

# Misinformation and Mystery

Addressing objections from the  
Leyton Islamic Sharia Council

**Office of Baroness Cox**  
**House of Lords**

October 2015

*There is evidence of women being “divorced” under Sharia law and left in penury, wives who are forced to return to abusive relationships because Sharia councils say a husband has a right to “chastise”, and Sharia councils giving the testimony of a woman only half the weight of the testimony of a man.*

**Home Secretary, Theresa May**

*We know of women needing to approach Sharia councils whilst making decisions for divorce. These women can face immense pressure to re-negotiate decisions, which in some cases has led to an escalation of domestic violence.*

**Muslim Women’s Advisory Council**

*There is a growing concern that many Muslim women in Britain today are suffering severe gender discrimination but lack knowledge of their rights under British law... vulnerable women are often inhibited from getting the help they really need.*

**Aurat: Supporting Women**

*Women must be aware of the UK legal system to resolve matters and to seek legal redress. Sharia Councils often overlook children’s rights which should be upheld and supported. It’s essential that all child-related matters are dealt with through UK courts of law.*

**Karma Nirvana**

## BACKGROUND

### **Arbitration and Mediation Services (Equality) Bill**

On 1 June 2015, Crossbench Peer Baroness Cox introduced her Private Members' Bill into the House of Lords for the fifth consecutive year.

The proposed legislation is intended to tackle religiously-sanctioned gender discrimination in arbitration proceedings, informal mediations or pseudo-courts.

While the Bill does not specify any faith tradition, it has specific relevance for Muslim women who are adversely affected by the policies of Sharia councils, with particular reference for example, to discriminatory inheritance provisions, polygamy, access to divorce and domestic violence.

# 1. INTRODUCTION

The House of Lords first debated the Arbitration and Mediation Services (Equality) Bill on 19 October 2012. Despite widespread support from Peers across the House, it was opposed by the Government on the basis that every citizen is equal before the law, and that existing laws provide adequate protection for all women in the areas highlighted by the Bill.<sup>1</sup>

However, the Government has since changed tack and acknowledged various concerns that were raised during the 2012 debate. In September 2014 the Home Secretary Theresa May told the Conservative Party Conference:

*Across the country, there are concerns about the way Shari'ah law is being applied, the way women are told to live and the intolerant attitudes shown to people of different beliefs and ways of life.<sup>2</sup>*

In March 2015 she also said that the Government would, if re-elected, undertake an investigation into the application of Sharia law:

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<sup>1</sup> House of Lords, Hansard, 19 October 2012, cols. 1710-1712

<sup>2</sup> Theresa May speech, 30 September 2014, see <http://press.conservatives.com/post/98799073410/theresa-may-speech-to-conservative-party> as at 16 October 2015

*There are some areas where – like in the application of Shari’a law – we know enough to know we have a problem, but we do not yet know the full extent of the problem. For example, there is evidence of women being “divorced” under Shari’a law and left in penury, wives who are forced to return to abusive relationships because Shari’a councils say a husband has a right to “chastise”, and Shari’a councils giving the testimony of a woman only half the weight of the testimony of a man. We will therefore commission an independent figure to complete an investigation into the application of Sharia law in England and Wales.<sup>3</sup>*

Following the 2015 General Election the proposed investigation was re-confirmed by the Prime Minister David Cameron:

*...we are keeping up the pressure on cultural practices that can run directly counter to these vital [British] values. That’s why the Home Secretary has already announced a review of sharia courts.<sup>4</sup>*

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<sup>3</sup> Theresa May speech, 23 March 2015, see <http://press.conservatives.com/post/115395299770/theresa-may-speech-a-stronger-britain-built-on> as at 16 October 2015

<sup>4</sup> David Cameron speech, 20 July 2015, see <https://www.gov.uk/government/speeches/extremism-pm-speech> as at 16 October 2015

And in October 2015, the Home Office minister Lord Bates said:

*Sharia councils may be working in a discriminatory and unacceptable way. That is why, as part of the forthcoming Counter-Extremism Strategy, [the] Government will commission a full, independent investigation to assess to what extent Sharia is being applied in a manner that is unacceptable. The review will commence following the appointment of an independent chair. The Terms of Reference for the review and its duration will be determined at that point.*<sup>5</sup>

In October 2015 the Government published its Counter-Extremism Strategy which again expressed the concern that “Shari’a is being misused and applied in a way which is incompatible with the law”.<sup>6</sup> It went on to state:

*We will therefore commission an independent review to understand the extent to which Shari’a is being misused or applied in a way which is incompatible with the law. This is expected to provide an initial report to the Home Secretary in 2016.*<sup>7</sup>

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<sup>5</sup> House of Lords, Hansard, 24 September 2015, HL2190

<sup>6</sup> *Counter-Extremism Strategy*, Home Office, October 2015, page 12

<sup>7</sup> *Ibid*, page 19

It remains to be seen whether the Home Office will follow through with such a commitment, and whether its efforts will progress further than the Ministry of Justice's 2011 inquiry into the rise of Sharia councils, which was abandoned because those operating the 'courts' were reportedly unwilling to co-operate.<sup>8</sup>

## Generating debate

A primary aim of the Bill is to engender open enquiry and debate about Sharia courts, which hitherto have been shrouded in mystery and misinformation. Exactly how far do they create a parallel legal system? How many courts across England and Wales operate outside their legitimate remit? To what extent are women coerced into agreeing into arbitration or mediation, which ought to be voluntary? And, with regard to Islamic marriages that are not valid under English law, what measures should be introduced to ensure that women are not misled as to their legal status? In this context, the Government's proposed review is to be welcomed and we look forward to seeing the terms of reference.

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<sup>8</sup> *The Daily Mail*, 30 July 2011

## Islamic Sharia Council (ISC)

One of the oldest of the 85+ Sharia courts in the UK – the Islamic Sharia Council in Leyton, East London – has published a booklet entitled, ‘Response to Baroness Cox’s Arbitration & Mediation Bill’.<sup>9</sup>

In June 2015, shortly after the Bill was re-introduced, the ISC booklet was sent unsolicited to members of the House of Lords and others.

We certainly welcome the ISC’s contribution to the wider debate and invite reasoned engagement from other Islamic bodies too. However, that a booklet issued by, arguably, the UK’s premier Sharia court can be obfuscated by such elementary misrepresentations and false arguments is a real cause for concern, and may of itself be reason for caution about the wider activities of the Council.

The points outlined below aim to highlight those misrepresentations and clarify the purpose of the Bill. It is hoped that by doing so, the urgent need for its provisions may become even more evident.

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<sup>9</sup> *Response to Baroness Cox’s Arbitration & Mediation Bill*, Islamic Sharia Council, see [www.islamic-sharia.org/baronesscox/](http://www.islamic-sharia.org/baronesscox/) as at 16 October 2015



## 2. PRELIMINARY POINTS

### a.) Arbitration and mediation

Pressure on the UK court system has increased the use of alternative methods of resolving disputes, such as arbitration and mediation.

Arbitration is where two or more parties agree an independent person who – having heard the evidence from both sides – will decide their dispute, with a decision which is usually final and binding, and can be enforced by the UK courts under the Arbitration Act 1996.

Mediation involves a neutral facilitator trying to help two or more parties to a dispute reach common ground – a mutually satisfactory agreement. This agreement can sometimes be put before a court. In mediation, the facilitator does not decide the matter, but helps the parties settle their dispute between themselves.

The ISC state that they are ‘not an arbitration service’ (p17). Rather, they exist to ‘facilitate mediation’ (p10). However, as Barrister Neil Addison explains:

*There is, in fact, every reason why the principles of sharia law should not be used as the basis for mediation and that is because mediation does not involve the application of legal rules, whether religious or otherwise, it involves a search for a mutually acceptable compromise. If [an organisation] is applying shariah principles to a dispute, then it is engaged in arbitration not mediation and the two are not the same and should not be treated as if they were the same.<sup>10</sup>*

## b.) The Arbitration Act 1996

It must be understood from the outset that the Arbitration and Mediation Services (Equality) Bill [hereafter 'the Bill'] recognises legitimate forums for arbitration, including Muslim arbitration tribunals.

As the ISC's booklet correctly states (p28), the Arbitration Act 1996 allows parties to agree how civil disputes should be resolved, including choosing to resolve disputes according to the law of another legal system. This legitimately permits arbitration to operate according to Sharia principles. Contrary to the ISC's suggestion that the Bill will undermine the continuation of these provisions (pp28-35), it will not affect

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<sup>10</sup> Addison, N in MacEoin, D, *Sharia Law or 'One Law For All'?*, Civitas, 2009, pages xi-xii

their growth and development in accordance with the law of the land.

## c.) Representation

The ISC is generally accepted within the UK Muslim community as an authoritative body with regard to Islamic law. Its own website claims to have dealt with thousands of cases, mostly relating to matrimonial disputes.<sup>11</sup>

As an established Sharia forum, the ISC appoints an Islamic scholar who acts as a mediator between two parties during proceedings. If one party does not wish to engage in a joint meeting, or if there is a legal impediment which prevents the two parties from being in contact with each other, then the ISC claims not to require engagement.<sup>12</sup>

Such an approach is sensible and commendable. Yet it is not necessarily representative of all Sharia forums in the UK. The ISC booklet makes no attempt to suggest how other so-called ‘Sharia courts’ – such as meetings of community elders which may be presented as able to make legally binding rulings – might operate within a more transparent framework.

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<sup>11</sup> Islamic Sharia Council website, see <http://www.islamic-sharia.org/aboutus/> as at 16 October 2015

<sup>12</sup> Islamic Sharia Council blog, see <http://blog.islamic-sharia.org/?p=73> as at 16 October 2015

## d.) Faith traditions

As was made clear during the 2012 Second Reading debate, if women from other faiths experience comparable problems of systematic discrimination, the provisions of the Bill would also be available for them. The Bill does not specify any religion.

Awareness of the need for the Bill has nevertheless arisen from evidence of problems affecting women and girls due to the application of Sharia law. The intention of the Bill is for these women to enjoy their full legal and civil rights.

## e.) Religious freedom

It is misleading of the ISC to describe the engagement of the House of Lords with the operation of Sharia law principles as a 'dismissal of all facets of Muslim life' (p9). None of the aspects of the Bill inhibit religious groups from dealing with internal theological affairs. Provided they operate within the civil law, they should be free to seek to resolve their disputes within the framework of their faith.

## f.) Contemporary debate

The ISC place the 2012 Second Reading debate firmly in the context of a 'British imperialism that struggled to civilise the

dark races' and a European orientalism that has a 'strong tradition of insulting and dismissing Islam' (p4). The points we outline below do not seek to engage with these, and equivalent, smears. Rather, they address pertinent questions relating to specific provisions of the Bill.

### 3. MISUNDERSTANDINGS AND MISTAKES

The ISC pamphlet identifies seven areas where it either contests the provisions of the Bill or considers that the October 2012 House of Lords Second Reading debate was based on ignorance: the custody of children; the worth of female evidence; inheritance; polygamy/Islamic marriages; domestic violence; court record-keeping; and pressure on women.

Each of the seven reservations are addressed below, though not necessarily in the same order.

#### a.) Inheritance

In theory, arbitration based on Sharia law should be fairly well regulated because it takes place under the Arbitration Act. However, there is a concern that even when these tribunals are operating legitimately, some may be embedding discrimination against women.

For example, a Muslim Arbitration Tribunal in Nuneaton adjudicated on an inheritance dispute between three sisters

and two brothers. In accordance with Sharia law principles, the men were given double the inheritance of the women.<sup>13</sup> The Bill therefore seeks to amend the Arbitration Act in order to strengthen court powers to set aside rulings when discrimination has taken place. In response to this amendment, the ISC write:

*The law has no business telling individuals how to dispose of their property. If a person wishes to leave his estate to the RSPCA or to Battersea Dog's Home, he can do so. If parents wish to divide their estate according to Islamic rules of inheritance, they are at perfect liberty to do so. (p17)*

Indeed, the freedom to decide disputes in accordance with religious beliefs is something that must be vigorously protected. If a woman genuinely and voluntarily accepts a discriminatory judgment with full knowledge of the alternatives available in civil law, then she has the right to do so. But when discriminatory decisions are validated by the force of the law, particularly where women may be unaware of the implications or pressured into accepting rulings based on gender discrimination, then the law itself is brought into disrepute.

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<sup>13</sup> *Coventry Telegraph*, 9 September 2008

## b.) The worth of female evidence

An associated concern relates to Muslim tribunals in England and Wales, which deal with legitimate areas of arbitration as defined by the Arbitration Act, but are nevertheless operating discriminatory practices during the proceedings. As the Home Secretary Theresa May has recently highlighted, this may include policies that define the testimony of a woman as being only worth half that of a man.<sup>14</sup>

The ISC argues that Islamic law regarding female evidence is based on two elements: first, the prevailing social condition of seventh century Arabia in which women rarely dealt with financial matters (pp14-15); and secondly, the second woman in council proceedings is there as a guarantor, rather than as a second witness in her own right. The evidence of a woman is therefore supposedly equal to that of a man (p15).

The booklet does not state whether a man requires a guarantor during proceedings. Nor does it address the apparent gulf between theory and practice. Sania's experience is an alarming case in point. Following an abusive marriage, she had applied to the Dewsbury Sharia Council for an Islamic divorce:

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<sup>14</sup> Theresa May speech, 23 March 2015



*...The Sharia Council then insisted that I brought along two Muslim witnesses to attend the Sharia Council with me to confirm that I was telling the truth. However, [my cousin] did not require any witnesses because he is a man. I did not know any Muslim women who could be witnesses and I didn't want to get anyone from my community involved.<sup>15</sup>*

The need for a provision to address these concerns is not based on 'contempt' or 'ignorance', as the ISC claims (p15), but has arisen from the evidence of women who have themselves been subjected to this form of discrimination.

## c.) The custody of children

The ISC states that, 'under UK law, mediation is not permitted in custody issues' (p12). Yet there is a legitimate role for mediation in divorce proceedings. Litigation can be stayed so that disputes about money, property and children can be resolved with the assistance of a mediator. As Neil Addison explains:

*...since it is usually in a child's interests to keep in contact with both parents, mediation fills an important and valuable role in helping divorcees to reach custody*

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<sup>15</sup> Proudman, C, *Equal and Free? Evidence in support of Baroness Cox's Arbitration and Mediation Services (Equality) Bill*, May 2012, page 19

*and contact arrangements which they can both accept. In reaching such a mediated agreement there is no doubt that religious principles can be important in appealing to the parents' better nature...<sup>16</sup>*

However, this is not equivalent to applying Sharia law rules which relate to child custody – rules that have been described by judges in the House of Lords not only as “arbitrary and discriminatory” but incompatible with the European Convention on Human Rights.<sup>17</sup>

Furthermore mediation has to be voluntary. The role of the mediator is as a facilitator to assist an agreement being reached. The mediator is not a judge or an arbitrator who imposes a decision. If a decision is a genuine mediated agreement, based on an assessment of what is in the best interests of the child, then the court is able to register and enforce it. But concerns arise when the ‘mediation’ process does not consider first a child’s interests.<sup>18</sup>

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<sup>16</sup> Addison, N in MacEoin, D, *Sharia Law*, pages xii-xiii

<sup>17</sup> The case of *EM (Lebanon) v Home Secretary* [[2008] UKHL 64] involved a Lebanese woman seeking asylum in the UK to avoid the provisions of Sharia law that give fathers or other male family members the exclusive custody of children over seven. She left Lebanon because its laws would have required her to give custody of her 12-year-old son to her violently abusive husband; see *Guardian online*, 23 October 2008, see <http://www.theguardian.com/world/2008/oct/23/religion-islam> as at 19 October 2015

<sup>18</sup> See for example: MacEoin, D, *Sharia Law*, pages 95-96 and 116-117

The ISC state that the four Sunni schools of Sharia generally favour the mother in child custody cases, unless she is deemed unfit to take care of the child (p12). They also highlight that across most of the Sunni schools of Sharia, the child can choose for him or herself at the age of seven which parent to live with, although the Maliki school leaves that decision until puberty (p13). Yet concerns remain about the extent to which some women and children may be suffering from discriminatory proceedings. To take one example, a British Muslim woman called Miri recorded her protracted efforts to obtain a divorce from her abusive husband. She was told by a Sharia council to give her husband full access to the children or, if not, hand them over for him to raise.

*This was the ultimate blow for me as I felt I had been waiting all this time only to be told that my children will be taken away from me and my family... I was told that if I didn't accept this then my divorce could not go ahead. I was at the same time in court for the contact for my children with my husband. The courts and the Children and Family Court Advisory and Support Service who were independently going through the case to resolve this in the best interests of the children said my husband was not to have any contact with the children. In court he accepted this without argument due to the level of violence involved. When I told this to the Sharia council they wanted evidence, so I sent them all the court documents.*

*As far I was concerned they had all the required documents and there could be no reason to refuse. Then a letter came stating that I had to return the entire dowry I had in order for the final process. I then wrote back saying that I no longer had the gold jewellery stated on the Nikah (marriage certificate) because all the jewellery had already been sold by my husband in order to pay off his debt. His letter was taken into account and only then was I granted my certificate.*

*It was a long road which I feel should not have taken so long. The pain and stress was unnecessary. I feel I was let down by the Sharia Council and demeaned just for being a woman. And what shouldn't be forgotten is that all this time not only was I suffering but also my children and my family.<sup>19</sup>*

## d.) Domestic violence

Whilst there are legitimate areas of operation for arbitration tribunals which apply Sharia law, there have been reports of some adjudicating on matters well outside the arbitration framework, for example by deciding cases relating to the criminal law, such as those involving domestic violence and grievous bodily harm.

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<sup>19</sup> Proudman, C, *Equal and Free?*, pages 21-22

The Muslim Arbitration Tribunal (MAT) – the highest profile of the Sharia forums operating under the Arbitration Act – has admitted in the past to overseeing six cases of domestic violence, apparently working ‘in tandem’ with police investigations. In each case the women who had been abused withdrew their complaints to the police, while the MAT judges suggested that the husbands take anger management classes and advice from Muslim elders with no further punishment.<sup>20</sup>

Sheikh Faiz-ul-Aqtab Siddiqi, chairman of the governing council of the MAT, said in 2008 that he expected the tribunals to handle a greater number of “smaller” criminal cases in coming years as more Muslim clients approach them.<sup>21</sup> There are clear suggestions that the MAT, despite recognising on its website that it does not have jurisdiction to deal with criminal offences, may be exceeding its remit in such cases in the name of “reconciliation”<sup>22</sup> or “regulating community affairs”.<sup>23</sup>

The Government states that domestic violence is a crime which should be reported to the police.<sup>24</sup> This is echoed in the ISC’s booklet (p25), which says:

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<sup>20</sup> *The Sunday Times*, 14 September 2008

<sup>21</sup> *Loc cit*

<sup>22</sup> Muslim Arbitration Tribunal, *Islamic Divorce and Family Disputes*, see <http://www.matribunal.com/family-dispute-cases.php> as at 16 October 2015

<sup>23</sup> *The Sunday Times*, 14 September 2008

<sup>24</sup> *Report domestic abuse*, 12 November 2014, see <https://www.gov.uk/report-domestic-abuse> as at 19 October 2015

*When a woman approaches the council for a divorce following domestic abuse, she is advised immediately to contact the police... She is never advised to return to her abusive husband.*

It is concerning to note however, that in April 2013, the ISC itself was among the Sharia 'courts' investigated by *BBC Panorama*.<sup>25</sup> The documentary showed an Islamic scholar telling an undercover reporter to only report domestic abuse to the police as a "last resort".<sup>26</sup> When the footage was shown to Nazir Afzal, the then Chief Crown Prosecutor for the North West and himself a Muslim, he said: "I'm disappointed but not surprised. Most of them [Sharia councils] are fine but there are some clearly like this who are putting women at risk."<sup>27</sup>

The ISC responded to the BBC programme via a local newspaper, stating that the court in fact takes a "harsh stance" on domestic violence and that *Panorama's* filming was

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<sup>25</sup> BBC Panorama, *Secrets of Britain's Sharia Councils*, 26 April 2013; *BBC News online*, 7 April 2013, see <http://www.bbc.co.uk/news/uk-22044724> as at 19 October 2015

<sup>26</sup> BBC Panorama, *Secrets of Britain's Sharia Councils*, 26 April 2013; *Telegraph online*, 7 April 2013, see <http://www.telegraph.co.uk/news/uknews/law-and-order/9975937/Inside-Britains-Sharia-courts.html> as at 19 October 2015

<sup>27</sup> *BBC News online*, 7 April 2013, see <http://www.bbc.co.uk/news/uk-22044724> as at 19 October 2015

“underhand”.<sup>28</sup> Its booklet also seeks to clarify that the Council has ‘never knowingly put the safety of any of our clients at risk’ (p25).

The booklet goes on to state:

*If the wife is not happy to sit in the same room as the husband, we arrange a telephone conference call so that she can join in the session from a safe location. (p25)*

However, as the case study below demonstrates, the process involved in ensuring the woman’s safety during proceedings may not always be so straightforward. The testimony was recounted in 2012 by an organisation which provides safe places for victims of domestic violence:

*Nasrin was in fear of her life and lived in a secret location to ensure that she had no contact with her husband. Had she disclosed her address on the application form, which Hasan then received, the consequences could have been life threatening for Nasrin and her son.*

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<sup>28</sup> *Guardian Series online*, 25 April 2013, see [http://www.guardian-series.co.uk/news/wfnews/10379316.Sharia\\_Council\\_defends\\_itself\\_after\\_Panorama\\_expos\\_/](http://www.guardian-series.co.uk/news/wfnews/10379316.Sharia_Council_defends_itself_after_Panorama_expos_/) as at 16 October 2015

*Hasan had three months to respond to Nasrin's application for an Islamic divorce. Hasan eventually wrote back to the Sharia council and stated that he was not willing to divorce and denied being violent towards Nasrin...*

*The head of the Sharia Council insisted that both parties, Nasrin and Hasan, attend a joint meeting in the form of mediation at the Sharia Council. Nasrin was horrified at the thought of this. I then telephoned the Sharia Council and informed them (again) that Nasrin was scared for her life and living in a secret location...*

*The head of the Sharia Council responded stating that the Sharia Council would safeguard Nasrin. I replied stating that the Sharia Council couldn't make such promises. After much debate they reluctantly agreed not to pursue a joint mediation meeting.<sup>29</sup>*

Any woman who does come forward needs the full protection of the law, because she may well be doing so in the face of overwhelming adversity. The Bill therefore makes it explicitly clear in legislation that a victim of domestic abuse is a witness to an offence and therefore should be expressly protected from intimidation. This provision does not seek, as the ISC claim, to 'patronise Muslims as if they are uncivilised' (p23), nor has it been drafted to undermine the Council's efforts to

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<sup>29</sup> Proudman, C, *Equal and Free?*, page 25



respond appropriately to these sensitive matters. Rather, it is designed to strengthen the law surrounding domestic abuse by specifying that victims of such abuse fall within the law preventing witness intimidation.

Since the current law has not been sufficiently effective in confronting individuals or bodies which set themselves up to decide cases outside of their legitimate remit – matters which should be dealt with by the proper authorities – a new criminal offence is introduced by the Bill to bolster the law in this area and clamp down on such undermining of the system.

## e.) Polygamy / Islamic marriages

Most Sharia courts, when dealing with divorce, are doing so purely in a religious sense. They cannot claim to be a civil court able to grant civil divorce; they are simply granting a religious divorce in accordance with Sharia law. In many cases this is all that is necessary for a ‘divorce’ anyway – although a religious wedding ceremony has taken place, the marriage has never been formally registered and is therefore not valid in the eyes of the civil law.

This creates a very serious problem: women who are married in Islamic ceremonies but are not officially married under English law can suffer grave disadvantages because they lack legal protection. As the ISC state:

*Many men who refuse to register their marriage do so either because they are contemplating polygamy or because they wish to deny their wives a share in their wealth should the marriage fail. (p35)*

The situation was highlighted in a recent report by the Muslim women's rights organisation *Aurat: Supporting Women*. The report, authored by Aurat's founder Habiba Jaan, found that women can be unaware their marriage is not officially recognised.<sup>30</sup> Such evidence sits in stark contrast to the ISC's dubious claim that 'Muslims are fully aware that Nikah-only marriages have no official status... they are also aware that polygamy is illegal in Britain' (p20).

As many as 100,000 couples in Britain are estimated to be living in Islamic marriages which are not valid under English law.<sup>31</sup> Of course people are entirely free to 'marry' purely in a religious sense, and not register it under English law – the Bill does not regulate religious definitions of marriage, nor does it seek to 'intrude into the private lives and family institutions of British citizens', as the ISC claims (p21). It simply places a duty on public bodies to ensure that those who have had a religious marriage, or those living in polygamous households,

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<sup>30</sup> Jaan, H, *Equal and Free? 50 Muslim Women's Experiences of Marriage in Britain today*, Aurat: Supporting Women, December 2014, pages 5 and 7

<sup>31</sup> *The Times*, 3 July 2015

are made aware of their legal position and relevant legal rights under English law. The suggestion that this provision will 'turn Britain into Orwell's nightmarish hell where Big Brother watches the bedrooms of his citizens and punishes their misdemeanours' (p21) is altogether misleading.

## f.) Pressure on women

At the heart of both arbitration and mediation is the crucial matter of freely-given consent. In arbitration, both parties agree to submit their dispute to a mutually-agreeable third party for a decision to be made. In mediation, the two parties are voluntarily using a third party to help them reach an agreement that is acceptable to both sides.

However, there are widespread concerns regarding the consent given prior to Sharia court hearings:

- Women may be pressured by their families into going to these courts and may also lack knowledge of their rights under British law;<sup>32</sup>
- Refusal to settle a dispute in a Sharia forum could lead to threats and intimidation;<sup>33</sup> and

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<sup>32</sup> *Sharia Law in Britain: A Threat to One Law for All and Equal Rights, One Law for All*, 2010, page 16

<sup>33</sup> *Loc cit*

- Going to the police or non-Muslim professional and legal sources may be considered culturally unacceptable and shameful.<sup>34</sup>

There is a particular concern that women face pressure to withdraw allegations of domestic violence after they make them. Several women's groups say they are often reluctant to go to the authorities with women who have run away to escape violence because they cannot trust police officers within the community not to betray the girls to their abusing families. For the ISC to respond to these concerns by suggesting that all vulnerable women are 'perfectly capable of accessing services they require' (p27) demonstrates a startling failure to distinguish between a woman's *de jure* rights and the *de facto* reality.

It may well be that many Muslim women choose to refer to Sharia councils rather than civil courts for a whole range of reasons (p27), but it does not then follow that those who are coerced into agreeing to arbitration or mediation should not be supported by the law of the land. That is why the Bill seeks to strengthen court powers to set aside court orders where there is evidence that consent to a mediation agreement was obtained under duress or by manipulation.

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<sup>34</sup> Brandon, J and Hafez, S, *Crimes of the Community: Honour-Based Violence in the UK*, Centre for Social Cohesion, 2008, pages 116 and 117; Jaan, H, *Equal and Free?*, page 12

## g.) Court record-keeping

The bodies which are commonly referred to as ‘Sharia courts’ appear to operate in a number of guises. Some fall within the arbitration framework, able to make legally binding decisions in legitimate arbitration proceedings. Others are constituted as arbitration tribunals but operate outside of their legitimate scope.

The third category includes all other so-called ‘Sharia courts’. One report has estimated that there are “at least” 85 Sharia forums in the UK.<sup>35</sup> Around a dozen of these other bodies are headed by the ISC, which has been operating in this way since 1982.

Most of the remaining Sharia forums are understood to be operating out of mosques around the country or through other arrangements,<sup>36</sup> such as meetings of community elders, which are being presented within some communities as making authoritative and legally binding rulings.<sup>37</sup> As far as we are able to ascertain, these forums keep scant records, and have no right of appeal. There is nothing like the control over justices’ appointment and conduct that applies within secular courts. While the ISC clearly recognises the importance of

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<sup>35</sup> MacEoin, D, *Sharia Law*, page 69

<sup>36</sup> *Loc cit*

<sup>37</sup> See for example *The Mail on Sunday*, 5 July 2009

keeping records for their own council proceedings (pp26-27), no attempt is made to suggest how other forums might operate within a more transparent framework.

## CONCLUSION

The concerns outlined above come back to one central principle: there must be equality for all under a single law of the land. At several key points, the operation of Sharia law principles in the UK today is undermining that principle.

The Arbitration and Mediation Services (Equality) Bill is not the whole solution but it does seek to tackle some of the more flagrant injustices outlined in the 2012 House of Lords Second Reading debate. It does so, principally, by trying to ensure that Muslim women are protected from discrimination and intimidation, and that any attempts by individuals or organisations to establish a parallel legal jurisdiction in this country are prosecuted as unlawful. It is specifically targeted at areas where the existing law appears to be undermined by what is happening on the ground, such as criminal law matters not being dealt with by the proper authorities.

The Islamic Sharia Council's rebuttal booklet is a welcome – though worryingly inadequate – contribution to the wider debate on these complex and sensitive issues. It is hoped that broader dialogue will promote a far more wide-ranging investigation to ascertain the scale of suffering endured by women in our country today and provide a basis for more comprehensive measures to address effectively the causes of their problems.

**Misinformation and Mystery: Addressing objections from the Leyton Islamic Sharia Council**

*October 2015*

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