

'Shariafication by stealth' in the UK

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The state's adoption of 'faith based' approaches to address minority issues are increasingly marginalising women from minority backgrounds and denying them the right to participate in the wider political community as equal citizens, argues Pragna Patel.

In the last five years or so in the UK, Southall Black Sisters (SBS) has increasingly been preoccupied with one key question above all else: how to access justice on behalf of the most vulnerable. Of course, access to justice has always been a central concern, given that we have long recognised the law as a key site of feminist resistance. We have used the [law](#) in a variety of ways to ensure that the most marginalised and vulnerable can [exercise their right](#) to equality, justice and fairness in civil and criminal proceedings. Examples include our [casework](#) and campaigns on [Kiranjit Aluwalia](#) and the [Forced Marriage \(Civil Protection\) Act 2007](#). This has involved laying bare in the law class, race and gender norms that reproduce inequality and legitimate exclusionary and discriminatory outcomes for minority women. The struggle to hold the law to account in this sense remains unfinished business, even though together with others, we have made some significant [gains](#) along the way.

However, the struggle to access justice has now reached crisis point. The ever widening shadow of neo-liberalism and the continuing rise of fundamentalist religious identity politics have left us struggling on two interlinked fronts. First, we are [compelled to challenge](#) the state for removing legal aid from a huge range of civil and criminal matters which impact not only on individual rights but also on our demands for institutional accountability in the face of abuses of power that seem to be growing rather than diminishing. The Government's 'reforms' on legal aid are strongly located in a fiscal context that reiterate some of the key overarching aims of the present Government: localism, alternative dispute resolution strategies, deficit reduction and deregulation. Taken together these measures are destroying one of the great pillars of the welfare state. They have forced SBS into leading or supporting legal and political challenges [against various legal aid cuts](#).

This development is directly linked to the challenges that we face on the second front: increasing privatisation of justice and state adoption of a 'faith based' approach to address minority issues. This has meant, amongst other things, challenging religious fundamentalists and 'moderates' alike who are using the vacuum created to influence and shape law and social policy by reference to a regressive religious identity that they have come to define.

In the last few years, the UK has seen a rise in the demand for the accommodation of religious legal codes in the very fabric of the legal system; demands which parts of the state have been only too happy to accommodate. These demands in part emanate especially, but not only from, some powerful Muslim spokespersons and institutions and can be directly linked to the growth of political Islam and more generally to the rise of fundamentalism in all religions.

Muslim fundamentalists have mounted what can be described as a two pronged pincer like manoeuvre based ostensibly on the demand for religious tolerance, but which is in reality [a bid for power](#) in which the control of female sexuality is central. On the one hand they seek to ensure that personal religious codes are normalised within the legal system, and on the other they seek to formalise a parallel legal system through the establishment of alternative religious forums for dispute resolution in family matters. This process - a sort of [shariafication by stealth](#) of the legal

apparatus - involves making state law and policy 'Sharia' compliant. If successful, we have no doubt that it will lead other religions to demand the same level of accommodation.

At the heart of the debate on religion and the law, is the tension between the rights and fundamental freedoms of the individual on the one hand, and on the other the rights of minorities to religious freedom and educational and cultural rights. But it is often women and sexual and other minorities who are caught in the clash that ensues. As secular black feminists what we have to contend with today echoes previous struggles that challenged multiculturalism and its left leaning variant, anti-racism. Whereas previously we challenged the anti-racist movement and official multiculturalism for abstracting notions of culture, and for failing to deal with gender power relations, we now find ourselves challenging official multi-faithism (which has formalised communal identities) and parts of the anti-racist and feminist movement for abstracting notions of religion.

Towards the end of 2012, against the growing practice of [gender segregation](#) at public events in universities, Universities UK (UUK), the governing body of British universities, issued guidance which permitted gender segregation of women in university spaces in order to accommodate the religious beliefs of external speakers. The guidance presented in the form of a case study purported to provide advice in contexts in which the right to manifest religion clashes with gender equality.

Far from addressing the question of sex discrimination, the guidance merely legitimised gender apartheid. It took a campaign and threats of legal action by us before the UUK agreed to withdraw the guidance. We [argued](#) that the UUK's guidance violated the equality and non-discrimination principles enshrined in the [Public Sector Equality Duty under the Equality Act](#) and other equalities and human rights legislation, themselves the product of long and hard campaigning by feminists, racial minorities and other marginalised groups in society. The withdrawal of the UUK guidance was followed by a formal investigation by the Equalities and Human Rights Commission which [found the guidelines to be unlawful](#) despite cries of 'Islamophobia' - not only by Islamists and conservatives - but also some parts of the left and those who regard themselves as anti-racists and feminists. Many, including Laurie Penny [dismissed the matter](#) as "a fuss about nothing" and reduced our protests to "mere hyperbole" or [Islamophobia](#) and "an attack on yet another Muslim practice".

Learning nothing from the debacle, the Law Society, a body representing the interests of the legal profession, followed the UUK lead by [issuing guidance](#) to lawyers on how to prepare 'Sharia' compliant wills. It would appear that the guidance was drafted with reference to fundamentalists who defend the most abhorrent practices including death by stoning. The guidance endorsed so called sharia succession rules which stipulates that "as a general rule, a male heir will inherit twice the amount that a female heir will receive, illegitimate children are not heirs".

Clearly, the guidance accepts without question the inherent discrimination that exists in Islam (as indeed in other religions) against women and children born outside marriage. Of course the Law Society has not asked itself how it can possibly know what is and isn't 'sharia' law: Muslim religious codes throughout the world are varied and vigorously contested when not targeted for repeal and reform. The real problem is that the Law Society sees no wrong in wading into such doctrinal territory. Indeed, the guidance is part of a wider programme of training courses developed by the Law Society to [encourage 'sharia' compliance](#) in relation to the question of family, children, property and financial settlements in minority communities.

All of this gives succour to Islamist demands in the UK for religious and secular laws to operate in parallel universes, with the former applying to minorities and the latter to the white majority. What we see operating is an inverse form of racism: far from promoting a rights compliant culture, the

Law Society, like the UUK is helping to arrest the development of a secular human rights culture from taking root in minority communities.

Our struggle for the right to access a secular human rights framework is made that much more difficult in a context where the Government has also consistently invoked the need to uphold 'British values' (presumably meaning respect for human rights, democracy and the rule of law) even though in the same breath, it also threatens to repeal the Human Rights Act, every time a court seeks to assert the universal application of human rights in cases of state abuse of power.

The other area of concern in respect of the growing alignment of religion and the law is state support for [non-state religious arbitration systems](#).

By removing legal aid, the state forces minority women to resort to formal and informal religious authority and forums such as sharia councils and tribunals that appear to be on the increase. On the face of it, formalised religious forums of arbitration such as the Muslim Arbitration Tribunal present themselves as professional bodies that seek to adhere to formal legal rules of engagement and to non-discriminatory principles. But what they are in fact, seeking to do is to exclude the application of what is considered to be 'Western' secular law in family matters and to establish instead a parallel legal system based on divine law which by its very nature is immune from scrutiny.

Support for parallel legal systems come not only from male religious leaderships and the state, but also alarmingly from within feminism itself. For instance, in feminist discussions on intersectional frameworks for understanding violence against women it has become fashionable to talk of the intersection of religion and gender, and to refer to the need to develop a feminist response that is sensitive to the growth of religious values, especially post 9/11 and the rise of anti-Muslim racism. This has amounted to support for the accommodation of religious legal codes. Yet few if any acknowledge the fact that wherever parallel legal systems operate they generally suppress dissent, and seek to remove women from public spaces metaphorically speaking and to impede their fundamental freedoms in the private sphere.

Even fewer acknowledge that there are [substantial movements](#), often led by women and human rights activists, for the repeal of state sanctioned religious orders on the grounds that they are not compatible with universal human rights principles. Instead, notions of 'autonomy' and 'female agency' - the cornerstone of feminist analysis - are invoked to shore up a regressive multi-faith framework.

A recent study of women who have used religious based forums suggests that, in contexts where the stranglehold of religion leaves little room to manoeuvre, far from 'voluntarily' accessing religious authority, women exercise a highly constrained agency. Not a single woman interviewed chose to utilise religious forums to obtain protection orders or resolve disputes over property or children. On these substantive matters, they placed unequivocal trust in the secular legal system, however imperfect, which they felt offered them the best hope of obtaining equality and justice. The only issue on which roughly half sought religious intervention was on the question of divorce, but even then many obtained a civil divorce and sought a religious divorce out of social compulsion: they feared that a civil divorce would not be recognised in the community and they needed to legitimate their exit out of a marriage. They sought to avoid the stigma and isolation attached to divorce or to exercise sexual autonomy albeit within a marriage.

Advocates for parallel legal systems argue that having recourse to religious forums does not mean that minority women are seeking to opt out of the wider political community, only that they are seeking the right to be governed by their own norms. But this misses the point that women are not

choosing to opt out at all - they are being opted out by the religious right and by the state; they are denied access to the tools they need to withstand pressures to conform to custom or to invoke a broader set of citizenship and human rights. And in the process, they are denied the right to participate in the wider political community as citizens rather than subjects.

What we see at work here is clearly an attempt to impede the development of secular, progressive, political resistance by de-legitimising and locating our struggles for access to justice, outside of so called community, anti-racist and feminist concerns. These struggles are now taking place on many fronts as both religious right forces and the state mount an assault on secular human rights values in pursuit of power without accountability.

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This article is an extended version of a presentation given by the author at the [Secularism 2014 Conference](#) held in London last weekend. This article was originally published on [Open Democracy](#) under a Creative Commons Attribution-NonCommercial 3.0 licence.

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