

A SANSAD Statement

We in the South Asian Network for Secularism and Democracy offer our congratulations to all the people who fought for the principles of secularism in Ontario. The announcement that Ontario has rejected the use of religious arbitration in family law is a victory in the struggle for equal entitlements and rights and we in SANSAD join hands with those who have opposed religious arbitration for many months now.

Much media attention has recently focused on the use of Islamic or sharia law to settle civil matters in Ontario. Yet the use of private parties voluntarily agreeing to have their disputes resolved by an arbitrator using a quasi-parallel legal system is not new. Jewish communities, for example, have created Jewish arbitration tribunals or Beis Din since at least 1982, yet it attracted little or no public criticism. Given this history, the sudden outcry against Sharia courts by many is suspect as people have succumbed to an anti-Muslim and racist sentiment. The colonialist stereotype of Muslims as barbaric and in need of “civilizing”, particularly the notion that Muslim women are in need of liberation by Western forces, has been perpetuated in much of the discourse. Indeed, phrases such as “Muslim women” or “Sharia law” homogenize diversity. We reject such sensationalized and racist essentialism.

We oppose the use of religious arbitration on the basis of principles of secularism and equality. We do not believe that religious laws or codes in the resolution of family law disputes recognize the equality rights of women and sexual minorities. Marion Boyd was asked by the Ontario government to conduct a review of the arbitration process with respect to family law and inheritance. It was her conclusion that as arbitration is a private act and, as the Charter of Rights and Freedoms applies only to government action, arbitration is not subject to Charter scrutiny. Thus the system would be completely outside the realm of protection of fundamental equality rights.

Many proponents of religious arbitration believe that it advances “multiculturalism” in Canada. We believe that by entrenching oppressive and regressive legal institutions such as religious tribunals in the name of multiculturalism, the government covers up systemic and societal social oppression as the “internal affair” of a community and legalizes the unequal citizenship of immigrant communities. Such multiculturalism leads to increased ghettoization and alienation as the pursuit of difference in a highly racialized

environment promotes racism. Furthermore, the attempt to empower marginalized communities through the use of religious-based law will likely reinforce power hierarchies within the community. Instead of such ghettoized and oppressive multiculturalism, we advocate the universality and indivisibility of human rights in manner that is inclusive for all those who experience disadvantage and marginalization. The fundamental values of human rights are our historical inheritance as human beings.

We also acknowledge that the current family law and court system falls far short of the mark in respecting women's equality. In fact, the inadequacy, inaccessibility, and discrimination in the current system have motivated many communities to consider religious arbitration. Indeed there does exist an urgent necessity of finding alternatives that give greater access and autonomy. However, we do not believe the fundamental and systemic flaws of the current family law system will be resolved by creating a religious-based system of family law. It is possible to transform the system in a manner that is based on equal rights and entitlements for all regardless of gender, sexuality and race.

Rather than being the infantilized women without agency or choice that many have relegated them to, women of faith- particularly Muslim women- have continually shown strength, resolve and commitment in the struggle for a just and equal society. We join them and many others in our commitment to secular principles. As opposition grows to Premier McGuinty's announcement and groups have vowed to fight for religious-based tribunals, we assert our position in maintaining a legal system based on secular and egalitarian principles for all.