referring to the Dagestan practice, he emphasizes that for ordinary people traditional norms related to *Sharia* and *adat* have never left social life. He finds such rules legal and calls the historically formed system of local customs and Islamic religious rules, the customary law which represents the social and normative subculture of the peoples of Dagestan.

Moreover, the constitution of Dagestan strengthens *Sharia's* special role when it stipulates that the republic guarantees the protection of the rights of all nationalities and national minorities living in Dagestan, acknowledges and respects national, cultural and historical identity of the nationalities of Dagestan, creates conditions to preserve and develop their cultural traditions and each nationality is guaranteed to have equal rights to protect their interests.

This protection, as Liverovsky supposes, is impossible without the constitutional recognition of customary law. He discusses two options for solving the issue. One is implementing the norms which provide the social and cultural development of nationalities and protect their vital interests in the legislation of the North Caucasian republics. At the same time he underlines that such rules must not contradict the Russian legal system.

Liverovsky finds this format unacceptable. In terms of Dagestan he concludes there is no common *adat* of Dagestani and no universal religious behest guiding the whole population of the

republic. He offers a solution based upon the co-residence of ethnic groups and communities, and the practice of regulating conflicts between them. He advocates creating, on the level of constituent territories of the Russian Federation, conditions allowing members of ethnic and religious communities to follow the norms of their common law in solving civil issues.

In our view Liverovsky's concept has a rational kernel. In particular, governments in Russian regions where Islam is traditionally practiced do not use to the full extent their authority to the subordinate entities of the Russian Federation and the joint rights given to them together with the Federation for adopting the legislation reflecting the historical and cultural traditions of people living there.

Together with this, Liverovsky's judgments about the place of *Sharia* in modern Russian law leave doubts in respect of their justification and realism. This, for instance, refers to the characteristics of *adat* and *Sharia*. In our opinion, he uncritically assesses and even idealizes the traditional norms constituting the subculture of certain nationalities of the North Caucasus which he calls common or customary law. He avoids the issue that among the specified rules there are not only those which protect the lifestyles of the respective communities and are compatible with the Russian law, but also many customs and rules of *Sharia* (such as blood feud or honour killing) do not correspond to this criterion at all.

That is why the inclusion of customary law into the legal system of Russia in this way is likely to give mixed results. Together with highlighting the contradictions between traditional social and normative culture and Russian legislation this line can even strengthen the conflict. The traditional lifestyle of local communities will not drastically change but the implementation of *adat* and *Sharia* norms directly contradicting the official legislation (for instance, regarding blood feud, cruel punishment of those who violated the customs, violation of women's rights) will continue.

This highlights another peculiarity of Liverovsky's position. He views the problem of the place of *adat* and *Sharia* in the legal system of our country only relating to the Islamic republics and also, which is important, limits it by the legislative recognition of traditional norms which occupy a central position in his concept.

Meanwhile, the problem of compatibility of *Sharia* with modern Russian law cannot be considered on the regional level only or come down to the legislative recognition of traditional norms in one form or another. It should be significantly broader not only for certain regions but on the level of the Russian legal system in general. *Sharia* norms and local customs are important for all Muslims of our country independently of where they live. Thus, the issue related to the compatibility of these regulations with positive law must be settled for the whole legal system. Moreover, in contrast to the traditional norms, which are characterized by

particularism and diversity, the legal life of our country in general is built in accordance with common principles even taking into account its federal structure. The unity of the legal system excludes the resolution of the problem of traditional social and normative subcultures on the level of one or more territories of the Russian Federation in the form which would contradict its general principles.

Forms of interaction of *Sharia* with the Russian legislation

This analysis allows us to suggest several options for the interaction of *Sharia* with the current law, so it gives us a conceptual answer to the question regarding its compatibility with the modern Russian law. In our view there are three basic forms.

First and foremost, there is the experience of direct inclusion of *Sharia* norms and institutions in contemporary Russian legislation. Although so far it has come down to the single instance—reference to *waqf* endowment in the legislation of Tatarstan on freedom of conscience. However, the explicit reinforcement of certain *Sharia* norms in the normative and legal acts does not contradict the general principles of Russian law and on the whole is admissible under certain conditions. For the execution of religious rights of Muslims (and other religious people) guaranteed in Article 28 of the Constitution of the Russian Federation addressing to *Sharia* is inevitable. Therefore certain procedural and institutional measures (creating conditions for prayer, pilgrimage, Ramadan observance, etc.) are to be taken by governmental bodies taking into consideration the respective *Sharia* rules.

The legislative recognition of *Sharia* norms may happen only under two important and interrelated conditions. The first is a consistent legal approach to the selection and use of the Islamic social and normative legacy.

For Russia, where Muslims are a confessional minority, and the state is secular, the only acceptable approach is not *Sharia* implementation in general but Islamic law, that part of *Sharia* which corresponds to legal criteria. The secular legal system can accept only those elements of the Islamic lifestyle which fit, and are not directly related to religion but represented by secular rules of conduct [See (Sykiainen 2007)]. Under such conditions addressing the normative legacy of Islam can use the experience of Islamic law as an original legal system without violating the secular structure of the state.

The second condition is their compatibility with the general principles of the Russian legal system, primarily with the constitutional ones. Here it refers not only to the conformity of the *Sharia* provisions to the specified principles but also to the fact that *Sharia* principles and norms should harmoniously fit the legal system of Russia by their legal and structural

characteristics. Under these conditions certain norms, principles, institutions of Islamic law and their inclusion in a European legal system gives a prospective for the development of the legislation of certain republics within the Russian Federation.

In this connection the so-called personal status attracts special attention. This is the area of the Islamic law which regulates the most important sphere of the legal status of Muslims. Conjugal relations, family and hereditary relations, mutual duties of relatives, custody, guardianship and other related issues are the subject of this field. Since most norms on the individual status are contained in the *Sharia* fundamental sources, the Quran and Sunnah, they are of great importance to Muslims. For those who profess other religions, Islam acknowledges the same rights for conjugal and family relations in accordance with their customs and religious norms.

In Russia these relations are not subordinated to the confession of the parties concerned but it does not mean that certain provisions of this area of Islamic law cannot be applied. The Russian Constitution in principle admits this possibility referring family issues to the joint jurisdiction of the Federation and its constituent territories. The Constitution of the Republic of Ingushetia already stipulates that citizens of the republic have the right to marry and have family relations on the basis of the current legislation taking into account national traditions and customs. This principle should be formalized in republican family law which simultaneously can stipulate a number of *Sharia* norms as well. A good example is the marriage contract elaborated in Islamic law, the conclusions of which can be fairly used by the legislation of the constituent territories of the Russian Federation.

Waqf is of great interest in respect of the regulation of charity. Polished by the Islamic legal doctrine the status of the property withdrawn from circulation and designated for charity over the course of history has been widely used to support education, science and currently it is applied to fund different social programs for example health services. Moreover, Islamic law is very profound in the regulation of the legal status and mutual rights and liabilities of the three principal parties of charity—the donor, the beneficiary and those authorized to administer *waqf*.

Finding direction for the potential use of Islamic legal culture in the form of the implementation of the *Sharia* norms requires a detailed study of the historical experience in respect of the impact of Islamic law and in Russia particularly as well as the latest achievements in the contemporary Islamic thought which meet the legal criteria and can be used by the legal system of our country. Though for this it is necessary to overcome the common, initially negative, attitude towards *Sharia* as a phenomenon absolutely unacceptable for Russia. This negative opinion prevails in the Russian public opinion and is shared by some state institutions

(like the prosecutor's office) which absolutely deny even the theoretical possibility of including any *Sharia* norms in the Russian legal system.

In support of this position there are different legal arguments. The most basic one comes down to the fact that recognition of *Sharia* in any form contradicts the Constitution of the Russian Federation. The Constitution proclaims a secular state and its separation from religion and *Sharia* itself is a religious phenomenon [See (Gilyazutdinova 2001)].

Another objection of legal nature is closely related to this postulate which emphasizes the impossibility of a "patchwork" legal system in Russia acting maybe in terms of certain issues but according to the religious principle, which violates the unity of this system. This thesis is taken as an axiom—any application of the *Sharia* culture on the level of the legal system will definitely lead to its division according to religious principles, i.e. it derives from Islam [See (Sykiainen 2001)].

But this does not take into account that certain parts of *Sharia* which can be called Islamic law have a legal nature and are not inherently religious. That is why addressing this part of *Sharia* does not infringe on the secular structure of the state stipulated in the constitution and the unity of the legal system, but is aimed at the application of the positive experience of a different legal culture.

An important argument against *Sharia* recognition comes from the impossibility of the combination and integration of elements belonging to different legal cultures—European and Islamic—and, to be more precise, from the unacceptability of including the *Sharia* provisions in a European legal system. However, Islamic law quite efficiently interacts with the European legal culture. The experience of legal systems of numerous Muslim countries testifies to this [See (Sykiainen 2009)].

Another form of interaction of *Sharia* with the legislation is represented by the general reference to the historical and local traditions contained in a number of acts. Again an example refers to the provisions of the constitution of Ingushetia related to the regulation of family issues according to the traditions and customs *Sharia* belongs to. In Russian law, the general principles of the organization and activity of local government mentions historical and other local traditions, which are applicable to the traditionally Islamic regions and can be interpreted as an indirect recognition of *Sharia*.

This interpretation touches upon the Constitution of the Russian Federation which stipulates the fact that the local government is realized on the territory of Russia with due account of historical and other local traditions. In a similar manner it is admissible to interpret references to local traditions and customs in the legislation when talking about Muslim minorities.

These legislative provisions can be used for the recognition of *Sharia* norms compatible with Russian law. At the same time, doubt is cast on this conclusion on the basis of the arguments against the possibility of addressing *Sharia* generally. However, these objections turn out to be groundless regarding another form of interaction of *Sharia* with the modern Russian law. Though it has been limited in practice so far.

What is meant here is addressing the *Sharia* provisions within the scope of dispositive law. From the legal perspective this situation can be characterized as the application of such norms but from the *Sharia* point of view as the implementation of its rules. An example is transaction processing by Islamic insurance companies which operate within the framework of the Russian legislation and at the same time follow *Sharia* rules. The issue of Islamic securities and bank cards happens in the same way.

Russian legislation can be used in other ways to apply *Sharia* norms. At the same time contemporary Islamic thought recommends following the principle: provided that the positive law officially does not allow the operation of *Sharia* in respect of some issue, it is necessary to elaborate an alternative solution which does not contradict the law and at the same time will maximally apply the *Sharia* norm. Moreover, the achievement of the content-related objective of this provision is more important than the form [See (Qaradawi, Yusuf 2001)].

Russian legislation contrasts with the *Sharia* norms which sets the property inherited by certain categories of heirs. *Sharia* also stipulates that those referring to these categories cannot inherit by will. In principle, it does not prevent implementing certain *Sharia* rules within their meaning without breaking the law. For instance, it is possible to envisage the disposal of property in accordance with the *Sharia* rules in favour of heirs whose property lot is predetermined. But obviously for this the testator must be able to draw up such a will and the heir must follow all the established legal requirements in order to come into an inheritance.

These interactions of *Sharia* with the current legislation testify to the fact that *Sharia* under certain conditions is compatible with Russian law. This conclusion rests upon practice, the conclusions of legal theory and comparative legal studies, the provisions of the legislation in power, and the general basics of the legal system of Russia.

However, in order to use all the possible ways of implementing *Sharia* in Russian law including the field of dispositive norms, it is necessary to have knowledge of law and the skill to use the precepts of law. For this it is much more efficient to work on increasing the level of the legal culture of Muslims and their organizations rather than just to stake everything on the legislative recognition of *Sharia* norms. The implementation of the specified norms in the legislation is pointless without the legally appropriate and sensible application of positive law.

The requirement to correctly analyse the interaction between *Sharia* and Russian law should be addressed to the government institutions including the prosecutor's office. In the meantime they, along with the Muslim community of Russia, lack knowledge of the approaches of the modern Islamic thought to *Sharia* and its interaction with modern positive law in a secular state, which is a subject for further study.

An understanding of the achievements of modern Islamic law will afford additional grounds for a positive answer to the question raised in the title of this article.

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