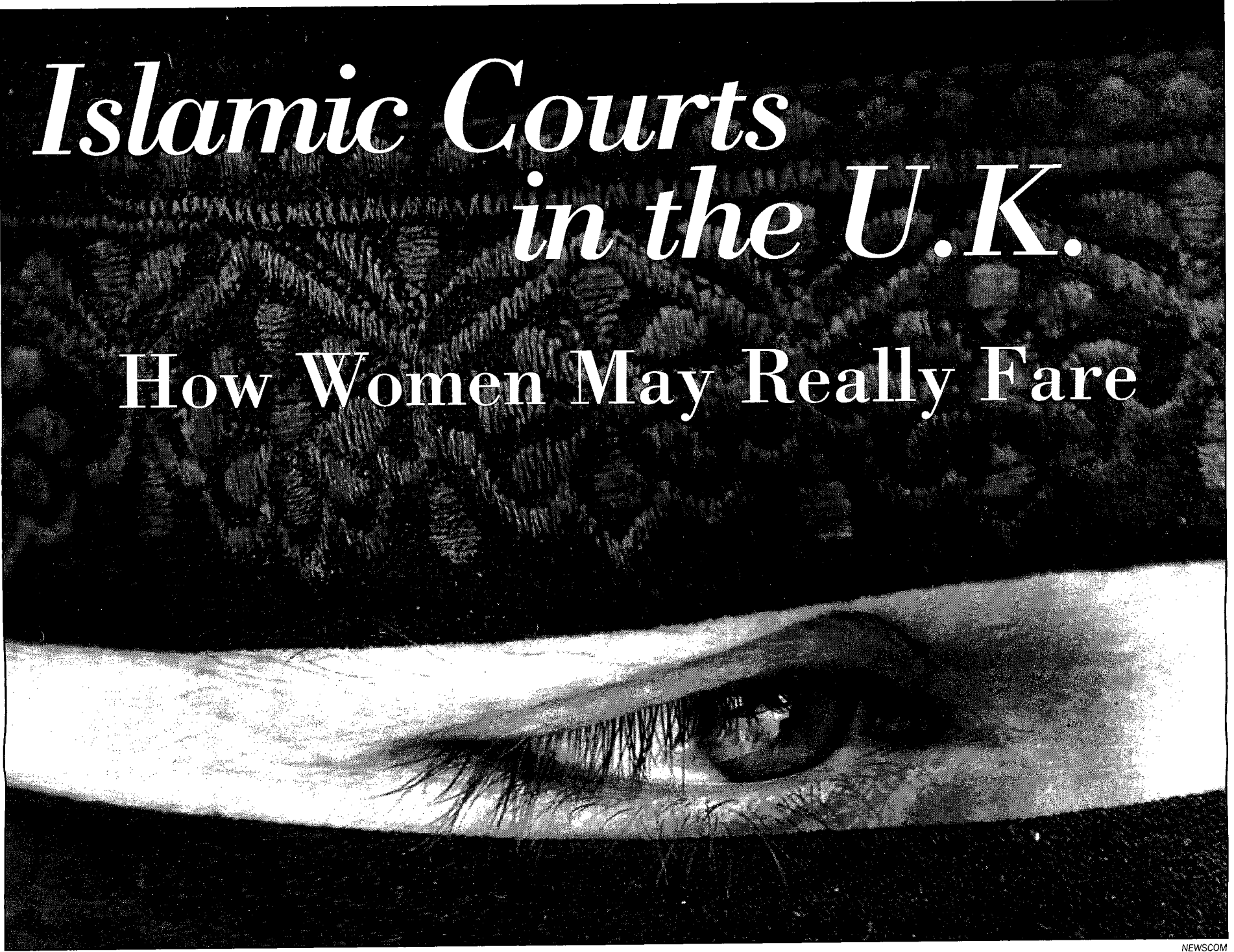


# Islamic Courts in the U.K.

## How Women May Really Fare



NEWSCOM

By Sarah Song

The Archbishop of Canterbury provoked public outrage when he recently suggested that the British legal system should make room for Shariah, or Islamic law. Newspaper cartoons depicted stoning and flogging, and one tabloid headline said he was handing al-Qaida a victory. If we cut past some of the extreme reactions, there is a genuine concern about the rights of women under Shariah law that needs to be taken seriously.

The archbishop was not talking about criminal law but commercial and family law in which both parties agree to arbitration within a religious tribunal. Britain and the U.S. already give a role to religious tribunals. Both countries recognize the role of Orthodox Jewish courts, known as *bet din*, in adjudicating matters of marriage and divorce.

Britain's established religion, the Church of England, has its own ecclesiastical courts which are granted considerable independence. The U.S. has gone so far as to recognize Muslim tribunals. In 2005, a divorce case arbitrated by the Texas Islamic Court was upheld by the state's Second Court of Appeals. It is against this background that the archbishop makes what is, at bottom, a point about fairness. If the legal system already recognizes the tribunals of these religious groups, then why not also Islamic courts?

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In a society committed to basic liberal freedoms, the question of whether a secular legal system should accommodate religious law depends on two crucial questions. First, whether the individuals involved really consented to use religious courts, and second, whether the decisions of these courts are consistent with the basic values underlying the legal system, including the equality of women.

The archbishop endorses a model where state and religious courts share legal jurisdiction, allowing individuals to choose where they will resolve their disputes. The assumption here is that if religious courts consistently give women a raw deal in divorce proceedings, women will opt for state courts over religious courts.

The trouble is that in many instances women may be pressured into using religious courts. In the U.S., state courts have sometimes refused to enforce separation agreements reached through *bet din* arbitrations on the ground that the woman involved had been forced to participate, but there have also been cases in which state courts have refused to intervene in the decision of a religious tribunal say, to compel a Jewish husband to provide for his ex-wife, out of deference for freedom of religion.

There would be no problem if religious courts took a

progressive interpretation of religious law, but this is not always the case. Some British Muslim women have stressed that under Shariah women have limited rights in terms of divorce, making it hard to leave abusive relationships. Many British Muslim activists say that the interpretation of Islam being proposed for Shariah courts in Britain is extremely conservative, more so than in many Muslim countries, and therefore, more oppressive to women.

In Canada, the recent movement for legal recognition of Islamic tribunals failed. This was partly due to the enormous difficulty of weaving the multiplicity of Islamic laws with Canadian secular laws. The larger concern was that many Islamic legal principles and procedures would conflict with existing equality rights. Rather than extend recognition to Shariah tribunals to arbitrate family and civil law disputes, Ontario decided in 2005 to withdraw existing recognition of Catholic and Orthodox Jewish tribunals.

In the British case, the archbishop was right to raise the issue of fairness. Unless Britain disestablishes the Church of England and withdraws recognition of Jewish tribunals, it is only fair to extend similar recognition to Shariah courts. But the archbishop and anyone who supports his proposal face a genuine dilemma — between respecting religious liberty and protecting the rights of women. The archbishop and his supporters are gambling that accommodating Islamic courts is not only the right thing to do, but also the best way to foster the integration of Muslim minorities in the West. They may well be right.

But they need to offer concrete proposals for addressing this dilemma. So long as the dominant interpretations of Shariah law deny the equality of women, formally recognizing it may come at women's expense. ■