

# Multiculturalism and Muslim Women: Sharia Debate in Australia and Canada

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**Abstract:** Compared with Australian Muslim women, their Canadian counterparts can claim better status, not only in terms of their contribution to electoral politics but also to more unconventional political areas. With its focus on the Sharia debate, this paper investigates one potential explanation for the aforesaid difference. Challenging feminist notions, for example, those of Okin, which observe multiculturalism as an undesirable policy for emancipation, it is argued that multiculturalism facilitates agency of female members of Muslim communities. Comparative examination of the Sharia debate between two secular countries reveals that Canada's more robust multicultural context and policy in terms of dealing with the request to adopt Sharia have not only ultimately culminated in Muslim women's empowerment but have enhanced their representation in the process of articulating a significant pertinent issue. In contrast, the debate's lack of multicultural features deprived Australian Muslim women of both a chance to express their understanding of the Sharia and to contribute to an important issue that could well have proven an empowerment opportunity.

## Introduction

Claiming an emancipatory agenda, both feminism and multiculturalism are committed to supporting the rights of marginalized and oppressed members of society. Feminism proclaims that women's sex should not invite any form of discrimination; that women are entitled to enjoy human dignity equally with men and to have equal opportunity to live as fulfilling and as freely chosen lives as their male counterparts. In the case of multiculturalism, there is a claim made in the context of liberal democracies that the focus on individual rights does not sufficiently protect minority cultures. It is argued that there should be special group rights to protect the individual rights of members of these minority cultures (Okin, 1999:10-11). Therefore, as leading feminist theorist Anne Phillips asserts, both projects draw on a shared commitment to equality (2007:3).

Pointing out a variety of similarities between feminism and multiculturalism, Kymlicka espouses them as allies engaged in a common struggle to articulate more inclusive concepts and arrangements of justice (1999:32-34). However, conflicts of agenda are traced by some scholars in terms of the compatibility of multiculturalism with the egalitarian aims of feminism. This challenge forms the core concern of this paper in which a specific anxiety harboured by some scholars about the incompatibility of multiculturalism and women's rights will be challenged. This paper contains two sections: the first will address the theoretical challenges to

the claim that multicultural policy is incompatible with women's emancipation. It will be argued that marking women of minority cultures as perpetual victims of patriarchy, i.e., a feminism vs. *multiculturalism position* negates the fact that these women are capable of emancipatory change of their own accord. The second part will focus on a case study comparing the Sharia debate in Australia and Canada. I will suggest that Canada's particular multicultural approach toward Sharia debate has served the interests of Muslim women. Retreat from multicultural policy in Australia during the Sharia debate deprived Australian Muslim women of the opportunity to contribute to a significantly pertinent issue<sup>1</sup>, which would not only have ultimately culminated in their empowerment but would have enhanced their role in evolving a major cultural facet of the Muslim community in Australia.

## **Feminism vs. Multiculturalism**

Political theorist Susan Moller Okin (1946-2004) was the first to employ a gender lens to scrutinise the political theory of multiculturalism and, in doing so, she was the first feminist scholar to crystallize the potential conflict between feminism and multiculturalism.<sup>2</sup> In her work, Okin correctly criticizes defenders of multiculturalism for not paying sufficient attention to either gender roles within cultures or the complications of a public/private dichotomy, insisting that such ignorance is likely to reinforce gender inequality within minority groups. She claims that the assumption that because they are both progressive "isms", feminism and multiculturalism are compatible and subject to be being considered together is questionable (1998:665).

Defenders of liberal notions of multiculturalism opt for group rights to protect minority cultures' ways of life and as a way of ensuring their members' well being. A distinctive characteristic of this particular notion of multiculturalism is that cultures with illiberal characters are not provided with any such privilege (Kymlicka, 1999:31). Okin argues that although this notion of multiculturalism seems less likely to be incompatible with feminism, it is in potential conflict with feminism. Furthermore, she criticises defenders of multiculturalism for paying

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<sup>1</sup> Sharia, and the introduction of it as a legal framework, is of great importance to Muslim women. As a legal framework, Sharia significantly influences Muslim women's lives: it lays down rules regarding marriage, divorce, heritage, financial disputes among others. Its influences, especially vis-à-vis the private sphere in which women are more vulnerable, are crucial.

<sup>2</sup> Many other feminist scholars subscribed to the debate later, either opposing or supporting Okin: Anne Phillips, Monique Deveaux, Ayelet Shachar, and Yael Tamir among others.

insufficient attention to the connection between gender and culture. Okin expands upon the degree to which cultures are often particularly concerned with personal laws such as marriage, divorce, child custody, and inheritance, for example. Given these concerns, group rights for minority cultures are likely to have a much greater impact on the lives of women than on the lives of men. Although differing from Okin in other respects, Ayelet Shachar, a leading expert on issues of the rights of women within minority cultures, also cites family law as a central pillar in the construction of cultures' membership boundaries and in preserving their difference. She contends that granting a cultural group an autonomous right to practice family law may have deleterious effects upon female members of said culture (1999:87, 2000:75). For Okin, the other connection between culture and gender is the aim of cultures to make sure that women are controlled by men. She validates this claim by citing the founding myths of three main religions (Judaism, Islam, and Christianity) as well as many examples of cultural practices in different countries (1999:13).

A significant issue is related to the private sphere. As explained above, in response to the challenge of internal discrimination by cultural groups, Kymlicka states that group rights should be confined solely to those groups that do not treat their members illiberally. Citing a variety of examples, Okin argues that "far fewer minority cultures than Kymlicka seems to think will be able to claim group rights under his liberal justification" (1999:21). She maintains that Kymlicka is referring to cultures that discriminate overtly and formally against women, but sex discrimination is often far less overt. The private sphere, which tends to be overlooked by defenders of group rights, is of great importance in this regard. Janet E. Halley, who raises the same concern regarding Kymlicka's conditions for granting group rights, asserts that Kymlicka rules out only the intentional constriction of members' rights. But, if there is any cultural constriction, it systematically produces constraints that it then conceals as habit, assumption, and worldview (1999:101).

Treating cultural groups as monoliths is the other negation that Okin points out. She argues that power relations within cultures are ignored while more powerful members, mostly male, are those who articulate the group's rights. Therefore, when talk is about group rights, only the rights articulated by the more powerful members of groups are addressed. Granting group rights is taking the side of privileged members against those who are powerless and oppressed (Tamir, 1999:48). Developing the same critique of multiculturalism, Shachar argues

that in its efforts to earn inter-group respect, multiculturalism implicitly conceals intra-group oppression (2001:28).

## Diversity beyond Power Relations

Okin is absolutely right in her critique when she states that by negating difference within cultural groups, defenders of group rights treat cultural groups as monoliths. Yet, when elaborating internal difference she confines her discussion to the power relations within cultural groups. A significant critique of multiculturalism addresses the way that the concept of culture is employed. This critique refers to the diversity within cultures and questions the overly homogenized version of culture promoted by multicultural scholars (Phillips, 2007:202). Okin's argument faces the same challenge because it restricts the diversity to power relations only. Many theorists argue that the *feminism vs. multiculturalism position* employs a certain notion of cultures as internally homogeneous and externally well-bounded entities. This understanding of culture exaggerates the internal unity of cultures and overstates dissimilarities among peoples of different cultures, portraying these peoples as more distinct than they really are (Deveaux, 2006, Phillips, 2007, Phillips and Saharso, 2008, Scott, 2003, Song, 2005, Volpp, 2001, Narayan, 2000). Citing Okin's argument about the patriarchal nature of all three major religions, Martha C. Nussbaum asserts that by treating the original core of the religion as equivalent to certain patriarchal stories, Okin simply bypasses centuries of debate surrounding each of the religions (1999:107).

Diverse understandings and practices of cultural mores receive insufficient attention in Okin's original argument. Differences among members of one culture exist not only in terms of their strengths and weaknesses but also in terms of their ideals and arrangements of culture.<sup>3</sup> Thus, different understandings and practices of cultural mores ought to be taken into account. "Islamic culture", for example, is among the most frequently used tags to refer to the customs, norms and traditions put into practice by Muslims. Women's disadvantaged position within this culture is frequently depicted. However, there is a vast diversity, not only among the different Muslim countries based on the impacts of their indigenous traditions but also among the

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<sup>3</sup> It is also important to acknowledge group members' multiple affiliations and their relationships to different sources of authorities. See A. Shachar (2000) 'Should Church and State be joined at the altar? Women's rights and the multicultural dilemma', in W. Kymlicka and W. J. Norman (eds) *Citizenship in diverse societies*. Oxford; New York: Oxford University Press.

different sects of Islam, i.e., Shiite, Sunni, Ismaili, Sufi, etc., which have various understandings of - and various ways of practicing - so-called "Islamic culture".

Okin explicitly cites the diverse features of minority cultures. For example, she refers to the progressive and conservative segments in different cultures as well as to the fundamental and reformed versions of religions. Yet, power relations are the only internal diversity of minority cultures, which form her argument in terms of possible conflict between feminism and multiculturalism. Yael Tamir, a professor of political philosophy at Tel-Aviv University, in her argument also refers to members of cultural groups who strive for social transformation and cultural reform. Providing an example of the experience of Jews in Israel, she states: "[T]he search for a unified voice that represents the Jewish community provokes a struggle among the different Jewish movements" (1999:50).

Internal diversity in terms of understanding and practice of cultural mores makes culture in general a phenomenon constantly negotiated. Over time, it has been contested, transformed, defined and redefined by various members of pertinent cultural groups through ongoing interaction both inside and outside of groups (Shachar, 2000:72). However, rapid change cannot be expected: cultural facets are developed over a period of time, not at once; thus, the rate of pace of cultural change may vary. In addition, the influence of external interaction is of great importance. Challenging the negation of intercultural influence via the feminism vs. multiculturalism position, Sarah Song writes of the interactive character of culture. She refers to culture as 'a socially constructed phenomenon, not only internally contested but also interactive and mutually constitutive' (2005:489). She stresses the importance of the interconnection between majority and minority cultures and the impact of this interaction on any changes that occur in both cultures. When it comes to minority cultures within Western liberal culture, the influence of the dominant culture is undeniable and significant (2005:473-489). Therefore, it would be wrong to assume that minority cultures are frozen and static entities and that people living within these cultures are ruled by cultural dictates. The capacity to move towards a better situation ought to apply to both Western and non-Western cultures (Volpp, 2001:1191).

Confining the non-monolithic features of minority cultures to power relations only, and overlooking other intra-group differences, that is, the various understandings of cultural mores and positioning female members of these cultures as everlasting victims, denies their potential to be understood as emancipist subjects capable of bringing about emancipatory change on their own behalf (Volpp, 2001:1205 and 1211). Shachar charges Okin with making wide-ranging

generalizations about cultures and religions. Ignoring dynamism and malleability within minority cultures, Okin overlooks the significant changes that have been put into practice to date, partly due to women's resistance and to their contribution as agents (2001:66). Thus, not only are there many members of minority cultures, who have different understandings and practices of their cultures from those espoused by privileged members but they are also able to act as agents, i.e., to play key roles in possible future changes in the minority cultures' mores. For example, in the West, Muslim women are frequently quoted only as "vulnerable" and "victims" of a patriarchal Islamic culture. However, as I discuss in the second section of this article, in Canada they effectively contributed to the Sharia debate expressing a variety of ideals and alternatives vis-a-vis the introduction of Islamic law.

## **Feminism or Multiculturalism?**

Debate about the compatibility or incompatibility of feminism and multiculturalism reveals its experimental function when it engages in discussion about the policy planning stage, in which the key question of what to do arises. First, it is essential to elaborate the points of view of scholars, who subscribe to the *feminism vs. multiculturalism* position.

Many critics of the *feminism vs. multiculturalism position*, especially Okin's critics, insist that conflict between feminism and multiculturalism is not as pivotal as it is depicted, that there may be some plausible resolution to the existing difference (Kukathas, 2001:86). However, scholars who argue in favour of in-depth conflict, in one way or another tend to prioritise feminism or multiculturalism. Arguing that granting communities group rights is in the interests of privileged members, Tamir subscribes to the view that there is fundamental conflict between feminism and multiculturalism. Advocating women's rights, and maintaining that any cultural or religious rights ought to be granted to individuals rather than to the community, she states:

We must entrust the faith of the community to its individual members. We ought then to empower individuals by granting them individual rights. In so doing, we may protect the rights of the less powerful and less conservative members of each group to live their lives and preserve their identity the way they see fit (1999:51-52).

In her positive response to Okin, Katha Pollitt, a columnist for the *Nation*, adopts the same position, arguing that even if feminism and multiculturalism are allied in academic politics, they are far apart as political visions. While multicultural policy seeks respect for all cultural traditions, feminism questions and challenges all cultural traditions. Pollitt contends that

“fundamentally the ethical claims of feminism run counter to the cultural relativism of group rights” (1999:27). She further asserts that the feminist position is to support women of minority cultures in their struggle to be independent modern women, not to support the community and religious leaders (1999:30).

In contrast, Chandran Kukathas, an Australian political theorist of multiculturalism and liberalism, explicitly upholds multiculturalism in circumstances where one must choose between feminist and multicultural agendas. He states: “[T]here is no question that there is conflict between feminism and multiculturalism ... the extent of conflict between feminism and group rights is evident not only in the philosophical literature but also in the cultural cases that come before the courts” (2001:87-88). Suggesting that feminist values are taken as self-evident truths in the debate, he challenges Okin's assumption that feminism's values should triumph in the contest with multiculturalism. Finally, he argues that “when feminism and multiculturalism come into conflict it is the latter that should take precedence” (2001:83-98).

Once again, the most powerful and challenging argument in this regard comes from Okin. A comprehensive reading of her early and late relevant writings reveals the two main approaches: a) extinction of these cultures, and b) women's contribution to articulating group rights. Okin argues that it is in the best interests of weak members of minority cultures, i.e., female members, for these cultures to become extinct, providing them with an opportunity to integrate into a less patriarchal culture. Okin's explicit point of view in this regard deserves direct quoting:

It is by no means clear from a feminist point of view, that minority group rights are "part of the solution." They may well exacerbate the problem. In the case of a more patriarchal minority culture in the context of a less patriarchal majority culture, no argument can be made on the basis of self-respect or freedom that the female members of the culture have a clear interest in its preservation. Indeed, they may be much better off if the culture into which they were born were either to become extinct (so that its members would become integrated into the less sexist surrounding culture) or, preferably, to be encouraged to alter itself so as to reinforce the equality of women--at least to the degree to which this is upheld in the majority culture (1999:22-23).

As Okin acknowledges, this part of her suggestion is considered controversial and invites further challenge from her readers (2005:70). However, this is not the only idea that she develops. She opens up an important insight into the feminism and multiculturalism debate.



Stressing the necessity of representation of female members of minority cultures in the process of negotiating group rights she states:

There can be no justification for assuming that the groups' self-proclaimed leaders-invariably composed mainly of their older and their male members-represent the interests of all of the groups' members. Unless women-and, more specifically, young women (since older women often are co-opted into reinforcing gender inequality) are fully represented in negotiations about group rights, their interests may be harmed rather than promoted by the granting of such rights (1999:23-24)..

Although Okin seemingly overlooks the fact that the older generations of females of these cultures are excluded from her suggested process of articulating group rights due to being embedded in an oppressive culture, she notwithstanding raises the potential agency of women within these cultures. In her earlier articles in the 1990s, Okin discontinues the discussion at the point where she suggests the potential contribution of young female members of minority cultures to the articulation of group rights. However, in her later article, *Multiculturalism and feminism: no simple question, no simple answer*, she highlights this suggestion, particularly when responding to Shachar's critiques. Significant pieces of the above article are devoted to debate surrounding the contribution of female members of minority cultures to the negotiation of group rights.

Adding further discussion to Okin's primary suggestion, I will suggest new ground for challenging the *feminism vs. multiculturalism* position regarding the compatibility of feminism and multiculturalism. Okin's suggestion to engage female members of minority cultures in the articulation of group rights can be a point of departure from which to broaden discussion about the roles of women and other non-mainstream members of minority cultures. There is a key issue which has thus far failed to be noticed: the relationship between multiculturalism and the contribution of female members of minority cultures to the pertinent issues. There is a bilateral rather than a one way relationship between multicultural policy and the contribution of women to the process of developing group rights. However, one obvious but simultaneously crucial element ought not to be overlooked: cultural mores did not evolve\_overnight and cannot be subject to instant reform.

## **Long Term Compatibility**

Bearing in mind (a) that minority cultures are not homogenous; (b) that their members ought to be seen as potential agents; and (c) that they are negotiated and under evolvment I

will suggest that members of minority cultures, especially non-mainstream members, should be provided with an opportunity to play their prospective roles. It is not reasonable to expect (especially vulnerable) members to eschew the culture in which they have been raised and lived to become members of a different cultural framework. Recognition policy and facilitating collective activities of minority groups as a community, rather than as individuals, can direct toward the contribution of members of these communities to pertinent issues. There is also the matter of time. One ought to have a long term perspective. Desired change will not be achieved immediately but attempts ought to be seen as a process of moving toward desired change.

Although Okin places emphasis upon adequate representation of female members in the process of articulating group rights, she does not approve the outcome if it accommodates illiberal features of cultural mores. Developing democratic and liberal approaches, Okin argues that if female members of minority groups opt to practice their group's illiberal norms, the democratic approach seems to accept this decision because it is reached through a democratic process. In the liberal approach, equal rights of the individual are crucial and a liberal state would not accept this decision. Okin supports a liberal approach:

Liberalism, grounded in the equal rights of individuals, would not concur in this outcome; indeed a state that values liberalism above all would have no more need to consult with the women of such a group than it need consult with slaves before it insisted upon their emancipation or with workers before it insisted upon their protection from deadly workplace hazards.... I favor the liberal response in the case of patriarchal religions that can make no good claims of past oppression (2005:86).

Comparing female members of minority cultures to slaves reveals a significant element in Okin's approach to women of minority cultures. As already insisted, confining heterogeneous features of minority cultures to a simple dichotomy between powerful and weak members, portrays women of minority cultures as perpetual victims. It ignores the potential agency of women. There are, however, different understandings among members including women as well as other disadvantaged members. Conditions such as prior-emancipation take one back to the reference place: how should emancipation take place? It is not a subject to be reached only through ratification of law. Even slavery did not disappear immediately with the advent of legislation. A long term process will be needed to make these changes happen, given the internal disputes that persist among the different groups of certain minority cultures. Accepting the procedural feature of cultural change means that initially some of the undesirable practices of cultural mores should be dealt with. Through recognition policy and developing a context for

different members of minority cultures, multiculturalism can be employed to facilitate this process toward desired change.

Canadian philosopher Charles Taylor argues that one may become a full human agent if one's collective features of identity are recognised, respected and put into practice (1994:32). Negating this collective identity of individuals deprives one of the opportunities to act as agents. By recognizing this feature of identity, members of minority cultures, especially vulnerable members such as women, will find an opportunity to act as agents and to express their non-mainstream understandings of their cultural mores.

Highlighting the function of multicultural policy, Irene Bloemraad, a scholar of migrants' political incorporation and multiculturalism, discusses how multicultural policy provides migrants with just such an opportunity. Drawing attention to the difference between political and civic integration on the one hand, and socioeconomic integration on the other, she advocates multiculturalism as being, above all a theory of political inclusion and citizenship, as well as a proper procedure for the political and civil integration of minority groups. Bloemraad advocates two different ways of politically integrating minority groups: (a) individual political assimilation, and (b) group-based political incorporation (2007:327). Arguing for the second way, she states that migrants' personal contacts and social interactions have more significant roles in their civic and political engagement than impersonal appeals or spontaneous engagement. She views "political incorporation as a social process of mobilization by friends, family, community organizations and local leaders that is embedded in an institutional context shaped by government policies" (2006:667). Therefore, in order to facilitate agency of members of any given minority culture, they ought to be permitted and/or supported to act alongside their fellow-community members. As Bloemraad further argues, both common immigrants and ethnic leaders will feel more empowered to participate and make claims within the system if they have the benefit of official recognition of their collective participation. Multicultural policy legitimises the activities of different sects of minority cultures and provides their members with resources that facilitate participation (2007:324-326). Therefore, rather than being the enemy of women, multiculturalism provides them with a unique historical opportunity to pluralize and transform radically the universally hegemonic and homogeneous patriarchal culture that ultimately damages both women and men (Parekh, 1999:75).

In contrast to the view that subscribes to incompatibility between feminism and multiculturalism, this paper suggests that multicultural policy serves minority women's interests

through facilitating their civic and political incorporation in a long term perspective. Seeing it as a negotiated process may necessitate tolerating some of the more unpleasant features of these cultures for the time being but at the same time supporting intra-group diversity and different understandings of cultural mores to facilitate their future change. Monique Deveaux calls for an understanding of conflict between cultural rights and sex equality as political tensions rather than as conflict over moral values. Suggesting the adoption of a deliberative approach to the debate, she demonstrates the South African experience of reforming customary marriage as an example, which showed that deliberation may yield outcomes with non-liberal features—in South Africa the preservation of polygamy and bride-wealth payment—that are inconsistent with norms of sex equality (2006:204-224). It is essential to notice the negotiated nature of minority cultures and their members' opportunities to take part in this negotiation. This contribution may never be achieved unless their collective identity involves them in the relevant issues. Multicultural policy gives these collective identities the opportunity to raise such issues.

Through examining the different policies exercised by two similar countries, i.e., Australia and Canada, in terms of their Muslim communities' request to introduce Sharia, I will argue that the Canadian multicultural approach has facilitated Muslim women's contribution to the debate. The Canadian multicultural approach vis-a-vis Sharia debate allowed the contribution of Muslim women to the debate, by extension turning the debate into an empowerment opportunity for Muslim women. In contrast, Australia has negated any possibility of furthering the debate by questioning multicultural policy. As a result, Australian Muslim women have been denied the opportunity to express their ideas and concerns vis-a-vis Sharia debate.

## **Australia and Canada: Different Experiences**

Canada and Australia share many similar features, e.g. political systems and federalism, a two party system, an official multicultural policy, the proportion of Muslim women to total population, lack of a colonial history vis-à-vis migrants, and growth rates of their respective Muslim communities. Despite these similarities, the level of Muslim women's political engagement differs between Australia and Canada. As regards formal politics, currently among the 226 members of The Parliament of the Commonwealth of Australia (including the *House of*

*Representatives* and the *Senate*) there are no Muslim women.<sup>4</sup> In contrast, Muslim women's engagements in Canadian federal elections have been noticeably higher. For example, 1993 saw the first Muslim women nominated to run for federal election. Seventeen Muslim candidates including four women participated in the 2004 Canadian general election. One was elected to the federal parliament (Hamdani, 2005:11). Moreover, one Muslim woman, Mobina Jaffer, was appointed to the Canadian Senate from 2001. There is a similar difference in terms of the level of the contribution of Muslim women to the Sharia debate.

## Sharia Debate

The term 'sharia debate' refers to the arguments that obtain among supporters and opponents who propose the adoption of Islamic law in western countries. As secular countries, both Canada and Australia have been coerced by their respective Muslim communities to consider putting *Sharia law* into practice. There are some similarities and differences between Australia and Canada in terms of their involvement with the Sharia debate. In brief, the main differences surround the scope of the debate, its timeframe and geographical boundary. The Sharia debate in Canada specifically focuses on the application of Islamic law in the arbitration process. In contrast, the Sharia debate in Australia appears less specific. It includes a broad arena of call for developing an Islamic court on the one hand, and using Sharia as an informal mediator body on the other. In terms of timeframe, while Canada engaged with the debate specifically from late 2003 until mid 2005, the Australian experience does not have a specific timeframe. Finally, requests to put Sharia law into practice in Australia have been nationwide, with many states signaling their interest. Ontario was the main Canadian state wherein heated debate was embarked upon.

One significant factor common to the Australian and Canadian Sharia debate has laid the foundation of this paper, that is, concern for Muslim women. The conceivable impact of the introduction of Sharia law on Muslim women is the most significant concern voiced by those who subscribe to the debate (Bakht, 2004, Karvelas, 2005, Razack, 2007).<sup>5</sup> This particular

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<sup>4</sup> A male Muslim, Ed Husic, who stood for the federal seat of Greenway in western Sydney in the 2004 election, failed to win the seat.

<sup>5</sup> It is important to note that Sharia is not all about women or personal law. Sharia provides instruction for all aspects of Muslims' personal and social lives. However, while women's issues are

characteristic inevitably put the debate within the theoretical framework of feminist and multicultural contention. Will Kymlicka distinguishes between two kinds of group rights: a) internal restriction, and b) external protection. He defines internal restriction as an ethno cultural group attempting to control its members in the name of cultural tradition. Liberal notions of multiculturalism, he argues, cannot accept this kind of group right. The second type of group right is the one in which minority groups claim rights against the larger society in order to reduce their vulnerability. Sharia debate is read as aiming to determine whether Sharia would provide external protection or prove an avenue by which Muslim men can place restrictions on Muslim women (Korteweg, 2006:51).

This paper does not aim to enter into the debate and to discuss whether the introduction of the Sharia would -or would not - be in the interests of Muslim women. Rather, it focuses on the ways in which the debate was dealt with. In comparison with Australia, the Canadian experience evinced two distinguishing characteristics: a) a multicultural legal context, and b) the state's multicultural approach. While the Canadian Sharia debate entertained these multicultural features, the Australian experience did not give weight to multicultural features. The debate's lack of said features deprived Australian Muslim women of both a chance to express their understanding of the Sharia and to contribute to an important issue that could well prove an empowerment opportunity.

## **Arbitration act**

The Canadian Sharia debate was mostly confined to the legal framework of the arbitration act. The *Arbitration Act* 1991, as the name implies grants the possibility of settling a variety of private matters through arbitration. Due to the time consuming process of the court system and its high expenses, the arbitration process is seen as a supportive arrangement designed to settle peoples' disputes in minimal time and with low expenditure. A multicultural feature of the Act is significantly important for the current paper. Subsection 32 (1) states that the parties under arbitration are free to choose the legal system by which their disputes will be settled so long as the results are not prohibited by law. This is the most important provision in the Act, which effectively opens up the possibility of recourse to religious principles for resolving

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considered to be the core element, sometimes by mistake they become the only relevant issue in this regard.

civil matters in Ontario (Pal, 2006). It provides different ethno-cultural individuals with the opportunity to settle their disputes based on their own legal system. Therefore, the existence of a significant multicultural feature in Ontario's legal system allowed the country's Muslim community to build one of their key appeals based on a specific and arguable framework, i.e., the *Arbitration Act 1991*.

In contrast, there is no similar multicultural feature in Australia's legal system. The appeal to introduce Sharia law into Australia occurred in a wide variety of ways. For example, *The Australian* reported Kurt Kennedy, founder and leader of the Best Party of Allah in Australia, as saying that all Australians should be living under Islamic law dictated by the Qoran (Karvelas, 2005). As a further example, in a meeting with the Citizenship and Multicultural Affairs Minister Peter McGauran, a group of Muslim leaders requested that a separate Islamic court be set up in Australia specifically to deal with Islamic divorce (Dunlevy, 2005). A modest appeal came from Western Australia. The Islamic Council of Western Australia offered a new mediation process based on Sharia law to solve Muslims' disputes, e.g., marital, divorce and financial. Abdul Jalil Ahmad, the religious advisor to the Council, made clear that the process would not override Australia's State and Commonwealth laws: he could only recommend that they be accepted by those involved (Macdonald, 2007). Thus, it becomes clear that appeals to introduce Sharia law in Australia were not well organized around a legal, cultural or political context. As a result, a single, unified and boundary-bounded argument could not be developed.

When an appeal is made in a certain framework and frames certain demands, both the opponents and supporters of the appeal would do well to prepare and organize their argument constructively. Then there will be a chance for rich debate about the appeals. In the Canadian case, the Arbitration Act and its relevant article, i.e., subsection 32 (1) provided this opportunity. The Country's legal system does not offer the same opportunity for Australian Muslims. As a consequence, not one of the scattered appeals was able to earn sufficient support or opposition, thus denying the Muslim protagonists any opportunity for heated debate.

## **The State's Approach**

Further to the multicultural nature of the context, the Canadian government's approach also made a difference. The Canadian government adopted a more multicultural approach when the appeal was raised. In general, the official reaction of the Australian government was to play an obstructive role in the debate, whereas state intervention in Canada was one of the positive

factors that fuelled the debate. In this regard, the role of state intervention in encouraging Muslim women to contribute to the debate is significantly important. Anna C. Korteweg describes the state intervention in Canada as 'the second phase in which more intensive debate occurred' (2006:50). Former Attorney General Marion Boyd, who was asked by the government to conduct a study, sought ideas from many prominent Muslim women's organizations as well as from key Muslim women; NGOs and activists.

In contrast, Australian official reaction to the appeal was to say the least deplorable. It blocked any possibility of expanding the debate. Those seeking the implementation of Sharia law were looked upon as agitators and asked to leave the country. After Prime Minister John Howard's meeting with Muslim leaders in August 2005, in an interview with the ABC, Treasurer Peter Costello stated: "[T]here are some clerics who have been quoted as saying they recognise two laws. They recognise Australian law and Sharia law. There's only one law in Australia, it's the Australian law ... if you prefer Sharia law and have the opportunity to go to another country which practices it, perhaps then that's a better option" (Costello, 2005). On another occasion, Costello mentioned Saudi Arabia and Iran as countries where such Muslims could go. The Treasurer said: "There are countries that apply religious or Sharia law – Saudi Arabia and Iran come to mind. If a person wants to live under Sharia law these are countries where they might feel at ease, but not Australia" (Costello, 2006:82). This approach was sufficient to silence supporters of Sharia law: it stripped them of all hope of furthering their efforts to push for the introduction of Sharia law. As regards the opponents of the law, there was no point in intervening: the government had already taken care of the issue.

In the Australian case, the debate was politicized. However, in Canada the state dealt with the appeal more as a legal and gender issue. As mentioned above, the Canadian state's first reaction to the debate was to ask the Attorney General and Minister Responsible for Women's Issues to have a close look to the case. This reaction made the gender concerns of the debate more clear. Considering her feminist and legal background, the government's appointment of Marion Boyd to conduct the aforementioned study was another sign of the government's legal approach. In the Australian case, high level political authorities stood steadfastly against the appeal. Statements made on different occasions left no doubt that it was not a matter for consideration. It was waste of time to talk about something so clearly against Australian core values. For example, Citizenship and Multicultural Affairs Minister Peter McGauran and Attorney-General Phillip Ruddock rejected the appeal of a group of Muslim



leaders in less than one week. McGauran stated: "The law in this country is secular. There's a clear separation between religion and the law and Australia's laws apply equally to all citizens, regardless of their religion" (Dunlevy, 2005). There was no question of seeking advice of Muslims or any other relevant bodies.

Another difference between the Australian and Canadian states' approaches to the appeal for the introduction of Sharia law had genesis in value conflict. Official reaction to the appeal revealed that Sharia is seen as in direct conflict with Australian values. "[T]his is a country, which is founded on a democracy. According to our Constitution, we have a secular state. Our laws are made by the Australian Parliament. If those are not your values, if you want a country which has Sharia law or a theocratic state, then Australia is not for you" (Costello, 2005). Focus of the debate in Canada was in the main on women and gender issues. Even when Premier Dalton McGuinty informed the press about his decision to ban the use of all religion in the arbitration process, there was no suggestion of value conflict. McGuinty insisted: "[T]here will be no Shariah law in Ontario. There will be no religious arbitration in Ontario. There will be one law for all Ontarians" (Leslie, 2005). In Australia, Education Minister Brendan Nelson informed the press that he would meet the Australian Federation of Islamic Councils and discuss the introduction of programs that would ensure that those attending Islamic schools would fully understand Australia's history and values. He commented: "We want them to understand our history and our culture, the extent to which we believe in mateship and giving another person a hand up and a fair go. And basically, if people don't want to be Australians and they don't want to live by Australian values and understand them, well basically they can clear off" (Nelson, 2005).

## **Conclusion**

In general a comparative review of the debate surrounding the appeal to introduce Sharia law in the two secular countries of Canada and Australia reveals that the appeal received greater attention in Canada. In terms of academic works, scholars including Natasha Bakht, Haideh Moghissi, Ayelet Shachar, and Jasmin Zine published a variety of articles and books addressing the complicated nature of the issue. In Australia, it is difficult to find any directly relevant academic publications. In a shared co-authored article, Ann Black and Jamila Hussain proposed the idea of inserting an Islamic Law course into the legal education system in Australia (Black and Hussain, 2006). Jamila Hussain's book *Islam and its law and society*

includes some passages about the Shaira law issue in Australia. Samina Yasmeen also has valuable publications in terms of Australian Muslim women, specifically in Western Australia, but there is no specific publication dealing with the request for the introduction of Islamic law. In terms of the press, statements by Australian authorities, particularly interviews with Treasurer Costello, attracted great attention not only that of the national media but also of the international press. The Australian media confined their comments vis-à-vis Muslim women and Sharia law to interviews with a limited number of individuals, i.e., Jamila Hussain, a scholar at the University of Technology, Sydney, and Aziza Abdel-Halim, president of the Muslim Women's National Network of Australia. In contrast, it was not only Canadian Muslim women who had a high-profile presence in the media. Muslim women from other countries contributed to the Canadian Sharia debate through the media. Beside interviews, Muslim women or ex-Muslim women expressed their opinions either in favour of or (mostly) against Sharia law. On different occasions, radio and TV channels broadcast debates in which participants advocated their points of view in terms of the adoption of Sharia law. Muslim women's contributions to these debates were to say the least impressive. Homa Arjomand, an ex-Muslim woman, launched an international campaign and mobilized a sizable number of Muslim women both in Canada and in other countries to oppose the possibility of the adoption of Sharia law. The "international Campaign against Shari'a Court in Canada", which took the debate beyond the borders of Canada, is one of the movements that continue to organise many activities regarding Sharia.<sup>6</sup>

As explained above, the potential impact of the introduction of Sharia law on female members of Muslim communities was the main concern in both Australia and Canada. Many argue that allowing patriarchal Islamic law to be practiced within Muslim communities in West would leave female members of these communities in extremely vulnerable circumstances. Therefore, at a theoretical level, debate surrounding Sharia law fits Okin's argument about possible conflict between feminism and multiculturalism. Comparative investigation of the debate in Australia and Canada shows that Canada's multicultural approach resulted in a greater contribution by Muslim women. While the final outcome in both countries was the same, i.e., requests for the adoption of Sharia law were denied, Canadian Muslim women at least

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<sup>6</sup> The campaign includes an active website which acts as an effective network among those fighting Sharia law in different countries. See: <http://www.nosharia.com/>

made a significant contribution to the outcome. But there was no such opportunity for Australian Muslim women to take part in the debate. Finally, whereas the Sharia debate may be seen as an empowerment opportunity for Canadian Muslim women, Australian Muslim women were denied this opportunity. In contrast to the *feminism vs. multiculturalism* position, the Sharia debate in Australia and Canada revealed that although multicultural policy ostensibly gives female members of minority cultures the right to contribute to controversial issues, in the case of Australia, this right was precluded by government intervention. In the Canadian case, Sharia debate not only served as an empowerment tool for female members of Muslim community but also facilitated their representation in the process of articulating a significant pertinent issue.

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