

Shari'ah Courts: Practice in the Modern World, Its Pragmatic Complications and Transitional Views in Bangladesh

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Abstract: Islam teaches that Allah's will should control all areas of daily life, including personal, social, national, and international spheres. Shari'ah courts have been established with this goal in mind, intended to control lifestyle choices through appropriate channels in accordance with Islamic law. Despite common misconceptions, Islamic or Shari'ah regulations continue to be the most trustworthy way to achieve desired outcomes. This assertion is confirmed by the establishment of Shari'ah courts and the sporadic practice of Shari'ah laws in a few Muslim-minority countries, including their stable judicial practice in several Muslim-majority ones. Bangladesh is a Muslim-majority nation with the constitutional power to implement Shari'ah law without opposition. This essay aims to identify the challenges facing the introduction of Shari'ah courts in Bangladesh while demonstrating their verified judicial precision in the context of Muslim-majority and Muslim-minority countries that practise Shari'ah laws.

Keywords: Shari'ah, Islamic, court, law, practice, hudud, Bangladesh, constitution, authority, majority, minority, Muslim, countries.

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I. Introduction:

Shari'ah is the foundation of Islam, the way of life that Allah has created for humans. It is used to build the Islamic socio-state system. Shari'ah, or 'divine law', is the supreme law and the foundation of Islamic government. It propels Muslims toward their decisive goal. The Islamic judiciary is committed to maintaining correct order in all aspects of life, ensuring a peaceful life for every citizen, safeguarding social unity, curbing deviant behaviour that may threaten social habitation, removing disagreement and resolving disputes, maintaining the balance in the daily life of a society, preventing violations of human rights, reconcile the conflict between the populace and the government, and ultimately proving Islam a just religion. The provisions of Shari'ah law constitute the Islamic judiciary. In Bangladesh, marriage, divorce, alimony, property, inheritance and waqf are regulated by Shari'ah for Muslim. The Muslim Personal Law (Shariat) Application Act of 1937¹ applies to Muslims in all matters relating to family affairs. Bangladesh has the constitutional authority to establish Shari'ah courts in order to begin applying Shari'ah laws on a regular basis as a Muslim nation in the greater interest or welfare of its people. This article touches on the modern practice of Shari'ah Court activity in Muslim-majority and Muslim-minority countries and their establishment and functioning in Bangladesh.

Defining Shari'ah Court and its legal basis:

Shari'ah Court, also called 'Qadi's Court,' refers to the 'House of the Qadi,' or an Islamic scholar who is empowered to offer solutions to problems presented to them.

The Shari'ah Court was established by Islam to resolve disputes among people complying with the instructions of the Quran and Sunnah, besides replicating the analogies utilized by Muslim scholars (Mujtahid) to address new difficulties.

In fact, all the Messengers of Allah (May the peace and blessings of Allah upon them) served as judges. Allah says,

¹ Act No. (XXVI of 1937)

“And remember Daud (David) and Sulaiman (Solomon), when they gave judgement concerning the field when people’s sheep had browned therein at night, and we were witness to their judgement. And we made Sulaiman to understand the case. And to each of them we gave good judgement and knowledge.”¹

Allah also said,

“O Daud! Verify! We have placed you as a successful on earth, no judge between people in truth (and justice) and follow not your desire for it will mislead you from the way of Allah. Verify! Those who lost from the way of Allah have a severe torment, because they forgot the Day of Reckoning.”²

Throughout the holy Quran, Allah commands his Prophet Muhammad (PBUH) to be equitable and logical in settling conflicts.

For instance, Allah says,

“So judge (O Muhammad) between them by what Allah (God) has revealed and do not follow their vain desire, but beware of them lest they turn you away from some of what Allah has sent down to you”³

Allah also says,

“... And if you judge (O Muhammad), judge between them with justice. Verily, Allah loves those who act justly.”⁴

The Islamic judicial system is likewise based on the Sunnah’s legal precepts. Narrated by Amra Bin Al-as (May Allah be pleased with him) that the Prophet (Peace be upon Him) said,

“If a judge gives a judgement using his best judgement and is correct, then he receives a double reward (from Allah) if he uses his best judgement but makes mistake then he receives a single reward.”⁵

While authorizing Mu’az bin Jabal as Qadi of Yemen, the Holy Prophet (PBUH) questioned,

“O Mu’az! According to what you will decide?

Mu’az submitted: According to the Book of Allah.

The holy Prophet (PBUH) asked, If you do not find it, then?

Mu’az submitted: According to the Sunnah of the Messenger of Allah

The Holy Prophet (PBUH) asked: “If you find no solution in it, then?

Mu’az submitted: I will exercise my personal judgement to decide the case

The Holy Prophet (PBUH) said: Thanks be to Allah who granted such Tawfiq to the Messenger of the Messengers of Allah whereby His Messenger is placed.”⁶

Many Muslim scholars are unopposed about the legal validity of the Islamic judicial system. Ibn Qudammah says,

“The Muslim are unanimously agreed that a judicial system must be established for the people.”

1. Existence of Shari’ah court or practice of Shari’ah law in the modern world:

1.1 Shari’ah Court in Muslim-majority countries:

Throughout the eighteenth century, the impact of Western culture on Muslim society led to significant adjustments in both civil and commercial transactions as well as criminal law. Due to the Shari’ah philosophy they were required to uphold as well as its system of procedure and evidence, Shari’ah Courts in these locations were seen as being wholly out of touch with modern demands. Consequently, most Muslim countries abandoned Shari’ah criminal and civil laws, following new codes based on European models and a new format of secular tribunals to administer them. In the second part of the nineteenth century, substantial political and administrative reforms in the Ottoman Empire and Egypt led to a shift in status. Islamic law emphasized European-style laws in the legal systems of more developed Muslim nations.

As a result of these modifications, Shari’ah courts have been drastically altered. In most countries their jurisdiction was confined to the considering the personal status of Muslims. The reforms of the nineteenth century defined not just the framework of the Shari’ah court system, but also how it would function in today’s Muslim world. Shari’ah is presently only utilized in a small number of modern states, with the exception of

¹ Al Quran, 21:78-81.

² Al Quran, 38:26.

³ Al Quran, 5:49.

⁴ Al Quran, 5:42.

⁵ Sahih Al-Bukhari, 6919; Sahih Muslim, 1716

⁶ Sunan Abu Daud, Kitab Al-Aqdiah, Vol. III, p. 303, Hadith No. 3592, Sunan Al-Tirmizi, Hadith No. 1348.

family law, and its organizational structure and procedural protocols are founded on traditional Islamic concepts and institutions. In the few nations that have added additional Shari'ah Law components, such criminal law or economic law, Shari'ah takes the shape of laws that may differ from one another.

Based on mentioned above, the practice of Shari'ah Court has been divided into the following sections:

- A. Countries having Shari'ah applications about personal matters (such as marriage, divorce, inheritance etc.).
- B. Countries having Shari'ah applications about civil and criminal proceedings.
- C. Countries having Shari'ah applications regionally.

Afghanistan

The Shari'ah Court in Afghanistan was made up of state and Shari'ah laws. Since the country's inception in 1747, Afghanistan has been governed by Shari'ah Law in addition to the country's statutory laws. However, in 2021, the Taliban retook control of the government and established an Islamic state based on a revolutionary interpretation of Shari'ah Law. During the Taliban era, all courts became Shari'ah courts and applied Shari'ah Laws.

Taliban Leader, Habibullah Akhundzada¹ has ordered Afghan judges to impose punishment for certain crimes that may public amputations and stoning. The Taliban spokesman Zabittullah Mujahid said, offences such as robbery, kidnapping and sedition must be punished under Shari'ah Court in the line with the group's interpretations of Islamic Shari'ah Law.²

The Taliban judicial system thus relied on the dual roles of its judges. They acted both as magnitudes in the legal field and as Ulema in the religious field. Judges were socially recognized as competent to decide disputes and imposed sentences both because of their appointment to a judicial system and because of their knowledge of Islamic Law were vouched for by an independent institution.³

Algeria

The judicial system of Algeria includes civil and military courts. Within each wialiat is a court of first instance for civil and some criminal cases. At the head of the system is the Supreme Court. In civilian courts Shari'ah (Islamic Law) is applied in resolving social issues.

Article 222 of the Family Code of 1983 specifies sharia as the residuary source of laws.⁴

Bahrain

Article 2 of Bahrain's 2002 Constitution as originally adopted, as well as after February 2012 amendment, declares Islamic Sharia is a chief source of legislation.⁵ ⁶ Four tiers of ordinary courts have jurisdiction over cases related to civil, administrative and criminal matters, with Court of Cassation the highest civil court in Bahrain; in all matters, the judges are required to resort to Sharia in case legislation is silent or unclear.⁷ Sharia courts handle personal status laws.⁸

A personal status law was codified in 2009 to regulate personal status matters. It applies only to Sunni Muslims; there is no codified personal status law for Shiites. In a Shari'a court a Muslim woman's testimony is worth half of that of a Muslim man.⁹

Bangladesh

In Bangladesh, marriage, divorce, alimony, property, inheritance and waqf are regulated by Shari'ah for Muslim. The Muslim Personal Law (Shariat) Application Act of 1937¹⁰ applies to Muslims in all matters relating to family affairs. Islamic Family Law is applied throughout the regular court system. The judiciary is organized at two levels: with Magistrate Courts and the Supreme Court with Appellate and High Court Division. The

¹ Moulavi Habibullah Akhundzada is a political, spiritual and religious leader who is the third commander and religious leader of the Taliban.

² <http://www.bbc.com/news/world-asia-63624400>. Access Date 15.11.2022.

³ Afghanistan's Laws and Legal Institutions under the Taliban, Melbourne Asia Review. June 6 2022.

⁴ "Algeria". *Law.emory.edu*.

⁵ Clark Lombardi (2013). "Sharia – A or The Chief Source of Legislation" (PDF). *American University International Law Review*. 28 (3): 733–74.

⁶ "Chapter III – Relevant Aspects of the Legal System and Description of the Enforcement Structures" (PDF). *Bahrain Government*.

⁷ "Chapter III – Relevant Aspects of the Legal System and Description of the Enforcement Structures" (PDF). *Bahrain Government*.

⁸ Gerhard Robbers (2006). *Encyclopedia of World Constitutions*. Infobase Publishing. p. 73. ISBN 978-0816060788.

⁹ "Bahrain Gender Equality Profile" (PDF). UNICEF.

¹⁰ Act No. (XXVI of 1937)

Family Courts are the Courts of first instance for personal status cases of all religious communities, although different religious communities are governed by their own personal status laws. The jurisdiction and functions of these courts are governed by the Family Courts Act, 1984.¹ Jurisdiction is limited to civil suits and any criminal offences that arise in the court of civil cases come under the jurisdiction of criminal or magistrate's court.

Brunei

There are two parallel system of law operating in Brunei Darussalam: Statutory laws, which regulate mercantile activities and disputes between persons and Shari'ah Law. Statutory laws are referred to do the common law system and are based upon English codified laws. These courts are also known generally as civil courts and have exclusive jurisdiction over all civil and criminal cases.²

The second independent system of courts in Brunei Darussalam is based on Shari'ah law. The Syariah Penal Code Orders³ 2013 was first introduced publicly in April 2014. The Syariah Penal Code has greatly expanded the jurisdictions of Shari'ah Courts to now include offences such as murder, rape and theft. The Shari'ah Court prescribes Shari'ah punishment, including the severing of limbs for property crimes and death by stoning for adultery and homosexuality.⁴

Djibouti

The Family Code is mainly derived from Sharia and regulates personal status matters such as marriage, divorce, child custody and inheritance.⁵ Sharia does not apply to criminal law.⁶

Egypt

Shari'ah is an integral part of the Egyptian legal system. Article 2 of Egypt's 2014 Constitution declares the principles of Islamic sharia to be the main source of legislation.⁷ Egypt's law and enforcement system are in flux since its 2011 Revolution; however, the declaration of Sharia's primacy in Article 2 is a potential ground for unconstitutionality of any secular laws in Egyptian legal code.⁸ Sharia courts and qadis are run and licensed by the Ministry of Justice.⁹ The personal status law that regulates matters such as marriage, divorce and child custody is governed by sharia. In a family court, a woman's testimony is worth half of a man's testimony.¹⁰

Indonesia

Aceh is the only part of Indonesia to apply Sharia to criminal law. Shari'ah courts in Aceh had long handled cases of marriage, divorce and inheritance. After special autonomy legislation was passed in 2001, the reach of courts extend to criminal justice. Offences such as being alone with an unrelated member of the opposite gender and gambling can be punished with canings.¹¹ In 2014, the provincial government of Aceh extended sharia's reach to non-Muslims whose offenses also involve a Muslim. If a non-Muslim commits an offense covered by the secular criminal code, the non-Muslim may choose to be punished under either the secular national criminal code (KUHP) or under Acehne Sharia Law.¹²

In other parts of Indonesia, religious courts have jurisdiction over civil cases between Muslim spouses on matters concerning marriage, divorce, reconciliation, and alimony. The competence of religious courts is not exclusive, and parties can apply to District Courts for adjudication on basis of Roman Dutch law or local adat.

Iran

The Iranian legal system is structured as a combination of Islamic Law and civil law system, adopted from the French Civil Law system. The Constitution of Islamic Republic of Iran calls for civil and criminal courts, as well as military courts. The Supreme Court reviews cases of capital offences. The Islamic Republic

¹ Act No. 66 of 1984.

² <https://cacj-ajp.org/brunei/legal-system/introduction-to-the-legal-system/overview> Access Date 14.10.2022

³ SYARIAH PENAL CODE ORDER, 22nd OCT, 2013. Order made under Article – 83(3), of Constitution of Brunei Darussalam.

⁴ An Overview of the Criminal Justice Syetem in Brunei Darussalam-www.agc.gov.bn Access Date 14.10.2022.

⁵ "Djibouti Gender Equality Profile" (PDF). UNICEF.

⁶ "24ème session". Haut-Commissariat aux droits de l'homme. *La Charia n'est pas compétente dans le domaine pénal, a précisé la délégation.*

⁷ Adly Mansour. "Egypt's Constitution" (PDF). Government of Egypt.

⁸ "Egypt – The Judiciary, Civil Rights and the Rule of Law". *Library of Congress, USA.*

⁹ "Incorporating Sharia into legal systems". *BBC News.* 8 February 2008.

¹⁰ "Egypt Gender Equality Profile" (PDF). UNICEF.

¹¹ "Aceh passes adultery stoning law". *BBC News.* 14 September 2009.

¹² Aceh fully enforces sharia at the Wayback Machine *The Jakarta Post* (7 February 2014)

also has Revolutionary Courts and the Special Court for the clergy (Both sets of tribunals were based on decrees by revolutionary leader). Article 167 of the constitution states that all judicial rulings must be based upon "authoritative Islamic sources and authentic fatwa". Book 2 of the Islamic Penal Code of Iran is entirely devoted to *hudud* punishments. Iranian application of sharia has been seen by scholars as highly flexible and directly contradicting traditional interpretations of the sharia.¹

Iraq

Iraq's legal system is based on French civil law as well as Sunni and Jafari (Shi'ite) interpretations of Sharia. Article 41 of the constitution allows for personal status matters (such as marriage, divorce and inheritance) to be governed by the rules of each religious group. The article has not yet been put into effect, and a unified personal status law remains in place that builds on the 1959 personal status code.² Article 1 of Civil Code identifies Sharia as a main source of legislation.³ The 1958 Code, made polygamy extremely difficult, granted child custody to the mother in case of divorce, prohibited repudiation and marriage under the age of 16.⁴ In 1995, Iraq introduced Sharia punishment for certain types of criminal offenses.⁵

Jordan

Jordan has Sharia courts and civil courts. Sharia courts have jurisdiction over personal status laws, cases concerning Diya (blood money in cases of crime where both parties are Muslims, or one is and both the Muslim and non-Muslim consent to Sharia court's jurisdiction), and matters pertaining to Islamic Waqfs.⁶ The Family Law in force is the Personal Status Law of 1976, which is based on Sharia.⁷ In Sharia courts, the testimony of two women is equal to that of one man.⁸

Lebanon

Lebanon's legal system is based on a combination of Civil Law, Sharia and Ottoman laws.⁹ There are eighteen official religions in Lebanon, each with its own family law and religious courts. For the application of personal status laws, there are three separate sections: Sunni, Shia and non-Muslim. The Law of 16 July 1962 declares that Sharia governs personal status laws of Muslims, with Sunni and Ja'afari Shia jurisdiction of Sharia.¹⁰

Libya

Muammar Gaddafi merged civil and sharia courts in 1973. Civil courts now employ sharia judges who sit in regular courts of appeal and specialise in sharia appellate cases.¹¹ The personal status laws are derived from Sharia.

Malaysia

Malaysia practices the mixed legal system which consists of the customary law, Islamic Law and Common Law. Schedule 9 of Malaysian constitution recognizes Sharia as a state subject; in other words, the states of Malaysia have the power to enact and enforce sharia.¹² The Federal Constitution of Malaysia gives the thirteenth states of Malaysia exclusive jurisdiction over the administration of Islamic Law.¹³ The Constitution was amended to clarify that the civil courts shall have no jurisdiction in respect of any matters within the jurisdiction of the Syariah Courts. Under this dual legal system the Syariah (Shari'ah) Courts established in

¹ Abrahamian, Ervand (2008). *A History of Modern Iran*. Cambridge, UK; New York: Cambridge University Press. p. 190. ISBN 978-0521528917.

² "Iraq Gender Equality Profile" (PDF). UNICEF.

³ "Iraq, Republic of". *Law.emory.edu*. 16 March 1983.

⁴ "Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria" (PDF). *SHS Papers in Women's Studies/ Gender Research, No. 4*. UNESCO. July 2005.

⁵ Jonathan Fox (2008). *A World Survey of Religion and the State*. Cambridge University Press. p. 238. ISBN 978-1139472593.

⁶ "Jordan, Hashemite Kingdom of" (PDF). *Law.yale.edu*. p. 21.

⁷ "Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria" (PDF). *SHS Papers in Women's Studies/ Gender Research, No. 4*. UNESCO. July 2005.

⁸ "Jordan Gender Equality Profile" (PDF). UNICEF.

⁹ "The Lebanese Constitution promulgated on May 23, 1926, with its Amendments". *World Intellectual Property Organization*.

¹⁰ "Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria" (PDF). *SHS Papers in Women's Studies/ Gender Research, No. 4*. UNESCO. July 2005.

¹¹ "Libya". *Law.emory.edu*.

¹² Harding, Andrew, Otto, Jan (ed). *Sharia Incorporated*, Leiden University Press, pp. 491-521, ISBN 978-9087280574

¹³ Federal Constitution of Malaysia, Schedule 9, List 11, 1988.

each state have jurisdiction over personal status issues and some criminal offences involving Muslims, with separate laws applying to such matters.

In 2007, Malaysia's Federal court ruled that apostasy matter lay "within the exclusive jurisdiction of Sharia Courts". Malaysian Muslims can be sentenced to caning for such offences as drinking beer, and adultery. Several sharia crimes, such as *khalwat* (close proximity of unmarried man and woman) are punishable only in Sharia courts of Malaysia. Publishing an Islamic book that is different from official Malaysian version, without permission, is a crime in some states. Other sharia-based criminal laws were enacted with "Syariah Criminal Offences (Federal Territory) Act of 1997".¹

Muslims are bound by Sharia on personal matters, while members of other faiths follow civil law. Muslims are required to follow Sharia in family, property and religious matters.² In 1988, the constitution was amended to state that civil courts cannot hear matters that fall within the jurisdiction of Sharia courts.

Maldives

The Maldivian legal system combines traditional Islamic Law with elements of common law. The Maldives has a three-tiered justice system. The Ministry of Justice oversees the lower courts. The Chief Justice preside over the High Court, which hears appeals from these Lower Courts. A lot of courts have separate sections that deal with religious, criminal, and political violations. There are no jury trials in criminal cases. Islamic Law judges conduct trials which are open to the public. Article 15 of the Act Number 1/81 (Penal Code) allows for hudud punishments.³ Article 156 of the constitution states that law includes the norms and provisions of sharia⁴ which are implemented by Maldivian Courts.

Mauritania

The Penal Code contains Sharia crimes such as heresy, apostasy, atheism, refusal to pray, adultery and alcohol consumption. Punishments include lapidation, amputation and flagellation.⁵

Morocco

In 1956, a Code of Personal Status (Mudawana) was issued, based on dominant Maliki school of Sharia jurisprudence. Regional Sharia courts also hear personal status cases on appeal. In matters of family law, a woman's testimony is worth only half of that of a man.⁶ With 2003 reforms of its criminal law, Article 222 of its new criminal code is derived from Sharia; Articles 220–221, 268–272 of its criminal law similarly codify those activities as crimes that are prohibited under Sharia.⁷ Morocco adopted a new constitution in 2011; Article 41 of this constitution granted sole power to the Superior Council of the Ulemas to guide its laws through Fatwas from principles, precepts and designs of Islam.⁸

Nigeria

Sharia states: Until 1999, Sharia applied primarily to civil matters, but twelve of Nigeria's thirty-six states have since extended Sharia to criminal matters.⁹ Sharia courts can order amputations, and a few have been carried out.¹⁰ The twelve sharia states are Zamfara, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto and Yobe.¹¹ Borno, Gombe and Yobe have not yet begun to apply their Sharia Penal Codes.¹² The rest of Nigeria has a mixed legal system of English common law and traditional law.¹³

¹ Harding, Andrew, Otto, Jan (ed). Sharia Incorporated, Leiden University Press, pp. 491-521, ISBN 978-9087280574

² Jonathan Fox (2008), A World Survey of Religion and the State, Cambridge University Press, p, 198, ISBN 978-1139472593.

³ "Maldives Penal Code" (PDF), <https://www.mvlaw.gov.mv/pdf/translation/PC1.pdf>.

⁴ Article 156 of Maldives Constitution of 2008.

⁵ "Researching the Legal System and Laws of the Islamic Republic of Mauritania". *Globa Lex*. New York University School of Law.

⁶ "Morocco Gender Equality Profile" (PDF). UNICEF.

⁷ Buskens, Leon (2010). Otto, Jan (ed.). *Sharia Incorporated*. Leiden University Press. pp. 122–24. ISBN 978-9087280574.

⁸ "Constitution of Morocco 2011". *Government of Morocco, Article 41*. 11 April 2013.

⁹ "Working within Nigeria's Sharia Courts". *Carnegiecouncil.org*.

¹⁰ "Nigeria's Zamfara Sharia court orders amputation". *BBC News*. 9 September 2011.

¹¹ "Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present". Leiden University Press. p. 575 (25).

¹² "Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present". Leiden University Press. p. 603 (53).

¹³ "Legal Systems". *The World Factbook*.

Oman

Islamic Sharia is the basis for legislation in Oman per Article 2 of its Constitution, and promulgated as Sultani Decree 101/1996.¹ The Personal Statute (Family) Law issued by Royal Decree 97/32 codified provisions of Sharia.² Sharia Court Departments within the civil court system are responsible for personal status matters.³ A 2008 law stipulates that the testimonies of men and women before a court are equal.

Oman's criminal law is based on a combination of Sharia and English common law.⁴ Omani commercial law is largely based on Sharia; Article 5 of its Law of Commerce gives Sharia precedence in cases of ambiguity, silence, or conflict.

Pakistan

General Ziaul Haq introduced Shari'ah Court and made for reaching changes in the criminal justice system. The Federal Shariat (Shari'ah) Court was established on 26 May 1980 by the President's Order⁵ as incorporated in Part VII of the Constitution of Pakistan, 1973 under the title of Chapter 3A. Article 203D of the Constitution of Pakistan empowers to examine and the question where or not any law or provision of law is repugnant to the injunctions of Islam. This Court is a unique institution with no parallel in the entire Muslim world.⁶ The Federal Shariat Court consists of eight Muslim judges appointed by the President of Pakistan on the advice of the Chief Justice of the Court. Of the eight judges, three are recruited to be Ulema who are well versed in Islamic Law. It hears appeals under the hudood ordinance.⁷ The Court also has revisional jurisdiction over criminal courts, ruling on hudood cases. The court's decisions are binding on both the High Courts and the subordinate judiciaries. The Court hires its own personnel and develops its own rules and procedures. The jurisdiction of Federal Shariat Court is to decide matters in its original, revisional, appellate and review jurisdictions and to decide a reference made to it.⁸

Palestine

The Egyptian personal status law of 1954 is applied. The personal status law is based on Sharia and regulates matters related to inheritance, marriage, divorce and child custody. Shari'a courts hear cases related to personal status. The testimony of a woman is worth only half of that of a man in cases related to marriage, divorce and child custody.⁹

Qatar

There are several Shari'ah Courts in Qatar, including: the Petty Shari'ah Court as the first and second court: the Grand Shari'ah Court, which takes appeal from the Petty Court, and the Presidium of the Shari'ah Court. Sharia is the main source of Qatari legislation according to Qatar's Constitution.¹⁰ Sharia is applied to laws pertaining to family law, inheritance, and several criminal acts (including adultery, robbery and murder). In some cases in Sharia-based family courts, a female's testimony is worth half a man's and in some cases a female witness is not accepted at all.¹¹ Flogging is used in Qatar as a punishment for alcohol consumption or illicit sexual relations.¹² Article 88 of Qatar's criminal code declares the punishment for adultery is 100 lashes. Adultery is punishable by death when a Muslim woman and a non-Muslim man are involved.

Saudi Arabia

Saudi law is based entirely on sharia,¹³ no codified personal status law exists, which means that judges in courts rule based on their own interpretations of sharia.¹⁴ Since Saudi Arabia is an Islamic state, its judicial system is based on Islamic Law (Shari'ah) for both criminal and civil cases. At the top of the legal system is the King, who acts as the Final Court of appeal and as a source of pardon.

¹ Mechantaf, Khalil. "The Legal System and Research in the Sultanate of Oman". *GlobaLex*. New York University School of Law.

² "Sultanate of Oman". Ministry of Foreign Affairs.

³ "Oman". *Freedom House*. 17 January 2012.

⁴ Graeme R. Newman (19 October 2010). *Crime and Punishment around the World [4 volumes]: [Four Volumes]*. ABC-CLIO. pp. 336–37. ISBN 978-0313351341.

⁵ Order 1 of 1980.

⁶ <https://www.federalshariatcourt.gov.pk>.

⁷ The Offence of zina (Enforcement of hudood) Order VII of 1979.

⁸ <https://www.federalshariatcourt.gov.pk/en/jurisdiction>.

⁹ "Occupied Palestinian Territory Gender Equality Profile" (PDF). UNICEF.

¹⁰ "Constitution of Qatar 2003, gco.gov.qa/wp-content/uploads/2016/09/GCO-Constitution-English.pdf.

¹¹ "Qatar Gender Equality Profile" (PDF). UNICEF.

¹² "Amnesty International Annual Report 2012 – Qatar". Amnesty International.

¹³ "Prison Information Pack – Saudi Arabia". [Ukinsaudiarabia.fco.gov.uk](http://ukinsaudiarabia.fco.gov.uk). 9 April 2012.

¹⁴ "MENA Gender Equality Profile" (PDF). UNICEF.

The Saudi court system consists of three main parts. The largest is the Shari'ah Court which hears most cases in the Saudi legal system. The Shari'ah Courts organized into several categories.¹

- (a) Courts of the First Instance (Summary and General Courts)
- (b) Courts of Cessation and the Supreme Judicial Council

Supplementing the Shari'ah Court is the Board of Grievances, which hears cases that involves the government. The third part of Saudi Court system consists of various committees within government ministries that address specific disputes, such as labour issues.²

However as of 2021, Saudi Arabia has implemented codified personal status laws, including the Personal Status Law, the Civil Transactions Law, the Penal Code for Discretionary Sanctions, and the Law of Evidence implemented by reformist crown prince Mohammed Bin Salman.³

Somalia

The Somali legal system is mixed, consisting of civil, Shari'ah and customary law. The Provisional Constitution of the Federal Republic of Somalia defines the hierarchy of law in Somalia and confirms the role of Islam in the state. The five levels of court in Somalia are: The Supreme Court, the Appeal Courts of the Reasons, the Regional Courts, the District Courts and the Courts of the National Armed Forces. Sharia was adopted in 2009. Article 2 of the Constitution of Somalia, 2012 states no law can be enacted that is not compliant with the general principles and objectives of Sharia.^{4 5} Sharia currently influences all aspects of *Xeer* as well as Somalia's formal legal system.⁶

The Islamic Courts Union (ICU) began as a loose association of Islamic Courts in Somalia that provided security and crime management following the fall of Said Barre's authoritarian regime in 1991. Around the year 2000, the Court formed the ICU. It later evolved from a judicial system to a governing apparatus, eventually providing social services and implementing Shari'ah law. The Court was defeated in December 2006 by troops from Somalia's Transitional Federal Government.

Sudan

Sharia has been previously declared the chief source of all legislation in Sudan's 1968, 1973 and 1998 Constitutions.⁷ In 2005, Sudan adopted an interim national constitution; it removed some references to Sharia, but included Sharia-derived criminal, civil and personal legal codes, as well as Sharia-mandated hudud punishments.⁸

The use of Sharia in Sudan ended in September 2020, when Sudan officially became a secular state after Sudan's transitional government agreed to separate religion from the state, ending 30 years of Islamic rule and Islam as the official state religion in the North African nation.⁹ It also scrapped the apostasy law and public flogging.¹⁰

However after 1 year of military coup took place, sharia got installed once again and harsh punishment like floggings still exist according to article 146.¹¹

Syria

Article 3 of the 1973 Syrian constitution declares Islamic jurisprudence one of Syria's main sources of legislation.¹² The Personal Status Law 59 of 1953 (amended by Law 34 of 1975) is essentially a codified

¹ Legal and Judicial Structure of Saudi Arabia: <https://www.saudiembassy.ne/legal-and-judicial-structure>.

² Introduction to the Saudi Legal and Court System, <https://acc.com/articlepdf>.

³ "Saudi Arabia announces major legal reforms, paving the way for codified law". *CNBC*. 9 February 2021.

⁴ "UN officials welcome 'historic' approval of new constitution for Somalia". United Nations News Center (2012). August 2012.

⁵ "Federal Republic of Somalia – Provisional Constitution". *United Nations* (2012).

⁶ Abdul Wahid Sh. Qalinde. Johansson Dahre, Ulf (ed.). *Promoting Rule of Law in an Era of 'Re-Islamization' in Somalia, Part IV in Predicaments in the Horn of Africa (PDF)*. Lund University Press. pp. 331–42.

⁷ Clark Lombardi (2013). "Sharia – A or The Chief Source of Legislation" (PDF). *International Law Review*. American University. 28 (3): 751–53.

⁸ Koendgen, Olaf (2010). Otto, Jan (ed.). *Sharia Incorporated*. Leiden University Press. pp. 181–230. ISBN 978-9087280574.

⁹ "Sudan ends 30 years of Islamic law by separating religion, state", <https://gulfnews.com/world/africa/sudan-ends-30-years-of-islamic-law-by-separating-religion-state-1.1599359147751>

¹⁰ "Sudan scraps apostasy law and alcohol ban for non-Muslims". *BBC News*. 12 July 2020.

¹¹ "Christian Couple in Sudan Faces Possible Flogging for 'Adultery'". 3 May 2022. <https://morningstarnews.org/2022/05/christian-couple-in-sudan-faces-possible-flogging-for-adultery/>

¹² "Syria (Syrian Arab Republic)". *Law.emory.edu*.

Sharia. The Code of Personal Status is applied to Muslims by Sharia courts.¹ In Sharia courts, a woman's testimony is worth only half of a man's.

United Arab Emirates

The United Arab Emirates (UAE) legal system is complex, with dual courts—Shari'ah Courts and civil courts—operating in parallel but covering different areas of the law. In the United Arab Emirates, for example, each Emirate has its own Federal Court of First Instance, though Dubai and Ras al Khaimah have separate judicial frameworks. Shari'ah courts are concerned with civil disputes involving Muslims. To make decisions, they rely on the legal provisions outlined in the Quran and Hadith. The Shari'ah Court may, at the Federal level only (which, as mentioned earlier, excludes Dubai and Ras al Khaimah) also hear appeals of certain criminal cases including rape, robbery, driving under the influence of alcohol and related crimes which were originally tried in lower criminal courts.²

Yemen

Yemen's legal system combines Islamic Law, Napoleonic Law, Customary Law, and English Law. The 1992 Civil Code is a major piece of domestic legislation. Contracts, torts, sales of goods, and inheritance are among the topics covered. The code also specifies the boundaries within which judges may apply Shari'ah and customary law. The Criminal Code includes capital punishment for Islamic hudood offences, such as apostasy and blasphemy. Although this is uncommon. Shari'ah Courts in Yemen apply Islamic Law, while Tribunal Courts apply traditional law.

1.2 In Muslim-minority countries:

Canada

Sharia is explicitly banned in Quebec, Canada, upheld by a unanimous vote against it in 2005 by the National Assembly of Quebec,³ while the province of Ontario allows family law disputes to be arbitrated only under Ontario law.⁴

The law permitting a sharia court was passed in 1991, when Ontario sought to streamline the overloaded court system (and save money) by diverting certain civil cases to arbitration, including arbitration conducted on religious principles.⁵

If both parties agree, the Province of Ontario has authorized the use of Sharia law in civil arbitration. Property, marriage, divorce, custody, and inheritance will all be subject to arbitration. Imams, Muslim elders, or lawyers may serve as arbitrators. In theory, their decisions should not contradict Canadian civil law. But no one will ever know if they do because there is no third-party oversight and no obligation to report decisions. These decisions are reviewable in regular courts.

Ethiopia

Muslims are required to use sharia law for cases regarding marriage, divorce, maintenance, guardianship of minors (only if both parties are Muslims). Also included are cases concerning waqfs, gifts, succession, or wills, provided that donor is a Muslim or deceased was a Muslim at time of death.⁶

India

The All Indian Muslim Personal Law Board (AIMPLB)⁷ had requested Shari'ah Courts to be established throughout the country. In Arabic, the Shari'ah Court is known as Darul Qaza, and it is a counselling or arbitration center rather than a court. These courts are accessible, helpful, informal, and volunteer organizations that provide the poor with quick and low-cost justice. Darul Qaza, which literally means "House of Judgment," is a common term for the Shari'ah Court. A Qazi and Islamic Law scholar who serves as a judge leads an arbitration committee. Darul Qaza is governed by personal law, and each Darul Qaza in the country is run by a personal law board. For example, if a Muslim wishes to divorce, he or she has two options: seek relief through lower courts or through Shari'ah Court. There are lengthy procedures if that individual seeks relief from the lower courts, but if he seeks relief from the Shari'ah Court, he will obtain a remedy as soon as possible. In the

¹ "Syria (Syrian Arab Republic)". *Law.emory.edu*.

² The UAE court system, Dubai, UAE - Consulate General of the United States.
https://web.archive.org/web/20151022020506/http://dubai.usconsulate.gov/emergency_uae_court.html

³ "Quebec gives thumbs down to Shariah law". *CBC News*. 26 May 2005.

⁴ Choski, Bilal M. (14 March 2012). "Religious Arbitration in Ontario – Making the Case Based on the British Example of the Muslim Arbitration Tribunal"

⁵ <https://www.theglobeandmail.com/news/national/life-under-sharia-in-canada/article743980/>

⁶ "Ethiopia". *Law.emory.edu*.

⁷ <https://aimplb.org->

year 2014, Vishnu Lochan Madan v. Union of India,¹ which is a landmark case, the Supreme held the Muslim women find it difficult to obtain justice in India's judicial system, Shari'ah Courts are established to construct on a alternative judicial system to Muslim. There are around 70 Islamic courts or Darul Qaza in India as per the 2021 study,² with the majority located in Maharashtra and Uttar Pradesh. According to the Pew Research study, 74% of Muslims in India support access to religious courts for resolving family issues such as inheritance or divorce.

Philippines

There are sharia trial and circuit trial courts in Mindanao, which is home to the country's significant Filipino Muslim minority.³ Sharia District Courts (SDCs) and Sharia Circuit Courts (SCCs) were created in 1977 through Presidential Decree 1083, which is also known as the Code of Muslim Personal Laws.⁴ Sharia only applies to civil cases involving all Muslims nationwide.

Cases are handled in Bangsamoro and a couple of Mindanao provinces outside the autonomous region by both sharia district and circuit courts, organised into five sharia districts. Outside these areas, sharia-related cases are processed in civil courts under a session from the five sharia districts. All other cases, including criminal ones, are dealt with by local civil courts.⁵

Russia

Sharia courts in Chechnya and Kadar area of Dagestan remained in the past. In respect of other *Sharia* institutes of dispute resolution existing today, their establishment is not stipulated in Russian law. Their decisions have no legal status but they are recognized by Muslims for whom they are often the only option. Quite often such *Sharia* courts take decisions which explicitly contradict Russian legislation. However, the power of traditions and the authority of public opinion effectively disallow Muslims, whose rights are affected by such decisions, to defend their rights in Russian courts.⁶

United States

The *Sharia's* socio-religious emphasis on family structure and the role of women in the family causes problems in American family law courts on multiple levels. In the United States, simply consulting *Sharia* religious codes calls into question important religious doctrine inquiries. Furthermore, Supreme Court decisions prohibit judicially sanctioned coercion of religious practices, and judges are barred from ruling on doctrinal mandates unless there is an independent legal basis for the determination. Thus, judicial entanglement in disputes over religiously-dictated *Sharia* is improper, from the attempt to decode extra-contractual marital terms to calling on *Sharia* cleric as an expert witness to provide context.⁷

In the United States, various states have outlawed *sharia*, or passed some form of ballot measure that prohibits state courts from considering foreign, international or religious law in their decisions. As of 2014 these include Alabama, Arizona, Kansas, Louisiana, North Carolina, South Dakota and Tennessee.⁸

1.3 Shariah Courts in European Countries:

Germany

If neither side possesses German citizenship, German courts may under certain circumstances uphold domestic *Sharia* law based on private international law. Thus, if a Muslim couple from Pakistan moves to Germany without having obtained citizenship, and a divorce occurs, unlike in other Western societies like Canada or the UK, the couple cannot get the divorce done under secular German law but only under *sharia*. Cases like

¹ Vishnu Lochan Madan v. Union of India & others on 7 July 2014, <https://indiankanoon.org/doc/22464727/>

² <https://timesofindia.indiatimes.com/india/majority-of-indian-muslims-support-islamic-courts-study/articleshow/84062710.cms>

³ Oxford Business Group. *The Report: The Philippines 2010*. Oxford Business Group. p. 14. ISBN 978-1907065118.

⁴ "A primer on the Philippine Sharia courts" (PDF). *Asian Institute of Journalism and Communication*.

⁵ "Analysis: Mindanao's uncertain road to peace". IRIN News. 24 October 2012.

⁶ Leonid R. Sykiainen, *SHARIA COURTS: MODERN PRACTICE AND PROSPECTIVES IN RUSSIA*, BASIC RESEARCH PROGRAM WORKING PAPERS SERIES: LAW WP BRP 60/LAW/2015, p 12-14./13-14.

⁷ *Sharia Law in America Courts, American Family Law and Sharia – Compliant Marriages*, <https://www.fedsoc-com-public.s3.amazonaws.com/pdf>.

⁸ Farmer, Liz (4 November 2014). "Alabama Joins Wave of States Banning Foreign Laws". *governing.com*.

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marriage, divorce, and many personal cases cannot be handled under German law in this situation. The outcome in most circumstances must not violate the principles of the German legal system according to the *ordre public*. The only times it can violate the German legal system are situations like for example when a non-citizen Muslim woman wants an equal inheritance but because of the use of sharia law in the German legal system, the woman does not have that choice, no matter if the deceased relative lived in Germany or abroad.¹

United Kingdom

Sharia councils – also known as Sharia courts – have existed in the UK since the early 1980s. The Islamic Sharia Council (ISC)² based in Leyton, East London, was established in 1982. Its website states that it was formed to “solve the matrimonial problems of Muslims living in the United Kingdom in the light of Islamic family law.”³

The Muslim Arbitration Tribunal (MAT) was established in 2007 to provide, according to its website, “a viable alternative for the Muslim community seeking to resolve disputes in accordance with Islamic Sacred Law”.⁴

While there are undoubtedly lots of different councils and tribunals dealing with Sharia principles, they aren't courts of law.

Most are Sharia 'councils' set up to make decisions on purely religious matters, although there are some bodies that mix Sharia principles with legally binding arbitration. But none can overrule the regular courts.⁵

England and Wales: Sharia councils, which have no legal status and no legal jurisdiction, are consulted by many Muslims as a source of religious guidance and as an instance granting religious divorces.⁶ Likewise, Muslim Arbitration Tribunals are afforded limited recognition as purveyors of arbitration.

However, there are concerns that Sharia councils may be establishing legal precedents.⁷ According to Amin Al-Astewani, a law lecturer at Lancaster University, the law does provide some avenues for decisions made by Sharia councils to accrue legal status. While the courts retain sole authority over legally-binding judgements, couples who have a religious but not a civil marriage might find themselves to be in a contractual relationship when it comes to any financial agreements that, for example, relate to dowries or other financial settlements agreed in the marriage contract or *nikah*.⁸

In *Shahnaz v Rizwan* (1965) the plaintiff claimed a payment of £1,400 as the Sterling equivalent of the deferred dower specified in an Islamic marriage contract, payable on the dissolution of the marriage, which occurred when the husband divorced the plaintiff by *talaq* (verbal revocation of the marriage). The Judge upheld the plaintiff's claim on the grounds it was based on a recognised contractual obligation.

In *Uddin v Choudhury & Ors* (2009) a court was prepared to accept evidence of an arranged marriage under Sharia law for the purposes of civil proceedings that related to a dispute over the return of the dower to the wife's family, and whether gifts made to the wife should be returned to the groom's family.⁹

2. The challenges of establishing Shari'ah courts in Bangladesh:

The following factors are responsible for the inability to introduce Shari'ah courts in Bangladesh–

(a) **Constitutional Complication:** The Bangladesh Constitution is largely based on the Indian Constitution, which is modeled after the British Constitution and both the criminal and civil laws of this state are secular and universal. State legislation has no influence on religion. The Penal Code, the Criminal Procedure Code, and the Civil Procedure Code are primarily responsible for governing the court system of Bangladesh. The legal system is available everywhere. There is no judicial division based on religion. Sharia law or Shari'ah courts governed by state law that follow religious orders do not exist. Different applications of the law based on religious or other grounds are viewed as violations of the Bangladeshi constitution and laws.

¹ "Sharia Courts in Western Democracies? – An Interview with Manfred Brocker". November 2012.

² <https://www.islamic-sharia.org/aboutus/>

³ <https://researchbriefings.files.parliament.uk/documents/CDP-2019-0102/CDP-2019-0102.pdf>

⁴ <https://www.matribunal.com/home>

⁵ <https://fullfact.org/law/uks-sharia-courts/>

⁶ "The independent review into the application of sharia law in England and Wales" (PDF). *UK Government*. 2018. p. 4.

⁷ National Secular Society, SHL0016, para. 8.

⁸ Amin Al-Astewani, SHL0027, para. 5.

⁹ *Al-Midani v Al-Midani* (1999) was the first ever reported case to consider the legal status of a Sharia council. The Judge's assessment was as follows: "The bench of the Shari'a Council would seem to provide a welcome facility to the Muslim community of the UK to render decisions on Islamic law, particularly in the matrimonial and family sphere. Its authority appears to rest largely on consent, in as much as it responds to the needs of the community it serves, but it may be that under Shari'a law it has autonomous power, as a religious court, to promulgate decisions in favour of a claimant even against the will of a respondent."

(b) **Defects in existing education system:** In our nation, there are two contradictory educational systems. The first is traditional madrasa education, and the second is general education. The former one calls itself 'Islamic education', while the later boasts of 'modern education'. The Quran, Sunnah, Fiqh, and other topics are covered in Madrasa education, but there is little chance for students to use modern knowledge and science. Consequently, they lack a thorough understanding of the contemporary nature and dynamics of all the issues affecting many facets and areas of human life. As a result, they are unable to have a long-term perspective on how to actually apply the just and truthful solutions to lifestyle difficulties that are found in the Quran and Sunnah. They are therefore unable to significantly contribute to satisfying the needs of the modern world with their education and experience, despite their lengthy and arduous quest of knowledge.

On the other side, people who receive a 'modern education' might learn the skills they need to succeed in the modern world, but they lack the desire to lead a truly Muslim life. They essentially evolved a nearly non-Muslim way of thinking and acting.

Another factor that must be taken into account is the fact that the majority of individuals who decorate the administration of our nation are educated in modern education and frequently lack access to or are unaware of Islamic education. Therefore, it is a significant flaw and issue in education. People who fully commit to Islam and establish themselves as true Muslims outside of the mainstream educational system are still the exception in society even after receiving this knowledge.

(c) **Absence of political support:** Bangladesh has a large number of political parties, although they are primarily split into two groups-

(i) At the national level, one group is vehemently opposed to the application of Islamic law, but not so much at the individual level. Their propagandists promote false information about Islam and the Islamic state system in an effort to block the application of Islamic law to all facets of governance in this land.

(ii) The other group is in favour of enforcing Islamic law. Despite their sincere intentions, they are unable to realize their dream because there is no political platform to back them up.

This dual political character stands in the way of institutionalizing the Islamic justice system and creating Islamic law and justice in this nation.

(d) **Religious disunity among most of the Islamic activists:** The Islamic activists who desire to see Islam as a successful ideal in Bangladesh may appear to be united in their comments, publications, and slogans, but in actuality they are divided into several groups, sects and factions. They are unable to take on any significant roles in the political sphere as a result. It is difficult to portray Bangladesh as an ideal Islamic state because of their division. So all Muslims should be united although there are different schools of thought.

(e) **Inactive stance of the Islamic educational institutions:** The terms 'Aliya' and 'Qawmiya' refer to madrasa education systems and Islamic education, respectively, in Bangladesh. In fact, the topics on Islamic justice system that are taught in these educational institutes are not enough for progressive and advanced execution. Because of this, most graduates with advanced degrees from these institutions occasionally have a fragmented concept of the Islamic state and administration. Eventually, they are also unable to adequately convey the idea of the Islamic judicial system to the public in their capacity as representatives of Islamic educational institutions, which is another major issue.

(f) **Flaws and abuse of traditional laws:** Except for a few exceptions, almost all of the laws in Bangladesh are of British origin. While this law has flaws, it also has some positive aspects. However, in many cases, these laws have no practical application and are abused in exceptional circumstances. As a result, even if the Islamic state is established, many people are skeptical of how much it will be able to contribute to the general populace. One reason for this is that Islamic law has long been neglected at the social and state levels.

(g) **Lack of a thorough comprehension of Islamic law and judicial system:** The students of general laws in Bangladesh lack in the knowledge regarding the Islamic law or the Shari'ah based judiciary. Even if there is rudimentary instruction in Islamic law and the legal system at some level, it is utterly insufficient in light of the demand. As a result, they continue to be insufficient informed about Islamic law and the judicial system. The overall populace is negatively impacted by it.

(h) **Failure to demonstrate the completeness and accuracy of Islamic law:** The Islamic parties are unable to convince the general public that Islamic law can govern a modern, worldwide society made up of various religious nations and communities. As a result, people are uncertain, afraid, doubtful, and ignorant.

(i) **Propaganda of the anti-Islamic media:** After five hundred and seventy extended years since Hazrat Isa (AS) left this world, Hazrat Muhammad (PBUH) made an auspicious appearance. Since there was no Prophet-Messenger during this period of time, the general populace was ignorant of the monotheism of Allah, His Messenger, and the Hereafter, and the devil's temptation caused them to harbor doubts. At the same time, the defeat of the Muslim population of this subcontinent in the Battle of Plassey in 1757 threatened the existence of a sovereign state, the Islamic state system was essentially gone and the anti-Islamic media kept on disseminating false information about Islam, particularly regarding Islamic law and justice—a practice that is

still prevalent today. Because of this, a sizable portion of the population is perplexed about the Islamic way of life.

(j) **Unusual court fees:** The current legal system has very strict rules regarding court costs. Many impoverished and destitute litigants cannot file lawsuits because they cannot afford the court fees, let alone receive justice. By having a judiciary that is so rigidly stringent, justice cannot be served.

(k) **Confusing official language of the court:** In the administration of justice, court language plays a crucial role. The courts in our nation are required to record cases, decisions, etc. primarily in English, regardless of the court's official language. The case management is drawn out since most judges find it difficult to understand the obscure words of a foreign language.

3. Recommendations for establishing shariah courts in Bangladesh:

- In our constitution Article 41 provides freedom of religion. According to Article 41 of the Constitution of the People's Republic of Bangladesh–

Freedom of religion

(1) Subject to law, public order and morality –

(a) every citizen has the right to profess, practise or propagate any religion;

(b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.¹

Thus, religious activities are not prohibited in Bangladesh. Marriage, divorce, alimony, and property inheritance are all triable and disposable in regular courts in Bangladesh. The establishment of Shari'ah courts does not conflict with the Bangladesh Constitution.

Given the foregoing facts and issues, it is necessary to establish Shari'ah Court to implement the Islamic laws that are regulated in our country, and the Constitution of the People's Republic of Bangladesh may be amended to that end.

- The faith of Islam is a gift of Allah to all people. Thus, both national laws and constitutional requirements must be based on Islamic Shari'ah. There are just a few instances where the constitution and Shari'ah conflict, and those instances may be resolved with wise amendments.

- Islamic education is originally established on the basis of the Holy Quran and Sunnah, which are enriched with the provisions of spiritual correction and moral instruction. It is important for the government to implement a drastic change in the present educational system. The development of the educational curriculum should incorporate both Islamic and contemporary knowledge.

- The welfare of the general populace must be the main priority for both the ruling and opposition parties, not internal conflict. Both the government and the opposition should co-operate for the sake of the general population.

- In order for the public to comprehend the advantages of Islamic law, the head of state and the people should work together on a common front.

- Islamic leaders must remain tolerant to their opponents when making public remarks based only on the holy Quran and Hadith.

- Islamic educational institutions must be operational if the incomprehensible concepts of Shari'ah law are to be spread.

- In order to eradicate superstitious misconceptions, Islamic groups must educate the public. Publications that explain Islamic Shari'ah should be distributed by the government. Free Islamic education that is available to everyone and coordinated by the government is needed to combat anti-Islamic propaganda.

- The flaws that exist in the current legal provisions must be troubleshot.

- Legal aid should be provided at no cost to those with less privilege.

- A common language, preferably the national language, should be utilized in court procedures to make them more legible.

Conclusion: All facets of the human life cycle are covered by Islamic teachings. It is imperative to follow the rules set out by Omnipotent Allah in order to ensure universal human rights, justice, and peace. If there are crime-triggering factors present, such as a severe lack of basic necessities like food, clothing, and shelter, a Shari'ah court cannot punish the perpetrator. For instance, amputating the hands of a thief for stealing is to be waived during times of poverty and starvation. Shari'ah law is concerned not only with the harmful effects on the body but also with the effects those consequences have on society and morality. Addressing the cause of the crime, it seeks to prevent its occurrence leading to eradication or reduction of criminal offences. Moreover, Shari'ah law cannot impose a responsibility without also offering a matching right because rights and

¹ Article 41, The Constitution of the People's Republic of Bangladesh (Act No. 1972).

obligations are mutual in nature. Additionally, a Shari'ah court does not differentiate between the rich and the poor or the strong and the weak. In a Shari'ah Court everyone is treated equally beyond discrimination of colour, sex, cast and religion to ensure universal justice, peace and security. There must be separate and documented procedural regulations governing the matters that Islamic Shari'ah courts can adjudicate in Bangladesh.

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