



Differential Treatment – The Road to Equality Paved with Discrimination?

Case Study of Sharia Law and Gender Inequalities in Great Britain

By

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MA in Human Rights Practice:

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June, 2013

***The degree of civilization of a society is ultimately measured
by the place women occupy.***

(Jacques Chirac¹)

¹ as cited in Saharso 2008:10

DECLARATION FORM

The work I have submitted is my own effort. I certify that all the materials used in this dissertation which is not my own work has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Tina Bedenik

June 5, 2013

ACKNOWLEDGEMENTS

Firstly, I would like to thank for the opportunity to participate in Erasmus Mundus Human Rights Practice Master's programme which has enriched me various ways. Special thanks go to Steven Howlett for the unconditional support he has provided me with on various occasions throughout these two years. The programme would have not been the same without you as our Convenor.

I wish to thank my mother, my ultimate source of moral and emotional support. She never failed once to be there for me. Hvala ti mama!

Finally, I want to thank all my friends, especially Nataša Nikolić and Neala Hickey for every smile they put on my face, and Amell El Guenuni for valuable and occasionally heated discussions on Islam.

ABSTRACT

The main question underpinning this research is the challenge of managing diversity in plural societies, especially when minority practices are incompatible with Western liberal values. Drawing a fine line between condemnation of these practices and development of cultural sensitivity has proved to be one of the most polarizing debates in modern multicultural societies. The dilemma is whether to tolerate and even support minority practices in the form of differential treatment, or to equalize the rights of all citizens which could consequently infringe upon minorities' cultural and religious rights. One of such controversial practices is Sharia law which operates in Great Britain for the last three decades, albeit not officially recognized. Studies have shown that a significant number of Muslims would want to see elements of Sharia law implemented in British legal system (Hennessy and Kite 2006), but its problematic regulations in terms of marriage, divorce and inheritance – which treat men and women in unequal ways – keep raising concern. This thesis aims to examine the relationship between Sharia Councils and gender inequalities they allegedly perpetuate by addressing primarily the validity of arguments for which they are criticized and secondly by anticipating the success the Bill would have in furthering Muslim women's rights. The findings suggest that gender inequalities are based on economical and practical considerations and that the Bill would not further women's rights but rather leave them worse off. In other words, not pursuing legal changes but adopting a free hand policy and allowing Sharia Councils to continue with their work, could be considered as differential treatment which, imperfect as it is, prevents from addressing one problem and creating a set of completely new ones.

Key Words: multiculturalism, differential treatment, equalization of rights, gender inequalities, women's rights, Sharia law, Great Britain

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1. INTRODUCTION

“Women in Britain are begging Islamic scholars to release them from unhappy, even violent marriages” (Corbin 2013). This was the opening line of BBC’s documentary *Panorama: Secrets of Britain's Sharia Councils* broadcasted in April 2013 about Muslim women, majority of whom were subject to domestic abuse, seeking divorce before Sharia Councils. Within couple of seconds this opening line set the tone of the entire documentary, only to support the underlying idea that Sharia bodies operate in parallel to British legal system and inherently discriminate against women. Moreover, the film tacitly backed up Baroness Cox’s *Arbitration and Mediation Services (Equality) Bill* whose primary purpose is to prevent Sharia bodies from ruling on family matters and therefore bring an end to these institutions. Sharia Councils included in the making of the film replied to what they perceived as “pre-determined agenda and stereotype of how shariah councils operate” (The Islamic Shari’a Council 2013) and emphasized that “where there are malpractices, they need to be addressed immediately” (Makkah Masjid 2013) without barring the work of Councils altogether.

Which is the exact nature of relationship between Sharia Councils operating in Britain and gender inequalities they allegedly embody? This is the overarching question this thesis tries to address whilst analysing the case within the wider socio-political framework of accommodating differences in multicultural societies. The title, *Differential Treatment – The Road to Equality Paved with Discrimination?*, was chosen for its twofold meaning. On a general level, differential treatment can be understood in terms of positive discrimination of one entire group or category of people in order to equalize their rights and freedoms to those of the majority. In other words, sometimes it is necessary to deliberately treat people in unequal ways to achieve equality. Nevertheless, on a local societal level differential treatment can be understood in terms of free hand approach to Sharia Councils in order to equalize Muslims’ religious rights to those of other religious communities. Bearing in mind gender inequalities for which these Councils are criticized, pursuing religious freedom of the entire Muslim community might imply glossing over gender disparities existing within the community. Put differently, ensuring equality between communities in exercising religious beliefs could lead to incidental perpetuation of discrimination against women.

1.1. RATIONALE FOR THE RESEARCH

The intersection of minority's rights and women's rights is the point of departure of this research. On one hand, there is this growing notion in contemporary multicultural societies that religious minorities do have the right to practice, in community with the other members of the group, their own religion – the idea emphasized in most notably *Article 27* of the *ICCPR* (1966). On the other hand, after decades of struggle, gender equality is a non-negotiable virtue enshrined in the International Bill of Human Rights – *UDHR* (1948), *ICCPR* (1966) and *ICESCR* (1966) – whilst specifically elaborated in *CEDAW* (1979).

Begs the question, should the state adopt differential treatment and support religious minorities in arranging their lives in accordance with their beliefs which might incidentally discriminate against women? Alternatively, should the state step in and intervene in minorities' internal affairs in order to protect women's rights, despite the risk of encroaching upon minorities' religious freedom? Providing a final answer to this dilemma is beyond the scope of this research, if doable at all. This thesis aims to contribute to the wider discussion on multiculturalism by exploring anticipated success and therefore desirability of implementing differential treatment in case of Sharia law in Britain.

1.2. RESEARCH PROBLEM

The objective of this thesis is to evaluate differential treatment – in the form of allowing Sharia Councils to keep up with their work – as an appropriate measure to ensure religious rights of Muslims, despite the gender inequalities for which these bodies are criticized. In order to do that, is necessary to elucidate the relationship between the Councils and discrimination of women they allegedly embody. This will be done by addressing the following:

1. *For which arguments are Sharia Councils in Britain criticized? How valid are these?*
2. *Which is the anticipated success of Baroness Cox' Bill in furthering Muslim women's rights?*

The thesis tries to show that Sharia Councils do not unjustifiably treat women in different ways than men and, moreover, that the changes Baroness Cox's Bill aims to introduce would place Muslim women in a disadvantageous position compared to the present one. Therefore, by maintaining *status quo* and avoiding any legal changes on that matter, Muslim community would be provided with the opportunity to conduct affairs on their own terms which, in a multicultural context, can be understood as differential treatment.

1.3. CHAPTER OVERVIEW

This thesis is divided into five chapters. After the *Introduction*, that tries to set the scene for the upcoming discussion, comes the *Theoretical Framework and Literature Review* with a somewhat extensive summary of debates surrounding multiculturalism. Two opposed concepts of equality – differential treatment and equalization of rights – are presented, with the advantages and shortcomings of both in order to depict the challenges they pose. The third chapter *Methodology* explains the practical approach employed in this research – the manner in which primary and secondary data was collected, as well as the scope and limitations of this study. The most important and thus comprehensive chapter is the fourth one titled *Case study – Sharia law and gender inequalities in Great Britain*. That chapter explains what Sharia law is all about and identifies the main gender disparities under that law. Arguments against Sharia Councils are examined in order to address research questions presented earlier. Finally, based on the findings deriving from this chapter, *Conclusions and Recommendations* are drawn as part of the fifth and final chapter.

2. THEORETICAL FRAMEWORK AND LITERATURE REVIEW

It is an irony of the present era that the more similar we become, the more we try to remain different.

(Thomas Hylland Eriksen 2007:5)

One of the greatest challenges of contemporary Western European societies is managing diversity. Their multicultural nature is a *descriptive* characteristic which says little about whether *prescriptive* policies should be implemented in order to further this social fact (Joppke 2004). Equality can be understood in terms of difference assertion and embodied in what is usually known as *politics of difference* (Young 1990), *politics of equal recognition* (Taylor 1994) or simply *differential treatment*. By implementing this approach states acknowledge that different people have different ideas of what a good life encompasses and therefore should be treated differently. The opposite concept is *equalization of rights* – a classic liberal response to diversity – usually implemented as part of *neutral politics* (Barry 2001) or *politics of universalism* (Taylor 1994). Advocates of this approach are suspicious of multiculturalist's agenda – dividing citizens into minorities with unequal rights – and argue that all people should be subject to same rights and responsibilities. However, this does not exclude occasional *rule and exemption* approach, but only after a particular case has been carefully examined.

These two contesting concepts of equality underpin the on-going debate in plural societies about *multiculturalism* and *assimilation*, with *integration* usually understood as something in between (Modood in Mahamdallie 2011). Paradoxically, whichever approach the state implements it can be accused of injustice (Eriksen 1993).

2.1. DIFFERENTIAL TREATMENT

Social equality can be understood as the final aim of social justice, implying “the full participation and inclusion of everyone in society’s major institutions, and the socially supported substantive opportunity for all to develop and exercise their capacities and realize their choices” (Young 1990:173). However, in order for everyone to develop and exercise their capabilities, the state might have to step in and support members of some vulnerable groups that are, or have been, subject to violence, oppression and discrimination. This is why proponents of differential treatment claim that equality itself is not enough since “practicing equality, de jure equality, will not necessarily result in de facto equality” (Smith 2007:176). In other words, if equal rights are imposed on people who start at very different positions, the outcomes will be anything but just. But why do people start at different positions to begin with? The answer is rather simple – because of whom they are. The root of the problem is identity.

Deriving from a Latin word *identitas*, the original meaning of identity is *sameness*. However, in order to grasp the complexities emerging from this notion, a comprehensive definition is borrowed from Bhikhu Parekh. He defines identities as those inherited or chosen characteristics which form an important part in peoples’ self-understanding – “identities are valued or devalued because of the place of their bearers in the prevailing structure of power, and their revaluation entails corresponding changes in the latter” (Parekh 2000:2). *Parekh suggests that identities are formed in a dialogue with other members of the society and others’ perception of us affects the way we perceive ourselves*. The same point was made by Charles Taylor who argues that “our identity is partly shaped by recognition or its absence, often by the misrecognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves” (Taylor 1994:25). *In other words, misrecognition and the absence of recognition can lead to a devaluating image of oneself and internalization of inferiority*. Furthermore, bearing in mind that humans are natural as well as cultural beings, it is reasonable to claim that grounding equality in uniformity means pursuing equality in *human* nature, but inequality in *cultural* nature (Parekh 2000). Therefore, in multicultural societies equal treatment would actually mean differential treatment, which is why a cross-cultural application of equality should be implemented instead. Culture, on the other hand, is essential for individual’s development as it shapes one’s world and, going back to beginning of this discussion, provides the individual with a sense of identity (Kymlicka 2000). *To sum up, our identities are influenced primarily by the culture we identify ourselves with, and*

secondly by others' recognition of us as valuable human beings or the absence of thereof. But why are all cultures not equally valuable?

In order to answer the question it is necessary to analyse the *power structure* in which decision on the value of one's identity takes place. This had been done by Iris Marion Young (1990), an eager advocate of differential treatment, whose point of departure is the notion of *oppression*. She focuses on social groups defined by gender, ethnicity, race, religion, lifestyle and culture, all of which are mistreated in modern liberal societies and "suffer from some inhibition of their ability to develop and exercise their capacities and express their needs, thoughts and feelings" (Ibid., p.40). These groups exist in relation to at least one other group and in order to define themselves they need the others. However, due to sharing similar cultural experiences and lifestyle, members of one group are more likely to stick together and less keen on bonding with members of other groups. The oppression members of these groups are subject to is structural and embedded in uncontested norms and customs of liberal societies, reproduced in political, economic and cultural institutions. Therefore, certain social groups suffer because of everyday practices of well-intentioned liberal societies. To make her point, Young beautifully quotes Simone Weil: "Someone who does not see a pane of glass does not know that he does not see it. Someone who, being placed differently, does see it, does not know the other does not see it" (Ibid., p.39).

This brings us to Young's *five faces of oppression* which need to be uprooted in order to establish social equality. These are: exploitation, marginalization, powerlessness, violence and cultural imperialism. The first three refer to social relations of labour – who benefits from whom – whereas violence is self-explanatory. *Cultural imperialism*, on the other hand, is of highest importance for this discussion. Building on the work of Marx who famously said that *the ideas of the ruling class are the ruling ideas*, Young argues that cultural imperialism happens when dominant cultural group universalizes its experiences and projects them as the social norm, while depicting everyone who is different as deviant, but invisible *Other*. Consequently, oppressed cultural minorities identify themselves in two contesting cultures – dominant and subordinated one – and develop *double consciousness*. Namely, they internalize the inferiority they are very much aware of but, paradoxically, also identify themselves in their own subordinated culture as human beings full of potential and demand recognition. For Young, this is the exact point where differential treatment kicks in – *the aim of politics of difference is not only to fight oppression and ensure cultural preservation, but to affirm the positivity of a group difference*. Therefore Young argues for a *dual system of rights*: a general

system of rights which applies to all citizens and a specific system of group rights and policies for members of minorities. Nevertheless, differential treatment will not help in reducing stereotypes and prejudices about subordinated social groups since they are reproduced systematically and unconsciously. It is necessary to change the elements of dominant culture that feed into their oppression – *cultural revolution* should be followed by a *revolution in the subject itself*. Young's last point is almost identical to that of Parekh (2000) who argues that legal and personal changes need to be made in order to achieve public affirmation of all cultures.

Arguments in support of differential treatment could be constructed from another angle – by criticizing equal rights approach, assimilation and ultimately egalitarian liberalism. Taylor (1994) claims that treating people in difference-blind way is inhuman as it cannot accommodate cultural survival, nor can it recognize equal value of all cultures. Equal treatment is often equated with assimilation although this inference has been challenged (Barry 2001). Nevertheless, the negative consequences of assimilation include placing into disadvantageous position members of minority cultures as it “implies coming into the game after it is already begun” (Young 1990:164). Assimilation allows dominant group to generate its experiences from a particular and project them as universal, but also cultural minorities will develop a feeling of inferiority since not being able to conform to dominant culture (Ibid.). It also denies the importance that the culture has for individual's development and goes against the principle of justice which requires equal cultural rights (Kymlicka 2000). Finally, assimilation will surely provoke resistance and, moreover, is not exactly known what minorities are supposed to be integrated into bearing in mind that a coherent and unified culture can rarely be found (Parekh 2000).

On the other hand, liberalism is often equated with state neutrality, but nothing in this inference suggests that liberalism is morally neutral. On the contrary, liberalism itself is an expression of a good life (Dewey in Taylor 1994). In other words, neutrality along with human rights can be understood as a device for enforcing the ideology of the dominant (Blois in Loenen and Goldschmidt 2007). It is argued that liberals tend to absolutize liberalism, making a distinction between liberal and non-liberal, and equating non-liberal with illiberal – “the crudity of this distinction would become clear if someone were to divide all religions into Christianity and non-Christianity and equate the latter with anti-Christianity” (Parekh 2000:110). Finally, liberalism requires a sharp division between the public and the private

sphere, which appears unacceptable especially for religious minorities since religion is not a private matter but encompasses the whole of life (Rex 1996).

Arguments presented above truly do speak in favour of a differential treatment. So, are there reasons good enough to question it?

2.2. EQUALIZATION OF RIGHTS

Contrary to differential treatment, equalization of rights does not intentionally give recognition to any specific cultural identity, but rather seeks convergence to a single national identity (Patten in Choudhry 2008). It aims to establish *homogeneous citizenship* which overrides particular affiliations meaning that „citizens have no obligation to respect each other's cultures, rather they have obligations to respect each other as citizens, irrespective of culture“ (Freeman 2011:138). It was the French Revolution that swept away privileges and special arrangements which clergy and nobility used to enjoy and introduced a uniform system of laws and taxes. By aiming to restore the old system albeit one modification – different bearers of special rights – it can be claimed that “multiculturalists even share the enthusiasm of the thinkers of the Counter-Enlightenment for pre-modern political forms” (Barry 2001:10). A brilliant comment against differential treatment was made by the same scholar – “usually... either the case for the law... is strong enough to rule out exemptions, or the case that can be made for exemptions is strong enough to suggest that there should be no law anyway” (Barry 2001:39 in Joppke 2004).

As discussed earlier, proponents of differential treatment find egalitarian liberalism inhospitable to all ideas of *good* that depart from dominant one. However, liberals argue that *precisely because* people have different notions of what a good life encompasses, the state should not interfere with their choices and further one lifestyle or the other. It is worth remembering that liberal formula emerged as an answer to religious wars between Protestants and Roman Catholics that the 16th century Reformation brought about (Ibid). Until that point religion was politicized and the dominant rule was *Cuius regio, eius religio* – Whose realm, his religion. Liberal approach then flipped things in reverse taking no stand on religion, but leaving it up to people’s private decisions. If it was good enough to end the armed conflicts of

the Roman Empire, how come liberal approach is inadequate to address the problems of contemporary societies?

Despite the fact that the figure of justice is traditionally represented as blindfold, Taylor (1994) criticizes equal rights approach precisely on the basis of being *difference-blind*. The justification of this somewhat controversial aspect of equality could be sought via examining John Rawls' political liberalism. Rawls tried to bridge the gap caused by divisions among citizens over the idea of good religious, moral and philosophical concepts (Wilson 1997). He argued that, in order to ensure stability and justice, people should gather around the overlapping consensus that doesn't revolve around any ideology. Behind *the veil of ignorance*, deprived of any knowledge of their identity, the most rational option individuals would choose is equal basic rights and liberties in order to further their own interests. This implies that some concepts of good – which are incompatible with liberal values – will become extinct, but why is that necessarily a bad thing? One of the three major characteristics of culture is its changeability – it is neither static in time, nor in place (Haralambos and Holborn 2008). *Persisting on a particular lifestyle just for the sake of diversity itself is a weak argument in support of differential treatment, for not every (aspect of) culture is worth saving.*

Furthermore, public recognition and accommodation of various cultures seems difficult for at least two reasons. Firstly, not all cultures respect other cultures, thus how to respect someone that doesn't respect you (Freeman 2011) or in words of Fullinwider: “Why, for example, should I respect the Southern Baptist who believes I am damned for not practicing his brand or religion (...) and why should he reciprocally respect my contempt for his benighted superstition?” (Fullinwider 1995:512). Secondly, recognizing all cultures is logically incoherent since each culture includes beliefs and practices which are incompatible with another one and if “everything is of value, nothing is of value: the value loses its content” (Sartori in Joppke 2004:242). The same point was made by Barry (2001) in his dispute with Iris Marion Young (1990) on cultural revolution. *Every culture includes beliefs and practices which are incompatible with at least another one which is why affirmation of everybody's culture is absurd.* Moreover, for every person who stands for cultural change, there is *at least* one who stands for *status quo*. Finally, judgments about the worth of one's culture should be left in the private sphere to an individual's decision which implies that members of non-liberal groups, should they wish so, “are perfectly free to participate with others in, say, the

observance of a religious faith that is autocratic, misogynistic and bigoted” (Barry 2001:124). The state, however, will give them neither public affirmation for that nor any special weight.

The difficulties with differential treatment can be identified from various standpoints. From a *human rights perspective*, cultural singularities can only be defended to the extent that they don't interfere with individual human rights (Eriksen in Wilson 1997). In other words, the paradox of cultural group rights lies in its power to challenge state hegemony, but inability to guarantee the freedom of the individual (Bano in Yuval-Davis and Werbner 1999). Also, by emphasizing the difference between the majority and minority culture, differences within the minority are overlooked (Asiter in Werbner 1999, Eriksen in Wilson 1997, Mason 2003), problem sometimes known as *minorities within minorities* (Sararso 2008). Ultimately this means that cultural pluralism, as an outcome of differential treatment, could easily be a consequence of authoritarian subgroup domination which violates basic human rights (Bielefield in Loenen and Goldschmidt 2007). From a *sociological perspective* it has been argued that differential treatment is a divisive force since it encroaches upon the social and cultural core of society's dominant values (Bhamra 2011, Moisi 2010) and threatens social cohesion and shared citizenship (Kymlicka 2010). Those arguing from an *economic perspective* claim that differential treatment ignores structural socio-economic inequalities (Barry 2001, Eriksen in Wilson 1997) and undermines class solidarity (Young 2000). It has also been argued that immigrants, or ethnic minorities as Kymlicka (2001) classifies them, have the weakest claim to differential treatment in comparison to national minorities and indigenous peoples. By leaving their countries voluntarily, immigrants have signed an implicit contract (Joppke 2004, Rex 1996) and chosen to give up their human right to their traditional cultural environment (Weigård in Minde 2008, Kymlicka 1995).

Finally, the shortcomings of differential treatment have been identified from a gender-based perspective – *postcolonial feminist theory* has challenged the discourse of (ab)using culture to justify harmful minority practices (Gill and Anitha 2011). One of the most influential and controversial essays on multiculturalism and gender equality is that of Susan Okin (1999) who claims that since many cultures are patriarchal, the ultimate victims of group homogenization are women. She argues that scholars operate with the assumption that citizen is a male and consequently do not ask what women would choose had they been behind Rawls' veil of ignorance. Similar point was made by Yuval-Davis and Werbner (1999) who argue that universals are generated from a particular, often hegemonic and almost always

masculine. Therefore, by homogenising groupings and glossing over gender inequalities, cultural group rights become “a licence to treat minority women in oppressive and inegalitarian ways” (Saharso 2008:5).

Begs the question, should White Western feminists step in and liberate their sisters from the oppressive cultures they are subject to? In the context of Sharia law, Abu-Lughod’s (2002) article title fits here perfectly – *do Muslim women really need saving?* However, there is something rather uncomfortable with this idea. ***The assumption that one can save the other from the harm they are subject to tacitly implies saviour’s moral superiority.*** This idea was the point of departure for scholars who compared, for instance, female genital mutilation in minority cultures and breast implants in the Western culture (Saharso 2008), or dowry murders in India and domestic violence in the USA (Parker 2012, Volpp 2010) only to find out that the reasons evoked to justify oppressive behaviour in minority cultures are very similar to those in the Western culture and yet, the practices of the Western world are *never* labelled as cultural. ***On one hand, this notion helps uncover the bias of classifying cultural practices as such but, on the other hand, it may lead to moral and political paralysis, as it makes it very difficult to criticize oppressive minority practices without being accused of hypocrisy.***

3. METHODOLOGY

In order to examine the issue of differential treatment on a macro lever, a critical analysis of an empirical case will be conducted on a micro level. The case itself – *Sharia law and gender inequalities* – is chosen due to its topicality and controversy it implies, but also due to its representativeness since it perfectly illustrates the challenges surrounding differential treatment in multicultural societies. This applied qualitative social research does not aim to produce new knowledge as much as it tries to increase the understanding of this particular issue which, admittedly, is of small scale. However, when exploring differential treatment, which itself can be understood as a deviation from the norm, there is hardly any other way to go about it but to single out one or more exemplary cases and explore these in the light of *equal rights vs. right to be different* debate. This research is a combination of two different types: *explanatory* and *evaluative* research (Cargan 2007, Kumar 1999, Neuman 2011). It is explanatory as it tries to elucidate the relationship between Sharia Councils and gender inequalities these institutions allegedly embody and perpetuate. Nevertheless, the research is also evaluative as it tries to anticipate the impact that a change of legislation would have for the work of Sharia Councils and consequently for the rights of British Muslim women.

No hypothesis was formulated in the beginning since social world is of high complexity, often unpredictable with little regularities, which makes it difficult to come up with simple cause and effect relationships. Also, focusing of a particular hypothesis might limit the scope of the enquiry since the former can emerge as the research evolves (Cargan 2007, Payne 2004). *Case study* was chosen as a research method since the social phenomena explored here satisfies the necessary preconditions for this research technique to be adopted (Yin 2009). This research seeks an in-depth investigation of Sharia Councils and gender inequalities whilst, as stated earlier, tries to explain the relationship between the two. Also, the issue investigated here is of contemporary nature and there is little possibility for the researcher to manipulate with the behaviour of those involved.

3.1. DATA COLLECTION

The primary data collected for this research comes from two interviews conducted with spokespersons of two oldest and biggest Sharia Councils in Britain – *The Muslim Law (Shariah) Council Wembley* and *The Shari'a Council Leyton*.

The greatest challenge this research posed was the lack of cooperation from Sharia bodies. Besides these two London-based Sharia Councils, several other have been contacted such as *Muslim Arbitration Tribunal MAT* and *Birmingham Shariah Council* where the first female Muslim Amra Bone sits. Furthermore, a prominent British Family law solicitor and Sharia lawyer *Aina Khan* was approached and despite her initial consent to be part of the research, Khan has pulled back due to her professional workload. *All of the institutions and persons above were immediately sent interview questions in order to familiarize them with the subject of the research and assure them of the transparency.* Finally, to understand the work of London-based NGOs advocating against Sharia law, *Diana Nammi*, the founder of *The Iranian and Kurdish Women's Rights Organisation IKWRO* and *Maryam Namazie*, the spokesperson of *The One Law for All Campaign* have been contacted. In both cases an internship/volunteering position has been sought in order to have an insight into daily activities of these two organizations. Unfortunately, both NGOs did not seem to be interested in cooperation.

Despite these initial challenges, the two Sharia bodies which had been willing to collaborate have provided more than enough information for substantive conclusions to be drawn. These two were chosen for the prominent place they occupy in the British Muslim community. The first interview was conducted on April 4, 2013 with *Moulana Shahid Raza*, the executive secretary of *The Muslim Law (Shariah) Council Wembley*. This Skype interview lasted for one hour and it was not recorded, but notes were being taken during the conversation. The second interview was conducted on April 29, 2013 with *Khola Hasan*, the spokesperson for *The Shari'a Council Leyton*. This face-to-face interview took place at the Council and lasted for approximately 90 minutes. At the initiative of Hasan, the interview was recorded by *Umran Malik* from the Council in order to have it uploaded to YouTube, which means it was recorded and transcribed. Both interviews were semi-structured and the initial questions were exactly the same. Despite that, emerging sub questions took the interviews in slightly different directions than anticipated, which proved to be beneficial in the end. The questions were intentionally open-ended, beginning primarily with *how? why? and which?* in order to encourage the interviewees to open up. Also, special attention was given to sensitive

questions about gender inequalities under Sharia law in order to avoid any prejudices and stigmatization of the interviewees.

The secondary data was collected from primarily books and journals for the theoretical framework, as well as from previous research, mass media, legal sources and official websites to support the case study. With regard to the former, an extensive literature review was chosen in order to familiarize the reader with the main debates in the field, but also to depict the challenges both concepts of equality – differential treatment and equalization of rights – pose. As part of the latter, speeches of *Aina Khan*, Family law solicitor and Omer El-Hamdoon, President of the *Muslim Association of Britain* given at the House of Commons on June 28, 2011 during a debate on Sharia law in Britain were transcribed. Just like the primary data, these speeches were analysed by listening repeatedly, taking notes and drawing connections and conclusions. No significant ethical issues emerged while collecting and analysing data.

3.2. SCOPE AND LIMITATIONS OF THE STUDY

As noted earlier, a significant problem encountered in this research was the unwillingness of those operating Sharia Councils to engage in a conversation. Even after the interview questions had been sent out, they were not keen on participating. Therefore, one of the limitations of this research is the *sample size*. Despite the fact that somewhat controversial conclusions on Sharia law and gender inequalities were able to be drawn from only two interviews, *the reliability of this research would have been higher had the sample size been bigger*.

The second issue is about *scientific generalizability and transferability of the findings*. The aim of this case study was to examine one particular case in the context of differential treatment. Whilst the findings might work in its favour, they will say very little about whether ethnic minorities should be given privileges and exemption from the law *in general*. The investigation of one specific case and the resulting conclusions speak exclusively about this case. *Applicability of this research outside the immediate frame of reference is therefore very limited*. However, it needs to be said that a comprehensive study which would allow

evaluating differential treatment altogether may never come about, for the social reality is too complex to be interpreted under a good/bad binary dichotomy.

4. CASE STUDY – SHARIA LAW AND GENDER INEQUALITIES IN GREAT BRITAIN

*Freedom of religion is a very bad idea because it means that
everyone should be left to go to hell in his own way.*

(Theodore Beza²)

Sharia law has been present in Britain for the last three decades, albeit not officially recognized. Studies have shown that a significant number of British Muslims, up to 40 per cent, would want to see elements of Sharia law implemented in British legal system (Hennessy and Kite 2006). Surprisingly, even the former Archbishop of Canterbury Rowan Williams backed that idea convinced it would lead to better social cohesion (Russel and Brown 2008). On the other hand, Sharia law primarily raises the issue of gender inequalities due to its problematic regulations in regard to marriage, divorce and inheritance. That is why organizations like *Iranian and Kurdish Women's Rights Organization IKWRO* and *National Secular Society* advocate against this proposal, backed up by Baroness Cox's Bill. So what is Sharia law all about?

4.1. SHARIA LAW

The literal meaning of the word Sharī'ah is *path to be followed*, or *right path* (Baderin 2003:33). The sources of this religious law include the revealed law found in *Qur'an* and in the traditions of the Prophet Muhammad contained in the *Sunnah*. Qur'an is considered to be the exact word of God revealed to Prophet Muhammad and therefore the principal source of Islamic law. It consists of approximately 6.200 verses and its words are unquestionable and invariable, but perfect and just since they represent the will of the Creator (Gearon 2002). Sunnah consists of Prophet Muhammad's deeds, sayings and approvals on different topics and supports Qur'anic verses by providing necessary details, but also instructions on aspects not covered by Qur'an. In case of any conflict between the two, Qur'an will prevail due to its

² as cited in Loenen and Goldschmidt 2007:239

undoubted authenticity. Together these two sources cover religious, moral, legal, political, social and economic aspects of Muslim's life, which is why it is sometimes called "a total discourse" (Ibid., p.41). This is precisely the problematic aspect of Sharia law. Providing guidance for the whole of one's life, Sharia leaves little room for other systems of rules and regulations enforced through social institutions. In comparison with other major religions whose laws also claim roots in the divine, "none has succeeded as Islam in persuading scholarly believers and unbelievers alike that the law must be considered before anything else" (Bulliet in Bloom et al. 1996:176).

Before any further examination of the rights and responsibilities Sharia law imposes on the individual, it is necessary to acknowledge one thing. Islam and its followers are subject to substantial homogenization, especially after events such as 9/11 and 7/7. Islamic world is often perceived monolithically as *Dar al-Islam*, meaning house of Islam, whereas the rest of the world is understood as *Dar al-Harb* or house of war (Gearon 2002). ***The simplicity of this inference overrides all particularities present in the Islamic world, but also conflicts among Muslims themselves.*** Samuel Huntington (1993) was one of the pioneers of this essentializing approach. Dividing the world into seven or eight civilizations, Huntington claims that the clash of civilizations will dominate future global politics, with the confrontation between the West and Muslim world as the first to come. Arguing that democratic values are less prominent in the Islamic civilization, Huntington fails to explain whether that is because Islam promotes non-democratic values, or perhaps due to the fact that Muslims have traditionally lived under authoritarian regimes (Gearon 2002). To defend Huntington's idea that democratic values, one of which are human rights, are external to the Islamic world would be to claim that the latter is a frozen culture in its premodern formulation incapable of adopting new ideas and institutions (Mayer 1995).

Due to the absence of hierarchical institutions, the social praxis of Muslims varies from one place to another and every individual Muslim has the possibility to choose their own source(s) of spiritual guidance (Ibid.). Therefore there is no such thing as a homogeneous Muslim world. Similar point was made by Hélie-Lucas (Hélie-Lucas in Howland 1999) who made a distinction between *Islam* and *Muslimness*. Islam, she argues, exists nowhere in the material world – it is a religion and an ideology which can be analysed from a theological and philosophical perspective. Muslims, on the other hand, are the ones who materialize the teachings of Islam in a particular political and socio-economic context. It can be therefore

concluded that not everything done by Muslim is Islamic – “Muslimness is man-made, not God given” (Ibid, p. 24). *The implication of this notion highlights a common stereotype of oppressed Muslim women, for the actual rights Muslim women enjoy differ from one society to the other.*

Nevertheless a problematic aspect of Islam, from a human rights perspective, is its emphasis on *duties* rather than *rights*. Muslim individuals have duties towards *God* as well as to the *community*. Starting with the latter, women’s duties vary significantly to those of men. Muslim women are symbols of collectivity and bearers of cultural norms, hence the ones who maintain and protect the identity of the group (Bloom et. al. 1996). Bearing in mind the significance of this role assigned to women, it shouldn’t surprise that control over their social position is an important marker of cultural autonomy (Coomaraswamy in Howland 1999). In other words, imposing strict rules on women is necessary in order to preserve the minority culture. *Therefore, what judging by external criteria can be seen as an expression of misogyny could by internal criteria primarily be a tool to ensure cultural survival of a group.* What follows from this is rather self-explanatory – the more jeopardized group’s identity, the stricter rules for women (Saharso 2008). This might explain why, once settled in a foreign country, immigrant women adhere even more to their traditional cultural and religious norms. The underlying question is to what extent is this adherence an autonomous decision of a free individual, and to what extent is it enforced by their family members.

Responsibilities towards God primarily refer to Muslims’ submission to God’s law which would ultimately lead to an ideal balance in the society (Mayer 1995). This emphasis on Muslims’ duties was expressed in the Preamble of the *Universal Islamic Declaration of Human Rights UIDHR* (1981) adopted by the Islamic Council of Europe – “by the terms of our primeval covenant with God our *duties and obligations* have priority over our *rights*” (emphasis added). The aim of UIDHR is to demonstrate the compatibility of Islam and human rights and moreover to ensure Islamic legitimacy of international human right. Despite that, in terms of gender equality, freedom of religion and the rights of non-Muslims, Declaration does contain exemptions from individual rights (Banchof and Wuthnow 2011). However, even if the Western notion of individual human rights might seem alien to traditional Islamic thought, Islam does emphasize the importance of *human dignity*. Article 1 of *Cairo Declaration on Human Rights in Islam CDHRI* (1990) states that “all men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of

race, colour, language, belief, sex, religion, political affiliation, social status or other considerations”. Similarly to UIDHR whose foundations are Qur’an and the Sunnah, the creators of Cairo Declaration emphasized Islamic Sharia as its cornerstone. The question remains whether this notion of equal human dignity of men and women, embodied in Sharia law, also implies equal rights of Muslim men and women. To address it, gender inequalities deriving from Sharia law have to be explored.

4.2. GENDER INEQUALITIES UNDER SHARIA LAW

Scholars are generally consistent in locating those gender inequalities, deriving from Sharia law, which discriminate against women. The most common issues that raise concern are:

- Presupposed male superiority
- Marriage
- Divorce
- Inheritance.

In the examination of these controversial aspects of Sharia law, English version of Qur’an will be the point of departure. It has to be emphasized that originally Qur’an is a law revealed in Arabic language and in the process of translation subtle misinterpretations are almost bound to happen. This confusion is sometimes used by Islamic scholars to criticize Western perception of Islam as a religion that legitimizes discrimination of women. However, legal comparisons of, for instance Arabic and English versions of *UIDHR* and *Cairo Declaration* have shown that gender inequalities present in Arabic version can be disguised in the English version (Mayer 1995).

4.2.1. PRESUPPOSED MALE SUPERIORITY

(...) But the men have a degree over them. (Qur’an 2:228)

This Qur'anic verse is often used in order to legitimize subordination of women, especially by conservative Islamic scholars (Ibid.). Two things here require further investigation. Firstly, it is not entirely clear *in what* do men have a degree over women. English version mentions two factors – advantage and responsibility (Qur'an 2013). However, it was pointed out that both of these are not explicit statements of Islam, but rather understandings of the interpreters (Baderin 2003). Secondly, it is questionable whether this verse refers only to a particular social context such as family institution, or can it be extended to male-female relations in general (Ibid.) If understood in the context of family dynamics, then establishing authority and structure can be seen as an essential prerequisite of a group cohesion and harmony.

And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her (Qur'an 2:282).

Some Islamic scholars support this verse with arguments about, allegedly inherited, female intellectual inferiority. The underlying idea is that the majority of women are subordinated to men in reason and “scientific and specialized studies have shown that men’s minds are more perfect than those of women, and reality and experience bear witness to that” (Saalih Al-Munajjid 2013). It would be hard to contradict that this verse portrays women as inferior second-class citizens incapable of rational engagement, in comparison with the opposite sex. Therefore this verse does consolidate prejudices and perpetuates gender inequalities.

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard (Qur'an 4:34).

This is an example of another problematic Qur'anic verse which seems to work explicitly in favour of men. Due to the fact that men are responsible for women’s economic well-being, they also have more rights than women do – “women’s financial dependence on men is in turn the consequence of other Shari’a rules that keep women housebound and excluded from remunerative activity (Mayer 1995:107).

But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them (Qur'an 4:34).

If understood literally, this verse legitimizes what in modern societies would be classified as domestic violence. The aim of the physical punishment of women is to bring about consent when conflicts arise and therefore to maintain family cohesion (Abdel Halim in Howard 1999). However, few would argue that consent obtained by physical force constitutes a genuine consent of a free person. Qur'an has addressed the issue of mistreatment of women, but primarily in the context of reconciliation:

And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best (Qur'an 4:128).

4.2.2. MARRIAGE

With regard to marriage and gender equality in Islam, two major issues raise concern – polygamy and the restrictions of women's choice whom to marry.

(...) Then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice] (Qur'an 4:3).

This verse is used to justify polygamy for men – upon the condition that all wives are treated in a just way – whereas there is no equivalent provision for women ensuring their right to polyandry. The underlying reasons for polygamy were various: demographic needs, economic factors, wife's barrenness and higher sexual needs of a man (Baderin 2003), which could be easily contested nowadays. To establish genuine gender equality in Islam two things could be done – firstly depart from this archaic practice by banning polygamy and secondly by

equalizing the rights of men and women. The latter solution – polyandry – was explored by some Islamic scholars and criticized on a fairly sound ground: it could easily lead to family and societal disintegration since the legitimacy of the offspring would be impaired (Ibid.). Nevertheless, bearing in mind another verse – *and you will never be able to be equal between wives, even if you should strive (Qur'an 4:129)* – it could be concluded that in Islam monogamy is the preferred way of living and polygamy is more of a solution to crises.

O you who have believed, when the believing women come to you as emigrants, examine them. Allah is most knowing as to their faith. And if you know them to be believers, then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them (Qur'an 60:10).

In Islam a Muslim woman is prohibited from marrying a non-Muslim, whilst a Muslim man is free to marry the people of the Book – Jewish and Christian women. This restriction, whilst completely unacceptable by international human rights standards, was justified on the grounds of potential coercion of women into another religion. Namely, a Muslim man has to respect the religion of his Jewish or Christian wife, but no obligation of this type can be imposed on a non-Muslim man. In other words, it is a feasible for a non-Muslim man to persuade his Muslim wife into abandoning Islam and adopting his religion. In order to prevent this, the rights of Muslim women of whom they can marry have been restricted.

4.2.3. DIVORCE

Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment (Qur'an 2:229).

Obtaining marriage dissolution in Islam is easier for men than for women. A man can have marriage dissolved via unilateral repudiation (*talâq*) which is the simplest way of obtaining a divorce exercised exclusively by the husband (Baderin 2003). A woman has no such privilege, but instead she has to initiate discharge (*khul'a*), a mutual agreement with a husband's consent (*mubâra'ah*) or judicial order on limited legal grounds (*faskh*). The misuse of man's power to

end the marriage has also been noted from the early period of Islam, as well as withholding consent once a woman initiates a divorce (Ibid.). Also, the process of obtaining it is time-consuming and by protracting the period necessary to reach a decision the Islamic authorities could be punishing women for not having maintained their marriages (Proudman 2012). Furthermore, in Islamic communities divorced women are subject to isolation as remarrying them is still considered to be a taboo.

After the husband has pronounced *talaq* the waiting period *iddah* begins. It lasts for three months, unless the wife turns out to be pregnant in which case it ends with the birth of a child. During *iddah* the wife is allowed to stay in the same house, but they cannot engage in sexual relation (The Islamic Shari'a Council 2013). During *iddah* the husband can take the wife back either verbally by saying "I take you back", or physically by having intimate relation with her. If that doesn't happen, the wife is then divorced and has to leave the matrimonial home (Ibid.). In regard to financial relations following *talaq*, the husband has the obligation to support the wife which ends along with *iddah*.

4.2.4. INHERITANCE

Allah instructs you concerning your children: for the male, what is equal to the share of two females (Qur'an 4:11).

Under Islamic law male and female heir will not receive an equal share of inheritance. However, it needs to be said that in particular circumstances female heir can get the same or even double the share of inheritance of a male heir, which contradicts any presumption of unfair treatment of women under Islamic law (Baderin 2003). Also, in Islam the man is responsible for the financial maintenance of his family and this obligation is not waived even when the wife has access to her own financial resources. Having in mind this financial protection married women enjoy, in comparison with the obligations men face, this double-share rule does make sense (Badawi in Ibid. p.147). Nonetheless, a good point was made by Mayer (2003) who emphasized the fact that, since under Islamic law men are entitled to have up to four women at the same time, the widows will have to divide the share leaving them with a significantly reduced inheritance.

To sum up, presupposed male superiority along with marriage, divorce and inheritance inequalities are considered to be the main sources of discrimination of women under Sharia law. *There are indeed tangible gender disparities under Islamic law and it can be concluded that equal dignity of Muslim men and women does not imply equal rights.* One would logically assume that Sharia Councils would be the very embodiment of these disparities. But is this really so? What is the actual position of Sharia Council in Britain and based on which arguments are they supported or criticized?

4.3. SHARIA COUNCILS IN GREAT BRITAIN

Although the final number is not known, according to one study there are around 85 Sharia Councils in Britain providing socially acceptable ways of solving family and business disputes for Muslims, but also non-Muslims (Civitas 2009). The most prominent ones are located in London, Birmingham, Bradford, Birmingham and Nuneaton, but of them operate out of mosques (Ibid.). They allegedly run in parallel with the British legal system, but have no legal powers and cannot impose any penalties. They do not advertise themselves and their decisions are accepted voluntarily. Councils are accused of perpetuating gender inequalities deriving from Sharia law and favouring men in their decisions. And yet, more and more Muslims resort to these religious bodies to settle their disputes.

This growing demand has been confirmed by the Councils themselves. Britain's oldest and largest Council *The Shari'a Council in Leyton, London* operates since 1985. The Council processes around 700 cases annually – 90 per cent of which are divorce applications raised by Muslim women – and the numbers have been steadily increasing (Interview 29 April 2013). *Khola Hasan*, Council's spokesperson, claims this increase in applications has to do with two things – it took time for Muslims to become familiar with the services they offer, but also for Muslim women to gain confidence to claim their rights.

People didn't know that they have this opportunity to get a divorce, so women were still flying back to Pakistan, to India, to get a divorce, not knowing they could get one here. So it took time for the word to

spread. (...) And also women have gained confidence. In the past, 20 years ago, a woman who was being abused, who was unhappy, who was treated badly may have just sat at home and cried and thought: 'I have to put up with it. I'm stuck with him. Islam doesn't like divorce'. (...) Nowadays women are much more confident and more likely to say: 'Well, if I'm not happy, that's it. I'm getting out of here' (Ibid.).

The same goes for well-known *The Muslim Law (Shariah) Council Wembley, London*, established also in 1985. Roughly 85 per cent of clients are Muslim women seeking divorce and the Council processes on average 130-150 divorce cases annually (Interview 4 April 2013). *Moulana Shahid Raza*, the executive secretary, also noted an increase in applications throughout the years. However, he offers a different interpretation of this change in numbers.

In the beginning, twenty-five years ago when migration law was not so tough and many spouses came from abroad, the main reasons clients approached the Council were non-compatibility and parental interference. Non-compatibility implies that the girl is from here, the boy is from the Middle East, and they have a different understanding of family life. (...) Nowadays it is due to domestic violence, coming from both sides, and lack of moral and spiritual experience. (...) Thus boy and girl are born, brought up and educated here, but they don't have a proper concept of marriage in this country (Ibid).

Raza emphasizes that *whilst the number of applications is increasing, the number of Sharia Councils is increasing as well*. Therefore it is very difficult to come up with precise numbers, but demand for the services Sharia bodies offer is on the rise. This shouldn't surprise since there is no lack of support coming from the public. *The survey conducted for the Sunday Telegraph showed that up to 40 per cent of British Muslims would want to see elements of Sharia law implemented in British legal system* (Hennessy and Kite 2006). The findings also suggested that the Muslim community is becoming more radical and feeling more alienated from mainstream society. This is the precise point where the *media bias and selective reporting* kicks in. While this striking 40 per cent have made the headlines, the fact that 41 per cent of respondents were *opposed* to this idea was nowhere to be mentioned in the heading. Moreover, 91 per cent of respondents expressed their *loyalty to Britain* which brings

into question Muslim radicalism some papers push for. The lack of any recent studies is an aggravating factor in drawing reliable conclusions on public support for Sharia law.

Sharia Councils operate under the *Arbitration Act 1996* which allows people to settle disputes through methods of their own choosing – “the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest” (The National Archives 1996). However, Arbitration Act specifically excludes divorce and childcare cases and any rulings by Sharia Councils on this matter would be illegal (Civitas 2009). ***What could provide Councils with more legitimacy is a recent landmark legal ruling when, for the first time in British legal history, an English family judge has agreed to refer a divorce dispute to a religious court*** (Alleyne 2013). The Jewish couple had a conflict over access to children and asked to have their dispute referred to a senior rabbi in New York under Jewish law or Beth Din. Nevertheless, this decision could spice things up as “the judgment could have far-reaching consequences and clear the way for other couples to seek a divorce in a religious court, including Sharia” (Ibid.). Interestingly, in his ruling Mr Justice Baker cited the former Archbishop and his talk on Sharia law and community cohesion.

This unexpected support for Sharia law from ***the former Archbishop of Canterbury Rowan Williams*** came in 2008 during a talk at the Royal Courts of Justice in London. He said that introducing some aspects of Sharia law to British legal system seems *unavoidable* as it would no longer mean that British Muslims have to choose between two systems.

If what we want socially is a pattern of relations in which a plurality of diverse and overlapping affiliations work for a common good, and in which groups of serious and profound conviction are not systematically faced with the stark alternatives of cultural loyalty or state loyalty, it seems unavoidable (Butt 2008).

In an earlier interview for the BBC Radio 4, the former Archbishop explained in detail what he meant by accommodating Sharia law in the British legal landscape. To all those implying that accommodating Sharia law would immediately mean deviating from British social norms – one of which is gender equality – the former Archbishop was clear to point out that Sharia has to be adjusted to fit British cultural make-up.

Nobody in their right mind I think would want to see in this country a kind of inhumanity that's sometimes been associated with the practice of the law in some Islamic states - the extreme punishments, the attitudes to women as well (...) but you have to translate that into a setting where actually that whole area, the rights and liberties of women, has moved on (Landau 2008).

Mr Williams also rejected the idea that Islamic law was “monstrously incompatible” and peculiar to the concept human rights only because it does not immediately fit within the Western understanding of that very concept. Furthermore, he acknowledges that other religious groups such as Anglicans, Christians and Orthodox Jews have some aspects of their religious laws constructively accommodated into the British legal system, thus why not extend the same right to Muslims? *Equalizing rights of all people, he argues, is a bad idea.*

(...) A lot of what's written suggests that the ideal situation is one in which there is one law and only one law for everybody (...) but I think it's a misunderstanding to suppose that that means people don't have other affiliations, other loyalties which shape and dictate how they behave in society and that the law needs to take some account of that (Ibid).

Unlike Mr Williams, individuals and organizations gathered under the umbrella name ***One Law for All*** have been campaigning precisely for a guaranteed equal citizenship rights and hence against Sharia law in Britain. The Campaign was launched by the ***National Secular Society*** on December 10, 2008 – International Human Rights Day – to call on the UK Government to recognise that Sharia courts are arbitrary and discriminatory against women and children (One Law for All 2013). The Campaign gained support from various ex-Muslim, women's rights and LGBT organizations as well as from prominent intellectuals such as Richard Dawkins, Christopher Hitchens and Ayaan Hirsi Ali. To achieve its goal, *One Law for All* has initiated a petition demanding an end to all Sharia courts, as well as for the law to be amended so that all religious tribunals are banned from operating within and outside of the legal system. By May 9, 2013, 29,804 signatories have been collected (Ibid.). The Campaign's spokespersons ***Maryam Namazie*** and ***Anne Marie Waters*** have collaborated closely with non-governmental organizations such as *Women Against Fundamentalism*,

Southall Black Sisters and *Iranian and Kurdish Women's Rights Organization*. The latter one is well-known for its anti-Sharia law agenda.

Iranian and Kurdish Women's Rights Organization IKWRO is a London-based NGO that provides advice and support to Middle Eastern women and girls living in the UK facing 'honour' based violence, domestic abuse, forced marriage or female genital mutilation (IKWRO 2013). Established in 2002, IKWRO is a prominent women's rights organization that processes up to 1.700 calls from women annually, majority of which are related to different forms of violence (equalandfreecampaign 2013). Given their immediate interaction with women who have dealt with Sharia law, IKWRO emphasizes the pressure women face to resolve their issues such as divorce, child custody and domestic violence before Sharia Councils. This is why ***Diana Nammi***, the founder of IKWRO, argues Sharia bodies in the UK should be banned. She makes an interesting point about the financial aspect of Sharia Councils which do not charge men and women equally for their services. For example, ***The Shari'a Council Leyton*** charges £100 divorce fee for men and £400 for women (Interview 29 April 2013), whereas ***The Islamic Law (Shariah) Council Wembley*** is a bit more sensible and the divorce fee is £100 for men and £150 for women (Interview 4 April 2013). Bearing in mind that the vast majority of Council's clients are women seeking divorce, it is no surprise that Nammi finds them primarily as "money-spinning business" (Proudman 2012). All of the above are the reasons why IKWRO and other women's rights organizations, along with the secular and Christian organizations have backed up Baroness Cox's Bill which aims to restrict the ruling scope of Sharia bodies.

Christian crossbench peer ***Caroline Cox*** introduced the ***The Arbitration and Mediation Services (Equality) Bill*** in 2011 aiming for a stricter regulation of Sharia organisations in Britain. Baroness Cox is particularly concerned with the injustice Muslim women are subject to when going before these bodies. What made her speak up on behalf of British Muslim women was her second-hand experience of their discrimination.

First and foremost, I know many of these ladies (...) and I've heard their stories and they are heart-breaking; and I have wept with those ladies... (Garvey 2011).

We cannot sit here complacently in our red and green benches while women are suffering a system which is utterly incompatible with the legal principles upon which this country is founded. If we don't do something, we are condoning it (Taylor 2011).

Although the Bill provides protection to victims of domestic abuse, its primary purpose is to stop any further development of parallel legal systems and prevent Sharia bodies from ruling on family and civil matters. In the words of the Baroness herself:

The Bill basically does two things. It tries to address the situation, which I don't think is acceptable, where you can have two legal systems in one country; our British legal system (...) and a parallel legal system that's fundamentally incompatible in terms of the second aspect: discrimination, inherent discrimination against women (BBC Radio 4; Garvey 2011).

This private member's Bill, extending to England and Wales only, passed the second reading at the House of Lords in October 2012 (BBC 2012). Should it become codified, the very existence of Sharia Councils will be brought into question. But would that be a good thing? Would it help release, as Baroness Cox implies, vulnerable Muslim women from the suffering they are subject to?

4.4. ANALYSIS AND FINDINGS

Three overarching issues will be examined here: firstly, Sharia law running in parallel with the British legal system; secondly, discrimination of women enforced by Sharia Councils and finally, Baroness Cox's Bill as a solution to gender inequalities taking place under the Islamic law. The ultimate question addressed in this chapter is whether British Muslim women are indeed helpless victims of their backward religion in need for a salvation from a White Western Christian MP. A negative answer can be anticipated.

4.4.1. SHARIA LAW AS A PARALLEL LEGAL SYSTEM

Starting with Baroness Cox's argument about Sharia law evolving into a parallel legal system operating next to the British one, it has to be said that this is a popular myth often employed to rule out Sharia law altogether. ***Sharia bodies in Britain have no legal recognition, nor can they impose any legally binding decisions. Furthermore, they operate within the British legal framework and it is the latter that gives them legitimacy.*** All they can do is to provide an alternative solution to a dispute. A distinction has to be made between *mediation* and *arbitration*. The aim of mediation is to provide the opportunity for parties involved in a dispute to reach an agreement which cannot be imposed by a mediator (Civitas 2009). Arbitration, on the other hand, is a trial before a judge who has the power to enforce the ruling via civil courts. ***Legal practitioners argue that the advantage of mediation, in comparison with arbitration, is that the parties involved are more likely to stick to an agreement reached by mutual decision, than the one imposed on them*** (Morrish Solicitors LLP 2013). The point of mediation is that the parties involved do it out of free will and implement mediator's decisions *voluntarily*. What could be argued though is that Muslim women might be coerced into mediation by their families. However, the lack of research on this issue makes it very difficult to draw any conclusion about oppression existing within the community.

As presented earlier, NGOs such as *IKWRO* emphasize the financial side of Sharia bodies and argue they are "money spinning business" (Proudman 2012). But is this really so? ***The Muslim Law (Shariah) Council***, registered as a charity, has only 25 per cent of its expenses covered by their clients' fees, whereas the rest of the income comes from donors and private persons based here in Britain. The Council gets no financial assistance from the government or any other bodies (Interview 4 April 2013). ***The Shari'a Council Leyton*** is financed exclusively from clients' fees and gets no donations whatsoever. Kholā Hasan says it's very hard for the Council to get by, but at the same time reminds that the minimum cost of a civil divorce is £1000, whilst the Council charges maximum £400 which is often reduced to £200 and sometimes waived altogether (Interview 29 April 2013). ***In other words, while Sharia Councils are criticized for being pricey, they are still a cheaper solution to a dispute than going before a civil court.*** Furthermore, Sharia bodies are criticized for their *tardiness* and therefore, since most of their clients are women seeking divorce, punishing women by protracting the time it takes to process their cases (Proudman 2012). However, *Aina Khan*, a

prominent Sharia lawyer and Family law specialist claims that *the tardiness of British civil courts is precisely what brings Muslims before Sharia Councils in the first place* (Garvey 2011). At *The Shari'a Council Leyton* Khola Hasan also points out women themselves might be responsible for the lengthy process to obtain, for example, a divorce by suspending the file themselves.

Generally what happens is that the women will apply, but then issues will come up. For example, we ask them to sign moral undertaking to allow the husband see the child after the divorce; because sometimes they want to punish the husband and not let him see the child at all. (...) And that sometimes stops them. (...) Sometime women come and they say I want a divorce, process starts, and then they start having counselling; things are getting a little bit better with the husband; they are thinking: 'Oh, he's not so bad after all' so they say: 'No, just hang on a bit, give me a couple of more months and see how it goes', so the file is just left opened, and then maybe they'll come in another six months: 'No, no, I definitely want a divorce now' (Interview 29 April 2013).

Every legal system has its own shortcomings and, as Khola Hasan says, "if she (Baroness Cox; *author's note*) wants to make the claim that the whole Muslim world is misogynistic and unfair, then we can start picking holes in British legal system as well (Ibid.). *Aina Khan* made a similar comment during a debate on Sharia law at the House of Commons, but also emphasized the importance of cooperation.

All legal systems have criticisms. (...) So, do we throw out the baby with the bathwater or do we use what we got which is extremely valuable to the Muslim community and build on it? (...) I believe it's very possible, in fact essential, that we try to make sure we coexist and learn from each other rather than always attacking each other (One Law for All 2011).

To sum up, the existence of Sharia law has not automatically introduced a separate legal system running in parallel to British one. But is that what Sharia Councils are after in the first

place? *Would they like to see Sharia law implemented in Britain?* Khola Hasan from *The Shari'a Council Leyton* explains:

No. My answer is no. It's the opinion of the council. It's the opinion of most right-minded, sensible, intelligent, non-drunk Muslims. (...) Islamic law can only be implemented in a Muslim majority country. Britain is not a Muslim majority country. The parliament is not Muslim. The Queen is not Muslim, her children are not Muslim; there is no sign of the whole royal family converting to Islam. And more importantly, the majority of people in this country are not Muslims. (...) So for Muslims to even think about having Islamic law in Britain is a sheer sight of anxiety (Interview 29 April 2013).

Moulana Shahid Raza from *The Muslim Law (Shariah) Council Wembley* is also opposed to the idea (Interview 4 April 2013). He is not proposing the implementation of Sharia law, nor would he like to see a conflict between Sharia and the secular law. However, he does emphasize the opportunity for Sharia law to complement the work of British legal system. In doing so, Muslims should create their own British Islam whose driving values would be the values of this precise society, which would imply for Islamic law to undergo adjustments. *All this leads to a conclusion that the fear of Sharia law taking over British legal system is unjustified and exaggerated, which might have more to do with the wider social climate which is unfavourable for Muslims in general as shall be explored later.*

4.4.2. DISCRIMINATION OF WOMEN

Does Islam discriminate against women as often argued? Going through the most common gender inequalities under Sharia law examined earlier – presupposed male superiority, marriage, divorce and inheritance – it would be hard to claim that a literal interpretation of Islam wouldn't imply discrimination of women. It would. *However, most of the religions are patriarchal and discriminate against women.* Despite the fact that *The Church of England* agreed to ordain women priests almost two decades ago, women are still not allowed to serve as bishops. This decision has only been confirmed in a recent vote, during which the

opponents of the proposal claimed that the scripture requires male headship in the Church (BBC 2012). To make things worse, the situation is no better elsewhere among the Anglican Communion. In this worldwide family of churches that consists of an estimated 80 million Christians (Anglican Communion 2013) *only 23 women bishops* are in active ministry. Countless examples of gender inequalities like this one can be identified. ***Islam is not the only religion to face criticism about gender disparities, but it is the first one to be criticized.*** Nonetheless, do gender inequalities under Islamic law imply that Sharia Councils necessarily embody those? The main issues for which Sharia bodies are criticized are firstly *unequal access to divorce* and secondly *unequal divorce fees for men and women*.

Starting with the first issue – unequal access to divorce – organizations like *One Law for All* and *IKWRO* claim Sharia Council discriminate against women since the man can pronounce *talaq* and divorce the woman on his own. The woman on the other hand has no such right, but has to go before the Council and apply for marriage dissolution. Khola Hasan from ***The Shari'a Council Leyton*** confirms that men have that one extra right and can just verbally issue the words of *talaq* which will start a minimum three months long process to obtain a divorce (Interview 29 April 2013). Namely, the man has to pronounce *talaq* three times for the marriage to end, but each *talaq* has to be separated by one month. ***The Muslim Law (Shariah) Council Wembley*** follows a different Islamic school of thought and men seeking divorce there can get it within a week (Interview 4 April 2013). Moulana Shahid Raza doesn't deny that this can be seen as unfair towards women, but argues that the Council must operate according to Sharia law. So why is it that a man can divorce a woman easier than the other way around? Khola Hasan offers a tenable explanation.

The reason for this is that in all societies, traditional societies (...), where Muslims come from, men have generally been the financial providers and women have been the home makers. So, because of that extra responsibility that a man has taken, which is financial, he then has a little perk, as it were, of that being able to give *talaq*. If a man gives *talaq*, it's seen as a huge responsibility is given up and he then will have to pay financial compensation which is maintenance for three months. If a woman starts an application for divorce, she does not pay him any maintenance (Interview 29 April 2013).

Therefore, the reason why under Sharia law men have unequal access to divorce is the additional responsibility they are subject to in matrimony, which is providing financial care for the wife and their offspring. Women have no such obligation and, moreover, they are entitled to keep their private earnings from employment or business to themselves. Generally speaking, Islam was the first legal system to grant women property rights such as the right to inherit, to keep the dower instead of having it paid to the bride's father and the right to conduct their own business (Baderin 2003; Banchoff and Withnow 2011; Mayer 1995). Bearing in mind gender roles and obligations Islam presupposes it is only logical that the rights are allocated proportionally to men and women. *This by no means implies that a change, in order to equalize the rights, should not be introduced. But it does highlight the one-dimensional approach opponents of Sharia Councils take, ignoring the benefits women under Islamic law enjoy – benefits non-Muslim women cannot claim – and focusing exclusively on men's gain.*

The second issue – unequal divorce fees for men and women – can be addressed now as well. What follows from the fact that Muslim men have the right to *talaq*, which is generally a less lengthy process than the one women go through – is another social fact: processing *talaq* is far less for work Sharia Councils than divorce applications initiated by women. The explanations given by both Councils are very similar. Moulana Shahid Raza from *Muslim Law (Shariah) Council Wembley* says:

Divorce fee is higher for women due to a longer procedure to obtain a divorce and more office work. It takes two or three panel meetings for a Muslim woman to obtain a divorce; generally they cannot divorce themselves, only in certain situations. In case of Muslim men, there is little secretary work; doesn't require any panel meetings. Men only need to register with the Council and within a week they will be divorced.

As discussed earlier, divorce process for men lasts significantly longer at *The Shari'a Council Leyton*; minimum three months. Even so, Khola Hasan emphasizes the financial aspect of the story:

When the man comes, he wants us to be the witness for his *talaq* because that's what we do; it's not a lot work for us. Whereas if the woman comes it is a process (...) which needs letters to both parties, some sort of conciliation meeting, some sort of counselling meetings, and all that admin and time costs (Interview 29 April 2013).

It sounds only inevitable that a task which requires more effort is more expensive for the client. So, is this difference in divorce fees discrimination of women? The same question could be raised in a very different context. For instance, the national carrier of Samoa, *Samoa Air*, just recently decided to introduce its new *pay as you weight policy* (BBC 2013). In a nutshell, the passengers will have to estimate their weight prior to booking a flight and pay for the combined weight of themselves and their baggage. The heavier passenger, the more expensive ticket. The company says there is nothing unequal about this decision. "It's the fairest of any system. (...) Think equality of purchase. Think no discrimination. (...) Think that you only pay for what you carry and everyone pays for what they use" (Samoa Air 2013). Chris Langton, the head of Samoa Air, argues that under this policy people will no longer feel they are paying for half of the passenger next to them, but also families with children will be paying lower fees (BBC 2013). Critics could then claim that this measure discriminates against heavier people, which includes pregnant women, muscly athletes and above all men, since they tend to be taller and accordingly heavier than women (Ellen 2013). How could this issue be resolved? Which one is fair? Equal price for all or equitable price for all? Same logic could be applied to different divorce fees at Sharia Councils. *It would make very little sense for the Councils to charge equally for services which require unequal amount of admin and other work. This seems to be another valid counter argument to those of organizations' presented earlier, as the latter seem to gloss over reasons for gender disparities in pursuing their own agenda – banning the Councils altogether.*

4.4.3. BARONESS COX'S BILL

The final issue analysed here is Baroness Cox's *Arbitration and Mediation Services (Equality) Bill*. The Baroness has, in her own words, wept with Muslim women that are suffering due to Sharia Councils' decisions (Garvey 2011) and therefore decided to leave the

comfort of red and green benches (Taylor 2011) and rescue them from their pain. Empathetic of her, indeed. ***However, the unpleasant question is whether there is more to it than Baroness' pure concern over Muslim women's wellbeing?***

In 2010 the controversial far-right Dutch politician ***Geert Wilders*** appeared at the House of Lords for the screening of an anti-Islam film and discussion on this 'totalitarian' religion (Jones 2010). It is worth remembering that Wilders emphasized more than once how he hates Islam – *the ideology of a retarded culture* – which he compared to Hitler's *Mein Kampf*, but also expressed his goal to have "all immigration from Muslim countries halted, Muslim immigrants paid to leave and all Muslim 'criminals' stripped of Dutch citizenship and deported back where they came from" (Traynor 2008). Due to all this controversy Wilders was initially banned from the UK under the previous government, but succeeded in having the ban overturned as a "victory of free speech" (Jones 2010). It is interesting to note that along with the UK Independence party leader Lord Pearson, who described Wilders as a "a very great man" (Ibid.), ***the second person at whose invitation Wilders came to the UK was, surprisingly, empathetic Baroness Cox***. During the event Lady Cox said that "cultural relativism is the greatest disease we face in Europe today" (Ibid.). Bearing this fact in mind, it is difficult not to interpret Baroness Cox's Bill in a different light – that of ***Islamophobia***.

It is no wonder that members of Sharia Councils refer to Baroness' Bill as ***anti-Sharia Bill*** (Interview 29 April 2013). The Baroness claims that the Bill cannot be anti-Sharia as it doesn't mention that law at all (Garvey 2011). ***It is almost difficult to distinguish between the naivety of this statement from the manipulateness that undermines common sense and insults intelligence of the reader***. Just one glance at the Bill makes it easy to recognize the underlying agenda. For example, suggested amendments to the Equality Act 2010 include the following definition of sex discrimination:

- (a) treating the evidence of a man as worth more than the evidence of a woman, or vice versa,
- (b) proceeding on the assumption that the division of an estate between male and female children on intestacy must be unequal, or
- (c) proceeding on the assumption that a woman has fewer property rights than a man, or vice versa (UK Parliament Website 2011).

The Bill also addresses the unlawfulness of polygamy as well as arbitration on criminal or family matters – the latter being precisely the service that Sharia Councils offer to their clients (e.g. religious divorce). Khola Hasan met Baroness before and says bluntly that she felt no empathy from Lady Cox. This is why at *The Shari'a Council Leyton* they perceive Baroness Cox's Bill more in the context of Islamophobia spreading across Western Europe than as promotion of women's rights.

There has been a climate for good ten years if not more, certainly since 9/11 (...), that immigration is not welcome; there are all sorts of laws in Europe; France for example banning the hijab, banning the niqab; Switzerland talking about not having minarets and mosques; halal meat being banned; all sorts of issues curbing migration etc. Every single word is designed to say Muslims are not welcomed: 'We don't like you; you're too visible when you wear a headscarf; you make it very obvious you're a Muslim; when you have a mosque you make it very obvious you're a Muslim'. So that sense of grievance against Muslims is very strong (Interview 29 April 2013).

Nevertheless, Khola Hasan is not pessimistic about the current social situation in Britain, quite the opposite. She emphasizes that Muslims have been very lucky as this Islamophobia, which admittedly is on the rise, hasn't hit Britain as much as it did other European societies.

The Parliament has had no interest in promoting this type of Islamophobia and there isn't a single law that is discriminatory against Muslim in Britain, unlike France and Switzerland for example. So I think (...) dear Baroness Cox is saying: 'Let me be the first' (Ibid.).

The presence of this anti-Muslim sentiment could be depicted from another perspective. *Whilst there is no lack of organizations advocating against Sharia law for gender inequalities, there are currently hardly any voices against adherents of other religions whose affiliations also consist of patriarchal and discriminatory elements.* For example, whilst the process of obtaining a divorce is more complicated for Muslim women than Muslim men, the same rule applies to the *Jewish community*. The husband has to provide his wife with a *get* – divorce writ – in order for the marriage to be dissolved (Raday in Howland

2011). The husband, however, might refuse to grant his wife the *get* which would either keep her locked in the marriage or alternatively she would need to pay him large sums of money to be released (Faith and Levine 2008). This disparity in providing religious groups with privileges and exemptions from the law, but also in advocating against these has been pointed out by Omer El-Hamdoon, President of the *Muslim Association of Britain* during a discussion with *One Law for All* co-spokespersons Maryam Namazie and Anne Marie Waters at the House of Commons.

If the *One Law for All* society is against Sharia, I ask them are they also against Jewish law? Do they have *One Law for All* campaign against Jewish law as well? Do they have a campaign against Sikhs as well; Sikhs' law? (One Law for All 2011).

This arbitrariness in choosing which religious groups to pick on for perpetuating gender inequalities depicts the inconsistencies in condemning the wrongs and inevitably raises the question of an underlying agenda. Nevertheless, the issue of Islamophobia is not the only ground on which Baroness' Bill can be criticized. The second issue is *Baroness' negligence*. As stated by both Sharia Councils included in this research neither the Baroness herself nor anyone else on her behalf had contacted Councils prior to introducing the Bill. *The Shari'a Council Leyton* has been contacted only after the Baroness introduced the Bill, whilst no one got hold of *The Muslim Law (Shariah) Council Wembley*. *One would assume that a comprehensive and thus responsible way of approaching the problem would be to include all stakeholders in a constructive discussion and join forces in the pursuit of an acceptable solution. Baroness Cox has failed to do that.*

The final point to be made in this chapter is about the anticipated consequences for British Muslim women if Baroness' Bill becomes codified. Would it indeed help further Muslim women's rights? Moulana Shahid Raza from *The Muslim Law (Shariah) Council Wembley* explains that before Sharia Councils, Muslim women would either live in failed marriages or become isolated. Khola Hasan from *The Shari'a Council Leyton* builds onto that and explains the impact Baroness' Bill and potential legislation change would have for the women themselves.

We wouldn't be able to issue divorces. (...) They (women; *author's note*) will go back into the old days – 'I'm not getting a divorce' – so that will be really good, won't it?! The Baroness wants to help women, but the women won't be able to get a divorce; so they're not going to be helped. If Sharia Councils were closed, women would either not get divorces which means suffering in silence, or they will spend tens of thousands of pounds, go back to their home countries, live there for couple of months, apply there for a divorce before a religious court (...) and spend loads for getting it there (Interview 29 April 2013).

The Bill would rule out Sharia Councils and the services they offer, which would leave Muslim women unable to obtain religious divorce in Britain and force them to either remain in failed marriage, or to travel abroad and file for divorce there. Either way, Muslim women would be left destitute, having to pay the price for what was initially supposed to be an empowering Bill. A comparison can be easily made between the ban on Sharia Councils and *the ban on full-face veil in public spaces* which took place in France, Belgium and Italy. The ban was also supposed to empower women, but left them worse off than they would have been had they stayed behind the veil³. However, another parallel to barring Sharia Councils can be made here, one which doesn't include Muslim women, but pregnant women. Along with Poland and Malta, Ireland has a very strict *abortion policy* which was recently contested after an Indian woman was denied an emergency abortion with fatal consequences (McDonald 2013). *An estimated 11 Irish women travel daily across the Irish sea to Britain in order to terminate their pregnancies.* Pro-choice campaigners in Ireland have adopted various outreach techniques providing contact details for British abortion clinics, the price of terminations as well as information on where to get financial assistance for this *bus'n'boat* trip to Britain. A research based on data provided by the UK government says that the main reasons Irish women have their abortions carried out in Britain are social and economic (White 2012). So, due to what feminists would describe as misogynistic policy,

³ The shortcomings of this ban are multiple. Firstly, women themselves will be fined for breaking the law, so instead of being empowered they are the ones being penalized. Secondly, women might be confined to their homes as their fathers and husbands won't let them go out unveiled and, moreover, they might be subject to domestic violence for refusing to wear the veil in the first place. Thirdly, the ban can easily lead to isolation and marginalization of Muslim women, whilst the members of the public could feel entitled to unveil their Muslim compatriots, which has already occurred in Rome (Kabutakapua 2012).

Irish women have to seek alternative solutions to unwanted pregnancies. In other words, *just because the government pushes for its own agenda doesn't mean the citizens will necessarily comply with it*. The same can be said for British Muslim women seeking religious divorce. Just because the state might introduce a new legislation doesn't mean women will necessarily change their ways. The reality proves us differently. *The chances are Muslim women will be traveling to primarily India, Pakistan and Bangladesh to have their religious marriage dissolved there and along the way contribute to those countries' economies*. One could claim that the alternative – going before Sharia Councils – is discriminatory for women and therefore *wrong*. Equally, one could claim that adopting a liberal abortion policy which would allow Irish women to have their pregnancies terminated in their home countries is discriminatory for the unborn baby and therefore *wrong*. There is really no way to resolve this problem.

However, what this thesis aims to show is that in comparison with the alternative – living in a failed marriage or traveling abroad to end the marriage – maintaining Sharia bodies can be a good option once understood in the context of harm reduction. To illustrate this point with another example: no one in their right mind would claim that encouraging drug consumption is a good thing. And yet, some would argue, this is precisely what has happened with the opening of *drug consumption rooms (DCR)* across Europe. For instance, Frankfurt's biggest drug consumption room is open from 11am-11pm daily and provides visitors with fresh needles, syringes and other material necessary for injecting heroin and crack cocaine (Harvey 2013). Only in the last year the centre had 100.000 visitors. So what were the outcomes of this controversial move? According to International Drug Policy Consortium (2012), there have been no drug related deaths recorded in Germany in the last 19 years, whilst the clients' awareness of safer use techniques has increased. Similar findings come from other countries that have applied DCR strategy, implying health and safety improvement as well as decreased crime rate connected to drug consumption (Ibid.).

The example with DCR shows that if there is no comprehensive solution to a complex social problem, and there rarely is, it might be wiser to take a different route and adopt strategies which preserve the problem within the manageable limits and prevent it from escalating. *In that context maintaining Sharia bodies, imperfect as they are, can be seen as a harm reduction strategy which may not solve the problem (gender inequalities), but prevents from creating new ones (living in a failed marriage or travelling abroad to obtain a divorce)*.

This however is not to imply that nothing should be done to put an end to gender disparities under Islamic law. ***But it highlights deficiency of a rigid approach – one that Baroness Cox seems to push for – which ignores its own negative consequences.***

One final point has to be made here. A valid question can be raised about the role of ***mainstream Western feminism*** in addressing gender inequalities present in minority religion and culture. Without a doubt, Western societies have made a long way in regard to civil, political and economic rights of women. However, whilst winning this battle, another one was being lost – women’s bodies. This unattainable, unsustainable and unhealthy ideal has been created – ***the beauty myth*** (Wolf 2008) – and has been ruling exclusively women's world ever since. Interestingly enough, the beauty myth developed in parallel with the emancipation of women and sexual liberation (Dolan and Gitzinger 1994) proving that ***dieting is the most potent political sedative in women’s history*** (Wolf 2008). In practice, this ***thinspiration*** (Hassannia 2013) has the following consequences: whilst 80 per cent of women in the USA and UK are dieting at any given moment, an estimated 150.000 American women die annually due to anorexia, ***mental disease of modern industrialized societies with the highest mortal rate among all mental diseases*** (Wolf, 2008). The question is then whether Western women are in position to liberate anyone else from oppression, bearing in mind they are subject to a very subtle one themselves? ***This is not to imply that nothing should be done about gender inequalities in minority cultures, but it highlights the fact we need to face those in our own culture. Those gender inequalities we are so reluctant to label as cultural, for only minorities’ practices can be called that way.***

To sum up, the aim of this analysis was to show that Sharia law is neither a parallel legal system threatening British legal and consequently social landscape, nor does it unjustifiably treat women in different ways than men as some NGOs suggest for the situation is much more complex than the one-dimensional perspective these organizations go for. Finally, the findings suggest that the change Baroness Cox’s Bill would introduce wouldn’t be beneficial for Muslim women, moreover, it would place them in a disadvantageous position compared to the present one. Maintaining the work of Sharia Councils can be understood as a harm reduction strategy – imperfect strategy in a long-lasting pursuit of gender equality.

5. CONCLUSION AND RECOMMENDATIONS

The big question underpinning this research is managing diversity in plural societies especially when minority practices are incompatible or, even worse, incommensurable with Western liberal values. Islamic veil, female genital mutilation, child marriage, arranged and forced marriage, religious schooling – all of these are the challenges primarily Western European societies face due to a huge influx of immigrants of very different cultural backgrounds. Drawing a fine line between condemning and barring these practices and developing cultural sensitivity and tolerance has proved to be one of the most polarizing debates in the socio-political sphere.

5.1. CONCLUSION

Differential treatment on one hand implies that imposing equal rights on all members of the society will not lead to equality, for different people have different concepts of good. In order for everyone to develop and exercise their capabilities, the state should step in and support members of ethnic minorities in pursuing their own concept of good life and therefore maintaining their cultural identity. Otherwise, misrecognition and absence of recognition could result in devaluating image and internalization of inferiority in members of those minorities. *Equalization of rights* on the other hand overrides particular affiliations and aims to establish homogenous citizenship by imposing equal rights and responsibilities on all citizens. Precisely because people have different notions of what a good life encompasses, the state should not interfere with their choices and further one lifestyle or the other. Moreover, persisting on a particular lifestyle just for the sake of maintaining minority's cultural identity may not be a good idea, for not every (aspect of) culture is worth saving.

The shortcomings of these two concepts were identified from various perspectives, but most significant for this research was the so called *minorities within the minorities* problem (Sararso 2008). By emphasizing the difference between the majority and minority, differences within the minority are overlooked and, since most cultures and religions are patriarchal, the victims of group homogenization are normally women. One would logically assume

something needs to be done about these gender inequalities – Western feminists should step in and liberate their sisters from the suffering they are subject to. *Unfortunately, the untenability of this notion becomes obvious once aware how it tacitly implies saviour's moral superiority which can be easily contested by pointing pout gender inequalities present in the majority culture.* An example reflecting precisely this dilemma is one of Sharia law and discrimination of women in modern Britain.

Sharia is a religious law whose sources are *Qur'an* and the *Sunnah*, providing Muslims with guidance on religious, moral, legal, political, social and economic matters. It is often criticized over gender disparities and four of these were identified here: presupposed male superiority and unequal marriage, divorce and inheritance rights for men and women. *Despite proclaiming equal dignity of men and women, Sharia law does not accord them equal rights for the rights are dependent on their responsibilities.* In a nutshell, the man is the financial provider for the whole family, whereas the woman has no such obligation but, moreover, she is entitled to keep her private earnings from employment or business for herself. *This disparity in obligations in Islam is the underlying reason why Sharia Councils do not treat men and women in the exact same way.*

Drawing on the work of NGOs advocating against Sharia law, most notably *One Law for All Campaign* launched by *The National Secular Society* and *The Iranian and Kurdish Women's Rights Organization*, as well as on the work of *Baroness Caroline Cox* who initiated *Arbitration and Mediation Services (Equality) Bill* to bring an end to these institutions, the arguments against these bodies were identified and their validity examined in immediate communication with Britain's two oldest and biggest Sharia bodies – *The Muslim Law (Shariah) Council Wembley* and *The Shari'a Council Leyton*. *Correspondingly to research questions, the findings suggest that the main arguments over which Sharia Councils are criticized are Sharia law evolving into a parallel legal system undermining the British one and secondly discrimination of women which Sharia bodies enforce and perpetuate.*

As far as the first argument goes – *development of a parallel legal system* – it was shown that these bodies operate within the British legal framework under the *Arbitration Act 1996* which allows people to settle disputes through methods of their own choosing. Sharia Councils provide mediation – the opportunity for parties involved in a dispute to reach an agreement which cannot be imposed by a mediator. Put differently, Councils have no legal recognition,

nor can they impose any legally binding decisions. According to Councils included in this research, people go before Sharia bodies due to the shortcomings of British courts – most notably the expressiveness and the tardiness in processing a case. Both of the Councils included in the research emphasized the primacy of British legal system and societal values, and stood against any implementation of Sharia law into British legal landscape. *Therefore, the argument about Sharia law as a separate legal system undermining the British one is a myth employed to rule out Sharia law altogether.*

The second issue, *discrimination of women*, is more complex. Islam does discriminate against women, just like the majority of religions do. The example used to illustrate this point was about *The Church of England* still banning women from serving as bishops. However, whilst Islam is not the only religion to face criticism over gender inequalities, it is the first one to be criticized. Specifically, Sharia Councils are criticized over *unequal access to divorce* and *unequal divorce fees* for men and women. Indeed, under Islamic law it is easier for a man to end the marriage than for a woman. A tenable explanation for this gender inequality was offered – women have unequal access to divorce due to the financial responsibility men exclusively are subject to in matrimony. Having in mind this disparity in responsibilities, it sounds logical that the rights are allocated accordingly. This by no means denies existing gender inequalities regarding access to divorce, nor does it negate the necessity of a change. It does however highlight the one-dimensional approach adopted by opponents of Sharia law which ignores the benefits Muslim women enjoy and focuses exclusively on men's gain. Council's unequal divorce fee for men and women is another gender inequality which raises concern. The reason for this disparity can be traced in unequal amount of work for Sharia Councils to process a case, as it takes less time and admin work to process a divorce an application initiated by a man. This is discrimination of women just as much as *Samoa Air's* decision to charge passengers proportionally to their weight is. Begg the question, which one is fair – equal or equitable treatment? This question could be raised in various situations, Sharia Councils being just one of those. *Nevertheless, it can be said that charging unequally for services which require unequal amount work doesn't seem like inherent bias over one gender or the other.*

The second research question was about anticipated success and therefore desirability of *Baroness Cox's Bill* whose purpose is to prevent Sharia Councils from ruling on family matters – in order to further Muslim women's rights – and ultimately bring into question the

very existence of these bodies. The findings suggest that the legal change the Bill would introduce would not be beneficial for Muslim women and, furthermore, it would place them in a disadvantageous position compared to the present one. Bearing in mind it was precisely Baroness Cox at whose invitation anti-Islam politician Geert Wilders appeared at the Parliament, it is difficult not to interpret her Bill in the context of *Islamophobia*. Although avoiding the word Sharia, the Bill targets exactly those gender inequalities which are specific for the Islamic law. Also, there is no similar provision which addresses gender inequalities present under other religious laws such as Beth Din. *This arbitrariness in condemning wrongs taking place under different religious laws only implies an underlying agenda of focusing exclusively on Islam*. Also, Baroness Cox failed to include the most relevant stakeholders – Sharia Councils – in a constructive dialogue before introducing the Bill, which points out her negligence in a pursuit of advancing Muslim women’s rights. Finally, it can be claimed the Bill wouldn’t improve Muslim women’s rights as it would leave them unable to obtain religious divorce in Britain and force them to either remain in a failed marriage, or travel abroad to file for divorce. *Either way, the women themselves would be the ones having to pay the price for what was initially supposed to be an empowering Bill*. Comparisons were made with Islamic veil ban and strict Irish abortion policy, both of which have left women worse-off but haven’t deterred them from those practices. *In other words, legislation change doesn’t necessarily lead to a behaviour change, for Muslim women could seek alternative solutions to their problems outside the Britain and its legal framework*.

Therefore this thesis tried to show that, in comparison with the alternative, maintaining Sharia bodies can be a good option if understood in the context of *harm reduction* – adopting strategies which preserve the problem within the manageable limits and prevent it from escalating. *In that sense, not pursuing the implementation of Baroness’ Bill, but rather adopting a free hand policy and allowing Sharia Councils to continue with their work could be considered as a differential treatment which imperfect as it is, prevents from addressing one problem and creating a set of completely new ones*. British Muslim women should have the access to both legal systems – British and Sharia – entitled to their own decisions as which one to adhere to.

At the end of a day, feminism is all about choice. Which does not imply that all choices are feminist.

5.2. RECOMMENDATIONS

Based on the theoretical and empirical research, following recommendations are made:

- ✓ Conduct an impartial in-depth research on Sharia Councils in Britain in order to examine eventual malpractices. Ideally, this research would include all relevant stakeholders – those operating Sharia bodies, Muslim women as their most common clients, government officials, Family law experts and NGOs. An insight into Council's problematic practices will help lay a foundation for future policy-making.
- ✓ Engage in a constructive dialogue with Sharia Councils in the pursuit of Muslim women's rights. Dialogue is the most challenging strategy as it includes negotiating religious practices with the gatekeepers who are usually the most conservative elements of the community. Nevertheless, dialogue has proved to be the only option leading to substantial attitudinal and therefore behavioural changes, as the example of forced marriages taking place among minorities in the UK shows⁴.
- ✓ Examine if and to what extent are British Muslim women coerced by their families to resolve family issues before Sharia Councils. This would help depict the oppression existing within the community and consequently help tailor policies to tackle it. It would be interesting to see whether this oppression correlates to gender distribution which would consequently challenge the notion of men oppressing women for the actual situation might be more complex.

Word Count: 16 852

⁴ For more information see: Phillips A.; Dustin M. (2004) *UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit*, London: LSE Research Group, online version available at: http://eprints.lse.ac.uk/546/1/Forced_marriage.pdf (accessed June 2, 2013)

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Appendix A

Interview Questions

About the Council

1. What is the Council registered as?
2. How is the Council financed?
3. Who operates the Council? What is the structure like (vertical, horizontal)?
4. How many employees are there? Their qualifications?
5. Are there any female employees? If not, why?

About the clients

1. Who are Council's main clients? Male-female ratio?
2. Which is the main reason clients approach the Council?
3. How long does it normally take to process a case (e.g. divorce)?
4. How many cases does the Council process a year?
5. Is there an increase/decrease in applications throughout the years? Is there any identifiable trend? If so, what could be the reason behind it?
6. How come divorce fee is not the same for men and women?

Sharia law in Great Britain

1. Which is the biggest obstacle you face in your work?
2. Are you familiar with Baroness Cox's Bill? Has it had any impact on your work and, if so, which?
3. Sharia law is sometimes criticized for gender discrimination – difficulties for women with obtaining a divorce, polygamy etc. Is there anything you would like to say about that?
4. How can Sharia law further British women's rights?
5. Should it be implemented into British legal system?

Appendix B
Arbitration and Mediation Services (Equality) Bill
[HL]

CONTENTS

PART 1

AMENDMENTS TO THE EQUALITY ACT 2010

- 1 Providing arbitration services
- 2 Arbitration services: consequential amendments

PART 2

AMENDMENTS TO THE ARBITRATION ACT 1996

- 3 Validity of arbitration
- 4 Criminal and family law matters not arbitrable

PART 3

AMENDMENT TO THE FAMILY LAW ACT 1996

- 5 Court orders based on negotiated agreements

PART 4

AMENDMENT TO THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

- 6 Intimidation of domestic abuse victims

PART 5

AMENDMENT TO THE COURTS AND LEGAL SERVICES ACT 1990

- 7 Falsely claiming legal jurisdiction

PART 6

GENERAL

- 8 Extent, commencement and short title

Schedule – Consequential amendments

A
B I L L

TO

Make further provision about arbitration and mediation services and the application of equality legislation to such services; to make provision about the protection of victims of domestic abuse; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

AMENDMENTS TO THE EQUALITY ACT 2010

1 Providing arbitration services

- (1) The Equality Act 2010 is amended as follows.
- (2) In section 29 (provision of services, etc) after subsection (10) insert— 5
- “(11) A person must not, in providing a service in relation to arbitration, do anything that constitutes discrimination, harassment or victimisation on grounds of sex.
- (12) For the purposes of subsection (11), discrimination on grounds of sex includes but is not restricted to— 10
- (a) treating the evidence of a man as worth more than the evidence of a woman, or vice versa,
- (b) proceeding on the assumption that the division of an estate between male and female children on intestacy must be unequal, or 15
- (c) proceeding on the assumption that a woman has fewer property rights than a man, or vice versa.”
- (3) In section 142 (unenforceable terms) after subsection (5) insert—
- “(6) A reference in subsection (1) includes a term by which parties agree that rules shall apply to one or more matters in so far as those rules 20

constitute, promote or provide for treatment of that or another person that is of a description prohibited by this Act on grounds of sex.”

- (4) In section 149 (public sector equality duty) after subsection (3) insert –
- “(3A) The steps involved in removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that is connected to that characteristic include steps to take account of the fact that those who –
- (a) are married only according to certain religious practices and not according to law, or
- (b) are in a polygamous household,
- may be without legal protection.
- (3B) Steps under subsection (3A) should include but not necessarily be restricted to –
- (a) informing individuals of the need to obtain an officially recognised marriage in order to have legal protection, and
- (b) informing individuals that a polygamous household may be without legal protection and a polygamous household may be unlawful.”
- (5) In paragraph 3 of Schedule 3 (judicial functions) after sub-paragraph (2) insert –
- “(3) For the avoidance of doubt, a reference in sub-paragraph (1) to a judicial function does not include a reference to a person falling within section 29(11).”
- (6) In paragraph 3 of Schedule 18 (judicial functions, etc.) after sub-paragraph (2) insert –
- “(3) For the avoidance of doubt, a reference in sub-paragraph (1) to a judicial function does not include a reference to a person falling within section 29(11).”

2 **Arbitration services: consequential amendments**

The Schedule (consequential amendments) has effect. 30

PART 2

AMENDMENTS TO THE ARBITRATION ACT 1996

3 **Validity of arbitration**

- (1) The Arbitration Act 1996 is amended as follows.
- (2) After section 6 (definition of arbitration agreement) insert –
- “**6A Discriminatory terms of arbitration**
- No part of an arbitration agreement or process shall provide –
- (a) that the evidence of a man is worth more than the evidence of a woman, or vice versa,
- (b) that the division of an estate between male and female children on intestacy must be unequal,

- (c) that women should have fewer property rights than men, or vice versa, or
- (d) for any other term that constitutes discrimination on the grounds of sex.”

4 Criminal and family law matters not arbitrable 5

- (1) The Arbitration Act 1996 is amended as follows.
- (2) After section 80 (notice and other requirements in connection with legal proceedings) insert –

“80A Criminal and family law matters not arbitrable

Any matter which is within the jurisdiction of the criminal or family courts cannot be the subject of arbitration proceedings.” 10

PART 3

AMENDMENT TO THE FAMILY LAW ACT 1996

5 Court orders based on negotiated agreements

- (1) The Family Law Act 1996 is amended as follows. 15
- (2) After section 9 insert –

“9A Court orders based on negotiated agreements

- (1) A court may issue a declaration setting aside any order based on a mediation settlement agreement or other negotiated agreement if it considers on evidence that one party’s consent was not genuine. 20

- (2) A court may make a declaration under subsection (1) on an application being made to it by –
 - (a) a party to the agreement;
 - (b) a relevant third party.

- (3) An application may be made by any other person with the leave of the court. 25

- (4) In deciding whether to grant leave, the court must have regard to all the circumstances, including –

- (a) the applicant’s connection with the party,
 - (b) the applicant’s knowledge of the circumstances of the party, 30
 - and

- (c) the wishes and feelings of the party so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person’s age and understanding, to have regard to them. 35

- (5) In assessing the genuineness of a party’s consent, the court should have particular regard to whether or not –

- (a) all parties were informed of their legal rights, including alternatives to mediation or any other negotiation process used, 40
 - and

- (b) any party was manipulated or put under duress, including through psychological coercion, to induce participation in the mediation or negotiation process.
- (6) For the purposes of this section “negotiated agreement” means an agreement which has been reached as the result of any form of negotiation, other than mediation, and “negotiation process” is to be construed accordingly. 5
- (7) For the purposes of this section, “relevant third party” means a person specified, or falling within a description of persons specified, by order of the Secretary of State. 10
- (8) An order of the Secretary of State under subsection (7) may, in particular, specify local authorities as defined by Article 2 of the Family Law Act 1996 (Forced Marriage) (Relevant Third Party) Order 2009.”

PART 4

AMENDMENT TO THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 15

6 Intimidation of domestic abuse victims

- (1) The Criminal Justice and Public Order Act 1994 is amended as follows.
- (2) In section 51 (intimidation, etc, of witnesses, jurors and others), after subsection (10) insert –
- “(10A) This section applies where the victim of a domestic abuse offence is assisting in the investigation of that offence or is a witness or potential witness in proceedings for that offence.” 20

PART 5

AMENDMENT TO THE COURTS AND LEGAL SERVICES ACT 1990

7 Falsely claiming legal jurisdiction 25

- (1) The Courts and Legal Services Act 1990 is amended as follows.
- (2) After section 118 (functions of Treasury) insert –
- “118A Falsely claiming legal jurisdiction**
- (1) A person is guilty of an offence if that person –
- (a) purports to determine in arbitration proceedings a matter excluded by section 80A of the Arbitration Act 1996, or 30
- (b) falsely purports to exercise any of the powers or duties of a court to make legally binding rulings.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both, or 35
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.”

PART 6

GENERAL

8 Extent, commencement and short title

- (1) This Act extends to England and Wales only.
- (2) This Act comes into force on such day as the Secretary of State may by order appoint. 5
- (3) This Act may be cited as the Arbitration and Mediation Services (Equality) Act 2012.

SCHEDULE

Section 2

CONSEQUENTIAL AMENDMENTS

Arbitration Act 1996

- 1 (1) The Arbitration Act 1996 is amended as follows.
- (2) In section 46 (rules applicable to substance of dispute) after subsection (1) insert – 5
- “(1A) Whether (a) or (b) above is the case, the tribunal shall decide the dispute in accordance with the provisions of section 29(11) of the Equality Act 2010”.
- (3) In section 68 (challenging the award: serious irregularity) after subsection (2)(g) insert – 10
- “(ga) failure of the arbitration proceedings to comply with section 6A;”.
- (4) In section 73 (loss of right to object) after subsection (2) insert –
- “(3) This section does not apply to any arbitral award made pursuant to proceedings which are not in accordance with the provisions of section 6A. 15
- (4) This section does not apply to any arbitral award that is not in accordance with the provisions of section 29(11) of the Equality Act 2010.” 20
- (5) In section 108 (extent) after subsection (1) insert –
- “(1A) The following provisions of Part I do not extend to Northern Ireland –
- (a) section 6A (discriminatory terms of arbitration),
- (b) section 46(1A) (rules applicable to substance of dispute), 25
- (c) section 68(2)(ga) (challenging the award: serious irregularity),
- (d) section 73(3) and (4) (loss of right to object), and
- (e) section 80A (criminal and family law matters not arbitrable).”

Equality Act 2010

30

- 2 (1) The Equality Act 2010 is amended as follows.
- (2) In subsection (2) of section 217 (extent) after “apart from” delete to the end and insert –
- “(a) section 29(11) and (12) (provision of services, etc);
- (b) section 142(6) (unenforceable terms); 35
- (c) section 149(3A) and (3B) (public sector equality duty);
- (d) section 190 (improvements to let dwelling houses);

- (e) Part 15 (family property);
- (f) paragraph 3(3) of Schedule 3 (judicial functions); and
- (g) paragraph 3(3) of Schedule 18 (judicial functions etc),
forms part of the law of Scotland.”

Arbitration and Mediation Services (Equality) Bill

[HL]

A

B I L L

To make further provision about arbitration and mediation services and the application of equality legislation to such services; to make provision about the protection of victims of domestic abuse; and for connected purposes.

Baroness Cox

Ordered to be Printed, 10th May 2012

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HL Bill 7

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