

2014

# Abusing The System: Domestic Violence Judgments From Sharia Arbitration Tribunals Create Parallel Legal Structures in the United Kingdom

Ashley Nickel

*American University Washington College of Law*

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### Recommended Citation

Nickel, Ashley. "Abusing The System: Domestic Violence Judgments From Sharia Arbitration Tribunals Create Parallel Legal Structures in the United Kindgom." *The Arbitration Brief* 4, no. 1 (2014): 92-120.

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# ABUSING THE SYSTEM: DOMESTIC VIOLENCE JUDGMENTS FROM SHARIA ARBITRATION TRIBUNALS CREATE PARALLEL LEGAL STRUCTURES IN THE UNITED KINGDOM

*Ashley Nickel*

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## INTRODUCTION

Pursuant to Britain's Arbitration Act of 1996, procedural orders from arbitration tribunals governed by Sharia law are recognized and fully enforceable by British government.<sup>1</sup> Currently, eighty-five Sharia Law Courts operate throughout Britain,<sup>2</sup> and, due to their private nature, operate outside of public view and meaningful independent oversight.<sup>3</sup> The rulings of these courts have sparked a concern for duality of law which arises from tribunal decisions inconsistent with English civil and family court practice. Proponents of reducing this duality have initiated a "One Law for All" campaign, and the Arbitration and Mediation Services (Equality) Bill first proposed by Baroness Caroline Cox in 2011 is one measure put forth to curb an enforced disparity towards social standards recognized through British law.<sup>4</sup> The bill's proposal includes a number of stipulations intended to address human rights issues and limit the power afforded to Sharia arbitration tribunals in respect to criminal matters, although the bill does not explicitly mention Islam.<sup>5</sup> In advocating her bill, Baroness Cox has focused particularly on domestic abuse issues disputed in Sharia courts, noting that many women subjected to such disputes either do not realize there is an alternative court for resolution or have no course of action in civil courts since their marriages do not have legal recognition, and as such, have faced intimidation, coercion, or unfairness from the tribunals.<sup>6</sup>

This Note addresses the campaign for equity of law, centering on the proposed Equality Bill. Part I presents a comparative analysis of the domestic violence cases seen by the Sharia courts as compared to

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<sup>1</sup> See Deborah Weiss, *Gender Equality in Sharia Courts?*, FRONTPAGE MAGAZINE (July 11 2011), <http://www.clarionproject.org/content/gender-equality-sharia-courts>.

<sup>2</sup> See Soeren Kern, *Britain's Sharia Courts: "You Cannot Go Against What Islam Says"*, GATESTONE INSTITUTE (Apr. 23, 2013, 5:00 AM), <http://www.clarionproject.org/content/gender-equality-sharia-courts>.

<sup>3</sup> See Christopher R. Lepore, Note, *Asserting State Sovereignty Over National Communities of Islam in the United States and Britain: Sharia Courts as a Tool of Muslim Accommodation and Integration*, 11 WASH. GLOB. STUD. L. REV. 669, 675 (2012).

<sup>4</sup> See Maryam Namazie, *One Law for All and the National Secular Society Back Bill That Aims to Curb Sharia Courts in Britain*, ONE LAW FOR ALL (June 10, 2011), <http://www.onelawforall.org.uk/one-law-for-all-and-the-national-secular-society-back-bill-that-aims-to-curb-sharia-courts-in-britain/>.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

English courts, comparing the volume of cases and the mentality surrounding the issue in the differing cultures. This analysis demonstrates that a disparity between English and Sharia law exists, and in doing so, recognizes the validity of the duality of law concerns. Part II considers how religions are accounted for under British law (considering whether Sharia law as a religious right should overrule English law or have to practice within those perimeters). Part III introduces the proposals within the Equality Bill, introducing the question of whether the bill is an effective measure in addressing the disparities between the courts and creating “one law.” To determine whether Cox’s bill is effective, Part IV evaluates the willingness of the women to enter into this arbitration (since it seems that many face coercion or do not realize an alternative option exists) and the actuality of abuse handed down by the courts in relation to the domestic violence suits, and Part V addresses whether evolution of culture is enough or if legislative steps should be taken. Finally, Part VI asserts that the Equality Bill is a useful first step in stemming the disparity, although societal reform should become an aim accounted for within the bill as well.

## **I. Comparative Analysis of Domestic Violence Cases**

This section provides statistics in relation to domestic violence cases heard by Sharia Arbitration tribunals and English courts. Following the numbers, an explanation of the current mentality pertaining to domestic abuse will afford insight into the existing duality, underscoring the problem within Britain since Sharia tribunals have advanced no condemnation of domestic violence.

### **A. Volume of Cases**

Since Sharia tribunal records are not published as thoroughly as English court records, the comparison provides an estimated comparative analysis in relation to the number of cases each handle. Additionally, the breakdowns provided each year by the Islamic Sharia Council vary in how the information is presented, which does not aid in establishing a clear picture of Tribunal decisions.<sup>7</sup> However, from the information gathered, the following three conclusions are apparent: applications for divorce are the main cases brought before the tribunal, women account

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<sup>7</sup> See generally THE ISLAMIC SHARI’A COUNCIL, <http://www.islamic-sharia.org/statistics.html> (last visited Jan. 20, 2014).

for the vast majority of those applying, and the main reason given for the divorce application is domestic violence.<sup>8</sup>

The following conclusions are derived from information provided by the Islamic Shari'a Councils. First, statistics show 583 applications were received in 2012.<sup>9</sup> In 2011, there is a total of 571 applications, breaking this number down into 132 received by men applying for Talaq and 439 women applying for Khula.<sup>10</sup> Lastly, in 2010, the court received 700 applications for divorce (116 from men and 584 from women).<sup>11</sup> Of those 700 cases, domestic violence accounted for 199 (roughly 28%) of the applications.<sup>12</sup>

On the other hand, domestic violence accounts for roughly 8% of family court cases in Britain.<sup>13</sup> Britain's Ministry of Justice reports statistics quarterly breaking down the number and type of petitions and cases received and reviewed. Since 2003, England has seen a decline in applications and orders made for domestic violence; however, the 2013 statistical numbers are up slightly which may suggest the declining trend's end.<sup>14</sup> From January to March 2013, domestic violence cases accounted for 8% of cases in Britain's family court (of which there were 5,611 applications and 5,628 orders).<sup>15</sup> Domestic violence cases recorded from April to June 2013 saw the start of 4,713 cases (from which there were 5,749 applications and 6,095 orders) accounting for

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<sup>8</sup> *See id.*

<sup>9</sup> *See id.* (showing that this is the only information given for 2012, which reflects a trend towards seclusion since each prior year (in ascending order) presents less information. This may be a response to the courts' mainly negative reception in England and additional scrutiny in relation to Baroness Cox's Bill.).

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> *See id.* (noting the breakdown of the types of domestic violence reported in the 2010 applications was as follows: Physical (132 applications), Domestic Abuse (general) (65 applications), Mental (44 applications), Verbal (41 applications), and Emotional (30 applications)).

<sup>13</sup> This number is derived from the Court Statistics Quarterlies detailing statistics regarding cases before Britain's family courts noted in the remainder of this section.

<sup>14</sup> Court Statistics Quarterly January to March 2013, *Ministry of Justice Statistics Bulletin* 1, 2627 (2013), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207804/court-stats-q1-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207804/court-stats-q1-2013.pdf).

<sup>15</sup> *See id.* at 27 (noting also that the October through December quarter usually marks the lowest number, with the trend peaking in the September quarter).

7% of family court cases.<sup>16</sup> July to September 2013 saw 5,387 cases starting accounting for 8%.<sup>17</sup> Data representing November through December is not yet available. Therefore, the data indicates that in relation to cases heard by the different resolution mediums, the Sharia tribunals handle nearly four times the amount of domestic violence related cases in proportion to each medium's total caseload.<sup>18</sup>

## **B. Mentality of Differing Cultures in Regard to the Issues Raised**

As demonstrated in the previous section, both English and Islamic cultures handle cases pertaining to domestic violence and each have strong views formed by culture that help administer perceived justice. However, these views differ greatly. Britain recognizes domestic violence as a societal concern. Compiling statistics detailing the number of women suffering domestic abuse in the United Kingdom, Britain has proffered policy regime suggestions to help curb these numbers, suggesting a proactive stance on reducing violence.<sup>19</sup> One such example is the "This is Abuse" campaign which purports to prevent teenagers from becoming both victims and perpetrators of violence, abuse, and controlling behavior.<sup>20</sup> Furthermore, human rights groups, such as the Iranian and Kurdish Women's Rights Organisation, devotes much of its work in assisting British women discriminated against and intimidated by Sharia court rulings.<sup>21</sup> This is a significantly different approach to Sharia courts, which have held fast to religious law and do not advocate for such change. According to Mark Durie, critics, including many

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<sup>16</sup> Statistics Quarterly April to June 2013, *Ministry of Justice Statistics Bulletin* 1, 11 12 (2013), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/245095/court-stats-april-june-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245095/court-stats-april-june-2013.pdf).

<sup>17</sup> Statistics Quarterly July to September 2013, *Ministry of Justice Statistics Bulletin* 1, 12 (2013), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/267508/csq-q3-jul-sep-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267508/csq-q3-jul-sep-2013.pdf).

<sup>18</sup> This conclusion does not take into account cases heard by the Muslim Arbitration Tribunal since no data is available.

<sup>19</sup> GOV.UK, *Ending Violence Against Women and Girls in the UK*, <https://www.gov.uk/government/policies/ending-violence-against-women-and-girls-in-the-uk> (last visited Jan. 20, 2014).

<sup>20</sup> *See id.*

<sup>21</sup> *See* Mark Durie, *Baroness Cox's Equality Bill and the Paradox of Tolerance*, LAPIDOMEDIA (JUNE 10, 2011), [HTTP://WWW.LAPIDOMEDIA.COM/NODE/898](http://www.lapidomedia.com/node/898).

Muslim women and some men, find that Sharia courts discriminate against women leading to parallel societies divided by religion.<sup>22</sup>

While English culture has initiated proposals to combating domestic violence, Sharia law has essentially ignored it. English Muslims, who were victims of domestic violence and who chose Sharia trials, have received different rulings, with the most extreme rulings mandating anger management classes for the husband whereas English court rulings have resulted in prison sentences, financial compensation, or protective orders.<sup>23</sup> The International Fiqh Academy, a group of jurists operating under the sponsorship of the Organization of Islamic Conference, exemplifies this concept of cultural disparity as it has used British Sharia courts as an example for its rulings, endorsing principles which allow “the right of a husband to use force to compel his wife to have sexual relations, even if she is ‘unwilling,’” and the right of a man to discipline his wife through a “non-violent” beating.<sup>24</sup> In using the British Sharia courts as their example, there is no demonstrated mindset for change from the discriminatory rulings. Thus, the Sharia courts operate on an opposite spectrum in domestic violence cases, in some instances even condoning beating as an answer to the current dispute, suggesting a large cultural gap.

Additionally, while the Muslim Arbitration Tribunal (MAT) does not provide statistics regarding such domestic violence decisions, its website does address the issue. However, the response the MAT provides is a simple acknowledgement that domestic violence exists in Britain, and it questions whether this is truly an issue within the Muslim community.<sup>25</sup> The site notes that women are portrayed as silenced and disempowered, unable to seek help, while Imams (Islamic leaders within the community who render advice based on Sharia law) are also shown as silent on the issue, unable to preach contrary to the practice of abuse since to do so would be sacrilegious.<sup>26</sup> However, the MAT does not attempt to dispel these portrayals, but rather asks questions as to whether this is factually correct, which suggests to some degree the inability to deny

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<sup>22</sup> *See id.*

<sup>23</sup> *See* Arsani William, *An Unjust Doctrine of Civil Arbitration: Sharia Courts in Canada and England*, 11 STAN. J. INT’L REL. 40, 45 (2010).

<sup>24</sup> Durie, *supra* note 21.

<sup>25</sup> MUSLIM ARBITRATION TRIBUNAL, [http://www.matribunal.com/cases\\_domestic\\_violence.html](http://www.matribunal.com/cases_domestic_violence.html), (last visited Jan. 20, 2014).

<sup>26</sup> *See id.*

some of the information typically portrayed.<sup>27</sup> Furthermore, the MAT concludes its address of domestic violence by broadening its answer further, asking what should be done if this is actually an issue within the Muslim community, and it suggests these are problems that the government should address.

Thus, the only attempts made to curb domestic violence within the cultures noted in this section are seen in British culture. Sharia law has indicated no divergence from its principles, and the only progressive effort made is to acknowledge domestic violence exists in Britain

## **II. Examination of How British Law Accounts for Sharia Law**

This section takes into account Sharia's past within Britain, and examines how British law has accounted for the distinct cultural law.

### **A. How the Past Has Shaped Acceptance or Rejection of Sharia Law**

This portion evaluates the changing acceptance of Arbitration and considers Muslim immigration, for both account for the current situation in Britain.

#### **1. Arbitration in England's Past Leading to the Current Arbitration Act**

Arbitration has a long history in England. By the end of the tenth century a system of dispute resolution had emerged with many proceedings involving trade and commercial disputes, and arbitration gained appreciation from the thirteenth to fifteenth centuries.<sup>28</sup> The proceedings and awards remained subordinate to the law of English courts, which provided the legal frameworks for the arbitration agreements and for the enforcement or appeal of the arbitration decisions.<sup>29</sup> During the fifteenth century, English common law maintained that arbitration awards were revocable on the concept that, while legal, awards were opposed to public policy "because they tended to oust the courts of jurisdiction." However, by the seventeenth century costs of litigation created concern

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<sup>27</sup> See MUSLIM ARBITRATION TRIBUNAL, [http://www.matribunal.com/cases\\_domestic\\_violence.html](http://www.matribunal.com/cases_domestic_violence.html), (last visited Jan. 20, 2014).

<sup>28</sup> See Rebecca E. Maret, Note, *Mind the Gap: The Equality Bill and Sharia Arbitration in the United Kingdom*, 36 B.C. INT'L & COMP. L. REV. 255, 261 (2013).

<sup>29</sup> See *id.* at 261.



leading to the once more prevalent use of arbitration tribunals.<sup>30</sup> Hence, England enacted the Arbitration Act of 1698 authorizing court enforcement if the parties agreed in advance that “any award might be made a rule of the court.”<sup>31</sup>

Successive acts (1889, 1934, 1950, and 1979) sought to reduce judicial intervention in arbitration tribunals.<sup>32</sup> The most recent arbitration reformation is seen by the enactment of the Arbitration Act of 1996.<sup>33</sup> This act “sought to consolidate previous arbitration statutes and incorporate recent changes made by judicial decisions in England.”<sup>34</sup> Part I of the Act specifies “that parties to arbitrations ‘should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest,’ and that the court should not intervene” except in certain instances.<sup>35</sup> Currently, under the Arbitration Act, “as long as the Sharia courts abide by the provisions set forth in the Arbitration Act, any decision made by the Sharia court becomes binding,” and therefore, under the Act, English law has effectively “created an outlet for parallel legal systems.”<sup>36</sup>

## **2. Muslim Immigration and its Affect on Initiation of Sharia Courts**

Since the 1960s and 1970s, the British government has engaged in integration efforts toward Muslim immigrants allowing for them to maintain parts of their cultural identity. These efforts included aid to associations, which became the primary way to meet Muslim demands regarding schooling and other religious concerns.<sup>37</sup> The government provided this aid to local associations, which served as the bases for effecting Muslim demands, and many of these associations united as one broader National organization establishing the Muslim Council of Britain (MCB) in 1977.<sup>38</sup>

While Muslims were able to establish some permanence through these organizations, initially, Muslim immigrants considered themselves

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<sup>30</sup> *See id.*

<sup>31</sup> *See id.* at 262.

<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

<sup>34</sup> *See id.* at 263.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 268.

<sup>37</sup> *See Lepore, supra* note 3, at 677.

<sup>38</sup> *See id.*

transient residents, and as such regarded their marriage and divorce issues to be handled in the community overseas rather than in English courts.<sup>39</sup> Muslim communities have desired tolerance and pluralism, and many (not all) view Sharia “as the embodiment of social justice—the only body of law under which social and personal matters should be adjudicated.”<sup>40</sup> Muslim communities imported their own customs and beliefs in place of foreign alternatives in response to high levels of discrimination, and thus, attempted to maintain their heritage.<sup>41</sup> The MCB “helped to shape the discussion of Muslim arbitration in Britain through its support” which was “critical to the British government’s acceptance of Sharia courts.”<sup>42</sup> The MAT now emulates the MCB in that these organizations’ attempt to reconcile British ideals with Muslim values in some aspects.<sup>43</sup> Traditional Islamic principles assert that Muslims should be prepared to adopt the legal systems of nations they immigrate to. Thus, Sharia courts should be open to an alteration to the scope of permitted arbitration and an integration of culture.<sup>44</sup>

### **B. Evaluation of Sharia Law’s Place in English Society**

Sharia courts operated in Britain long before their legality as an alternative dispute resolution option was realized and judgments had the full force of law.<sup>45</sup> Sheikh Faiz-ul-Aqtab Siddiqi discovered a clause in the Arbitration Act which led Muslims to realize “that under the Arbitration Act [they could] make rulings which [could] be enforced by county and high courts.”<sup>46</sup> The Arbitration Act allows alternative dispute

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<sup>39</sup> *See id.* at 676.

<sup>40</sup> William, *supra* note 23, at 42.

<sup>41</sup> *See, Maret, supra* note 28, at 258.

<sup>42</sup> Lepore, *supra* note 3, at 679.

<sup>43</sup> *See id.*

<sup>44</sup> *See Maret, supra* note 28, at 260.

<sup>45</sup> *See Weiss, supra* note 1.

<sup>46</sup> Lepore, *supra* note 3, at 669.

resolutions which occur in the Sharia courts, an allowance which manifests from three principles in the Act.<sup>47</sup>

These arbitration tribunals are often relied upon by Muslims in non-Muslim countries since they afford a forum that offers solutions consistent with Islamic law principles, and thus, provide a sense of comfort for the immigrants.<sup>48</sup> The Muslim Arbitration Tribunal and the Islamic Sharia Council form the base of Sharia Arbitration. The Muslim Arbitration Tribunal (MAT) was established in 2007 in order to provide an alternative for Muslims seeking to resolve disputes in accordance with Islamic Sacred Law without having to resort to time consuming and costly litigation. The MAT also affords an opportunity to self determine disputes.<sup>49</sup> Like the MCB, the MAT gives British government the opportunity to pursue a cohesive national policy with Muslim immigrants through an intermediary organization.<sup>50</sup> One way this could be achieved relates to the fact that “there is no system for appeals within the

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<sup>47</sup> *See id.* (explaining the Arbitration Act principles are as follows: a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense; b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary to the public interest; and c) in matters governed by this Part the court should not intervene except as provided by this [Act]. While the Act allows for dispute resolution within Sharia courts, b) allows for the safeguard of public interest which is how Britain may raise contention in regard to the rulings. Since Sharia culture and decisions create parallel legal structures in relation to domestic violence disputes, and since England has indicated its dedication to domestic violence eradication, legislation aimed at this goal in relation to arbitration tribunals holds fast under public necessity.).

<sup>48</sup> *See* Maret, *supra* note 28, at 259.

<sup>49</sup> *See*, Lepore, *supra* note 3, at 680.

<sup>50</sup> *See id.* at 682.

MAT, but parties may seek judicial review from Britain's High Court."<sup>51</sup> However, while the MAT is more cohesive with British society, there is still a lack of transparency within the tribunals which hampers the government's ability to create or enforce any meaningful oversight, which creates both the appearance of injustice and increases its likelihood.<sup>52</sup>

Conversely, decisions provided by the Islamic Sharia Council (ISC) do not have binding authority under the Arbitration Act, but rather, provide "mediation services [offering] parties a non binding view of Sharia law on divorces and other civil disputes," and a main format these services appear as are fatwas.<sup>53</sup> Additionally, unlike the MAT, the ISC does

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<sup>51</sup> See *id.* at 681 (referencing the procedure for bringing a case before the tribunal is as follows:

- (1) The request for hearing must –
  - a) be addressed to the Tribunal;
  - b) state the name and address of the applicant and respondent;
  - c) state whether the applicant has authorized a representative to act for him in the case, and, if so, give the representative's name and address;
  - d) set out the grounds for the case;
  - e) give reasons in support of those grounds; and
  - f) so far as reasonably practicable, list any documents and the name and address of any witnesses which the applicant intends to rely upon as evidence in support of the case.
- (2) The request for hearing must, if applicable, be accompanied by a copy of any relevant decisions against which the applicant is aggrieved.
- (3) The request for hearing must be signed by the applicant or his representative, and dated.
- (4) If a request for hearing is signed by the applicant or his representative, the representative must certify in the request for hearing that he has completed it in accordance with the applicant's instructions.).

<sup>52</sup> See *id.* at 689 (explaining that in relation to the lack of transparency, the MAT's procedural rules state the following in regard to privacy:

- (1) Subject to the following provision of this rule, every hearing before the Tribunal must be held in private unless the parties agree to a public hearing.
- (2) The Tribunal may of its own motion exclude any or all members of the public from any hearing or part of a hearing if necessary—
  - a) in the interests of public order or national security;
  - b) to protect the private life of a party or the interests of a minor;
  - c) to achieve the overriding objective.
- (3) The Tribunal may also exclude any or all members of the public from any hearing or part of a hearing to ensure that publicity does not prejudice the interests of justice, but only if and to the extent that it is strictly necessary to do so.).

<sup>53</sup> *Id.* at 682-84.

not incorporate perspectives from British domestic law nor does it seek to comply with any of its requirements.<sup>54</sup>

However, while legal, the courts have received a split response with debate between those who find the courts as “a helpful way to grant an immigrant community legal equality and opponents who caution against the dangers that anti-democratic tendencies of Sharia law pose to Western society,” and to an extent, the unequal treatment of women.<sup>55</sup> In 2008, the Lord Chief Justice of England and the Archbishop of Canterbury both supported Muslim arbitration as a method for alternative dispute resolution, while Keith Porteous Wood, Executive Director of the National Secular Society, summed this issue stating, “Laws should not impinge on religious freedom, nor should courts judge on theological matters. But by the same token democratically determined and human rights compliant law must always take precedence over the law of any religion.”<sup>56</sup> Baroness Cox’s bill has the potential to address both facets of this debate. Sharia courts can remain autonomous in aspects unrelated to domestic violence thereby reducing human rights concerns and keeping an alternate forum available. Muslims can still seek dispute resolution from the tribunals on any matter not criminal in nature which allows human rights compliant law to take precedence and reduce the experienced duality of law.<sup>57</sup>

Yet, not all are satisfied with this solution, arguing that the bill will either be ineffective or too restrictive, and proponents of Sharia tribunal autonomy argue “religious equity necessitates the legitimacy of the courts [since] the Jewish Orthodox community has engaged in religious arbitration for over 100 years.”<sup>58</sup> However, despite this call for religious autonomy, the Grand Chamber of the European Human Rights court concluded that accommodating Sharia could actually reduce Muslims’ choice of mediation and infringe religious freedom by creating a pressure for Muslims to live according to religious rules with which they may not agree.<sup>59</sup>

Furthermore, these tribunals appear to act outside their legal authority. The Arbitration Act does not allow MATs to arbitrate on matters

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<sup>54</sup> *See id.* at 685.

<sup>55</sup> *Id.* at 670.

<sup>56</sup> Namazie, *supra* note 4.

<sup>57</sup> *See id.*

<sup>58</sup> *See*, Lepore, *supra* note 3, at 675-76.

<sup>59</sup> *See* Durie, *supra* note 21.

of criminal offense in order to mitigate any instances of unfair ruling, for example, instances where non-Muslims receive a criminal record whereas Muslims may not under Sharia law. Yet, the tribunals claim the ability to handle certain criminal allegations. Thus, in combining this arbitration creep with a public interest in eradicating domestic violence, Baroness Cox's bill comes into play as an option for combating the rise of parallel legal structures within Britain and allowing cultural arbitration tribunals to remain a staple in British society.

### III. The Proposed Equality Bill

The Equality Bill aims to “provide additional protection for victims of domestic abuse and to make further provisions concerning equality under the law of alternative arbitration and mediation services.”<sup>60</sup> Introduced by Baroness Cox in 2011, the bill attempts to uphold principles of gender equality, and is supported by assorted human rights groups, including the Iranian and Kurdish Women's Rights Organisation.<sup>61</sup> Other organizations in support of the bill include Inspire, the Henna Foundation, Karma Nirvana, and British Muslims for Secular Democracy.<sup>62</sup> According to Baroness Cox, the aim of her bill is to address “two interrelated issues: the suffering of women oppressed by religiously sanctioned gender discrimination in this country[,] and a rapidly developing alternative quasi-legal system which undermines the fundamental principle of one law for all.”<sup>63</sup> Baroness Cox states that “equality under the law is a core value of British justice,” and that her bill's purpose is not to interfere in religious groups, but rather, to preserve this standard by stopping the quasi-legal systems from taking root.<sup>64</sup> Essentially, Baroness Cox's bill requires Sharia courts to acknowledge the priority of British law when there is a conflict thereby preserving British human rights and women's equality values.<sup>65</sup>

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<sup>60</sup> See Maret, *supra* note 28, at 256.

<sup>61</sup> See Durie *supra* note 21.

<sup>62</sup> See 19 Oct. 2012, Parl. Deb., H.L. (2012) 1655 (U.K.) [hereinafter H.L. 1655 (U.K.)].

<sup>63</sup> *Id.*

<sup>64</sup> Namazie, *supra* note 4..

<sup>65</sup> See Weiss, *supra* note 1.

## A. Proposals within the Bill

The main basis of the Equality Bill is to narrow the legal system's application of equality legislation, particularly in relation to arbitration and mediation services, focusing on non-discrimination.<sup>66</sup> The bill addresses the concern of a quasi-legal system and focuses on the discriminatory practices that cause the divide.<sup>67</sup> Baroness Cox asserts that the form in which arbitration tribunals operate causes gender discrimination toward women.<sup>68</sup> Such discrimination occurs in a plethora of forms, and Cox addresses the disparity between genders regarding ease of divorce (since men have much simpler divorce procedures), and the tolerance of domestic violence (as seen by the holdings and suggestions given by the tribunals).<sup>69</sup>

Among the provisions aimed at curbing discrimination, the bill accounts for a new criminal offense of "falsely claiming legal jurisdiction for persons adjudicating matters that ought to be decided in criminal...courts," it provides requirements for informing "women that they have fewer legal rights if their marriage is unrecognized by English law," and it explicitly states that "on the face of legislation arbitration tribunals may not deal with matters of ... criminal law" such as domestic abuse.<sup>70</sup> Additionally, the bill states that "on the face of legislation a victim of domestic abuse is a witness to an offense and therefore should be expressly protected from witness intimidation," and the bill "makes it easier for a civil court to set aside a consent order if a mediation settlement agreement or other agreement was reached under duress."<sup>71</sup>

An example of a portion of the bill that would potentially curb discrimination is Section 6A: Discriminatory Terms of Arbitration. This section would prohibit arbitration agreements or processes from either expressly or implicitly providing that evidence of a man is worth more than a woman's, that division of estate is unequal favoring a man, and that women should have fewer property rights than men.<sup>72</sup> This section

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<sup>66</sup> See Maret, *supra* note 28, at 271.

<sup>67</sup> See 19 Oct. 2012, Parl. Deb., H.L. (2012) 1655 (U.K.) [hereinafter H.L. 1655 (U.K.)].

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*

<sup>70</sup> Namazie, *supra* note 4.

<sup>71</sup> *Id.*

<sup>72</sup> See Maret, *supra* note 28, at 269.

attempts to combat the perceived inequality Islam affords women.<sup>73</sup> The bill also takes steps to minimize inequities, recognizing that those “who are married according to religious practices may be without legal protection,” and informs “individuals of the need to obtain an officially recognized marriage in order to have legal protection.”<sup>74</sup>

Baroness Cox also addresses what the Bill will not do. She asserts that the Bill will “not interfere in the internal theological affairs of religious groups,” that those wishing to arbitrate in alternate tribunals are still free to do so, and that the Bill does not force an abnegation of religious law in favor of English law.<sup>75</sup> Instead, the Bill recognizes existing legally sanctioned forums for arbitration, including MATs, and will not affect their continued “growth and development in accordance with the law of the land.”<sup>76</sup>

## B. Question of Its Effectiveness

Much like the Sharia arbitration tribunals, Baroness Cox’s bill has also met with mixed response.<sup>77</sup> While the bill has much support, the question remains whether this bill will effectively accomplish what it seeks to do: eradicate the disparities between British and Sharia culture that led to the parallel legal structures.<sup>78</sup> The glaring question in response to the bill is whether social reformation is the method that should be pursued instead of legislation. While social reformation is necessary to completely address issues of domestic violence and gender inequality, the same could be said of Western society. Social reformation will aid in the accomplishment of this goal and ultimately trickle down into the facets of society not dictated by courts.<sup>79</sup> However, legislation is necessary to address the disparity Britain is experiencing on a judicial level. Hence, the bill requires evaluation in terms of its effectiveness.

First, Baroness Cox asserts that the Bill will not interfere with the theological affairs of the arbitration tribunals; however, the main contention surrounding Sharia tribunals is that their religion-based system is

<sup>73</sup> *See id.*

<sup>74</sup> *Id.*

<sup>75</sup> H.L. 1655 (U.K.) *supra* note 62.

<sup>76</sup> *Id.*

<sup>77</sup> *See* Maret, *supra* note 28, at 257.

<sup>78</sup> *See id.* (discussing criticisms of the Bill and its ability to bring about substantial social change).

<sup>79</sup> *See id.* (emphasizing the need to address both the legal and social problems the Bill confronts)



what dictates the harsh judgments toward women.<sup>80</sup> Inherently it would seem the bill would have to either interfere with theology or not address the issue. Yet, Baroness Cox's bill is able to strike a balance, preserving both Sharia principles and British values.<sup>81</sup> Instead of attempting to change Sharia, the bill simply prevents arbitration tribunals from ruling on criminal matters, and in doing so helps rid the quasi-legal system.<sup>82</sup> Since domestic violence is a criminal offense, Sharia courts would carry no weight in their decisions regarding such cases. This allows women, if they so choose, to find recourse in British courts without the pressure to adjudicate in Sharia tribunals and receive binding decisions since this would no longer be an outlet.<sup>83</sup> Additionally, the bill criminalizes persons claiming legal jurisdiction over matters for criminal courts, which creates a method of enforcing the prevention of domestic violence adjudication by any person or body other than British courts.<sup>84</sup>

Moreover, the bill states that a victim of domestic abuse is a witness to an offense and therefore should be expressly protected from witness intimidation.<sup>85</sup> This adds a level of protection for women, especially for those who waver on whether they will bring forth a claim or those who initially chose to adjudicate in British courts and then are forced to withdraw any complaint.<sup>86</sup> The bill also makes it easier for courts to set aside a consent order for mediation or settlement agreements or other agreements that are reached under duress.<sup>87</sup> This aspect of the bill will allow women to pursue outlets other than Sharia tribunals, and since consent is necessary to hear a claim in arbitration tribunals, this would invalidate any hearings commenced without proper consent which again aids women who are mainly the victims of such duress.<sup>88</sup>

Discrimination is also addressed within the bill. Section 6A prohibits arbitration agreements or processes from either expressly or implicitly providing that evidence of a man is worth more than a woman's, that

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<sup>80</sup> See H.L. 1655 (U.K.), *supra* note 62.

<sup>81</sup> *See id.*

<sup>82</sup> *See id.*

<sup>83</sup> *See id.*

<sup>84</sup> *See* Namazie, *supra* note 4.

<sup>85</sup> *See id.*

<sup>86</sup> *See id.*

<sup>87</sup> *See id.*; *see also* H.L. 1655 (U.K.), *supra* note 62 (discussing the Bill's ability to facilitate access to redress where agreements were finalized based on duress).

<sup>88</sup> *See* Namazie, *supra* note 4.

division of estate is unequal favoring a man, and that women should have fewer property rights than men.<sup>89</sup>

Furthermore, the bill attempts to inform women that there are alternative options available.<sup>90</sup> The bill takes steps to minimize inequities, recognizing that those who are married according to religious practices may be without legal protection, and informs individuals of the need to obtain an officially recognized marriage in the legal aspect in order to have legal protection.<sup>91</sup> If women are more conscious of and encouraged to pursue civil marriage, the basis of the bill will remain effective since women will have civil recourse in relation to the divorce aspects of the domestic disputes, thereby not disadvantaging women from obtaining aid when only in a religious situation pertaining to criminal matters that Sharia cannot rule on.<sup>92</sup>

Therefore, the measures proposed within the bill, if passed, will effectively achieve its goals on three levels: the language will help combat discrimination, the bill will inform women of alternative options and afford a level of protection surrounding any choices they may make if under duress, and the bill will criminalize any judgment in relation to domestic violence.

#### **IV. Willingness of the Women Entering Arbitration**

This section discusses the women who use the arbitration tribunals for domestic violence related issues, and examines whether they are aware of alternative solutions. Additionally, this section discusses the abuse experienced by these women, noting that this also ties into the question of the women's willingness to use Sharia tribunals.

##### **A. Are Women Aware of Alternate Options**

As the proposals within the bill indicate, Baroness Cox is concerned for the welfare of women, the discrimination they face, and the coercion, intimidation, and unfairness they experience in relation to the tribunals.<sup>93</sup> She asserts that many of the women she has interacted with “believe the Sharia courts are real and do not know that they have other rights under English law, or that they are pressured by their family

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<sup>89</sup> See Maret, *supra* note 28, at 269.

<sup>90</sup> Namazie, *supra* note 4.

<sup>91</sup> See *id.*

<sup>92</sup> See *id.*

<sup>93</sup> See H.L. 1655 (U.K.), *supra* note 62

and community not to seek those rights outside their community.”<sup>94</sup> Furthermore, Baroness Donaghy affirms Baroness Cox’s conclusions stating that “the definition of mutuality is sometimes being stretched to such limits that a women is said to consent to a process when in practice, because of a language barrier, huge cultural or family pressure, ignorance of the law, a misplaced faith in the system or a threat of complete isolation, mutuality is as consensual as rape.”<sup>95</sup> The bill addresses this concern as it allows courts to place aside agreements consented to under force. Additionally, Sharia courts on some occasions will deliver pre-determined outcomes that comport with Sharia law and request both parties to sign consent forms which are then submitted to Family Court on the pretense of negotiation.<sup>96</sup>

Moreover, in some instances consent is based on the fact that the women have no other legal recourse. Many of the marriages are strictly religious, and thus, the women cannot turn to civil court for divorce nor are they afforded its legal protection.<sup>97</sup> However, “given the transnational nature of many of the marriages involved in these proceedings, private mediations adjudicated under [S]haria law offer a necessary service to newly arrived immigrant women...[w]ithout such... many would be left without a divorce that would have any meaning in their country of origin.”<sup>98</sup> These services are a mechanism of transition, and it appears as if there is no discernible difference between depriving women of these services and honoring the decisions of Sharia arbitration.<sup>99</sup> In theory, the bill would restrict the court’s ability to deliver decisions on domestic violence, yet many of these decisions are in tandem to women’s applications for divorce. If the women are only religiously married, they would not be able to apply for divorce in a civil court, and as such, the arbitration tribunal affords as much weight to a decision regarding abuse as it would divorce in civil society. If the tribunals are unable to render any decisions regarding domestic violence, this may leave women without an option for divorce; however it seems that little weight is given to this reason for divorce, and thus, the bill, while carrying the potential to limit some access to divorce, seems placed to do more good than harm.

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<sup>94</sup> *Id.*

<sup>95</sup> Kern, *supra* note 2.

<sup>96</sup> *See* Weiss, *supra* note 1.

<sup>97</sup> *See id.*

<sup>98</sup> Lepore, *supra* note 3, at 684.

<sup>99</sup> *See id.*

Yet, many women, despite the unequal treatment, still seek out imams for guidance on spiritual matters since they care about complying with Sharia law, and women tend to accept the tribunal's formal decisions since religious divorces are important.<sup>100</sup> Brown notes that "most women turn to civil courts to obtain rulings on child custody and divorce settlements."<sup>101</sup>

## **B. Abuse Experienced by the Women in Domestic Violence Suits**

Many British judges have questioned if Sharia rulings comply with the United Kingdom's gender equality obligations under the Human Rights Act.<sup>102</sup> Women are inherently disadvantaged when applying for divorce, and this only compounds the suffering experienced through abuse. While a man may simply say "I divorce you three times," a woman seeking divorce from the ISC must generally undergo a four-step process.<sup>103</sup> A woman must "initiate civil court proceedings, show proof that the couple has been separated for at least one year prior to divorce proceedings, provide assurance that their husbands will be able to see any marital children after the divorce, and, in some cases, return any...dower, given by the husband to his wife upon their marriage."<sup>104</sup> One of the primary reasons Baroness Cox has introduced the Equality Bill is to combat domestic violence in two ways: by reducing the Sharia arbitration tribunals' power to render decisions that adversely affect the victim of such dispute, and also by raising awareness which can trickle down into action to prevent the abuse in the first place, or at least incorporate the social reforms in place via British culture that can aid the victims of such abuse. In Baroness Cox's address to the House of Lords, she expressed her concern that Muslim women do not enjoy their full legal and civil rights, and that her bill would afford this to women of all denominations.<sup>105</sup>

Cox provides numerous examples of women experiencing this abuse and how they have fared under Sharia arbitration tribunals. For example,

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<sup>100</sup> *Id.* at 675.

<sup>101</sup> John R. Bowen, *Private Arrangements*, BOSTON REVIEW (Mar. 01, 2009), <http://bostonreview.net/john-bowen-private-arrangements-sharia-England>.

<sup>102</sup> See Weiss, *supra* note 1.

<sup>103</sup> See Lepore, *supra* note 3, at 673.

<sup>104</sup> See Maret, *supra* note 28, at 259.

<sup>105</sup> See H.L. 1655 (U.K.), *supra* note 62.

one woman was abused so severely she was hospitalized, and she was pressured by family not to seek help from the police but instead to go to the Sharia court so as to not bring shame upon the family.<sup>106</sup> The court told her to return to her husband at whose hands she then suffered even more abuse.<sup>107</sup> Her husband then divorced her and remarried, but when she attempted to get a divorce she was required to present the marriage certificate which her husband's family kept, and as a response for bringing shame to the family in seeking a divorce, she suffered violence in the name of honor.<sup>108</sup> Baroness Cox explains that many of the women live in fear, intimidated by family and community from seeking help.<sup>109</sup>

A BBC documentary, "Secrets of Britain's Sharia Courts," contends that women are put at risk of violence from abusive husbands when courts pressure them to stay in marriages.<sup>110</sup> Referring to Sharia courts, Nazir Afal, head of the Crown Prosecution Service, northwest England, stated that while most are fine, others are "putting women at risk...and for ridiculous reasons, namely that they are somehow responsible for the abuse they are suffering."<sup>111</sup> For example, a reporter was sent to receive advice for an abusive husband, and the Leyton Council suggested she ask if the violence was due to her actions and urged the woman to place more effort into her wifely duties.<sup>112</sup> This last sentiment is a prevalent source for the continuation of domestic violence, and a reason why many women do not even seek out help. However, when women do attempt to find help, the mentality should not be to blame the women for their situation or force them to stay in the marriage while advising them to better some aspect of their character or change what they have been doing. The bill will curtail this advice in removing the tribunals' power to oversee domestic violence cases.

The documentary also provides examples of women who have suffered abuse and have been further victimized by the tribunals. One woman, Ayesha, was physically abused by her husband, and when she sought a divorce, the Dewsbury Sharia Council said she would have to go to mediation with him despite his being imprisoned for violence, and

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<sup>106</sup> *See id.*

<sup>107</sup> *See id.*

<sup>108</sup> *See id.*

<sup>109</sup> *See id.*

<sup>110</sup> *See Kern, supra note 2.*

<sup>111</sup> *Id.*

<sup>112</sup> *See id.*

the court ignored the injunctions issued by a British court due to his abuse.<sup>113</sup> It took Ayesha two years for the court to grant her divorce.<sup>114</sup> The tribunal informed Cara, who was abused by her husband physically and financially, that she would have to be accompanied by her estranged husband to arbitration.<sup>115</sup> These rulings further the mental abuse, forcing these women into situations in which they have to face their abuser.<sup>116</sup> Instead of providing recourse for the harm they have endured, the women are instead told that what they have experienced is trivial and can be rectified with remedial counseling or attempts on their part to appease their husbands.<sup>117</sup> This is hardly the mentality that should thrive, and Baroness Cox's bill seeks to reform such decisions by limiting power to adjudicate on such matters.<sup>118</sup>

Furthermore, Sonia is another example of a woman who suffered both extreme physical abuse and the differing legal structures. When Sonia obtained a civil divorce, the courts granted her husband only indirect access to the children; however, when Sonia attempted to obtain a divorce through Sharia channels, the tribunals informed her that she would have to give custody to her husband.<sup>119</sup>

Therefore, the women in these examples found no recourse from the tribunals and received rulings inconsistent with the British civil courts. In some cases, the women were even forced into these tribunals which perpetuated the abuse. This pressure is contrary practice to the Arbitration Act of 1996's provisions which require a mutual agreement to enter into arbitration.

## V. Questioned Necessity of Legislation versus Evolution of Culture

Baroness Cox asserts that this system of gender discrimination causing women to suffer is incompatible with Britain's values, and that it is time to address the issue.<sup>120</sup> The question then becomes how to do so, whether by enacting legislation or allowing the issues to work

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<sup>113</sup> *See id.*

<sup>114</sup> *See id.*

<sup>115</sup> *See id.*

<sup>116</sup> *See id.*

<sup>117</sup> *See id.*

<sup>118</sup> *See id.*

<sup>119</sup> *See id.*

<sup>120</sup> *See Kern, supra note 2.*

themselves out through cultural evolution. While evolution of culture is necessary in order to truly address the current gender discrimination and abuse issues, alone evolution is not enough to rid the problems, and an impetus from legislation is necessary. Many have proffered concerns that Islam is too dissimilar and potentially not compatible with Western democracy, and thus, cultural evolution cannot stand alone.<sup>121</sup> Lepore explains that “some scholars contend that the diverse, de-centralized, structure of Islam results in the near impossibility of creating representative bodies within the governmental structures of church state relations [...] while other critics contend that the religious values of Islam are antithetical to democracy.”<sup>122</sup> Yet, Jytte Klausen’s research asserts that a majority of Muslim leaders favor integration into the West and find that Islam is compatible with western values.<sup>123</sup> The key is distilling these similarities and affecting a balance that promotes legal, moral, religious, and social integrity.

One way to achieve this balance is derived from Lord Chief Justice Nicholas Phillips’ ideology. He states that “there is no reason why Sharia principles, or any other religious code, should not be the basis for mediation or other forms of alternative dispute resolution [with the understanding] ... that any sanctions for failure to comply with agreed terms of mediation would be drawn from the Laws of England and Wales.”<sup>124</sup> This allows for cultural application of belief into mediation, but renders the civil law as oversight. An example of combining government with culture is similar to the MCB ideology. By legitimizing organizations that apply Sharia law, Britain can ensure a moderate form of Sharia law is promoted, and at the same time, government officials can use Sharia courts to build closer ties to Muslim leaders; such a policy would accommodate spiritual needs while asserting state sovereignty over diverse religion-based dispute resolution.<sup>125</sup>

Since Baroness Cox’s bill would prevent arbitration in relation to criminal matters, some level of access to the tribunals would also further this integration. The tribunals should still be free to adjudicate, and their use of publicized decisions, or even public access to some hearings, would go far in preventing parallel legal systems, abuse of

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<sup>121</sup> See Lepore, *supra* note 3, at 691.

<sup>122</sup> See *id.*

<sup>123</sup> See *id.*

<sup>124</sup> *Id.* at 670.

<sup>125</sup> See *id.* at 680.

power, judgments inconsistent with Britain's values, and misperceptions that ultimately arise from the privacy. Allowing the tribunals to remain autonomous while providing some disclosure will help create this cultural integration, and eventually principles from each culture will have a chance to blend in a manner that allows each to retain core values and appreciation for those of the other culture. Publication could reveal unethical proceedings and allow for appellate review on seriously contended rulings, but it could also demonstrate the similarities between the two systems and allow for an increased interplay between the two. Success within the tribunals is entirely possible, but a desire for change can only be sparked if there can be an understanding of differences that do not impede on human rights standards. Therefore, Cox's bill is necessary because this legislation will provide the first step to cultural integration in allowing the tribunals to continue with the exception of criminal adjudication. In removing this aspect of power, the bill begins social reformation. The tribunals are aware of the cultural practices that cause contention within British society, and Britain is placed in a position of acknowledging and continuing eradication efforts of domestic violence.

This is not to say British culture is superior—instead the bill addresses an area of practice within the tribunals inconsistent with its own governance and seeks to prevent multiple legal systems from operating simultaneously. As mentioned previously, Lord Chief Justice Phillips advocates the continued allowance of arbitration tribunals as long as sanctions for failed compliance arise under civil law.<sup>126</sup> Hence, the tribunals should continue to operate, but legislation is necessary to govern their allowance.

However, social reformation is still necessary to fully eradicate domestic violence, and this is in both cultures. However, while crucial, cultural evolution is not an effective solution on its own, for evolution can span generations without great change, and often some impetus is needed to begin the evolution necessary.

Furthermore, Archbishop of Canterbury Rowen Williams and Lord Chief Justice Phillips have argued for the future of Sharia, noting that Sharia will unavoidably be used to settle civil disputes between Muslims.<sup>127</sup> Since arbitration will also continue, this demonstrates another aspect of necessity for Baroness Cox's legislation. The Equality

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<sup>126</sup> See *id.* at 670.

<sup>127</sup> See William, *supra* note 23, at 43.



Bill provides the opportunity to place some government oversight on the tribunals in preventing them from hearing criminal matters, and since the bill does not outlaw their existence, the potential integration noted above still has the opportunity to succeed. By legitimizing the organizations applying Sharia law, Britain is in a position to ensure a moderate form of Sharia law is promoted while simultaneously using the courts to build relationships with the officials, accommodating Muslim needs, and asserting state sovereignty.<sup>128</sup> Thus, simply allowing cultural evolution alone is not as effective a solution, since the opportunity to establish relationships may not appear as easily as if the government and tribunals work together. While the Bill proposes more of a controlling solution, if altered to demonstrate a commitment to work together, the legislation could act as a significant impetus for change.

Furthermore, there is an indication that Muslims are open to this type of relationship, as long as the laws of Sharia are not threatened. In fact, the MAT's website states that allowing Sharia to coexist with English law will be a great achievement.<sup>129</sup> Sharia has a long history and should not simply be eradicated within a new society, but rather integration efforts must commence, and those efforts should work to eradicate domestic violence in both cultures.

## **VI. Equality Bill as a Useful First Step**

While there has been criticism that the bill is not enough to actually rid domestic violence, the bill is still a necessary and useful first step in the process, and this section will discuss the reasons the bill is poised to succeed.

### **A. The Equality Bill as a Good Start to Addressing the Issues**

In purest distillation, the Bill attempts to advance two goals: (1) to respond to the need to prevent parallel legal systems from competing with English law, reaffirming the existing English law structure; and (2) to abate the perceived threat of gender discrimination and domestic abuse meted by Sharia tribunals. From its inception, the Bill has heralded both applause and hesitancy.<sup>130</sup> To the "extent that the Equality Bill seeks to advance its policy objectives of promoting equality by targeting

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<sup>128</sup> See, Lepore, *supra* note 3, at 680

<sup>129</sup> See *id.* at 685.

<sup>130</sup> See Maret, *supra* note 28, at 274.

gender discrimination,” the Bill has received praise.<sup>131</sup> In the House of Lords, Bishop Michael Nazir-Ali supported the Bill asserting it would uphold freedom of religion guaranteed to British citizens while also targeting unequal treatment within Islamic Arbitration tribunals, and the bill accomplishes this by raising awareness that there are legal British remedies for addressing the discrimination.<sup>132</sup> Some have found that the Bill will likely increase pressure on the Sharia Councils to improve their practices and clarify to their clients that their decisions have no legal weight [in regard to the ISC] before initiating mediation.<sup>133</sup>

Additionally, there are a plethora of other examples where legislation was an effective first step in addressing an issue. One such example is the Equality Act of 2006, which in addition to imposing duties in relation to sex discrimination also established the Commission for Equality and Human Rights (CEHR). The CEHR is a body intended to address issues of discrimination and promotes the “cross-fertilization of ideas and experience” to facilitate “fair representation, equality, and diversity” within England.<sup>134</sup> Therefore, the legislation itself was an effective and necessary start to creating a body dedicated to social reformation.

Baroness Cox’s bill uses this concept of social reformation as a springboard and presents multiple solutions for women facing discrimination in the tribunals. For one, the women are able to have an agreement set aside where the consent was coerced. The bill also makes it easier for women to apply to have the decisions overturned on the basis of gender discrimination.<sup>135</sup> Lastly, the bill offers protection to the victims from witness intimidation, a crucial aspect necessary for women seeking aid who may face harm in seeking legal action for the abuse. Each of these aspects, as well as the provisions analyzed in Part 4 speak to the quality and remedies the bill offers. To say that the bill is unnecessary and that cultural evolution will eventually solve the problem is essentially asserting ignorance of the issue. Christopher Lepore suggests that alternative dispute resolution has the potential to succeed under the proper safeguards, and this bill is one such safeguard.<sup>136</sup>

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<sup>131</sup> *See id.*

<sup>132</sup> *See id.* at 275.

<sup>133</sup> *See id.*

<sup>134</sup> *See id.* at 272.

<sup>135</sup> *See* H.L. 1655 (U.K.) *supra* note 62

<sup>136</sup> *See* Lepore, *supra* note 3, at 671.

## **B. Where the Bill Still Needs Work**

There has been criticism on the potentially harmful effects the Bill may have on England's minority and cultural populations.<sup>137</sup> One potential side effect is offending those it attempts to protect by stressing the unofficial nature of their marriages.<sup>138</sup> However, this side effect could be considered a small price to pay in the effort to eliminating the perpetuated abuse women endure under domestic violence related rulings. Along with the criticism, suggestions for how to improve the bill have arisen as well. One suggestion is to require more thorough screening of tribunals and arbitrators.<sup>139</sup> Other suggestions include Parliament appointing two arbitrators to each dispute, or requiring that the arbitrators hold a degree or provide some other substantial indication of their experience within the English legal system.<sup>140</sup> Yet, these measures of oversight could place a greater burden on the legal system and undermine one of the purposes of allowing arbitration. Conversely, some sort of regulation could help curb the rise of any parallel legal system in that the arbitrators may be more well-versed in the English legal system which would then render more compatible decisions that do not require the British courts to become involved. Lastly, Sharia tribunals have the possibility of developing more easily regulated and transparent procedures by imposing requirements that create standards for the qualifications of arbitrators, and this would render the bill's ends more enforceable.<sup>141</sup> Oversight allows the communities to protect their heritage while Britain is able to protect its citizens.<sup>142</sup>

Furthermore, the fines and impositions placed on those attempting to claim jurisdiction on legal matters as an enforcement mechanism is another aspect of the bill that critics find insufficient to affect the bill's desired change.<sup>143</sup> While this concern is valid, the concerns are only potential drawbacks to a bill that has the ability to aid women facing domestic abuse with no recourse. While the fines may not stem all attempts at arbitration, they carry great potential to act as a disincentive

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<sup>137</sup> *See* Maret, *supra* note 28, at 275.

<sup>138</sup> *See id.*

<sup>139</sup> *See id.*

<sup>140</sup> *See id.*

<sup>141</sup> *See id.*

<sup>142</sup> *See id.* at 277.

<sup>143</sup> *See id.* at 276.

for ruling on criminal matters, and if the fines succeed, then the bill's goals are achieved.

Additionally, as noted in Part V, while the bill seeks to regulate the operation of tribunals by prohibiting their arbitration on criminal matters, this is not enough to truly establish integration necessary to eradicate the problem of domestic violence. While the bill is still necessary and does begin to solve a number of problems Britain's legal system is facing, a portion of the bill should address the need for some sort of social reformation.

### C. Combining with Social Reform

One concern is that the Bill will remain ineffective unless there is some attempt at social reformation, and further, that it fails to address deeply rooted social issues. One fear is that without the requisite social reforms, Baroness Cox's Equality Bill may run the risk of creating a religious and civil law disconnect.<sup>144</sup> Hence, amendments to the law should be accompanied by social reform, and as the bill stands, its attempt to affect social change could remain somewhat ineffective and even increase the cultural gap.<sup>145</sup> With this being said, if Baroness Cox can pass through this legislation, social change will still occur since the decisions meted by the arbitration tribunals will be subject to more rigorous standards, and thus certain dispositions will not have basis allowing for a modified social reformation. The Equality Bill's predecessor, the Equality Act of 2006, introduced anti-discrimination measures in combination with imposed duties on persons performing public functions in relation to sex discrimination. This is one such way that legislation can be combined with social reformation.<sup>146</sup> It may not be enough to simply restrict power to adjudicate on criminal matters, but the introduction of a public element can be one step to combat domestic violence and the disparate rulings meted to women.

Social reform should not be limited to arbitration and domestic violence related initiatives, but rather should have an aim to integrate the Muslim communities into British society as a whole. Once this is achieved, there will be a greater cohesion of culture and willingness to incorporate the British legal system into arbitration matters. For example, social reforms could include funding for minority parties,

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<sup>144</sup> See *id.* at 278.

<sup>145</sup> See *id.* at 280.

<sup>146</sup> See *id.* at 271.

lowering thresholds for entering Parliament, or even reserving seats for representatives of minorities.<sup>147</sup> While these suggestions may spark their own debate and create a new set of problems, they may be smoothed out over time and other options are available. Hence, social reformation should be holistic in scope, and legislation is an appropriate and effective measure to enact this change.

Lastly, Muslim arbitration could integrate within itself as an alternative. In combining the procedural safeguards of the MAT with the non-binding format the ISC offers, those seeking arbitration could avoid any inequality and protect their ability to opt-out if treated unfairly.<sup>148</sup> This form of reformation offers more autonomy to the tribunals in that the rulings would not be binding, and thus, a parallel legal system would not truly threaten Britain. However, this integration is not wholly ideal in that without binding resolutions, the tribunals would lose efficacy. Hence, the Equality Bill is still a viable and appealing option to addressing the inequality women may face within the tribunals and the parallel systems within England.

## CONCLUSION

For Muslims within Britain, the Sharia arbitration tribunals have served as an outlet offering solutions in respect to their faith and culture. However, these same tribunals have caused concern within Britain as they create a parallel legal structure that arises with tribunal ruling that conflict with Britain's legal system. Baroness Cox seeks to address this concern, as well as the disparity women face within the tribunals when seeking divorce, especially in relation to domestic violence related causes.

The best way to understand this disparity is by comparing the number of cases heard by the English courts versus those of the arbitration tribunals. While the MAT does not provide information, the numbers indicate that Sharia courts handle four times the number of domestic violence cases (this is not a flat number, but is based on proportionality of domestic violence cases to the total heard by each medium). In addition to the greater volume of cases, English culture has made outspoken attempts to end domestic violence, but the tribunals have done

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<sup>147</sup> *See id.* at 281.

<sup>148</sup> *See id.* at 690.

little more than recognize that domestic violence exists in Britain. This disparity is essentially where the duality of law concerns arise from.

Despite this concern, however, arbitration is legal within Britain and has a long history. Muslims, too, have a long history within Britain, and it is this history of creating organizations to help integrate into the culture that has led to the structure of the arbitration tribunals. However, despite the long history, integration has been somewhat partial, with large cultural disparities still at large. One such disparity is the mindset surrounding domestic violence. As noted above, this is the main reason behind the duality of law concerns, and thus, the Equality bill attempts to address both the legality and cultural aspects of the concerns.

In drafting her bill, Baroness Cox addresses her concern for the women going to the tribunals. Many of the women who have experienced domestic violence have not found adequate decisions, but instead, have often faced rulings that blame the women for the abuse and place them in worse conditions. Baroness Cox also considers the willingness of the women entering these tribunals. After speaking to many who have adjudicated within the Tribunals, Baroness Cox concluded that many women are unaware of alternative options and that some may even feel forced to use the tribunals.

The Equality Bill proposes solutions for women that take into account these findings, and the proposals include protection and the ability to null agreements made under coercion. The bill also effectively prevents the tribunals from adjudicating on matters relating to domestic violence as it prohibits alternative dispute resolution forums from giving decisions on criminal matters, and the bill imposes fines on any body that claims the ability to do so. While the bill has met with mixed reviews, it affords an effective first step to combating rulings that place the women in poor situations after experiencing domestic violence. The solutions presented within the bill not only address the issues, but leave room for social reformation to commence in tandem. While the bill could speak more to this reformation and make a greater effort at integration rather than inhibiting power, cultural evolution is not enough and the legislation is necessary. Despite the necessity of social change to follow, the Equality bill affords a crucial first step in combating the inequality in domestic violence hearings women face in the Sharia tribunals, and without such advocacy through the bill, this disparity will continue.