

“Sharia Courts” in Britain, a colonial legacy - “Racism and colonial superiority are what sustain the setting up of separate laws for ‘indigenous people’”

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BRITISH ‘SUBJECTS’ DID NOT DESERVE LEGAL EQUALITY WITH THEIR COLONIAL MASTERS: INTERVIEW WITH MARIEME HELIE LUCAS ON SHARIA COURTS IN BRITAIN



Protest against Sharia in the United Kingdom 2014. Pic Credit: See Li/Wikimedia Commons.

British MPs on the Commons home affairs committee have launched an inquiry into the operation of ‘Sharia courts’ in the UK [\[1\]](#) to ensure their principles are compatible with British law. The announcement follows the establishment of a similar investigation by the Home Office last month.

However, over 200 women’s rights campaigners and organisations recently signed a public letter to Prime Minister Theresa May criticising the government inquiry into Sharia councils [\[2\]](#).

Whilst a review into Sharia bodies and their impact on gender equality and justice is long overdue, the letter outlined concerns that the review is focusing on “best practice” when the issue is not “moderate” versus “extreme” Sharia law but women’s rights.

The issue has resulted in disputes between various activists and Muslim groups, leading to accusations of racism and Islamophobia.

One Law for All spokesperson Maryam Namazie spoke to Algerian feminist Marieme Helie Lucas on ‘Sharia courts’ and their impact on women’s rights.

Maryam Namazie: Are Sharia councils parallel legal systems?

Marieme Helie Lucas: Before I get into your first question on Sharia laws — a little bit of history. Racism and colonial superiority are what sustain the setting up of separate laws for ‘indigenous people’.

The UK is simply applying, inside the UK today, to former 'natives', the rules that were designed for them in colonised countries under the British Empire: in other words, colonised people living under British rule in colonial times were not under British law, rather the British Empire selected and codified a mix of interpretations of religions, customs and cultural traditions in order to create, out of the blue, so-called 'indigenous laws' (see: WLUML Occasional Paper 7: *Islamic Law and the Colonial Encounter in British India*, by Michael R. Anderson, June 1996 Publication).

This clearly points at the fact that British 'subjects' did not deserve legal equality with their colonial masters. The condoning of parallel legal systems, rather than equality before the law, is at the heart of the British form of colonisation.

Now as well as in colonial times, one of the main justifications for codifying formal inequality of individuals before the law was/is respect for the native's ontological difference; the colonial master was not to disrupt in any way colonised people's mores.

When one thinks of violent conquest wars, of the number of dead and wounded in colonising enterprises, of forcibly seized land and resources, of burnt villages, of famished populations, that all come with colonisation, one may find quite ironical their sudden pretence of 'respect'.

Today, the British law of the land applies to all citizens, be they Catholics, Protestants, atheists, etc. Not one single citizen is beyond the law. Except for the former 'natives', be they actually British citizens or migrants: those – and those only – are, once more, entitled to laws of their own, because, beyond their official citizenship, they are still seen as 'different' from – and inferior to – the (former?) colonial master. 'Let them have their own customs, it is their way'.

'Proper' British citizens are ruled by laws they have voted on, that they can change if they come together and press their MPs. How can 'Sharia laws' be changed by the will and vote of citizens? A significant proportion of British citizens are now under supposedly religious laws that they have neither voted for, nor can change through a democratic process. Democracy for 'proper' British citizens but unchangeable 'tribal native customs' for others?

Insofar as the 'conclusions' or 'judgments' issued by the 'councils' or 'courts' are automatically transcribed, as a judgment would be, into the official system of justice (unless a dissatisfied party applies against the judgment), 'Sharia courts' are indeed part of a parallel legal system in the making. Does one have to apply in court against the conclusion of someone 'counselling' you? It is the very fact that the 'conclusions' of the so-called counsellors are equated to and transformed into a legal judgment that makes them a parallel legal system.

Several media articles have been pointing to the problem since mid-2000s. See for example: Islamic sharia courts in Britain are now 'legally binding' [3] where the aim of creating a parallel legal system was confirmed by some of the initiators of these councils-courts:

"Islamic sharia law courts in Britain are exploiting a little-known legal clause to make their verdicts officially binding under UK law in cases including divorce, financial disputes and even domestic violence. A new network of courts in five major cities is hearing cases where Muslims involved agree to be bound by traditional sharia law, and under the 1996 Arbitration Act the court's decisions can then be enforced by the county courts or the High Court."

Mr Siddiqi, the initiator of Muslim Arbitration Tribunal said: 'We realised that under the Arbitration Act we can make rulings which can be enforced by county and High Courts. The Act allows disputes to be resolved using alternatives like tribunals. This method is called alternative dispute resolution, which for Muslims is what the sharia courts are.'

In another article [4]:

"If individuals or companies are unable to settle their differences and do not wish to begin legal proceedings, they can agree to have their disputes resolved by an arbitrator, a sort of private judge."

Unless there are procedural irregularities, the arbitrator's decision — known as an award — will be enforced in the same way as a court ruling.

It is the benevolent attitude of the British government that makes 'private counselling' legal, even if and when the 'agreement' which is reached between parties contradicts, for instance, the legal provision of equality between sexes which are enshrined in the law of the land. Hence private settlements of properties in unilateral divorce initiated by the husband, or unequal share between brothers and sisters in wills, etc... which are unlawful under British law are officially sanctioned through 'sharia courts'.

What happens in the UK today is the quiet continuation of colonial discriminatory condescension. Unequal citizens may be left to their native uncivilised ways, as demanded by their self-appointed 'representatives'. This is what explains British 'tolerance'.

Maryam Namazie: Are Sharia "courts" part of an Islamist project? Where is the empirical evidence for that?

Marieme Helie Lucas: Yes, they are. Not just in Britain but everywhere in the world, the Muslim fundamentalist project is to bring back patriarchal mores and the legal subjugation of women, among others. First and foremost, this is happening in Muslim-majority countries. One can look at the global trends throughout the Middle East, Africa, South Asia and more recently South East Asia and in the Asian republics of the former Soviet Union.

For instance the Muslim far-right is steadily putting pressure so that the legal age of marriage for girls is reduced to 9 years old and whenever they fail to change the law, they make sure that the practice gets more and more tolerated by the state.

Horrors that Europe contemplates in Daesh's actions is the implementation of what the Muslim far-right pretend is 'sharia law'; predecessors of Daesh in Algeria in the 1990s did just the same: domestic and sexual slavery, child marriage, beheading, etc.

Europe is now also on the agenda of the fundamentalist Muslim-right: changing the laws to make it conform to their idea of 'sharia laws' (or promoting a parallel legal system) and controlling education are the main means of their entryism in Europe.

For instance in France in 2008, a Muslim husband sought an annulment of his marriage on the grounds that his bride was not a virgin [5]; she was willing to go for an immediate consensual divorce, but he and his advocates wanted an annulment; through this procedure, they attempted to create jurisprudence in French law so that 'virginity' would then be considered – in their words – 'an essential component of a marriage'. This, of course, is illegal in France.

It is also in this light that one should understand the Muslim fundamentalist efforts to push for an amendment of the secular laws that prohibit any sign of political or religious affiliation inside state – run secular primary and secondary schools (which incidentally are totally free of costs for children, be they citizens or not) — for both pupils under the age of 18 and for school personnel, teachers, administrative staff, etc. French authorities' refusal to comply was branded a 'law against Muslims', despite the fact that the law was enacted in 1906.

France was confronted with other attempts to deeply modify the laws of the land, for instance on polygamy, on sex segregation in public spaces, sex segregation in public services, on control over the content of what is being taught in State-run secular schools, etc.

Let's also make here a reference to the case of a woman of Moroccan origin who, in 2007, was seeking a divorce in Germany and was denied the right to initiate it, on the grounds that 'in her country', only husbands could initiate divorce [6]. The case was also covered in the *New York Times* [7] and *Spiegel* [8]. In Serbia, in the Muslim enclave of Sanjak, FGM is being performed, polygamy is practiced, early marriage is creeping in, all of it with no legal interference by the state.

What is happening now in the UK is part of this global move to impose specific (regressive) laws to specific categories of citizens. It seems there is not even awareness in the UK that all those laws and practices which are being promoted by Muslim fundamentalist extreme-Right are not even necessarily religious ones, but that they can have diverse origins, including customary laws.

A very simple cross-examination of the vast diversity of laws across 'Muslim countries' immediately demonstrate that, despite various governments' claims that their laws are all perfectly in conformity with Islam, they grant very different rights to women (See: Knowing Our Rights, WLUMML).

It is definitely not true that women everywhere in Muslim-majority countries cannot initiate a divorce; it is not true either that they all have to cover, or that they have unequal share to inheritance, or that there is sex segregation.

A number of Muslim women are and have been heads of state, entrepreneurs, politicians, taxi drivers, bright intellectuals, researchers, etc. in some Muslim-majority countries, while in others, girls are married off at an early age, are denied education, are closeted in four walls.

The agenda promoted by the Muslim fundamentalist extreme-right should be recognised for what it is — the agenda of a conservative political movement which cannot be equated to representing all Muslims at all times and all over the globe.

In other words, the "laws" used by so-called "Sharia courts" are not especially religiously inspired; they are just the choice that fundamentalists implement between contradictory (even antagonistic) customs, mores and conservative religious interpretations.

To make it even clearer: would "Christian law" be the one which prevails in Christian-majority countries that allow divorce or in those that deny access to divorce? In Christian-majority countries which deny access to contraception or in those that criminalise it? Which is the real "Christian law" and "who will cast the first stone?"

By encouraging and giving in to these supposedly religious demands in the name of religious tolerance, the UK promotes in fact a very specific right-wing political agenda, rising under a religious mask. Realising this should help do away with the accusation of 'Islamophobia' that attempts to silence women's opposition to the curtailing of their fundamental rights under this political agenda.

Women's opposition to changing the laws to the worst, under fundamentalist pressure, exists everywhere, in all Muslim-majority countries and it is very vocal – and of course, it exists too in countries where Muslims are in a minority and in the diaspora in Europe or North America.

Not surprisingly, women's resistance is more vocal inside Muslim-majority countries than in countries where the fundamentalist extreme-Right can play on "the need to defend ourselves" and pretend that the curtailing of women's rights will serve the survival of "our oppressed minority

community”.

Fundamentalists are the ones who create, sometimes ex-nihilo, the dilemma “faith versus women’s rights”, while many progressive Muslim theologians state that they see no contradiction between their faith and universal human rights and total equality in rights between men and women.

UK authorities should be made aware that, by setting up – or allowing the setting up of – ‘Sharia courts’, they in actual fact make a political choice that favours the Muslim fundamentalist extreme-Right agenda to the detriment of universal rights that are defended everywhere in Muslim-majority countries by progressive people including believing Muslims, progressive theologians and women’s rights advocates. And that the UK will be held accountable for making such a political choice.

Maryam Namazie: Some Sharia advocates have said that most Muslim women want Sharia “courts” and banning them would increase abuse against women. Is that true?

Marieme Helie Lucas: How could it be detrimental to women to benefit from laws they can vote and help modify according to their will and rights as citizens? How could it be beneficial to women to be held under laws that they cannot vote for or against, that they cannot change and which are subject to the exclusive interpretations of most conservative men who self-appoint themselves as interpreters of god’s will?

It amounts to saying that exercising one’s democratic rights is detrimental to women’s rights. How could it increase abuse?

From the point of view of strict logic, I would be interested in knowing how can it be demonstrated that exercising one’s rights is detrimental to one’s rights.

As for arguing that Muslim women want ‘Sharia courts’, that may be the case for some of them... just as long as they do not realise that, in these courts, they will be denied rights that they would otherwise enjoy in British tribunals under the law of the land. Knowledge is an important, even crucial, component for making a free and informed choice.

Personally, I fail to understand that any democratic country could even think of offering “choice” to women in these terms: “would you rather have less rights or more rights? Having less rights is better for you”. There is something utterly wrong here.

As mentioned earlier, the Muslim fundamentalist extreme-right plays the communal card, and pressures women into considering the need of the community before their own. However, what is proposed to them is not even really the need of the community, it is the political need of the far-right within this community which is being considered.

Let me doubt that this has been exposed clearly to the women who supposedly ‘want’ ‘Sharia courts’.

Maryam Namazie: Is opposition to the “courts” from secular activists Islamophobia and because of an anti-faith agenda?

Marieme Helie Lucas: Secularists cannot be equated to atheists. Secularists may or may not be atheists. Many secularists believe in one or another religious faith. Why should all these believers have an anti-faith agenda? That would go against their own interests.

Many believers in Islam hold strong secular views and think secularism protects their freedom of conscience and their freedom of religion. This was eloquently argued, for instance, by Soheib

Bencheikh, a very well known and savvy progressive Muslim theologian in his book about secularism in France: 'Marianne et le Prophète'.

Separation of religions and state allows citizens to freely believe and practice (it is article 1 of the 1906 law in France); it does not allow religions – these non-elected bodies – to interfere as such in politics. In other words, Christian Catholics have the right to vote and to shape the politics of their governments; but the representatives of Catholicism, or the Vatican itself, cannot step in and tell the government what to do, which laws to pass, which rights to grant, according to their vision of god's will (this is article 2 of the 1906 French law on separation).

Obviously, the UK (with its Head of State which is also the Head of the Anglican Church) has difficulties with the concept of secularism, to the point that it has distorted its original definition and changed "separation" between religions and state with "equal tolerance, by the state, for all religions".

Well, the Muslim fundamentalist extreme-Right, pretending it represents Islam and Muslims, is now demanding equal tolerance: what will Anglican Britain do? Legally sanctioning its discriminatory practices against women through so-called 'Sharia courts'? Hasn't Britain ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)? Should anyone bring Britain to court for breaching its commitment to CEDAW?

I think that secularists in the UK are and will remain trapped as long as they do not impose a re-definition of secularism as separation between churches/institutionalised religions, and State. The concept of "equal tolerance" is what breeds communalism, the perverse effects of which we now see in the promotion and implementation of so-called "Sharia courts" parallel legal system.

P.S.

* Sedaa. 2nd December 2016:

<http://www.sedaa.org/2016/12/british-subjects-did-not-deserve-legal-equality-with-their-colonial-masters-interview-with-marieme-helie-lucas-on-sharia-courts-in-britain/>

* Marieme Helie Lucas is an Algerian sociologist, political theorist and author. She is the founder and former International Coordinator of Women Living Under Muslim Laws, a solidarity network that provides information, support and a collective space for women. She is also the founder of Secularism Is A Women's Issue, which focuses on the threat of the erosion of secular spaces and of formal secularism, and challenges all forms of fundamentalisms.

Maryam Namazie is Spokesperson for the One Law for All Campaign. Follow her on Twitter [here](#).

Footnotes

[1] <https://www.theguardian.com/law/2016/may/26/theresa-may-launches-sharia-law-review>

[2] ESSF (article 39648), [An Open Letter to Theresa May: Whitewashing Sharia councils in the UK?](#).

- [3] <http://www.dailymail.co.uk/news/article-1055764/Islamic-sharia-courts-Britain-legally-binding.html>
- [4] <http://www.telegraph.co.uk/news/newstopics/lawreports/joshuarozenberg/2957692/What-can-sharia-courts-do-in-Britain.html>
- [5] <http://uk.reuters.com/article/us-france-court-virginity-idUKL3044927920080530>
- [6] <https://www.theguardian.com/world/2007/mar/23/germany.islam>
- [7] <http://www.nytimes.com/2007/03/22/world/europe/22cnd-germany.html>
- [8] <http://www.spiegel.de/international/germany/controversial-muslim-divorce-case-investigation-dropped-against-german-koran-judge-a-487238.html>