

# “SHARIAH AND COMMON LAW ARE COMPATIBLE”

BY APARAJITA MUKHERJEE

THE highly developed nature of the Shariah, together with the legal paradigm that the parties select – either Common Law or the Shariah – will effectively rule out all issues of incompatibility between the two, says Khawar Qureshi QC (Queen’s Counsel, a barrister who has been appointed as counsel to the British crown in the UK) Head of McNair Chambers.

McNair Chambers has established the first ever Barristers’ Chambers outside England and Wales, here at QFC.

Qureshi, in an interview to *Qatar Today*, talks about the highly developed Shariah-compliant legal system and the role of his Chambers in Qatar.

“The vast majority of commercial contracts that have a connection with the Muslim world may touch upon the Shariah, which is a very developed legal system. Most commentators are of the view that, in most of these contracts there is no question of incompatibility. The distinction between the Shariah and the Common Law principles is one which is clear to most of us who have dealt with both the domains. When parties enter into contracts, they identify the governing legal systems which sorts out the rights and obligations that



Khawar Qureshi QC, Head of McNair Chambers, says that the rationale of arbitration must be to refine the process further to reduce delay in conflict resolution and the concomitant costs

arise out of the chosen system.”

This vision of unity of legal systems stems in part from the writings of Lord McNair (after whom the Chambers has been named), whose work as a Queen’s Counsel, Professor at

Cambridge University and President of the International Court of Justice inspired generations of international lawyers. “He emphasised mutual respect between legal traditions and the importance of international law

providing a link between legal systems and legal traditions. He wrote in this way 50 years ago and today, we can see how far-sighted his vision was. For us, it is a great privilege to be inspired by such a leading light."

**A thought leader**

In legal practice for the past 16 years, Qureshi was a student at the prestigious Cambridge University. While going back to Cambridge to teach at weekends, he pursued his qualifications to be a barrister.

The passion for teaching has not left this gifted orator – he is still a Visiting Professor of Commercial Law at London University.

Qureshi was called to the Bar in 1990 and specialises in Commercial Litigation and International Arbitration. He often acts for the UK government in cases with a PIL (Public International Law) angle, with cases concerning a very wide range of issues including state immunity, treaty interpretation, extradition and human rights. He also acts for foreign governments, state corporations, multi-national corporations and individuals on commercial law matters.

Qureshi has effortlessly navigated no less than fifty jurisdictions, and is widely known as a thought leader with phenomenal integrity.

Explaining the nuances in the legal profession, he says, "In England there are two types of legal professionals – there are solicitors, of whom there are some 70,000 odd practitioners – they work in partnerships, in firms that may have branches all over the world. The partners could work with six-seven associates on any particular matter. In contrast, there are no more than around 8,000 barristers – the oldest part of the English Legal Profession – who have been around for about 800 years. Barristers work in offices called 'Chambers'. This distinction is important to remember

since barristers are self-employed. They work together in Chambers, but have their own distinct areas of specialisation and over time, each develops his/her reputation in those areas of specialisation.

"I practise International Arbitration and Commercial law. There are a very small number of barristers who specialise in this domain of advice and advocacy and I am listed in the top five such barristers."

Elucidating the uniqueness of McNair Chambers, Qureshi says, "McNair is a collection of experts and unlike many other types of lawyers, we do not work in teams (save for very big cases). For us, teams are not necessary since, when clients come to us, they come knowing our individual excellence and expertise."

**“QATAR IS A BUSINESS COMMUNITY, AND INDEED A SOCIETY, THAT IS FULL OF VITALITY AND INNOVATION AND WE FEEL VERY MUCH AT HOME DOING BUSINESS HERE.”**

**First stop outside UK**

Qatar is the first country where McNair has set its footprint outside the UK. "This is significant since Qatar has had strong ties with the UK, over and above the dynamic and forward-looking institutional and policy climate in the country. I was myself pleasantly surprised to learn that McNair Chambers was the first ever Barristers' Chambers to be established outside the UK.

"All of us at McNair have a long and mutually understanding association with Qatari institutions and Qatari legal colleagues. While, as a matter of practice, we never appear in foreign courts, international commercial law is based largely upon English law principles, and international commercial business adopts a dispute resolution mechanism that is outside the local courts, namely through arbitration.

"In these areas, we are experts as

a result of which, we have, over the years, been sought to provide our expertise in international commercial disputes the world over, Qatar being one such country, where we have worked extensively.

"We are keen to enhance our local relationships by providing easier access to our expertise for both Qatari law firms and corporate clients. We are also keen to share our knowledge with all Qatari communities, including Qatari students."

Towards the goal of providing a stepping stone for the local students, McNair Chambers has signed a Memorandum of Understanding with the College of Law at Qatar University, marking the beginning of the McNair Internship programme.

Such initiatives reflect the McNair

commitment to "give back something to the community" and Qureshi's passion with passing on legal traditions to the next generation.

"We feel that Qatar is a business community, and indeed a society, that is full of vitality and innovation and we feel very much at home doing business here."

**Evolution of arbitration**

"I have been very fortunate given that, over the course of the duration of my practice for 16 years, I have seen the process of arbitration change enormously. I have done hugely complex cases for or against 50 states. I have done multi-billion dollar arbitration cases involving issues such as construction, energy supply agreements, banking and the recurrent theme is that more and more parties are resorting to arbitration. In the early 1990s, when I started my practice, arbitration was not that usual or

well-known in the domain of business. But now we see, not least in England, where the main statute to deal with arbitration, came into effect in 1997, the response of the professionals, judges and the legal system as a whole, has been to support the choice of arbitration by commercial parties as a speedy and cost-effective method of conflict resolution."

The crux of the present trend in arbitration is to refine the process further and reduce delay in conflict resolution and the concomitant costs, which according to Qureshi are "worry points" for many clients across the globe.

Local arbitration trends are no different than those at the global level, a fall-out of globalisation. "The laws of the GCC countries have been changed substantially to reflect the global shift in increasing recourse to arbitration in case of a dispute arising out of business contracts. It is understandable if it takes a little time for people to become familiar with arbitration as a process"

How would a possible conflict be averted if barristers whet the contract at the drafting stage?

"Given the fact that a barrister is hired to dismantle contracts after a dispute has already arisen, many feel that it makes a great deal of sense to have the contract reviewed before it is signed to spot potential problems.

"Very recently, I was asked to review a multi-billion dollar contract governing a government purchase of 40 aircrafts before the purchase."

**Winning trust**

The experience of having done legal cases in 50 odd jurisdictions has added diverse feathers like human rights and corruption in Qureshi's core competence area of international commercial law and arbitration. He prosaically says, "By virtue of having done a multitude of complex cases in international commercial law and ar-

**THE MCNAIR LUMINARIES**

- LORD Slynn of Hadley whose main areas of expertise include arbitration and mediation. One of the outstanding judges of his time, Lord Slynn has served as a High Court Judge, as an Advocate General and a Judge of the European Court of Justice, and he has been a Lord of Appeal for 10 years who sees strong parallels between the GCC and the EU.
- Richard Southwell QC whose main areas of expertise are banking, insurance and reinsurance, international and English commercial arbitrations, professional negligence and competition. Southwell has been an Arbitrator in English and international arbitrations, a Judge of Courts of Appeal of Jersey and Guernsey, President of Lloyd's appeal tribunal and Former Chairman of Professional Standards Committee, Bar Council, among others.
- Simon Browne-Wilkinson whose main areas of expertise include international arbitration, fraud, professional negligence, insurance and reinsurance, employment, banking and private and public international law.
- Professor William Ballantyne whose main areas of expertise include international litigation and arbitration as Chairman, arbitrator, counsel or expert. He is a leading expert in Arab laws. His cases of note include: State of Qatar vs. British Aerospace – Qatari law (Paris); Qatar Petroleum Company vs. Shell – expert counsel for Shell, Qatari law arbitration (Paris); Kuwait Oil Tanker Company vs. Al Badi & Ors.
- Dr Thomas Krebs whose main areas of expertise include transnational commercial law, international trade, contract, general commercial law (sale of goods, agency, personal property, secured financing), private international law (in particular knowledge of different European legal systems).
- Professor Michael Palmer whose main areas of expertise include Chinese law, selected aspects of Hong Kong law, private international law and human rights law

bitration, I have, on occasions, been asked to do cases in commercial fraud. Last year, I did one such case for the Italian Government. Because of the frequency with which I deal with heavy commercial cases, fraud/corruption type cases are increasingly being seen a by-product of large scale commercial transactions."

Navigating juridical climates is no child's play. Quoted as "an effortless bridge across jurisdictions", this expert feels that the job of a barrister is to be culturally sensitive and to be sensitised to the needs of his clients. For him it is an honour to be trusted by several governments – Russia, US,

the Far East, ME, India – and the common denominator of all such cases is the ability to communicate expertise and being able to gain the trust of so many mindsets.

"When governments interact with each other, the legal framework that governs their conduct is Public International Law, a domain which is not only sensitive, but demands very complex skill-sets as well. These are cases of very high public importance, and to that extent, governments are very careful when they hire barristers. I feel honoured and privileged to have been chosen to advise and represent so many different States."■