

Islam Throughout the Diaspora: Balancing Cultural Characteristics, Religious Beliefs, and Criminal Activity (the Case of Italy)

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Abstract

The purpose of this study is to revitalize the debate around the plural structure of Western societies and what cultural traits and religious dimensions mean. Starting from some news reported by the Italian media often with misleading headlines, the article analyzes the processes of inclusion of Islam in European legal systems, with a particular focus on the relationship between the religious factor and the criminal sphere. Cyclically the Italian media, in reporting some news stories, associate crimes with the religious affiliation of their perpetrators, polarizing attention on Islam rather than on the criminal. The research method used is qualitative, based on media and library research, with a jurisprudence analysis and a legal approach as an analytical tool to investigate the stated problems. Although in Italy the relationship between the religious factor and criminal law certainly shows a concrete and tangible interest, despite the lack of a dedicated constitutional model as well as a current and specific law on religious freedom. However, doctrinal discussions do not always correctly emphasize the difference between behaviors guided by cultural heritages and those imposed by religious beliefs. The results of this study indicate that, if on the one hand there is a tangible religious illiteracy, internal and external to the Muslim communities living in the diaspora, on the other hand the cultural sphere must be distinguished from the religious one, and a hermeneutic paradigm exercised by suitable and accredited subjects

is needed. In fact, the appropriate hermeneutic coordinates are needed both on the legal and on the religious level to live Islam correctly as migrants residing in the diaspora or as Muslims with citizenship. In conclusion, the topic is essential, due to the gap in the research, which often confuses the cultural level with the religious one, and the aim is to clarify the point and provide a new paradigm. In this way discrimination is avoided and Italian judges and legislators will be able to have a more informed and therefore more sensitive approach towards religious minorities in Italy.

Keywords: Islam in the Diaspora; cultural traits; religious dimension; criminal facts.

Introduction

Globalization, migratory flows and the development of the web in its planetary dimension are certainly the factors that have contributed to building the plural structure of contemporary Western societies. This relatively new structure suffers from the lack of criminal law regulation. In particular, in Western societies there is a lack of shared rules with reference to some lifestyles of religions and cultures other than the dominant or host one.¹ The reason for this gap can be found both in the fact that the phenomenon is recent and in the fact that there is a certain mainstream reluctance to intervene on sensitive issues bordering on the 'politically correct'. This reality, especially when referring to Muslim communities living in the diaspora, can cause problems also due to uncertainty and discrimination, on a legal and social level. In this regard, some recent news reports place the emphasis once again on those religious-cultural legacies that influence certain behaviors, to the point of making them illegal. This is the research problem that this study wanted to investigate, taking into account the state of the art, because those few existing studies on the item have in any case been reviewed and because the jurisprudence on the first cases is just consolidating.

The topic of the relationship between the religious factor and the penal sphere in reference to the Muslim belief therefore constitutes a novelty in the dimension of Italian literature, as well as that of the judicial courts, and delving into the question constitutes an interesting challenge for academic research and also a necessity for social inclusion policies.

It should be noted that in the corporate structures of the Western world a state organization marked by secularism reigns and this aspect has led, over time, to a loss of centrality of the religious factor at the community level. Religion has thus lost that regulatory role at least of common ethics that it

¹ J. A., Beckford, "Religious Diversity: Sociological Issues and Perspectives", in *International Studies in Religion and Society*, 1/2019, 9-33;

historically held, and has been progressively confined to the dimension of the internal forum.² The Italian legal system has not escaped this trend, which despite declaring itself secular, has maintained a certain preference for the dominant Catholic religion.³ However, this can prove discrimination on the part of the institutions.

In fact, in the new plural arrangement of Western societies new legal problems can emerge, essentially connected to the differences between lifestyles sometimes considered dutiful by the 'new citizens' and the community model of the host society.⁴ And it is precisely under this specific lens that those behaviours induced by the context of origin must be judged. In fact, they have an external and potentially colliding influence with respect to the legal system in which they occur if there is no regulation. Here it can happen that dissonant behaviours and differences in heritage, often assumed on the basis of suggested models rather than by personal choice or inclination, can lead to criminally relevant conduct on an objective level.⁵

The research method used is qualitative, based on media and library review but, since studies on the topic are decidedly few (i.e. Cohen, Shengtao, Miller (2016); Lynn Goodwin, Lloyd Williams, Snell Herzog (2020); Lauwers (2022)), therefore the state of the art had to be implemented by 'de jure condendo' arguments. It was then decided to carry out the research with a review of judicial decisions and with an hermeneutic and normative legal approach as an analytical tool to describe existing problems of the Muslim communities of the diaspora.

The study of diaspora Muslims specifically has not been studied by many observers of Islamic studies, especially in the case of Italy, which is dominated by people of non-Muslim religions. At least, the study that comes closest to this theme is as follows: Fachri Aidulsyah and Gusnelly Gusnelly, writing about *Mapping the Indonesian Muslim Diaspora in the Netherlands*.⁶ The research aims to understand the contribution of the Indonesian Muslim diaspora by mapping the role of Indonesian Muslim Organizations in the Netherlands from a socio-historical perspective. The main reasons for the

² A. Cohen, M. Shengtao, J. Miller, "Religion and Culture: Individualism and Collectivism in the East and West", in *Journal of Personality and Social Psychology*, 9/2016, 432-443.

³ A. S. Lauwers, "Religion secularity, culture? Investigating Christian privilege in Western Europe", in *Ethnicities*, 6/2022, 403-425.

⁴ J. Lynn Goodwin, A. Lloyd Williams, P. Snell Herzog, "Cross-Cultural Values: A Meta-Analysis of Major Quantitative Studies in the Last Decade (2010-2020)", in *Religions*, 8/2020, 1-42.

⁵ A. Negri, "Religious freedom and inviolable lines in pluralist societies: the case of cultural crimes", in *Stato, Chiesa e pluralismo confessionale*, 30/2019, 175-189.

⁶ Fachri Aidulsyah and Gusnelly Gusnelly, "Mapping Indonesian Muslim Diaspora in the Netherlands," *Journal of Indonesian Social Sciences and Humanities* 9, no. 2 (December 31, 2019): 157-66, <https://doi.org/10.14203/jissh.v9i2.150>.

Netherlands as the locus of this research are; The Indonesian Muslim diaspora was the first actor to promote the face of Islam in this country since the 1920s and is also recognized as one of the countries with the highest Muslim population in Europe. After that, this article shows that there are many Indonesian Muslim organizations in the Netherlands from various perspectives, schools of thought and backgrounds. Although the government did not loot Indonesian Muslim organizations, most of them had strong ties to several Muslim organizations in Indonesia, ranging from Nahdhatul Ulama (NU) to the Salafi Movement. Halim Rane writes about the *Islamic diaspora in Diaspora*.⁷ The findings of this study challenge the notion that Islam in the diaspora is illegitimate and incompatible with Western, liberal and democratic countries which is often expressed by Islamist-jihadist and right-wing groups, as well as being anti-Islam. Additionally, Fabrizio Ciocca wrote about the *Muslim Diaspora in Italy*.⁸ This article further negates the Italian diaspora which has the third largest Muslim minority population, namely around three million people. Despite this, there is no legal recognition for the country's second largest religion after Catholicism. Additionally, Italy is experiencing increasing Islamophobia and the growth of political parties trying to fight what they call the "Islamization" of society.⁹ All these factors make Muslims always struggle to negotiate the presence of Italian society in public space, especially the younger generation, in order to find and facilitate compromises to maintain their Muslim identity and be both Muslim and Italian in an existential sense. From several of these articles, a common thread can be drawn as the novelty of this article which discusses *Islam Throughout the Diaspora: Balancing Cultural Characteristics, Religious Beliefs, and Criminal Activity (the Case of Italy)* aims to revitalize the debate around the plural structure of Western society and what it means cultural characteristics and religious dimensions, especially for the Muslim diaspora as a religious minority.

Discussion

News stories and people suspended between multiple cultures and religions

Recently the Italian media have published some news, highlighting how Muslims perpetrated some illegal acts and underlining once again not so much the negative value of the act, but rather the belonging of its perpetrator to Islam, described as a distant religion and sometimes irreconcilable with the values of the place of residence. We refer to titles such as:

⁷ Halim Rane, "Islam in Diaspora," 2020, <https://doi.org/10.13140/RG.2.2.25928.47360>.

⁸ Fabrizio Ciocca, "The Muslim Diaspora in Italy," *Waikato Islamic Studies Review*, January 1, 2021, https://www.academia.edu/54051448/The_Muslim_diaspora_in_Italy.

⁹ Norma Fitria, "Revisiting Transformative Islam," *Nizham: Jurnal Studi Keislaman* 10, no. 1 (June 20, 2022): 24–32, <https://doi.org/10.32332/nizham.v10i1.4613>.

1. The father kidnaps her daughter to prevent her from living "Western". She denounces her father - Bologna December,8 2021;¹⁰
2. The judge must decide between punishing the father for domestic abuse and a cultural defense – Perugia November,4 2021;¹¹
3. The judge investigates the parents of a girl for imposing on her husband - Ostia January, 29 2022;¹²
4. Little girl promised as a bride in Pakistan by her Italian mother, the prosecutor intervenes - Lecce 4 February,4 2022;¹³
5. Religion never justifies the domestic abuse of family members - Lecce March,18 2022;¹⁴
6. Domestic abuse if she does not wear the veil and if she does not accept the husband chosen by her father, Muslim parents reported - Bassano 29 January 2023.¹⁵

Over time, such conducts have been classified in the class of cultural offences or even cultural defenses.¹⁶In Italy, the debate on religion and penal

¹⁰ G. Baldessarro, “Non puoi vivere all’occidentale. Lei si ribella e fa arrestare il padre”, in *La Repubblica online*, 8 dicembre 2021, https://bologna.repubblica.it/cronaca/2021/12/07/news/non_puoi_vivere_all_occidentale_lei_si_ribella_e_fa_arrestare_il_padre-329365829/

¹¹ G. Sgrena, “Il giudice archivia per attenuanti culturali”, in *Il Manifesto online*, 20 novembre 2011, <https://ilmanifesto.it/il-giudice-archivia-per-attenuanti-culturali/>

¹² Redazione, “Rifiutò note combinate, indagati i genitori”, in *Avvenire.it*, <https://www.avvenire.it/attualita/pagine/rifiuto-nozze-combinate-indagati-i-genitori-ostia>

¹³ M. Caione, “Bambina promessa sposa in Pakistan dalla madre italiana, interviene la procura”, in *Avvenire.it*, <https://www.avvenire.it/attualita/pagine/bambina-di-12-anni-promessa-sposa-in-pakistan#:~:text=Una%20volta%20scoperta%20la%20promessa,si%20muove%20su%20pi%C3%B9%20fronti.>

¹⁴ E. Sala, “La religione non giustifica mai il maltrattamento del familiare”, in *Centrostudilivativo*, 18 marzo 2022, <https://www.centrostudilivativo.it/la-religione-non-giustifica-mai-il-maltrattamento-del-famigliare/>

¹⁵ Redazione, “Nozze concordate e botte se non mette il velo, denunciati i genitori musulmani”, in *Ilgazzettino*, 29 gennaio 2023, https://www.ilgazzettino.it/nordest/vicenza_bassano/nozze_concordate_picchio_figlia_velo_genitori_musulmani_denunciati-7198179.html

¹⁶ M. C. Foblets, “Cultural Delicts: The Repercussion of Cultural Conflicts on Delinquent Behaviour. Reflections on the Contribution of Legal Anthropology to a Contemporary Debate”, in *European Journal of Crime, Criminal Law and Criminal Justice*, 1/1998 pp. 187 ss.; J. Van Broeck, “Cultural Defence and Culturally Motivated Crimes (Cultural Offences)”, in *European Journal of Crime, Criminal Law and Criminal Justice*, 1/2001, pp. 1 ss.; M. C. Foblets, A. Dundes Rentein, *Multicultural Jurisprudence*, London, Hart Publishing, 2009; AA. VV., “Multiculturalisme, droits de l’Homme, droit pénal international”, in *Revue internationale de droit pénal*, 3-4/2011; L. Friedman Ramirez, *Cultural Issues in Criminal Defence*, New York, Juris Editions, 2010; A. Connolly, *Cultural Difference On Trial: The Nature And Limits Of Judicial Understanding*, London-New York, Routledge, 2016.

law¹⁷ has thus been revived.¹⁸ This reasoning, especially when referring to the migratory context, must be enriched by an inclusive approach, open to understanding those mechanisms that guide the way of acting of subjects 'suspended' between multiple cultures and different perceptions of the religious factor.

However, it is necessary to analyse in detail what are, at the base, these motivations that condition human behaviour and what are or, at least, should be the answers of the legal system.¹⁹ Well, scholars have not always highlighted with due attention the genetic difference of such conducts, when assumed on a cultural level and when held for religious reasons. Yet, it is essential to underline the gap between the two areas.

The cultural motivation, coming from below and in line with behavioural models widespread in society but not imposed by a religious dogma, can allow the subject a certain autonomy of action and the possibility of choosing whether to follow a social influence or not. On the other hand, a religious conviction, therefore descended from above, appears to inhibit the decision-making power of subjects who grew up in the shadow of those typical precepts of revealed juridical-religious systems, such as Islam. In the analysis of cultural traits, religious dimension and criminal facts, therefore, recognizing this distinction is central, since it implies the possibility of choosing to follow or reject a society's influence and, vice versa, an obedience to the divine command.

An example of the concrete effects of this distinction can be provided by some practices, on the one hand cultural and on the other religious, carried

¹⁷ Al Aufa, "Impact of Ukraina And Russia War Perspective on Islamic Humanitarian Law," *MILRev: Metro Islamic Law Review* 2, no. 1 (June 30, 2023): 1–9, <https://doi.org/10.32332/milrev.v2i1.6881>.

¹⁸ C. De Maglie, *I reati culturalmente motivati. Ideologie e modelli penali*, Pisa, Edizioni ETS, 2010; A. Bernardi, *Il "fattore culturale" nel sistema penale*, Torino, Giappichelli, 2010; F. Basile, *Immigrazione e reati 'culturalmente motivati': il diritto penale nelle società multiculturali*, Milano, Giuffrè, 2010; F. Parisi, *Cultura dell'"altro" e diritto penale*, Torino, Giappichelli, 2010; D. Brunelli, *Diritto penale della libertà religiosa*, Torino, Giappichelli, 2010; G. Crocco, *Diritto, ordine e religione nella tutela penale*, in A. Fuccillo, *Esercizi di Laicità interculturale e pluralismo religioso*, Torino, Giappichelli, 2014; G. Casuscelli, *Il diritto penale*, in G. Casuscelli, *Nozioni di diritto ecclesiastico*, Torino, Giappichelli, 2015; I. Merzagora, *Lo straniero a giudizio. Tra psicopatologia e diritto*, Milano, Giuffrè, 2017; A. Provera, *Tra frontiere e confini. Il diritto penale dell'età multiculturale*, Napoli, Jovene, 2018.

¹⁹ V. Tozzi, G. Macri, M. Parisi, *Proposta di riflessione per l'emanazione di una legge generale sulle libertà religiose*, Torino, Giappichelli, 2010; M. Canonico, "L'idea di una legge generale sulla libertà religiosa: prospettiva pericolosa e di dubbia utilità", in *Stato, Chiese e pluralismo confessionale*, gennaio 2010; V. Tozzi, "Necessità di una legge generale sulle libertà religiose (risposta a Marco Canonico)", in *Stato, Chiese e pluralismo confessionale*, settembre 2010; F. Alicino, "Lo strano caso dei ministri di culto buddhisti. Ovvero la legge sui culti ammessi vs la legge di approvazione delle intese", in *Quaderni di diritto e politica ecclesiastica*, 2/2013; A. Melloni, *Appunti sulla libertà religiosa*, in R. Beingni, *Libertà religiosa, diritti umani e globalizzazione*, Roma, Roma Tre Press, 2017; R. Zaccaria, S. Domianello, A. Ferrari, P. Floris, R. Mazzola, *La legge che non c'è. Proposta per una legge sulla libertà religiosa in Italia*, Bologna, Il Mulino, 2020.

out on minors. In the case of female genital mutilation, a practice not imposed by religion but derived from cultural influences,²⁰ whoever has the responsibility of a little girl can also choose not to conform to this social conditioning. In addition, this choice is especially appropriate when you know you are violating a law,²¹ since female genital mutilation has been prohibited in Italy since 2006.²² On the other hand, when it is a religious conviction that imposes certain rites and the consequent behavioural patterns, as in the case of male ritual circumcision, it is difficult to imagine that the believer can escape the divine will. Moreover, this happens even in the extreme case of an awareness that such conduct is illegitimate in the juridical system in which it resides. In Europe ritual circumcision is not always permitted and Italy, circumcision is permitted for medical reasons, but religious circumcision is granted only to Jews, who have an agreement with the Italian State pursuant to art. 8 of the Constitution, but not also to Muslims, who do not yet have this agreement.²³

Therefore, acknowledging such a differentiation could lead the Italian judges to condemn the behaviours motivated by the cultural level and justify those inspired by the religious dimension.²⁴

Religious illiteracy and Shariatic hermeneutics

However, albeit without generalizing, we must recognize the existence of a deep level of religious illiteracy among many Muslims of the Diaspora,²⁵ who sometimes believe they conform to a religious dictate while, in practice, they only follow a cultural influence, which in some cases goes even against the real values of Islam. This is also often due to an indifference towards theology preferring the faith as 'experienced' or as seen by others.

²⁰ A. Cilardo, *Il minore nel diritto islamico. Il nuovo istituto della Kafala*, in A. Cilardo, *La tutela dei minori di cultura islamica nell'area mediterranea. Aspetti sociali, giuridici e medici*, Napoli, E.S.I., 2011, p. 230.

²¹ Suud Sarim Karimullah, "The Implications Of Islamic Law On The Rights Of Religious Minorities In Muslim-Majority Countries," *MILRev: Metro Islamic Law Review* 2, no. 2 (November 9, 2023): 90–114, <https://doi.org/10.32332/milrev.v2i2.7847>.

²² See Italian Law n.7/2006 "Disposizioni concernenti la prevenzione e il divieto di pratiche di mutilazione genitale femminile"

²³ A. Jan Wensinck, sub voce "Khitan", in *The Encyclopaedia of Islam*, Leiden, Brill, 1986, vol. V, p. 20; V. Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century*, Leiden, Brill, 1993, pp. 88 ss.; M. Abou Ramadan, *Les débats sur la circoncision en droit musulman classique et contemporain*, in V. Fortier, *La circoncision rituelle. Enjeux de droit, enjeux de vérité*, Strasbourg, Presses universitaires de Strasbourg 2016, pp. 27 ss.; V. Fronzoni, *Processi di inclusione dell'islam negli ordinamenti europei. Diritto e religione in prospettiva comparata*, Cosenza, Pellegrini, 2020, pp. 209 ss.

²⁴ V. Fronzoni, *La delicata posizione dei minori musulmani e la giurisprudenza europea*, in M. Corleto, V. Fronzoni, *Nuove opportunità di sviluppo dai contesti migratori. Inclusione, sicurezza e confessionalità*, Cosenza, Pellegrini, 2020, pp. 122 ss.

²⁵ O. Roy, *La sainte Ignorance*, Seuil, 2009; A. Melloni, *Rapporto sull'analfabetismo religioso in Italia*, Bologna, Il Mulino, 2014.

This paradoxical reality must be underlined, since Muslims living in non-Islamic majority countries must know which conduct is in accordance with Islam and which is not, even before knowing the principles and laws of the society in which they live.²⁶

A question therefore arises: do we still need a theoretical paradigm to refer to?

The answer is necessarily positive, since what really constitutes a religious dictate, therefore recognized by scholars and exegetes must be clarified, and not just what is perceived as such by the believer. In fact, the subjective evaluation of the necessity of an action in response to a value impulse cannot be left to a single subject, but the conduct must be parameterized to an objective evaluation and framed in the shared hermeneutics of a juridical school.

However, a second question arises: is it possible today to converge on an objective and shared hermeneutic with respect to Shariatic sources?

Once again the answer is positive, but we need to agree on some important issues: who can provide the correct hermeneutics, i.e. who can explain not only to the Italian judges called to deal with the criminal fact, but also and above all to the Muslim community itself, if that episode judged as domestic abuse, forced wedding, female genital mutilation complies with Islam and can be absolved by the state system, or is it just a cultural conviction and therefore condemned by law?

Indeed, it should be remembered that religious illiteracy is present both within and outside the Muslim communities in the diaspora.²⁷ With respect to a law prohibition, it is necessary to inform the Muslim communities not yet integrated while, with respect to a legislative vacuum, an exegetical activity is necessary, precisely because in the absence of a specific regulatory norm (religious, state or by agreement), all residents must know what is illegal and what is not, in order to be consciously right both as citizens and as believers.

Going back to news stories, a clear message needs to be conveyed: segregating a daughter or forcing her into marriage is a sin and a crime,²⁸ just like practicing genital mutilation on her, and understanding this is essential if

²⁶ Ibnu Akbar Maliki, "Living Hadis Islam Wasathiyah: Analisis terhadap Konten Dakwah Youtube 'Jeda Nulis' Habib Ja'far," *Nizham: Jurnal Studi Keislaman* 11, no. 01 (June 26, 2023): 64–78, <https://doi.org/10.32332/nizham.v11i01.6753>.

²⁷ J. Habermas, C. Taylor, *Multiculturalis. Examining the politics of Recognition*, Princeton, Princeton University Press, 1992; N. Colaianni, *Eguaglianza e diversità culturali e religiose. Un percorso costituzionale*, Bologna, Il Mulino, 2006.

²⁸ Sakiman Sakirman, "Contemporary Fiqh Methodology in the Theory of the Limitation of Dialectics Space and Time According to Muhammad Syahrur," *Hunafa: Jurnal Studia Islamika* 14, no. 2 (December 31, 2017): 301–26, <https://doi.org/10.24239/jsi.v14i2.484.301-326>.

someone wants to be a Muslim and a European citizen and if he wants to be treated as such.

A third and final question then arises. Who should practice this hermeneutic? Can we leave this fundamental task to any Western state bureaucratic apparatus or entrust it to the sermons of any self-proclaimed imam, even one with many followers? An exegetic activity of Shariatic rationalization, which appears necessary and even urgent, can only be structured by expert jurists, who know both worlds, in order to spread among the communities of the diaspora a Shari'a compliant behavioural model and in accordance with the legal system of the place of residence.

However, this necessary activity is not enough. On the one hand, we must make European states and, specifically, Italy and the Italian spirit attractive to Muslims who come from a migratory background, involving them in national life in an inclusive way and showing that there is no antinomy between living in the West and being Muslims, making it clear that one can be good believers and good residents at the same time. On the other hand, however, it is necessary to decouple Islam from the migratory phenomenon and overcome this context, thinking of the autochthonous and Muslim Italian citizens, so that they do not suffer reverse discrimination and so that they can find the right channel in a shared legislative context to practice their religiosity in accordance with the condition of Italian citizens.

Conclusion

Undoubtedly, even in a secularized society it is important to establish a relationship between the religious factor and the criminal sphere, as the religious belief of many residents in Europe and Italy (whether Muslim or Catholic or otherwise) constitutes a central aspect of their existence. The research finding in this article, are that in Italy the relationship between cultural traits, religious dimensions and criminal facts certainly shows a concrete and tangible interest, despite the lack of a dedicated constitutional model and a current and specific law on religious freedom. The research has also found out that, as consequence, this relationship is essentially governed by jurisprudence, with a possible alternation of antinomic pronouncements. Emblematic is the discriminatory case of male ritual circumcision, which is lawful for Jews who have activated an agreement with the Italian State pursuant to art. 8 of the Constitution and that instead for Muslims, who have not activated an agreement pursuant to art. 8 of the Constitution, is from time to time classified under different types of crime. This certainly constitutes a factor of discrimination and not of inclusion. Muslims in Italy must feel they have the right (and duty) to be citizens who follow the laws, which however must be written and criminal matters must not be left to the interpretation of judges, and to follow their religion while respecting religious freedom. Therefore, in view of the data acquired and elaborated with the research, it must be concluded that, while awaiting a

legislative intervention that regulates such a sensitive area for human rights and strategic for public safety, a shared hermeneutical paradigm is needed, which guides the judicial world and the Umma of believers towards social inclusion and contrasts both the Islamophobia than radicalization. The latter, in fact, sometimes constitutes the reaction to xenophobia, because it leads to developing sympathy for what those who treat you badly hate or fear. It is, therefore, more urgent than ever in Italy to regulate the phenomenon of religious pluralism and its impact on the legal system.

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