

Modern Challenges to Islamic Law

The diversity of interpretation within Islamic legal traditions can be challenging for those working within this field of study. Using a distinctly contextual approach, this book addresses such challenges by combining theoretical insights with empirical explorations into how vernacular understandings of Islamic law impact on the application of law in the daily life of Muslims. Engaging with topics as diverse as Islamic constitutionalism, Islamic finance, human rights and internet *fatawa*, Shaheen Ali provides an invaluable resource for scholars, students and practitioners alike by exploring exactly what constitutes Islamic law in the contemporary world. Useful examples, case studies, a glossary of terms and the author's personal reflections accompany rigorous academic critique. The book offers the reader a unique and discerning discussion of Islamic law in practice.

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Bronwen Morgan (University of Bristol).

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To Ali

For a lifetime of love, trust, encouragement and support

To Zareen

*For teaching us to believe and persevere as we grieve for loved ones.
You will always live in our hearts.*

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Contents

Acknowledgements	page xiv
Glossary	xvii
Table of Cases	xxi
Table of Legislation	xxiii
Introduction	1
On the Terminology in This Book	3
1 Sharia: The Flowing Stream	20
1.1 Introduction	20
1.2 <i>Sharia, Fiqh</i> , and Islamic Law	22
1.3 The Currents of the Flowing Stream	29
1.4 New Exegeses: Challenging Readings of the Qur'an	32
1.5 The Fragmentation of the Authority of <i>Sharia</i> and Islamic Law	37
1.6 Globalization	38
1.7 Concluding Reflections	39
2 An Elephant in the Room or a Needle in a Haystack? Searching for 'Islamic' Constitutionalism(s)	41
2.1 Introduction	41
2.2 The Meaning and Scope of 'Constitutionalism'	44
2.3 The Historical Roots of Modern Islamic Constitutionalism(s)	50
2.4 Constitutional Texts in Contemporary Muslim States	62
2.5 Can Islamic Constitutionalism Lead to an Islamic State?	67
2.6 Concluding Reflections	71
3 Contextualizing Family Law Reform and Plural Legalities in Post-colonial Pakistan	79
3.1 Introduction	79
3.2 The <i>Wilaya-Qiwama</i> Nexus and the 'Paradox of Equality'	81

3.3	From 'Islamic' to 'Anglo-Muhammadan' Family Law? A Historical Overview of Pakistan's Colonial Legacy and the Influence of Common Law	86
3.4	Features of Inherited 'Anglo-Muhammadan' Family Law in Post-colonial Pakistan	89
3.5	The Dynamics of Family Law Reform in Post-colonial Pakistan	93
3.6	Concluding Reflections	109
4	In Search of Legitimacy: The Dilemma of Islamic Finance	113
4.1	Introduction	113
4.2	Contextualizing Islamic Finance within the Islamic Legal Traditions	117
4.3	Principles of Islamic Finance	120
4.4	The Charitable Arm of Islamic Finance: <i>Zakat</i> and <i>Qard Hasan</i> as Alternative Regimes for Social Justice	123
4.5	Techniques of Islamic Finance: An Overview	127
4.6	Launching Islamic Finance in a Globalized World: An Overview	131
4.7	Between the Government's Eloquent Silence and Judicial Activism: The Story of Islamic Finance in Pakistan	134
4.8	Malaysia: An Aspiring and Innovative Dual Financial Regime	137
4.9	Islamic Finance: A Critical Appraisal	139
4.10	Is Islamic Finance Failing?	141
5	Muslim Women's Contributions to Drafting CEDAW: An Untold Narrative	146
5.1	Introduction	146
5.2	Problematizing the Relationship between Islamic Law and International Human Rights Law	148
5.3	The CEDAW Drafting Process	155
5.4	Linking Contributions of Muslim Delegates with Subsequent Reservations	173
5.5	The Contributions of Muslim Delegates: Some Concluding Remarks	179
6	CEDAW? What's That? 'Domesticating' 'International' Women's Human Rights in Muslim Jurisdictions: Reflections on Pakistan's Engagement with CEDAW	184
6.1	Introduction	184
6.2	CEDAW within a Religious, Cultural and Socio-legal Context	185
6.3	The Arduous Journey towards Accession	188

6.4	Did CEDAW Conflict with Domestic Law?	192
6.5	Domesticating CEDAW in Pakistan	193
6.6	Legal Obstacles to Full Domestication	197
6.7	Using the CEDAW Model to Advance Women's Rights in Pakistan	198
6.8	Domesticating CEDAW within the Superior Judiciary	200
6.9	The Impact of CEDAW in Pakistan: Some Concluding Thoughts	203
7	'Between the Devil and the Deep Blue Sea': <i>Sharia</i> Councils and Muslim Women's Rights in the British Muslim Diaspora	206
7.1	Introduction	206
7.2	Multiculturalism, Minority Legal Orderings and British Muslim Women	210
7.3	Types of Marriage Contracted, and Their Impact on Choice of Divorce Forum	211
7.4	<i>Siyar</i> , and the Jurisprudence of Muslims in the Non-Muslim World	212
7.5	The Origins and Operations of <i>Sharia</i> Councils in Britain	219
7.6	Conclusion	229
8	Internet <i>Fatawa</i>: Challenging Tradition and Modernity in Women and Gender Issues	233
8.1	Introduction	233
8.2	Contextualizing <i>Fatawa</i> in the Islamic Legal Traditions	235
8.3	Internet <i>Fatawa</i> : Challenging Tradition and Democratizing Knowledge	237
8.4	The Form, Content and Features of Internet <i>Fatawa</i>	238
8.5	Internet <i>Fatawa</i> on Questions of Women and Gender	239
8.6	Muslim Women's Legal Position as Seen through the Lens of Internet <i>Fatawa</i>	243
8.7	Women's Dress Code and Demeanour	245
8.8	The Triple <i>Talaq</i> Form of Divorce	252
8.9	<i>Tahlil</i> Marriage	255
8.10	Reflections and Conclusions on Internet <i>Fatawa</i> as Counterhegemonic Discursive Sites	258
	Conclusion	262
	Reflecting at the <i>Dihliz</i>	262
	Bibliography	271
	Index	293

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Glossary

<i>adah</i>	see <i>'urf</i>
<i>'adat</i>	customary practices, custom
<i>'adl</i>	justice
<i>aalim</i>	scholar (plural <i>ulema</i>)
<i>aman</i>	protection
<i>ansar</i>	hosts – in early Islamic history refers to the people of Medina who hosted the migrant Muslims from Makkah
<i>asal</i>	capital
<i>awliya</i>	guardians
<i>bay' mu'ajjal</i>	credit sale
<i>bay'ah</i>	oath of allegiance
<i>bidā'</i>	(reprehensible) innovation in Islamic law or teaching
<i>burqa/burka</i>	full-body covering worn by women, including the face
<i>chador</i>	covering worn over clothes by women
<i>dar-al-Harb</i>	land(s) of war
<i>dar-al-Islam</i>	land(s) of peace
<i>dar-al-sulh</i>	land(s) of (negotiated) peace
<i>daraba</i>	contested term in relation to verse 4:34 of the Qur'an, normally used to denote hitting/to strike
<i>darshal</i>	Pashto word for <i>dihliz</i>
<i>darura</i>	necessity
<i>dawla</i>	state
<i>dihliz</i>	threshold, inter-space, in-between place
<i>din</i>	religion
<i>Eid-Milad-un-nabi</i>	birth anniversary of the Prophet Muhammad
<i>faqih</i>	jurist
<i>faskh</i>	a judicial decree of divorce
<i>fatwa</i>	opinion (plural <i>fatawa</i>)
<i>fiqh</i>	jurisprudence
<i>fiqh al-aqalliyat</i>	jurisprudence of minorities
<i>gharar</i>	uncertainty, risk, speculation

<i>hadd</i>	prescribed limit (plural <i>hudud</i>), used in Islamic criminal justice to denote the mandatory offences/punishment set in the Qur'an and Sunna
<i>hadith</i>	the recorded statements or actions of the Prophet Muhammad (plural <i>ahadith</i>)
<i>halala</i>	see <i>tahlil</i>
<i>hijab</i>	headscarf worn by women
<i>hijra</i>	migration
<i>hiyal</i>	legal fiction
<i>ibadaat</i>	lit. 'worship'
<i>iddat</i>	prescribed minimum waiting period between marriages for Muslim divorced/widowed women
<i>ifta</i>	the institution of <i>fatwa</i>
<i>ijara</i>	lease
<i>ijma</i>	consensus of opinion among Muslim jurists on a particular question of law
<i>ijtihad</i>	lit. 'exertion', and technically the effort of a jurist to arrive at a response to a legal question through independent reasoning
<i>ikhtilaf</i>	diversity of opinions
<i>ikhtilaf al-fuqaha</i>	diversity of opinions among jurists
<i>ikrah</i>	duress
<i>imam</i>	leader, employed in various contexts including a prayer leader
<i>imama</i>	religious leadership
<i>imambargah</i>	mosque/congregation hall of Shia Muslims
<i>istisna</i>	commissioned manufacture
<i>izzat</i>	honour
<i>jihad</i>	lit. to exert, struggle, including, as a last resort, armed struggle
<i>jirga</i>	council of elders/decision-making assembly
<i>kafir</i>	infidel, non-believer
<i>khilafa</i>	caliphate
<i>khul'</i>	divorce initiated by the wife in return for relinquishing her <i>mahr</i>
<i>maddhab</i>	school of juristic thought in Islam
<i>mahajir</i>	migrant; in Islamic history, denotes the first migrant Muslims from Makkah to Medina
<i>mahr</i>	marriage gift by husband to wife at the time of marriage
<i>mahram</i>	close male relative
<i>majlis</i>	gathering, for example for commemorating the martyrdom of the grandson of the Prophet Muhammad at Karbala (plural <i>majalis</i>)
<i>maqasid-al-sharia</i>	'objectives of <i>sharia</i> '

<i>maslaha</i>	the public good/welfare
<i>muamalat</i>	socio-economic relationships
<i>mubara't</i>	divorce by mutual consent
<i>mudaraba</i>	profit sharing
<i>mufti</i>	A <i>fatwa</i> -giving scholar
<i>muhallil</i>	a man who marries a woman and divorces her so she can remarry her first husband; see <i>tahlil</i>
<i>muharram</i>	the first month of the Islamic calendar
<i>mujtahid</i>	one who is qualified to make <i>ijma/ijtihad</i>
<i>mu'minin</i>	faithful covenanters (in the context of the Medina Charter), normally used to denote Muslims/the faithful
<i>murabaha</i>	a form of short-term financing
<i>musharaka</i>	joint partnership
<i>mustafti</i>	<i>fatwa</i> -seeker
<i>nikah</i>	the ceremony where the 'Islamic' marriage contract is signed
<i>niqab</i>	face veil
<i>nushuz</i>	rebellious disobedience
<i>panchayat</i>	village council
<i>pir</i>	religious person
<i>qadi</i>	judge
<i>qanun</i>	state law, also used in the sense of secular law
<i>qard hasan</i>	charitable loan with no expectation of return on the part of the person loaning the money
<i>qawwamun</i>	provider/protector, someone who looks after and is responsible for (usually) the family
<i>qiwama</i>	the concept of male as protector and provider
<i>qiyas</i>	analogical deduction
Qur'an	the religious text and primary source of Islamic law believed by Muslims to be the word of God
<i>riba</i>	excessive interest, usury
<i>risala</i>	God's message to humankind
<i>riwaj</i>	custom
<i>salam</i>	a form of sale using advance payment for goods that need not be in existence at the time of payment to be delivered on a fixed future date
<i>sharia</i>	principles of Islamic law
<i>shura</i>	consultation, also a consultative body when used as a noun
<i>siyar</i>	Islamic international law
<i>siyasa sharia</i>	<i>Sharia</i> as enacted in state law through statutory ordinances
<i>sood</i>	interest on capital
Sunna	the words and deeds of the Prophet Muhammad recorded as <i>hadith</i> for posterity and as a source of Islamic law

<i>ta'amul</i>	see <i>'urf</i>
<i>tahlil</i>	intervening marriage enabling remarriage between divorced couples
<i>takaful</i>	'Islamic' insurance
<i>takhayyur</i>	juristic choice
<i>talaq</i>	pronouncement of divorce by the husband
<i>talaq al-bida</i>	(also called <i>talaq-i-bain</i> and triple <i>talaq</i>) a contested form of delivering <i>talaq</i> – three pronouncements in one sitting
<i>talaq-i-ahsan</i>	mode of delivering <i>talaq</i> where husband makes one pronouncement refraining from sexual relations thereafter for a prescribed period of time, leaving room for reconciliation
<i>talaq-i-hasan</i>	mode of delivering <i>talaq</i> – comprises three pronouncements in three consecutive months without sexual contact; room for reconciliation
<i>talaq-i-tafwid</i>	the right to pronounce divorce upon a husband, delegated by him to his wife or third party
<i>talaqnama</i>	divorce deed
<i>talfiq</i>	lit. 'patchwork'; as a legal term, the putting together of a rule based upon diverse opinions from various schools of juristic thought in Islam
<i>taqlid</i>	duty to follow
<i>tawarruq</i>	a form of <i>murabaha</i> contract involving buy-back of a commodity
<i>tawhid</i>	oneness of God
<i>taysir</i>	the 'making easy' of practising Islam
<i>ulema</i>	religious scholars (plural)
<i>umma</i>	universal nationhood of Muslims
<i>'urf</i>	customary practices
<i>usul-al-hukm</i>	principles of government
<i>usul-ul-fiqh</i>	principles of jurisprudence
<i>wali</i>	guardian, also used in relation to marriage guardianship
<i>wilaya</i>	guardianship
<i>wilayat al-ijbar</i>	marriage guardianship with power of coercion; see <i>wali</i>
<i>zakat</i>	annual mandatory tax on unspent wealth beyond a prescribed minimum for the poor and needy, generally 2.5%, 5–10% on harvest

Table of Cases

- Aali v. Additional District Judge I, Quetta* 1987 CLC 27 103
Abdul Basit v. Union Council, Ward no 3, Peshawar Cantt 1970 SCMR 753 98, 100
Abdul Kalam v. The State 1987 MLD 1637 100
Abdul Waheed v. Asma Jehangir PLD 1997 Lahore 301 186
Allah Dad v. Mukhtar 1992 SCMR 1273 106
Allah Rakha v. Federation of Pakistan PLD 2000 FSC 1 99, 106
Attiq Ahmed Khan v. Noor-ul-Saba 2011 CLC 1211 109
Ayaz Aslam v. Chairman Arbitration Council 1990 ALD 702 106
Beximco Pharmaceutical v. Shamil Bank of Bahrain EC [2004] EWCA Civ 19 144
Essa E. H. Jafar v. Federation of Pakistan PLD 1982 FSC 212 135
Farid v. Manzooran PLD 1990 SC 511 102
Federation of Pakistan v. Mst Farishta PLD 1981 SC 120 99
Federation of Pakistan v. Mahmood-ur-Rehman Faisal PLD 2000 SC 770 135–6
Ghulam Abbas v. Station House Officer (2009) YLR 201 Lahore High Court 109
Ghulam Muhammad v. The State 1994 PCRLJ 1856 FSC 109
Habib v. The State PLD 1980 Lah 97 100
Inayat Khan v. District Magistrate, Sialkot 1986 PCrLJ 2023 98, 100
Khalid Abdur Raoof v. Federation of Pakistan PLD 1983 FSC 50 135
Khurshid Alam v. Muslim Commercial Bank PLD 1983 FSC 20 135
M Saqlain Zaheer v. Zaibun Nisa 1988 MLD 427 103, 104
McGowan v. Maryland, 366 U.S. 420 (1961) 47
Mahmood-ur-Rehman Faisal v. Secretary, Ministry of Law PLD 1992 FSC 1 136
Marsh v. Chambers, 463, U.S. 783, 792 (1983) 47
Mirza Qamar Raza v. Mst Tahira Begum PLD 1988 Kar 169 106
Mst Bashiran v. Muhammad Hussain PLD 1988 SC 186 106
Mst Farishta v. The Federation of Pakistan PLD 1980 Pesh 47 97, 99, 102
Mst Fazeelat Jan v. Sikander PLD 2003 SC 475 99
Mst Ghulam Fatima v. Mst Anwar 1981 CLC 1651 98, 100

-
- Mst Humaira Mehmood v. The State* PLD 1999 Lah 494 201, 202
Mst Kaniz Fatima v. Wali Muhammad PLD 1989 Lah 490 106
Mst Khurshid Bibi v. Mohammed Amin PLD 1967 SC 97 103, 225
Mst Saima and 4 Others v. The State PLD 2003 Lah 747 201–2
Mst Sarwar Jan v. Abdur Rehman 2004 CLC 17 202
Mst Zarina Jan v. Mst Akbar Jan PLD 1975 Peshawar 252 97, 202
Muhammad Akram v. Mst Farman Bi PLD 1989 Lah 200 100
Muhammad Ibrahim v. Gulam Ahmed (1864) 1 BHC 236 25
Muhammad Sadiq Khan v. Federation of Pakistan PLD 1983 FSC 43 136
Muhammad Sarwar v. The State PLD 1988 FSC 42 105
Muhammad Siddique v. The State PLD 1983 FSC 173 105
Muhammad Siddique v. The State PLD 1999 Lah 494 101, 186
Radmacher v. Granatino [2010] UKSC 42 230
Raisa Begum v. Mohammed Hussain 1986 MLD 1418, 1988 MLD 427 103
Refah Partisi (The Welfare Party) and Others v. Turkey (41340/98, 41342/98,
 and 41344/98) 20
Safia Begum v. Khadim Hussain 1985 CLC 1869 103
Sameena Masood v. Pakistan International Airlines Corporation PLD 2005
 SC 831 251
Shahnaz v. Rizwan (1964) 1 Q.B.D. 390; (1964) 2 All.E.R. 993; (1964) 3 W.L.R.
 1506 208
Shera v. The State PLD 1982 FSC 229 105
Shirin Dokht v. Pakistan International Airlines Corporation 1995 PLC (C.S) 251
 202
Shrin Munir v. Government of Punjab PLD 1990 SC 295 202
 Supreme Constitutional Court (Egypt) *Sharia and Riba: Decision No. 20 of*
 1985, 1 Arab. LQ 100 (1985) 66
Syed Mohammed Rizwan v. Mst Samina Khatoon 1989 SMCR 25 103
Uddin v. Choudhury [2009] EWCA Civ 1205 208
Waghela v. Sheikh Musludin [1887] 14 IA 89 88
Yusuf Abbas v. Ismat Mustafa PLD 1968 Kar 480, 508 99

Table of Legislation

- Bombay Regulation IV, 1827 92
- Code of Civil Procedure (Act VIII of 1859) 88
- Criminal Law (Second Amendment) Act 2011 196
- Criminal Procedure Code (Act XXV of 1861) 88
- Dissolution of Muslim Marriages (Act VIII of 1939) 92, 96
- Dowry and Bridal Gifts (Restriction) Act 1976 93
- Dowry and Bridal Gifts (Restriction) Rules 1981 93
- Guardians & Wards Act 1890 93
- Indian Evidence Act (Act I of 1872) 88
- Indian Penal Code (Act XLV of 1860) 88
- Jordanian Law of Family Rights 1951 25
- Moroccan Code of Personal Status 1858 25
- Moroccan Family Moudawana Code 2004 25
- Muslim Family Laws Ordinance 1961 (Pakistan) 66, 84, 92, 96–9, 100, 103,
105–6, 108–9, 110–11, 222, 254
- Muslim Personal Law (Shariat) Application (Act XXVI of 1937) 90–2
- Muslim Personal Law (Shariat) Application (Removal of Difficulties) Act 1975
93
- Muslim Personal Law (Shariat) Application (Removal of Doubt) Ordinance
1972 93
- Muslim Personal Law (Shariat) Application Act 1962 93
- Offence of Zira (Enforcement of Hudood) Ordinance 1979 192
- Ottoman Law of Family Rights 1917 25
- Places of Worship Registration Act 1855 212
- Syrian Law of Personal Rights 1953 25
- The Child Marriages Restraint Act 1929 93, 98, 164, 165, 192
- The Marriage Act 1949 212
- West Pakistan Family Court Rules 1965 93
- West Pakistan Family Courts Act 1964 (amended 2002) 93
- West Pakistan Rules under the Muslim Family Laws Ordinance 1961 93