

Anti-sharia laws stir concerns that halachah could be next

By Ron Kampeas · April 28, 2011



John Chasnoff of the American Civil Liberties Union and Gail Wechsler of the Jewish Community Relations Council of St. Louis join Muslims in Jefferson City, Mo. on April 12, 2011 to protest a proposed law banning sharia. (Missouri News Horizon / Creative Commons)

WASHINGTON (JTA) -- With conservative lawmakers across the United States trying to outlaw sharia, or Islamic religious law, Jewish organizations are concerned that halachah could be next.

If the state legislative initiatives targeting sharia are successful, they would gut a central tenet of American Jewish religious communal life: The ability under U.S. law to resolve differences according to halachah, or Jewish religious law.

“The laws are not identical, but as a general rule they could be interpreted broadly to prevent two Jewish litigants from going to a *beit din*,” a Jewish religious court, said Abba Cohen, the Washington director of Agudath Israel of America, an Orthodox umbrella group. “That would be a terrible infringement on our religious freedom.”

A number of recent *beit din* arbitrations that were taken by litigants to civil courts -- on whether a batch of *etrogim* met kosher standards; on whether a teacher at a *yeshiva* was rightfully dismissed; and on the ownership of Torah scrolls -- would have no standing under the proposed laws.

Cohen added that a New York State law requiring parties in a divorce to cut all ties immediately would be affected by the passage of anti-sharia legislation; the law protects divorced Jewish women from becoming "agunot," chained to a recalcitrant husband through his refusal to grant a religious divorce. Federal laws protecting religious expression in the workplace -- for instance, wearing head coverings or asking for certain holidays off -- also could be affected, he said.

The threats posed by the anti-sharia laws -- passed by referendum in Oklahoma and under consideration in 13 other states, according to a study by the liberal Center for American Progress -- led Agudah and the Orthodox Union to join in an American Jewish Committee-spearheaded letter to state legislatures urging them to reject such laws.

"The impact of this legislation goes well beyond prohibiting religious tribunal resolution of monetary or ministerial disputes," says one of the letters, to the Arizona state Senate. "It would apparently prohibit the courts from looking to key documents of church, synagogue or mosque governance -- religious law -- to resolve disputes about the ownership of a house of worship, selection and discipline of ministers, and church governance."

The unlikely combination of signatories, which also include the American Civil Liberties Union, the Baptist Joint Committee for Religious Liberty and Americans United for Separation of Church and State, signal the breadth of opposition to the legislation targeting Islamic law.

But there are also Jews supportive of the anti-sharia laws, such as David Yerushalmi, an Orthodox lawyer who has written extensively on the topic and testified on the matter as some legislatures consider the proposed laws.

Yerushalmi argues that sharia differs from halachah or Christian canon law because it sanctions jihad, which he says amounts to sedition through seeking the overthrow of governments through nonviolent and violent means.

"Because Jihad necessarily advocates violence and the destruction of our representative, constitution-based government, the advocacy of jihad by a sharia authority presents a real and present danger," he wrote recently on a conservative website. "This is sedition when advocated from within our borders; an act of war when directed at us from foreign soil."

Scholars of Islam say such characterizations of sharia are distorted.

And those opposing the legislation say many of the laws as proposed are unconstitutional and likely would not survive their first judicial test.

"It's violation of the right to free exercise," said Rabbi David Saperstein, who directs the Reform movement's Religious Action Center and teaches church-state law at Georgetown University. "It's a violation of the establishment clause, giving pre-eminence of one religion over another."

A federal judge cited the establishment clause in her decision to indefinitely hold the Oklahoma law in abeyance while she considers a lawsuit.

Still, the tide of proposed laws has stoked enough concern that the groups are taking action. Cohen, Saperstein and the Orthodox Union's Nathan Diament all said their organizations are urging constituent synagogues to take up the matter in states where laws are under consideration.

Jewish officials in Nashville, Tenn., have spoken out against a proposed sharia ban that has evolved into a bill that would grant the state attorney general broad powers to name any group a terrorist group.

"I have been on a local morning TV show about the issue," said Judy Saks, the community relations director for the local federation. "I said, as Jews, we've been persecuted throughout the ages, and to stand by and watch this broad brush being used against another community -- we really can't."

Diament expressed concerns about proposed laws in places like Nebraska and South Dakota that might circumvent constitutional bans by targeting "foreign law" and "religious code" and not naming sharia or Islam.

Such laws "are problematic particularly from the perspective of the Orthodox community -- we have a beit din system, Jews have disputes resolved according to halachah," Diament said. "We don't have our own police force, and the mechanism for having those decisions enforced if they need to be enforced is the way any private arbitration is enforced" -- through contract law in the secular court system.

Marc Stern, the AJC's associate general counsel who drafted the letter to the state legislatures, said the greatest threat presented by the proposed laws is to America's delicate relations with Muslims across the world.

"The key point here for us is that it makes all Muslims who take their religion seriously a threat," he said, adding that the laws could alienate Muslim moderates who otherwise seek accommodation with the West.

"It's a strategic error of gigantic proportions," Stern said.

Saks recalled that when she heard that vandals had defaced a mosque in Nashville in February 2010 with crosses and "Muslims go home" graffiti, she joined a clean-up effort -- and forged new alliances.

"When they found out I was Jewish, there was a kind of astonishment, and then they were grateful," she said of the mostly Somali congregation.

Abed Awad, a New Jersey-based lawyer who is an expert on Islamic law, said the application of the proposed laws would have an impact not only on domestic family court agreements and contracts between members of the same religious community, but on contracts made overseas.

Awad noted that a number of Muslim states and Israel use religious law in divorce cases, for example. An American judge addressing the divorce of a couple now must take into account the sums agreed upon in those contracts; the proposed laws would ban such considerations.

Additionally, Awad said, the legislation would affect agreements signed between American companies and counterparts in countries such as Saudi Arabia, where sharia governs business law. How would one side pursue a grievance in an American court should the laws governing the contract be considered null?

In no instance does sharia law prevail over U.S. law, said Awad, who has testified in about 100 cases as a sharia expert. Instead, judges use sharia to understand the underpinnings of a contract.

"The judge will elicit testimony from me, what is the document, what were the expectations of the party when they came into this, what is the culture," he said. "Then he applies New York contract law -- was there an offer, was there acceptance, was there fraud. Sharia law comes into play to explain what this is all about."

Such a case in a Florida court, where a judge is considering a dispute between the officers of a mosque, already has led to accusations that sharia has infiltrated the U.S. court system. Leading the charge is Adam Hasner, a Jewish Republican and veteran state politician who is mounting a bid for the state's U.S. Senate seat in 2012.

"We need to speak out," Hasner said at a recent rally. "We need to make sure that these threats do not continue to grow, do not continue to infiltrate our state and our country."

Abraham Foxman, the Anti-Defamation League's national director, said he often encounters Jews concerned about sharia.

"I've had questions from Jewish audiences: What is the ADL doing from stopping sharia from taking over the country?" he said.

Foxman said he politely counters that there is no such threat, except perhaps to the American tradition of accommodating religious observance.

"People don't know what sharia means, it's a foreign word," Foxman told JTA. The proposed anti-sharia laws, he said, are "camouflaged bigotry."

Ron Kampeas is JTA's Washington bureau chief.