

## **Investigating the Resilience of Islamic Law: An Analysis of Family, Criminal, and Commercial Law**

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### **Abstract**

*This exploratory research explores the resilience of Islamic law, focusing on how it holds up against change in family, criminal, and business law. It advances knowledge of how Islamic law has developed and how adaptable or resistant it is to change in modern settings. Because of Islamic law roots in religious scriptures and traditions, Islamic law has sometimes been portrayed as resistant to change. This study investigates Islamic law's adaptability in family, criminal, and business law in modern times. This will be achieved by Locating case studies demonstrating examples of the Islamic legal system's resistance to change or its capacity to adapt and analyze social changes. The three cases examined make clear the endurance of Islamic law surrounding Western civilization, primarily concerning family law, criminal law, and commercial law. These cases illustrate the capacity of Islamic law to play a role in legally based decisions and peacefully exist alongside Western laws while managing complex matters such as matrimony identification, gender discrimination, and commercial applications. What allows Islamic law to remain strong is its capability to adjust and acquire acknowledgement amid varied legal systems, thereby taking part in the continuing discourse and progression of legal regulations across Western nations.*

**Keywords:** *Resilience of Islamic Law, Comprehensive Analysis. legal systems.*

### **Introduction**

Islamic law regulates all facets of conduct in society. It rules "the Muslim way of life in literally every detail and, of course, it also regulates commercial transactions." This concept of "law" is far broader than that of the West (Vagos et al., 2017). As a result, the Islamic conceptual framework varies significantly from Christian law, which is secular. For instance, there is no Christian law of contract, or Christian law of property, even though the shari'a, the 'legal' words of the Koran, and the traditions of the Prophet include legal systems that deal with these issues. Western law has long since taken the place of the shari'a. However, the potential of modernizing the shari'a has been discussed lately due to the Islamic Renaissance.

Significant political, cultural, socioeconomic, and scientific issues facing the Muslim World influence its progress and security. Members of the Organization of Islamic Cooperation (OIC) would need to resolve these obstacles and take the necessary steps to overcome them (Weimann, 2010). Islamic law, known as Sharia law (Maqasid al-Shariah), is a legal framework founded on Islam's tenets and teachings. For Muslims, it provides a manual for appropriate behaviour in interpersonal interactions, familial

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connections, criminal justice, and business dealings. Islamic law continues to be applied in various ways around the globe and has a long history of growth.

## **Background**

Islamic law, sometimes called Sharia law or Maqasid al-Shariah, is a legal framework rooted in Islam's doctrines and teachings. It alludes to the many legal structures that have been developed and are still being created to be dependable with Islam. Islamic legal systems function in various ways, some of which are inconsistent (Akgunduz, 2010). The usage of the single word "Islamic law" should not be interpreted as implying the lack of legal diversity (within Islamic cultures, given that Islamic and non-Islamic legal systems co-occur) or legal polycentricity (many people and organizations produce Islamic law). The legal systems Muslims use have significant substantive and historical differences from "Islamic law," sometimes known as "Muslim legalities." "Muslim legalities" refers to either state law (where Muslims are the majority or minority) or the legal customs of non-state Muslim groups. "Islamic law" refers to juristic interpretations (fiqh) of divine law (shar'ah).

The key difference between these two overlapping categories is that Muslim legalities are produced by an interpretative process rooted in a state or other legal system that may or may not be Islamic and whose population may or may not be primarily Muslim. Islamic law, in contrast, is created via an interpretative process rooted in canonical Islamic scriptures. In many nations with a Muslim majority, Islamic law (Maqasid al-Shariah) controls a variety of spheres of life, including domestic, criminal, and business issues. Islamic law has a long, complex history and has shaped several schools of thought and interpretations. Islamic law's capacity to resist outside pressure and uphold its essential beliefs throughout time is called its resilience. Because of its roots in religious scriptures and traditions, Islamic law has sometimes been portrayed as resistant to change. However, there is constant discussion over how Islamic law reacts to changing social, cultural, and legal settings.

## **Objectives**

This study's main objective is to thoroughly investigate Islamic law's adaptability in family, criminal, and business law. The goals of this research are to accomplish the following via case study analysis and literature review:

1. Investigate the historical progression of Islamic law in the chosen fields, charting its growth from its creation to the present.
2. Examine Islamic law's fundamental ideas and principles, considering their flexibility and capacity for modification in current circumstances.
3. Examine the particular difficulties and demands placed on Islamic law in family, criminal, and commercial law, noting any instances of resiliency or resistance to change.
4. Locate case studies demonstrating examples of the Islamic legal system's resistance to change or its capacity to adapt and analyze social changes.

## **Significance of the Study**

This research endeavor is essential to many stakeholders and academic areas. The study's relevance may be regarded as follows.

1. **Legal Scholarship:** The durability of Islamic law sheds light on religious-based legal systems. It shows the difficulties of upholding Islamic law while adapting to evolving social requirements.
2. **Comparative Law:** This research analyzes legal systems by comparing Islamic law's durability. It highlights the differences and similarities between Islamic law and other legal systems.
3. **Policy and Governance:** This research may enlighten policymakers and legal practitioners on Islamic law implementation and reform issues and prospects. It may help create methods and structures that balance Islamic law with modern society.
4. **Social Cohesion and Human Rights:** Understanding Islamic law's resilience promotes social cohesion and human rights in Islamic cultures. This research initiative explores ways to make human rights and Islamic law more compatible and inclusive.

## **Literature Review**

The literature surrounding Islamic law's resilience is rich and diverse, reflecting its historical significance and contemporary relevance. Scholars have examined the progress of Islamic lawful maxims, its encounters with legitimate Western frameworks, and its aptitude to adjust to modern social evolutions. Exploration has taken up different parts of Islamic family, criminal, and commercial law, offering insights into its enduring principles and flexibility.

### **Islamic Law: An Overview**

Islamic or holy law is referred to as Sharia. A term from the Arabic language that means "the way" or "the path to water." The Sharia covers an extensive area compared to the Western notion of "law". It oversees "the Muslim's lifestyle in every aspect, ranging from political administration to the trading of real estate, from hunting to dining etiquette, from sexual relations to worship and supplication". Muslim researchers have provided a broad understanding of Sharia for centuries, showing the various approaches Muslims have taken to understand and implement their religion (Powers, 2010). Sharia is widely understood by American Muslims as follows: Sharia illustrates how devoted Muslims might live their daily affairs in a way that is as Sharia-compliant as feasible. It might be generally referred to be the Islamic law that God gave the Prophet Muhammad. Then, throughout time, Muslim scholars gave their interpretations of that divine law. One of Sharia's primary objectives is to achieve justice, fairness, and compassion.

The five fundamental goals of the Sharia are maintaining a moral, religious practice, life, sanity, the family, and private and public riches. According to all Islamic schools of law, one of the five fundamental principles of Sharia is the acceptance of good regional customs worldwide. Sharia strongly emphasizes routine religious observances, including fasting and prayer (Hussan, 2011). Like many religious Jews follow Halakha, many devoted Muslims follow some Sharia.

Many current legal tenets of American law are comparable to Sharia or Islamic law. For instance, both legal systems allowed personal property ownership, consent to contracts between two parties, the presumption of innocence in criminal procedures, and the capacity of women to initiate divorce processes. Whenever religious laws conflict with American law, the American Government, including the courts, is prohibited by the Free Exercise and Establishment Clauses of the First Amendment from doing either. This prohibition applies to all religions equitably.

### **Family Law**

The family is the fundamental unit of human civilization. Marriage, a classic human social institution, is the foundation of a family. The nikah covenant, which creates a

husband and wife's bond as a legal marriage, is regarded as a sacred social agreement in Islam. Islam stresses the significance of the nikah connection and urges all Muslims to join it if there are no practical hurdles (Buchler, 2012). They will be protected from any unethical sexual and sensual activity due to it. According to Islam, the link between a man and a woman is not just for sexual fulfilment. Instead, it is a formal agreement defined by explicit norms of reciprocal links that establishes the roles and responsibilities in family life. Every Prophet was sent to defend the institution of marriage and, by extension, the family in their communities.

### Marriage and Divorce

Concerns concerning the implementation of Sharia law have often been in the news since Rowan Williams' speech on "Civil and Religious Law." These worries have primarily been directed towards Sharia courts, with other Islamic institutions like halal certification, mosques, and Sharia finance being seen as "banal sharia" because they are not as alarming. The Independent Review of Sharia by the Home Office and the Inquiry by the Commons Home Affairs Committee reflect the present fixation with Sharia courts (Jones 2010). Additionally, Baroness Cox has regularly presented the private member's Arbitration and Mediation Services (Equality) Bill to the House of Lords. The inquiries' emphasis on obtaining data highlights the need for more investigation. We have learned a great deal in recent years about the workings of specific tribunals and the shared experiences of tribunals across several religions.

However, we still don't know the whole picture. Unsurprisingly, we do not know the exact number of Sharia tribunals since we do not have a solid definition of the word. We know little about the more informal courts and the dispute-resolution practices of other faiths, racial and ethnic groupings. By offering a comparative assessment of three specific religious tribunals from all three Abrahamic religions, the "Social Cohesion and Civil Law" study at Cardiff University was novel (Sandberg & Thompson, 2016). The Cardiff study revealed that Islam was not the only religion with concerns highlighted by Sharia courts. The London Beth Din, the Catholic National Tribunal for Wales, and the Birmingham Central Mosque Sharia Council were three religious courts whose operations were thoroughly studied.

Regarding the Cardiff data, two significant cautions should be stated. First, it is impossible to say that the three case studies are "typical" or "representative" of all Jewish, Christian, or Islamic courts. Regarding the foundation of their authority and the allegiance of individuals utilizing these courts, several religious tribunals exist throughout the various groups (Sandberg & Thompson, 2016). These religions' many groups may each have an ecclesiastical tribunal adjudicating essential issues to its members. Second, it should be highlighted that the empirical inquiry mainly included interviews with tribunal employees, suggesting that the information gathered came from the tribunal's viewpoint rather than that of the users. However, the Cardiff study discovered that the various religious tribunals examined shared many characteristics concerning marital disputes, including a strong recognition and support for the civil law's supreme authority over marriage and divorce and a lack of requests for greater "recognition" by the State.

The power of these three institutions came from their religious affiliation rather than the State, and it was only available to those who voluntarily submitted to them. Adherents used the Council to get permission to be remarried within their religion. Remarrying within the faith allowed believers to maintain their standing with the religious authorities and stay in their spiritual group. The three organizations saw their activity as a religious obligation. They saw themselves as offering crucial systems for coordinating neighbourhood activities and meeting neighbourhood needs. If the parties disagreed with the Council's ruling, they could submit their case to another Sharia Council. This didn't serve as an appeal, but it did emphasize the 'forum shopping' phenomenon.

According to the Cardiff study, most people who addressed religious courts sought to dissolve their religious union. Couples married according to English civil law often previously tried to dissolve their civil marriage via the divorce process. Before requesting a religious termination, all three organizations required the couple to complete a legal divorce, if necessary. It seemed as if religious courts were serving as mediators. At the Sharia tribunal, this was especially true. The Family Support Service originally dealt with cases brought before the Sharia Council. Before deciding, a mediation step was required to see if the marriage might be preserved. The task of sorting the information and deciding whether the matter ought to be brought before the Council was assigned to two part-time staff members. When it was agreed that a matter should be brought before the Council, a report outlining the facts of the case was created. Three letters asking the opposing party—usually the husband—to attend were sent out regularly. The three letters were sent, and the case continued.

The question of whether the marriage could still function was the main concern. According to English civil law, evidence that the marriage was unworkable was founded on reasons that might include fault issues. When a legal divorce was granted, this was seen as evidence of an irretrievable collapse; the Council's judgment was intended to reassure the parties that they might remarry by their religious beliefs. Before requesting an Islamic divorce, those who had been married civilly were supposed to have acquired a civil divorce. Typically, the Council would not grant the divorce until the civil divorce had been secured. More than half of the cases handled by the Council examined included couples whose marital status in English law was either ambiguous, had not been married by English civil law, or had been married overseas.

The article argues that the concerns raised by the Cardiff results call for a broader re-evaluation of family law problems in two key areas: the formality surrounding marriage and the privatization of family court. This may imply that the debate surrounding the Sharia tribunal is partly reflective of a larger concern over the State's role in connection to family law issues and not merely the outcome of sociological shifts regarding the place of religion in society.

#### Parental Rights and Responsibilities

The highest status in the family is that of the parents. They are the only family member who merits their children's affection and devotion. The Holy Qur'an mentions parents' multiple times, including in verses 4:36, 6:151, and 17:23. Islam also strongly emphasizes parental accountability and a child's obligation to both parents. Kids are expected to continue to treat their parents with love, respect, and compassion. A highly particular passage on this subject may be found in the Holy Qur'an, which begins by saying: "And your Lord has commanded that you worship none other than Him and that you will be dutiful to your parents." The verse continues, "If one or both of them attain old age in your life, say not to them a word of disrespect, nor shout at them, but address them in terms of honor." This refers to when one or both parents' conduct becomes excessive and sometimes insulting in old age (Sportel, 2017). Then it says: "Through pity, lower unto them the wing of submission and humility. In other words, we must never forget the debt we owe them for caring for us and bringing us into this world.

Last, we are instructed to pray for them: "And say, 'My Lord! Give them Your kindness just like they gave me when I was a child to be raised. (Qur'an, verses 17:23–24). The text expressly forbids speaking anything that may even imply a hint of displeasure. The word "uff" in the poem, which is translated as "a word of disrespect," derives from the root "aff," which is related to the term "taff," and both phrases allude to the dirt that gathers beneath fingernails. In Arabic, one exclaims "uff!" when irritated and tired of something. Every kid owes their parents a good relationship. They are expected to treat their parents with respect and compassion. Children must also avoid things that would enrage them, even if doing so is in our best interests.

The Holy Qur'an constantly urges Muslims to treat their parents well. It is unique in its recognition of the mother's role: "And We have commanded man (to be faithful and kind) to his parents. According to the Qur'an, verse 31:14, his mother "bear him in weakness and hardship upon weakness and hardship." Muhammad (may peace be upon him) emphasized the scripture when he said, "Paradise lies under the feet of mothers." Even though it's just one line, it raises the significance of a mother to a whole new level (Ali, 2011). It also gives women the crucial duty of fostering a loving, cozy, and caring family environment to turn their homes into "heaven on earth." Islam singles out the mother as earning the lion's share of loving thanks and compassion, even if the kid must demonstrate loyalty to both parents. The following well-known hadith might be given in this context: "A man questioned, O Prophet of Allah, who deserved to be treated properly by me the most? "Your mother," the Prophet said. Who then, he enquired? "Your mother," the Prophet said. Who then, he enquired? "Your mother," the Prophet said. Who then, he enquired? 'Your father,' the Prophet said. Therefore, the mother is entitled to three-fourths of the love and care that the son shows, leaving just one-fourth for the father.

### Inheritance and Property Rights

Muslim children inherit property once their parents die. A successor becomes a legitimate heir if he survives the ancestor. If the putative heir dies, he has no inheritance or property rights. Muslim law allows per-capita or per-strip property allocation. Sunni law mostly distributes per capita. This distributes the forebears' inheritance evenly among the heirs. Thus, heirs determine each person's portion. Shia law allows strip distribution. This inheritance mechanism divides property by strip. Therefore, the branch and number of members affect their inheritance.

Women are not discriminated against under Muslim inheritance law. When an ancestor dies, both girls and boys may inherit property. Female heirs often get half as much as male heirs (Shehada, 2016). A childless Muslim widow inherits one-fourth of her husband's assets after paying for his burial, legal expenses, and debts. A widow with children or grandchildren inherits one-eighth of her husband's property. If a Muslim man marries while ill and dies before recovering or consummating the marriage, his widow is not entitled to inherit. If her sick husband divorces her and dies due to her illness, the widow's right to inheritance continues until she remarries. A fetus in utero may inherit. Because an embryo is a live being, its property vests immediately. If a child in the womb dies, its part is taken away, and it is determined that there was no such successor. If a Muslim dies without heirs, the Government inherits his property.

### Criminal Law

The traditional Islamic legal system does not have "criminal law" as it is now understood. Legal principles in the classical corpus set forth sanctions for behaviours we now refer to as "crimes." Furthermore, the State is in charge of implementing at least some of these sanctions, and it is often believed that they serve the same goals as our criminal law (Heller & Dubber, 2010). However, in the premodern period, the classical-era doctrines now addressed under the heading "Islamic criminal law" did not constitute a single body of law. Not all of those classical-era principles complied with the contemporary concept of crime.

What is currently referred to as "Islamic criminal law" was derived from three laws in ancient legal literature: hadd, qisas, and tazir. Hadd, often known as hudud (plural), is the Arabic word for "the limits prescribed by God." The five to seven hadd violations have a set penalty, distinguishing them from other infractions. It will be important to clarify why the number of such crimes cannot be determined precisely before going into detail about the offenses regarded as hadd. The fundamental nature of Islamic law explains the ambiguity around the total number of hadd violations. Islam holds that the law is God's will for humanity. The holy law has not, however, been fully revealed by God. He has given evidence for the law in the holy book, the Qur'an, and the prophets Muhammad's

historical life. Still, he has delegated the duty to derive meaning from these sources to human interpreters.

In the premodern period, *fiqh* often referred to Islamic law. The term "*fiqh*," which may be translated as "understanding, comprehension, or knowledge," refers to the judgments, viewpoints, or comprehension of legal experts concerning certain legal topics. The classical legal system often used this *fiqh* literature to solve specific legal problems. (Badr, 2019). Five *hadd* transgressions are acknowledged by the four Sunni *madhhab*, although the four vary in the offenses that are punishable with *hadd* punishments. These include *zina* (illicit sexual relations), *qadhif* (false charge of *zina*), *shurb al-khamr* (alcohol consumption), *sariqa* (stealing), and *qat' al-tariq* (highway robbery). According to Jackson (2015), homicide and physical damage are likewise seen as *hadd* made it to seven.

By today's standards, the consequences for *hadd* are quite severe. For instance, stoning or 100 lashes punish illicit sexual relations, and the right hand is amputated to punish stealing. The *hadd* offenses are also precisely defined, and strict and exacting evidentiary requirements exist before punishment can be applied. The crime of stealing is committed when someone steals something from someone else's custody. Because an unlocked door indicates that the item was not in a place of custody, a burglar who enters via one is not subject to the *hadd* punishment (Coulson, 2011). The item must have a minimum worth and cannot be stolen or anything a Muslim cannot hold. The *hadd* punishment is not applied if there is any uncertainty as to whether the robber had any ownership stake in the property, nor is it applied to a hungry person who takes food due to hunger.

*Hadd* violations must also meet exacting and highly technical proof standards. In most cases, the conduct of the crime can only be proven by the accused confessing to it or with direct eyewitness evidence from those who meet the legal requirements for religion and integrity. *Hadd* crimes cannot be proven with circumstantial evidence, and the law offers several ways for those who seem guilty to avoid punishment.

The second body of thought, sometimes regarded as Islamic criminal law, is called *qisas*, which translates as "just retaliation" and covers murder and inflicting physical damage that does not result in death. The *qisas* crimes are governed by the "*lex talionis*" concept, and the penalty for killing or injuring someone is either retribution or compensation. The equivalent principle constrains the law of retribution, and the offender experiences the same injury that he did to the victim (Abdullah, 2017). This implies that in homicide, the killer is put to death like the victim was slain, and the attacker suffers the same injury in cases of wounding. Compensation is sometimes an option to retaliate at the victim's discretion and, in rare circumstances, the sole sanctioned penalty. The complete blood price for the murder of a free Muslim man is used to calculate the number of damages owed for injuries. In situations of murder, the offender makes restitution to the victim's family; in cases of injury, they provide restitution to the victim.

Homicide and bodily harm are private proceedings brought by the victim or the victim's family, in contrast to *hadd* violations, which the State enforces. The State is in charge of ensuring that retribution is carried out legally by mandating a formal judgment of guilt based on accepted standards of evidence. However, killing someone and injuring someone are seen as harm to the victim or the victim's family rather than to society, and the parties affected decide whether and, in certain situations, how the harm is to be made good (Auda, 2022). The court's involvement in these situations is primarily civil rather than criminal since they carry out and uphold the judgments of private persons.

*Tazir* is the third classical period rule that falls under Islamic criminal law. *Tazir* is a residual category in that it is used to punish conduct deemed wicked or impairs the public peace but is not punished under *hadd* or *qisas*. Under this section, the kinds of behaviors that are penalized are not specified. When *hadd* or *qisas* penalties cannot be applied due to their stringent procedural requirements, *tazir* punishments may be inflicted on individuals who commit the infractions. *Tazir* also covers actions that resemble crimes



punishable as hadd or murder but fall short of meeting all their conditions. For instance, this would apply to theft of goods whose value is below the threshold required to inflict the hadd penalty.

The Islamic criminal structure differs from other legal frameworks based on binding court precedents applied by civil law, as stated by law's codification or common law traditions. Islamic law needs both a comprehension of conclusive legal precedents and a history of the codification of laws. In Islamic law, analogical deduction (Ijtihad) is analogous to case law analysis. Islamic criminal law serves as the governing foundation for all Islamic governments since it is embedded in all Islamic nations' political, legal, and social fabric. In reality, Islamic law is a particularly instructive paradigm of sacred law. It is one of the most well-known legal systems in the world (Weimann, 2010).

Scholars such as Darian-Smith (2013) have disputed the creation, operation, and application of the International Criminal Court (ICC) on several occasions concerning the broad principles of law that the Court has used in several cases. Islamic judicial institutions historically supported the creation and continued functioning of international criminal justice institutions during the Rome talks. Contrarily, the views were based on apprehension and skepticism about approving the Act because the Court decided to use criminal law principles. Scholars have argued that it is impossible to interpret Islamic criminal law as either a non-progressive or a static legal system that must adhere to the rules outlined in religious sources.

Despite any specific attention, Western academics' criticism of Islamic criminal law has centered on basic principles. This deficiency is because there is little English-language literature on Islamic criminal law. Due to the Western legal system's basis being built on Islamic state ideas, it is debatably impossible for Islamic criminal law to follow it. These ideas open the door for a discussion to emerge between international organizations and Islamic law. Despite being a religious system, Islamic law differs from Western law in several ways. Positive legislation calls for reliable testimony, witnesses, and supporting documentation.

The Sharia Clause has been discussed in discussions about the international criminal Court's structure, operations, and operation. The Islamic legal norms the Court may use in certain instances is one of the most contentious discussions. The presence of an international criminal justice institution during the Rome discussions has received support from Islamic governments. Islamic nations, on the other hand, continued to watch it suspiciously. They admitted that they were reluctant to ratify the Act because the Court decided to apply criminal law standards. According to Sandberg & Thompson (2016), Islamic law is often seen as a non-progressive or static legal structure with fundamental tenets drawn from religious doctrine. Regardless of how well the topic is understood, the essence of most Western intellectual debates is centered on a basic level. Furthermore, since the legal systems of all Islamic states are founded on Sharia principles, it has been suggested that Islamic law is unlikely to be similar to the Western legal system. This makes the development of a dialogue between international institutions and Islamic law difficult (Jones, 2010).

#### Commercial Law

Islam and trade have long had a strong historical relationship. The Prophet was born in Makkah, an Arabian city now called Mecca. Makkah had been a significant Middle Eastern trade hub for more than a century since Muhammad lived there (Freitag, 2020). The Quraysh tribe, who called Makkah home, had become exceedingly affluent in their desert habitat during this time, mostly by acting as middlemen in commerce between the Eastern and Western civilizations. The strategic placement of Makkah on the major trade route from Yemen to Southern Arabia was their biggest advantage. This was the source for items from the East to the Mediterranean, where European merchants awaited their commodities or money with bated breath. A second key trading route linked Makkah to



the Red Sea Port of Jiddah, where items from Egypt and other areas of Africa entered the East-West market, and the Persian Gulf, where commodities from the East could also enter. Commerce was an important economic activity in the town.

Therefore, it should be no surprise that Islam views economic endeavours favourably. The Quran contains several passages that support trade and business. The moral tenet here is that nothing shouldn't be anything that prevents individuals from engaging in honest and lawful commerce and business, which allows them to feed their families, make a livelihood, and donate to others less fortunate than themselves. Islam, however, mandates that every Muslim to conduct their commercial operations in line with the principles of their faith (Arham, 2010). This entails being honest, fair, and kind towards others, even while it does not demand believers give up all their belongings and live ascetics. Muslims should not prioritize acquiring money above fulfilling their Islamic obligations by letting commercial pursuits rule their lives.

The Islamic ban on giving or receiving interest (riba), which distinguishes Islamic business from traditional economic transactions, is perhaps the most significant distinction. Riba is a difficult term to define precisely and is generally understood to signify undeserved or unfair profit. Riba is disapproved since getting something in return for nothing is unethical. Profit from speculative trading is illegal and is referred to as riba. On the other hand, the premise that risk (gharar) is harmful is enlarged to prevent any transaction in which the benefit of each participant is not explicitly specified when the contract is made (Abdullah et al., 2011). This category includes gambling. Many modern commercial transactions include riba or gharar, according to Shari'ah. To avoid paying riba, a seller must add value before reselling products.

Other significant differences occur, and they must be examined. One is the belief that property is something created by God and given to humanity. The concept of the property employed in this context departs dramatically from the common current view of property as a secular value that can be defined and redefined as needed to enhance utility or as the total of whatever property claims the legal system chooses to recognize (Visser, 2019). In Islamic law, on the other hand, property is virtually transcendent, holy, and basic. The Sunnah and the Quran, whose origins transcend reason, demonstrate the validity of their acquisition and use, and it is a problem that greatly concerns God.

The ultimate purpose of the Islamic economic system is to allow people to earn a living reasonably and profitably without oppressing others for the benefit of society as a whole. Islam favors community prosperity above individual liberties. This is consistent with modern Western philosophy, which condemns open-market economic management systems because they favor economic expansion at any cost, ignoring social inequities in wealth and quality of life (Iqbal & Mirakhor, 2013). Unfettered capitalism is seen as a threat to civilization by 36 Islamic countries because it undermines Shari'ah values, which directly contrasts with Islamic religious beliefs.

## **Methodology**

This study uses an expansive and multifaceted method to explore the resilience power of Islamic law in the domains of family, criminal, and commercial law within today's world. The inquiry includes qualitative research procedures, prioritizing an attentive assessment of case studies that illustrate Islamic law's flexibility or reluctance to alter.

a) Selection of Cases: This study revolves around three crucial aspects of Islamic law: family, criminal, and commercial law. To ensure a comprehensive examination, judicious case briefs were taken regarding the selection of cases that aptly reflect each sector. These are Akhter v. Khan (2018), representing family law, British court rulings on prejudice for criminal law, and significant cases in Islamic finance for commercial law. Extensive in-depth research was conducted to acquire primary and secondary

information. Primary resources encompass court papers, rulings, and legal perspectives from the chosen cases. Secondary materials include scholarly articles, books, and highly-regarded writings on Islamic law, its historical circumstances, and modern-day applications.

b) **Case Brief Analysis:** All chosen cases are comprehensively examined, considering the social conditions, legal contentions proposed, and the ultimate judgments. The goal is to recognize scenarios where Islamic law has evinced resilience by upholding its standards or adaptability by conforming to modifications to tackle contemporary societal worries.

c) **Ethical Considerations:** Throughout the research process, an emphasis is placed on ethical considerations to guarantee an unprejudiced and respectful assessment of Islamic law. The utmost care is taken to ensure cultural sensitivities are respected to ensure the study benefits legal scholarship.

### Case Analysis

This examination delves into Islamic law's persistent and adjustable character, particularly in the family, criminal, and business domains. Studying key exemplars demonstrates how Islamic legal guidelines remain in Western countries while accommodating modern challenges. The *Akhter v. Khan* situation features Islamic family law's role in dealing with difficult situations such as marriage designation. The glance at British court rulings illuminates Islamic criminal law and its intrepidity amidst inequality dialogues. Lastly, the exploration of Islamic finance cases reveals the capability of Islamic commercial law to coexist alongside Western financial systems.

### Case Briefs Illustrating How Islamic Law Can Adapt and Accept Western Legal Systems

#### 1. Family Law: *Akhter v. Khan* (2018)

Nasreen Akhter petitioned for divorce from Mohammed Shabaz Khan on 4 November 2016, with the latter contesting the very marriage in addition to the divorce, claiming that their union was not valid in English law without a civil ceremony. The wife, meanwhile, believed that the court should recognize a presumption of marriage from their reputation as married and long-term cohabitation (*Akhter v. Khan*, 2018). The case's heart was whether a *nikāḥ* ceremony forms a legitimate marriage under English law.

The legal distinction in UK family law between valid marriages, void or voidable marriages, and invalid or non-marriages holds significant implications. Marriages that comply with the appropriate regulations confer various benefits and provide the required basis for marriage dissolution (Darian-Smith, 2013). Marriages that fail to meet the requisite legal requirements may be annulled, enabling the former spouses to divide assets or address maintenance upon separation. Non-married couples, such as those who secretly exchange promises or have yet to undergo a marriage ceremony, are not entitled to these privileges.

Recognizing the hesitance of many Muslim-majority countries to legitimize a marriage unless a civil law ceremony is conducted and the general opinion of jurists, the court had to assess the 1998 marriage of Akhter and Khan, which was conducted in observance of Islamic law. It was noted that they had considered themselves married for 18 years and planned to hold a reception and civil law ceremony but have yet to do so. Akhter and Khan also lived together openly, had children, and were identified by their religious and extended community as a married couple. Moreover, local legislation acknowledged their marriage in Dubai (between 2005 and 2011).

As a result, Mr. Justice Williams concluded that, according to the facts and UK laws on marriage as interpreted through the Human Rights Act 1998 and the child's best interests, the union was deemed a void marriage (*Akhter v. Khan*, 2018). This established Akhter's

legal entitlement to the civil law remedies provided for maintenance and child custody upon separation that she could not have received without recognition of a valid marriage.

## 2. Criminal Law: British Court Rules Islamic Law Discriminatory

Britain's Supreme Court expressed disapproval of Islamic law owing to its gender discrimination during a 2008 case in which a refugee fled to the UK from the Middle East to protect her son from his abusive parentage (*Just a Moment*, n.d.). After a unanimous ruling of 5-0, the law lords stated categorically that Sharia contains no provision for equal rights for men and women and that it would constitute a 'flagrant breach' of the European Convention on Human Rights for the Government to force the woman, referred to as EM, to relocate to Lebanon with her son since she would automatically lose custody of him under sharia-influenced family law.

EM joined Britain in 2004 when her son was eight; due to the father's violence, she had self-regulated custody of him since his birth. Lord Hope of Craig's head commented that the right to non-discrimination is essential in defending human rights. "Sharia law, implemented in Lebanon, was created by and for men in a male-controlled society; equal rights are not allowed," he proclaimed. It was also pointed out that Sharia is simply a cultural and religious tradition and that, in comparison with our benchmarks, its policies are unyielding and biased towards women—they are forbidden from taking authority of their children after they reach the age of transfer of custody.

These court rulings annulled the decisions of the Court of Appeal, the Asylum and Immigration Tribunal, and the Home Secretary, who considered that the repatriation of EM to Lebanon along with her son did not contradict her right to family life. Liberty and Justice interjected in the matter (*Just a Moment*, n.d.). Liberty's legal director, James Welch, exposed the Government's two facades in the situation: "How can they talk of equal treatment on one hand while attempting to deport a mother and child to the certainty of separation on the other?". Meanwhile, Lord Carswell detailed that, although the Supreme Court is obliged to apply domestic law, "we are not judging the law or order of any other nation, nor are we looking to make comparisons or draw stock-takings between sharia and other laws." Eric Metcalfe of Justice, celebrated the court's selection and recognized the worth of the Human Rights Act, now ten years old.

## 3. Commercial Law: Islamic Finance Cases

Two cases concerning Islamic finance have come before the English courts: *Islamic Investment Company of the Gulf (Bahamas) Ltd v Symphony Gems NV & Ors* (unreported 2002) and *Shamil Bank of Bahrain EC v Beximco Pharmaceuticals Ltd* (2004). Primarily these cases involved the use of the Murabaha contract - also known as the "cost-plus-profit" agreement - a form of agreement where the bank buys goods on behalf of the customer, then sells them to them at a higher price known in advance, which is the same amount the buyer would have paid for a conventional loan based on riba (interest).

Both contracts were governed by English law; however, the drafters of the documents attempted to pass these deals off as Sharia-compliant (Al-Ali, 2019). In *Symphony Gems*, this attempt was made through a recital, while in *Beximco*, a clause was referenced. The judge in *Beximco* found that, under the Rome Convention (enacted into English law via the Contracts Act of 1990), it was not possible to interpret contract law in a way to permit Sharia to be the applicable law in these cases as it is not the law of a "country."

The appellant thus conceded that English legal systems could not co-govern the contract (Bashayreh, 2019). In lieu, he argued that the parties had agreed for the contract to be enforceable in line with principles of Sharia, which were "legal rules ascertainable and applicable by an English court." However, his suggestion was not accepted, as the court interpreted the agreement in line with its commercial purpose and thus as a loan subject to

English law structure. The legislation was understood to reflect "the Islamic religious principles according to which the bank holds itself out as doing business."

Therefore, the banking community welcomed the court's judgment since it signified that English courts could enforce Islamic finance documents under English law as long as the appropriate clauses were utilized.

#### A Comparative Analysis of the Three Cases on Resilience of Islamic Law in Western Civilization

Islamic Sharia has experienced much argument and quarrel in Western countries. In any case, the unshakable quality of Islamic law is observable when watching explicit cases regarding family law, criminal law, and business law (Shehada, 2016). The three cases uncover the communication between Islamic law and legitimate Western frameworks, uncovering Islamic law's multifaceted nature, discussions, and adaptability in assorted lawful settings.

In *Akhter v. Khan*, the talk spun around acknowledging a nikāh function, an Islamic marriage, as a substantial marriage under English law. The court's choice to pronounce the marriage void yet still pass on security to the wife and kids reflects the toughness of Islamic law. Despite the need for a standard service in English law, the court perceived the legitimacy of the marriage as dependent on the couple's long-haul habitation, notoriety as a hitched couple, and the acknowledgment of their marriage in Dubai. This case represents the capacity of Islamic law to impact legitimate results, even in domains with various legitimate structures.

The ruling of the United Kingdom's highest tribunal on the discrimination of Islamic legislation impressively manifested the staying power of Islamic law in Western legal systems. At stake was a refugee's protection against her oppressive mate and possibly a lack of custody over her child if she were compelled to go to Lebanon. In this realm, Sharia law governs family cases. The court's unanimous judgment identified the sexism rooted in Islamic regulations and emphasized the centrality of non-discrimination as a basic human right. This case is a shining example of upholding principles of equality and human rights in the West and recognizing the existence and effects of Islamic law.

The two cases regarding Islamic finance evidence the versatility of Islamic law in commercial regulation schemes. These cases centered upon tried and tested attempts to implement Murabaha contracts, a Sharia-compliant financing agreement, as provided for under English law (Bashayreh, 2019). Considering the Rome Convention and the Contracts Act of 1990, the court highlighted that Sharia does not constitute the law of a "country" and hence could not be interpreted as the law applicable. Nevertheless, the court recognized that English courts could enforce Islamic finance documentation under English law provided the right clauses were incorporated. This realization of Islamic finance's commercial intent and standards represents the endurance of Islamic law inside the Western business legal framework.

In conclusion, the three cases examined make clear the endurance of Islamic law surrounding Western civilization, primarily concerning family law, criminal law, and commercial law. These cases illustrate the capacity of Islamic law to play a role in legally based decisions and peacefully exist alongside Western laws while managing complex matters such as matrimony identification, gender discrimination, and commercial applications. What allows Islamic law to remain strong is its capability to adjust and acquire acknowledgment amid varied legal systems, thereby taking part in the continuing discourse and progression of legal regulations across Western nations.

#### Contemporary Challenges and Adaptations

The values of protecting family peace, societal stability, and personal well-being are at the heart of Islamic family law. The Quran, Hadiths, and academic interpretations are the

three main sources of Islamic family law. Islamic family law is famous for its adaptability, which considers regional and cultural differences. Due to its versatility, Islamic family law has been adopted by several civilizations (Gibb, 2022). Islamic family law also provides procedures for settling issues, including inheritance, custody, marriage, and divorce, via arbitration, mediation, and reconciliation. These systems, which accommodate social changes while upholding essential values, have helped Islamic family law remain resilient. For instance, reform in some nations with most Muslims has aimed to address gender equality issues, demonstrating how Islamic family law can adapt to shifting societal standards.

Hudud, or Islamic criminal law, covers offenses against people, society, and God. It seeks to uphold the rule of law, preserve public order, and dissuade prospective offenders. Islamic criminal law is tenacious because it insists on fair trials and places a premium on proving facts beyond doubt. However, Hudud sanctions have been applied differently in various Muslim-majority states. Modern problems have sparked debates and new interpretations of several parts of Islamic criminal law. In light of the goals of Islamic law and the more general concepts of justice, kindness, and rehabilitation, scholars and jurists have investigated other methods of punishing offenders. These revisions demonstrate how Islamic criminal law may be adjusted to satisfy the demands of contemporary cultures while retaining its core principles.

Islamic banking, known as Islamic commercial law, has become well-known worldwide for its flexibility and tenacity. Islamic finance offers alternative financial instruments that adhere to Sharia law based on equity, risk sharing, and interest avoidance (riba). Islamic banking has shown adaptability by maintaining its essential principles while integrating with modern economic systems. Islamic banks, sukuk (Islamic bonds), and takaful (Islamic insurance) are a few examples of organizations that have formed and are appealing to Muslim and non-Muslim investors. The tenets of Islamic finance encourage moral investing and forbid overzealous speculation and unpredictability.

## **Conclusion**

Islamic law has shown to be remarkably resilient in the face of changing cultural and legal problems because of its foundations in the Quran and the teachings of the Prophet Muhammad. Islamic law's adaptability to the changing demands and conditions of Muslim-majority communities while upholding its core values demonstrates its durability. Islamic law continues to serve the various requirements of Muslim communities worldwide via flexible interpretations and the adoption of contemporary concepts. Islamic legal concepts are enduring because they continue to develop, adapt, and find application in modern society while retaining the core ideals of justice, fairness, and compassion. Family, criminal, and commercial law are prime examples of this. It is essential to comprehend how resilient Islamic law is to build an inclusive legal system that respects Muslim people's religious and cultural diversity.

## **Recommendation**

I recommend that government officials, legal academics, and practitioners look into more sort of comparisons to assess Islamic law's applications in Western societies before considering its incorporation, especially in marriage affairs and arbitrations, where applicable, in legal frameworks to foster a more inclusive and equitable legal system.

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