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The laws of the land must protect all of us, irrespective of gender or religion

by Alia Hogben

The Canadian Council of Muslim Women is in a difficult position, as we speak out against our own government and some of our fellow Muslims, regarding the proposed application of Sharia/Muslim family law in Canada.

As citizens of Canada, we believe that the laws of the land must protect us, treat us equally and be applied to all of us, irrespective of our ethnicity, race, gender or religion.

We know that any benefits for women in Muslim family law also exist in Canadian family law, plus greater protection of other rights. For example, the ability to have a pre-nuptial agreement, no polygamy, laws against violence, and fairer child custody than in Muslim law.

The provincial Arbitration Act allows for the development of "sharia" tribunals outside the court system.

We want family matters to be dealt with under the Family Law Act and not the Arbitration Act.

Neither the government nor the proponents are being honest about the Arbitration Act.

It defines arbitration as a "private" matter without the safeguards of public scrutiny.

There are no principles underlying this act, no training requirements for arbitrators, no standards, no limits to their process, no legal representation is needed, no records need be kept and only the award goes to the court.

It has been repeated *ad nauseam* that the tribunals will adhere to the Charter, but we find no overseeing nor monitoring to ensure this. The woman would have to take a second legal step if she wants to challenge the binding arbitrated settlement.

Where's the protection of rights, where's the cost efficiency and where's the justice?

We fear that this discussion may increase anti-Muslim hostility, which, sadly, would be injurious for us as individuals and as a community. However, the issue is too

important because it is about women's human rights and our treatment under the laws of Canada.

The confusing use of terminology (sharia, Islamic, Muslim) is hampering this discussion.

Sharia is an encompassing, value-laden term, and literally means the beaten path to the water, and metaphorically describes the way Muslims are to live.

It is far more profound than mere jurisprudence, (*fiqh*) or Muslim law.

The term "Islamic" connotes the teachings of the faith, while "Muslim" relates to matters of the believers. Muslim family law is the human interpretation, over centuries, of Islamic guidance and is not divinely ordained, as some would have us believe.

The proponents of these tribunals are deliberately using the term Sharia, knowing that this will silence discussion and give them "Islamic" legitimacy in the eyes of some believers. They play into the fears of us, newer Canadians, arguing that we need identity markers to remain Muslim. They are belittling the rights provided under Canadian laws and presenting an idealized version of Muslim law.

Based on research in different countries on the current application of Muslim family law, founded on a patriarchal model, the conclusion is that women's rights are adversely affected.

The Canadian Council of Muslim Women cannot be against sharia by definition; our concern is about the application of Muslim family law.

Unquestionably, 1,400 years ago Muslim women were given significant rights. However, it is misleading to think that these rights are adequate and that we should not have enhanced human rights under the Universal Declaration and the Canadian Charter of Rights and Freedoms, which we believe are congruent with the principles of Islam.

We appreciate that in our homelands many faced economic woes, authoritarian governments, lack of democracy and human rights, plus some western neo-colonialism. In reaction, some yearn for a recreation of the halcyon, glorious days of Muslim civilization and for an idealized legal system.

If Muslim countries want to apply Muslim law, we would support development of a legal system based on Islamic principles of compassion, social justice and equality of

all individuals, coupled with a strong commitment to democratic values of citizenship. Many of their current laws are not in keeping with these principles.

In Canada, we can live fully as Muslims because of the values of fairness, social justice and acceptance of diversity. We should work with our fellow citizens when faced with injustices rather than segregating ourselves in fragmented communities.

However, on this issue, we, Muslim women, are being dealt with in a discriminatory and unjust manner by both our own government and by the proponents of sharia tribunals.

We appeal to our fellow Canadians to help us fight an act that not only fails to protect us but gives permission for us to be treated adversely.

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