

## Introduction

Poised at the *dihliz*<sup>1</sup>

Life, I sit at your *dihliz*,

Hands holding the bowl of endeavour.<sup>2</sup>

In my eyes are desires for a flower-filled spring,

On my lips lie grievances of the indifference of time.

Life, I sit at your *dihliz*.

The word *dihliz* is common to Arabic, Turkish, Persian and Urdu, those great languages of the Muslim world, with cognates in many related languages besides (in my native Pashto, the word is *darshal*). A literal, albeit inadequate, English translation might be ‘threshold’ or ‘vestibule’ – the *dihliz* is an ‘inter-space’ or an ‘in-between place’. As a metaphor, though, the *dihliz* has a deep cultural significance that goes well beyond its bare translation, encompassing a passage or corridor connecting and disconnecting spaces, places and buildings; a notional path that connects and frames other spaces.

Much like the poet, I am poised at a *dihliz*, exploring conceptual and analytical tools to contextualize and write about Islamic law, a subject that constitutes both a personal and a professional journey. How do I link theoretical perspectives of a discipline to its lived reality in language that resonates with readers across cultures, geographies and knowledge systems? In seeking an appropriate vantage point from which to engage with the Islamic legal traditions, the metaphor that comes to mind is of being poised at the *dihliz*. This in-between place or threshold is also imagined as a passage or corridor connecting and disconnecting spaces, places and buildings. Located at the *dihliz*, one is simultaneously inside and outside the broader frameworks of life and knowledge. Conscious of

<sup>1</sup> The translation here from Urdu is my own; it is not literal, but I have attempted to convey the underlying meaning of the verses. As *Modern Challenges* was nearing completion I discovered that Ebrahim Moosa had named his website *Dihliz*, reflecting there on the meanings of the word. I gratefully acknowledge his insights (see also E. Moosa, *Ghazali and the Poetics of Imagination* (Chapel Hill: University of North Carolina Press, 2005)). *Dihliz* is pronounced deh-leez in Urdu and dih-leez in Arabic.

<sup>2</sup> The bowl is commonly used as a metaphor for a space wanting or needing to be filled; holding a bowl signifies both impoverishment and a desire for fulfillment. Those who seek something also arrive at the *dihliz*, where they hope to fulfil their desires and achieve their purpose.

competing experiences and contexts, at the *dihliz* one is offered multiple panoramic visions dotted on the horizons beyond one's immediate proximity. From its vantage point, I position myself to explore and expose multiple interpretations of Islamic law as well as the complexity inherent in handling plural normativity. *Modern Challenges to Islamic Law* aims to bring to the fore the diversity within Muslim communities and the various cultural and linguistic lenses through which they perceive and experience their religious traditions. At the level of state and government, it aims to demonstrate how Islamic law is served up rhetorically and selectively for popular consumption and for the retention of authority.

*Modern Challenges* has as its background four decades of professional engagement with the Islamic legal traditions, augmented by six decades of personal experiences as a woman with multiple identities: a Pashtun from the Swat Valley who is Muslim, Pakistani and British. Exposed to both Western and non-Western educational and legal systems, and having lived and worked in Asia, Europe and beyond, I find myself adept at perceiving many different visions and realities simultaneously. However, I would like to make clear that my main experience and knowledge is with Commonwealth jurisdictions and common law legal systems and does not extend to, for instance, Indonesia and other South East Asian Muslim jurisdictions.<sup>3</sup> Likewise, whilst I am deeply aware of the role and contribution of Shia perspectives on jurisprudence, as well as more recently on state and government, my personal and research experiences are confined to Sunni Islam.<sup>4</sup>

Multiple locations both geographical and intellectual inform my perspectives and approaches to the Islamic legal traditions. Based on these varied experiences, I am able to bring to the present project a variety of conceptual and interpretative tools to engage with the globalizing and transformative impacts that are affecting subjects as disparate as Islamic finance, Internet *fatawa* and women's rights movements. The manner in which Muslim state practices are negotiating new challenges also forms part of my contemplations at the *dihliz*. This is a position that fosters inclusivity, in that it acknowledges that there is no single, definitive position on any given aspect of the legal traditions in Islam. Aware of any number of equally compelling views in and around the *dihliz*, those so positioned are seldom dismissive of others' perspectives. Presenting one's position without apology or dismissal of others' viewpoints is the balancing act performed at

<sup>3</sup> I recognize that Indonesia is the largest Muslim country in the world and requires close attention, but it is beyond my areas of expertise and the remit of this book. This does not preclude me from including its system of *zakat* in Chapter 4, along with other Muslim countries where appropriate.

<sup>4</sup> A highly sophisticated body of work has emerged over the years in this field of scholarship. Most prominently, in the areas of state and government, the Iraqi scholar Muhammad Baqer as-Sadr has been hugely influential in shaping Ayatullah Khomeini's idea of the Islamic Republic. See Chibli Mallat, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi'i International* (Cambridge: Cambridge University Press, 2004).

the *dihliz*. It is both the centre and the margins of tradition and modernity – moving, fluid and dynamic, much like the Islamic legal traditions.

The inter-disciplinary and cross-cultural approach adopted in *Modern Challenges* reflects the *dihliz* where various disciplines and knowledge traditions meet, cross paths, and engage in meaningful conversations. It is a metaphor that may usefully be employed when placing the Islamic legal traditions in conversation with their Western counterparts. I believe in engaging with both Muslim and Western traditions as well as with my own ethnic, racial and linguistic identities as the tools of this inter- and intra-cultural conversation. The terms ‘Islamic’ and ‘Western’ are employed while bearing in mind that neither is a monolithic concept and that both traditions have a vast range of variations within their folds. I do not set out to ‘prove’ or ‘disprove’ any particular narrative, because I believe that where there are multiple narratives each must be heard and respected.

Being positioned at the *dihliz* also signifies awareness of paradox and contradictions, subjectivity and objectivity. Throughout *Modern Challenges*, we are confronted with the paradoxes and contradictions reflected in the theory and practice of Islamic law in various and varying communities, states and governments.<sup>5</sup> Equally challenging when situated at the *dihliz* are the negotiation, contestation and struggle with past and present, with hegemonic and colonial knowledge traditions. Reflexivity is inherent in positioning oneself at the *dihliz*; developing the ability to be self-critical is imperative in understanding the Islamic legal traditions. Moosa sums this up rather well in his use of *dihliz* to analyse Al-Ghazali’s work when he observes, ‘This attempt to foster a conversation among iterations of different intellectual traditions aims to advance an emancipatory and humane discursive tradition, one to which the Muslim intellectual legacy can make a meaningful contribution.’<sup>6</sup>

### On the Terminology in This Book

I am conscious of the variety of meanings ascribed to key terms in this work – ‘modernity’, ‘tradition’, ‘Islamic law’, *sharia*, ‘Western’ and ‘Westernization’, to name but a few – and it is appropriate to present my reasons for appearing to privilege these over other comparable terms.

As the ethicist Jeffrey Stout observes, ‘No categories require more careful handling these days than *tradition* and *modernity*.’<sup>7</sup> In popular use, these two

<sup>5</sup> Saudi Arabia, for instance, described by some as the ‘Vatican of Sunni Islam’, actively avoided using the term ‘Islamic’ in describing its banking and financial sector, whereas the British prime minister David Cameron readily declared his aspiration to make Britain a ‘hub of Islamic finance’.

<sup>6</sup> Moosa, *Ghazali*, p. 35.

<sup>7</sup> Jeffrey Stout, ‘Commitments and Traditions in the Study of Religious Ethics’, *Journal of Religious Ethics* 25(3) (1998) 25th Anniversary Supplement, 23–56 at 49, original emphasis.

terms may denote a dichotomous construction of meaning, but it is increasingly recognized that neither term is monolithic. Tradition need not always be opposed to modernity and change and may even facilitate it.<sup>8</sup> I use ‘modern’ to imply present, current or contemporary,<sup>9</sup> yet with caution, as I am aware of the problem of ‘periodizing’ time. When, for a start, does the past end and the present begin? There are ruptures and new beginnings, the ebbs and flows of eras, and fragments of continuity that link the past to the present and future. Some aspects of modernity can be found in every past and some traditions in every present. Muslim communities have perceived ‘modernity’ in different ways, including its relevance to and compatibility with the Islamic traditions; it has been perceived as synonymous with Westernization, hence resistance to the term in some Muslim constituencies.

Why ‘Islamic law’ rather than ‘*sharia* law’ or ‘Muslim law’?<sup>10</sup> Adding ‘law’ to *sharia* implies that *sharia* constitutes law in the sense of legally enforceable rules akin to black-letter law, so reducing its scope and meaning. But such law is only one of many components of *sharia*, which covers all aspects of human life, and so ‘*sharia* law’, I submit, would be misleading. Further, I consider *sharia* to be the principles of Islamic law,<sup>11</sup> as well as a moral, ethical, normative framework encompassing both the divine texts and human understandings and articulations. ‘Muslim law’ refers to those aspects of the law that are understood by Muslims to be Islamic; it would arguably include ‘*urf*–customary practices that do not strictly fall within Islamic law but which some Muslims follow.<sup>12</sup> ‘Muslim law’ and ‘Islamic law’ are used interchangeably by some authors,<sup>13</sup> but

<sup>8</sup> Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton: Princeton University Press, 2007), p. 3.

<sup>9</sup> Two interesting and important edited collections on the subject employ the term. See, for instance, Yvonne Yazbeck and Barbara Freyer Stowasser (eds.), *Islamic Law and the Challenges of Modernity* (Walnut Creek: Altamira Press, 2004); Muhammad Khalid Masud, Armando Salvatore and Martin van Bruinessen (eds.), *Islam and Modernity: Key Issues and Debates* (Edinburgh: Edinburgh University Press, 2009).

<sup>10</sup> Or indeed ‘Muhammadan law’, the description of the Islamic legal traditions as understood by British colonial administrators.

<sup>11</sup> I adopted this position in my monograph Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man?* (The Hague: Kluwer, 2000).

<sup>12</sup> For instance, traditional Islamic law prohibits adoption (as the term is understood in Western jurisdictions), yet South Asian Muslim communities have long ‘adopted’ children, with childless couples skirting around Islamic rules of inheritance to make sure such children were provided for. See Shaheen Sardar Ali, ‘A Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law’, in *Protecting the World’s Children: Impact of the Convention of the Rights of the Child in Diverse Legal Systems* (Cambridge: Cambridge University Press, 2007), pp. 142–208. Until 1962, customary practices depriving women of their inheritance rights (contrary to Islamic law) prevailed. See M. A. Mannan (ed.), *D. F. Mulla’s Principles of Mahomedan Law* (Lahore: PLD Publishers, 1995). At 519, the author states, ‘Where custom is given priority by legislation over general Muhammadan Law, a special family or tribal custom of adoption will, if proved, prevail.’

<sup>13</sup> ‘Muslim law’ and ‘Islamic law’ have been employed in the title of monographs as well as edited collections, including the following: David Pearl and Werner Menski, *Muslim Family Law*, 3rd

understandings of what constitutes ‘Muslim’ as opposed to ‘Islamic’ law is not and cannot be uniform, as Islamic law does not have a static, fixed content, extrapolated as it is from a range of sources by different juristic schools.

And so ‘Islamic law’ – a term constructed in colonial times – is the one I prefer to employ, conscious, of course, that this too may be understood differently by different people. In *Modern Challenges*, ‘Islamic law’ encompasses the law’s theoretical framework, its sources in the Islamic legal traditions and its interpretative discourse, as well as the legislative enactments of Muslim jurisdictions.<sup>14</sup>

### Modern Challenges to Islamic Law: Multiple Narratives from the *Dihliz*

*Modern Challenges* forms a narrative of my continuous pursuit of understanding the nature and scope of Islamic law and its efficacy and application in the contemporary world. As a Muslim student of law and society,<sup>15</sup> an activist for women’s rights and a woman besides, I have grappled with questions arising from over forty years of engagement with Islamic law. There is a rich body of existing literature in English on various aspects of the Islamic traditions, including the social, legal, political, economic and moral, to which I too have made my small contribution. While perspectives vary, many accounts of Islamic law and its interface with society have enhanced our understandings, and critical arguments over theory and practice have been debated and developed. The Islamic legal traditions are neither linear nor monolithic, and, as Asad observes, Islam is a discursive tradition and must be approached as such.<sup>16</sup> *Modern Challenges* likewise adopts a contextual and discursive approach to Islamic law, offering insights into how local understandings transform its scope and application in the daily lives of Muslims in the contemporary world.

edition (London: Sweet and Maxwell, 1998). Ziba Mir-Husseinii employs ‘Muslim’ law as well as ‘Islamic’ law in, for instance, her celebrated monograph *Marriage on Trial. A Study of Islamic Family Law: Iran and Morocco Compared* (London: I. B. Tauris, 1993); and Ziba Mir-Husseinii, Kari Vogt, Lena Larsen and Christian Moe (eds.), *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition* (London: I. B. Tauris, 2013); also Anver M. Emon, *Islamic Natural Law Theories* (Oxford: Oxford University Press, 2010); and Mathias Rohe, *Islamic Law in Past and Present* (trans. Gwendolin Goldboom) (Leiden: Brill, 2014).

<sup>14</sup> I am aware that this definition too will invite some criticism on the basis that the term ‘Islamic law’ creates the expectation of a uniform body of regulatory norms in statutory formulation, a position few scholars on the subject would be willing to support. Islamic law must combine jurisprudence (*fiqh* and *usul-ul-fiqh*) and law, as one leads to the other. Second, and more importantly, the ‘law’ in Islamic law should not be understood as the sole authoritative voice of black-letter law as conceptualized in Western legal systems.

<sup>15</sup> I was brought up to believe that one always remains a student – a *taalib-e-ilm* (seeker of knowledge).

<sup>16</sup> Talal Asad, *The Idea of an Anthropology of Islam*, Occasional Papers (Washington, DC: Center for Contemporary Arab Studies, 1986), p. 14; Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), p. 28.

As this narrative will show, very rarely do scholars and jurists agree on a legal outcome or rule as being the ‘definitive’ Islamic response. Writing a book on Islamic law, then, is a challenging project, not least due to questions of authority and legitimacy of substance, content and context, as well as the sheer diversity of interpretations and understandings of Islam’s religious texts. What are Muslims’ understandings of what constitutes Islamic law, and from where do these understandings purport to derive their legitimacy? Are legitimacy and authority based upon legal and juristic perspectives from within the Islamic legal traditions, or have Muslim communities developed these understandings based upon their lived experiences? Standing at the *dihliz*, privileged to see and live within more than one Muslim community, it is enlightening to perceive a continued diversity of thought and practice. Looking eastward towards my place of birth and early life, I perceive the robust challenge being mounted by Muslim women for their inheritance rights. They do so on the basis of rights inherent within the Qur’an and Sunna and are not afraid of advancing those claims in a patriarchal society that believes in land as belonging solely to male heirs.<sup>17</sup> Looking westwards, among Muslim communities in Europe and North America, the burning issue for Muslim women is not inheritance but recognition of marital status and the right to divorce.<sup>18</sup>

Likewise, I see contradictions and paradoxes in various aspects of life as led by Muslims. Growing up in the conservative Swat Valley of northwest Pakistan, I often heard a saying that described grandparents’ affections: ‘children are *asal* [capital]; grandchildren are *sood* [interest]. Needless to say, *sood* is sweeter than *asal*’ At the time it never occurred to me that Islam most unequivocally forbids interest; how, then, could this saying have any meaning? If Muslims were not meant to take or give interest, how did they know it was sweet? Never once did I hear the unacceptability of interest raised.

In my many roles I have confronted many questions. Does Islamic law protect the equal rights of men and women to marry persons of their own choosing? How might it permit polygamy without infringing women’s rights? How does it respond to the contemporary issue of child marriages? What is the religious justification for migration to non-Muslim countries? What is the impact on Islamic law of the diversity of legal opinions? Are human rights an integral component of the Islamic legal tradition, and, if so, are they different to those emanating from the West? Such questions are important not only to lay Muslims at a personal level, but also to the study of law and social science, to researchers, and to policy- and law-makers. I contribute to these debates as a student of law and society, provide critical responses where I can, and raise questions that need further investigation. As a contribution to these debates, *Modern Challenges*

<sup>17</sup> Interestingly, a similar resistance was not seen when women claimed land as part of their *mahr* (dower). Was it the fact that *mahr* was seen as an undertaking – a word of honour – demanding fulfilment, whereas the male heirs to land considered it their birthright? This selective use of Islam and Islamic law permeates all aspects of life.

<sup>18</sup> See my discussion on *Sharia* Councils and women’s right to divorce in Britain in Chapter 7.

relates theory to context and practice and looks at how Islamic legal systems are responding to contemporary issues such as globalization and scientific and technological development. It looks at how, and to what extent, Islamic legal traditions and Muslim communities locally and globally perceive, construct, interpret and respond to these challenges. To give a nuanced understanding of the legal traditions, I present a contextual and personal narrative of how I have lived, practised and reflected upon Islamic law. I have experienced this mainly in my native Pakistan but have continued to do so in Britain and those several other countries and cultures where I have lived and worked.

My own life is a case in point of the complex identities any single Muslim may have in the contemporary world, and of how they impact on their understanding and practising of Islamic law; I have the perspective of an insider who has experienced the interface between its fixed and moving aspects. Though my own story is one of countless valid narratives, it demonstrates the importance of exploring the transformative nature of Islamic law as Muslims experience it.

I was born to a Punjabi mother and Pashtun father and raised in the Pashtun culture of the remote mountains of Pakistan's Swat Valley. My education was in the Roman Catholic Sacred Heart High School, run by the Sisters of Charity of Jesus and Mary, in the Punjabi city of Lahore, followed by the University Degree College for Women and the University of Peshawar,<sup>19</sup> and finally I studied for my LLM and PhD in international law at Hull University in the UK. So I have been negotiating competing layers of religious, cultural and legal normative frameworks since the age of five. This has meant a lifetime of exposure to the plurality of understandings within the Islamic legal traditions that are at play in the lives of citizens of an ostensibly 'Islamic' state which is in reality highly differentiated by ethnicities, languages and cultures; a rural/urban divide; and class distinctions. Simultaneously I have experienced life in the British, Norwegian and North American Muslim diasporas and grappled with Islamic law issues as debated in those various communities. My own life has exemplified this plurality and been witness to considerable change: Lahore, my home during my formative years, is an urban reflection of a rich Punjabi culture that has cut across religion, caste and class. Yet Lahore, home to a number of the saints of Islam's esoteric Sufi tradition, was also the home of the Muslim League and the city where, before Partition, Islam became the slogan and *raison d'être* for the creation of an independent nation.

In my own country, 400 miles from home, from a young age I found myself upon a steep learning curve on Islam and Muslims. As a five-year-old from the Swat Valley and the only Pashtun student at the Sacred Heart convent, Lahore's Punjabi culture and language were almost totally alien to me, despite my being born to a Punjabi mother. Since at the time I had only experienced the Swat Pashtuns' relatively functional practice of Islam, as a young girl my

<sup>19</sup> Later renamed the Jinnah College for Women, the University Degree College for Women formed part of the University of Peshawar.

ignorance of what to my Punjabi classmates were well-known festivals and religious practices even led them to suspect my religious affiliation. Coming from a Sunni family, I was surprised by the Lahore Shias' practice of marking the month of *Muharram*<sup>20</sup> by wearing black clothes and participating in religious meetings and rituals.<sup>21</sup> I would ask myself the question, if their Qur'an and their Prophet were the same, then why were the laws based on their texts different?<sup>22</sup> This was a plurality to which I had not been exposed.<sup>23</sup> The day-to-day Islam of the people, be it in Swat or Lahore, was coloured by cultural understandings and not by dogmatic Islam. True, there were those at the extremes – Sunnis who felt the Shias were bordering on being non-Islamic; Shias who felt the Sunnis had been disloyal to the family of the Prophet – but how interesting that at a personal and community level the division that led to parallel histories, laws, politics and more was lived out in such benign co-existence.<sup>24</sup>

Living in Pakistan in the 1970s, I saw a slow change come about in the self-perception of Muslims regarding both the sect (either Sunni or Shia) and the juristic school (i.e. Hanafi, Maliki, Shafi'i, or Hanbali) they followed. In an increasingly globalized world, two events especially lent impetus to this, not simply in Pakistan but the world over. The 1979 Soviet invasion of Afghanistan ushered in a fundamentalist, literalist, Wahabi Islam;<sup>25</sup> the Iranian revolution of

<sup>20</sup> The first of the Islamic year, whose first ten days mark the Battle of Karbala where the grandson of the Prophet Muhammad and many of his family were martyred. The schism between Sunni and Shia Muslims was deepened, never to be bridged again.

<sup>21</sup> Such meetings (*majalis*; singular *majlis*) during *Muharram* mostly took place in the *imambargah* – congregation halls or mosques of the Shias, although smaller ones were also organized in private homes. Interestingly, significant numbers of Sunnis too would attend. In Peshawar, I have seen Sunnis make a wish (a *mannat*) on an aspect of their lives that they wanted resolved and give an offering signifying their gratefulness if the *mannat* was fulfilled.

<sup>22</sup> For example, Sunnis require at least two witnesses to a marriage contract, while Shias hold that a marriage conducted without witnesses is still valid. Nevertheless, written marriage contracts duly attested are the norm among Shias. Laws of inheritance differ too: where a Shia father dies without leaving a male heir, the estate is divided among his female heirs; with Sunnis, after giving a portion to the widow and daughters of the deceased, the remainder goes to the nearest male agnate. Shias hold that *zakat* is an act of personal worship and that the state cannot intervene and collect charitable money for distribution; Sunni Islam is ambivalent on this point, but some Sunni governments have collected *zakat*.

<sup>23</sup> As a child I was unaware of the divisions within Sunni Islam into Hanafi, Maliki, Shafi'i and Hanbali.

<sup>24</sup> Swat had no Shias, hence my ignorance that Muslims could be other than what I thought was simply 'Muslim'. That said, *Muharram* was even for us Sunni Pashtuns the month of sombre grieving at the martyrdom of the Prophet's family. I remember how a woman was 'commissioned' by my grandmother to live in our family home for the first ten days of *Muharram* and recite the story of the Battle of Karbala every evening to the ladies of the household.

<sup>25</sup> It was not until the mid-1980s that, as a university lecturer in Peshawar, I first saw a woman fully covered in a black *burqa*, in temperatures of 47 °C (I was familiar only with the traditional Pashtun *chador*, or what we called a 'shuttlecock' *burqa*). Such Arab women had accompanied husbands who were supporting the Afghans in fighting the Soviets. The *burqa* proved contagious and it is now a common sight to see Pashtun and other Pakistani women in this Arab garb: the Arabization of Islam and the undermining of 'cultural' Islam had begun.

the same year did likewise for a militant and radical Shia Islam.<sup>26</sup> The poisonous seeds of intolerance and militancy were sown and an emphasis placed on public ritual in an increasingly antagonistic atmosphere: witness the Sunnis' *Eid Milad-un-Nabi* marking the Prophet's birth, and the Shias' processions marking the martyrdom of Hussain and his household at Karbala.

Returning to Swat after university, I experienced Islamic law as it was lived in the family sphere of millions of other Pashtuns. I had been engaged during childhood to a paternal cousin, and our marriage ceremony reflected how state-legislated Islamic family law is so often sidelined in favour of centuries-old traditions and custom: amongst other things, the Pashtun tradition of conducting the marriage ceremony in the groom's home would have been considered sacrilege by most Muslims.<sup>27</sup> Like everyone else's, our marriage ceremony was conducted orally, and even today, after forty years, we do not have a written document to prove it! Yet the stipulations in that marriage contract were honoured meticulously, and my husband did not rest until he had fulfilled the pledge entered into therein by our grandfather.<sup>28</sup>

Such is the diversity of the experience which forms the foundation of my outlook. It is such multi-layered, plural, complex legalities, both formal and informal, which have enabled me to experience and explore Islam and Islamic law from a highly personal perspective. Throughout decades of academic study of, and personal interaction with, Islamic law, I have been asking questions: what *is* this phenomenon? Whence does it acquire its legitimacy and authority? Who interprets its divine primary and secondary sources? Is its remit strictly and simply to follow a literal interpretation and application of the text, drawing upon seventh-century examples and contexts? Or might we justifiably acknowledge that the rules found in the Qur'an and Sunna are by no means exhaustive or prescriptive, and that it is Islamically legitimate to develop others which are adaptable to changing needs? Is it 'law' in the Western sense of legally enforceable rules, or is it something more, or something less?

The question of Islamic law's compatibility with ever-changing, evolving and interdependent societies is not new. For decades, academics, religious scholars and Muslim (as well as non-Muslim) communities have sought to resolve the tensions between sources perceived as immutable and their application to changing times and places. I have consistently argued – as have others – that the Islamic legal tradition is not a monolithic entity; hence my conscious

<sup>26</sup> Prior to the Iranian revolution, one was unable to distinguish between a Sunni scholar (*alim*) and a Shia. The revolution ushered in a new 'dress code' for Shia clergy, who took to the headgear and robes worn by their Iranian counterparts.

<sup>27</sup> Pakistan's Muslim Family Laws Ordinance 1961 had not been extended to Swat, and customary laws, informed by principles of Islamic family law, prevailed.

<sup>28</sup> In Pashtun communities at the time, it was representatives of the bride and groom who took the vows on their behalf: the groom was not expected to be present at his own marriage! The only time our oral tradition caused us anguish was at the British Embassy in Brussels when applying for visas; the immigration officer asked for proof of marriage and would not believe us when we said our marriage had been conducted orally.

adoption of the phrase ‘Islamic legal traditions’.<sup>29</sup> The principles of Islamic law and *sharia* are inherently dynamic, sensitive and susceptible to changing needs. *Modern Challenges* advances this argument by demonstrating Islamic law as an evolutionary, dynamic, responsive and multidimensional phenomenon capable of generating responses from within its varied and rich traditions, highlighting its plurality and its inbuilt transformative processes.

Contemporary demands by Muslims for ‘Islamic’ responses to social and scientific developments increasingly involve returning to the original sources of law to ascertain whether a given practice is legitimate or runs counter to understandings of Islam. As for many years the only woman legal academic at Peshawar University Law School, I would often be approached by women (and sometimes men) asking for ‘Islamic legal advice’ on contemporary questions: did scientific methods of ascertaining pregnancy have implications for *iddat*, the minimum ‘waiting period’ for women between marriages? What were the possible contemporary responses to the calculation of minimum and maximum gestation periods and paternity in the Islamic legal traditions? Engagement with Islamic law was for me more than an academic post, with implications for the lives and relationships of those who turned to me for possible solutions.

Many claim to be, as Dr El Fadl so aptly describes it, *Speaking in God’s Name*.<sup>30</sup> There are ultimately as many expressions of Islam as there are Muslims. Each school of thought claims authenticity over competing interpretations, and no individual scholar can claim a definitive view on Islamic law encompassing all possible perspectives. What I therefore aim to do in *Modern Challenges* is offer my personal and academic insights into the subject as I have experienced it; as I have read, researched, taught and applied it in my political activism. Like all Muslims, I believe in the Qur’an as the word of Allah revealed to the Prophet Muhammad. As a Muslim academic I also believe in questioning and challenging certain formulations of Islamic law, and it is this belief which informs the discussion and analysis in this book. The accounts that I have chosen by way of developing this personal narrative through an academic lens are helpful in determining the contours of evolving legal traditions.

In choosing the subject matter of the various chapters, I have been guided by my personal and professional experiences but also attempted to cover varying aspects of Islamic law. Conscious that a single monograph could not encapsulate the entire range of themes within the Islamic legal traditions, I have taken the liberty of limiting *Modern Challenges* to subjects with which I have been closely involved. In other words, this is an attempt to give a scholarly account of some modern challenges from the point of view of a scholar fortified by the inside knowledge of one who has had the privilege of a wide range of practical experience. For instance, rather than exploring the various sources

<sup>29</sup> Ali, *Gender and Human Rights*, p. 3.

<sup>30</sup> Khalid Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority and Women* (Oxford: One World, 2001).