

# Balancing women's rights with freedom of religion: the case against parallel legal systems for Muslim women in the UK

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**H**ow well a country responds to the needs of its religious minorities is an important question for states, not least because while the right to religious freedoms is enshrined in international law, the ability to access this right depends on the national laws one is governed by.

Sometimes the perceived importance of ensuring religious freedom is so strong it can overshadow the need to preserve other rights. For many women from religious minorities around the world, this has been a rather common experience. Rina Verma Williams has discussed, for example, how the debates over reforming Islamic law in India in the 1980s were framed as being about religious identity and minority rights to the exclusion of gender rights, even by the Indian government. The consequence of this, she argues, is that the legislation that was passed has not benefited Indian Muslim women. In cases such as these, where the price of religious freedom is that half the minority population lose out on other rights, can countries be said to be delivering religious freedom with any success?

Such sacrifices of gender rights are a not infrequent occurrence in efforts to preserve religious freedom. Therefore, it is useful to examine the experiences of women from religious minorities as a way of assessing how well countries are responding to the needs of their religious minorities. Using women's rights as a baseline indicator helps us judge whether countries are able to provide for the needs of religious minorities at a sophisticated enough level that women from religious minorities benefit equally – as both belonging to religious minorities and as women.

Western Europe and Canada have witnessed several controversies concerning this balance between women's rights and the rights of religious minorities in recent years. Some of the most heated and high-profile of these debates have been about Muslim women generally, and 'the veil' in particular. Such a debate has been ongoing in France, for example, since June 2009, when the government said it would consider banning *burqas*. At the beginning of 2010 the leader of the ruling party filed draft legislation banning garments that cover faces in public – referred to as an 'anti-*burqa* law' in coverage of the story in the mainstream British press.

Looking at how certain industrialized countries treat Muslim women can reveal some of the challenges states face in integrating religious minorities

into mainstream society, as well as in ensuring that women from religious minorities are treated fairly. The details will be different in different places, and the experiences of religious minorities as well as different countries will also vary, of course. But one of the fundamental questions at stake will be the same: can women's rights be balanced with religious freedom?

This chapter focuses on the experiences of Muslim women in the UK and Canada, in order to explore some of the issues. In the last few years, both countries have been grappling with the question of whether and how Sharia courts can be incorporated into the laws of the land by focusing on what this would mean for Muslim women. The chapter begins by examining some of the challenges faced by Muslim women living in the UK, in order to explain why some Muslim women may want to use non-mainstream legal options – what I call parallel options – such as Sharia courts to resolve their concerns. The chapter then goes on to outline some of the pitfalls of these parallel options, drawing on the arguments of those Muslim women who organized against the introduction of Sharia laws in Canada. It finds that parallel options can present a false solution to women from religious minorities, asking them to trade gender rights for religious freedom.

The chapter concludes that allowing such systems to operate risks excusing the state from its responsibilities to protect Muslim women's rights. It suggests that the best way to prevent the marginalization of religious minorities is to ensure that they have access to the same rights, as well as the same access to negotiating those rights, as those in the mainstream.

## Muslim women in the UK

Muslim women living in industrialized countries are at risk of what is known as 'multiple discrimination', because they are women, and belong to religious minorities and often also ethnic minorities. In addition to the risk of discrimination on each issue separately, they are also open to discrimination from all of them at the same time. Muslim women can also experience discrimination that includes more than one of their identities in ways that produce an entirely new form of discrimination. The French example above would affect Muslim women who wear full-face veils as Muslims and as women, for

instance, and would also be particular to them – the same legislation would not affect anyone else in society in the same way.

As a result of their multiple minority status, Muslim women within Britain experience some of the most extreme forms of disadvantage and social exclusion. According to a report called *Black and Minority Ethnic Women in the UK*, published in 2005 by the UK-based campaigning organization the Fawcett Society, two-thirds of Pakistani and Bangladeshi women, approximately 60 per cent of whom are Muslim, live in poverty; this is three times the proportion of Caucasian women. Muslim women are under-represented in elected office at all levels of government. For example, there had never been a Muslim woman Member of Parliament until two were elected in 2010. Muslims are the faith group most likely to be out of the paid labour market, while Muslim women are particularly likely to be outside it; according to the latest government statistics, about two-thirds of Muslim women are currently not in the paid labour force compared to a quarter of women overall. Meanwhile, the unemployment rate for Muslim women is 23.3 per cent compared to 6.9 per cent for all women. And there is ample evidence to show that women experience a marked ‘Muslim penalty’ in the labour market that becomes more pronounced the more ‘Muslim’ they appear to be, for instance, through their dress choices. Evidence includes the two-year *Moving on Up?* investigation by the Equal Opportunities Commission, a statutory body, and the Young Foundation’s independent research findings, published in 2008 as the *Valuing Family, Valuing Work* report.

Muslim women are also at risk of very specific kinds of violence and marginalization because of racism and Islamophobia in the UK. Muslim women are currently particularly vulnerable to abuse, persecution and discrimination in the public arena because of wider security and political agendas related to the ‘war on terror’ (see the chapter ‘Religious minorities in a post-9/11 world’), as the book *Muslims in the UK: Policies for Engaged Citizens*, by the New York-based Open Society Institute (OSI), acknowledges.

In addition, Muslim women, like all women, are at high risk of specific forms violence. But attempts to understand and address this gender-based violence are often filtered through the lens

**Right:** A young woman receives counselling at the Islamic Sharia Council in Leyton, England, July 2009. Tom Pilston/Panos.

of ‘Muslimness’ by policy-makers, the media and public opinion. One result of this is that the mainstream only hears about violence against Muslim women that can be associated with being Muslim, such as forced marriages and so-called ‘honour crimes’. Another result is that public discourse on these forms of violence blames and demonizes Muslim communities, suggesting that Muslim women are at risk of these forms of violence because of ‘backward cultures’.

In this way, certain types of violence against Muslim women are treated as having to do with belonging to a religious minority, masking the role of sexism and patriarchy in such violence – in effect incorrectly diagnosing the problem. As the Fawcett Society’s 2010 report *Realising Rights: Increasing Ethnic Minority Women’s Access to Justice* notes, when politicians also fall into this trap of primarily blaming ‘culture’ for violence against Muslim women, they ignore the ways in which they are failing to protect a group of their citizens by, for example, ensuring that the police treat all victims and potential victims fairly. As a result, Muslim women remain at risk of those kinds of violence that are painted as ‘cultural’, and are encouraged to believe that the government and the British legal system will not or cannot help them.

### The appeal of parallel options

It is not uncommon for countries to provide different legal routes for different groups of people within the same country. Such parallel options exist to ensure that minorities, such as religious minorities, are fully able to practise their religions or other cultural norms and to avoid imposing majority laws that would directly or indirectly discriminate against them. The range and types of parallel options can vary enormously in different contexts. Some countries have very separate systems of family law for example, while others have supplementary systems for only parts of the legal system or only certain groups of the population.

In the UK, there are a number of instances where Sharia alternatives to mainstream services are legally available to Muslims. British food regulations have been adapted to allow Sharia-compliant



animal slaughter, for example, and the Treasury has approved financial products such as mortgages that are Sharia-compliant. More controversially, Muslims are also allowed to use Sharia courts for mediation and arbitration purposes under existing British law. Under the Arbitration Act 1996, for example, Sharia courts have the power to resolve civil disputes between Muslims. Although the National Secular Society (NSS) argues that these powers are not permitted to extend to areas of family law, there have been reports in the British press that Sharia courts have been issuing rulings on divorce that are being enforced under UK law. According to the NSS, women who do not know their rights may similarly believe that the rulings, which are not necessarily regulated once both parties have agreed to be subject to them, are legally binding and may therefore be operating as though they are in their day-to-day lives.

Where Muslim women are facing extreme disadvantage, discrimination and marginalization in the UK, it is entirely practical for them to seek a new or different way of accessing their entitlements and rights, or to achieve redress or legal recourse. In addition, against a backdrop of racism and Islamophobia, it is perhaps not surprising that the question of introducing separate mechanisms for justice for Muslims crops up. Moreover, where the

public discourse seems to suggest that Britain is either mostly secular, or, if not, Christian, and perhaps even hostile to Islam, it is not unreasonable for Muslims to reflect on their options for maintaining strong ties to their religion and beliefs as minorities.

Research has found that it is these two needs that motivate Muslim women to use informal Sharia courts for arbitration in the UK. According to the BBC, in February 2008, the overwhelming majority of cases that the Islamic Sharia Council (ISC) deals with are about divorce, generally filed by women looking to leave their marriages. Many of these women have reportedly either been forced into marriage, or else are stuck in a marriage because their husbands are not willing to divorce them under Islamic law, the BBC stated.

In a 2001 empirical study of all the matrimonial cases conducted by the Muslim Law Sharia Council (MLSC) in London, Sonia Nurin Shah-Kazemi found that out of just over 300 cases, there were 28 forced marriages and a number of marriages that had only been carried out Islamically, without also having been conducted under English civil law. In her book *Untying the Knot: Muslim Women, Divorce and the Shariah*, Shah-Kazemi discusses how the importance of religion and religious identity for these women are key reasons why they use Sharia

courts for divorce. Even where they might be able to secure a divorce under English civil law, if they do not divorce under Islamic law, they, their family or local community members, who have a large impact on individual behaviour, may feel that the divorce is not complete and that they are still married.

Further, according to a paper published by the Canadian Council of Muslim Women in 2005 entitled, *The Reception of Muslim Family Laws in Western Liberal States*, most of the cases the ISC dealt with stem from this exact situation: women, who had already obtained civil divorces but whose husbands had not consented to Islamic divorces, were appealing to Sharia courts to secure their Islamic divorces.

### The costs of separation

It is clear that informal Sharia arbitration courts are offering something of value to some Muslim women in the UK. However, and as Muslim women's organizations in Canada have successfully argued (see below), these courts can also come at a cost for Muslim women precisely because they are parallel, rather than mainstream, options.

Unfortunately, Sharia courts are not free from wider sexist tendencies in society. In her journal article, 'Muslim women and "Islamic divorce" in England', Lucy Caroll uncovers some evidence that Sharia courts in the UK favour men's perspectives by requiring wives to pay money to their husbands, or return jewellery and money given as marriage gifts, in exchange for divorce. As a result, some Muslim women are effectively being held hostage in their marriages until they can pay for their freedom. Given the statistics on Muslim women's poverty and access to work quoted above, being able to afford divorce against a husband's will may prove impossible and accessing the financial means through family members may represent a significant barrier because of stigma, for example, discouraging women further.

Under the guise of religious obligations, Sharia courts also risk limiting Muslim women's choices. The idea that Sharia courts provide a useful function for Muslim women seeking Islamic divorce reinforces the notion that Muslim women need to secure Islamic divorces to be 'truly' divorced in the eyes of their religion. Without this religious acceptance of their divorce, some Muslim women may believe they cannot remarry, for example. Yet Caroll explains in some detail why Islamic divorces

are, in many cases, not actually necessary at all in the UK. Because marriage ceremonies in the UK must be conducted in a 'registered building' to be valid, the civil marriage ceremony generally precedes any Islamic one. Once married under civil law, the author explains:

*'the nikah then becomes merely a ceremony of religious celebration and blessing, legally without significance in either English or Muslim law as far as the status of the parties is concerned: a man can no more marry a woman to whom he is already married in Muslim law than he can in English law.'*

In these cases, a civil divorce is sufficient from a legal perspective, and would even be recognized in Muslim countries. It is therefore important to ask: whose interests are being served by the myth that additional Islamic divorces are necessary? Sharia courts are proposed as a means of negotiating between the majority rules and minority religious needs. But, as Maleiha Malik writes in her essay in the 2005 book edited by Madeleine Bunting, *Islam, Race and Being British*: 'This recognition of external hierarchies should not blind us to the fact that there are also power hierarchies within groups.'

### Muslim women's experience in Canada

It was to challenge such myths and gender bias that Muslim women's organizations in Canada mobilized against the proposed introduction of Sharia arbitration courts into the Ontario legal system from 2002 to 2006.

According to the National Association of Women and the Law (NAWL), the controversy over the proposal intensified in 2003, when the Ontario Islamic Institute of Civil Justice announced its intention to use the courts to conduct binding family law arbitrations in accordance with Islamic law. Concerned about the impact such faith-based arbitration would have on women's rights, the Canadian Council of Muslim Women (CCMW) took a public position challenging the idea that religious freedom required a parallel system of law and pointing to the threat to women's rights such a move could entail, saying:

*'CCMW sees no compelling reason to live under any other form of law in Canada, as we want the same*

*laws to apply to us as to other Canadian women. We like the Charter of Rights and Freedoms, which safeguard and protect our equality rights. We know that the values of compassion, social justice and human rights, including equality, are the common basis of Islam and Canadian law.'*

In response, the Ontario government appointed Marion Boyd to analyse the problem and propose a way forward. CCMW commissioned two studies with which to try to lobby Boyd: *Applicability of Sharia/Muslim Law in Western Liberal States* and *Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and Its Impact on Women*, the second one jointly with NAWL and the National Organization of Immigrant and Visible Minority Women (NOIVMW). In a press release about the studies' findings, CCMW argued, 'Separate arbitration tribunals to settle family matters under Sharia/Muslim family law will ghettoize and further marginalize vulnerable women.'

Nevertheless, in her 2004 report *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*, Boyd recommended allowing faith-based arbitration within Ontario's family law.

Following publication of the report, CCMW and other women's groups began to campaign against the Ontario government adopting the recommendation. NAWL published a position paper analysing the negative impacts of the proposed faith-based arbitration for women's rights, *Arbitration, Religion and Family Law: Private Justice on the Backs of Women*, arguing:

*'When the resolution of family law matters is relegated to the private domain of arbitration with no limits, there are serious threats to the equality rights of certain vulnerable groups such as women.'*

Soon after, NAWL sponsored an international conference entitled International Perspectives on Faith-based Arbitration. The conference led to the creation of the No Religious Arbitration Coalition, which issued the Declaration on Religious Arbitration in Family Law that was signed by over a hundred groups, of which the CCMW was the first. The text specifically appealed to international agreements on gender equality to challenge the notion that religious freedoms should trump women's rights, saying:

*'We are supported by an international coalition of groups watching closely the Ontario government's decision in relation to Boyd's report. Their concern for the potential erosion of women's rights within constitutional democracies based on religious justifications is in keeping with the provisions of the Canadian Charter, and with international agreements (i.e. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence Against Women) to which Canada is a signatory. We demand that the Government of Ontario both understand the intent of these agreements and ensure that domestic laws and regulations are not in contravention of them.'*

Eventually, and after much public debate, the government of Ontario decided to disallow the use of faith-based arbitration in family law. On 14 February 2006, it passed the Family Statute Law Amendment Act, which states that all arbitration under family law in Ontario should be conducted in accordance with Canadian (including Ontario) law only.

### Muslim women as mainstream not marginal

Although parallel options such as Sharia arbitration courts can seem to provide Muslim women a way to have the best of both worlds – practising their religion while continuing to have all their rights preserved – they risk being a false solution if and when these courts operate outside the mainstream system and national legal scrutiny. In effect, Muslim women are pressured to trade between their rights as women and their rights as religious people.

Some Muslim women will perceive the choice as follows. They can either be Muslims, using Sharia courts that flow from their religious convictions but risk sexist outcomes, or they can be women, getting their divorces from the UK or Canadian legal system that do not necessarily correspond to Islamic thinking but which are formally scrutinized. To be fair, there are still problems of sexism within, for example, the UK legal system, as the UK government's own Corston Report confirmed in 2007. Sometimes this is mixed with a culture of institutional racism, namely the idea that 'their culture allows violence against women'; this is an example of the issue being seen through a filter

of ‘Muslimness’, as described above. But asking Muslim women to be either Muslims or women, as if this is an easy or even possible choice – for some women will feel that it is not – is not a fair request to make. Muslim women are entitled to all of their rights as complete people, and it is the government’s responsibility to provide them.

Providing separate parallel options excuses governments from having to think about how to integrate the needs of religious minorities into the mainstream. It also reinforces the view that religious minorities should negotiate for special accommodation, because the rules of the game are made without bearing in mind their needs or priorities. Moreover, such accommodations end up happening in parallel rather than being integrated. Any adaptation to the needs of religious minorities in this situation is seen as an adjustment of the norm, as if the norm were neutral rather than constitutive of a dominant paradigm that serves those not in a religious minority. Thus, where the core laws that apply to all are not fundamentally altered, religious minorities are seemingly offered the choice of either using parallel options and being marginalized or using mainstream options and sacrificing their religious beliefs.

For Muslim women, this means that their rights and priorities are treated as ‘special interest’ rather than mainstream by decision-makers. This divides the treatment of Muslim women from how other, non-Muslim women are treated. The UK’s parallel option allows a government’s progressive ideas on women’s rights to be suspended suddenly when it comes to Muslim women because they are ‘different’. In practice, this means that compromises are offered legislative, legal and policy scope for those Muslim women who choose to prioritize their religion, when such compromises would not be acceptable for non-Muslim women, given that they risk leading to sexist decisions. In any case, non-Muslim women would be more readily able to seek recourse in the regular court systems for sexist outcomes.

Muslim women have the right not to be discriminated against for their religious beliefs and they have the right to practise their religion too. But Muslim women also have rights as women. Countries that have religious minorities need to treat the needs of women from these groups – as both women and as members of religious minorities – as a central issue. Governments must take responsibility for the needs of *all* their citizens,

not just the ones that are in the majority or that fit the majority’s rules. Muslim women are not part-time citizens.

It is clear that the rules are not working for some people, so a change of system is called for. Obviously minority groups have less power and influence, so governments should be careful about demanding unfair adaptations from people, and human rights laws can help in this area. But ultimately, countries will be stronger, and the rules work better, when they are able to meet the needs of all the people who are bound by them.

A state system that sets itself up as beyond, or not geared towards, religious thinking will present a barrier to those whose lives are lived in religious belief. When those people, in addition, belong to a minority of even those who are religious, the challenge can be compounded. But separate parallel systems for religious minorities are only a temporary solution; they allow governments to avoid having to change to meet the needs of people who are different. They also take power away: Muslim women are encouraged to settle for minority systems and fend for themselves instead of trying to change the mainstream system to meet their needs.

Muslim women in Canada have successfully organized against the introduction of separate parallel systems, in particular the use of Sharia courts for arbitration. Their efforts are useful to consider not only because they revealed the diversity of opinion that exists within the grouping ‘Muslim women’, shattering the notion that Muslim women are an undifferentiated mass, but more importantly because they pushed the state to recognize how it was failing to deliver women’s rights to them. In successfully demonstrating how Muslim women’s rights are women’s rights, just as other women’s rights are, they brought into the mainstream the notion that minority demands are legitimate claims on the state that the majority should be concerning itself with.

## Conclusion

The experiences of Muslim women in Canada and the UK provide several lessons on how industrialized countries need to reflect the needs and priorities of religious minorities on the one hand, as well as better protect women’s rights on the other. More importantly, by focusing on women from religious minorities, we learn that pursuing

each task independently will not only fail to serve these women, it could also risk undermining these women’s rights. Indeed, sometimes the changes proposed for one agenda (i.e. tackling religious discrimination and accommodating the needs of religious minorities) might actually come at the cost of the other (i.e. women’s rights), as the case of unregulated Sharia courts informs us.

Yet parallel options can be appealing to many Muslim women against the backdrop of extreme disadvantage, discrimination and marginalization that in part results when countries do not adequately address the needs of religious minorities generally or Muslim women in particular. This appeal risks being misleading, however. In reality, parallel options can present a false solution to women from religious minorities, forcing them to trade their rights as women for their rights to religious freedoms. This trade is unfair and should not be asked of Muslim women; they are entitled to have all of their needs and rights met – as Muslims and as women – by governments just as others are.

The fact that religion figures centrally in how some Muslim women would like to live their lives is something the state must address from within a commitment to upholding human rights for all women from religious minorities are equal citizens, and, as such their rights constitute legitimate claims which the majority should be concerning itself with. The challenge of reconciling minority religious beliefs with majority laws that do not stem from those beliefs is a fundamental question for democracies and democracy-building. The solution cannot be a short-cut that tells minorities to manage themselves, regardless of the risks to women’s rights. ■