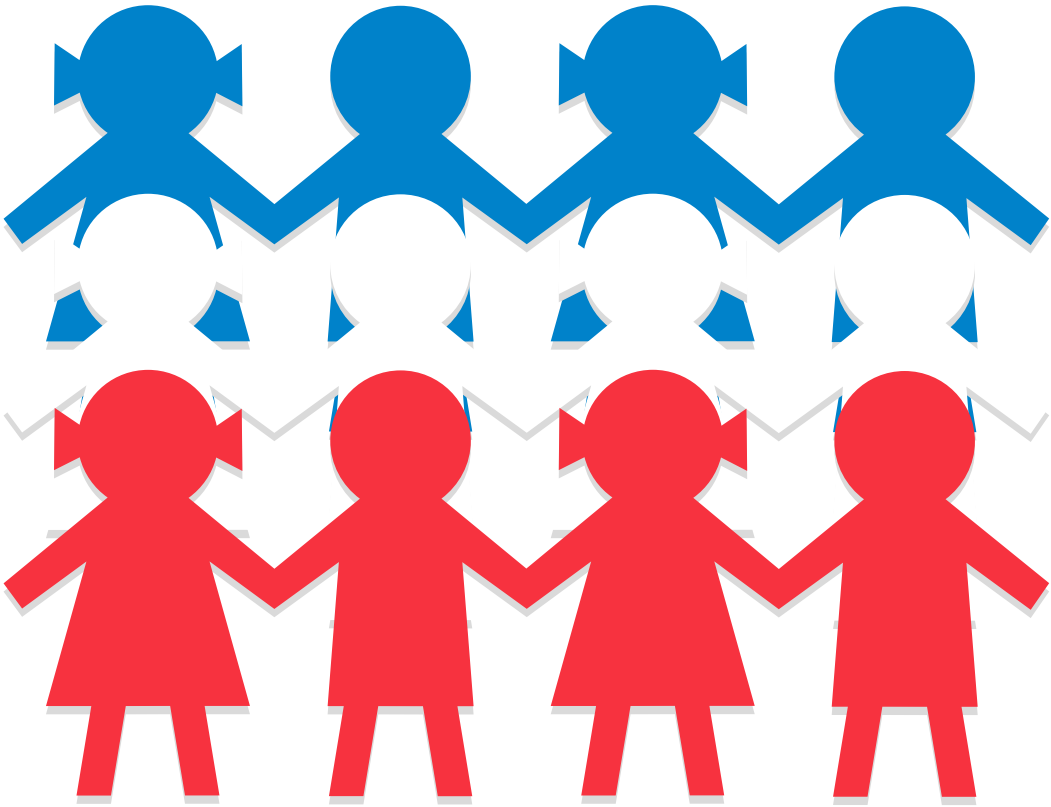
Multiculturalism and Child Protection in Britain:

Sharia Law and Other Failures



ONE LAW *for* ALL

The One Law for All Campaign was launched on 10 December 2008, International Human Rights Day, to call on the UK Government to recognise that sharia and religious courts are arbitrary and discriminatory against women and children in particular and that citizenship and human rights are non-negotiable. The Campaign aims to end sharia and all religious courts from dealing with family or criminal matters, on the basis that they work against, and not for, equality and human rights.

For further information contact:
One Law for All
BM Box 2387
London WC1N 3XX, UK
Tel: +44 (0) 7719166731
onelawforall@gmail.com
www.onelawforall.org.uk

Sharia Law and Child Protection in Britain:
The Failure of Multiculturalism

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Introduction

In October 2011, the BBC reported[1] that more than 400 allegations of mistreatment of children – including violence and sexual abuse – had been made against authorities in Islamic madrassas (Islamic schools where children study the Quran) in Britain. Unlike other schools, Islamic madrassas are not regulated or monitored by the state and there is currently no formal observation of their practices. According to the BBC report: "A senior prosecutor told the BBC its figures were likely to represent the tip of an iceberg" and "Leading Muslim figures said families often faced pressure not to go to court or even to make a formal complaint". In 1986, hitting children was outlawed in schools in Britain under section 47 of the *Education Act* of that year.

In 2010, *The Guardian* reported[2] that between 500 and 2000 young British girls were likely to be subjected to female genital mutilation (FGM) the following year. The *Female Genital Mutilation Act 2003* prohibits FGM on any British resident anywhere in the world; the maximum penalty is 14 years imprisonment. There have to date been no prosecutions for FGM in Britain.

A Civitas report issued in 2009[3] stated that there are at least 85 "sharia courts" operating throughout Britain. These "sharia courts" take the form of councils and tribunals – primarily the Islamic Sharia Council and the Muslim Arbitration Tribunal. The Muslim Arbitration Tribunal acknowledges that it hears and decides upon cases including domestic violence, while the Islamic Sharia Council has confirmed that it has dealt with matters including marital rape (a criminal offence under English law but deemed "impossible" by a sharia court "judge"). In 2009 the then Shadow Home Secretary Dominic Grieve said: "If it is true that these tribunals are passing binding decisions in the areas of family and criminal law, I would like to know which courts are enforcing them because I would consider such action unlawful. British law is absolute and must remain

1 www.bbc.co.uk/news/education-15256764 [accessed 3 May 2013]

2 www.guardian.co.uk/society/2010/jul/25/female-circumcision-children-british-law [accessed 3 May 2013]

3 www.civitas.org.uk/pdf/ShariaLawOrOneLawForAll.pdf [accessed 3 May 2013]

so". Despite this, a government investigation in to the activities of sharia bodies in Britain was dropped in 2011 due to "challenges".

What the above examples indicate is the emergence of a parallel and separate application of the law dependent upon the culture and/or religion of those affected. Indeed, in a letter to One Law for All, the Justice Ministry stated "The Government does not prevent individuals from seeking to regulate their lives through religious beliefs or cultural traditions." We have yet to receive a response to our follow-up question as to how the Government defines "cultural traditions" and whether there is any limit as to what can be encompassed under this heading.

This report aims to raise questions regarding the treatment of children in Britain and in particular the potential influence of Islamic sharia law on their lives. It will examine the advice given by the Islamic Sharia Council with regard to the custody of children and how this conflicts with the demands of the *Children Act 1989*. It will look at the requirements of the *Children Act* and how they are applied in both public and private law matters, and ask if there is a risk that children within Muslim communities are being placed at a disadvantage by being subject to a separate and distinct system which sits outside of the mainstream secular legal system. Reference to British law, UK law, or English law throughout the report refers to the laws of England and Wales, or if relevant, the laws of Scotland or Northern Ireland.

Sharia Law and the Children Act

By Anne Marie Waters, Spokesperson of One Law for All

The Children Act 1989 – Private Provisions

The *Children Act 1989* provides the framework for issues such as child custody, contact, and other important issues with regard to the raising of children. When taking these decisions, courts apply what is known as "the welfare principle" to any and all decisions it makes with regard to child residence and contact. The primary and binding demand of the *Children Act* is that the best interests of the child are paramount. We will now look in great detail at how the courts approach the welfare principle.

The Welfare Principle

In determining what is in the best interests of a child, the courts of England and Wales ask the following questions and apply these to each individual case. They are:

1) The ascertainable wishes and feelings of the child concerned. How much weight is given to this will depend on the age of the child. The Court will not always allow the child's wishes to take precedence as it may feel that the child's wishes are not in his or her own best interests.

2) The child's physical, emotional, and education needs. In this, the Court will look at the child's accommodation, school, and medical needs. It will not equate welfare with material advantage and one parent having more money than the other will not mean the child will live with the more well off parent.

3) The likely effect on the child of any change in circumstances. It is generally felt that disruption to a child's life should be kept to a minimum, and if arrangements are working well for a child, it is unlikely that the Court will change them. Because of this, whoever the child lives with – or is the child's sole or main carer - will be at a considerable advantage.

4) The child's age, sex, background, and any characteristics the Court considers relevant. The age of the child may be taken in to account and it is likely that it will be considered best for a very young baby to live with their mother. However, as a child ages, their own wishes will be considered. Religion, culture, and gender will also be considered under this heading.

5) Any harm the child has suffered or is at risk of suffering. The Court will look at any past abuse of the child and this will cover both physical and psychological injury. It will also consider if the child is likely to be in any danger in the future.

6) The capability of the parents. This involves the Court assessing the parents (or other proposed carers) and their ability to care for the child. Criminal records will be relevant, as will the parent or carer's medical background and mental and physical health.

7) The range of powers available to the Court. The Court has the power to make any order in favour of any person and so this factor encourages the Court to think of other possibilities – in the child's best interests – than the ones mentioned above. For example, the Court may not give residence to the person who applied for it, but to another person altogether – if it feels this to be in the child's best interests.

Further considerations made by courts in the matter of child residence and contact include ensuring that there are not unnecessary delays in proceedings which may harm a child, the availability of orders which can be made on specific issues raised by either parent, and preventative measures to avoid actions being taken by parents (or guardians) which may be harmful to a child. Regardless of the matter before the court, be it contact with a child or who the child will live with, the overriding imperative of the *Children Act* remains that in all matters, the best interests of the child is paramount and supersedes all other considerations. The Islamic Sharia Council however appears to take a rather different view.

The Islamic Sharia Council and Children

The Islamic Sharia Council (ISC) runs the largest network of sharia councils in Britain. It deals primarily with matters of family law and describes itself as "an authoritative body, consisting of a panel of scholars, representing many established institutions in the UK"[4]. Founded in 1982, the Council sought to establish a "quasi-Islamic court [which would] apply Islamic rules in what was presented to it, of the Family problems in particular"[5]. The Council claims to have dealt with about 10,070 cases[6]– the majority of which concerned matters of family law.

As the Islamic Sharia Council does not provide public records of the cases it hears or on how its decisions are reached, there is no way of knowing for certain if, and how many, cases heard by the Council involve matters of child residence or contact. However, on October 25th 2011, in a broadcast entitled "What Would Sharia Do?" on British television, Aina Khan – a family law solicitor who works with sharia law clients – stated the following:

> "Traditionally, sharia councils dealt only with Islamic divorces asked for by women, with time, they've been asked to do mediated solutions for example with children's matters and finance, because the law is so very expensive and so slow so these alternatives have been set up"[7].

Due to the lack of public records, one needs to look to the general advice issued by the Islamic Sharia Council and its online advice service to get an idea of what principles are applied upon questions of children in sharia family law.

In beginning to advise on matters of family law, the Council states the following: "When spouses separate by divorce or annulment, these welfare responsibilities get also split according to best abilities of each parent"[8]. This

4 www.islamic-sharia.org/. Note: quotations referenced at footnotes 4, 8, 9, 10, 11, 12, 13, 14, 44, 46, 47 and 49 were accessed on the ISC's website during 2012 but subsequently removed from the site. Alternative sources and citations are provided where available.

5 www.islamic-sharia.org/4.html [accessed 3 May 2013]

6 www.islamic-sharia.org/4.html [accessed 3 May 2013]

7 Aina Khan, Current TV, What Would Sharia Do?, 25th October 2011

8 Accessed on ISC's website in 2012: subsequently removed. Alternative source: www.turntoislam.com/threads/child-custody-after-divorce-in-islam.46157/ [accessed 3 May 2013]

statement instantly raises some alarms as it does not state, as with English law, that the interests of the children are paramount but instead places emphasis on parents. It goes on to say "While fathers are vested with financial burden and legal guardianship roles, mothers are given role of physical carer and emotive guardian of child(ren)"[9]. This principle implies a sex-related role for women and men and does not take in to account the attributes of the individual parent (without regard to sex) nor does it place the rights or needs of child in first priority.

The Council goes on to state that it believes women to be better placed for raising small children and would "give first preference to a mother's claim to physical custody of her young child"[10]. However, this only applies for as long as the mother does not remarry.

> "A woman came to the Prophet and said: 'Truly my belly served as a container for my son here, and my breast served as a skin-bag for him (to drink out of) and my bosom served as a refuge for him; and now his father has divorced me, and he (also) desires to take him away from me.' The Prophet sallalahu Alaihe wasallam said: 'You have a better right to have him, as long as you do not marry again.'"[11]

Under sharia law, according to the Council, the period for which children live with their mother is referred to as the "period of female custody". This period ends, and custody of children awarded to fathers, at a preset age. The age will depend upon the interpretation or the school of Islamic law applied. The Council states:

> "Till the age of seven the mother has the sole right to have the custody of the child. If she marries someone who is not related to the child, she loses her right in the custody. If the child were still under seven, he would be given into the custody of a female (preferably among the

9 Accessed on ISC's website in 2012: subsequently removed. Alternative source: www.turntoislam.com/threads/child-custody-after-divorce-in-islam.46157/ [accessed 3 May 2013]

10 Accessed on ISC's website in 2012: subsequently removed. Alternative source: www.turntoislam.com/threads/child-custody-after-divorce-in-islam.46157/ [accessed 3 May 2013]

11 Accessed on ISC's website in 2012: subsequently removed. Alternative source: www.missionislam.com/family/husband.htm [accessed 3 May 2013]

> mother's relatives like his maternal aunt or grandmother). But if he is above seven, he is no more in need of a woman's care and he is to be in custody of the father"[12].

It further states:

> "Under the Hanafi School, female custody of a boy ends when he is able to feed, clothe, and cleanse himself. Most Hanafi jurists set this age of independence at seven years, although some set it at nine. Hanafi jurists differ on when a mother's custody of her daughter ends. Most maintain that the mother's custody ends when the girl reaches puberty, set at either nine or eleven years of age"[13].

The above statements on the position of sharia law with regard to the raising of children are demonstrative of conflict between sharia law and the principles of the *Children Act*. It is fair then to question that would happen, for example, if a father were abusive or violent towards his children, and whether the practice of sharia law in such cases places children within a Muslim family at a distinct disadvantage and subjects them to a greater risk of harm. The Islamic Sharia Council does not address this issue.

Does English Law Show Preference to Mothers?

"Islamic Sharia councils have little control over custodial orders. But they have a balancing act to perform when matters are in sharia courts. Currently family courts are overlooking father's rights and input to child(ren) development. Recent high profile public protests reflect that imbalance in the courts orders. There is extensive lobbying and cry to give fathers significant contacts and say in child(ren) development"[14].

12 Accessed on ISC's website in 2012: subsequently removed. Alternative source: www.theunitedmuslims.smfforfree3.com/index.php?topic=78.0 [accessed 3 May 2013]

13 Accessed on ISC's website in 2012: subsequently removed. Alternative source: www.expertlaw.com/library/family_law/islamic_custody-3.html [accessed 3 May 2013]

14 Accessed on ISC's website in 2012; subsequently removed. Alternative source: www.mhsolicitors.com/islam.pdf [accessed 3 May 2013]

It is often cited, including by sharia advocates and practitioners, that English law favours mothers unfairly in matters of child residence (custody). However, as outlined above, it is the Welfare Principle that is applied and followed in such cases. Under the Welfare Principle, the courts try to cause as little disruption as possible to a child's life as it believes this to be in a child's best interests. One of the consequences of this approach is that the child's primary carer will often be at an advantage as a child continuing to live with their primary carer is seen as the least disruptive course. In the majority of cases, a child's primary carer will be their mother and therefore it could be seen that mothers are advantaged because they are mothers – this is untrue; it is the best interests of the child which inform the court's decision.

The Children Act 1989 – Public Protections (Children in Need)

As well as directing judges to place the best interests of children as their paramount consideration on the event of divorce and/or separation of parents, the *Children Act* also provides that local authorities take steps to protect children from harm, and to remove them from their homes if necessary to do so.

Section 17 of the *Children Act* places local authorities (local government councils) in a position of responsibility when it comes to caring for children in their area. There is a duty under the Act to "safeguard and promote the welfare" of children in need. A child in need is one whose health or development "is likely" to be significantly impaired. The practicalities of how authorities are to respond to a child in need varies depending on the circumstances, and can range from supporting parents to the removal of a child from home on a permanent basis.

Among the powers available to local authorities to assist them in cases of children in need are the powers to apply for a care or supervision order to protect a child. A court will make these orders only if the local authority can show that the child "is suffering, or is likely to suffer, significant harm". This harm should be attributable to the care of the parent, or the child being outside of the parents' control. These are the minimum requirements. Case law in this area has determined that when examining whether a child is likely to suffer

significant harm, this meant "a real possibility, a possibility that cannot sensibly be ignored"[15].

In 2011, the London Safeguarding Children Board – which provides advice, guidance, and support to London councils with regard to child safety – issued guidelines on the application of their powers when dealing with cases of children in need. We will focus particularly on the guidance given in the case of domestic violence.

The Home Office definition of domestic violence is "any incident of threatening behaviour, violence or abuse (psychological, sexual, financial or emotional) between adults who are or have been, intimate partners or family members, regardless of gender or sexuality"[16]. The guidance provides that "children of all ages living with a mother who is experiencing domestic violence, are vulnerable to significant harm through physical, sexual, emotional abuse and/or neglect"[17]. Significant harm has been defined as "a situation where a child is suffering, or is likely to suffer, a degree of physical, sexual and/or emotional harm (through abuse or neglect) which is so harmful that there needs to be compulsory intervention"[18]. This was redefined in 2005 to include "the harm that children suffer by seeing or hearing the ill-treatment of another, particularly in the home"[19].

The guidance says that professionals, such as doctors, teachers, sexual health professionals, and GPs should prepare a plan for mothers and children to be made safe if they have been subjected to domestic violence. It goes on to say that if a mother chooses to stay within a violent relationship a multi-agency assessment should be carried out with regard to the safety of the children.

The presence and operation of sharia tribunals in the matter of child residence (custody) does not exclude the protections available in the *Children Act 1989* or make them unavailable to children of Muslim parents, but there is arguably a great risk that the accommodation and expansion of an exclusive system of

15 Re H and R (Child Sexual Abuse: Standard of Proof) [1996] 1 FLR 80

16 www.londonscb.gov.uk/procedures/ (Clause 5.12.2)

17 www.londonscb.gov.uk/procedures/ (Clause 5.12.4)

18 www.londonscb.gov.uk/procedures/ (Clause 5.12.4)

19 www.londonscb.gov.uk/procedures/ (Clause 5.12.5)

family law for Muslims risks taking children out of the mainstream family law system in Britain, and denying them many of its protections. This is particularly worrying given the attitude to domestic violence voiced by sharia advocates and practitioners in Britain.

Sharia Law and Domestic Violence

Shaikh Haitham al-Haddad is a member of the Islamic Sharia Council and a sharia council "judge" in London. In a speech entitled "Why Marriages Fail" Shaikh al-Haddad stated the following:

> "A man should not be questioned why he hit his wife because this is something between them. Leave them alone. They can sort out their matters among themselves. Even the father of the daughter who is married to the man, he should not ask his daughter why you have been beaten or hit by your husband"[20].

Sheikh Faiz-ul-Aqtab Siddiqi is a spokesman for the Muslim Arbitration Tribunal (MAT) headquarters in Warwickshire. In 2008, *The Telegraph* reported that Sheikh Siddiqi stated, with regard to the domestic violence cases being heard by the MAT, that the judges ordered husbands to take anger management classes and mentoring from "community elders". There was no further punishment and criminal complaints lodged with the police were often withdrawn following rulings by sharia courts[21].

In an interview with the BBC in the same year, Sheikh Siddiqi claimed:

> "we do not get involved in any criminal cases, but the only sort of remit we are looking at at the moment, and we are discussing it with the authorities like the CPS and the police at the moment, is where we desire to give – in the case of domestic violence, primarily it's a woman though sometimes it is a man as well – the opportunity to look at an alternative form of resolution"[22].

20 http://standforpeace.org.uk/islamic-relief/ [accessed 3 May 2013]

21 www.telegraph.co.uk/news/uknews/2957428/Sharia-law-courts-operating-in-Britain.html [accessed 3 May 2013]

22 Video was accessed on YouTube in 2012; subsequently removed.

In October 2010, the President of the Islamic Sharia Council, Sheikh Maulana Abu Sayeed stated that rape within marriage is "impossible". He explained:

> "[Marital rape] is not an aggression, it is not an assault, it is not some kind of jumping on somebody's individual right. Because when they got married, the understanding was that sexual intercourse was part of the marriage, so there cannot be anything against sex in marriage. Of course, if it happened without her desire, that is no good, that is not desirable. But that man can be disciplined and can be reprimanded"[23].

In a film produced by *The Guardian* newspaper in 2011, Dr Suhaib Hasan, Secretary of the Islamic Sharia Council, asked a woman who had approached the council whether her husband had ever hit her. She replied that he had hit her once. Dr Hasan then stated "only once? So it is not a very serious matter"[24].

This thinking demonstrates a stark contrast between sharia law approaches to domestic violence and the laws and protections of England and Wales. This is not only evident in terms of the protections provided by the *Children Act* with regard to violence in the home, but also the provisions of the *Family Law Act* which allow women to apply for injunctions against violent partners (Non-Molestation Order) or for an order to remove a violent husband from the home (Occupation Order).

Various concerns may stem from these attitudes, but it must be made clear that sharia bodies such as these do not legally prevent any person from approaching the British legal system for protection. There are growing concerns however that people, women in particular, are pressured and coerced into using sharia councils and tribunals. The volume of people approaching sharia councils in Britain has led some to voice concerns about the possible emergence of a parallel social and legal system for Muslims, which is distinct from that of the non-Muslim majority.

23 www.telegraph.co.uk/news/religion/8064571/Rape-within-marriage-is-impossible-claims-Muslim-cleric.html [accessed 3 May 2013]

24 www.guardian.co.uk/law/video/2011/mar/09/islam-sharia-council-divorce [accessed 3 May 2013]

A Parallel System

One of the concerns often raised about the use of sharia in Britain, with regard to marriage and divorce, is the lack of registered marriages within Muslim families. Unregistered marriages can result in a loss of rights, particularly with regard to property and finances, if that marriage then comes to an end – this is because the couple were not deemed to be married under UK law.

In 2011, the BBC reported an increase in the number of polygamous marriages among British Muslims[25]. British law allows a person to marry only one partner at a time and any breach of this amounts to the crime of bigamy – which can carry a prison sentence. However, as these marriages are taking place outside of the established British system of family law, they are unrecognised and therefore only deemed valid under sharia law. Under sharia law women can be divorced summarily and, as we have seen, can lose all rights over their children at a preset age. In 2010, One Law for All reported a case of a woman who had been married under sharia law and lost custody of her children in the divorce that followed. When she eventually approached UK law in an attempt to regain custody of her children, the UK courts found that the children had lived so long with their father that to remove them now would not be in their best interests. Arguably, the custody rights of her children had been lost as a direct result of her marriage and divorce taking place under sharia rather than English law.

The criminal code of sharia law is one area which causes great controversy across the world. Its punishments include death for homosexuality and adultery, and the amputation of hands for theft. Though most sharia practitioners in Britain deny any desire to implement sharia's criminal codes here, there are signs that this position is ambiguous. In an article in *The Telegraph* in 2008, Sheikh Siddiqi of the Muslim Arbitration Tribunal said he hoped that sharia bodies in Britain would eventually expand into "smaller" criminal cases[26]. It is known for example that at least one case of stabbing has been dealt with through

25 www.bbc.co.uk/news/uk-15032947 [accessed 3 May 2013]

26 www.telegraph.co.uk/news/uknews/2957428/Sharia-law-courts-operating-in-Britain.html [accessed 3 May 2013]

the sharia system[27]. As has been outlined, sharia councils and tribunals are deciding upon cases of domestic violence and rape (both criminal matters) and that complaints have been withdrawn from the police following such rulings in sharia courts.

Leaders of such sharia bodies have also expressed a wish for the full criminal code to be imposed in Britain, and for legal and political dominance. For example, Dr Suhaib Hasan said "If sharia law is implemented, then you can turn this country into a haven of peace because once a thief's hand is cut off nobody is going to steal. Once, just only once, if an adulterer is stoned nobody is going to commit this crime at all. We want to offer it to the British society. If they accept it, it is for their good and if they don't accept it they'll need more and more prisons"[28]

In a Channel 4 documentary "Undercover Mosque", Dr Hasan told a congregation at Green Lane mosque in Birmingham that "Allah has decreed this thing that I am going to be dominant, the dominance of course is a political dominance". He also called for "the chopping the hands of the thieves, the flogging of adulterers, and flogging of drunkards. Then jihad against the non-Muslims"[29].

Given the expansion of sharia law in Britain, and the attitudes of those driving this expansion, questions must be raised as to the future of sharia and the future of the concept of one legal system being applied to all citizens equally. There is arguably a danger that other non-secular belief systems could demand separate tribunals in accordance with their beliefs, and a risk that the democratic principles underlying the UK legal system are being undermined.

27 www.telegraph.co.uk/news/uknews/1535478/Sharia-law-is-spreading-as-authority-wanes.html [accessed 3 May 2013]

28 Divorce, Sharia Style, Channel 4, February 2008: http://video.google.ca/videoplay?docid=7551240419498830429# [accessed 2012; subsequently removed] and We want to offer Sharia law, The Telegraph, 20 January 2008: www.telegraph.co.uk/news/uknews/1576066/We-want-to-offer-sharia-law-to-Britain.html [accessed 3 May 2013]

29 Video was accessed on YouTube in 2012; subsequently removed.

Sharia Law and Children's Rights in Parental Disputes over Residence and Contact

By Lorraine Harding, (retired) senior lecturer in social policy at Leeds University

The law in England and Wales governing important matters of child care, and what used to be called "custody", is embodied in the *Children Act 1989*, a piece of legislation which both consolidated earlier Acts and brought in innovative concepts and measures of its own.

In order to see the *Children Act* in context, it is useful to remember that in this country the history of attempts to shape the law dealing with "custody" and related matters goes back to 1839. We thus had (by the time of the *Children Act*) a hundred and fifty years of progressive refinement of the law designed to respond to the problem of what should happen to children when the adults responsible for them cannot agree. These refinements have increasingly brought to the fore the child's own welfare and interests, and, in latter years, the child's right to have a say in their living arrangements as well. This area of law is not about "mothers" rights" versus "fathers' rights", although it was construed that way for much of the nineteenth century. In fact, since an Act in1925 the law has not assumed that the rights of either parent take precedence; the important criterion in a decision is what is best for the child. While it is sometimes regarded as axiomatic that very young children are better-off with their mother when parents are separated, even this is not taken for granted. What matters is what works for this particular child – so deciding on residence ("custody" has been recast as "residence" since 1991) requires looking at the circumstances of each individual case, in the light of the child welfare principle. This is so also with decisions about "contact" (formerly "access") and other issues in the child's life. The child's welfare is always the paramount consideration, and how the child's welfare is to be construed is the subject of detailed guidance in the Act. All those involved – parents, courts, local authorities, other child care agencies – must always have this particular child's welfare in the focus of their vision.

This, as far as I can see, sharia law on "custody" does not do. It introduces a purely age-related yardstick – usually seven for boys, nine for girls – and assumes that the child under this age should be with the mother, and over this

age with the father, regardless of other circumstances, or indeed the child's own wishes. It is worth remembering that the *Infant Custody Act 1839* also made the age-seven distinction. If a child were under this age, a mother could apply to a court for custody – although her application would not necessarily be successful. If the child were above this age, she had no right even to apply. Later legislation gradually raised the age bar. Thus in a sense we can place sharia law somewhere in the mid-nineteenth century in terms of English law – more "progressive" than the situation pre-1839, but not yet caught up with the 1870s, or thereabouts.

English child care law does not permit religious exemptions – it applies to all children within the jurisdiction. Certainly, regard has to be paid to a "child's religion or culture" by the local authorities and courts making decisions, and this might affect where the child will live. The law sidesteps the difficult question of what "the child's religion" is, as to whether this simply means the religion of the child's parents. However, the factoring in of the child's own wishes and feelings, depending on age and understanding, might seem to give some scope for a child who claims his/her religion and belief is different from that of the parent. The main point here, though, is that the *Children Act* quite clearly applies to the children of Muslim parents living in the jurisdiction. Muslim leaders have no legal basis for claiming that "their" children, as a group, should be governed by a different system of law.

This is taking "Muslim children" as a population. There is one way, however, in which, on a case-by-case basis, it might be claimed that there is a role for sharia courts or tribunals, as mediators, to play a role in the decisions that parents take. This is rooted in the *Children Act* itself and in something called the "no order" principle. Basically, the position of the *Children Act* is that where parents can agree between themselves as to where a child shall live, and on who should have contact with him/her, and on other important decisions, then the court's approach should be "hands off." The "no order" principle means that no order should be made unless the court considers it is definitely better to do so. So if parents reach agreement – and it is assumed that they will have the welfare of their own children as paramount in their eyes when they do this – thus avoiding the trauma of a court case, then all well and good. To this, some might add the

argument that if, in assisting their decision-making, parents bring in a mediator to clarify their options and the way forward, then all well and good too.

I would like to answer this argument, because I think that it could be quite strongly put in the case of sharia law, but also because I also think that the argument fails. Firstly, it is quite clear from what one reads, that Muslim Arbitration Tribunals and similar bodies are not mediating, they are – as their titles suggest – arbitrating. The distinction is crucial. Mediation is based on free and informed consent of the parties involved, is democratic in nature, and does not involve imposing a solution but only helping the parties to reach agreement. Arbitration is something more like a court reaching a judgement which is then binding on the parties. It does not require consent in the same way as mediation, and it must be questioned most strongly whether women, and, in particular, children themselves, consent to residence, contact and other child-related matters being decided by a sharia court or tribunal.

On the matter of mediation, it must be noted that the Islamic Sharia Council describes itself as a body of mediation. However, testimony of women who have attended this council – in any of its locations – confirm that both the Muslim Arbitration Tribunal and the Islamic Sharia Council operate what is essentially an identical system of sharia family law; both acting as "courts" and both imposing sharia law in both family and criminal matters. Though in law, there is a distinction between arbitration and mediation, the operation of sharia in Britain cannot accurately be described as either.

Finally, it must be questioned whether these courts and tribunals are applying the principles of the *Children Act*, whether they have the detailed knowledge of the Act that would be required for them to mediate in this area, and whether they value above all else the welfare of the child in the family before them, and are guided by that. If the courts/tribunals are arbitrating, not mediating; if they are not above all concerned with the child's welfare; if they are simply applying some rigid yardstick which takes no account of the circumstances of this individual child, then there is no place for them under the *Children Act*, despite the "no order" principle and the assumption that informal agreements between parents are better. The place for decisions where parents cannot agree is the secular courts of the country, the courts that clearly operate under the *Children Act*.

Sharia Law in the UK: Compromising Women and Children's Safety

By Fionnuala Murphy, Campaigns Officer, Iranian and Kurdish Women's Rights Organisation (IKWRO)

The Iranian and Kurdish Women's Rights Organisation[30] is a registered charity[31] which provides advice and support to women and girls from the UK's Middle Eastern[32] communities. The main issues facing the women we work with are domestic abuse, forced marriage and "honour"-based violence.

Many of IKWRO's clients need assistance with family law issues such as child residence and divorce. While IKWRO is a secular organisation a large proportion of our clients are Muslims and some of them have resorted to religious arbitration.

In the UK a number of bodies are involved in dealing with family disputes including applications for Islamic divorce under the *Arbitration Act 1996*[33]. The London-based Islamic Sharia Council[34] (ISC) provides rulings and advice in accordance with the four Sunni schools of thought, and primarily handles marital disputes and divorces. The Muslim Law (Sharia) Council UK[35] also provides advice, marriage and divorce services. Muslim Arbitration Tribunals[36] (MAT) have claimed a wider remit and adjudicate on cases involving forced marriage, domestic violence and family breakdown, as well as disputes in relation to debt, commerce and inheritance. Many Muslims also use more informal mechanisms, such as meetings in local mosques, in order to resolve disagreements.

Among women IKWRO has worked with, the main reason for using religious arbitration is to obtain an Islamic divorce. This will often involve wider

30 www.ikwro.org.uk [accessed 3 May 2013]

31 Charity Commission number 1104550.

32 Our client base includes Farsi, Dari, Kurdish, Arabic and Turkish speaking women and girls.

33 www.legislation.gov.uk/ukpga/1996/23/contents [accessed 3 May 2013]

34 www.islamic-sharia.org/ [accessed 3 May 2013]

35 www.shariahcouncil.org/ [accessed 3 May 2013]

36 www.matribunal.com [accessed 3 May 2013]

investigation into why the woman wants to end her marriage, touching on issues such as domestic violence and forced marriage. It can also involve discussions concerning which parent any children should live with and how decisions about the children's upbringing will be taken. IKWRO has three main concerns about religious arbitration in relation to cases involving these issues:

1. In our experience bodies involved in religious arbitration often do not respond appropriately to women and children who have experienced domestic violence, and can actually put them at greater risk.
2. Given the need to protect the welfare of children above all other concerns, religious arbitration should not be used to resolve disputes relating to child residence and contact.
3. Some bodies have adopted attitudes and practices which are harmful to victims of forced marriage.

This chapter discusses these concerns and explores potential incompatibilities between sharia law and UK legislation aimed at protecting women and children.

Inappropriate Responses to Women and Children who have Experienced Domestic Violence

Women and children from ethnic minorities can be especially vulnerable to domestic violence, both because they are less able to seek help (e.g. due to lack of knowledge of their rights, insecure immigration status or language barriers) but also because of cultural attitudes to domestic violence. Many of the women IKWRO works have been brought up to believe that they should accept violence as part of family life. They are often expected to make their marriage work, even where they and their children are experiencing severe abuse. If they decide to leave an abusive husband they can face great stigma from the community as well as pressure, and even threats, from their family. In many cases they will approach religious leaders for help in dealing with their husband's abusive behaviour before seeking other kinds of support.

Many of IKWRO's clients have at some stage gone to an Imam for help. In most cases, they were not offered any practical advice or assistance to enable

them to protect themselves and their children– for example help with accessing safe housing. Instead, the emphasis was placed on preserving family unity.

Case study: Leila

Leila was forced to marry her first cousin when she was in her teens. The marriage took place in a mosque in the UK. From the outset Leila's husband was physically abusive. He threw things at her, twisted her arm, pushed her down stairs, verbally abused and threatened her. He was also voilent towards their three children. He did not give Leila any money and she had got into debt trying to feed and clothe herself and her children.

Leila went to an Imam and asked for help to end her marriage. The Imam told Leila that he would talk to her husband about the abuse and would tell him to give her money. After this the situation became worse. Leila came to IKWRO for assistance and told us that she wanted a divorce.

We discovered that Leila's marriage was never legally registered in the UK, making it more difficut to enforce her rights in a UK court. Leila had very little knowledge of the law and she came under pressure from the Imam and her family to settle things through the mosque. Although IKWRO linked Leila to a solicitor she did not attend appointments and stopped answering her phone. We do not know whether Leila obtained a divorce through the Imam or if she returned to her husband. We are very concerned for Leila and her children's wellbeing.

Leila's experiences are not out of the ordinary. In fact they are very much reflected in the domestic violence section of the MAT website[37] , which despite its subject matter offers no practical advice to women or children who are experiencing abuse at home. The first three paragraphs concentrate on questioning whether domestic violence is really a problem in the Muslim community. The MAT then goes on to acknowledge that some Imams are reluctant to address the issue because they believe that "the practise of domestic

37 www.matribunal.com/cases_domestic_violence.html [accessed 3 May 2013]

abuse derives legitimacy from the Islamic scriptures"[38]. The MAT does not state that this belief is incorrect, but instead vaguely says that its intention is "to dispel certain myths about Islam and domestic abuse and also to discuss avenues for tackling the problem".

In 2008 Sheikh Faiz-ul-Aqtab Siddiqi, founder of the Muslim Arbitration Tribunals (MAT), was quoted in *The Times* and other media outlets[39] as saying that MAT had dealt with six domestic violence cases. In each of the cases the women withdrew complaints they had made to the police and the husband was ordered to attend anger management classes and to receive mentoring from community elders. The MAT webpage on family disputes[40] gives more detail on the MAT's role in encouraging withdrawal of criminal complaints:

"Where there are criminal charges such as assault within the context of domestic violence, the parties will be able ask MAT to assist in reaching reconciliation which is observed and approved by MAT as an independent organisation. The terms of such a reconciliation can then be passed by MAT on to the Crown Prosecution Service (CPS) though the local Police Domestic Violence Liaison Officers with a view to reconsidering the criminal charges."

The "advantage" of this approach according to Sheikh Faiz-ul-Aqtab Siddiqi is that marriages are saved and couples given a second chance. IKWRO is very concerned about the obvious disadvantages in terms of the risk posed to the safety of women and children.

One Law For All's publication on sharia law in Britain[41] found that of the women who went to bodies applying sharia with cases involving domestic violence, 40 per cent actually had court orders against their husbands on the grounds of violence. These orders are aimed at protecting women and their

38 Verse 4:34 of the Koran appears to give permission for the abuse of women:
"Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in their sleeping places and beat them; then if they obey you, do not seek a way against them (Shakir translation)."

39 www..dailymail.co.uk/news/article-1055764/Islamic-sharia-courts-Britain-legally-binding.html [accessed 3 May 2013]

40 www.matribunal.com/cases_faimly.html

41 Sharia Law in Britain: A threat to one law for all and equal rights. Namazie, Atasheen and Waters.

children from violence and ensuring their health, safety and well being. It is extremely worrying that bodies involved in arbitration are convening hearings in violation of these orders.

Furthermore, the MAT seems to be suggesting that violence against women and children can be dealt with simply by a person in authority telling an abusive man to change his behaviour. In reality, for men to change abusive behaviour they need to face serious legal ramifications and to go through a credible offender programme which has been proven to be effective. Mentoring from an Imam or anger management classes, which are being presented as solutions by the MAT, will not address the underlying reasons why men are abusive to their wives and children, and will not challenge the assumptions that men are entitled to control and discipline their wives and other family members. IKWRO is concerned that while operating with a semi-official status, many MAT members appear to have no understanding of effective ways to deal with violence against women and children. In some cases religious leaders have shown not just an ignorance of how to tackle the problem, but an ideological position which is hostile to the idea that women have a right to take control of their own safety and that of their children. A short film made by *The Guardian* using footage from inside a sharia council shows a Sheikh telling a woman that if her husband has only hit her once, it is "not a serious matter".[42] As one woman told IKWRO:

> "If you go there and say you have been a victim of domestic violence they look at you like you're a nuisance, or like you're dirty. They don't have any respect for you. The Sheikh wouldn't even look me in the eye."

Violence against women and children is a serious crime which has wide-ranging consequences for those affected and for wider society. IKWRO has concerns that religious arbitration is not an appropriate means to deal with violence against women and children. These concerns are echoed in the 2009 UN Handbook for legislation on violence against women, which recognises that religious courts can present problems in relation to violence against women and

42 "Inside a Sharia divorce court", 9 March 2011 www.guardian.co.uk/law/video/2011/mar/09/islam-sharia-council-divorce [accessed 3 May 2013]

that they have "been seen to preclude the survivor from seeking redress within the formal justice system". The handbook recommends that "where there are conflicts between religious law and the formal justice system, the matter should be resolved with respect for the human rights of women and in accordance with gender equality standards".[43]

From the provisions of the *Arbitration Act 1996* it is unclear whether bodies engaging in religious arbitration are permitted to adjudicate on cases involving violence against women and children, since this is a criminal matter under UK law. At present MAT are openly engaging in disputes where a crime has been recorded and charges have been brought. IKWRO believes that MAT and other bodies may be going beyond their legal remit by adjudicating on situations where a criminal prosecution is pending. We recommend as a matter of urgency that the UK government clarifies the legal remit of the MAT and other bodies involved in religious arbitration to explicitly exclude cases where violence against women and/ or children has occurred.

Involvement in Disputes Relating to Child Residence and Contact

The MAT and Muslim Law (Sharia) Council UK websites do not mention any involvement in decisions relating to children or to child residence. The website of the Islamic Sharia Council (ISC) does have a page which sets out the Islamic perspective on child custody after divorce[44]. Provisions of note include:

- Custody of young children goes to their mothers, but fathers retain "legal guardianship".
- If a mother remarries after the divorce she forfeits custody of children.
- The period where children live with their mother ends once the child reaches a certain age, which varies from 7 to marriage age (usually the age of 9 for girls under sharia law) depending on the gender of the child and the school of Islamic thought.

43 Section 3.1.5.

44 Accessed on ISC's website in 2012; subsequently removed. Alternative source: www.ummah.com/forum/showthread.php?347035-Which-parent-should-keep-the-child-after-divorce [accessed 3 May 2013]

In response to the recent Arbitration and Mediation Services (Equality) Bill[45] , which aims to limit the remit of religious arbitration tribunals, the ISC published a statement on its website[46] arguing that it advises clients to approach the family courts to settle child custody disputes. However, elsewhere on the same website the ISC states, in relation to child custody, that:

> "Whether the child stays with the mother or the father the other party must have a full right to see the child on agreed terms. If any of the parties is reluctant for the other party to see the child on a regular basis the council regrets not to proceed with the application of divorce"[47].

In other words the ISC actually makes both parents agree that the other can have contact with children as a pre-condition to the granting of Islamic divorce. Even if such agreements are not legally binding, there will be a significant amount of pressure on women to comply.

The ISC also goes on to say that currently the "family courts are overlooking father's rights" and argues that "all major decisions affecting the life of children should be taken in consultation with both mother and father even after separation or divorce". In reality, this approach could pose very real risks to children who have been abused by their fathers or have seen their mothers abused by them. Furthermore, it ignores the fact that contact with children and involvement in decision-making about their lives can be used by men as a means to re-victimise their former partner and perpetuate abuse.

IKWRO is concerned that the ISC requires women to agree to child contact arrangements or to involving an abusive parent in making decisions about a child, when this may be against the child's best interests and in contravention with key UK legislation on protecting children. As set out by the *Children Act* 1989[48], in all decisions regarding the upbringing of a child, the child's welfare should be the paramount consideration.

45 www.publications.parliament.uk/pa/bills/lbill/2010-2012/0072/2012072.pdf [accessed 3 May 2013]

46 Accessed on ISC's website in 2012; subsequently removed. Alternative source for ISC's statement on the proposed Bill is at http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1696&context=iclr

47 Accessed on ISC's website in 2012; subsequently removed.

48 For a summary of the Act see http://en.wikipedia.org/wiki/Children_Act_1989 [accessed 3 May 2013]

The concept of welfare is not defined in the *Children Act 1989* but in decisions relating to child residence and contact. A number of factors known as the "welfare checklist" are used by courts in the UK to help them make decisions about children, particularly in relation to whether they should live with or have contact with one or both parents. The checklist includes factors such as the physical, emotional and educational needs of the child, any harm which the child has suffered or is at risk of suffering and the wishes and feelings of the child.

On their website the ISC claim that "family courts in the UK and west in general are broadly in conformation with Islamic Law of custody"[49] . This statement is extremely misleading, given that the provisions on child custody set out on that same website are not based on the fundamental principle of protecting children's welfare.

The Law Lords have recognised that sharia law conflicts with the right to family life, as protected under Article 8 of the *Human Rights Act 1998* and the European Convention on Human Rights. In 2008 they ruled that a woman could not be returned to Lebanon where she would be separated from her son under sharia law. The woman – referred to as EM – had looked after the boy since he was born, but was in danger of being separated from him under laws that automatically award fathers custody of their children from the age of seven. Lord Bingham called the system "arbitrary and discriminatory" while Lord Hope described it as "created by and for men in a male dominated society[50]".

The provisions of the *Arbitration Act 1996* are not clear on whether bodies engaging in religious arbitration can adjudicate on disputes relating to child residence and contact. IKWRO believes that religious arbitration is not an appropriate means to resolve complex questions of child welfare, particularly in situations where there has been abuse against the children or their mother. We recommend that the provisions of the *Arbitration Act* are clarified, in order

49 Accessed on ISC's website in 2012; subsequently removed. Alternative source: www.mhsolicitors.com/islam.pdf [accessed 3 May 2013]

50 Law lords say Sharia is "arbitrary and discriminatory" by Joshua Rosenberg www.telegraph.co.uk/news/newstopics/lawreports/joshuarozenberg/3239938/Law-lords-say-sharia-is-arbitrary-and-discriminatory.html [accessed 3 May 2013]

to prevent religious arbitration tribunals from taking decisions which relate to children's welfare including adjudicating on child residence and contact disputes.

Harmful Attitudes and Practices in Relation to Forced Marriage

Under UK law forced marriage is defined as "a marriage in which one or both parties do not (or in the case of some adults with disabilities cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure." Forced marriage is a violation of human rights in itself, because it deprives victims of the ability to choose their own partner and to make basic decisions about their lives. It also leads to many other human rights violations including imprisonment, rape, domestic violence and forced pregnancy and child bearing. Under the *Forced Marriage (Civil Protection) Act 2008* and the pursuant statutory guidance on forced marriage, all public bodies have a statutory duty to protect individuals at risk of forced marriage.

Statistics suggest that forced marriage is a serious problem in the UK. The Forced Marriage Unit, a branch of the UK Foreign and Commonwealth Office, dealt with over 1700 cases of forced marriage in 2010. The majority of the victims are young women, and IKWRO has worked on forced marriage cases involving girls as young as 13.

The MAT also deals with forced marriage cases and sets out their approach on the forced marriage page of their website[51]. The focus of that page is not on assisting victims of forced marriage (indeed it makes no mention of what action will be taken to protect young people who are at risk or have been the victim of forced marriage) but rather on ensuring that in marriages where one of the parties is not from the UK, the MAT can issue a certificate certifying that the marriage has not been forced, in order to help them obtain a spousal visa. This fact in itself is unlikely to instil confidence in victims of forced marriage or encourage them to come forward.

51 www.matribunal.com/cases_forced_marriages.html [accessed 3 May 2013]

In their report Liberation from Forced Marriages[52] the MAT goes on to make claims that the incidence of forced marriage between spouses who are both resident in the UK "is remote, as usually both parties have had some say … and an opportunity to get to know one another". In fact the vast majority of IKWRO's forced marriage cases relate to situations where both parties are already living in the UK. We are very concerned that the MAT has made assumptions about forced marriage that simply do not reflect the reality, and has used these as the departure point for their whole approach to dealing with the issue of forced marriage. The practice of forced marriage is most common among certain faith communities, including among Muslims, and religious leaders should be playing a role in tackling the problem, not pretending that it is not there.

The report also provides further detail on how the MAT proposes to intervene in situations where a party is applying to enter the UK for the purposes of joining a spouse. In order to reach their decision on whether coercion has taken place, the MAT first interviews the potential victim's family. This approach conflicts with the Forced Marriage Unit guidelines on forced marriage[53] which unequivocally advise against consulting the family of a potential victim of forced marriage. In IKWRO's experience involvement of the family will deter a victim from speaking about what has happened to them, and can put them in significant danger.

Following this, the person who normally lives in the UK has to make a voluntary deposition stating that the marriage has not been forced. On the basis of this the MAT will make a written declaration that it is satisfied that no force has occurred. The MAT argues that there is no likelihood that a person might be forced to make this deposition, claiming that the party could simply abstain if they wished to. In fact it is our view that if a person can be forced to make a false declaration to UK immigration authorities, then they are even more likely to submit to pressure in the context of the MAT, a male-dominated body where they may have concerns about confidentiality.

52 www.matribunal.com/downloads/MAT%20Forced%20Marriage%20Report.pdf [accessed 3 May 2013]

53 www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf [accessed 3 May 2013]

The MAT then goes on to describe what action it will take in cases where a marriage has been forced, including sending the family a written warning or asking a community elder to visit them. Again, all of this goes against the advice of the Forced Marriage Unit[54] and in IKWRO's experience could put the victim at risk of harassment, violence and even "honour" killing.

The MAT report repeatedly claims that it is the ideal body to tackle forced marriage and argues that the problem "would not befit an official, judicial or governmental jurisdiction. Any such attempts would be deemed by the community as infringement of their civil liberties and the government placing further obstacles prejudicing the Asian community". Forced marriage is a violation of human rights, and most often involves the commission of serious crimes including rape, domestic violence, abduction, forced childbearing and imprisonment. Protecting victims from these crimes must be the priority in any response to forced marriage, and IKWRO is extremely concerned that the MAT should suggest that the community's "civil liberties" in relation to the practice of forced marriage should take precedence over the protection of individuals from it.

We are also concerned at the definitions used by the MAT in their report on forced marriage, particularly the distinction they make between "coerced" marriage where emotional pressure has been applied, and "forced" marriage where other forms of pressure have been exerted. The statutory definition of forced marriage under UK law recognises emotional duress, but the MAT definition does not.

The UK definition also encompasses situations where the victim cannot consent – for example because they are under the age of 16. However the Centre for Islamic Pluralism [55] interviewed some 90 Muslim women living in England and found a number of cases where Imams had encouraged victims of forced marriage "to stay with their husband or with their in-laws, whereby they have a duty bound under the sharia". The report documented the case of a girl who was forced into marriage at 13. She later consulted three Imams and each

54 www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf [accessed 3 May 2013]

55 www.islamicpluralism.org [accessed 3 May 2013]

ruled that she was legally married. When she requested an Islamic divorce this was refused and she was instead advised to go for counselling – thus placing the blame with her rather than with her husband or family[56] . Similarly, a 15 year old girl in Pakistan was tricked into a phone marriage with a man in his 40s who had the mental age of a four year old. According to the study the Home Office refused to recognise the validity of the marriage but the Islamic Sharia Council in Britain accepted it.

Given the examples set out above, IKWRO does not believe that it is appropriate for religious tribunals or councils, or for religious leaders, to adjudicate on forced marriage cases. Undoubtedly religious leaders have an important role to play in challenging forced marriage within their communities. However in the interests of victims – the majority of whom are young and vulnerable – we believe that cases of forced marriage should only be dealt with using the mechanisms and protections established by the *Forced Marriage (Civil Protection) Act 2007*[57] and the UK criminal courts. We strongly recommend that the UK government amends the *Arbitration Act 1996* in order to clarify that forced marriage is beyond the remit of religious arbitration tribunals.

56 http://news.bbc.co.uk/1/hi/7783627.stm [accessed 3 May 2013]

57 www.legislation.gov.uk/ukpga/2007/20/contents [accessed 3 May 2013]

Child Veiling

By Maryam Namazie, Spokesperson for One Law for All

Discussions around the veil are complex. Clearly adult women have the "right" to veil and freedom of clothing (with the exception of the burqa or niqab because of its severe restrictions on women's humanity, movement and visibility). Even so, this "right" is often a mere formality given the pressures to veil.

Child veiling, however, is another matter, which should be considered a form of child abuse and prohibited by law. After all, there is a distinction to be made between adults and children. And whilst adults have the possibility to choose, albeit in many instances only as a formality, this is absolutely not the case for children.

Children are required to do as their parents wish and child veiling is respecting the parent's beliefs rather than the child's who is too young to be able to determine her religious beliefs, if any. Children do not have a religious belief, their parents do. And just as their parents' political beliefs are not automatically imposed on children, neither should religious beliefs. Children are not the properties of their parents but human beings with universal rights. The rights of parents are limited to and conditioned by children's rights.

More generally, veiling is a form of acquiescence to sex apartheid and segregation of the sexes. It confirms that women are the source of chaos or fitna in society, confirming the need to veil and segregate them. Veiling children enforces upon them the very same acquiescence though they are not yet of the age to make such a life-changing decision. Moreover, child veiling sexualises children at a young age and instils in them a belief that they are different and unequal to boys. In some cases, this means different textbooks for girls and the closing of certain fields of study to girls and women solely due to their sex. It also means that girls can no longer swim, socialise with boys, dance, engage in sports, and feel the wind in their hair all because they have reached puberty and are considered "consenting adults" with full responsibility under sharia law. Subsequently, child veiling is directly linked to other areas of child abuse such as child "marriages" or honour killings.

According to Mansoor Hekmat in his piece calling for the prohibition of child veiling [58]:

> "We say that putting a veil on the heads of children and adolescents who have not come of legal age should be prohibited in law, because it is the imposition of certain clothing on the child by the followers of a certain religious sect. It so happens that the defence of the civil rights of the child and the child's right to choose (not an absolute in itself) require that this imposition be legally prevented. The child has no religion, tradition and prejudices. She has not joined any religious sect. She is a new human being who, by accident and irrespective of her will has been born into a family with specific religion, tradition, and prejudices. It is indeed the task of society to neutralise the negative effects of this blind lottery. Society is duty-bound to provide fair and equal living conditions for children, their growth and development, and their active participation in social life. Anybody who should try to block the normal social life of a child, exactly like those who would want to physically violate a child according to their own culture, religion, or personal or collective complexes, should be confronted with the firm barrier of the law and the serious reaction of society. No nine year old girl chooses to be married, sexually mutilated, serve as house maid and cook for the male members of the family, and be deprived of exercise, education, and play. The child grows up in the family and in society according to established customs, traditions, and regulations, and automatically learns to accept these ideas and customs as the norms of life. To speak of the choice of the Islamic veil by the child herself is a ridiculous joke. Anyone who presents the mechanism of the veiling of a kindergarten-age girl as her own "democratic choice" either comes from outer space, or is a hypocrite who does not deserve to participate in the discussion about children's rights and the fight against discrimination. The condition for defending any form of the freedom of the child to experience life, the condition for defending the child's

58 http://hekmat.public-archive.net/en/1035en.html [accessed 3 May 2013]

> right to choose, is first and foremost, to prevent these automatic and common impositions."

Child veiling disregards the rights of the child out of "respect" for religion and parents' beliefs. It is time though that we put the welfare of the child over and above that of her parents or of religion itself.

One Law for All and IKWRO Recommendations for the UK Government

- Recognise that religious arbitration is not an appropriate means to deal with violence against women and children, or family or criminal matters of any kind.
- Clarify the legal remit of religious arbitration tribunals under the *Arbitration Act 1996*, to explicitly exclude criminal matters; particularly domestic violence, and family law matters such as child residence, contact arrangements, marriage and divorce.
- Make it explicit that all bodies involved in arbitration under the Act are performing a public function and therefore come within the remit of UK legislation including the *Children Act 1989*, the *Forced Marriage (Civil Protection) Act 2008*, the *Sex Discrimination Act 1975* and the *Human Rights Act 1998*.

Further Issues on Multiculturalism and the Protection of Children

Female Genital Mutilation

Female Genital Mutilation (FGM) is the practice of removing or altering the external genitalia of girls for non-medical reasons. There are four different kinds of FGM, described below:

1. Clitoridectomy: partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) or in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).
2. Excision: partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (the labia are "the lips" that surround the vagina).
3. Infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner, or outer, labia, with or without removal of the clitoris.
4. Other: all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.

Globally, the World Health Organisation (WHO) estimates that around 140 million women and girls have undergone FGM, and a further 3 million per year are at risk in Africa alone. The practice is common mainly in Middle Eastern and African countries – particularly countries around the Horn of Africa were it is estimated that in Somalia for example, around 90% of women and girls have undergone, or are at risk of, FGM.

The WHO states that there are no health benefits to FGM and that women and girls can suffer a lifetime of pain and complications following the procedure. Health risks identified by the WHO include bladder and urinary tract infections, cysts, infertility, childbirth complications, and a need for surgeries later in life; with FGM type 3 (above) in particular, women often have their vaginas surgically opened and reclosed throughout their lives, either to facilitate sexual

intercourse or childbirth. Other complications experienced by women and girls include blood retention during menstruation and fistula. Fistula is a tear in the wall between the vagina and rectum or vagina and urinary tract which can lead to incontinence and social isolation. It is also believed that women who have undergone FGM are twice as likely to die during childbirth.

The reasons behind the practice of FGM are complex and varied. Justifications range from religion and culture to the preservation of virginity and fidelity. Forward UK, an anti-FGM campaign group in Britain describes the rationalisation of FGM:

"The degree of "fixedness" of FGM varies widely. For example, in some settings FGM persists essentially as a rite of passage whilst in other areas the focus is on the preservation of virginity, chastity and fidelity. The "cultural keepers" of the practice vary as well. Among the keepers in different settings may be excisors, older women in the family or culturally designated groups of women in the community and in some cases even male barbers.

To make sure that people conform to the practice, communities have put strong enforcement mechanisms into place. These include rejection as marriage partners of women who have not undergone FGM, immediate divorce for unexcised women, derogatory songs, public exhibitions and witnessing of complete removal before marriage, forced excisions and instillation of fear of the unknown through curses and evocation of ancestral wrath. On the other hand girls who undergo FGM are provided with rewards, including public recognition and celebrations, gifts, potential for marriage, respect and the ability to participate in adult social functions.

Although FGM has been declared to be a violation of the human rights of women and girls by various influential organisations, and outlawed as a criminal offence in Britain, the practice continues to thrive here, and studies show that the prevalence of FGM is growing in the UK.

It is estimated that around 70,000 women and girls in the UK have undergone FGM. There has never been a prosecution. It was reported in 2012[59] that

59 www.bbc.co.uk/news/health-18900803 [accessed 3 May 2013]

children are now coming to the UK, from other parts of Europe, to undergo FGM because of the failure of authorities here to prosecute offenders. Various comparisons have been made between the UK approach to FGM and that of France. There have been over 100 prosecutions for FGM in France, and practitioners have been imprisoned. According to Isabelle Gillette-Faye, an anti-FGM campaigner in France, French children are being brought to the UK for FGM because, as she put it, "you do not care". In France, mothers and babies attend specialist clinics and girls are routinely examined for signs of mutilation.

Muna, a Somali school-girl living in Britain, told a BBC journalist in 2012 that the statistics on FGM in Britain show how little the Government is willing to do to tackle this. "They are so terrified and they are using cultural sensitivity as a barrier to stop them from really doing anything. What would you do if the girl had blue eyes and blonde hair? Would FGM still be carrying on in the UK?". The cultural sensitivity defence was also mentioned by Aisha, a young girl who had undergone FGM, who reported that she had told her teacher she had been "cut" on a visit to Somalia: "She said, 'That's nice.' She saw it as part of our culture."[60]

Forced Marriage

It is estimated that around 10 million girls around the world every year are married before the age of 18. Plan, an organisation which campaigns to end forced marriage, claim that the result of this includes: violence – the younger a girl is married, the more likely she will be a victim of violence, poor health – girls married young are more likely to contract HIV and suffer greater sexual ill-health, lack of education – girls who are married are denied an education as they are deemed no longer in need of learning[61].

According to statistics, around 8,000 young women and girls are forced in to marriage in the UK each year. In June 2012, Home Secretary Theresa May

60 http://newhumanist.org.uk/2673/the-cutting-season-female-genital-mutilation-and-the-uk [accessed 3 May 2013]

61 www.plan-uk.org/early-and-forced-marriage/ [accessed 3 May 2013]

announced that the Government intends to criminalise forced marriage; the law hitherto providing a civil injunction which can be issued to order parents (for example) not to continue with any "marriage" plans. David Cameron however did not believe this sufficient. He described forced marriage as "little more than slavery" when he ordered a consultation on the matter early in the year.

In 2011, 400 children were assisted by the Forced Marriage Unit in the UK, one of whom was only 5 years old[62]. In 2012, the *Islington Tribune* reported an "alarming number of underage girls – some as young as nine – being forced in to marriage in Islington"[63]. The Iranian and Kurdish Women's Rights Organisation reported then that they believed at least 30 girls in that borough alone, and that "honour"-based violence is often a threat for women and girls who refuse such marriages. "Honour" violence is on the rise in Britain with some areas of the country showing an increase of 305% since 2009[64]. In the summer of 2012, the parents of Cheshire school-girl Shafilea Ahmed were found guilty of her murder having suffocated her for being "too westernised" and refusing a forced marriage.

The response of the authorities to cases such as Shafilea's again highlight the failings of a multicultural or culturally relative approach. In an interview with *The Guardian* in 2009, Jasvinder Sanghera, director of anti honour violence group Karma Nirvana, said: "These are British-born subjects who were taken out of school at 15, yet nobody blinked an eyelid. They are often raped and systematically abused. Yet these horrific crimes are going unchallenged"[65]. Sanghera also reports that she wrote to over 200 schools in Britain offering to speak about this issue, but was invited to just two. She adds "If an Asian child goes missing, I do not believe that their case would be investigated as fully as if a non-Asian child fell off the school roll. I've heard teachers say they think it is part of the child's culture to be taken abroad for an extended length of time; they think they are being culturally sensitive. But I had this girl who was 12

62 www.bbc.co.uk/news/uk-17534262 [accessed 3 May 2013]

63 www.islingtontribune.com/news/2012/jan/islington-girls-forced-marriage-age-nine [accessed 3 May 2013]

64 www.bbc.co.uk/news/uk-16014368 [accessed 3 May 2013]

65 www.guardian.co.uk/society/2009/jan/14/crime-victims-karma-nirvana [accessed 3 May 2013]

when she was taken out of school, taken to Pakistan when she was 14, forced to marry, and raped. She came back to the UK and gave birth to a child in this country, as a minor. Nobody ever asked her any questions about her situation. I believe that of these unaccounted-for children, there will be victims of forced marriages. There's no doubt in my mind about that"[66].

Further evidence uncovered in 2012 confirmed that young girls have been forced in to "marriages" by imams and religious leaders. It was revealed in September 2012 via an undercover investigation by a *Sunday Times* reporter that imams in Britain were agreeing to "marry" young girls to older men, provided such "marriages" were kept secret from the authorities.[67]

Despite this further evidence, successive Governments have thus far refused to take action against, or even to criticise or condemn, sharia-based bodies in the UK.

Witchcraft/Exorcism

In the Old Bailey in 2005, three people were convicted of the torture of an eight year old girl they suspected of being a witch. The child had had chillies rubbed in to her eyes, been beaten, and cut with a knife. Jurors were told that the torture of the child was performed in an attempt to "beat the devil out of her". In the same year, Malcolm Poussaint, an "exorcist" from north London, told *The Telegraph* that the child had indeed been possessed by demons and that he regularly performs exorcisms on children in similar states – at a cost of £70 per child – that there was a "considerable demand" for his services.

Human Rights Campaigner Peter Tatchell reported in 2009 of an increase in exorcisms in Britain – in particular of children and young people thought to be gay. One London church – United Pentecostal Ministry in Harrow – had said that it carries out around 4-5 exorcisms per year on people they believe to be gay. The pastor of the church said that there was no minimum age for the exorcism ceremony.

66 www.guardian.co.uk/world/2008/mar/14/race.gender [accessed 3 May 2013]

67 www.thesundaytimes.co.uk/sto/news/uk_news/Society/article1122316.ece [accessed 3 May 2013]

A case which brought the issue of witchcraft and exorcisms to light in the UK was that of Victoria Climbie who died in 2000 after suffering horrific abuse at the hands of her guardians, who believed her to be possessed by an evil spirit. According to the campaign group Africans United Against Child Abuse (Afruca) this phenomenon has since increased in Britain. In 2012, Afruca chair Prospera Tedam said: "Over the last year, we have seen and worked with 12 cases in the London area of what we perceive as severe abuse and neglect arising from these beliefs of witchcraft." Afruca is campaigning for a change in law to make it illegal to brand someone as a witch.

Ecpat UK, a group which campaigns against the exploitation and trafficking of children, has stated that cultural sensitivity is a major road-block in tackling these abuses. Director Christine Beddoe said in 2012:

"One of the biggest challenges is where professionals have turned a blind eye to perceived cultural practices, even when they are considered harmful to children. They have got to start challenging concerns around cultural sensitivity where there is child abuse. This needs to be documented and agencies need to find a way of synthesising the data."[68]

In August 2012, an action plan to tackle witchcraft-related abuse was launched by the Government. The National Action Plan to Tackle Child Abuse Linked to Faith or Belief was drawn up by faith leaders, charities, social workers and police. The plan urges closer cooperation between social workers and churches and other religious groups, as well as the police. It also calls for greater numbers of prosecutions.[69]

68 www.guardian.co.uk/society/2012/jan/18/child-abuse-witchcraft-exorcism-rise [accessed 3 May 2013]

69 www.bbc.co.uk/news/education-19248144 [accessed 3 May 2013]

Conclusion

Multiculturalism has played a prominent part in political discourse in the United Kingdom for several decades. One Law for All believes that the source of multiculturalism of the kind described in this report is varied and complex; including a misplaced sense of "political correctness" and a reluctance to criticise "other" cultures and practices for fear of being branded racist or imperialist. These fears however are not unfounded. Indeed, many of the proponents of multiculturalism have accused public services – such as police and local authorities – of racism when interventions have been attempted to bring an end to the separate and distinct treatment of people from various minority groups.

Given the serious consequences of accusations of racism for professionals in these fields – such as loss of job or even the possibility of criminal charges – it is not difficult to understand such reluctance on the part of professionals in this field.

It is the belief of One Law for All that accusations of racism are often made quite deliberately to silence critics and to prevent the intervention of state services in the protection of women and children, with the aim of creating a separate social and legal system under the authority of patriarchal "leaders" who wish to impose religious or cultural authority within minority communities.

One Law for All further believes that in allowing such an actuality to occur, British society is guilty of dehumanising people of minority communities and of creating an extremely dangerous – and *truly* racist – attitude to prevail which determines that violence, rape and mutilation are not in fact universally and objectively harmful. We also believe that, in doing so, we are abandoning thousands of women and children to the mercy of misogynistic and violent characters who feign representation of such communities.

One Law for All calls for an unconditional end to state multiculturalism – that is separate and different treatment of perceived separate groups by the state and its institutions – and that the protections and rights long fought for over centuries in this country be applied equally to all people, regardless of race, religion, or cultural or ethnic background.

Sharia Law and Child Protection in Britain:
The Failure of Multiculturalism

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