

The Sharia Debate in Ontario

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In late 2003, Syed Mumtaz Ali, a retired lawyer and scholar of Islamic jurisprudence, announced in the Canadian media that the Islamic Institute of Civil Justice (IICJ) would start offering arbitration in family disputes in accordance with both Islamic legal principles and Ontario's Arbitration Act, 1991. This act allowed a variety of private matters to be settled through legally binding arbitration, including arbitration based on religious principles. A vociferous debate ensued on the introduction of sharia law in Ontario in which the presumed incompatibility of sharia-based family law and women's individual rights took centre stage. This debate reached its conclusion in September 2005 when Ontario Premier Dalton McGuinty announced that he would end all religious arbitration. In February 2006, the Ontario legislature passed amendments to the 1991 Act that allowed family arbitration only if it was based on Ontario or Canadian law, excluding any form of religious arbitration, whether based on Christian, Jewish, Muslim, or other religious principles.

The account that follows is based on my reading of the Canadian newspapers, the government commissioned report on the desirability of allowing sharia-based arbitration tribunals, and the websites of various organizations arguing for and against the establishment of sharia-based arbitration tribunals.

The development of the sharia debate

Established in part to diminish a backlog in the courts, the Ontario Arbitration Act of 1991 allowed for religious, as well as non-religious, arbitration in private matters, including family and business matters.

Under the 1991 Act, two parties can appoint an arbitrator to make a legally binding decision. Unlike in mediation where two parties collaboratively reach a resolution aided by a mediator, an arbitrator acts much like a judge. Under the 1991 Act, both parties have to agree to engage in arbitration and if one of the parties feels that the decision reached is in conflict with existing Canadian law, they can appeal the arbitrator's decision in court. However, the 1991 Act contained no institutional oversight mechanism to ensure that decisions were in compliance with Canadian law. Feminist scholars and legal practitioners have warned that arbitration, like mediation, runs the risk of reproducing gendered power inequalities in intimate relationships, leaving women to agree to decisions that might not be in their best interest.¹ Nonetheless, arbitration under the 1991 Arbitration Act has continued to increase in popu-

larity in Ontario, quite likely because it offers a faster and cheaper route to resolving issues surrounding family dissolution and inheritance than the court system.

After 1991, Jewish and Christian groups, as well as Ismaili Muslims, set up arbitration boards that arbitrated in accordance with their religious principles. These arbitrations never received public scrutiny and little is known about them. The IICJ's proposal, then, built on over ten years of, seemingly unproblematic, religious arbitration in Ontario. Nonetheless, the ensuing public debate often misconstrued the Muslim Arbitration Board as a proposal to *extend* the law to include arbitration based on Islamic religious principles. As a matter of fact, under the Arbitra-

From 2003 through 2006 a debate developed on the introduction of "sharia law" or sharia arbitration in Ontario, Canada. The author shows how an issue that was in its core about legal principles and practices turned into a debate about women's inequality, and by extension Canadian national identity and culture. The ensuing public lambasting of Islam reinforced the notion that Islam and gender inequality are inherently incompatible. Important questions regarding faith-based arbitration were thus ignored, and with it the possibility to improve gender equality.

tion Act, such arbitration was *already* possible. As with all other arbitration, decisions would be legally binding as long as they did not violate existing Canadian law, though, again, there were at this point in time no oversight provisions to ensure that this was the case in each individual decision made. Furthermore, even though the debate centred on the proposal of the IICJ to start a sharia-based tribunal, there was no reason to assume that Ontario would only have one Muslim arbitration board. Under the 1991 Arbitra-

tion Act, multiple sharia-based tribunals could have been established, something that might well have happened given the tremendous diversity in Muslim communities in Ontario.

The debate on the idea of sharia-based arbitration clustered around a number of events. First, there was the announcement, made in December 2003, by the IICJ. That announcement resulted in some news reporting and editorials on the application of Islamic principles in family arbitration. A second period of more intensive debate occurred in June 2004 when Ontario Premier Dalton McGuinty asked his Attorney General, Michael Bryant, and Minister Responsible for Women's Issues, Sandra Pupatello, to look at the issue of religious arbitration based on sharia more deeply. By the end of the month, Bryant and Pupatello asked former Attorney General Marion Boyd to conduct a study. Marion Boyd was a minister in the left-wing National Democratic Party government in Ontario that passed the 1991 Arbitration Act. She had strong credentials as a feminist and was thought to be knowledgeable about both issues related to arbitration and to gender equality, particularly those pertaining to the family.

The third wave of the debate occurred when Boyd issued her report in late December 2004. She argued that religious arbitration based on what she called "Islamic legal principles" was allowed under the existing Arbitration Act. Furthermore, Boyd proposed that religious arbitration should continue arguing, "secular state laws do not treat everyone equally because people's individual backgrounds lead to differences in the impact of these laws."² At the same time, she was very concerned that individual rights, including women's rights, be safeguarded. To ensure this, she proposed a number of amendments to the Act, including institutionalized oversight measures and education measures on the principles of both religious arbitration and Canadian legal principles.

The debate peaked in September 2005. On September 8, a number of women's groups staged international protests against the adoption of sharia law in Ontario. On September 11, 2005, Premier McGuinty announced that he would put forth an amendment to the Arbitration Act to ensure that there would be "one law for all Ontarians" effectively ending faith-based arbitration. This was followed by a stream of op-eds, news analyses and opinion pieces, arguing, on the one hand, that this was a victory for women's rights and on the other, that McGuinty was leaving religious Muslim women who would now turn (or be turned) to informal sharia based-arbitration without any protection by the state. Since the adoption of the amendments to the Arbitration Act on February 14, 2006,³ there has been little public discussion of the issue, though some groups, both Jewish and Muslim, have vowed to struggle for the reinstatement of religious arbitration.

Multiculturalism, group rights, and women's rights

The sharia debate was at its core a debate on group rights. In his work on multiculturalism, the Canadian political theorist Will Kymlicka argues that ethnic groups deserve protections of their culture insofar

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as these protections further the group's integration into dominant society.⁴ This is in line with the intent of official Canadian multicultural policy, which emphasizes the goal of integration in its respect for group rights and ethno-cultural difference. Kymlicka further makes an important distinction between what he calls external protections and internal restrictions. External protections are group rights that remove a barrier to a group's full participation in society or that protect a group's ethno-cultural heritage. Internal restrictions, on the other hand, are group rights that enable the imposition of practices by some members of a group on other members of that group. The sharia debate, then, can be read as a debate on whether sharia arbitration would be an external protection furthering Muslim communities' integration into Canadian society or an avenue by which Muslim men can place restrictions on Muslim women.

Religious rights are one form of group rights that can be protected within the context of Canadian multicultural policy. The editorial board of *The Globe and Mail*, one of the two national newspapers in Canada, supported sharia-based tribunals because of their potential to increase integration of Muslims into Canada, arguing that, "the Islamic tribunal may yet send a message that Muslims can be who they are and still be as Canadian as anyone else."⁵ The editorial board rooted this argument firmly in a multicultural group right to practice one's religion within the confines of Canadian law. From this perspective, instituting sharia-based tribunals would provide an external protection to Canadian Muslims that would enhance their integration into Canadian society.

Syed Mumtaz Ali of the IICJ stressed a sense of religious obligation rather than of religious rights in his arguments for the establishment of sharia-based arbitration: "Islamic law obliges Muslims to follow local law, and Islamic law where possible. Under Ontario's Arbitration Act, Muslims will be able to settle disputes in matters of contracts, divorce and inheritance privately with the help of arbitrators [...]"⁶

Echoing the multicultural paradigm, Mumtaz Ali argued elsewhere that in order for Muslims to feel accepted within Canadian society, they have to be able to fulfil what he sees as a religious obligation to obey Muslim family law, insofar as it is in accordance with Canadian legal principles. While there is one place on his website that lists an argument he made in 1997 that arbitration is useful to Muslims exactly because there is no oversight, in his later writings, Mumtaz Ali stresses that interpretations of sharia are always context dependent and that they therefore can and should accommodate Canadian law.⁷

However, this argument for the compatibility of Muslim family law and Canadian law did not resonate with those who were concerned with Muslim women's rights. In her oft-cited critique of multiculturalism as "bad for women," feminist political philosopher Susan Moller Okin argues that multiculturalism has a tendency to reinforce ethno-cultural practices that are detrimental to women within that group.⁸ In other words, from her perspective multicultural group rights almost always entail internal restrictions.

This is exactly what those arguing against the institution of sharia-based tribunals argued. They did not take Mumtaz Ali and others' invocation of support for the Canadian Charter of Rights and Freedoms and its protections for gender equality seriously. Rather, a wide range of organizations and individuals, representing religious Muslim women and men, secular Muslim women and men, and non-Muslims, strenuously argued that by allowing sharia-based tribunals government would give its approval to the systemic devaluation of women's rights.

The argument that multiculturalism threatened women's individual rights dominated the debate. For example, Homa Arjomand was the founder of the International Campaign Against Sharia Court in Canada and one of the most cited people in the debate.⁹ A feminist who fled her native Iran in the late 1980s, she stated in an interview that, "I chose to come to Canada because of multiculturalism. ... But when I came here, I realized how much damage multiculturalism is doing to women. I'm against it strongly now. It has become a barrier to women's rights."¹⁰

Arjomand further argued that her experience living in Iran and working with Muslim women as a refugee counsellor in Toronto gave her first-hand knowledge of the negative impact of Muslim family law on Muslim women's rights. Many of the groups and individuals arguing against sharia-based tribunals drew on such personal experiences as well as stories from countries like Iran, Pakistan, Saudi-Arabia, and Nigeria to argue that women's rights are clearly incompatible with religious group rights.

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The effects of the sharia debate in Ontario

Ultimately, the sharia debate in Ontario had a number of effects. The framing of the issue as multiculturalism gone awry combined with the reach and depth of groups arguing against sharia-based arbitration to pit public support for multiculturalism against support for women's rights. As such, I would argue that the debate confused a larger problem with arbitration with matters of religion. In its 1991 incarnation, the Arbitration Act did not adequately deal with institutionalized power imbalances between men and women regardless of their religious affiliation or practices. Yet, rather than debating the way *arbitration* can reinforce such power imbalances, the focus of the debate was on how *sharia* threatened women's equality, and by extension Canadian national identity and culture. The debate on sharia arbitration, then, often turned into a public lambasting of Islam rather than a debate on legal principles and practices.

Second, this had the effect of reinforcing negative stereotypes about Islam as much of the evidence for the detrimental effects of sharia-based arbitration were drawn from countries where sharia is used to justify acts that clearly violate international standards of women's or human rights. In doing so, the debate also reinforced the notion that Islam and gender equality are inherently incompatible and that liberal rights and freedoms depend on secularism.

Third, the debate divided Muslim communities as it pitted those religious Muslims who believed they could best practise their religion privately against those who wanted state sanction for sharia-based rulings.

Finally, the issue of how to protect Muslim women in Canada from rulings that go against their interests was ultimately left by the wayside. As newspaper arguments made clear, religious Muslim women in Canada do go to Muslim arbitrators to rule on family matters. The decisions reached there will not be legally binding given the amendments to the Arbitration Act but they do shape the lives of these women and their children. By not seriously engaging in an attempt to conduct religious arbitration with government oversight, where that oversight would have focused on issues of gender equality, Ontario quite possibly left these women with fewer protections.

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Heated debate on Sharia law, Queen's Park, Ontario, 8 September 2005

Notes

1. For a good overview of the legal situation regarding faith-based arbitration and mediation and gender inequality, see: Natasha Bakht, "Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its Impact on Women," *Muslim World Journal of Human Rights* 1, no.1 (2004).
2. Marion Boyd, 2004. *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* – Executive Summary, 2004: 3, <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/>.
3. 2006 Family Statute Law Amendment Act, http://www.ontla.on.ca/hansard/committee_debates/38_parl/session2/GenGov/G011.htm#P619_194522.
4. Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).
5. *Globe and Mail*, 29 May 2004.
6. *Globe and Mail* A11, 11 December 2003.
7. <http://muslim-canada.org/>.
8. Susan Moller Okin, *Is Multiculturalism Bad for Women?* (Princeton: Princeton University Press, 1999).
9. See <http://www.nosharia.com/>.
10. *Globe and Mail*, 29 May 2004.