

Written evidence submitted by Southall Black Sisters

Summary

1. The formal legal system is a critical site for asserting the human rights of vulnerable black and minority (BME) women. For many subject to gender-based violence, it is a hard won final safety net without which they cannot survive.
2. The vacuum that is created by drastic cuts to welfare services and legal aid is filled by religious fundamentalist and conservative forces who act as dispensers of 'justice.' Their aim is to create parallel legal systems based on regressive religious values and to remove women and children from the protection of the rule of law altogether.
3. SBS' research and experience highlights the detrimental and even life threatening impact of parallel legal systems on abused BME women and children who are routinely denied access to justice. They are subject to highly arbitrary, patriarchal and discriminatory forms of religious arbitration that strike at very heart of the protection, equality, non-discrimination and human rights principles.
4. The regulation of parallel legal systems is a dangerous and undesirable option that will ghettoise minority women and undermine efforts to create a shared commonality of values and citizenship. The very economic and ideological reasons that drive the state and religious bodies to promote the privatisation of justice are the very reasons why regulation is not viable. The sole aim of bodies like Sharia Councils is to mediate and adjudicate on 'private' family matters and to reject what are considered to be 'western' secular laws or norms of democratic governance including the rule of law.

About Southall Black Sisters (SBS)

5. For 37 years, SBS has provided advocacy and support to black and minority (BME) women who make up some of the most marginalised and powerless

sections of our society. Women from Muslim backgrounds make up the second largest group of our users, and like other women, arrive at SBS having experienced all forms of gender based violence and related problems of homelessness, mental illness, trauma, poverty and insecure immigration status. The bulk of our work is directed at assisting BME women and children obtain effective protection and to assist them to assert their fundamental human rights and freedoms. Through advice and advocacy, we assist on average 3500 women a year to obtain immediate protection and access housing, welfare and mental health services and legal advice and representation in family, immigration, criminal, community care and other legal proceedings. Our work by its very nature addresses issues of multiple or intersectional discrimination, involving the simultaneous experience of race, gender and other forms of inequality. Although based in West London, we have a national and international reach.

Our concerns

6. In the last three decades, in the UK, secular BME women's groups like SBS have made great strides in compelling the state (through the welfare and legal system) to intervene in its protective capacity in the family affairs of minorities (especially in relation to domestic violence, honour killings, forced marriage and FGM.) We have seen major changes in national perceptions, laws and policy on violence against women that has helped to not only change the landscape that we inhabit but also the wider political and social culture. It is no longer acceptable to condone violence against women. We have seen the establishment of MARACs and specialist domestic violence courts; the adoption of standardised risk assessment tool kits and good practice; the introduction of laws on forced marriage, harassment and coercion and support for abused women with insecure immigration status as well as statutory guidance on honour based violence. These are just some developments that have made it possible for women

to leave abusive relationships, minimise risk and repeat victimisation, resolve issues relating to the protection of children and improve accountability from key front line services.

7. However, contradictory faith based social policy developments (addressing the needs of minorities only through the prism of religion) combined with austerity measures not only threaten to undo these achievements but also to take us backwards in respect of protecting vulnerable women and children and embedding a rights based culture in our communities.
8. The decimation of state and specialist BME women's services¹ and the drastic erosion of civil and criminal legal aid has created vacuum in the welfare state. It is being filled by patriarchal and authoritarian if not fundamentalist religious forces in BME communities who are increasingly providing welfare services and acting as dispensers of 'justice'²
9. Many minority religious leaders and organisations refer to the 'personal laws' of their communities to demand that issues to do with the family (seen as 'private or personal' matters), should be the subject of religious and culturally relative processes. It is a demand that the state is only too willing to meet: successive governments have been expressly promoting the use of informal, essentially private arbitration and mediation services both as a cost cutting exercise and as an ideological attack on what it wrongly perceives as a litigious culture of rights in the UK.³ The lack of effective access to legal aid in family proceedings in particular, and state encouragement of alternative sources of dispute resolution has helped to

¹ 'State of the Sector: Contextualising The Current Experiences of BME Ending Violence Against Women And Girls Organisations' Imkaan 2015 <https://www.dropbox.com/s/c3n2gjs4g2g37s2/IMKAAAN%20-%20STATE%20OF%20THE%20SECTOR%20%5BFINAL%5D.pdf?dl=0>

²: 'An injustice anywhere is a threat to justice everywhere' - Pragna Patel TEDX Talk

<https://www.youtube.com/watch?v=X8hldysrGBw&index=5&list=PLsRNoUx8w3rNjKivQYGrHOp7eEKA36blt>

³ *Banned Aid: the government's cure for a broken society* by Yasmin Searle dated 30th December 2010 published by Open Democracy website available at: <http://www.opendemocracy.net/ourkingdom/yasmine-seale/banned-aid-governments-cure-for-broken-society>

legitimise parallel legal systems through the use of highly unaccountable religious arbitration forums such as Sharia Councils and the Muslim Arbitration Tribunal (MAT) ⁴ and given greater prominence to religious clerics. The latter are also increasingly used and sanctioned by the state through the family courts and social services departments as 'experts' on religious and cultural matters in legal family proceedings.

10. But these religious arbitration forums almost always fail women and children who have the least bargaining power in such forums because they are generally regarded not equal to men. The forums are particularly detrimental to women who have been subject to abuse and violence.

SBS Research and Casework Experience

11. Far from exercising 'choice' or 'autonomy', the vast majority of BME women are compelled to use religious arbitration out of immense social pressure, lack of knowledge of their legal rights and the lack of alternatives support systems. Findings from a recent SBS study of 21 abused women living in refuges/and or had experienced domestic violence and who engaged with Sharia Councils or turned to other religious authority, suggest that they are exercising a highly constrained form of agency and choice in contexts in which the stranglehold of religion has left them with little or no room to manoeuvre.⁵

12. For many women however, it is not religious authority but the formal legal system that represents their best hope of obtaining justice; it is the final safety net because it acts as a crucial buffer zone between them and patriarchal violence and abuse of power that they experience in family, community and religious institutions. This is precisely why attempts made

⁴ Lord Hunt speaking at an event of the Birmingham Muslim Arbitration Tribunal in July 2008, commended the advice provided by the Birmingham MAT to local people on this issue. At no stage in the speech did he question the MATs involvement in family disputes. See: http://www.matribunal.com/initiative_s_lh.html

⁵ Forthcoming report by SBS on violence against women and religious arbitration.

by the state and religious forces to divert BME women away from the formal legal system are so alarming. The existence of parallel legal systems only serves to exacerbate the pressures on such women to remain in abusive relationships and to refrain from accessing their rights in the formal legal system; it exposes them to greater risk of serious harm thus increasing rather than decreasing their vulnerability and hindering their integration in the wider society.

Flouting the Rule of Law

13. Our research shows that religious arbitration forums deny women their rights in all aspects of family matters. Women and children do not have legal representation during the process; decisions are not public material and there is no right of appeal. Nor is there evidence of any meaningful commitment or adherence to key rule of law principles: accessibility, transparency, impartiality, confidentiality, certainty, procedural fairness, the absence of discretion, and compliance with international human rights obligations. Indeed because religious forums operate on the basis of so called 'divine law', they claim that their pronouncements cannot be challenged. They are by their very nature, not amenable to state scrutiny and accountability, precisely because their aim is to remove women from the protection of the rule of law altogether.

Mediation and Reconciliation

14. In our study and casework, many abused women describe being forced into mediation for the purposes of 'reconciliation' and of not being heard. Frequent advice is to be tolerant of abuse and to allow the abusive partner access to children even if this contravenes formal court protection orders and orders forbidding perpetrators access to children. Established statutory guidance and good practice that warns against mediation and reconciliation in gender-based violence cases is also regularly flouted. The pressure to mediate and reconcile regardless of the severity of the violence and abuse

is arguably the single most common problem faced by these women. Indeed reconciliation is viewed as a 'moral duty' and as a 'religious obligation'. The following case exemplifies this problem:

15. Nosheen, was married in Pakistan for her money and jewellery and to be a servant for her in-laws in the UK. Here She was subjected to humiliation and violence and told me that her mother-in-law tried to strangle her. She eventually left her husband but then faced a long almost kafkaesque battle to obtain an Islamic divorce from a Sharia Council. She was told that it was her 'Islamic' duty to tolerate the abuse. She eventually ran out of patience and cried out in defiance:

'What do you know about Islam, our whole life is Islam and it doesn't say anywhere that you must stand being treated so badly...'

16. Women were often exasperated by the pressure to reconcile:

'...to be honest with you the experiences I'd had with these Maulanas and Masjids telling me to be patient with abuse and violence and I was saying....these Sharia council's are set up by men for men, that's how I see it and as for mediation, I said it's past mediation, I don't want mediation...The courts have already decided that he has no access to the children and my daughter turned 18 and she took out an injunction against...'

17. Another abused woman who approached an Imam for advice was told: 'you will receive justice in the after-life, you should be patient'.

18. Alarmingly, current practices show that these forums also attempt to sabotage criminal proceedings. The MAT for example, actively involves itself in criminal proceedings on domestic violence, despite stating that it is unable to deal with criminal offences: it uses its position of power to persuade the CPS to drop charges and to encourage women to reconcile with abusive partners without reference to court orders they may already have or to risk assessments and safety planning.⁶

⁶ http://www.matribunal.com/cases_faimly.html

Divorce

19. Not a single woman in our research chose to use religious arbitration forums to seek redress in respect of violence, children, property or financial matters. The only issue on which roughly half sought religious intervention was in the area of divorce. But even here their reasons were often complex and had more to do with the fact that unlike their husbands, they could not declare unilateral divorce - talaq - (without the woman's consent) and therefore had to seek religious permission to end their marriage. Women were forced to apply for a khula (women's initiated divorce that is dependent upon permission from a religious scholar and involves foregoing the dowry and financial gifts related to the marriage.) There is no financial forfeit when a man declares talaq.
20. Some women sought a religious divorce because they had never registered their marriage and so could not obtain a civil divorce. Others sought a religious divorce following referrals by community organisations who worked on the problematic assumption that a religious divorce was of paramount importance to their identity as Muslim women.
21. Women often experienced undue delays and obstructions in obtaining a religious divorce. For example, Sharia Councils would allow unresponsive husbands considerable time before finally approving a divorce, thus adding to the trauma and distress that women experienced. They were kept in a state of uncertainty and anxiety and at risk of further violence.
22. One pregnant woman was told that under Islam it was forbidden for a pregnant woman to obtain a divorce. Another woman was granted a divorce only after it became clear that she had waived her legal entitlement to maintenance and property.

'...I mean he and I had been separated for many years by that point, he wasn't giving me any maintenance ...And he didn't do anything for me, so you see this way it's easy to get a divorce and so they didn't ask me too many questions because, there were no impediments, it wasn't as if he was giving

me, he didn't give me any maintenance, nor did I ever take anything from him, the house...'

23. Often women were compelled to seek a religious divorce because they wished to re-marry in order to avoid being accused of Zina (adultery) or because they wanted to avoid the hardships they would face as single parents or because they were under considerable pressure from their families to re-marry. Some felt that re-marriage was the only way they could start life again without fear of ostracisation and even persecution as female divorcees which in most BME communities is tantamount to being sexually immoral:

'It would be bad, they would say bad things like she's married without getting divorced, you know those people who are considered 'untouchable', who wash dishes and no-one even talks to them...'

'I mean if I didn't apply for a divorce and started living with a man, then the community would be up in arms and my family will be shamed saying that I'd come here and look at what I was doing. That I'm doing wrong things.'

24. It was clear that such women were unaware that a civil divorce was acceptable as a legitimate divorce in other jurisdictions. The fear of being accused of Zina or adultery was purely a community pressure that was placed on women by over zealous religious leaderships who seek absolute religious conformity.

25. By far, the majority of women who approached Sharia Councils for divorce were destitute or facing financial hardships as single parents on low income or benefits, yet most were made to pay considerable amounts of money to obtain a divorce. It led one woman to declare that Sharia Councils were operating purely for financial gain.

'I approached Birmingham and they wanted £200 plus, it was purely financial... I did write in and say I don't agree with the money why are you asking me to say, you're just going to sit around and look at my evidence, why do you need paying, admin cost, for what? A stamp to Pakistan and Rotherham, what's your admin? Because nobody ever spoke to me on the phone.'

26. Significantly, some women remained sceptical about the entire process of seeking a religious divorce; a politically astute response given that 30 years ago, the experience of SBS and other women's groups for example, shows that women did not feel the need to obtain a religious divorce:

'To be honest, I'm not really a religion person, I am Muslim right but I don't know the history why they need it, need to know that you're divorced but I think its wrong, if you have a like a letter or a legal divorce, then it's more than enough to know, it doesn't have to say them the Sharia council divorce...'

Another woman said:

'I'll be honest with you as a Muslim, someone who believes in the purity of this faith, I don't like Sharia Councils, I don't think they should exist, there are for men, that's it, it's predominantly men on those councils, so four or five men are going to sit around a table and decide whether I can file for this or not when God has already given me the permission to do it...'

27. The importance of these testimonies is that even if women do not seek assistance on anything other than a divorce, their rights in relation to protection from violence and to property, finances and children are also seriously undermined since their ability to obtain a divorce is often dependent on forgoing their rights in these matters. Such agreements to waive financial and other rights upon divorce would never occur within the civil law without independent legal advice and judicial scrutiny, especially where children are involved. The following case typifies this recurrent problem:

28. Farzana was married at 18 and left Pakistan to join her husband and his large family in Britain. Intensely traumatised by her experiences of abuse in her marriage, she recounted how she was beaten daily and made to do all the housework. She couldn't go out or speak to anyone and ate the leftovers from family meals. Whilst pregnant, she was beaten so badly that she was hospitalized, where she finally got help. She went to a Sharia council for a religious divorce which took months because her husband did not reply or give his permission. Eventually, she succeeded but had to forgo

her rights to maintenance and property. In a civil court, she would not only have been granted a divorce but also a protection order. She would also have been advised to make a claim for property and for damages for wrongful imprisonment by her husband and in-laws.

29. These examples show how religion is deeply implicated in women's experiences of violence, inequality and discrimination. In the formal legal system, with legal aid, abused women would get immediate protection and have the right to divorce, to claim dowry and compensation and damages, children, maintenance, finances and property. They would not be delivered back to their abusers or told to wait for justice in the after-life.

30. There is also evidence to show that religious forums like the MAT undermine the legal rights of women in other ways. In one case involving inheritance of family property following the death of parents, a woman was given less than her brothers because religious law deemed that she should be dependent on her brothers for financial support.⁷

Women do not trust religious authority

31. In another SBS study, far from inspiring confidence and trust, the growing power of religious authority in BME women's lives evoked a range of fears amongst BME women about the control that it would have over their lives and the risks that it would pose to their mental and physical health.⁸

'I would never go to a temple or Gurdwara for help. I wouldn't feel happy about talking about myself. I feel they would judge me...I couldn't trust them to keep things confidential...I come to SBS to share my innermost feelings. I have never been anywhere else. I couldn't go to a Gurdwara or Temple or Masjid. I would rather die than go there.'

⁷ 'Sharia Law in Britain: A Threat to One Law for All and Equal Rights' One Law for All, June 2010

⁸ 'Cohesion, Faith and Gender' Pragna Patel and Udit Sen Southall Black Sisters 2010

32. Most women regarded religion as a continuation of the community collusion that they experienced when seeking to exit from violence and oppression. They also recognised religious institutions not just as places of religious worship but as profoundly political, gendered, elitist, and corrupt spaces in which rival factions often bid for power and authority and/or seek financial or political gain.

'Doesn't make a difference if there are men or women trustees – they feel superior to devotees... [I] don't know why they have to feel so superior. It is the public that gives them their status. The politics of these places is very dirty. Very corrupt – that's the word – corruption. If anyone rebels against their ideas they would be against that person- they never encourage women to divorce until it happens to their own daughter.'

The Sharia Myth

33. Sharia Councils and the MAT hold themselves out to be 'courts of law' but they are in fact highly arbitrary decision making forums that use dominant, patriarchal and authoritarian interpretations of Muslim codes which are passed off as 'Shaira' laws. The majority of women who sought a religious divorce laboured under the misapprehension that they were legally valid elsewhere, a myth that Sharia Councils and the MAT were only too willing to perpetuate since it consolidated their pivotal role in the community as dispensers of 'justice'. There is in fact, no single codified 'Sharia' legal framework and even among the four main schools of Sunni Islamic jurisprudence there are numerous interpretations and applications of Muslim codes which vary according to ethnic and national and cultural diversity. There is consensus on the other hand on the death penalty for apostasy, homosexuality and adultery.⁹

34. Significantly, in many Muslim majority countries, Muslim family codes have undergone progressive reforms in family matters in civil courts that have created legal precedents, yet none of this is reflected in the decision making processes of the religious arbitration forums in this country. The

⁹ One Law for All (2010)

point here is that not only are the decisions of religious tribunals arbitrary and inconsistent amongst the different tribunals within the UK, but that even across the Muslim world, a decision by one religious tribunal may not be recognised as valid by another religious tribunal or even by a Muslim majority state. In Pakistan and Bangladesh, for instance, 'religious divorces' obtained in the UK are not recognised by the formal courts applying Muslim family laws whereas civil divorces are accepted as valid divorces between Muslims.¹⁰

Conclusion

35. There is a view that as religious arbitration systems are used, it makes more sense to recognise their rulings and regulate their operations and encourage good practice. We reject this view outright. Quite apart from the fact that there is no evidence that the majority of BME woman want religious arbitration over family matters, any such move will be profoundly anti- democratic. In the wider society there is continuing public scrutiny of the law and legal systems under a democratic parliamentary process but religious law is not open to such scrutiny.
36. Also, to make religious tribunals compatible with the equalities and human rights law would require considerable state monitoring and resources and putting into place mechanisms of accountability. This is simply beyond the scope of the state given that the state is already trying to shift the economic burden away from the formal legal system to alternative systems of dispute resolution.
37. This submission emphasises the point that marriage/divorce, family, child custody and inheritance issues are not private matters and precisely because historically they were seen as private matters, domestic violence, exploitation and abuse towards women and children were ignored. For this

¹⁰ 'Recognising the Un-Recognised'. Akbar, S. and Balchin, C. Women Living Under Muslim Laws January 2006

reason, there needs to be greater not less state protection for the most vulnerable in our society. This responsibility cannot be abrogated by creating and validating spaces for religious bodies dominated by fundamentalist and conservative forces to govern the communities on behalf of which they claim to speak. To regard these issues in this way is to undo the decades of feminist campaigning across the world for the separation of religion and the law and for reforms in law and public policy to reflect the reality of gender-based violence. Evidence from across the world indicates that wherever parallel legal systems exist, they disadvantage vulnerable women and other sub groups and remain politically resistant to progressive reform.¹¹

38. Ultimately, the whole idea of promoting religious arbitration raises profound questions of citizenship and human rights. Minority women are being encouraged to remain ghettoised and subject to their own religious systems with little or no opportunity to exit from oppression. It is likely to lead to even less promotion and opportunity to create a shared commonality of values and citizenship.

Southall Black Sisters

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¹¹ 'When Legal Worlds Overlap: Human Rights, State and Non-State Law' by The International Council on Human Rights Policy, published in 2009 by The International Council on Human Rights Policy (Versoix, Switzerland).