Articles

Sharia Law in Ontario: Separating Myth from Fact

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Konrad Bongard, freelance columnist for Pardon Applications of Canada, explores the history and debate of Sharia law in Ontario.

In the past decade, sharia law has been an oft-discussed topic in the Canadian media.

In 2004, Marion Boyd, a former NDP MPP for London Centre, published a report on the status of religious claims under the Arbitration Act, "Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion." This report had been requested by Dalton McGuinty, and sought to investigate the appropriateness of laws in Ontario which made religious arbitration of civil matters enforceable by Canadian courts.

Boyd's recommendation was that the Arbitration Act in Ontario remain in force. However, the media response was quick and severe: within days of lawyer Syed Mumtaz Ali's accouncement that the "Islamic Institute of Civil Justice" would begin arbitrating matters on the basis of sharia law, the right-wing media and anti-sharia activist groups mounted an aggressive counterattack. The vitriol which characterized this campaign was, at times, stunning: on a daily bases, articles were run in papers like *The Toronto Sun* which sought to connect the limited usage of sharia in an advisory capacity in Ontario with rape gangs, forced marriages, and female genital mutilation.

Re-reading these articles now, what is astounding are the facts about sharia law, and the Arbitration Act, they tended to omit. Few mentioned, for example, that the Jewish Beit Din as well as Ismaili tribunals had been arbitrating family matters under the 1991 Arbitration Act for 13 years prior to Boyd's report. Or that, for sharia law to have any legal force in Ontario, all parties involved in out-of-court arbitration would have to legally assent, and even after that the law could only be applied to civil matters — over which civil courts would ultimately have the last word. Most of the authors didn't even really seem to understand what sharia law was: by placing disproportionate emphasis on barbaric sentences for crimes handed out in third-world countries such as Africa and the Middle East under sharia (which had nothing to do with its proposed usage in Ontario), they neglected to illustrate that sharia law is largely devoted to legislating issues such as social welfare, business transactions, finance, travel, worship rituals, hygiene, charity, dietary restrictions and other day-to-day life practices.

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In the end, McGuinty caved to the pressure and ended the 20-month controversy by declaring that there will be 'One law for all Ontarians', in the process rescinding the rights of arbitration previously enjoyed by other groups.

But sharia remains a widely covered topic in the Canadian media. According to *Vancouver Sun* columnist Douglas Todd, Canadian newspapers published almost 1,000 articles last year about sharia. Of these articles, 82 per cent were negative, 16 per cent were neutral, and 2 per cent were positive. Given the highly prejudiced nature of this coverage, it is then worth posing the question: just what is sharia law?

Sharia is an Arabic word meaning "the right path." During his lifetime in the seventh century, Muhammad — the central prophet of Islam, the messenger of the Koran, and the man who united Arabia into a single religious polity under Islam — clarified the law by interpreting provisions in the Koran and acting as a judge in legal cases.

After his death, companions of Muhammad known as caliphs ruled Arabia. These caliphs considerably expanded the existing sharia law, and conquered territories outside of Arabia including Iraq, Syria, Palestine, Persia and Egypt. In 661 the Umayyad dynasty took power and seized further territories in India, Northwest Africa, and Spain, and appointed Islamic judges (kadiis) to decide cases involving Muslims.

In 750, the Abbasid dynasty removed the Umayyads from power. They transferred substantial areas of criminal law to the government, whereas the kadiis continued to deal with cases of religious, family, property, and commercial law.

During this time, considerable debate ensued as to whether sharia law referred exclusively to the legalistic legacy of the Prophet Muhammad, or whether qualified legal experts should be able to revise it. This dispute was resolved by a legal scholar named Shafii, who was murdered for his controversial views in 820. Shafii argued that in legal cases, a judge should first consult the Koran. If he could not find an applicable answer in the Koran, he should then resort to appealing to the teaching of Muhammad. If this did not work, he could look to the consensus of Muslim legal scholars. Failing this, the judge could form his own answer by analogy to the closest available precedent.

By the year 900, the classic sharia had taken shape. And while procedurally, it greatly resembles European law (not a coincidence, since the sharia influenced post-feudal European legal systems), the most crucial difference is that in sharia law the defendant will represent himself, without the mediation of a lawyer.

Also worth noting is that the content of sharia law is quite unique. While it would be impossible to describe it thoroughly in such a short article, women under sharia had the freedom to divorce and be financially supported, in divorces mothers typically retained the right of custody, men had the right to marry up to four wives (though polygamy would not be sanctioned for reasons of 'lust'), and abandoned infants received public support.

Of course, there is no one, single, 'definitive' sharia law. Throughout the Middle East, sharia has been greatly influenced by European legal systems since the time of colonization, and only a handful of countries (Saudia Arabia, Iran) try to apply sharia in family *and* criminal matters, whereas most (Turkey, Egypt, Lebanon) have blended systems. Ironically, some of most brutal laws in the Middle East—such as Pakistan's law against blasphemy, which has resulted in 60 executions since 1990—were actually established during the colonial era, and have no connection with sharia!

In many respects, sharia is more progressive than Canadian family law. As the University of Wisconsin scholar Asifa Quraisi-Landes points out, the *mahr* (dowry) that had to be provided in Islamic marriages traditionally used as an insurance policy, should a woman wish to divorce — thereby allowing women greater latitude when it comes to separation. And interestingly, in marriages under sharia, the property of the wife remains exclusively her own, and an unfair balance of labour (as we frequently see in the West, owing to the infamous 'double day' for women) would've actually been sufficient grounds for a divorce.

Given the highly restricted nature of the use of out-of-court mediation based on sharia provided by the 1991 Arbitration Act, it is difficult to understand, short of capitulation to bigotry, why the McGuinty government refused to provide the same liberties to Muslims as had been enjoyed by Jewish groups for years. This is particularly true given that — under our current regime — sharia law is more likely to be enforced behind closed doors, in a less progressive fashion, and many immigrants who would've resorted to it will be forced to engender expensive legal fees using the overstrained court system.

It was also a missed opportunity. As Marion Boyd pointed out, if Ontario had allowed for out-of-court mediation under sharia, it would've become the first jurisdiction in the west to do so (the UK has since introduced it), and could've helped foster a 'progressive' reinterpretation of Islam.

Given how unprogressive our governments have been in the past twenty years, this would've been a welcome change.

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