

The Islamic Legal and Cultural Influences on
Britain's Shari'a Councils

by

Shahwiqar Shahin

School of Advanced Study, University of London

December 2023

Table of Content

Abstract	vii
Acknowledgement	viii
Dedications	xi
Introduction	1
Aims and Objectives.....	7
Research Methodologies.....	7
Breakdown of the Chapters	9
Transliterations, Translations, and the Dating System Used in this Thesis	12

Part 1: Perspectives and Methodologies

Chapter 1: Literature Review	16
1.1 Introduction	16
1.2 Context.....	17
1.3 Tradition	20
1.4 Conversations, Criticisms, and Concerns.....	27
1.4.1 Perception of Shari’a, Islamic Law and Shari’a Councils Among the British Establishment	28
1.4.2 Perception of Shari’a, Islamic Law and Shari’a Councils Among Muslim Women	30
1.4.3 Perception of Shari’a, Islamic Law and Shari’a Councils Among Women’s and Human Rights Campaigners	34
1.5 Challenges	39
1.6 Conclusion	48
1.6.1 Contribution to the Literature	50
Chapter 2: Research Methods	53
2.1 Introduction	53
2.2 Evaluating the Research Methodologies	54
2.3 Advantages of Using Grounded Theory as a Research Methodology for This Study	55
2.4 Defining the Research Questions	58
2.5 Approaching Shari'a Councils for This Study (Engaging the Research Group).....	59
2.6 Challenges	60
2.7 Going into the Field: How the Data Was Collected.....	64

2.8 Qualitative Data: Interviews with the ‘Ulamā.....	64
2.9 Quantitative Data: Extracting Data from the Shari’a Council Archives.....	66
2.10 Ethical Considerations.....	69
2.11 Analysing the Data.....	69

Part 2: Pathways and Practices

Chapter 3: The Dār ul-Qazā: The Archetype for Shari’a Councils in Britain..... 75

3.1 Introduction	75
3.2 The Deobandi Movement	76
3.3 Jami’ at al-‘Ulama-i-Hind: The Political Wing of the ‘Ulamā of Deoband	81
3.3.1 Maulana Abul Kalam Azad: The Founding Father of India’s Dār ul-Qazā	82
3.3.2 Maulana Abul Mohsin Mohammad Sajjad	86
3.4 British Colonial Roots of Islamic Law in South Asia.....	90
3.5 The Dār ul-Qazā and Islamic Law in Post-Independent India.....	92
3.5.1 The All-India Muslim Personal Law Board (AIMPLB)	93
3.5.2 Article 44: India’s Uniform Civil Code.....	95
3.5.3 The Dūr ul-Qazā in Twenty-First Century India.....	97
3.5.4 Muslim Women: The Dūr ul-Qazā’s Largest Client Base	98
3.5.5 Criticism of AIMPLB and the Dūr ul-Qazā.....	99
3.5.6 Feminist Responses to the Dūr ul-Qazā.....	100
3.6 Conclusion.....	104

Chapter 4: The Immigration and Settlement Patterns of Muslims in Britain..... 106

4.1 Introduction	106
4.2 Britain’s Immigration Policies and the British Muslim Demographic	106
4.3 Islamic Legal Pluralism in Britain.....	109
4.4 Muslim Settlement Patterns in Scotland, Northern Ireland, England, and Wales	118
4.5 Settlement Patterns of Muslims in England and Wales	123
4.6 The Pakistani Birādarī and Bengali Gūshtī Systems.....	127
4.7 British-Born Muslims	130
4.8 Creating a Home Away from Home: The British Muslim Identity	133
4.9 The Laws of God vs the Laws of the Land	133
4.10 British Muslims: Keeping the Faith	135
4.11 The British Values of British Muslims.....	136

4.12 Fiqh al-Aqalliyāt: Islamic Jurisprudence for Minorities	137
4.13 Sunni Legal Rulings and Opinions on Muslims Living as Minorities.....	142
4.14 Muslims Living in Postmodern Secular Britain.....	143
4.15 Conclusion	146
Chapter 5: Ijtihād, Taqlīd, and Istiṣhāb: Reasoning, Servility, and the Continuity of Islamic Law	149
5.1 Introduction	149
5.2 Ijtihād and the Theories of Islamic Law (Uṣūl al-Fiqh).....	149
5.3 The Etymology of Ijtihād	152
5.3.1 <i>Ijtihād Bayānī</i> : Explaining Selected Text from the Qur’an or Hadith.....	154
5.3.2 <i>Ijtihād Qiyāsī</i> : The Ijtihād of Analogical Reasoning (<i>Qiyās</i>).....	156
5.3.3 <i>Ijtihād Istiṣhābī</i> : The Ijtihād that Is in the Public’s Interest (<i>Maṣlaḥa</i>)	157
5.4 Perceptions of Islamic Law and Ijtihād in the Modern West.....	158
5.5 The Closure of the Gates of Ijtihād: Rebuttal and Debunking Myths.....	160
5.6 The Etymology of Taqlīd	163
5.7 Between Ijtihād and Taqlīd	164
5.8 Ijtihād, Taqlīd, and the Continuity of Islamic Law in Britain.....	167
5.9 Conclusion.....	173
Part 3: Analysis of the Data	
Chapter 6: The Formative Years of Shari'a Councils in Britain	177
6.1 Introduction	177
6.2 Prof Mohammed Aboulkhair Zaki Badawi (1922-2006).....	177
6.3 Islamic Shari’a Council and the Muslim Law (Shariah) Council	187
6.4 Conclusion	190
Chapter 7: Islamic Legal Precedents and Their Applications in Shari’a Councils	193
7.1 Introduction	193
7.2 Islamic Marriage.....	194
7.2.1 The Bridal-Gift (<i>Mahr/Ṣadāq</i>).....	195
7.2.2 The History, Etymology, and Difference Between <i>Mahr</i> and <i>Ṣadāq</i>	196
7.3 Islamic Divorces	198
7.3.1 Talaq.....	198
7.3.2 The ‘Idda: The “Islamic Decree Nisi”	201
7.3.3 Khula	204

7.3.4 Faskh (Annulment)	211
7.3.5 <i>Talaq Tafwīz</i> : The Difference Between <i>Takhyīr</i> and <i>Tamlīk</i>	213
7.4 Shari’a Council Services: Islamic Divorces	218
7.4.1 Preliminary Paperwork Required for Talaq and Khula Applications	221
7.4.2 Reconciliation Efforts: Their Effects and Uses in the Islamic Divorce Process	223
7.4.3 Islamic Divorce Cases Requiring the Consensus of a Shari’a Council	228
7.4.4 The Organisational Structure of Shari’a Councils	230
7.4.5 Inter-Legal and Transnational Challenges	233
7.4.6 Shari’a Councils’ Consensus: How Decisions are Reached	242
7.4.7 Eligibility Criteria for a Shari’a Council Panellist	244
7.4.8 Working with Other Shari’a Councils	246
7.5 Shari’a Council Services: Islamic Marriages	247
7.5.1 The Benefits of Shari’a Councils’ Islamic Marriage Services to Young British Muslims	248
7.5.2 Young, Single Muslims: Advice Offered by Shari’a Councils	249
7.5.3 Differences of Opinions among Shari’a Councils Regarding Islamic Marriages: The Role of the <i>Walī</i>	250
7.6 Shari’a Council Services: Consultancy	253
7.7 Conclusion	254
Chapter 8: Shari’a Councils and the Sunni Legal Schools	258
8.1 Introduction	258
8.2 Which of the Four Popular Sunni Legal Schools Do Shari’a Council ‘Ulamā Follow?	259
8.3 Which of the Four Popular Sunni Legal Schools Do British Muslims Follow?	264
8.4 Conclusion	266
Chapter 9: Exploring the Methods of Ijtihād: An Analysis of the Decision-Making Processes Used by Shari’a Councils’ ‘Ulamā in Case Adjudication	269
9.1 Introduction	269
9.2 Ijtihād Bayānī: The Ijtihād of Interpretation	271
9.3 Ijtihād Istiṣlāhī: The Ijtihād That Is in the Public’s Interest	276
9.4 Conclusion	278
Chapter 10: An Analysis of Shari’a Councils within the English Legal Context	281
10.1 Introduction	281
10.2 The Historical Context and Legal Pluralism: Conflicts Between Islamic and State Laws	282
10.3 Islamic Law and the British Human Rights Act 1998	285
10.4 Unravelling Britain’s Inconsistent Policies with Islamic Law	287

10.5 Inadequate Legal Advice Provided by Solicitors	289
10.6 State Legislators Making Concessions for Other Religious Laws in Britain.....	290
10.7 The Impact of Islamic Family Law’s Null Legal Status on British Muslims	293
10.7.1 Congruences Between the British and Islamic Legal Systems: Efforts to Help British Muslim Women	295
10.7.2 Congruences Between the British and Islamic Legal Systems: Curtailing Polygamy in Britain.....	300
10.7.3 Incongruences Between the British and Islamic Legal Systems: The Bridal-Gift (<i>Mahr/Ṣadāq</i>)	303
10.7.4 Incongruences Between the British and Islamic Legal Systems: A Decree Absolute Does Not Fulfil the Requirements of an Islamic Divorce.....	305
10.7.5 Incongruences Between the British and Islamic Legal Systems: Civil Family Law Services Are Expensive Compared to Islamic Legal Services	306
10.7.6 Incongruences Between the British and Islamic Legal Systems: Parallel Legal Systems Play Against Community Cohesion Efforts	309
10.8 Conclusion	311
Epilogue.....	314
Appendices.....	325
Appendix 1: Glossaries.....	325
Arabic Glossary	325
Urdu Glossary.....	342
Bangla Glossary	345
Appendix 2: IJMES Transliteration Systems	346
IJMES Transliteration System for Arabic.....	346
ALA-LC Romanisation System for Urdu	347
Appendix 3: Questionnaire.....	348
Appendix 4: Classic Islamic Legal Works	379
Appendix 5: Islamic Law and Education in Medieval and Pre-Modern India.....	387
Bibliography	395

Abstract

This study investigates the Islamic legal and cultural influences on Britain's shari'a councils. Shari'a councils emerged from within Britain's diverse Muslim communities as informal Islamic family legal forums that mediate matrimonial disputes in accordance with Sunni jurisprudence. While existing literature on shari'a councils offers anthropological, feminist, and English legal perspectives and their implications for women's rights, this study contributes to the field by providing detailed insights from the 'ulamā (Islamic scholars) serving on these councils. The study focuses on the Islamic epistemologies employed by the 'ulamā and the multifaceted challenges they face when addressing the spiritual and societal needs of British Muslim families.

Using the methods of Informed Grounded Theory, this study offers new insights and refines existing theories presented in the literature. The study highlights how the 'ulamā on these councils, contrary to presumptions of their adherence to the *Hanafi* legal tradition, employ the Islamic legal principle of *takhayyur*, which involves selecting the most suitable (*munāsib*) ruling from among the four popular Sunni legal traditions: the *Hanafi*, *Shafi'i*, *Maliki*, and *Hanbali* schools of jurisprudence. The study also explores how this articulation of Islamic legal pluralism and the presence of various pan-Islamic movements in Britain have influenced shari'a councils' services. The study also reveals how most British Muslims' steadfast adherence (*taqlīd*) to Sunni orthodoxy has not only facilitated the development of shari'a councils in Britain but has also sanctioned the androcentric power dynamics operating within these councils.

The study also examines how the religious and cultural illiteracy of British family solicitors often leads to misguided legal advice, which can complicate and endanger the lives of British Muslim women. To address these deficiencies in the British civil services and mitigate the androcentric power dynamics within shari'a councils, the study recommends the strategic inclusion of female legal experts who specialise in transnational marriages, thereby augmenting women's agency in both the Islamic and British judicial processes. The study concludes by highlighting how shari'a council 'ulamā are uniquely placed to assess the efficacy of the religious rulings found in the classic Sunni legal works for Muslims who choose to live as minorities within a postmodern, secular, multicultural, and multi-faith society.

Acknowledgement

When I embarked on this research, my initial gratitude, tinged with an element of naïveté, was directed towards the good Lord for granting me this opportunity, and towards Heythrop College for accepting me as their doctoral candidate. But with each step along this journey, a truth began to emerge: a doctoral research is not merely a path to a higher station in life - it is a voyage of self-discovery and reflection.

Ideas and experiences that challenged me became moments for reflection, while those I took for granted revealed themselves to be unforeseen impediments. Amidst this current of change, those who had claimed to have my best interests at heart stepped aside - in their absence, others stepped in. Their words of encouragement, belief in me, and unwavering support instilled in me the fortitude to persevere and achieve my goal.

Among those to whom I extend my gratitude is Professor John R. Bowen, whose role in my journey has been both inspiring and humbling. It is incredible to think that the very person whose work inspired my research on shari'a councils became my external supervisor. Despite his busy schedule, his feedback, advice, and time have been invaluable. I deeply appreciate his support and will always treasure it. My appreciation also extends to my internal supervisor, Dr. Ahmad Ahtar, with whom I was able to refine my ideas into a set of objectives. His input was invaluable in shaping the direction of my work.

I am equally indebted and profoundly grateful to Professor Michael Barnes SJ. As the Dean of Research, he has consistently been an unfailing pillar of support, championing my cause and offering invaluable guidance to overcome the challenges that emerged during my research. Beyond his official capacity, his mentorship and friendship have guided me along the path of interfaith dialogue, which has had a positive impact on my life and enriched my understanding of various faiths and cultures. His unwavering support and wise counsel are qualities I aspire to embody when assisting others.

Special recognition is due to Dr. Rajnaara Chowdhury Akhtar for identifying my strengths and guiding my potential. Her tactful approach in pointing out areas for improvement has been immensely valuable.

I am also deeply thankful to the ‘ulamā who participated in this study. My engaging conversations with these esteemed scholars, where questions flowed freely from both sides, proved to be an enriching and enjoyable aspect of my journey. These exchanges, where the currents of conservatism and progressivism converged, have left an indelible mark. It was equally encouraging to hear an ‘ālim expressing their appreciation of this thesis, recognising its nuanced approach to the study of fiqh and its significance for British Muslims.

I would also like to extend my heartfelt gratitude to those who have enriched my academic journey. I am sincerely thankful to Dr. Doreen Hinchcliffe and Dr. Sally Graham for welcoming me onto their courses, and to Dr. Mohammad Ibrahim Darwish for his friendship and guidance. Moreover, the support and assistance provided by the staff at Heythrop College and the School of Advanced Study during my journey are truly appreciated.

I hold a special place in my heart for my childhood friend Shaban Siddik, his wife Sarah Bibi, and their children—Hamza, Hasan, Hafsa, and Husayn. Amid the isolation of research, their home became a haven of solace and companionship. Their patience in entertaining my reflections, even involving their children to chime in on my theological ramblings, brought a welcome splash of humour to my journey. Your hospitality, warmth, and patience have been a soothing balm for the solitary hours of research. Thank you for enriching my experience in such meaningful ways.

I would also like to express my thanks to my elder brother, Shahnawaz Shahin, his wife Sabeen, and their two boys - our family’s guardian angels - Slavik and Shawaiz. Throughout the long and solitary years of my research, the presence of these two young souls has been a consistent source of profound warmth and joy. The boundless energy, insatiable curiosity, and warmth radiating from

our two guardian angels have not only provided me with comfort, but there is no denying that their presence and their pure, unselfish, unconditional love have woven their way into the very fabric of my thoughts, shaping my research and infusing it with a profound sense of purpose and humanity. Thank you for being a source of joy during this challenging journey.

I offer my deepest gratitude and love to my mother, Shahnaaz Shahin. Her unwavering love, countless sacrifices, nurturing nature, and ceaseless prayers have sustained me. Her reminders of my capabilities and the indomitable “never give up” spirit she instilled in me have guided me through the darkest hours. Her voice, echoing the wisdom of the Prophet Muhammad, “If God wants to do good to somebody, He afflicts them with trials,” serves as an enduring reminder to persevere regardless of the obstacles.

Lastly, but of the utmost significance, is my heartfelt appreciation for my younger brother, Bilal Rasool Shahin. His presence brings tranquillity and purpose to my life, and his sincerity and simplicity fills me with hope for the future. Words fail to convey the depth of my gratitude to the Almighty for blessing my life with him. It’s true what people say when they first meet him: “He’s the real deal! He is where it’s at!” May the Almighty protect and preserve Bilal, shielding him from harm, and may he always be surrounded by those who bring him happiness. Ameen.

With gratitude and humility.

Shahwiqar Shahin

Dedications

In tribute, I dedicate this thesis to the cherished souls who are sadly no longer with us: Professor Abdul Ali Hamid al-Azhari (1943-2021), Professor Mohammed Aboulkhair Zaki Badawi (1922-2006), Moulana Dr. Mohammad Shahid Raza Naeemi (1950-2021), and Dr. Fuad Nahdi (1958-2020).

Introduction

Throughout history, Muslims around the world have sought to live their lives in accordance with the will of God - a divine will that Muslims infer from the Qur'an and exemplified by the Prophet of Islam, Muhammad. This commitment is shared by Muslims in Britain, irrespective of their ethnic, racial, economic, and cultural backgrounds, as well as their varying degrees of religiosity.¹ Whether they are temporary visitors or settled citizens, Muslims in Britain often ask themselves the question: Can I practice my faith in this country?

Before the Second World War, Muslims were a visible presence in Britain, although they did not have a significant impact on the lives of native Britons or the country's political landscape. The majority of Britons were unfamiliar with the beliefs and customs of these early Muslim settlers, who resided near seaports and in cosmopolitan cities and were viewed as an exotic feature of modern industrial Britain.² In all their ethnic and cultural diversities, some of these early Muslim settlers sought ways to fulfil their religious obligations.³ Together, they established institutions and provisions that facilitated the fulfilment of certain religious obligations, such as provisions for halal meat and establishing mosques for congregational prayers.

After the Second World War, the British Government enacted the *Nationality Act 1948* to aid in the reconstruction of Britain. Under this legislation, workers from the Commonwealth were granted the status of *Citizens of the United Kingdom and Colonies*.⁴ Seizing the opportunity for employment

¹ Rajnaara Chowdhury Akhtar, 'British Muslims and Transformative Processes of the Islamic Legal Traditions: Negotiating Law, Culture and Religion with Specific Reference to Islamic Family Law and Faith Based Alternative Dispute Resolution' (unpublished PhD, The University of Warwick, School of Law, 2013), p. 51 <<http://go.warwick.ac.uk/wrap/57689>>.

² Humayun Ansari, *The Infidel Within: Muslims in Britain Since 1800: The History of Muslims in Britain, 1800 to the Present* (London: C Hurst & Co Publishers Ltd, 2004), pp. 24–28.

³ Sophie Gilliat-Ray, *Muslims in Britain: An Introduction* (Cambridge; New York: Cambridge University Press, 2010), p. 24.

⁴ His Royal Highness George VI, *British Nationality Act 1948*, 56, 1948, 1(2) <<http://www.legislation.gov.uk/ukpga/Geo6/11-12/56/enacted>>; John R. Bowen, *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils* (Princeton; Oxford: Princeton University Press, 2016), p. 10.

and to support their families, many young Muslim men from rural parts of South Asia responded to Britain's invitation. Village elders in South Asia, who were leaders of their *birādarī* and *gūshṭī* communities,⁵ devised a labour strategy that benefited their villages. These village elders organised for their young men to travel to Britain and work as itinerant labourers, living frugally in shared accommodations. Each of these itinerant workers would then send remittances back to their families. After some time, village elders would arrange for a new group of young men from their villages to replace their kinsmen in Britain, thus ensuring a continuous flow of remittances from abroad to their villages.

Muslim workers from South Asia initially had no intention of staying in Britain for the long term. However, their plans were disrupted when the British Conservative Party introduced the *Commonwealth Immigrants Act 1962*, which aimed to reduce the intake of overseas workers.⁶ Although Muslim workers who arrived in Britain before the enactment of the *1962 Act* were exempt from these new regulations, they no longer expected their village kinsmen to replace them. In order to protect their family's reputation within their *birādarī* and *gūshṭī* communities, many Muslim workers chose to remain in Britain, prioritising the welfare and honour (*izzat*)⁷ of their families. These newly settled Muslim workers were unwilling to accept the prospect of living apart from their wives and children indefinitely. The *1962 Act* placed immense emotional burdens on these Muslim male workers and posed a threat to the terms of their Islamic marriage agreements.

To understand the moral dilemma posed by the *1962 Act* to South Asian Muslim workers in Britain, we must look to their Islamic legal and moral precedents found in the classic Islamic legal

⁵ The terms *birādarī* in Urdu and *gūshṭī* in Bangla describe South Asian stratified clan systems where the relationship between its members are defined by their religious, genealogical, and geographical ties. See: Mohammad Jasim Uddin, *The Micro-Politics of Microcredit: Gender and Neoliberal Development in Bangladesh* (Abingdon, UK; New York, USA: Routledge, 2015), p. 69; Dilwar Hussain, Mohammad Siddiqui Seddon, and Nadeem Malik, *British Muslims Between Assimilation and Segregation: Historical, Legal and Social Realities* (Markfield: The Islamic Foundation, 2004), p. 15.

⁶ David Pearl and Werner Menski, *Muslim Family Law*, 3rd edition (London: Sweet & Maxwell, 1998), p. 60.

⁷ "عزت" in John Thompson Platts, *A Dictionary of Urdu, Classical Hindi and English (1884 Edition)*, Urdu, English and Hindi Edition, London 1884 (London: Munshiram Manoharlal (Reprint 2004), 1884), p. 1554.

work, the *Hidāyah*.⁸ The *Hidāyah*, which translates as *guidance*, is a comprehensive legal compendium of the *Hanafi* legal school and is one of the primary sources of Islamic law for Muslims of the subcontinent.⁹ The *Hidāyah* sets out several sanctions against Muslim men who do not meet their family responsibilities. Should a man fail to provide maintenance (*nafaqa*)¹⁰ and accommodation (*īwā'*)¹¹ for his wife and children, the *Hidāyah* declares “it behoves him to divorce her; and if he declines so to do, the Kazeer¹² is then to effect the separation as his substitute.”¹³

When the period of separation between a Muslim couple is indefinite, Islamic scholars (*‘ulamā*)¹⁴ question the viability of their Islamic marriage, with accusations of estrangement (*wahsh*) and continence (*īlā'*) levied against the husband. Along with looking after their immediate families’ welfare, the *Hidāyah* also draws Muslim men’s attention to their duty towards their extended families, ensuring that none of them fall into poverty.¹⁵

As a cultural and religious point of reference for South Asian Muslims, the *Hidāyah* outlines the steps they should take when faced with the terms of the *1962 Act*. Most working Muslim men in Britain felt a sense of duty to remain in the country for the sake of their families’ welfare. For those who remained, the *Hidāyah* beckoned them to bring their wives and children to Britain in order to fulfil their marital obligations.¹⁶ Fortunately, the *1962 Act*’s family reunification programme availed a pathway for these marooned Muslim workers to bring their wives and children to join them in Britain.¹⁷

⁸ Full title: *al-Hidāyah fī Sharḥ Bidāyat al-Mubtadī fī al-fiqh al-Ḥanafī (The guidance in explaining the introductory manual of the laws of the Ḥanafī legal school)*.

⁹ Wael B. Hallaq, *Sharia: Theory, Practice, Transformations*, 1st edn (Cambridge, UK; New York: Cambridge University Press, 2009), p. 374.

¹⁰ See “نفقة”, in Hans Wehr, *Dictionary of Modern Written Arabic: Arabic-English*, ed. by J. M. Cowan, 3rd edn (Ithaca, New York: Spoken Language Services Inc, U.S, 1976), p. 987.

¹¹ “إيواء”, in Wehr, p. 36.

¹² “كازير”, in Platts, p. 1603.

¹³ Burhan Al-Din Al-Marghinani, *The Hedaya, or Guide 4 Volume Set: The Hedaya, or Guide: A Commentary on the Mussulman Laws: Volume 4*, trans. by Charles Hamilton (Cambridge: Cambridge University Press, 2013), p. 142.

¹⁴ Sin: ‘*ālim* (علم), Pl: ‘*ulamā* (علماء). See “علم”, in Wehr, p. 636.

¹⁵ Al-Marghinani, pp. 147–48.

¹⁶ Al-Marghinani, p. 215.

¹⁷ Elham Manea, *Women and Shari’a Law: The Impact of Legal Pluralism in the UK*, 1st edition (I.B. Tauris, 2016), pp. 37–38.

This programme served as a catalyst for a second significant wave of Muslim immigration from South Asia,¹⁸ specifically from the Mirpur district of Kashmir and the Sylhet district of Bengal.¹⁹

During the late twentieth century, the British Muslim population experienced an exponential growth, with estimates rising from around 50,000 in 1961 to 226,000 in 1971 and further increasing to 553,000 in 1981.²⁰ These figures comprise Muslim families who settled in England's inner cities and factory towns in the north of the country.²¹ As the British Muslim population grew, the existing infrastructure of mosques and halal meat provisions no longer sufficed. By the late 1970s, first-generation British Muslims of South Asian descent felt there was a need to preserve their families' religious and cultural identities "through effective transmission to future generation."²² Among the measures first-generation Muslims took to preserve their *birādarī* and *gūshṭī* in Britain was to arrange the marriages of their children to extended family members living overseas. In their endeavours to keep their children within their own community, some first-generation British Muslim parents instilled in their children the belief that the key to a successful Islamic marriage is to find a spouse who shares similar (*kafā'*)²³ cultural and religious values. Through this strategy, first-generation British Muslims sought to ensure that their children remained connected to their own people, fostering a sense of identity and belonging within their culture and society.

However, Muslims born in Britain questioned the cultural context to which their parents refer. Do their parents nostalgically refer to the culture they grew up in, or do they acknowledge the British social environment in which their children were born and raised? First-generation Muslim parents who foist their native cultural norms and beliefs upon their British-born children may find themselves

¹⁸ Pearl and Menski, p. 60.

¹⁹ John R. Bowen, pp. 12–15.

²⁰ Ceri Peach and Richard Gale, 'Muslims, Hindus, and Sikhs in the New Religious Landscape of England', *Geographical Review*, 93.4 (2003), 469–90 (p. 479).

²¹ John R. Bowen, pp. 11–14.

²² Humayun Ansari, p. 344.

²³ "كفأة", in Wehr, p. 832.

embroiled in intergenerational conflicts.²⁴ For British-born Muslims involved in transnational marriages, these conflicts become deeply personal and heart-wrenching. The cultural disparities between spouses become palpable, leading to heated arguments and, in some cases, the dissolution of their marriages. In cases of marital disputes, the legitimacy of Islamic marriages in Britain becomes a contentious issue. Muslim couples who perform their Islamic marriage (*nikāḥ*) ceremonies in unregistered buildings or without the presence of an authorised registrar find their marriages sullied by the British legal designation of “cohabitants.” As a result, they are denied the legal rights and protections granted to legally married couples.²⁵

With some British Muslim families grappling with intergenerational conflicts and the concern that their children’s marriages may not be recognised under British law, various representative groups within Britain’s Muslim communities have campaigned for reforms to Britain’s laws to accommodate Muslim personal law. However, these reform campaigns have faced opposition from British legislators, who argue that Islamic law is incompatible with the secular laws and values of the country.²⁶ Despite this rejection, British Muslims still retain their national rights to freely practice and express their faith in ways that serve the interests of their communities. Furthermore, British Muslims also exercise their rights to form peaceful assemblies that work to protect their interests.²⁷

One of the ways in which Muslims of South Asian descent manifest and practice their faith in Britain is by inviting elders of their *birādarī* and *gūshṭī* based overseas to Britain and positioning them as their faith leaders. These community elders, hailing from parochial parts of South Asia, offer guidance to British members of their *birādarī* and *gūshṭī*, helping them to recreate their home away from home. Members of the *birādarī* and *gūshṭī* tend to form cloistered neighbourhoods made up of

²⁴ Samia Bano, *Muslim Women and Shari’ah Councils: Transcending the Boundaries of Community and Law*, 1st edn (Basingstoke: Palgrave Macmillan, 2012), pp. 183–85.

²⁵ Michael Gouriet and Jemma Thomas, ‘Couples Living Together in the UK – Financial Provision for Your Children’, *Withers World Wide*, 2020 <<https://www.withersworldwide.com/en-gb/insight/article/pdf/9298>>.

²⁶ Pearl and Menski, pp. 57–58.

²⁷ *Human Rights Act UK 1998*, (1998), c. 42, 26.

their native countrymen in various towns and cities across Britain.²⁸ Another way in which British Muslims manifest their faith is by seeking the support of traditionally trained ‘ulamā, who believe it is their religious obligation to provide legal and theological guidance to Muslims in Britain. As demonstrated by their use of the *Hidāyah* earlier, these traditionally trained ‘ulamā refer to classic works of Islamic law to cultivate a traditional Islamic lifestyle in Britain. Among the prominent voices of Islam in Britain are the conservative ‘ulamā from Deoband, India,²⁹ who arrived in Britain during the late 1950s and early 1960s.³⁰ To address familial disputes within the British Muslim community, the ‘ulamā of Deoband established the dār ul-qazā (house of Islamic judges),³¹ an institution that they sought to replicate in Britain:

The institution of the dar ul-qaza in India was part of the background knowledge of scholars who later moved to England. These Muslims brought with them ideas and habits about personal status that had been developed under British rule of the Indies...In effect, by transposing their Asian experiences to Britain, the Islamic scholars who created shari’a councils brought colonial ideas of personal status back home to their legal source.³²

Despite the South Asian roots of Britain’s shari’a councils and with over 60 percent of Britain’s Muslims being of South Asian descent,³³ many shari’a councils have gone on record to state that the ‘ulamā serving on their panel come from different ethnic, theological and educational

²⁸ John R. Bowen, pp. 11–14.

²⁹ Innes Bowen, *Medina in Birmingham, Najaf in Brent: Inside British Islam*, 1st edn (London: C Hurst & Co Publishers Ltd, 2014), p. 11.

³⁰ Ronald Allen Geaves, ‘Sectarian Influences within Islam in Britain with Special Reference to Community’ (PhD, University of Leeds, 1994), p. 190.

³¹ “قضاء”, in Wehr, p. 772.

³² John R. Bowen, p. 54.

³³

- Census 2011, *Ethnic Group by Religion*, Ethnic Group, Religion (England and Wales: Office of National Statistics, 2011).
- *Scottish Muslims in Numbers: Understanding Scotland’s Muslim Population through the 2011 Census* (The University of Edinburgh, Edinburgh: The Alwaleed Centre for the Study of Islam in the Contemporary World, 2016), p. 15.
- *Northern Ireland 2011 Census: Ethnicity, Identity, Language and Religion*, (2011) (Northern Ireland Neighbourhood Information Services: Northern Ireland Statistics and Research Agency, 2011).
- National Records of Scotland, (2011), *SNS Data Zone 2011* (Scotland: National Records of Scotland, 2011).

backgrounds, and the services they offer are culturally neutral.³⁴ In describing the ethos of shari'a councils, Mohammed Aboulkhair Zaki Badawi (1922-2006 CE) asserted:

We work on the basis of Islamic principles and we draw upon a wide range of schools of thought in Islam. We are not made up of just Pakistanis and we do not adhere to Pakistani law. We are here for all Muslims.³⁵

Aims and Objectives

This study critically examines the Islamic legal and cultural influences on Britain's shari'a councils. The rationale for this study is based on how some Muslims in Britain turn to their Islamic legal and cultural traditions to find appropriate religious solutions for their domestic and social issues. Shari'a councils emerged as a community-based initiative intended to address these issues.³⁶ These councils strive to settle Muslim family disputes in accordance with the time-honoured traditions of Islamic family law without violating the laws of Britain. This study will also investigate how the 'ulamā who serve on these councils make their Islamic legal decisions. More specifically, the study will examine whether the 'ulamā of these councils adhere to the rules and opinions found in the classic works of Islamic law. It will also investigate whether these 'ulamā consider the social, political, and legal landscape of Britain, as well as the minority status of the Muslim community, when engaging in Islamic legal reasoning (*ijtihad*).³⁷

Research Methodologies

This research will collect and examine both qualitative and quantitative data to determine the Islamic legal and cultural influences on Britain's shari'a councils. The primary focus will be on analysing the qualitative data, while the quantitative data will serve as a complementary source, providing further context for the qualitative data. To effectively analyse the qualitative data, this study

³⁴ John R. Bowen, p. 103.

³⁵ Bano, *Muslim Women and Shari'ah Councils*, p. 87.

³⁶ Samia Bano, 'Complexity, Difference and "Muslim Personal Law": Rethinking the Relationship between Shariah Councils and South Asian Muslim Women in Britain.' (PhD, University of Warwick, 2004), p. 115.

³⁷ "الجهاد", in Wehr, p. 143.

will employ the research methodology of what Robert Thornberg calls *Informed Grounded Theory*.³⁸ This approach is firmly grounded in the data and enables the generation of new theories or refinements of existing ones presented in the literature, with the aim of enhancing our understanding of understudied areas of research. The methods through which both qualitative and quantitative data were collected, along with a detailed rationale for this study's use of Informed Grounded Theory as its preferred approach for analysing the data, will be discussed in detail in Chapter 2.

Against the broader context of the literature, this study provides a more comprehensive examination of the formative development of shari'a councils and the influence of pan-Islamic movements, particularly those originating from South Asia, on this development. The data analysis will also reveal the commonalities and differences in the administrative and Islamic arbitral procedures among these councils, distinguishing between those committed to upholding and preserving traditional Islamic legal practices in Britain and those that provide Islamic rulings and opinions that serve the interests of their clients and wider British society.

This study contributes to the field by revealing the 'ulamā's responses to concerns raised in the literature. By focusing on the views and opinions of the 'ulamā serving on these religious panels, this study provides insights into the Islamic epistemology that underpins their beliefs and approaches to Islamic family law. Furthermore, it examines the rationale behind the 'ulamā's decision-making processes and highlights the challenges they face within the context of their religious traditions and the unprecedented personal, social, and political complexities present in postmodern,³⁹ multicultural, and multi-faith Britain.

³⁸ Robert Thornberg, 'Informed Grounded Theory', *Scandinavian Journal of Educational Research*, 56.3 (2012), 243–59 (p. 249).

³⁹ Gary Aylesworth, 'Postmodernism', in *The Stanford Encyclopedia of Philosophy. SEP-Postmodernism*, ed. by Edward N Zalta, Spring 2015 (1st published 2005) (Stanford, California, United States: Metaphysics Research Lab, Stanford University, 2015) <<https://plato.stanford.edu/archives/spr2015/entries/postmodernism/>>.

Breakdown of the Chapters

Along with an introduction and epilogue, this thesis comprises ten chapters, which are organised into three parts. The first part, titled “Perspectives and Methodologies,” encompasses two chapters that offer readers insights into the existing literature on shari’a councils, and the research methodologies employed in this study.

Given that the methods of Informed Grounded Theory require researchers to leverage their familiarity with the literature, Chapter 1 provides readers with a review of the English literature concerning shari’a councils. It assesses the views of academics, legal scholars, feminists, and human rights activists. The chapter delves into the context in which these councils emerged, the traditions they uphold for Britain’s Muslims, and the challenges they face from society and the establishment. It pays special attention to theories, observations, conversations, and concerns that will guide the data analysis in the third part of this thesis.

Chapter 2 offers a comprehensive overview of the research methodologies used in this study. It evaluates different methodologies and explains why Informed Grounded Theory was chosen as the preferred approach. Additionally, this chapter presents research questions derived from the literature review. It outlines how the researcher entered the field, the collection of qualitative and quantitative data from shari’a councils, and how the data will be analysed.

Part two of this thesis, titled “Pathways and Practices,” focuses on the transnational theologies of Muslims in Britain, particularly those who migrated from the subcontinent and required the services of shari’a councils. The second part begins with Chapter 3, which explores the development of informal Islamic family legal services in South Asia. The chapter delves into the emergence of the ‘ulamā of Deoband, a South Asian Islamic revivalist movement that established India’s informal Islamic family legal courts, known as the *dūr ul-qazā*.⁴⁰ It analyses the contemporary role of the *dūr ul-qazā* in the

⁴⁰ The plural form of *dār ul-qazā*.; Sin: *dār* (دار), Pl: *dūr* (دور). See: “دار”, in Wehr, p. 299.

twenty-first century and examines the political, legal, and social challenges faced by these informal Islamic family legal services in post-independent, secular, democratic republic of India.⁴¹ Furthermore, the chapter discusses feminist responses to India's *dūr ul-qazā*.

Chapter 4 examines the migratory and settlement patterns of Muslims in Britain during the postmodern period. It begins by assessing the pathways through which Muslims arrived in Britain from various parts of the world, each bringing their distinct approaches to the Sunni legal traditions. The chapter then investigates why shari'a councils emerged from within Britain's South Asian Muslim communities and why similar Islamic arbitral services have not emerged from other Muslim communities in the country. It also analyses how the government's failure to address the religious needs of Muslim families in Britain, coupled with the lack of Islamic rulings catering to the experiences of Muslims living as minorities, has fostered an environment conducive to the emergence of shari'a councils.

Chapter 5 examines the motivation of some British Muslims who prioritise *taqlīd*,⁴² the uncritical acceptance of the Sunni legal traditions, instead of grappling with the challenges of living in a postmodern, secular society and engaging in *ijtihād* to derive new Islamic rulings for contemporary issues. It traces the historical shift from *ijtihād* to *taqlīd* among modern 'ulamā when faced with the challenges of Imperial Europe. The chapter also examines how the institutionalisation of *taqlīd* influenced South Asian Muslim societies and extended to Britain during the latter half of the twentieth century, resulting in intergenerational differences and conflicts within British Muslim families. By exploring these aspects, Chapter 5 sheds light on the underlying dynamics and historical contexts that have influenced the attitudes and practices of British Muslims in relation to their Islamic legal traditions within the multicultural, multi-faith context of British society.

⁴¹ Ministry of Law & Justice, *Constitution of India*, 1950
<https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf>.

⁴² “تقليد”, in Wehr, p. 786.

The third part of this thesis, entitled “Analysis of the Data,” consists of five chapters that will present the results and analysis of the data collected for this study. This third part aims to address the following six research questions:

1. What insights do the ‘ulamā provide regarding the formative development of shari’a councils in Britain?
2. How do clients apply for shari’a council services and how are their applications processed?
3. Which one of the four popular Sunni legal schools do shari’a council ‘ulamā follow?
4. Which one of the four popular Sunni legal schools do British Muslims follow?
5. What methods of ijtihād do shari’a council ‘ulamā employ in case adjudication?
6. How are British Muslims affected by the null legal status of Islamic family law in Britain?

Chapter 6 begins by addressing the first research question, revealing what the ‘ulamā share with regards to the formative development of shari’a councils in Britain. Chapter 7 will address the second research question, investigating the application process for shari’a councils services and the corresponding procedures the ‘ulamā use to review and handle these applications. To provide a solid foundation for readers, the chapter will present a comprehensive breakdown of the Islamic legal precedents that underlie the services offered by these councils. The chapter will then systematically analyse the qualitative and quantitative data to understand the logistical aspects of the councils’ Islamic divorce procedures and how the ‘ulamā form a consensus (*ijmā’*). The chapter will also examine shari’a councils’ provisions for Islamic marriage and consultation services.

Chapter 8 delves deeper into the arbitration processes of the ‘ulamā, exploring the influence of the Sunni legal traditions on their services. It addresses the third and fourth research questions, examining which Sunni legal traditions the ‘ulamā of these councils adhere to, and which of these traditions British Muslims embrace.

Chapter 9 presents findings that address the fifth research question, which is also related to the ‘ulamā’s arbitral processes. The chapter explores the methods of *ijtihād* employed by the ‘ulamā in their decision-making.

Chapter 10 explores the sixth and final research question, examining the impact of the null-legal status of Islamic family law on British Muslims. It aims to understand the historical and legal context of the conflict between Islamic and British laws. The chapter also evaluates areas of agreement and disagreement between state legislators and shari’a council ‘ulamā in relation to Islamic legal matters.

Transliterations, Translations, and the Dating System Used in this Thesis

When using transliterated Arabic words and phrases, this thesis will follow the standards set by the International Journal of Middle Eastern Studies’ (IJMES) *translation and transliteration guide*.⁴³ The IJMES is widely recognised as a leading authority in Middle Eastern Studies and Arabic transliteration, and its guide provides a comprehensive list of frequently used Arabic transliterated words in English academic literature. This thesis will include the words from the IJMES list without italicising them, since these words are not regarded as technical terms according to the IJMES guidelines. Additionally, it is worth noting that the IJMES word list is also included in *Merriam-Webster’s Collegiate Dictionary*. However, any new Arabic transliterated words or phrases not found in the IJMES list will be rendered using the IJMES transliteration system, including diacritical marks and macrons. Upon their initial use, these newly transliterated words will be italicised, and then subsequently presented in regular typeface for the remainder of the thesis. In instances where these newly introduced transliterated words represent technical terms that necessitate the reader’s attention, they will consistently remain italicised to emphasize their significance and distinctiveness.

⁴³ International Journal of Middle East Studies, *IJMES Translation and Transliteration Guide* (Cambridge: Cambridge University Press, 2021) <<https://www.cambridge.org/core/journals/international-journal-of-middle-east-studies/information/author-resources/ijmes-translation-and-transliteration-guide>>.

While Arabic transliteration has an established orthographic standard for English academic works in the United States and Britain, achieving standardisation for the romanisation of Urdu has been challenging. This is primarily due to the existence of multiple romanisation schemes for Urdu employed across various fields of study, businesses, and services. Following the recommendations of the IJMES, this thesis will adhere to one of the prominent standards for romanising Urdu, as established by the American Library Association and the Library of Congress (ALA-LC). The ALA-LC's romanisation system covers a wide range of languages, including Urdu, and is widely employed by American and British libraries for cataloguing materials from across the globe in different formats.⁴⁴ Consequently, any Urdu words or phrases romanised in this thesis will adhere to the diacritic and macron-marking scheme prescribed by the ALA-LC's transliteration system. With regard to the use of newly introduced romanised Urdu words that are frequently used throughout the thesis, they will be italicised upon their initial appearance and then subsequently unitalicised in later usage. If these words are technical terms that require particular attention from the reader, they will consistently be italicised.

Non-English names, places, political parties, organisations, book titles, and journal articles will be presented in this thesis without diacritical marks or macrons. Arabic nouns will be transliterated according to the IJMES' established transliteration system, while Urdu nouns will be romanised in accordance with the ALA-LC's romanisation system.

In English works of Islamic law, authors employ their preferred conventions for transliterating Arabic or romanising Urdu. Consequently, when quoting from these works within this thesis, the authors' transliterated words will be reproduced exactly as found in the original texts.

In this thesis, Arabic and Urdu transliterated words will generally be written with lowercase letters, unless they are employed as names, proper nouns, or at the beginning of sentences. For instance,

⁴⁴ American Library Association - The Library of Congress, *ALA-LC Romanization Tables* (Washington D.C., United States of America: The Library of Congress, 2013) <<https://www.loc.gov/catdir/cpsd/roman.html>>.

nouns like ‘ālim, maulana, or shaykh will begin with lowercase letters. However, when these nouns are used in conjunction with names, they will begin with capital letters. For instance, Maulana Muhammad Shahid Raza, Maulana Abul Kalam Azad, and Shaykh Mohammed Aboulkhair Zaki Badawi. It is important to note that names, places, political parties, and organisations will not be italicised, while books, journal articles, statutes, and amendments will be italicised.

In this thesis, when providing translations of Arabic words, reference will be made to Hans Wehr’s *Dictionary of Modern Written Arabic: Arabic-English*⁴⁵ and Nicholas Awde’s *Arabic-English/English-Arabic Dictionary*.⁴⁶ For translations of Urdu words, the thesis will rely on the 2004 Reprint of John Thompson Platts’ *A Dictionary of Urdu, Classical Hindi, and English*.⁴⁷

When citing English translations of passages from the Qur’an, this thesis will rely on M.A.S. Abdel Haleem’s 2008 reissued translation of the Qur’an.⁴⁸ However, occasions will arise in this thesis where specific Arabic words and phrases from the Qur’an, such as *ṣadāq*, *talaq*, and *‘idda*, require further elucidation. In these instances, the thesis will provide explanations of the Islamic legal precedents associated with these terms, as derived from the Qur’an and applied by shari’a councils.

In this thesis, dates will be referenced in accordance with the Gregorian calendar, and birth and death dates will be followed by the abbreviation “CE” to denote the Common Era.

⁴⁵ Wehr.

⁴⁶ Nicholas Awde, *Arabic-English/English-Arabic Dictionary*, trans. by K Smith (London, England: Bennett & Bloom, 2004).

⁴⁷ Platts.

⁴⁸ Haleem.

PART 1

PERSPECTIVES AND METHODOLOGIES

Chapter 1: Literature Review

1.1 Introduction

This chapter provides a review of the existing English literature that specifically focuses on shari'a councils. It will critically evaluate scholarly works, research articles, and relevant sources that contribute to our understanding of this topic, thereby guiding the analysis of this study. The chapter delves into the various conversations, criticisms, concerns, and challenges that have emerged regarding the role and position of these councils in postmodern Britain. The literature on shari'a councils provided by feminists, human rights campaigners, academics, and scholars of English legal studies is extensive and explores a range of issues, including the historical development of Islamic law in Britain, its mercurial relationship with the country's public laws, and, most notably, the impact of shari'a councils on the lives of British Muslim women. To ensure a comprehensive survey of the literature, this chapter is divided into four sections.

The first section, entitled "Context," contextualises the study of shari'a councils by examining the historical, social, cultural, and Islamic legal factors that have contributed to their increasing numbers over the past few decades. It is crucial to understand how the literature perceives and presents the role of shari'a councils in resolving Muslim matrimonial disputes and providing British Muslims with the spiritual and familial guidance that aligns with their Islamic traditions.

The second section, titled "Traditions," considers why, according to the literature, some British Muslims in the twenty-first century still seek to live in accordance with Islamic legal traditions, and how shari'a councils are meeting their religious and cultural expectations.

The third section, titled "Conversations, Criticisms, and Concerns," is equally important in understanding the literature on shari'a councils. This section delves into the views of British establishment figures, as well as women's and human rights activists concerning the increasing demand among some British Muslims to live in accordance with Shari'a and explores how shari'a councils are

addressing this demand. It presents a diverse range of arguments and case studies to illustrate how these councils and the faith-based law they apply can conflict with British laws, contribute to gender inequality and discrimination against women, and violate fundamental principles of human rights.

After examining the different contextual factors that have contributed to the emergence of shari'a councils, the religious traditions British Muslims wish to observe which require the services of these councils, and the concerns and criticisms voiced by activists and the British establishment, the penultimate section, titled "Challenges," assesses some of the key issues and questions that have been raised in the existing literature that this thesis aims to address.

1.2 Context

During the 1970s and 1980s, the first-generation of Britain's South Asian Muslim communities were determined to preserve their religious and cultural traditions through their children born in Britain.⁴⁹ In her book, *Women and Shari'a Law: The Impact of Legal Pluralism in the UK*, Elham Manea, a social scientist and human rights activist,⁵⁰ expounds on how British Muslims from tribal parts of South Asia indoctrinate their children into their prescribed gender roles. According to Manea, boys are taught to be protectors of their younger siblings and female relatives, whereas girls are taught to respect their male relatives and to believe that their well-being is inextricably linked with that of their male kin. South Asian communities in Britain demand respect for their male elders and obedience from their women, which manifests as social control and repressive behaviour that pre-empts the possibility of their women and girls engaging in "immoral conduct."⁵¹

Women from Britain's Pakistani and Bengali communities share how their families continually remind them of their role as "bearers of community and family honour." They are warned that at any given moment, especially in Britain, a woman's actions can bring shame (*sharam*) to the

⁴⁹ Humayun Ansari, p. 344.

⁵⁰ Manea, p. 22.

⁵¹ Manea, pp. 192-93.

family. To protect their families' honour (*izzat*) in their communities, women and girls are conditioned to believe that their rigidly defined roles as Muslim wives and mothers are intrinsically linked to their family's reputation. Consequently, women in these communities live in fear that if they fail in their duty as wives, they and their children will be shunned by their communities and they will have also failed as mothers.⁵² The concepts of *izzat* and *sharam*, as Shayma Izzidien points out in a study published by the National Society for the Prevention of Cruelty to Children (NSPCC), are patriarchal constructs that enable South Asian communities to control and silence their women.⁵³

Samia Bano offers an anthropological take on the concepts of *izzat* and *sharam* as well as the gendered cultural norms prevalent in Britain's South Asian Muslim communities, particularly in their expectations placed on women to fulfil traditional roles as "mothers, wives and daughters."⁵⁴ In her book, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law*, Bano examines the marital experiences of British Muslim women of Pakistani descent and the complex dynamics of their relationships with their families. She also explores how, when marriages break down, these women are often pressured by their families and communities to seek resolution through shari'a councils. Bano explains how, for many British Muslim families of Pakistani descent, their standing within their local community (*birādarī*) is determined by their ability to remain within the "endemic barriers" of their culture and traditions.⁵⁵ For these families, maintaining honour (*izzat*) within the *birādarī* is inextricably tied with their ability to control the lives of their daughters and the men they marry.⁵⁶

Bano discovered that, in most cases of marriage breakdowns in British-Pakistani Muslim families, wives are often blamed. They are blamed of being careless in their role as a Muslim wife and

⁵² Manea, pp. 195–96.

⁵³ Shayma Izzidien, *I Cannot Tell People What Is Happening at Home - Domestic Abuse within South Asian Communities: The Specific Needs of Women, Children and Young People*. (London: NSPCC Inform: The Online Child Protection Resource, 2008), p. 21 <<https://letterfromsanta.nspcc.org.uk/globalassets/documents/research-reports/i-cant-tell-people-what-happening-home-report.pdf>>.

⁵⁴ Bano, *Muslim Women and Shari'ah Councils*, pp. 139, 175, 213, 235.

⁵⁵ Bano, *Muslim Women and Shari'ah Councils*, p. 149.

⁵⁶ Bano, *Muslim Women and Shari'ah Councils*, p. 180.

mother, of being “too educated,” or of not being “traditional enough,” thus bringing shame (*sharam*) upon their family. Rather than listening to the grievances of their women, families and in-laws will try to find ways to reconcile the couple, in an effort to protect the honour (*izzat*) of both families in the eyes of their culturally stratified community (*birādarī*). When British Muslim women resist their families, in-laws, and community pressures to conform to their gendered cultural expectations and decide to leave their unwanted Islamic marriages, some of these women are advised by friends and relatives to seek the guidance of shari’a councils.⁵⁷

Women who approach shari’a councils are typically determined to obtain their Islamic divorces and are usually not interested in reconciling with their husbands. Many of these women may have already experienced numerous failed attempts at reconciliation organised by their families, friends, and community. In Saher Tariq’s article *Muslim Mediation and Arbitration: Insights from Community and Legal Practice*, she reveals how family interventions are often the first and most distressing experiences for British Muslim women. Typically, male elders from both the husband’s and wife’s families organise and attend these family intervention sessions. Discussions are usually focused on salvaging the marriage and protecting both families’ honour (*izzat*) in their community. The exclusion of women from these discussions creates barriers for them to express their grievances:

Clearly, these informal attempts at mediation are biased toward men, take no account of the feelings of the women, and contravene religious principles.⁵⁸

In her article, *The Unfamiliar Abode: Islamic Law in the United States and Britain*, Kathleen M. Moore explains how shari’a councils are “an increasingly important resource for women in troubled domestic situations who live in complicated networks of extended family and community.”⁵⁹ However,

⁵⁷ Bano, *Muslim Women and Shari’ah Councils*, pp. 194–204.

⁵⁸ Saher Tariq, ‘Muslim Mediation and Arbitration: Insights from Community and Legal Practice’, in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017), p. 131.

⁵⁹ Kathleen M Moore, *The Unfamiliar Abode Islamic Law in the United States and Britain* (Oxford University Press, 2010), p. 127.

when these women visit these councils, they are disturbed to find that the first step of the Islamic divorce process sees the ‘ulamā of these councils asking women if they are interested in reconciling with their husbands. Charlotte Proudman, a human rights barrister and contributor to *Baroness Cox’s Arbitration and Mediation Services (Equality) Bill*, shares case studies and testimonies of women who used shari’a councils, along with statements from women’s and human rights organisations; all of whom reveal how women who go to shari’a councils to terminate their Islamic marriages are pushed into mediation processes that are both misogynistic and gender discriminatory.⁶⁰ Bano, who cautiously supports the use of alternative dispute resolution mechanisms,⁶¹ was troubled to find ten of the women she interviewed were “coaxed” by shari’a councils to reconcile with their husbands, despite their protests. Four of these ten women had restraining orders against their husbands on the grounds of violence but were asked by councils to sit in the same room as their abusers during reconciliation sessions.⁶² Bano comments:

These privatised legal processes were ignoring not only state law intervention and due process but providing little protection and safety for the women in question. Furthermore, the interviews and observation data revealed that husbands used this opportunity to negotiate reconciliation, financial settlements for divorce, and in many cases access to children. Settlements which in effect were being discussed under the shadow of law. Quite clearly these women were in a weak bargaining position and their autonomy and choice was to some extent being limited if they were to be granted a Muslim divorce.”⁶³

1.3 Tradition

Rehana Parveen’s article, *Do Sharia Councils Meet the Needs of Muslim Women?* and Homa Khaleeli’s piece for *The Guardian* offer insights into the motivations that drive Muslim women to pursue their Islamic divorces through shari’a councils. According to Islamic law, both men and women

⁶⁰ *Equal and free? Evidence in support of Baroness Cox’s Arbitration and Mediation Services (Equality) Bill*, ed. by Charlotte Rachael Proudman (Mexborough, South Yorkshire: Equal and Free Limited, 2012), pp. 11–43 <http://equalandfree.org/wp-content/files_mf/1441879624Equal__Free_booklet_May_2012.pdf>.

⁶¹ Manea, p. 206.

⁶² Bano, *Muslim Women and Shari’ah Councils*, p. 213.

⁶³ Samia Bano, ‘Islamic Family Arbitration, Justice and Human Rights in Britain’, *Law, Social Justice & Global Development Journal (LGD)*, 1 (2007), p. 20.

have the right to divorce their spouse, but the process is more complex for women. While a man can unilaterally pronounce a talaq, a woman needs to ask her husband to release (khula) her from their marriage. If her husband denies her request for a khula, a third party, such as a shari'a council, can be called upon to dissolve (faskh) the Islamic marriage (nikāh). For this reason, "the Shari'a council is essential for her."⁶⁴ Without shari'a councils, "many women feel they are still married in the sight of God - even if they have had a civil divorce."⁶⁵

In their work, titled *British Muslim Women and Barriers to Obtaining a Religious Divorce*, Shaista Gohir and Nazmin Akhtar-Sheikh suggest that the incentive for women attending shari'a councils depends on their level of religiosity.⁶⁶ Some Muslim women were satisfied with their civil divorces and were able to move on with their lives. Others maintained that they would only have peace of mind if they obtained their Islamic divorces. The literature on shari'a councils also highlights the unfavourable position Muslim women find themselves in when their husbands deny their request for a khula, leaving them with no choice but to go to shari'a councils for an Islamically sanctioned solution. Articles,⁶⁷ books,⁶⁸ and reports⁶⁹ document instances of Muslim women who found the civil divorce they obtained was not enough to end their marriages, as their husbands refused to agree to their wife's request for a khula and trapping them in what is known as a "limping marriage" or "martial captivity."⁷⁰ Sonia Nurin Shah-Kazemi (1964 - 2021 CE) described several cases of Muslim women who received a civil divorce but still faced harassment from their ex-husbands. These women saw securing an Islamic

⁶⁴ Rehana Parveen, 'Do Sharia Councils Meet the Needs of Muslim Women?', in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017), pp. 142–62 (pp. 147–48).

⁶⁵ Homa Khaleeli, 'Inside Britain's Sharia Councils: Hardline and Anti-Women – or a Dignified Way to Divorce?', *The Guardian* (Kings Place, London, 1 March 2017), section The Guardian: Law: Sharia law.

⁶⁶ Shaista Gohir and Nazmin Akhtar-Sheikh, 'British Muslim Women and Barriers to Obtaining a Religious Divorce', in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017), p. 180.

⁶⁷ Machteld Zee, *What Happens at Sharia Councils? Part Four: The Legal Status and Future of Sharia Councils*, Interdisciplinary Study of the Law (Universiteit Leiden, Netherlands: Leiden Law Blog, Interdisciplinary Study of the Law, 2013) <<https://www.leidenlawblog.nl/articles/the-legal-status-and-future-of-sharia-councils>>.

⁶⁸ John R. Bowen, p. 62; Bano, *Muslim Women and Shari'ah Councils*, p. 187; Manea, p. 200.

⁶⁹ Mona Siddiqui and others, *The Independent Review into the Application of Sharia Law in England and Wales*, CCS0118708404 (Home Office, United Kingdom: Home Office, February 2018), p. 13.

⁷⁰ Zee, *What Happens at Sharia Councils? Part Four: The Legal Status and Future of Sharia Councils*.

divorce as their only solution, which highlights, in Shah-Kazemi's view, the greater weight given to an Islamic divorce over a civil divorce among British Muslims.⁷¹ The difficulties Muslim women in Britain face in securing their much-desired Islamic divorce led this investigation into the literature to determine why some British Muslims and the 'ulamā working in shari'a councils prioritise their Islamic traditions over the laws of Britain. Moreover, the literature warrants an examination of whether the detrimental treatment of Muslim women is sanctioned by the classic works of Islamic law.

Muslims in Britain, along with the 'ulamā working in shari'a councils, assert that there are explicit religious grounds in the Qur'an and hadith literature for mediating Muslim family disputes. Bano,⁷² Tariq,⁷³ Gohir, and Akhtar-Sheikh⁷⁴ also concur that the principles of arbitration and mediation have their origins in Islam's sacred texts. They all cite Qur'an (4:35) as a foundational verse used by the fuqahā' of the pre-modern period to establish arbitration for resolving marital disputes:

If you [believers] fear that a couple may break up, appoint one arbiter from his family and one from hers. Then, if the couple want to put things right, God will bring about a reconciliation between them: He is all knowing, all aware.⁷⁵

The purpose of this Qur'anic arbitral process is to allow Muslim couples to accept God's guidance in resolving their disputes. This endows shari'a councils the religious authority to begin the mediation process by inquiring whether couples are interested in reconciliation. Even in one of Britain's progressive shari'a councils,⁷⁶ where female counsellors hear Islamic divorce appeals from

⁷¹ Sonia Nūrīn Shah-Kazemi, *Untying the Knot: Muslim Women, Divorce and the Shariah*, Child Welfare and Development (Nuffield Foundation, 2001), p. 80 (p. 49) <<http://www.nuffieldfoundation.org/untying-knot-muslim-women-divorce-and-shariah>>.

⁷² Bano, *Muslim Women and Shari'ah Councils*, pp. 100–103.

⁷³ Tariq, p. 127.

⁷⁴ Gohir and Akhtar-Sheikh, p. 171.

⁷⁵ Haleem, p. 54.

⁷⁶ Machteld Zee, *What Happens at Sharia Councils? Part Two: The Most Liberal One*, Interdisciplinary Study of the Law (Universiteit Leiden, Netherlands: Leiden Law Blog, Interdisciplinary Study of the Law, 2013).

Muslim women, Manea notes how counsellors “suggest reconciliation as a matter of Islamic principle.”⁷⁷

Tariq, who is also the founding director of YHM Solicitors in Leeds and its Islamic Divorce & Khula service, asserts that arbitration and mediation are dispute resolution strategies that have been used by Muslims for over fourteen centuries. Tariq supports her argument by citing a hadith tradition from the Bukhari collection, which suggests that those who participate in mediation are promoting justice on earth and will be rewarded with a charitable gift.⁷⁸

Shari’a councils maintain that the principles of Islamic law require them to initiate their mediatory process with reconciliation. When couples seek both an Islamic and civil divorce, Sohail Akbar Warraich and Cassandra Balchin (1962-2012 CE) assert in their policy research report, *Recognizing the Un-Recognized: Inter-Country Cases and Muslim Marriages & Divorces in Britain*, that the interval between a decree nisi and decree absolute in a civil divorce should be sufficient for attempting reconciliation in an Islamic arbitral process. According to Warraich and Balchin, the shari’a councils’ insistence on internal reconciliation appears to be an ostentatious display of their religious authority over British Muslims.⁷⁹ In her *Information and Guidance on Muslim Marriage and Divorce in Britain*, Gohir argues that the ‘idda period, the mandatory waiting time before the Islamic divorce becomes final, provides an opportunity for reconciliation.⁸⁰ This thesis will examine the comparison between the ‘idda period and the period between the decree nisi and decree absolute in a civil divorce.

The matter of marriage and divorce holds significant importance within Islamic law and is an area where many British Muslims seek guidance rooted in their religious traditions. Scholars such as

⁷⁷ Manea, p. 203.

⁷⁸ Tariq, p. 127.

⁷⁹ Cassandra Balchin and Sohail Akbar Warraich, *Recognizing the Un-Recognized: Inter-Country Cases and Muslim Marriages & Divorces in Britain*, Women Living under Muslim Laws (Nottingham, UK: The Russell Press, 2006), p. 72.

⁸⁰ Shaista Gohir, *Information and Guidance on Muslim Marriage and Divorce in Britain* (Birmingham, UK: Muslim Women’s Network UK, 2016), p. 53.

Shaheen Sardar Ali,⁸¹ Ziba Mir-Hosseini,⁸² and Khaled Abou El Fadl⁸³ have argued that the construction of classic Islamic law is rooted in the patriarchal biases of pre-Islamic Arabia. These biases have been further reinforced throughout history by the interpretations of the Qur'an and hadith collections carried out by the 'ulamā and fuqahā' of antiquity, who were influenced by the patriarchal assumptions prevalent in their time.

In her chapter, *Between the Devil and the Deep Blue Sea: Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora*, Ali examines how these patriarchal basis of classic Islamic law has manifested in Britain and finds Britain's diasporic Muslims of South Asian descent usually follow the Hanafi tradition of Islamic law. She posits that the Hanafi legal tradition enables many Muslims in Britain to define their group's identity and preserve their culture by controlling members of their group, particularly their women. Ali reveals how shari'a councils are one of the mechanisms Britain's South Asian diasporic Muslims use to control the lives of their women. She explains how shari'a councils in their current British incarnation are detrimental to Muslim women's interest, and the community who created them had done so to augment the dominant role of husbands in the British Muslim household. In her investigation, Ali found that the vast majority of shari'a council clients are Muslim women, and many of these women are looking to religiously divorce their husbands. Although this data may indicate British Muslims women are acting of their own volition to improve their personal and social circumstances, Ali delves a little deeper into the data. She found shari'a councils were reinforcing South Asian patriarchal understandings and interpretations of Islamic law in

⁸¹ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (The Hague, London, Boston: Kluwar Law International, 2000), pp. 42–43.

⁸² Ziba Mir-Hosseini, 'Classical Fiqh, Contemporary Ethics and Gender Justice', in *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition*, ed. by Kari Vogt, Lena Larsen, and Christian Moe (London & New York: I.B.Tauris, 2009), pp. 77–88 (p. 80).

⁸³ Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, First Edition (Oneworld Publications, 2001), pp. 12–13.

Britain. Her research shows how these councils are in reality Muslim men's contrived attempts to curtail women's choice, autonomy, and their civil rights as citizens of Britain.⁸⁴

In her attempt to deconstruct what Ali described as “the patriarchal understandings and interpretations of Islamic law,”⁸⁵ the Iranian-born legal anthropologist, Ziba Mir-Hosseini, examines the underlying theological, jurisprudential, and philosophical assumptions the classic works of Islamic law are based on. In her article titled *Classical Fiqh, Contemporary Ethics and Gender Justice*, Mir-Hosseini states that she approached her study as a Muslim who believes in the “justice of Islam” and as a legal anthropologist who seeks to understand how Islamic juristic constructs have become distorted and obscured over the centuries, particularly in the rules that regulate marriage and divorce.⁸⁶

Earlier, Manea explained how Britain's Pakistani and Bengali communities taught their boys to be protectors of their families, while girls are taught to be obedient and that their interests are tied to those of their male kin. After further research, Manea found that Muslim jurists (fuqahā') of antiquity had developed jurisprudential traditions which introduced discriminatory and punitive measures on matters related to gender, sexuality, adultery and apostasy.⁸⁷ She further adds that the type of Islamic law practiced by shari'a councils “has everything to do with the medieval jurisprudential traditions, which violates modern concepts of human rights and gender equality.”⁸⁸ In her chapter, entitled *Muslim Legal Tradition and the Challenge of Gender Equality*, Mir-Hosseini adds to the discussion by revealing how these gendered relations of power are based on...

⁸⁴ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora”, in *Modern Challenges to Islamic Law* (Cambridge: Cambridge University Press, 2016), p. 206–232 (pp. 206–25).

⁸⁵ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora”, p. 229.

⁸⁶ Mir-Hosseini, ‘Classical Fiqh, Contemporary Ethics and Gender Justice’, pp. 78–79.

⁸⁷ Manea, pp. 111–12.

⁸⁸ Manea, p. 120.

...translations that approximate the consensus of classical Muslim jurists and are reflected in a set of rulings (ahkam) that they devised to define marriage and marital relations.⁸⁹

In both her articles, Mir-Hosseini examines how the verse, Qur'an (4:34), has traditionally been interpreted. She found that the fuqahā' of antiquity had prescribe the role of *qiwamah* to men, which they interpreted as "protectors" or "maintainers." She then finds the fuqahā' describing the role of a "righteous Muslim wife" as *qanitat*, which they interpreted as "obedient." The fuqahā' then used their definitions of *qiwamah* and *qanitat* as postulates for all areas of Islamic family law and set out the shari'a mandates for couples who have a nikāḥ (Islamic marriage contract).⁹⁰

Mir-Hosseini purports that some of the legal effects of these shari'a mandates include the concepts of *tamkīn/ṭā'a* (obedience) and *nafaqa* (maintenance). According to Mir-Hosseini, *tamkīn/ṭā'a* refers to the duty of a wife to be sexually obedient to her husband, which the fuqahā' consider to be a fundamental aspect of a successful Islamic marriage. This obligation is also recognised as a husband's right and thus a wife's duty under Islamic law. If his wife rebels (*nushuz*), then the husband may deny her maintenance. Conversely, *nafaqa* (maintenance) is defined in terms of the duty of the husband to provide financial support and security to his wife. This responsibility is also recognised as a fundamental right of the wife under Islamic law. If the husband fails to provide his wife with maintenance, then she does not have to be sexually obedient to him.⁹¹

This traditional Islamic marital framework demands that a "righteous Muslim husband" must provide for and maintain his household. On the other hand, a "righteous Muslim wife" must ensure that her husband has sexual access to her. To ensure this access, a husband has control of his wife's activities, meaning that a wife must get her husband's permission to work, leave home, etc.⁹² Mir-Hosseini contends that this patriarchal interpretation of *qiwamah* and *qanitat* by the fuqahā' of the pre-

⁸⁹ Ziba Mir-Hosseini, 'Muslim Legal Tradition and the Challenge of Gender Equality', in *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, ed. by Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger (London: Oneworld, 2015), pp. 36–83 (p. 38).

⁹⁰ Mir-Hosseini, 'Muslim Legal Tradition and the Challenge of Gender Equality', pp. 38–39.

⁹¹ Mir-Hosseini, 'Muslim Legal Tradition and the Challenge of Gender Equality', p. 39.

⁹² Mir-Hosseini, 'Classical Fiqh, Contemporary Ethics and Gender Justice', p. 82.

modern period forms the basis of other legal disparities in classic Islamic law. These disparities include:⁹³

- Men's right to polygamy and can unilaterally pronounce a talaq.
- Women getting a lesser share in inheritance.
- Women are unqualified to hold positions of authority (judges or political leadership).
- Women are forbidden to hold political positions because they are under the authority of their husbands and thus cannot be impartial.
- A woman, by nature, is weaker and more emotional, which are inappropriate qualities of a leader.
- Women were created for childbearing, which confines them to the home, so men must protect and provide for them.

1.4 Conversations, Criticisms, and Concerns

So far, the literature reviewed has revealed how British Muslim women are socially and structurally disadvantaged by their families and communities, who force them to conform to their cultural norms and traditions. These earlier sections also identified the difficulties these women face in obtaining their much-sought-after Islamic divorces. Additionally, the literature has revealed the belief held by shari'a council personnel - from the 'ulamā to their female counsellors - that "reconciliation is a matter of Islamic principles,"⁹⁴ and that the patriarchal contagion of classic Islamic law grants husbands control over their wives' bodies. This portrayal of classic Islamic law and the shari'a councils that apply them has drawn significant criticism and conversations among British political leaders as well as from women's and human rights campaigners.

⁹³ Mir-Hosseini, 'Muslim Legal Tradition and the Challenge of Gender Equality', pp. 41–42.

⁹⁴ Manea, p. 203.

1.4.1 Perception of Shari'a, Islamic Law and Shari'a Councils Among the British Establishment

During a House of Lords debate, Baroness Shreela Flather asked for the government's assessment of the impact of Shari'a in Britain, with a particular focus on its effects on women. Lady Flather argued how...

...Sharia is discriminatory against women, not only in relation to marriage and children, but in most aspects. A woman's status does not come up to more than half that of a man. Two women have to give evidence to equal a man's evidence. When a Sharia will is made, a woman gets half of what a man gets... Did God really make us half as good as a man? We do not believe that anymore... we are not half of a man. We are also people; we are also persons.⁹⁵

Baroness Warsi responded to Lady Flather's critique by highlighting the "distinction between Sharia and Sharia Law. Sharia exists in the United Kingdom in our multicultural society." She provided examples of Sharia in action, such as Shari'a-compliant financial bonds and the growth of the halal food industry. "Sharia, like other religious practices," she said, "is therefore an everyday part of British life and has been for many years." However, Lady Warsi clarified that Britain does not accept Shari'a Law as part of its judicial system. She argued that the practice of Shari'a Law among British Muslims stems from the government's failure to provide adequate support and protection to Muslim women, leading them to seek assistance from shari'a councils.⁹⁶

Responding to Baroness Warsi's differentiation between "Shari'a" and "Shari'a Law," Baroness Caroline Anne Cox acknowledged that the scope of Shari'a is more comprehensive, encompassing various aspects of a Muslim's life, and that "no one can take issue with those." But where Baroness Cox's concerns lie are...

⁹⁵ Baroness Shreela Flather, *Sharia Law: Question for Short Debate*, 757 (London, United Kingdom: House of Lords (Lord's Hansard), 2014), col. GC539 <<https://publications.parliament.uk/pa/ld201415/ldhansrd/text/141211-gc0001.htm#14121139000326> or <https://hansard.parliament.uk/Lords/2014-12-11/debates/14121139000326/ShariaLaw>>.

⁹⁶ Flather, cols GC540-GC541.

...with the fundamental tenets inherent in many interpretations of Sharia law, which are inherently discriminatory with regard to provisions for men and women.⁹⁷

The opinions of Britain's political leaders became more pronounced in response to the 2008 lecture by the former Archbishop of Canterbury, Dr. Rowan Williams. In his lecture, he called for the country's judiciary to reevaluate its stance on the religious laws practiced by faith minorities in Britain.⁹⁸ In Robin Griffith-Jones' edited work, *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, Griffith-Jones explained that Dr. Williams referred to the Muslim experience in his lecture to demonstrate how faith communities in postmodern, secular Britain are inimically affected by British lawmakers' resolute snubbing of the "vexatious appeals to religious scruple."⁹⁹ Dr. Williams argued that, for some Britons, the competition for loyalty between the laws of the land and the laws of God "seems unavoidable." However, Griffith-Jones found that the BBC had misconstrued the former Archbishop's statement to suggest that "shari'a law 'seems unavoidable' in parts of Britain."¹⁰⁰ In response to the widespread criticism of his alleged recommendation of the adoption of Shari'a law in Britain, the former Archbishop clarified on his website that he "certainly did not call for its introduction as some kind of parallel jurisdiction to the civil law."¹⁰¹

Taking "grave exceptions" to the former Archbishop's alleged proposal, Britain's former Prime Minister Boris Johnson told *London Broadcasting Company (LBC)* radio that the suggestion of

⁹⁷ Flather, col. GC542.

⁹⁸ Rowan Williams, 'Civil and Religious Law in England: A Religious Perspective', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 20–33.

⁹⁹ Williams, 'Civil and Religious Law in England: A Religious Perspective', p. 25.

¹⁰⁰ Robin Griffith-Jones, '1. The "unavoidable" Adoption of Shari'a Law - the Generation of a Media Storm', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 7–20 (p. 13).

¹⁰¹ Rowan Williams, '*Sharia Law*' - *What Did the Archbishop Actually Say?*, Dr Rowan Williams: 104th Archbishop of Canterbury (Cambridge: Rowan Williams 2021, 2008)

<<http://rowanwilliams.archbishopofcanterbury.org/articles.php/1135/sharia-law-what-did-the-archbishop-actually-say.html>>; BBC News Online, *Archbishop Defends Sharia Remarks* (London: BBC, 2008)

<<http://news.bbc.co.uk/1/hi/uk/7236174.stm>>.

Shari'a law being integrated into British law is "absolutely unacceptable."¹⁰² London Mayor Sadiq Khan shared similar views, believing that Shari'a law is "not fit for the UK." Khan argued that shari'a courts, which operate under the Islamic judicial system, may "give unequal bargaining power to the sexes," leading to women being abused. He further asserted that the high rate of unemployment and low educational attainment among British Muslims renders them "not advanced enough" to manage shari'a courts. Khan believes that the premature introduction of faith-based legal systems in the Muslim community could hinder their integration into British society.¹⁰³

1.4.2 Perception of Shari'a, Islamic Law and Shari'a Councils Among Muslim Women

Providing an insight into the perception of Shari'a among British Muslim women, Shah-Kazemi, in her book *Untying the Knot: Muslim Women, Divorce and the Shari'ah*, found that the 21 women she interviewed¹⁰⁴ were all keen to observe the Shari'a. Their incentive for seeking the intervention of shari'a councils was predicated on the belief that these organisations could resolve their marital disputes according to the Shari'a. Most of the women Shah-Kazemi interviewed accepted that their religious idealism was not matched by their knowledge of the Shari'a, but they nonetheless insisted on dissolving their marriage in accordance with the Shari'a so that they could, with a clear conscience, move on with their lives and marry whomever they chose. Even those whom Shah-Kazemi interviewed who did not strictly adhere to the Shari'a in their daily lives considered an Islamic divorce to be superior to a civil divorce.¹⁰⁵ Despite these beliefs, these women generally agreed that formalising a "Shari'a system of laws" in Britain would be challenging. Shah-Kazemi also noted that the demand for recognising Shari'a or its associated system of laws in Britain is a minority view.¹⁰⁶

¹⁰² Rebecca Perring, *Boris Johnson: 'Sharia Law in the UK Is Absolutely Unacceptable'* (London: Daily Express, 2015) <<https://www.express.co.uk/news/politics/566111/Boris-Johnson-Sharia-law-UK-absolutely-unacceptable-Islamic-legal-code>>.

¹⁰³ 'Sharia Law Is "Not Fit for the UK", Says a Labour Muslim MP', *MailOnline, Dailymail.Co.Uk* (London, 12 October 2008) <<https://www.dailymail.co.uk/news/article-1056794/Sharia-law-fit-UK-says-Labour-Muslim-MP.html>>.

¹⁰⁴ Shah-Kazemi, p. 15.

¹⁰⁵ Shah-Kazemi, pp. 25, 47–49.

¹⁰⁶ Shah-Kazemi, p. 70.

Like Baroness Warsi, Shah-Kazemi also made a distinction between “Shari’a” and “Shari’a law.” Shah-Kazemi explained how, in principle, Shari’a governs the actions of both individuals and the Muslim community, whilst the “rules of Shari’a” are derived from the Qur’an and the normative practices (Sunnah) established by the Prophet Muhammad. Furthermore, she stated that the rules and religious acts which govern a believer’s relationship with God are non-negotiable, whereas the rules which govern social, political, and economic transactions between people are subject to reform and constitute the body of work known as fiqh,¹⁰⁷ which possesses a significant degree of inherent flexibility and adaptability.¹⁰⁸

Likewise, Mir-Hosseini also distinguished between Shari’a as the “revealed law” and fiqh as the science of Islamic jurisprudence:

...the Shari’a (as contained in the Qur’an and the Prophetic Traditions) is understood as a transcendental ideal, the path, the way of life, that embodies the justice of Islam and the spirit of the Qur’anic revelations; while fiqh includes not only the vast corpus of jurisprudential texts but also the positive laws and rulings that Muslim jurists claim to be rooted in the sacred texts.¹⁰⁹

Whilst Mir-Hosseini regards Shari’a as sacred, eternal, and universal, she sees fiqh as mundane, temporal, and profane, and considers the compiled works of fiqh to be “patriarchal in both spirit and form” and has become “a closed book, removed from public debate and critical examination,” hindering Muslims’ search for justice and equality for centuries. The distinction between Shari’a and fiqh enables Mir-Hosseini to advocate for gender justice within an Islamic legal framework and to identify the patriarchal aspects of fiqh. Mir-Hosseini also differentiates between Islamic legal rulings that regulate the relationship between God and a believer (*‘ibādāt*) and those that govern human affairs (*mu’āmalāt*). According to Mir-Hosseini, the rules relating to *‘ibādāt* are limited in their scope for rationalism, explanation, and change, whilst the rules for *mu’āmalāt*...

¹⁰⁷ “Understanding” or “Jurisprudence in Islam.” See “فقه”, in Wehr, p. 723.

¹⁰⁸ Shah-Kazemi, p. 6.

¹⁰⁹ Mir-Hosseini, ‘Classical Fiqh, Contemporary Ethics and Gender Justice’, p. 80.

...regulate relations among humans and remain open to rational considerations and social forces, and to which most rulings concerning women and gender relations belong.¹¹⁰

Bano also distinguishes Shari'a from its interpretation. She defines Shari'a as an "evolving legal philosophy (jurisprudence) with its roots in two key religious scriptures: the Qur'an and the Sunnā."¹¹¹ Bano describes the "process of Shari'ah" as...

...an exercise in interpretation [where] individuals are unable to set incontrovertible legal precepts. Islamic history points to the development of Muslim jurisprudence that has led to different interpretations of Islamic law.¹¹²

Bano then briefly discusses how Muslims today largely fall into the two ecumenical sects of Sunni and Shi'a. Within these sects, several legal schools work to interpret the Qur'an and hadith collections in accordance with their beliefs, local customs, cultural practices, and traditions.¹¹³ Given this diversity of interpretations of Islamic law, alongside the vast array of legal principles and jurisprudential theories found in the classic works of fiqh, it becomes "simply impossible to speak of Islamic law in a generic way." Bano also mentions an issue in the prevailing literature, where the terms "Shari'ah," "Shari'ah law," "Islamic law," and "Muslim law" are used interchangeably and can lead to confusion.¹¹⁴

To mitigate any confusion in this thesis, the study will take account of the distinctions that the aforementioned Muslim women in academia have made between Shari'a and its interpretations. Specifically, this study refers to Lena Larsen's definitions. Quoting from the Oxford Dictionary of Islam, Larsen defines Shari'a as:

God's eternal and immutable will for humanity, as expressed in the Qur'an and Muhammad's example (Sunnah), considered binding for all believers; ideal Islamic law.¹¹⁵

¹¹⁰ Mir-Hosseini, 'Classical Fiqh, Contemporary Ethics and Gender Justice', p. 80.

¹¹¹ Bano, *Muslim Women and Shari'ah Councils*, p. 80.

¹¹² Bano, *Muslim Women and Shari'ah Councils*, p. 81.

¹¹³ Bano, *Muslim Women and Shari'ah Councils*, p. 81.

¹¹⁴ Bano, *Muslim Women and Shari'ah Councils*, pp. 4, 67.

¹¹⁵ Lena Larsen, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, Studies in Islamic Law and Society (Leiden; Boston: Brill, 2018), XLIV, p. 14.

Regarding the interpretation of Shari'a, Larsen associates it with the mutability of fiqh, which...

...originally means "understanding" and "knowledge," and refers to the tradition of scholars describing and exploring the Sharia...To the believer, then, Sharia would refer to the divine quality of the law, whereas fiqh is the result of the interpretations of scholars through history.¹¹⁶

More crucially for this thesis, Larsen writes that, in the face of intellectual, political, social, and economic challenges of an enlightened, modern Europe, Muslim reformers of the nineteenth century believed that Shari'a should be interpreted pragmatically and codified in ways that resemble Western legal systems. Larsen states that, in their effort to understand how religious laws affect Muslims and their societies, Western authors described fiqh as "Islamic law," a term that was later adopted by the modern Muslim world. In this thesis, "Shari'a" will be used to describe God's immutable will for Muslims as expressed in the Qur'an and Prophetic traditions, and understood by Muslims as the path, the way of life, the embodiment of justice in Islam that exemplifies the spirit of the Qur'an. The term "Islamic law" will be used here to refer to fiqh as the temporal, substantive, and evolutionary system of jurisprudence that results from the interpretation of the Qur'an and hadith collections. The collected works of fiqh that comprise the vast corpus of Islamic jurisprudential texts accumulated over the centuries will be referred to in this thesis as the "classic works of Islamic law."

Another noteworthy aspect highlighted by Bano regarding the religious staff of shari'a councils is their reluctance to use the titles of *fāqih* (Islamic jurist) or *mufti* (judge of an Islamic court) to avoid confusion with equivalent civil legal roles in Britain.¹¹⁷ Consequently, Bano found that these religious staff members prefer to identify themselves as *'ālim* individually or collectively as the *'ulamā*. This thesis will adhere to this convention, referring to a religious staff member as *'ālim* or collectively as the *'ulamā* unless explicitly informed otherwise by the respective shari'a council.

¹¹⁶ Larsen, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, XLIV, p. 14.

¹¹⁷ Bano, *Muslim Women and Shari'ah Councils*, p. 119.

1.4.3 Perception of Shari'a, Islamic Law and Shari'a Councils Among Women's and Human Rights Campaigners

Women and human rights activists, and legal experts contend that many principles of Islamic law conflict with British law and public policy and would likely be rejected by a British court. Diana Nammi, the founder and Executive Director of the Iranian and Kurdish Women's Rights Organisation (IKWRO), candidly states:

Sharia Law discriminates against women and children and puts those who have experienced violence and abuse at further risk. Its rulings are incompatible with UK legislation including the Sex Discrimination Act 1975, the Children Act 1989 and the Human Rights Act 1998.¹¹⁸

Despite the IKWRO being a secular organisation, it offers support to many Muslim women who had previously sought help from shari'a councils or their local mosques. The IKWRO discovered that these women did not receive sufficient advice or support to escape their abusers. Some women reported that they were subjected to further abuse and discrimination by shari'a councils.¹¹⁹ In a BBC News report, Nammi shared:

We have spoken to many women and all of them tell us the same story; Sharia law is not providing them with the justice they seek. The councils are dominated by men, who are making judgements in favour of men...all Sharia bodies should be banned. That is the only way we can ensure equality of justice for all women.¹²⁰

In David Pearl's and Werner Menski's *Muslim Family Law*, a concise guide to Islamic family law for English readers and British lawmakers, the authors contend that the recognition of "limited polygamy" within Islamic law is at odds with the fundamental principle of monogamy and the criminalisation of bigamy under Christian laws and contemporary Western legal systems.¹²¹

¹¹⁸ Diana Nammi, 'Iranian and Kurdish Women's Rights Organisation', in *Equal and free? Evidence in support of Baroness Cox's Arbitration and Mediation Services (Equality) Bill*, ed. by Charlotte Rachael Proudman (Mexborough, South Yorkshire: Equal and Free Limited, 2012), p. 37 <http://equalandfree.org/wp-content/files_mf/1441879624Equal__Free_booklet_May_2012.pdf>.

¹¹⁹ Nammi, p. 36.

¹²⁰ Divya Talwar, 'Growing Use of Sharia by UK Muslims', *BBC Asian Network*, 16 January 2012 <<https://www.bbc.co.uk/news/uk-16522447>>.

¹²¹ Pearl and Menski, pp. 237, 273–74.

Classic Islamic rulings on apostasy and blasphemy also conflict with British public policy. Commenting on how some British Muslims have called for reforms to aspects of Britain’s blasphemy and family laws, the legal scholar Sebastian Poulter (1942-1998 CE) contended:

The concessions sought by Muslims...would interfere with everyone’s freedom of expression (in relation to the blasphemy law) and might well entail sexual discrimination (in the field of family law), both matters of great moment in our society.¹²²

Critics, legists, and academics have also expressed concerns of women being pressured into using shari’a councils and adhering to their unfair decisions. In the executive summary of her report, Proudman observed that the injustices women face in shari’a councils are “compounded by intimidation: pressure from families and communities often prevents women from seeking their legal redress available in civil law.”¹²³ The Casey Review corroborates Proudman’s observations, noting how faith-based and race-relations organisations reported on the misogynistic culture that pervades their communities. Women are disempowered and treated like second-class citizens, while the tyranny and inequities of men are reinforced by their mothers, faith leaders and shari’a councils.¹²⁴ The Casey Review also revealed that women from minority communities suffering from the effects of misogyny and the abuses of their husbands are foreign-born brides brought to Britain via arranged marriages. These women often have poor English skills, little education, low self-esteem, and depend on their husband’s finances and immigration status. The lack of English language skills leaves these subaltern women unaware of their legal rights and support services in Britain, and they are less likely to seek help due to their “fear of the unknown.”¹²⁵

In addition to family pressures and structural and social disadvantages which coax women to seek out the services of shari’a councils, women’s lack of awareness of their legal rights and the support

¹²² Sebastian Poulter, ‘The Muslim Community and English Law’, *Islam and Christian-Muslim Relations*, Taylor and Francis Group, 3.2 (1992), 259—273 (p. 270) <<https://doi.org/10.1080/09596419208720984>>.

¹²³ Proudman, p. 9.

¹²⁴ Dame Louise Casey, *The Casey Review: A Review into Opportunity and Integration* (London, United Kingdom: Department for Communities and Local Government, December 2016), p. 107.

¹²⁵ Casey, pp. 105–7.

services available for them in Britain can also push them towards using these councils. The anthropologist Roger Ballard suggests that one of the reasons why some Muslim leaders in Britain intentionally mislead women in their community about their civil and Islamic legal rights is to maintain the stratification and cultural norms of their communities.¹²⁶

Women's and human rights campaigners have raised concerns about how shari'a councils are intentionally misleading women into believing shari'a councils' decisions are both legally and religiously binding. Despite the British government's position that shari'a councils hold no legal authority in Britain, there are concerns over the growing number of British Muslims who are turning to these councils instead of the British justice system.¹²⁷ Gita Sahgal underscore the concern that shari'a councils contribute to the creation of separate legal enclaves for Muslims in Britain. She highlights how the 'ulamā of these councils are issuing judgments that resemble the procedures of Britain's civil court system, leading many Muslim women to mistakenly assume that the Islamic divorces issued by these councils have legal recognition in Britain.¹²⁸ In her article for *The Guardian*, Namazie also criticises shari'a councils for operating with impunity as though they are functioning like civil courts in Britain. She further highlights that there "is no accountability or oversight of these councils and no rights for those affected."¹²⁹ Namazie reinforces this point in her report, *Sharia Law in Britain: A Threat to One Law for All and Equal Rights*:

[In shari'a councils] there is neither control over the appointment of "judges" nor an independent mechanism for monitoring them. People often do not have access to legal advice and representation. The proceedings are not recorded, nor

¹²⁶ Roger Ballard, 'Ethnic Diversity and the Delivery of Justice', in *Migration, Diaspora and Legal Systems in Europe*, ed. by Werner Menski and Prakash Shah (London and New York: Routledge, 2006), pp. 50–51.

¹²⁷ Anne-Marie Waters, 'One Law for All', in *Equal and free? Evidence in support of Baroness Cox's Arbitration and Mediation Services (Equality) Bill*, ed. by Charlotte Rachael Proudman (Mexborough, South Yorkshire: Equal and Free Limited, 2012), pp. 60–61 <http://equalandfree.org/wp-content/files_mf/1441879624Equal__Free_booklet_May_2012.pdf>.

¹²⁸ Gita Sahgal, 'On Sharia Council and Muslim Arbitration Tribunals: Frequently Asked Questions and Answers', in *One Law for All. No Religious Laws - One Secular Law for All. Rights Are for People Not Beliefs*, ed. by Maryam Namazie (London, United Kingdom: One Law for All, 2016).

¹²⁹ Maryam Namazie, 'Sharia Councils in Britain: "There Is No Accountability or Oversight of These Councils"', *The Guardian* (London, 17 April 2016) <<https://www.theguardian.com/lifeandstyle/2016/apr/17/sharia-councils-britain-one-law-for-all-campaign>>.

are there any searchable legal judgements. Nor is there any real right to appeal.¹³⁰

The literature also reveals how shari'a councils typically reflect a fundamentalist view of women being inferior to men. Manea discovered that this outlook stems from “extremist clerics” who sit on these councils and seek to isolate Muslims, particularly women, from the outside world:

[These extremist clerics] will say, a woman can never marry on her own accord, she can never divorce on her own accord, she can never have equal inheritance with men, let alone more than men. And they are all basing this on a literalist interpretation of the Qur'an, which is one characteristic of fundamentalism in my understanding.¹³¹

In a press statement titled *The Sharia Debate in the UK: Who Will Listen to Our Voices?* written by Pragna Patel on behalf of three hundred abused women, their experiences with shari'a councils were shared. These women, who had escaped abusive households, turned to these councils for help, only to find themselves under the control of hard-line, fundamentalist 'ulamā who used their interpretation of Islamic law to exert control over their lives. The experiences of these women shed light on the abuse of authority by fundamentalist 'ulamā, who masquerade as “guardians of the faith” for Muslims in Britain. They shame women who reject their decisions and deprive them of their basic human and civil rights.¹³²

The literature also highlights how fundamentalist views of women being inferior to men are structurally reflected in shari'a councils through entrenched misogynistic practices that have institutionalised shame and coercion. In her article titled *Agency, Autonomy, and Rights: Muslim Women and Alternative Dispute Resolution in Britain*, Bano references Foucault's theory of power dynamics, highlighting the presence of “points of resistance” within shari'a councils when female counsellors challenge all-male religious panels. She found women's participation in decision-making

¹³⁰ Maryam Namazie, *Sharia Law in Britain: A Threat to One Law for All and Equal Rights* (London: One Law for All, 2010), p. 9 <https://onelawforall.org.uk/wp-content/uploads/2012/09/New-Report-Sharia-Law-in-Britain_fixed.pdf>.

¹³¹ Manea, p. 176.

¹³² Pragna Patel, *The Sharia Debate in the UK: Who Will Listen to Our Voices?* (London: openDemocracy, 2016) <<https://www.opendemocracy.net/en/5050/sharia-debate-who-will-listen-to-us/>>.

processes is often limited and tightly controlled, with their concerns disregarded if they conflict with the decisions of male religious leaders.¹³³ Bano further explores these “points of resistance” in her book, where she describes the role of the all-male religious panel in shari’a councils as “strategic and negotiated,” perpetuating a narrative that confines women’s roles in Islam to those of mothers, wives, and daughters, thereby excluding them from holding positions of authority within their local Muslim communities.¹³⁴ Furthermore, Bano found that more conservative shari’a councils lacked female representation, resulting in female plaintiffs feeling intimidated, subjected to rigorous questioning, and pressured into reconciling with their husbands to preserve the Muslim family. Refusal to reconcile was viewed as a sign of female disobedience.¹³⁵

Testimonies gathered by women’s and human rights campaigners indicate that shari’a councils are violating Muslim women’s rights in fundamental ways. In her supplementary question-and-answer dossier to Patel’s *The Sharia debate in the UK: who will listen to our voices?*¹³⁶ Sahgal highlights that the testimonies of the three hundred women who co-signed Patel’s statement revealed a troubling pattern. Many of these women were compelled to attend shari’a councils by their family and friends. They found themselves subjected to the patriarchal and patronising practices of the councils and were coerced into complying with unjust decisions that put their lives in danger.¹³⁷

Namazie concurs with Sahgal’s contentions, maintaining that shari’a councils have “help to increase discrimination, intimidation and threats against the most vulnerable”¹³⁸ by eroding Britain’s legal principles of equality and neglecting women’s and children’s rights. Even in cases where women secure civil injunctions against their abusive husbands, shari’a councils seem to disregard these

¹³³ Samia Bano, ‘Agency, Autonomy, and Rights: Muslim Women and Alternative Dispute Resolution in Britain’, in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017), p. 66.

¹³⁴ Bano, *Muslim Women and Shari’ah Councils*, p. 255.

¹³⁵ Bano, *Muslim Women and Shari’ah Councils*, pp. 140–41.

¹³⁶ Pragna Patel, *The Sharia Debate in the UK: Who Will Listen to Our Voices?*

¹³⁷ Sahgal.

¹³⁸ Namazie, *Sharia Law in Britain: A Threat to One Law for All and Equal Rights*, p. 8.

injunctions and arrange mediation sessions for couples in the same venue, thereby failing to consider the safety of the women involved. She finds...

...women are often pressured by their families into going to these courts and adhering to unfair decisions and may lack knowledge of English and their rights under British law. Moreover, refusal to settle a dispute in a Sharia court could amount to threats and intimidation, or at best being ostracised and labelled “Western” or a “Kafir” (disbeliever). This is as true for men as for women.¹³⁹

1.5 Challenges

In her information and guidance notes, Gohir contends that shari’a councils ask khula applicants to provide evidence that meets the rigorous standards of the Hanafi legal tradition, which she considers to be the most restrictive of the Sunni legal traditions.¹⁴⁰ This view is supported by Ali, who highlights that Britain’s diasporic Muslims of South Asian descent typically follow the Hanafi legal tradition.¹⁴¹

In her analysis of the custodial powers held by the guardian (*walī*)¹⁴² of the bride, Bano posits that “most Pakistani Muslims are of Sunni origin and belong to the Hanafi school of thought.” She notes that the Hanafi legal system allows women to marry without the need for consent from their walī; however, the Hanafi legal school also bestows tutelary powers to fathers over their daughters, enabling them to veto their daughter’s marriage at a later stage if they deem their son-in-law incompatible (*ghayr kafa’a*).¹⁴³ Manea makes a similar observation, finding that male elders exploit their tutelary powers to end the marriages of young women in their community, and that shari’a councils enforce this practice.¹⁴⁴ Gohir concurs with Bano’s evaluation that women belonging to the Hanafi tradition have the right to marry without the consent of their walī. However, Gohir also discovered that when Muslim women decide to get married in Britain, particularly those of Pakistani and Bengali ancestry, they

¹³⁹ Namazie, *Sharia Law in Britain: A Threat to One Law for All and Equal Rights*, p. 16.

¹⁴⁰ Gohir, pp. 48–49.

¹⁴¹ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, p. 225.

¹⁴² “ولي”, in Awde, p. 222; Wehr, p. 1100.

¹⁴³ Bano, *Muslim Women and Shari’ah Councils*, p. 158.

¹⁴⁴ Manea, p. 132.

typically observe the Shafi'i, Maliki, and Hanbali legal traditions, which mandate that they obtain the approval of their walī before they marry. Moreover, Gohir found that shari'a councils uphold the pedantic stance of the British Muslim community with regards to the role and authority of the walī in an Islamic marriage, which Gohir argues is contrary to modern concepts of gender equality and human rights.¹⁴⁵ Gohir's former colleague, the late Cassandra Balchin, raised an interesting point that, in addition to applying Hanafi legal traditions, shari'a councils are also utilising "the worst aspects of traditions from non-Hanafi schools."¹⁴⁶

When it comes to annulling (faskh) Islamic marriages, particularly in divorce proceedings where husbands delay the Islamic judicial process, Parveen discovered that the Islamic Judiciary Board (IJB), a shari'a councils based in Birmingham, did not adhere to any particular Islamic legal school, and often debated which of the Sunni legal schools provided the most appropriate solution for a case. Parveen observed that the IJB usually applied the rules of the Maliki legal tradition in cases where wives faced harm in their marriages.¹⁴⁷ Similarly, Sabiha Hussain's investigation of informal Islamic family courts in India revealed that many of these courts applied the rules of the Maliki legal tradition in matters related to estranged husbands.¹⁴⁸

The existing literature on the development of shari'a councils presents an incomplete picture of their history. While John R. Bowen's examination of the history of the dār ul-qazā in British-controlled India sheds light on how British 'ulamā obtained the necessary organisational and performative infrastructures for establishing shari'a councils,¹⁴⁹ his account overlooks crucial details

¹⁴⁵ Gohir, p. 15.

¹⁴⁶ Shaheen Sardar Ali, "Between the Devil and the Deep Blue Sea": Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora', p. 225.

¹⁴⁷ Rehana Parveen, 'Do Shari'a Councils Meet the Needs of Muslim Women? (PhD)' (PhD thesis, Birmingham Law School, College of Arts and Law, University of Birmingham, 2017), p. 217.

¹⁴⁸ Sabiha Hussain, 'Shariat Courts and Women's Rights in India', *Center for Women's Development Studies, Occasional Papers Series*, Delhi, India, 2007, p. 9 <<https://www.cwds.ac.in/wp-content/uploads/2016/09/ShariatCourts.pdf>>.

¹⁴⁹ John R. Bowen, pp. 52–54.

regarding the adaptation of India's dūr ul-qazā under the shadow of the English and Welsh legal system in postmodern Britain.

Although the literature does not specifically discuss the evolution of shari'a councils from the dūr al-qazā, it offers considerable insights into the socio-political landscape of Britain that has contributed to their emergence. Ali,¹⁵⁰ Patel,¹⁵¹ and Manea¹⁵² provide detailed accounts of how the British government's deference to multiculturalism and fear of being labelled as racist or Islamophobic has seen it capitulate its responsibilities for protecting the welfare and rights of minority women to "non-state legal actors," who violate these rights with impunity. Under the "garb of liberal multiculturalism," Ali posits that the development of Islamic law among British Muslims of South Asian descent has given birth to an "Angrezi shari'a," which she describes as "a pick-and-mix of English, Islamic and local South Asian norms."¹⁵³ Ali argues that it is within the sphere of shari'a councils where Angrezi shari'a is applied most vigorously.

Patel characterises the emergence of shari'a councils in Britain during the 1970s and 1980s as "shariafication by stealth." She argues that these councils serve as legal mechanisms that Britain's conservative Muslim leaders employ to make state law and policy more "shari'a compliant."¹⁵⁴ Similarly, Manea critiques the British government's complicity in allowing Muslim leaders to function under the rules and norms of their "native lands," which can include faith-based laws that are incompatible with British law.¹⁵⁵ For Manea, this underscores the dangers of multicultural policies that grant ethnic and religious groups the right to self-governance, as such policies can result in the

¹⁵⁰ Shaheen Sardar Ali, "'Between the Devil and the Deep Blue Sea': Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora", p. 219.

¹⁵¹ Pragna Patel, 'The Growing Alignment of Religion and the Law: What Price Do Women Pay?', in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017), p. 101.

¹⁵² Manea, p. 190.

¹⁵³ Shaheen Sardar Ali, "'Between the Devil and the Deep Blue Sea': Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora", p. 220.

¹⁵⁴ Pragna Patel, 'The Growing Alignment of Religion and the Law: What Price Do Women Pay?', p. 85.

¹⁵⁵ Manea, pp. 112–13.

abdication of the government's responsibility to protect the rights and freedoms of their minority citizens.

Another area of interest in the literature that demands further investigation are the affiliations between shari'a councils and international Islamic organisations and pan-Islamic movements, and how these affiliations influence their services. Bowen contends that, whilst the doctrinal differences between the Barelvi and Deobandi movements have subsided in South Asia over time, they seem to have "hardened and simplified" in Britain. These differences are said to have impacted many of the country's Muslim institutions, including shari'a councils.¹⁵⁶ Bowen shares how clients of shari'a councils have noted the impact of these doctrinal differences on the services provided by Barelvi and Deobandi-affiliated councils, but the epistemic implications of these differences have yet to be explored.¹⁵⁷

In his doctoral thesis, Ronald Allen Geaves highlights how Deobandi 'ulamā have worked to consolidate their control over Britain's mosques and Islamic educational institutions since the early 1960s. He explains that the Deobandi's success in seizing control of Britain's mosques was largely due to their time-honoured strategies of protecting and preserving the religious traditions of South Asian Muslims through isolationism,¹⁵⁸ strategies that are analysed in Chapters 3 and 5 of this thesis.

Recent surveys substantiate the extent of the Deobandi's control over Britain's mosques. In a survey conducted in 2016 which analysed the ethnic and sectarian affiliation of 1,700 mosques, Philip Lewis and Sadek Hamid found that 43 percent (779 mosques) were affiliated with the Deobandis, compared to 25 percent (447 mosques) aligned with the Barelvis.¹⁵⁹ Innes Bowen's research

¹⁵⁶ John R. Bowen, p. 230.

¹⁵⁷ John R. Bowen, pp. 86–87.

¹⁵⁸ Geaves, pp. 190–93.

¹⁵⁹ Philip Lewis and Sadek Hamid, *British Muslims: New Directions in Islamic Thought, Creativity and Activism*, 1st edition (Edinburgh: Edinburgh University Press, 2018), p. 48.

corroborates these results, stating that “Deobandi Islam is the dominant branch of Islam in the UK, with 44 percent of British mosques following its teachings.”¹⁶⁰

Despite the wealth of available data that showcases the Islamic institutional dominance of Britain’s Deobandi ‘ulamā, the sectarian affiliation of British Muslims presents a contrasting and complex picture. As Sophie Gilliat-Ray aptly observed:

If the *Deobandis* have been ideologically and institutionally dominant among South Asian Muslim in Britain, Muslims with *Barelvi* sympathies have been more significant numerically. An understanding of the character of the *Barelvi* movement is important for an appreciation of Islam in Britain today, because the ideas and practices of this schools of thought reflect the religious world-view of many South Asian Muslims in Britain.¹⁶¹

Innes Bowen’s research also underscores the influence of Barelvi movement in the Mirpur District of Pakistan, which happens to be “ancestral homeland of most of Britain’s Pakistani Muslims.”¹⁶²

Secular feminists such as Manea, Sahgal and Namazie further add to the discussion, highlighting how societal and political Islamic movements, such as the Jamaat-i-Islami, the Muslim Brotherhood, the Deobandis, the Ahl ul-Hadith, and the global Wahhabi movements, also exert considerable influence and control over shari’a councils. They further contend that British-based councils operate under the same framework as some of the most repressive Islamic legal boards in Pakistan and India, resulting in decisions that severely curtail the rights of women.¹⁶³

While the literature on shari’a councils highlights their colonial origins, associations with international Islamic organisations and pan-Islamic movements, and the role of Britain’s multicultural policies in facilitating their emergence, there is a notable absence of accounts from the ‘ulamā who serve on these councils regarding these aspects and the formative development of shari’a councils. The

¹⁶⁰ Innes Bowen, p. 11.

¹⁶¹ Gilliat-Ray, p. 92.

¹⁶² Innes Bowen, p. 116.

¹⁶³ Manea, pp. 151–52, 175.; Sahgal.

lack of accounts also raises important questions about how ‘ulamā in Britain during the late twentieth century drew upon traditional Islamic legal institutional models, like the dār ul-qazā, to provide similar services for British Muslims. These gaps invite examination into the specific needs of British Muslims that led to the demand for dedicated Islamic family legal services in the form of shari’a councils. Furthermore, given the doctrinal differences that exist among Britain’s Muslim communities and their affiliations with pan-Islamic movements abroad, it is essential to investigate whether the ‘ulamā of these councils feel pressured to remain loyal to Islamic legal tradition or are free to engage in ijtihād and devise new solutions to the problems faced by British Muslims.

The existing literature on shari’a councils presents varying research findings in relation to the Islamic family judicial processes employed by these councils. Feminist and human rights literature typically consists of case studies in which women recount their traumatic experiences, while other sources and commissioned reports present mixed experiences. Ali,¹⁶⁴ Bano,¹⁶⁵ Namazie,¹⁶⁶ Patel,¹⁶⁷ Proudman,¹⁶⁸ Sahgal,¹⁶⁹ Gohir and Akhtar-Sheikh¹⁷⁰ present and analyse the negative experiences of women, particularly those who visited conservative shari’a councils, where they were subjected to discriminatory mediatory processes with gendered power dynamics. These authors share accounts of women who reported instances where their grievances and fears were ignored, questioned in accusatory tones, subjected to undue and unexplained delays, charged higher fees for Islamic divorce services than men, treated as second-class citizens, and forced into accepting unreasonable terms related to child custody, visitation, and alimony.

¹⁶⁴ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, pp. 221–27.

¹⁶⁵ Bano, *Muslim Women and Shari’ah Councils*, pp. 208–16.

¹⁶⁶ Namazie, *Sharia Law in Britain: A Threat to One Law for All and Equal Rights*, pp. 10–20.

¹⁶⁷ Pragna Patel, ‘The Growing Alignment of Religion and the Law: What Price Do Women Pay?’, p. 94.

¹⁶⁸ Proudman, pp. 15–44.

¹⁶⁹ Sahgal.

¹⁷⁰ Gohir and Akhtar-Sheikh, p. 174.

In contrast, Bano,¹⁷¹ Gohir,¹⁷² Shah-Kazemi,¹⁷³ and the government-commissioned *Siddiqui Review*¹⁷⁴ provide examples of women who have had positive experiences with these councils. They highlight how some shari'a councils have helped women understand their Islamic and civil rights and directed them to appropriate civil legal remedies. Bano adds that some women even went as far as to say that these councils were “bridging the gap between older and younger generations and challenging intra-family [gender] inequalities.”¹⁷⁵ Some shari'a councils also waive their fees for women who cannot afford their services or are living in refuge centres. Despite mediation being, as some shari'a councils stated, a “necessary preliminary” in the Islamic arbitral process, the *Siddiqui Review* found little evidence of shari'a councils forcing women to reconcile with their husbands. Another variation in the Islamic family judicial procedures of these councils is that some are reluctant to grant an Islamic divorce when women present them with a civil divorce certificate.¹⁷⁶ The reasons behind this reluctance and how a decree absolute facilitates the Islamic divorce process remain unclear. Further clarification from the 'ulamā is needed to address this issue.

Earlier, Namazie argued that the lack of recorded proceedings in shari'a councils presents a significant obstacle in tracking their Islamic rulings and understanding their operational procedures.¹⁷⁷ This poses a challenge for human rights campaigners and researchers who are looking to monitor and gain insights into the councils' decisions and processes. This also raises questions as to why shari'a councils require Muslim women to provide evidence to support their khula petitions. In Shah-Kazemi's report, out of 287 case files reviewed, 285 concerned women seeking intervention from a shari'a council. These files contained correspondence between the council and their clients, evidence supporting women's khula petitions, and the council's attempts to inform the women of the

¹⁷¹ Bano, *Muslim Women and Shari'ah Councils*, pp. 206–14.

¹⁷² Gohir, p. 77.

¹⁷³ Shah-Kazemi, p. 11.

¹⁷⁴ Siddiqui and others, pp. 14–15.

¹⁷⁵ Bano, *Muslim Women and Shari'ah Councils*, p. 214.

¹⁷⁶ Gohir, pp. 44–47, 58–59; Siddiqui and others, p. 16.

¹⁷⁷ Namazie, *Sharia Law in Britain: A Threat to One Law for All and Equal Rights*, p. 9.

proceedings.¹⁷⁸ Parveen’s investigation of the Islamic Judiciary Board revealed that all 100 case files reviewed involved women seeking to end their Islamic marriages.¹⁷⁹ The files were marked “closed,” indicating that the marriages had been terminated.¹⁸⁰ However, the documents suggested that there were delays in the process.¹⁸¹ This raises questions about the contents of shari’a councils’ case files, their use in proceedings, their retention, storage, and destruction, and how these councils uphold their policies of client confidentiality.

Another inconsistency in the literature on sharia councils is the assumption that their services are exclusively sought after by women. Shah-Kazemi,¹⁸² Amin al-Astewani,¹⁸³ and the *Siddiqui Review*¹⁸⁴ attest to men also using these services for a range of reasons, from family mediation to business consultation. Parveen highlights that there are “no published research on the views of Muslim men regarding Shari’a councils.”¹⁸⁵ This thesis aims to fill this gap in the literature and determine what provisions these councils provide for men and if they are given preferential treatment over women.

Besides flagging up and addressing the reservations raised in the literature, this thesis also notes works that analyse the standards and practices of shari’a councils and offers recommendations to improve their services and prevent the discrimination of women. The *Siddiqui Review* presents evidence of both good and bad practices among shari’a councils. The panel noted examples of good practices, such as the issuance of Islamic divorce certificates upon presentation of a decree absolute, directing clients to civil legal remedies, and appointing women to the panel. However, the *Siddiqui Review* also identified instances of bad practices, such as when Islamic divorces were not always

¹⁷⁸ Shah-Kazemi, p. 18.

¹⁷⁹ Parveen, ‘Do Sharia Councils Meet the Needs of Muslim Women?’, p. 147; Parveen, ‘Do Shari’a Councils Meet the Needs of Muslim Women? (PhD)’, p. 12.

¹⁸⁰ Parveen, ‘Do Shari’a Councils Meet the Needs of Muslim Women? (PhD)’, p. 18.

¹⁸¹ Parveen, ‘Do Shari’a Councils Meet the Needs of Muslim Women? (PhD)’, p. 217.

¹⁸² Shah-Kazemi, p. 18.

¹⁸³ Amin al-Astewani, ‘Loci of Leadership: The Quasi-Judicial Authority of Shariah Tribunals in the British Muslim Community’, *Multidisciplinary Digital Publishing Institute (MDPI), Religions*, 10.406 (2019), p. 7 <<https://doi.org/10.3390/rel10070406>>.

¹⁸⁴ Siddiqui and others, p. 7.

¹⁸⁵ Parveen, ‘Do Sharia Councils Meet the Needs of Muslim Women?’, p. 143.

granted when decrees absolute were presented, inappropriate questioning of clients, and requiring victims of forced marriages to attend mediation sessions with their families. These variations in practices were attributed to conflicting interpretations of Islamic law among the councils. To protect the rights of women seeking Islamic divorces and prevent discriminatory practices, the *Siddiqui Review* recommends that the British Government intervene and establish a body with a code of practice that shari'a councils must adhere to. This body would monitor and ensure compliance with the code of practice. The necessity of such a benchmarking mechanism is evidenced by the discrepancies in standards and practices between and within shari'a councils.¹⁸⁶

In her *Information and Guidance on Muslim Marriage and Divorce in Britain*, Gohir lists her concerns with shari'a councils, and the barriers women face when attempting to obtain an Islamic divorce through these councils. These barriers include encountering an all-male panel of 'ulamā, a lack of concern for the welfare and privacy of female clients, biased decision-making and procedures that favour men, charging women a higher fee than men for the same service, and procedures that violate British court orders and equal rights laws.¹⁸⁷ Given the risks inherent in these practices and the fact that shari'a councils are providing a public service, Gohir recommends that the British government intervene to protect vulnerable women and children by enforcing the Equality Act 2010 on these councils.¹⁸⁸

Parveen also offers recommendations for shari'a councils based on her observations. She highlights that the Islamic Judiciary Board (IJB) does not employ women in any capacity, which creates an intimidating environment for women. Parveen also identified procedural shortcomings within the IJB, such as not informing clients of the purpose of meetings and a reluctance to provide clients with paperwork explaining the stages of an Islamic divorce and the estimated timeline. Given these

¹⁸⁶ Siddiqui and others, pp. 15–19.

¹⁸⁷ Gohir, pp. 42–47.

¹⁸⁸ Gohir, p. 85.

procedural shortcomings, Parveen recommends that the IJB employ a qualified female support worker. This would mitigate the austere, all-male environment and provide women with the opportunity to speak more freely about intimate matters with another woman. Parveen argues that a qualified female support worker is best suited to take details and screen female clients, answer questions about the Islamic divorce procedure, and determine whether it is suitable to arrange a joint meeting.¹⁸⁹

Much like the works of Parveen, Gohir, and the *Siddiqui Review*, this thesis will identify instances of good and bad practices among shari'a councils in its results and conclusions.

1.6 Conclusion

The literature review in this chapter revealed a significant focus on the experiences of British Muslim women and the circumstances that lead them to seek help from shari'a councils. The chapter highlighted how many of these women, particularly those of South Asian descent, are socialised into prescribed gender roles and the pressure to uphold their family's honour (*izzat*) while avoiding actions that may bring shame (*sharam*) upon their families. When their marriages break down, their grievances are often disregarded and are excluded from family mediation discussions. The literature also exposed gender biases in shari'a councils' arbitration processes. The literature revealed that in some cases, these councils overlook state laws and court rulings, fail to provide adequate protection and safety for vulnerable women, restrict their autonomy, and force them into weak bargaining positions.

The chapter explored the religious traditions and aspirations of British Muslims, particularly women seeking an Islamic divorce. These women believe that without an Islamic divorce, they remain spiritually bound to their husbands and are unable to progress in life. The literature revealed the complexities these women face, highlighting the deeply patriarchal nature of Islamic legal tradition. The literature found Islamic law prioritises the husband's role as a protector and provider while

¹⁸⁹ Parveen, 'Do Sharia Councils Meet the Needs of Muslim Women?', pp. 150–58; Parveen, 'Do Shari'a Councils Meet the Needs of Muslim Women? (PhD)', pp. 209–51.

imposing expectations of obedience and satiating the husband's sexual desires on women. Consequently, these patriarchal religious laws often result in discriminatory practices and gender power imbalances within shari'a councils.

The literature also presented conversations, criticisms, and concerns raised by politicians, women's rights activists, and lawmakers regarding the perceived risks associated with Islamic law in Britain. Critics argue that shari'a councils implement a patriarchal and contextualised interpretation of Islamic law, which undermines British law, perpetuates gender discrimination, and threatens the well-being of vulnerable women and children. Some authors advocate for banning shari'a councils. The literature also criticises British lawmakers for not adequately addressing the practical challenges posed by multiculturalism in secular democracies where human rights and religious freedom are guaranteed. However, there is a dearth in the literature exploring the views and reasoning of the 'ulamā who preside over these councils.

While some authors lament the risks associated with shari'a councils, others emphasise the vital support they provide to vulnerable subaltern women in Britain. These women face challenges due to austerity politics, legal centralism, and the gendered cultural expectations within some of Britain's sequestered Muslim communities. In an effort to improve their lives while mollifying the expectations of their family and community, some of Britain's vulnerable Muslim women find that shari'a councils, despite their shortcomings, are serving a vital purpose by providing them with their much-sought-after Islamic divorces.

The chapter also found authors distinguishing between Shari'a as God's immutable will that is sacred and universal, and fiqh as temporal and subject to social, cultural and political influences. The chapter also presented literature highlighting the diversity of interpretation of Islamic law among Muslims, which makes it difficult to speak of Islamic law in a generic way, with terms such as "Shari'a," "Islamic law," and "Muslim law" being used interchangeably across the literature, leading

to confusion. To avoid confusion, the thesis adopts Larsen’s and Mir-Hosseini’s definitions, which consider Shari’a as God’s immutable will expressed in the Qur’an and hadith traditions, and fiqh as the evolving system of jurisprudence resulting from the interpretation of these sources. The accumulated corpus of Islamic jurisprudential texts is referred to as the “classic works of Islamic law” in the thesis.

While the literature offers a range of experiences with shari’a councils, with both positive and negative encounters reported, recommendations are made to improve these councils. These include enforcing equality laws, establishing monitoring bodies, involving women on council panels, and employing female support workers. However, there are notable gaps in the existing literature that this thesis aims to address.

1.6.1 Contribution to the Literature

Investigating the Formative Development and Evolution of India’s Dār ul-Qazā and Their Influence on the Establishment of Shari'a Councils in Britain: Authors have highlighted that the Muslim Personal Law developed in British-ruled India was later transposed to Britain during the second half of the twentieth century, an argument that merits further investigation. In the context of this study, Bowen observed that in establishing shari’a councils, British ‘ulamā emulated the organisational structures of India’s dūr ul-qazā.¹⁹⁰ However, since Bowen’s book primarily focuses on how shari’a councils cater to British Muslims’ needs, he deferred the discussion of the link between India’s dār ul-qazā and Britain’s shari’a councils for others to pursue—a pursuit which this study will be undertaking across several chapters in this thesis.

Providing a Nuanced Examination of the Islamic Legal Precedents That Underlie Shari’a Council Services: In this chapter, multiple authors refer to the Qur’an and hadith traditions to illustrate the Islamic legal precedents (uṣūl) guiding shari’a councils in initiating the arbitral process with

¹⁹⁰ John R. Bowen, p. 54.

reconciliation. The literature also provides insights into the administrative procedures of these councils. More notably, Bano and Shah-Kazemi offer detailed accounts of Muslim women's experiences, while Bowen provides interview transcripts with the 'ulamā and their consensus meetings. However, the transcripts lack a detailed explanation for the 'ulamā's consensus and do not delve into the religious basis of the rulings and opinions formed during these meetings.

While Ali, Mir-Hosseini, and el Fadl should be commended for their meticulous breakdown of the patriarchal influence of classic Islamic law over the centuries and its impact on the general Sunni Muslim populace, their works fall short in delivering a comprehensive and objective analysis of how shari'a councils employ these classic Islamic legal works in case adjudication and how their decisions affect their clients. To fully understand how shari'a councils operate, it is important to examine the Islamic legal precedents of their reconciliation process, what the classic works of Islamic law suggest when reconciliation attempts fail, and the precedents concerning the various Islamic divorce processes.

Chapter 7 of this thesis aims to bridge this gap in the literature by offering nuanced insights into the Islamic legal precedents that underpin the services provided by shari'a councils.

Assessing Whether Shari'a Councils Can Be Distinguished by Their Sunni Legal Affiliations: This chapter delves into the perspectives of various authors regarding the Islamic legal traditions followed by Muslims in Britain. Many argue that, given South Asian Muslims predominantly adhere to the Hanafi legal tradition and a significant number of British Muslims are of South Asian descent, it can be assumed that the majority of British Muslims also follow the Hanafi tradition. However, other authors highlight specific cases where British Muslims of South Asian heritage adopted the rulings of the Shafi'i, Maliki, and Hanbali legal traditions. These contexts include the presence of a walī in nikāḥ ceremonies and instances where shari'a councils handle Islamic divorce petitions involving domestic violence or estranged husbands. The ambiguities in the literature regarding which of the Sunni legal traditions British Muslims adhere to contribute to the argument of Islamic legal

pluralism developing within the British Muslim community and their shari'a councils. This development will be further explored in this thesis through discussions with the 'ulamā.

Assessing Whether Shari'a Councils Are Affiliated with Pan-Islamic Movements: This thesis will also examine the associations of shari'a councils with international Islamic bodies and pan-Islamic movements. The literature reviewed in this chapter revealed how the perennial sectarian conflict between the South Asian Barelvi and Deobandi movements has "hardened and simplified" in Britain since the mid-twentieth century, notably within the country's mosques and Islamic education academies. The jockeying for power between the Barelvi and Deobandi movements over the lives of British Muslims and their institutions raises questions about their influence on the development of shari'a councils and the services they offer. Answers to these questions will be presented in Chapter 6 of this thesis.

Chapter 2: Research Methods

2.1 Introduction

This study aims to investigate the Islamic legal and cultural influences on Britain's shari'a councils. It seeks to assess how the 'ulamā of these councils reach their Islamic legal decisions and how they mediate Muslim family disputes in Britain. Moreover, this research will evaluate how shari'a councils review Islamic divorce petitions and investigate whether the 'ulamā of these councils engage in independent legal reasoning (ijtihād) in case adjudication. The ultimate goal of this study is to provide a comprehensive understanding of shari'a councils' operations in Britain and the factors that affect the 'ulamā's decision-making processes.

This chapter presents the methodology used to gather data from shari'a councils and how it will be analysed to meet the aims of the research. The analysis will enable us to understand the emergence of these Islamic dispute resolution services within the Muslim community in Britain, as well as the rationale of the 'ulamā for creating them. Furthermore, it will evaluate the extent to which 'ulamā of these councils engage in ijtihād to meet the needs of Muslims in postmodern, secular Britain, and whether they reinforce the "gendered cultural expectations" of South Asian diasporic Muslims in the country. Moreover, the analysis will provide insights into the influence of British laws, norms and values on the decisions made in these councils.

Furthermore, the data analysis will help this study ascertain the degree to which the 'ulamā allow their personal beliefs, Islamic legal and theological affiliations, and cultural backgrounds to impact their decisions. It will also examine how the 'ulamā consider the religious beliefs and cultural backgrounds of their clients. Additionally, the analysis may uncover any potential influence of conservative pan-Islamic movements on these councils and whether 'ulamā feel obligated to apply a restrictive and anachronistic form of Islamic law that may result in human rights violations against women.

2.2 Evaluating the Research Methodologies

In planning this research project, the researcher considered a number of research methodologies to see which best analyses the thoughts of the ‘ulamā working in sharia councils, the Islamic legal principles they follow, and the societal factors that shape their decisions. In her book,¹⁹¹ and in her exploratory study commissioned by the Ministry of Justice,¹⁹² Bano proposes the use of ethnographic observations as a methodology for studying shari’a councils. This method requires an ethnographer to spend a good length of time with a council observing their daily work routines and analysing their administrative and dispute resolution processes.¹⁹³ Bano’s suggestion aligns with scholars such as David M Fetterman,¹⁹⁴ Martyn Hammersley and Paul Atkinson,¹⁹⁵ who contend that for an ethnographer to gain a comprehensive understanding of how a particular group thinks and behave in their natural habitat, they must immerse themselves for extended periods, becoming the situational understudy of the people they are observing. Typically, an ethnographer is expected to spend anywhere “from 6 months to 2 years or more” observing one group.¹⁹⁶

However, this study ultimately rejected the ethnographic approach for several reasons. This study aims to gauge the epistemic and jurisprudential views of the ‘ulamā across multiple shari’a councils. This study must also consider factors outside of the group which may influence the ‘ulamā’s decisions, such as the social, cultural and political circumstances of postmodern, multicultural Britain. It is also important for this study to assess the influences of pan-Islamic sectarian movements on the decision-making processes of these councils. Furthermore, the prolonged time commitment required from an ethnographer renders this approach inadequate for the scope and objectives of this study.

¹⁹¹ Bano, *Muslim Women and Shari’ah Councils*, p. 67.

¹⁹² Samia Bano, *An Exploratory Study of Shariah Councils in England with Respect to Family Law* (Reading: University of Reading and the British Ministry of Justice, 2 October 2012), p. 27.

¹⁹³ Bano, *Muslim Women and Shari’ah Councils*, p. 67.

¹⁹⁴ David M Fetterman, *Ethnography: Step-by-Step*, Applied Social Research Methods Series (Los Angeles and Washington DC (USA): Sage Publications, Inc, 2010), xvii, p. 37.

¹⁹⁵ Martyn Hammersley and Paul Atkinson, *Ethnography: Principles in Practice*, 3rd edn (London and New York: Routledge: Taylor and Francis Group, 2007), p. 3.

¹⁹⁶ Fetterman, xvii, p. 8.

This study also rejects the phenomenological approach as a viable methodology, as it primarily focuses on understanding the subjective beliefs, experiences, and perceptions of an individual or a group who share similar lived experiences. Over the past century, phenomenology has evolved from its traditional emphasis on individualism to today where it acknowledges the ways in which society shapes individuals' beliefs and perceptions through various forms of socialisation (lifeworld) rather than as abstractions.¹⁹⁷ Individuals come to understand themselves through their interactions with the world,¹⁹⁸ and the human body serves as the medium through which individuals gain their understanding of the world.¹⁹⁹ While phenomenology can help us understand how individuals perceive their societies, it falls short in providing insights into how certain individuals exert their influences on society and how they are perceived by others, particularly those who hold positions of authority within their communities. This study aims at formulating theories that encapsulates how 'ulamā, as religious authorities, understand the sources of Shari'a, the classic works of Islamic law, and the religious rulings they issue that consider the needs of British Muslims.

This study requires a research methodology that enables the researcher to delve into a relatively understudied area while also generating new theories, concepts, and insights drawn directly from the data. For this purpose, *Grounded Theory* stands out as a suitable approach.²⁰⁰

2.3 Advantages of Using Grounded Theory as a Research Methodology for This Study

Grounded Theory, developed by Barney Glaser (1930-2022CE) and Anselm Leonard Strauss (1916-1996CE) in the 1960s, emphasises the importance of constant comparative analysis of the data

¹⁹⁷ Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy*, trans. by David Carr (Evanston: Northwestern University Press, 1970), pp.51–52.

¹⁹⁸ Martin Heidegger, *Being and Time: A Translation of Sein Und Zeit*, trans. by Joan Stambaugh (Albany, New York: State University of New York Press, (Originally published 1953), 1996), p. 297.

¹⁹⁹ Maurice Merleau-Ponty, *Phenomenology of Perception*, trans. by Colin Smith (London and New York: Routledge Classic (first English edition published 1962), 2002), pp. 118–20, 169.

²⁰⁰ Barney G Glaser and Anselm L Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (New Brunswick (U.S.A) and London (U.K): Aldine Transaction: A Division of Transaction Publishers (originally published 1967), 2006), pp. 101–15.

and its emergent conceptual results that can contribute to both critical and activist scholarship.²⁰¹ Grounded Theory offers the potential for new insights or refinement of existing theories in the literature,²⁰² although we ought to address a criticism levied against this analytical method in relation to the survey of the literature. The strict Glaserian approach to Grounded Theory demands the minimal use of extant literature so that a researcher enter the field as an unbiased *tabula rasa*:

An effective strategy is, at first, literally to ignore the literature of theory and fact on the area under study, in order to assure that the emergence of categories will not be contaminated by concepts more suited to different areas. Similarities and convergences with the literature can be established after the analytic core of categories has emerged.²⁰³

On the other hand, grounded theorists who critique the classic Glaserian approach advise researchers to use the literature “as a possible source of inspiration, ideas, ‘aha!’ experiences, creative associations, critical reflections, and multiple lenses.”²⁰⁴ Strauss and Corbin argue that researchers come to their studies bringing their expertise in their fields. *Straussian Grounded Theory* takes a more liberal stance than its Glaserian rendition, arguing that a researcher’s familiarity with the literature allows them to identify gaps in the literature, enhances their sensitivity to nuances in the data, stimulate questions in the analytical process, guide theoretical sampling and even going as far as to verify, disprove or draw attention to how existing theories only partially explain phenomena found in the data.²⁰⁵ Offering further refinements to the Straussian model is Thornberg’s *Informed Grounded Theory*, which is the approach this thesis will be adopting. Informed Grounded Theory is an analytical process...

... that has been thoroughly grounded in the data by the GT [Grounded Theory] methods while being informed by existing research literature and theoretical framework...informed grounded theorists sees the advantages of using pre-existing

²⁰¹ Steven Engler, ‘Grounded Theory’, in *The Routledge Handbook of Research Methods in the Study of Religion*, ed. by Steven Engler and Michael Stausberg, Routledge Handbooks in Religion, 2nd edn (London & New York: Routledge, Taylor & Francis Group, 2021), pp. 300–312 (pp. 300–301).

²⁰² Glaser and Strauss, p. 18.

²⁰³ Glaser and Strauss, p. 37.

²⁰⁴ Thornberg, p. 249.

²⁰⁵ Juliet Corbin and Anselm Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*, 4th edn (United States of America: SAGE Publications, Inc, 2015), pp. 68–70.

theories and research findings in the substantive field in a sensitive, creative and flexible way instead of seeing them as obstacles and threats.²⁰⁶

Another advantage Informed Grounded Theory offers is its capacity to situate its findings within a broader context presented in the literature. This approach allows the analytical methods used in Grounded Theory to be applied to various fields of study so long they allow the data to “speak for itself.”²⁰⁷ One of the tenets of Grounded Theory is what Henwood and Pidgeon term “theoretical agnosticism.” This means that grounded theorists must avoid subscribing to pre-existing theoretical frameworks presented in the literature and instead engage with the data in a critical and reflexive manner.²⁰⁸ Theoretically agnostic grounded theorists are expected to generate new theories and insights to better explain the phenomena under study and to “boldly go where nobody in their discipline has gone before.”²⁰⁹

Udo Kelle offers a strategy for grounded theorists to incorporate pre-existing theories, concepts, and research findings from the literature to their advantage in creative and flexible ways, while mitigating the risk of contaminating their analysis. Kelle suggests that the pre-existing resources from the literature can function as heuristic devices to help researchers focus their attention on the data.²¹⁰ By becoming “theoretical agnostics,” grounded theorists can critically examine and compare different pre-existing theories and concepts against the results they obtain from their data. This approach calls for researchers to stay impartial in their evaluation and avoid any bias towards a

²⁰⁶ Thornberg, p. 249.

²⁰⁷ Thornberg, p. 248.

²⁰⁸ Karen Henwood and Nick Pidgeon, ‘Grounded Theory in Psychological Research’, in *Qualitative Research in Psychology: Expanding Perspectives in Methodology and Design*, ed. by Paul M Camic, Jean E Rhodes, and Lucy Yardley (Washington DC: American Psychological Association, 2003), pp. 131–55 (pp. 138–40).

²⁰⁹ Vivian B Martin, ‘The Relationship between an Emerging Grounded Theory and the Existing Literature: Four Phases for Consideration’, *Grounded Theory Review: An International Journal*, 5.(March/June 2006) 2 and 3 (2006) <<https://groundedtheoryreview.com/2006/06/30/1403/>>.

²¹⁰ Udo Kelle, ‘The Status of Theories and Models in Grounded Theory’, in *The Sage Handbook of Current Developments in Grounded Theory*, ed. by Antony Bryant and Kathy Charmaz (London (UK): Sage Publications Ltd, 2019), pp. 84–85.

particular theory, leading to a more objective and neutral analysis. This approach not only enriches a researcher's understanding of the data but also expands their theoretical knowledge.²¹¹

An informed grounded theorist can take advantage of the “cracks between the theories and the spaces in the literature”²¹² to formulate relevant research questions to guide their analysis. By examining the lacunae between pre-existing theories and ambiguities within narratives, they can identify research opportunities and, when necessary, challenge existing paradigms. Identifying gaps and ambiguities in the literature is thus a critical step towards establishing an effective research design.

2.4 Defining the Research Questions

This research aims to provide opportunities for shari'a council 'ulamā to share their views and experiences and situate them within the various contexts discussed in the literature. Using the abductive methods of grounded theory,²¹³ this study evaluates the extent to which the qualitative and quantitative data supports pre-existing theories or warrants their re-examination. The data may offer new insights on existing theories, require adjustments to them, or even generate new theories that accurately account for the beliefs and Islamic legal approaches adopted by the 'ulamā and their interplay in other contexts. In this way, this thesis will make a valuable contribution to the literature.

The literature review revealed several noteworthy findings. Firstly, it highlighted uncertainties regarding the diverse Sunni legal beliefs and practices among British Muslims and their 'ulamā. Secondly, there was an incomplete understanding of how shari'a councils developed during the 1970s and 1980s. Lastly, there were notable variations in the experiences of shari'a council clients and the services offered by these councils. These findings raise important research questions that require answers from the 'ulamā serving on these councils. Building on the insights gleaned from the literature review, this study aims to answer the following six questions:

²¹¹ Thornberg, pp. 249-250.

²¹² Thornberg, p. 250.

²¹³ Kathy Charmaz, *Constructing Grounded Theory* (London: SAGE Publications, 2006), pp. 103-4.

1. What insights do the ‘ulamā provide regarding the formative development of shari’a councils in Britain?
2. How do clients apply for shari’a council services and how are their applications processed?
3. Which one of the four popular Sunni legal schools do shari’a council ‘ulamā follow?
4. Which one of the four popular Sunni legal schools do British Muslims follow?
5. What methods of ijtihād do shari’a council ‘ulamā employ in case adjudication?
6. How are British Muslims affected by the null legal status of Islamic family law in Britain?

2.5 Approaching Shari'a Councils for This Study (Engaging the Research Group)

Drawing on the researcher’s acquaintance with certain ‘ulamā who work in shari’a councils and senior British Muslim leaders in the education and charitable sectors, the snowball sampling method was used to extend the study to other shari’a councils. Through this approach, the researcher observed how ‘ulamā from different shari’a councils interact with each other and collaborate on various tasks, including the sharing of declassified information, the discussion of contemporary Islamic legal issues, and the formulation of decisions based on classic Islamic law. Notably, several ‘ulamā serving on these councils are widely considered world authorities in Islamic law and the traditional Islamic sciences and thus command respect from their peers both in Britain and in countries where Islamic law forms part of the national constitution.

To examine the cultural and Islamic legal influences on Britain’s shari’a councils, this study will use a combination of questionnaires, interviews with the ‘ulamā, and reviews of closed-case files in the councils’ archives. By analysing the data, the researcher will explore how the ‘ulamā working in these councils address the Islamic legal and spiritual needs of British Muslims, the ‘ulamā’s qualifications and experiences that earn them a seat on a shari’a council, and the formative development of these councils in Britain during the 1970s and 1980s. Furthermore, the study will investigate the

process through which the ‘ulamā arrive at their Islamic legal decisions for Islamic divorce cases and assess the impact of South Asian cultural norms, traditions, and theological doctrines on the decision-making process of these councils. By delving into these issues, the study seeks to better understand how shari’a councils function and the various factors that influence their operations in Britain.

2.6 Challenges

The literature review revealed that there is a significant body of work that focuses on the experiences of Muslim women who use these councils, as well as the development of Islamic law, principally in South Asia, and how it manifested into its liminal state of Britain. In particular, many works highlight how British Muslims of South Asian descent seek to replicate the religious and cultural traditions of their home country in Britain.²¹⁴ The review also considered the ongoing debates among policymakers, legislators, and women and human rights campaigners on the compatibility of Islamic law with the secular values of postmodern Britain.²¹⁵

In the existing literature, the methods of data collection include:

1. **Interviews with former clients:** In their data collection, authors gathered information by conducting interviews with former clients who presented them with statements, case-related documents, and Islamic divorce certificates to verify their use of shari’a councils services. The shari’a councils, upon the authors’ request, facilitated these interviews with former clients by providing them with details about the authors’ research and that their participation was voluntary.
2. **Semi-structured discussions between authors and the ‘ulamā:** The focus of these discussions was on the authors’ examination of the closed-case files contained in the councils’ archives.

²¹⁴ Rajnaara C. Akhtar, ‘Modern Traditions in Muslim Marriage Practices, Exploring English Narratives’, *Oxford Journal of Law and Religion*, 7.3 (2018), 427–54 (p. 429).

²¹⁵ Baroness Caroline Anne Cox, *Arbitration and Mediation Services (Equality) Bill (HL): HL Bill 12 of 2015–16* (Great Britain. Parliament. House of Lords: House of Lords: In Focus, 2015) <<https://researchbriefings.files.parliament.uk/documents/LIF-2015-0034/LIF-2015-0034.pdf>>; Proudman; Gohir; Casey.

3. **Interviews and discussions with the shari'a council's administrative staff:** Conversations with the administrative staff provided insights into the shari'a councils' application procedures. Discussions revealed the process of opening case files, managing funding, and forwarding files to the 'ulamā for evaluation.

Earlier works that collected data using the three aforementioned methods include the *Siddiqui Review*,²¹⁶ Bano's *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law*,²¹⁷ and Shah-Kazemi's *Untying the Knot: Muslim Women, Divorce and the Shariah*.²¹⁸ Whilst previous works identified the services provided by shari'a councils and their impact on British Muslim women, they did not sufficiently evaluate the Islamic legal methods used by the 'ulamā, nor did they provide rationales for the decisions made using such methods. This study aims to provide such an assessment, as the 'ulamā who serve on these panels are central to the shari'a council's services. The 'ulamā's circumspect advice and status as authorities for the British Muslim community are among the reasons why British Muslims seek guidance from these councils.

The British government and the country's media often oversimplify and misrepresent Muslims in Britain as a monolithic community in diaspora, when, in reality, Muslims in Britain comprise a heterogeneous community that is diverse and divided in their beliefs, practices, ethnicities, and experiences.²¹⁹ However, mainstream media outlets are among the harshest critics of British Muslims, often depicting them without considering their cultural, racial, and theological diversities. Instead, the mainstream media tends to present Muslims as a stagnant and anomalous community that is "rooted in the West's self-definition as the negative Other."²²⁰ Elizabeth Poole, a Professor of Media and Communications at Keele University, surmised:

²¹⁶ Siddiqui and others, p. 7.

²¹⁷ Bano, *Muslim Women and Shari'ah Councils*, pp. 130, 181

²¹⁸ Shah-Kazemi, p. 15.

²¹⁹ Manea, pp. 19–20.

²²⁰ Elzain Elgamri, *Islam in the British Broadsheets: The Impact of Orientalism on Representations of Islam in the British Press* (Reading: Ithaca Press, 2011), p. xxiii.

In the search for a good story, journalists have tended to overlook Muslims with more moderate opinions in favour of radicals who give sensational sound bites, Muslim leaders say ... The representation of Islam in the press coverage of some British newspapers is viewed as reductive and reflecting a general negative image of the religion and the societies associated with it.²²¹

The ‘ulamā have raised concerns about how Islam and Muslims are depicted in the British media. These concerns stem from a lack of understanding and empathy exhibited by the media regarding the challenges faced by British Muslims in reconciling their spiritual and national identities. Furthermore, the media tends to overlook the contributions made by Muslims to British society.²²² These concerns are also linked to the negative press coverage shari’a councils have received. As a result, three of the six councils contacted for this study preferred to conduct telephone interviews, with the caveat that participation would need to be authorised by their ‘ulama and mosque stakeholders. However, the researcher received curt responses from the administrative teams during these telephone conversations and the promised follow-up call to confirm their participation in the study did not happen.

Some shari’a councils are hesitant to participate in academic studies due to their commitments to stakeholders and management. This reluctance is particularly prominent among councils affiliated with larger Muslim organisations, which raises questions about the appropriate definition and characterisation of a British shari’a council. The *Siddiqui Review* sheds light on this issue, stating:

Sharia councils are diverse and there is no single authoritative definition of what constitutes a sharia council. Those in England and Wales vary in size, services offered and schools of Islamic thought, but were all established to service the religious needs primarily of Sunni Muslims.²²³

²²¹ Elizabeth Poole, ‘Media Representation of British Muslims’, *Arab Media*, May 2001.

²²² Paul Baker, Costas Gabrielatos, and Tony McEney, *Discourse Analysis and Media Attitudes: The Representation of Islam in the British Press* (Cambridge and New York: Cambridge University Press, 2013), pp. 261–70.

²²³ Siddiqui and others, p. 10.

In another report commissioned by the British government, Bano notes that there exists no authoritative definition of a shari'a council. She then provides her own preliminary definition, describing shari'a councils as entities that...

...specifically dealt with issues concerning matrimonial breakdowns... [with] the capacity to issue Muslim divorce certificates to Muslim women.²²⁴

Bano's report offers insights into the services provided by shari'a councils and their funding sources. She classifies these councils into three types: those that are self-funded, those affiliated with mosques, and those operating as non-profit voluntary organisations that are led and funded by an 'ālim or a Muslim organisation that adheres to a specific Sunni legal tradition.²²⁵

Of the six shari'a councils contacted for this study, two operate independently, charging fees to cover administrative costs. These two independent shari'a councils readily participated in this study, providing interviews, follow-up interviews, and access to their councils' archives. One council, which functions as a branch of a mosque, also participated in this study, granting the researcher interviews and access to their archive.

As for the three shari'a councils that chose to conduct telephone interviews, two were affiliated with mosques, and one functioned as a charity. According to their administrative team, these councils mainly handle Islamic divorce cases. When the researcher requested a meeting with one of the councils' 'ulamā, the administrative team apologised and explained their 'ulamā were all busy. They again reiterated that any involvement in an academic research and access to their archives needed to be discussed and authorised in their annual general meeting. Due to time constraints and the research's requirements, the researcher settled with telephone interviews with the administrative team of these three councils.

²²⁴ Bano, *Muslim Women and Shari'ah Councils*, p. 85.

²²⁵ Bano, *An Exploratory Study of Shariah Councils in England with Respect to Family Law*, pp. 19–20.

With the three councils that took part in this study, the researcher explained to the ‘ulamā that the purpose of the study was to examine the cultural and Islamic legal influences on Britain’s shari’a councils. The ‘ulamā found the study to be compelling and believed that face-to-face interviews would be more suitable for the purposes of this research. The ‘ulamā were concerned that their schedules and the limitations of providing comprehensive written responses would not adequately serve the study. Consequently, the ‘ulamā from all three participating councils permitted the researcher to use an audio recording device during the interviews.

To protect the confidentiality of the ‘ulamā in this research, each ‘ālim who took part in the study will be assigned a pseudonym corresponding to the shari’a councils they represent. Each shari’a council will be distinguished by an integer, and each ‘ālim from a particular council will be assigned a decimal number to differentiate them. For example, the first ‘ālim from the second participating shari’a council (Shari’a Council 2) will be referred to as ‘*Ālim 2.1*, and the second ‘ālim from the third shari’a councils (Shari’a Council 3) will be designated as ‘*Ālim 3.2*.

2.7 Going into the Field: How the Data Was Collected

The fieldwork involved the collection of two sets of data: the first was acquired through face-to-face interviews with the ‘ulamā, and the second was drawn from closed-case files from the shari’a councils’ archives.

2.8 Qualitative Data: Interviews with the ‘Ulamā

A questionnaire²²⁶ was drafted and sent to the participating shari’a councils via email. The questionnaire contained several multiple-choice questions, with additional space under the checkboxes that allowed the ‘ulamā to provide more detailed responses. The researcher expected the ‘ulamā to complete the questionnaire, schedule an appointment for the researcher to collect the completed form

²²⁶ See Appendix 3.

from their offices, and then arrange an interview with one of the council's 'ulamā. The questionnaire was divided into six sections as follows:

1. Details about the shari'a council. This includes contact information, the number of 'ulamā on the panel, administrative staff, and paid and voluntary staff.
2. How 'ulamā interpret the Qur'an and hadith collections.
3. The methods of ijtihād the 'ulamā used when referencing classic works of Islamic law.
4. The Islamic marriage services offered by the council.
5. The Islamic divorce services offered by the council.
6. The 'ulamā's understanding of the English and Welsh legal system.

Shortly after emailing the questionnaire, the researcher received a telephone call from the council's administrative team. They acknowledged receipt of the email containing the questionnaire and said that the 'ulamā were looking forward to meeting the researcher.

On the day of the meeting, an 'ālim from the council invited the researcher to their office. The 'ālim revealed that they had reviewed the questionnaire with other members of their council and, despite the space for written responses, proposed that conducting a semi-structured interview would be more beneficial. The researcher posed questions from the questionnaire and the 'ālim responded verbally, while the researcher recorded their answers using an audio recording device. This allowed for a free-flowing and thorough discussion between the researcher and the 'ālim, with opportunities for the researcher to tailor their questions and request further clarification based on the 'ālim's response. For multiple-choice questions, the researcher read out the options, and the 'ālim selected the appropriate response before explaining the reason for their selection.

The interviews provided an in-depth conversation with the 'ulamā, who shared their opinions on the four popular Sunni legal schools, the legal methods employed by the 'ulamā at their council when dealing with Islamic divorce cases, and how they handled clients who sought a decision based

on a specific Sunni legal school. The ‘ulamā also provided insights of the details they require from clients to render an Islamic legal verdict and areas of civil and Islamic law their shari’a council avoided. Two of the shari’a councils that participated in this study requested further meetings with the researcher to complete their questionnaires and interviews.

In one of the shari’a councils, the ‘ālim recounted they had asked their administrative team to help them complete the questionnaire. However, the administrative team suggested it would be better for them to invite the researcher and for the ‘ālim to complete the questionnaire with them. The ‘ālim then told the researcher that their staff had explained the purpose of the research was to understand how they, as an ‘ālim of the shari’a council, review cases and reach their Islamic legal verdicts.

After completing the questionnaire, the ‘ālim took the researcher on a guided tour of their council, showing them their offices, consultation and arbitration rooms, prayer facilities, libraries, and staff rooms. During the tour, the ‘ālim and their administrative team shared details of their daily routines and the challenges they faced in their day-to-day operations. Following the tour, the ‘ālim granted the researcher access to their council’s archives and to review their closed-case files.

2.9 Quantitative Data: Extracting Data from the Shari’a Council Archives

As part of the fieldwork, the ‘ulamā insisted that the researcher examine their council’s archives. The ‘ulamā contended that their archives provide a reliable indication of their council’s operational procedures. These archives contain preserved case files, including the testimonies of petitioners, defendants, and witnesses, as well as documents, affidavits, reports from medical professionals and other experts, and, in certain instances, copies of decrees nisi or decrees absolute.

In England and Wales, solicitors are bound to *Sections 2*²²⁷ and *5*²²⁸ of the *Limitation Act 1980*, which stipulate that solicitors can keep files for a period of six years, after which both hard copies and electronic versions must be destroyed. It should be noted that shari'a councils in Britain are not legally obligated to abide by these stipulations concerning file retention and the destruction timeframe. Nevertheless, some shari'a councils have opted to comply with the *Limitation Act 1980* in relation to their Islamic divorce case files:

Case files will be securely retained by the Shariah Council for a period of six years from the date of application, after which they will be safely destroyed.²²⁹

In the event that a client requests their case to be expunged from the councils' archives, the councils are willing to accommodate such requests. However, if no request is made, it is within the discretion of the 'ulamā to decide whether to retain the case files in the archives for posterity or to comply with the provisions of the *Limitation Act 1980*. According to an 'ālim from one of the participating councils, preserving case files presents an invaluable opportunity for both academics and future generations of 'ulamā to examine and develop overarching Islamic principles and guidelines for British Muslims and their religious leaders. All the case files reviewed in this study were no more than six years old from the date of their application.

In the three shari'a councils participating in this study, their archived case files were brought to the researcher and placed on a desk in one of their private staff rooms. All the files presented to the researcher were Islamic divorce case files that had been resolved. On the first page of each file was a copy of the Islamic divorce certificate issued to the petitioner. When the researcher asked the 'ulamā if their council kept records of other services in their archives, all the 'ulamā emphatically answered

²²⁷ 'Limitation Act 1980. Time Limit for Actions Founded on Tort. Section 2', legislation.gov.uk, 1991 url: <https://www.legislation.gov.uk/ukpga/1980/58/section/2>

²²⁸ 'Limitation Act 1980. Time Limit for Actions Founded on Simple Contract. Section 5', legislation.gov.uk, 1991 url: <https://www.legislation.gov.uk/ukpga/1980/58/section/5>

²²⁹ The Muslim Law Shariah Council, 'Application Form for Woman & Procedure for Khula Application' (The Muslim Law Shariah Council - Application form for woman & procedure for khula application, 2019), p. 4 <<http://www.shariahouncil.org/wp-content/uploads/2019/01/AW1-Islamic-Divorce-Application-Pack-for-Women-8.11.2018.pdf>>.

“No.” ‘Ulamā from the three participating shari’a councils mentioned that couples sometimes visited them to perform their Islamic marriage rites. They also revealed how professionals from the financial and medical sectors, academics, business owners and the service industries would consult the ‘ulamā for their Islamic opinions in relation to their respective fields. In reports and academic works, the ‘ulamā allowed academics, professionals, and civil servants to reference their names. The ‘ulamā also shared that British community organisations, faith leaders, politicians, and dignitaries, both in Britain and from abroad, visited their councils. All three shari’a councils stated they did not archive records of their marriage and consultation services; evidence of these services is recorded in visitor’s logbooks and email correspondence.

Upon investigating the archived Islamic divorce case files, the researcher discovered cases of British Muslim couples who presented two marriage certificates to the council: one for their civil marriage and another for their Islamic marriage (nikāḥ-nāmā). The researcher also discovered cases of Muslim couples who had married overseas and submitted, along with their Islamic divorce petition, a copy of their Islamic marriage certificates that had been notarised by a federal state. There were also cases that involved Muslim couples who had performed an Islamic marriage (nikāḥ) in Britain but had opted not to register their marriage with their local authorities. In England and Wales, the *Siddiqui Review* lists several reasons why some Muslim couples choose not to civilly register their marriages. These include a desire among British Muslims to seek moral rectitude for engaging in sexual relations, deferring the civil ceremony until they can afford it, and a lack of awareness regarding the legally null status of Islamic law in England and Wales. In other cases, some couples are fully aware of the legally null status of Islamic marriages in England and Wales, and thus with impunity, practice polygamous Islamic marriages.²³⁰

²³⁰ Siddiqui and others, p. 14.

2.10 Ethical Considerations

Upon reviewing the shari'a councils archives, the researcher clarified that they were specifically interested in closed Islamic divorce case files, as these documents provide a comprehensive view of the 'ulamā's Islamic legal procedures - from the initial application submitted by their clients to the final verdict issued by the 'ulamā. All confidential information pertaining to petitioners, defendants, and shari'a councils 'ulamā, such as names, addresses, and contact details, was redacted from the analysis. To address any potential concerns regarding access to closed Islamic divorce case files in the council archives, the researcher included a disclaimer with the questionnaire that was emailed to the councils, stating:

All documents, cases studies, interviews and correspondences are treated as strictly confidential and will not be released to any third party unless written authorisation is first obtained from the shari'a council, and any party involved.

The research topic and methodology presented in this thesis was conducted in accordance with university ethical guidelines. Before commencing this study, the proposed research design and methods were submitted to and approved by the Ethics Review Committees of Heythrop College (HC) and School of Advanced Study (SAS), both of which are institutions of the University of London. These committees assessed the potential ethical implications of the research and provided guidance on appropriate measures to ensure the protection of participants. The study was conducted in compliance with the approved research ethics code of good practice, and all participants in this study - the 'ulamā - gave their informed consent before their participation.

2.11 Analysing the Data

After conducting the fieldwork, the researcher obtained two distinct sets of data to support the aims of the study. The first data set comprised audio recordings of interviews with 'ulamā belonging to one of the three participating shari'a councils. These interviews served as sources of qualitative data, which was then codified and analysed using Grounded Theory methods. The researcher began with a

thematic analysis of these interviews to identify initial codes and substantive themes emerging from each interview. These emerging themes were then refined and developed into more inclusive formal theories using the Constant Comparative Method of Grounded Theory.²³¹ This iterative process helped to provide a better understanding of the thoughts and opinions of the ‘ulamā and their methods of Islamic adjudication.

It is important to acknowledge the difference between Grounded Theory, which is a research methodology, and thematic analysis, a tool used to analyse qualitative data. Grounded Theory is an inductive and iterative method of research that aims to generate theories based on the data and provide explanations for phenomena evident in the data. This method involves a meticulous and systematic line-by-line coding of the data, enabling the researcher to identify patterns, themes, and phenomena that are present in the data. In contrast, thematic analysis is a way of analysing qualitative data that involves identifying and categorising patterns or themes. Grounded theorists often use thematic analysis during the early stages of memoing, coding, and categorisation of data.²³² This is particularly true when following the steps of thematic analysis developed by Virginia Braun and Victoria Clarke.²³³ Thematic analysis can help grounded theorists to identify patterns and themes from the data, which can then be used to formulate theoretical concepts and ideas to explain the data.

Each audio recording of an ‘ālim’s interview was transcribed and manually collated into a Microsoft Word spreadsheet. Each line of the transcription was inserted into an individual cell in a column. To help the researcher to locate a specific line in an interview, a code text²³⁴ was assigned to each ‘ālim and a number was assigned to each line in their interview. Thus, the first line in ‘Ālim 1.1’s interview was given the code text [‘Ālim 1.1-01], the twentieth line in ‘Ālim 2.1’s interview was given

²³¹ Glaser and Strauss, pp. 32–35.

²³² Greg Guest, Kathleen M MacQueen, and Emily E Namey, *Applied Thematic Analysis* (United States of America: Sage Publications, Inc, 2012), p. 12.

²³³ Virginia Braun and Victoria Clarke, *Thematic Analysis: A Practical Guide* (London: SAGE Publications Ltd, 2022), pp. 35–36.

²³⁴ Guest, MacQueen, and Namey, pp. 63–64.

the code text [‘Ālim 2.1-20], and so on. Memoing was also used to help the researcher understand the meanings and patterns emerging from the data,²³⁵ and their connections with the codes, themes and categories developed in later stages.²³⁶

Once the researcher familiarised themselves with the interview transcript, they proceeded to generate initial codes which described elements and patterns emerging from the transcript. Charmaz maintains that this initial, line-by-line coding can help researchers to identify themes, patterns, and ideas from their data. It is not uncommon for an initial code to describe multiple lines from one transcript or even lines from other transcripts.²³⁷ The column containing the initial codes is placed adjacent to the column containing the interview transcript.

After completing the initial line-by-line coding of the interview transcript, Braun and Clarke suggest that researchers should proceed to categorise codes that share core ideas and concepts that “tell you something important and relevant in relation to the research question.”²³⁸ In Grounded Theory, these categories are developed through focused coding. During focused coding, the initial codes, which serve as units of analysis of the data, are grouped under a category that hint at a higher theme or idea.²³⁹ The column containing the categories is placed adjacent to the column containing the initial codes.

Once all the initial codes have been grouped into their respective categories, the next step in the thematic analysis involves examining the relationship between these categories and returning to the transcript to validate whether this relationship indicates an emerging theme from the interview. During this stage, the codes and categories developed in the earlier stages may be adjusted to better highlight any emerging themes.²⁴⁰ In Grounded Theory, Charmaz refers to this process as axial coding, whose

²³⁵ Glaser and Strauss, p. 108.

²³⁶ Charmaz, p. 72.

²³⁷ Charmaz, pp. 50–53.

²³⁸ Braun and Clarke, p. 80.

²³⁹ Charmaz, pp. 57–60.

²⁴⁰ Braun and Clarke, pp. 98–101.

purpose “is to sort, synthesise, and organise large amounts of data and reassemble them in new ways after open [initial] coding.”²⁴¹

Using this study’s six research questions as a guiding framework, the researcher will identify categories and themes from each of the transcribed interviews. They will then employ Glaser and Strauss’ Constant Comparative Method to compare and contrast participants’ accounts in relation to the research questions.²⁴² Through this iterative process, the researcher will refine and delimit their investigation until theoretical saturation is achieved.²⁴³ At this point, the ‘ulamā’s accounts will have been thoroughly explored and analysed, and theories and explanations will have emerged from the data. For this study, the Constant Comparative Method will support the generation of new insights and theories that will contribute to a deeper understanding of the ‘ulamā’s thought processes and behaviour, as well as the social, cultural, political, and Islamic ecumenical factors that influence their decision-making and behaviour.

The second set of data comprises quantitative data extracted from 402 Islamic divorce case files held in the shari’a councils’ archives. According to Morse and Maddox, researchers who wish to integrate quantitative data into their qualitative research should consider their research questions carefully to decide how the quantitative data can support the categories and themes generated from the qualitative analysis, as well as the format in which this supplementary data should be presented.²⁴⁴ Julia Brannen concurs with Morse and Maddox’s recommendations, suggesting that in any research endeavour where qualitative data is the main focus, any accompanying quantitative data should be treated as a facilitator for the qualitative work.²⁴⁵ This thesis will use quantitative data to complement

²⁴¹ Charmaz, p. 60.

²⁴² Glaser and Strauss, pp. 105–15.

²⁴³ Glaser and Strauss, pp. 61–62.

²⁴⁴ Janice M Morse and Lory J Maddox, ‘Analytic Integration in Qualitatively Driven (QUAL) Mixed and Multiple Methods Designs’, in *The SAGE Handbook of Qualitative Data Analysis*, ed. by Uwe Flick (California, United States of America: SAGE Publications, Inc, 2014), pp. 524–39 (pp. 528–29).

²⁴⁵ Julia Brannen, ‘Combining Qualitative and Quantitative Approaches: An Overview’, in *Mixing Methods: Qualitative and Quantitative Research*, ed. by Julia Brannen, Thomas Coram Research Unit, Institute of Education, Thomas Coram

and provide context for the qualitative data analysis. To present the quantitative data, tables, pie charts, bar graphs, and choropleth maps will be used, along with basic arithmetic tools such as quantities (addition), differences (subtraction) scale (multiplication), and proportions (divisions) to summarise and illustrate trends in the data.²⁴⁶

Research Unit, Institute of Education (Hants, England, Great Britain: Ashgate, Biddles Limited, 1992), pp. 3–37 (pp. 23–24, 27–28).

²⁴⁶ Guest, MacQueen, and Namey, pp. 132–37.

PART 2

PATHWAYS AND PRACTICES

Chapter 3: The Dār ul-Qazā: The Archetype for Shari’ah Councils in Britain

3.1 Introduction

By the early 1980s, Zaki Badawi and other imams would help women but there was no way to get divorces; women were left hanging...imams, mosque officials, scholars, and they agreed that there should be a shari’ah council, like the dār ul-qaza in India.²⁴⁷

Maulana Muhammad Shahid Raza (1950-2022 CE)

The London council [Islamic Sharia Council, Leyton] has its heritage in the quasi-judicial bodies of British India, the dar ul-qaza, and has adjusted and adapted in the shadow of the English law court.²⁴⁸

As one of Britain’s leading ‘ulamā, Maulana Muhammad Shahid Raza’s contributions to interfaith dialogue and community cohesion in Britain were lauded by the country’s establishment. So much so, Raza’s work earned him an Order of the British Empire (OBE). But for Muslims in Britain, it was Raza’s role as Executive Secretary of the Muslim Law (Shari’ah) Council, and as one of the leaders of the *Ahl-e-Sunnat wa Jama’at*, that captured their attention.²⁴⁹ The *Ahl-e-Sunnat wa Jama’at* is an international Hanafi-cum-Sufi movement with over 200 million followers, many of whom reside in India and Pakistan.²⁵⁰ Followers of the *Ahl-e-Sunnat wa Jama’at* are commonly referred to as the Barelvis; a name derived from the hometown of the movement’s founder, Ahmed Raza Khan (1856–1921 CE), who was born in the city of Bareilly, in the Indian district of Uttar Pradesh.²⁵¹

Research conducted by Geaves²⁵² and Gilliat-Ray²⁵³ suggest that the South Asian Muslim population in Britain with Barelvi sympathies is numerically significant. However, a South Asian Islamic movement which stands in opposition to the Barelvi movement and exerts a greater influence

²⁴⁷ John R. Bowen, p. 62.

²⁴⁸ John R. Bowen, p. 128.

²⁴⁹ Press Trust of India, ‘Indian-Origin Imam Conferred Honorary Doctorate by UK University - Times of India’, *The Times of India* (Mumbai, Maharashtra, India, 25 January 2016); Musharraf Hussain, *A Tribute to Maulana Shahid Raza OBE* (Nottinghamshire, UK, 10 October 2012).

²⁵⁰ John Bowker, ‘Barelvi’, in *The Concise Oxford Dictionary of World Religions* (Oxford University Press, 2003).

²⁵¹ Usha Sanyal, *Ahmad Riza Khan Barelwi: In The Path Of The Prophet* (Oxford: Oneworld Publications, 2005), pp. 51–53.

²⁵² Geaves, p. 195.

²⁵³ Gilliat-Ray, p. 92.

on British Muslim institutions and the development of shari'a councils, are the followers of the 'ulamā of Deoband.²⁵⁴

While the Barelvis primarily focused on the spiritual dimension of Prophet Muhammad,²⁵⁵ the 'ulamā of Deoband take a more pragmatic approach, placing greater emphasis on the practical application of Islamic law in everyday life. To achieve their pragmatic aims, the 'ulamā of Deoband established the dār ul-qazā, which translates as “the house of Islamic judges.” Emerging in early twentieth-century India, the dūr ul-qazā continue to operate as informal Islamic family legal services in the country and are often managed by the 'ulamā of the Deobandi movement.

This chapter delves into the origins and development of India's dār ul-qazā, the archetypal Islamic family legal service in post-independent India, which the 'ulamā sought to emulate in Britain. It explores the significant role played by the 'ulamā of Deoband in shaping the concept of dār ul-qazā, leading to its growth in India. The chapter will highlight key figures within the Deobandi movement who conceived and promoted the idea of the dār ul-qazā. It will also assess the contentious position of the dār ul-qazā in post-independent India, examining its complex interaction with the broader legal framework of the parliamentary, secular, democratic republic of India.²⁵⁶ By analysing this interplay, the chapter will uncover the challenges that the dār ul-qazā encounters while navigating through the contours of postmodern Indian society.

3.2 *The Deobandi Movement*

Following the death of the sixth Mughal emperor, Muhammad Aurangzeb Alamgir (1618-1707 CE), the Mughal Empire began to deteriorate, rendering it incapable of sustaining India's cultural, legal, and religious educational institutions. In the early nineteenth century, the *British East India Company*, originally an international trading entity known as the “Governor and Company of

²⁵⁴ Innes Bowen, p. 11; Lewis and Hamid, p. 48.

²⁵⁵ Sanyal, *Ahmad Riza Khan Barelwi*, pp. 74–75.

²⁵⁶ Ministry of Law & Justice.

Merchants of London trading into the East Indies,” transformed into a proxy empire-building organisation representing the British Crown. This transformation allowed the Company to exert economic, military, and political control.²⁵⁷ The British East India Company patiently observed India’s social and economic deterioration, waiting for opportune moments to acquire territories that aligned with Britain’s colonial interests.

To hasten the decline of the Mughal Empire, the British East India Company enacted the *British Parliamentary Charter Acts of 1813 and 1833*. These acts stipulated that indigenous educational academies in India would lose state patronage unless they conformed to the British education system.²⁵⁸ By 1837, Farsi was abolished in India’s courts, and English became the new official language. This rapid transition in India’s courts led to the abolition of Muslim Criminal Law, with English Criminal Law becoming the official penal code across British-controlled India.²⁵⁹ For the British East India Company, Britain’s annexation of India represented a manifestation of their...

...confidence in the racial superiority of Europeans and in their God-given right to bring European order to less-developed peoples. The British exhibited an ever-increasing aloofness, superciliousness, and condescending attitude toward Indians.²⁶⁰

During the nineteenth century, indigenous Indians witnessed the usurpation of their provinces, the confiscation of their nation’s treasures and estates, heavy taxes imposed by the British, and the rapid Anglicisation of their culture and society. As India’s grievances escalated, they turned to active political resistance, resulting in the Indian Rebellion on 10 May 1857. The catalyst for the rebellion was the British East India Company’s disregard for the religious beliefs of native Indians, demonstrated by their sepoys’ use of rifle cartridges greased with pig’s and cow’s fat, which was deeply offensive to the Indian infantry and sparking a nationwide uprising. The Indian Rebellion came to an end on 1

²⁵⁷ Douglas M. Peers, *India Under Colonial Rule 1700-1885*, 1 edition (Harlow, England; New York: Routledge, 2006), p. 64.

²⁵⁸ Muhammad Asjad Ansari, ‘Modern Education in Madrasas: A Perspective Study of Dar al-Uloom Deoband’, *Asia Pacific Journal of Research*, 1.XLIV (2016), 101–8 (pp. 101–2).

²⁵⁹ Mohammad Hanif Ahmad, ‘A Study of the Secular Content of the Educational Programmes of Prominent Madrasas of Uttar Pradesh’ (PhD, Aligarh Muslim University, 2002), pp. 50–51.

²⁶⁰ Ira M. Lapidus, *A History of Islamic Societies*, 3rd edition (New York: Cambridge University Press, 2014), p. 701.

November 1858, leaving behind a devastating toll. The conflict claimed the lives of over 800,000 Indians and 6,000 Europeans, while cities such as Delhi, Lucknow, Bihar, and Kanpur lay in ruins.²⁶¹

After the Indian Rebellion, both Britons and Indians gained valuable insights. The British recognised the risks of governing their colonies as commercial enterprises under royal assent. As a response to the Indian Rebellion, the British Parliament reevaluated its political strategy and extended recognition to India's native population as British subjects. This led to the enactment of the *Government of India Act 1858*, which dissolved the British East India Company and transferred all its assets to the Crown. Consequently, Queen Victoria, the reigning British monarch (reign: 1876-1901 CE), was bestowed with the title of Empress of India, granting her authority to govern the Indian subcontinent as the British Raj.

For Indians, the consequences were far more sombre. Direct military action against the British army resulted in a devastating loss of lives and the destruction of their historical cities. The end of the Indian Rebellion marked the end of the Mughal Empire and ensured Britain's sovereign control of India. For the 'ulamā, the Indian Rebellion served as evidence that armed conflict not only jeopardised their lives and their nation but also posed a danger to their religious identities. Some 'ulamā of the subcontinent, such as Mahmud al-Hasan (1851-1920 CE), believed that armed resistance against Britain was essential for Muslims to strengthen their resolve and advance Islam in India. Others, such as Muhammad Qasim Nanautawi (1832-1880 CE) and Rashid Ahmad Gangohi (1826-1905 CE), who had previously advocated for armed struggle, reevaluated their stance after the Indian Rebellion. They realised that protecting and preserving India's Muslims' religious and cultural identity was paramount, given Britain's efforts to secularise their religious institutions and society. They also sought to counter what they saw as the aberrant religious and cultural practices of the Hindu mainstream.²⁶²

²⁶¹ Peers, p. 64.

²⁶² Muhammad Asjad Ansari, p. 103; Innes Bowen, p. 12.

Nanautawi and Gangohi shifted their focus away from armed conflicts to intellectual and social efforts, aimed at protecting and preserving the religious beliefs and cultural practices of India's Muslim population. To achieve this, the traditionist 'ulamā established a new dār al-'ulūm in Deoband, a village about 130 miles north of Delhi. The Majlis-e-Shura (consultative council) for the Dār al-'Ulūm of Deoband was inaugurated on May 30, 1866, marking a significant milestone in addressing the challenges faced by Muslims living in British-controlled India. In hindsight, the Majlis-e-Shura recognised that India was no match for Britain's economic and military power. Therefore, the 'ulamā reasoned that their wiser course of action would be to guide India's Muslim population and assist them in protecting and preserving their faith and traditions against British imperial and missionary activities.²⁶³

The inaugural ceremony of the Dār al-'Ulūm of Deoband was held at the Chatta Mosque in Deoband. Distinguished members of the Majlis-e-Shura of the newly-established dar al-'ulūm attended the ceremony. They included:²⁶⁴

- Muhammad Qasim Nanautwi: The first patron-Principal of the Dār al-'Ulūm of Deoband.
- Mulla Mahmud Hasan Deobandi: The first teacher of the Dār al-'Ulūm of Deoband.
- Muhammad Abid Husain: The rector of the Dār al-'Ulūm of Deoband.
- Muhammad Yaqub: The first principal (*Sadr-Mudarrsis*) and Mufti of the Dār al-'Ulūm of Deoband.
- Mahmud Hasan: The first student of the Dār al-'Ulūm of Deoband who, upon graduating, became a vocal political activist against British rule of India and earned the title Shaykh of India (*Shaykh ul-Hind*) for his activism.

²⁶³ Muhammad Asjad Ansari, p. 103.

²⁶⁴ Ahmad, pp. 60–61; Muhammad Asjad Ansari, p. 104.

Other members of the Majlis-e-Shura who served as consultants or patrons for the Dār al-‘Ulūm of Deoband included Maulana Zulfiqar Ali, Maulana Fazlur Rahman, Maulana Rashid Ahmad Gangohi, Maulana Mahtab Ali, Munshi Fazl-i-Haq and Shaikh Nehal Ahmad.²⁶⁵ Notably, the founding members of the Dār al-‘Ulūm of Deoband were all certified (mu‘tamad)²⁶⁶ to teach the methods of Shah Wali Ullah and had successfully completed the dars-i-nizāmi²⁶⁷ curriculum.²⁶⁸

To secure their control over the Indian subcontinent and weaken its people, the British Raj adopted a strategy of suspending all federal and provincial funding for religious and cultural institutions in regions that posed a risk to their imperial ambitions. In response to these attempts to destabilise their cause, the founders of the Dār al-‘Ulūm of Deoband countered the British attrition strategies by actively seeking financial support from Muslim benefactors and collecting public donations during Friday prayers.²⁶⁹

Following the Indian Rebellion, Muslims in the Indian subcontinent were determined to support a movement that was dedicated to the revival of traditionist Islam in the region. One prominent movement was led by the ‘ulamā of the Dār al-‘Ulūm of Deoband. Their mission was to reform the moral character and cultural practices of Indian Muslims, aligning them with the examples of the Prophet Muhammad and his community (salaf al-ṣāliḥ). To fulfil this mission, the Majlis-e-Shura of the Dār al-‘Ulūm sought funding to provide comprehensive training for their students. They firmly believed that students needed full financial support to engage effectively in their traditionist Islamic education. As a result, students admitted to the Dār al-‘Ulūm of Deoband were generously awarded scholarships that covered all their expenses. By providing this support, the Majlis-e-Shura of the Dār al-‘Ulūm of Deoband believed that students would grow up to become...

²⁶⁵ Muhammad Ansari, p. 104.

²⁶⁶ “معتد”, in Wehr, p. 643.

²⁶⁷ See Appendix 5: Islamic law and education in medieval and pre-modern India.

²⁶⁸ Ahmad, pp. 63–64; Muhammad Asjad Ansari, p. 104.

²⁶⁹ Ahmad, p. 59.

...learned men with missionary zeal to work among the Muslim masses to create a truly religious awakening in them towards classical Islam, and to guard them against acceptance of un-Islamic beliefs and practices which were creeping in the Muslim society in the name of modernity, unorthodoxy and innovation (Bid'at).²⁷⁰

3.3 *Jami'at al-'Ulama-i-Hind: The Political Wing of the 'Ulamā of Deoband*

Founded on 19 November 1919, the *Jami'at al-'ulama-i-Hind* (The Council of Indian 'ulamā) is an Indian religious-political party comprising 'ulamā who graduated from the Dār al-'Ulūm of Deoband. The party was formed to counter the influence of the separatist Muslim political group, the *Muslim League*, which campaigned for a separate nation-state for India's Muslims. Instead of supporting the Muslim League's separatist proposal, the *Jami'at al-'ulama-i-Hind* provided Islamic validation for the Indian National Congress' *Muttahidā Qaumīyat*, a composite Indian nationalist manifesto used by Congress to unite all Indians – Hindus, Muslims, Jains, Sikhs, Buddhists, and other cultural, religious, and caste-based minority groups – against British control of their nation. To bolster their position as India's Islamic authority, the *Jami'at al-'ulama-i-Hind* brought attention to the provincial *'imārat-i-Shari'a* – an office of Shari'a that functioned as local governing bodies comprising 'ulamā within a province. The consensus of the *'imārat-i-Shari'a* provided Islamic legal opinions and strategies to preserve and promote India's Islamic cultural heritage and Muslim unity against both the British Raj and the Hindu mainstream.²⁷¹ 'Ulamā of the *'imārat-i-Shari'a* also served as members of the bench for provincial dār ul-qazā – the house of Islamic judges that operated as informal Shari'a courts within India's provinces.²⁷² The dār ul-qazā aimed to cultivate an Islamic lifestyle in India following the ways of the Prophet Muhammad and his community.²⁷³

The concept for the *'imārat-i-Shari'a* and the dār ul-qazā was introduced to India by the traditionist-cum-modernist 'ālim, Maulana Abul Kalam Azad (1888-1958 CE), during his travels

²⁷⁰ Ahmad, p. 64.

²⁷¹ Papiya Ghosh, 'Muttahidah Qaumiyat in Aqalliat Bihar: The Imarat i Shariah, 1921-1947', *The Indian Economic and Social History Review*, Indian Institute of Advanced Study, Simla, 34.1 (1997), p. 1.

²⁷² Maulana Abul Kalam Azad, *India Wins Freedom* (Orient BlackSwan, 1988), p. 7.

²⁷³ John R. Bowen, p. 54.

across the Middle East. Azad developed strategies for establishing these institutions in India during his three-year prison term in Ranchi, India.

3.3.1 Maulana Abul Kalam Azad: The Founding Father of India's Dār ul-Qazā

Maulana²⁷⁴ Abul Kalam Azad (1888-1958 CE) was born Sayyid Ghulam Muhiyuddin Ahmed bin Khairuddin al-Hussaini in Ottoman-governed Mecca. Azad was a gifted writer, whose works inspired a generation of Indians and earned him the honorific pen-name, *Abul Kalām - the Lord or Father of Dialogue*. Azad's journalistic career spanned over fifty years, and his treatise on the Qur'an and hadith literature was widely referenced by India's traditionist 'ulamā.²⁷⁵ His commentaries, translations of classic Islamic works, and memoirs like *India Wins Freedom* and *Ghubar-e-khatir (the dust of nostalgia/melancholy)*²⁷⁶ made abstract theological concepts accessible to modern audiences. When India gained independence on 15 August 1947, Azad became the nation's first Education Minister, a position he held until his death in February 1958, following a fatal stroke.

Azad's father, Muhammad Khairuddin bin Ahmed al-Hussaini, was a traditionist 'ālim of Afghan ancestry from Bengal, India. After the Indian Rebellion of 1857, Azad's father sought refuge in Mecca, where he authored twelve books and taught native Meccans various topics of Islamic thought, law, and exegesis. Azad's mother, from Medina, also came from a rich Islamic scholastic ancestry.²⁷⁷ With such noble Islamic heritage on both sides of his family, it was natural for Azad to pursue a traditionist Islamic education.

In 1890, Azad's father relocated to Calcutta, the capital of British India, to serve as an Imam. Meanwhile, Azad remained in Mecca to study the Qur'an, hadith, commentaries of the Qur'an, and Islamic law. He became proficient in Arabic, Urdu, and Farsi. In 1897, he joined his father in Calcutta

²⁷⁴ An Islamic scholar. See "مولانا", in Platts, p. 2176.

²⁷⁵ Dr. Sarup Prasad Ghosh, 'Remembering Maulana Abul Kalam Azad: A Short Biography', *Maulana Abul Kalam Azad's Institute of Asian Studies*, 2004.

²⁷⁶ "غبار", in Platts, p. 1574.; "خاطر", in Platts, p. 1012.

²⁷⁷ Azad, p. 2.

to further his studies in traditional Islamic sciences under his guidance. Azad's father also hired tutors for additional subjects such as mathematics, philosophy, history, and modern sciences. By the age of fifteen, Azad completed the dars-i-nizāmī curriculum, and by seventeen, he had gained the respect of his father's colleagues, becoming one of India's leading traditionist (muhadith) 'ulamā.²⁷⁸

I was born into a family which was deeply imbued with religious traditions. All the conventions of traditional life were accepted without question and the family did not like the least deviation from orthodox ways. I could not reconcile myself with the prevailing customs and beliefs and my heart was full of a new sense of revolt. The ideas I had acquired from my family and early training could no longer satisfy me. I felt that I must find the truth for myself. Almost instinctively I began to move out of my family orbit and seek my own path.²⁷⁹

Seeking respite from the constraints of his family's traditionist background, Azad found solace in local libraries, reading rooms, and debating societies.²⁸⁰ He studied the works of Sir Sayyid Ahmad Khan (1817-1898 CE), which enlightened him about the transformative potential of a modern, secular education for the advancement of Muslim society. This led Azad to develop an interest in the pan-Islamic ideas of Jamal al-Din al-Afghani (1839–1897 CE) and the reformist views of Muhammad 'Abduh (1849–1905 CE), who advocated for the revival of modern Islamic thought through judicial and educational reforms.²⁸¹

Immersed in the writings of modernist thinkers, Azad, like his namesake, felt liberated²⁸² from the intellectual restrictions of his family's traditionist legacy. This newfound freedom ignited a passionate commitment to pan-Islamic activism, prompting him to embark on a journey to Afghanistan, Iraq, Iran, Syria, Egypt, and Turkey.²⁸³ During his visit to Egypt, Azad came across Muhammad 'Abduh's state-commissioned report, *Taqrir fi Islah al-Mahakim al-Shari'a* (A Report on the Reform

²⁷⁸ Subhash Kashyab, 'Maulana Azad as Distinguished Writer', *Awaz Multimedia & Publications*, 2009 <https://ummid.com/making_of_legend/azad_as_a_writer.htm>.

²⁷⁹ Azad, p. 3.

²⁸⁰ Azad, p. 3.

²⁸¹ Dr. Sarup Prasad Ghosh.

²⁸² "أزاد", in Platts, p. 92.

²⁸³ Azad, p. 7.; Dr. Sarup Prasad Ghosh.

of *Shari'a Courts*). In this report, 'Abduh provided a catalogue of grievances from native Egyptians about the condition of Islamic courts in the country and put forth a list of recommendations.²⁸⁴ As Grand Mufti, 'Abduh advised Khedive 'Abbas Hilmi Bey Pasha (reign: 1892-1914 CE) that...

...it is not appropriate to make the competence of the shari'ah courts narrow but rather it is obligatory to enlarge it.²⁸⁵

'Abduh's proposed reform consisted of two parts: the first part involved specialised training for 'ulamā, fuqahā' (Islamic legal scholars)²⁸⁶ *quḍāh* (Islamic judges),²⁸⁷ and *kuttāb* (desk clerks) in dedicated Islamic seminaries (*madrāsāt al-qaḍā shar'ī*). The second part aimed to improve the administration and facilities of these courts. To achieve this, 'Abduh suggested organising the Islamic court's records in a systematic manner, with oversight provided by a court-appointed registrar. Existing courts were to be refurbished or relocated to new premises with designated judicial offices (*qaḍā'*) to ensure privacy and preparation of cases. Courthouses would be equipped with a reception area, a main courtroom, and a crèche. 'Abduh also called for well-furnished courtrooms with distinct sections for those involved in the case and the audience.²⁸⁸ Inspired by 'Abduh's comprehensive reforms of shari'a courts at both the operational and administrative levels, Azad endeavoured to introduce similar Islamic judicial reforms in India.²⁸⁹

Upon his return to Calcutta, Azad emerged as a fervent nationalist, determined to lead an Indian movement to liberate the country from British rule.²⁹⁰ In June 1912, he launched *al-Hilāl* (*The Crescent*), a weekly newspaper that criticised the British Raj for plundering the Indian people and manipulating young Muslims by belittling their faith and culture.²⁹¹ The publication also criticised

²⁸⁴ Aswita Taizir, 'Muhammad 'Abduh and the Reformation of Islamic Law' (McGill University, 1994), p. 14.

²⁸⁵ Taizir, p. 66.

²⁸⁶ Sin: faqīh (فقيه), Pl: fuqahā' (فقهاء). See "فقيه", in Wehr, p. 723.

²⁸⁷ Sin: qadi (قاضي), Pl: quḍāh (قضاة). See "قاض", in Wehr, pp. 772-73.

²⁸⁸ Taizir, pp. 62-70.

²⁸⁹ Azad, p. 7.

²⁹⁰ Dr. Sarup Prasad Ghosh.

²⁹¹ Kashyab.

India's aristocrats (*bādshāh*)²⁹² and Sufi leaders (*pir*²⁹³ or *murshid*²⁹⁴), accusing them of using their followers to support the Muslim League. *Al-Hilāl* also printed articles accusing the Muslim League of prioritising its separatist agenda over India's interests.²⁹⁵ By 1914, *al-Hilāl* had garnered over 26,000 subscribers, mainly consisting of politically active young Muslim professionals committed to India's independence.²⁹⁶ Mohandas Gandhi himself acknowledged the newspaper's significance in his own weekly publication, *Young India*, recognising *al-Hilāl* as a powerful voice that exposed the harm caused by the British Empire to India and its people.²⁹⁷

Before the First World War, the British government passed the *Indian Press Act 1910* to suppress nationalist sentiments and criticism of British rule in India. This led to the prohibition of *al-Hilāl*, which Azad saw as validation of his revolutionary efforts. Further intensifying his efforts, Azad urged young Muslims to unite for India's independence. In 1916, Azad founded *al-Balāgh* (*The Message*), a newspaper dedicated to criticising British rule and advancing the cause of independence. Despite being banned after five months, this did not deter Azad's political ambitions. He continued his Islamic political activism through conferences and debates, advocating for *Ummah Wahidah*, the unity and solidarity of Muslims in religious life, society, and global affairs.²⁹⁸ As part of his call for *Ummah Wahidah*, Azad supported the *Khilafat Movement*, which urged Muslims worldwide to unite and protect the Ottoman Caliphate against European imperialism. He reminded India's Muslims that they were part of an international Islamic fraternity that transcended the borders set by Europe's colonisers.

²⁹² “بادشاه”, in Platts, p. 256.

²⁹³ “پير”, in Platts, p. 637.

²⁹⁴ “مرشد”, in Platts, p. 2059.

²⁹⁵ Azad, p. 117.

²⁹⁶ Azad, p. 8.

²⁹⁷ Sikdar, Shubhomoy, (2012), '*More than Just a Chronicle*' [Online], *The Hindu Newspaper*

<<https://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/more-than-just-a-chronicle/article3633850.ece>>.

²⁹⁸ Ali Ya'kub Matondang, 'Ummah Wahidah in Al-Qur'an and Its Implication to Da'wah Activity', *IOSR Journal Of Humanities And Social Science*, 21.7 (2016), 1–6 (p. 1).

In 1917, Britain's tolerance for Azad's activism reached its limit, resulting in his three-year imprisonment in Ranchi jail, 300 miles west of Calcutta.²⁹⁹

While in jail, Azad reflected on 'Abduh's *Taqrir fi Islah al-Mahakim al-Shari'a* and began formulating ideas for an Islamic judicial system in India. He received numerous visitors seeking his counsel on improving the condition of the Indian people. Supporters, activists, politicians, and faith leaders from both Hindu and Muslim communities visited to pay their respects and seek guidance on India's struggle for independence. Among these visitors was *Maulana Abul Mohsin Mohammad Sajjad*, a Deobandi 'ālim from Bihar.

3.3.2 Maulana Abul Mohsin Mohammad Sajjad

Maulana Abul Mohsin Mohammad Sajjad (1880–1940 CE) was an 'ālim and educator who devoted himself to establishing schools and homeless shelters for deprived and marginalised communities in Bihar. His charitable initiatives earned him widespread support and respect from both Hindus and Muslims in the region. Sajjad's reputation as a philanthropist and his proficiency in organising large projects caught the attention of India's 'ulamā and political leaders.³⁰⁰ In June 1918, Sajjad founded the *Anjuman 'Ulamā-i-Bihar (Assembly of the 'ulamā of Bihar)*, which significantly amplified the Muslim presence in the district. The Anjuman 'Ulamā-i-Bihar served as an important precursor to the organisational structure later adopted by the Jami'at al-'ulama-i-Hind.³⁰¹

While visiting Azad in jail, Sajjad attentively listened to Azad's pan-Islamist strategy. Azad envisioned a future India governed by an *Amīr-e-Hind*, an Emperor of India, with an *'imārat-i-Shari'a* in each province. This office would be dedicated to upholding Islamic law and consist of a chairing 'ālim (*Amīr-e-Shari'a*), a vice-chair (*nā'ib-e-Shari'a*),³⁰² and a panel of 'ulamā to address the religious

²⁹⁹ Mushirul Huq, 'Past Presidents: Maulana Abul Kalam Azad', *All India Congress Committee Website*, 2009.

³⁰⁰ Mohammad Sajjad, *Muslim Politics in Bihar: Changing Contours* (Routledge India, 2014), p. 75.

³⁰¹ Sajjad, p. 74.

³⁰² "نائب", in Platts, p. 2224.

and social needs of citizens within their respective provinces. Each provincial ‘imārat-i-Shari’a would oversee a dār ul-qazā in its district, where the ‘ulamā of the ‘imārat-i-Shari’a would serve on the Islamic judicial bench. The chairing ‘ālim of each provincial ‘imārat-i-Shari’a would provide reports on developments or concerns affecting their province to the Amīr-e-Hind.³⁰³

To ensure accountability and prevent corruption, the chairing ‘ālim of each provincial ‘imārat-i-Shari’a would convene, deliberate, and nominate an Amīr-e-Hind for a specific term.³⁰⁴ In this context, Azad proposed Mahmud Hasan Deobandi as the first Amīr-e-Hind.³⁰⁵

After the Amīr-e-Hind consolidated control of India through the provincial ‘imārat-i-Shari’a, the final stage of Azad’s pan-Islamist strategy was to raise awareness among Indian Muslims of the global Muslim community, the *Ummah Wahidah*, who had pledged their allegiance to the ecumenical Caliphate of Islam.³⁰⁶ To secure the support of India’s Muslim population for his pan-Islamic strategy, Azad aligned his concept of *Ummah Wahidah* with the Indian National Congress’ *Muttaḥidā Qaumīyat*. He asserted that the active cooperation between Hindus and Muslims for India’s freedom finds its precedents in the Qur’an and hadith traditions.³⁰⁷

Using his good reputation and extensive national network, Sajjad took on the task of raising awareness of Azad’s Amīr-e-Hind initiative. Sajjad’s involvement in establishing the Jami’at al-‘ulama-i-Hind provided insights into how India’s provincial borders fragmented the Muslim population. In his native district of Bihar, Muslims constituted only 10 percent of the provincial population,³⁰⁸ making Bihar relatively insignificant to the political aspirations of the Muslim League in establishing a separate Muslim state. Sajjad observed that the Muslim League primarily concentrated

³⁰³ Heritage Times, ‘The Media-Mullah Nexus, Darul Qaza & Progressive History of Imarat e Shariah’, *Heritage Times* (India, 11 July 2018).

³⁰⁴ Papiya Ghosh, p. 2.

³⁰⁵ Heritage Times.

³⁰⁶ Papiya Ghosh, p. 2.

³⁰⁷ Papiya Ghosh, p. 12.

³⁰⁸ John R. Bowen, p. 53.

its efforts in districts with Muslim majorities, such as Punjab, Sindh, and Bengal. In these regions, they aimed to secure support by offering party membership to influential ‘ulamā and Sufi leaders. According to Sajjad, the Amīr-e-Hind would play a crucial role in addressing regional divisions among Muslims and consolidating India’s Islamic and political leadership.³⁰⁹

Sajjad travelled across India, visiting madāris³¹⁰ and Sufi lodges to garner support for Azad’s Amīr-e-Hind initiative.³¹¹ In December 1918, Sajjad held a meeting with senior members of the Firangi Maḥall, an Islamic seminary based in Lucknow, Uttar Pradesh. During their discussions, Sajjad reminded those in attendance that the establishment of the Jami’at al-‘ulama-i-Hind by the ‘ulamā of Deoband aimed to protect the interests of India’s Muslims from British imperial rule and strengthen the religious and cultural presence of India’s Muslims against the Hindu mainstream.³¹²

Sajjad believed that, just as he had established the Anjuman ‘Ulamā-i-Bihar and set a precedent for the Jami’at al-‘ulama-i-Hind, he could set an example for ‘ulamā in other districts by establishing an ‘imārat-i-Shari’a in his native district. On 25 June 1921, ‘ulamā and Sufi leaders from Bihar, Jharkhand, and Odisha were invited to the headquarters of the Anjuman ‘Ulamā-i-Bihar to nominate a chair and vice-chair for Bihar’s ‘imārat-i-Shari’a.³¹³ Azad, who had been released from jail six months earlier, also attended the meeting. Shah Badruddin (1852–1924 CE), the leader of the Chishtī Ṣābiriyya Sufi order and custodian of the Muḥibiyya Sufi lodge in Bihar, was appointed as the Chair of Bihar’s ‘imārat-i-Shari’a, with Sajjad nominated as the vice-chair.³¹⁴ Furthermore, nine other ‘ulamā were

³⁰⁹ Papiya Ghosh, pp. 1–3.

³¹⁰ Sin: *madrāsa* (مدرسة), Pl: *madāris* (مدارس). See “مدرسة”, in Wehr, p. 278.

³¹¹ Heritage Times.

³¹² Papiya Ghosh, p. 2.

³¹³ Heritage Times.

³¹⁴ Papiya Ghosh, p. 3.

selected to form the council of Bihar's 'imārat-i-Shari'a, who also served as members of India's first dār ul-qazā. The meeting also outlined a set of objectives for the 'imārat-i-Shari'a, which included:³¹⁵

- To apply the rules and regulations of Islamic family law and the laws of inheritance as outlined in the Qur'an and the Sunni hadith collections.
- To protect the religious rights and public interests of India's Muslims.
- To raise public awareness of an Islamic way of life and society, as set by the examples of the Prophet Muhammad and his Companions and within the guidelines of Islamic law.
- To raise awareness amongst India's Muslims that they are part of the global Muslim community, the Ummah, and are united by the declaration of faith they have all taken.

After establishing the 'imārat-i-Shari'a and dār ul-qazā in Bihar, the Jami'at al-'Ulamā-i-Hind allocated a budget for both institutions during their annual general meeting in December 1921 in Budaun, a city in Uttar Pradesh, India.³¹⁶ The 'ulamā in attendance also discussed the next steps for establishing the Amīr-e-Hind. The Jami'at al-'Ulamā-i-Hind considered themselves the *ūlū al-amr* - those whom God has entrusted to appoint, support, and oversee those in positions of authority.³¹⁷

Following the dissolution of the Ottoman Empire on 3 March 1924, the Jami'at al-'Ulama-i-Hind faced a defamation campaign orchestrated by the Muslim League, which hampered their efforts to establish an Amīr-e-Hind. The Jami'at al-'Ulama-i-Hind's provincial and national initiatives were also hampered by this campaign. Despite these setbacks and their relegation to India's social and political margins, the 'imārat-i-Shari'a and dār ul-qazā continued to operate covertly. Over time, they managed to expand their influence to other Indian provinces.³¹⁸

³¹⁵ Sabiha Hussain, 'Shariat Courts and Women's Rights in India', *Center for Women's Development Studies, Occasional Papers Series*, Delhi, India, 2007, p. 16.

³¹⁶ Papiya Ghosh, pp. 3–4.

³¹⁷ Qur'an (4:59). Haleem, p. 56.

³¹⁸ Papiya Ghosh, p. 5.

3.4 British Colonial Roots of Islamic Law in South Asia

Before the eighteenth century, a legitimate marriage in England and Wales only required an ordained clergy of the Church of England to officiate the ceremony. This simple criterion led to a significant number of clandestine or irregular marriages, including those involving underage partners and cases of bigamy. To address this issue, Lord Hardwick introduced the *Clandestine Marriage Act 1753*. This act mandated that marriages in England would only be recognised by Parliament if they were conducted in a parish or a chapel of the Church of England by an ordained Anglican clergy. Additionally, either a public declaration of the marriage or the issuance of a marriage license was required.³¹⁹ It is important to note that Jewish and Quaker marriages were exempt from the provisions of the *1753 Act*.³²⁰

Although the *Clandestine Marriage Act 1753* was repealed in 1823, its residual legal effects meant that only Jewish, Quaker, and Anglican marriages continued to be legally recognised in England and Wales. To address the legal status of marriages in Roman Catholic, Islamic, Hindu, and other non-conformist faiths, the British Parliament enacted the *Marriage Act 1836*. Under the provisions of the *1836 Act*, members of non-conformist faiths in Britain were no longer required to perform Anglican marriage rites in addition to their religious marriage rites for their unions to be legally recognised. Instead, non-conformist faiths could register their places of worship with the Registrar General. Marriages performed within these registered buildings would be considered legal as long as an official registrar and two witnesses were present at the ceremony.³²¹

³¹⁹ Parliament of Great Britain and Philip Yorke (The Earl of Hardwicke), *Clandestine Marriages Act 1753*, 26 George 2 c.33, 1754 <<http://statutes.org.uk/site/the-statutes/eighteenth-century/1753-26-geo-2-c-33-prevention-of-clandestine-marriages/>>.

³²⁰ Parliament of Great Britain and Philip Yorke (The Earl of Hardwicke), *Clandestine Marriages Act 1753*, 26 George 2 c.33, Section XVIII, 1754 <<http://statutes.org.uk/site/the-statutes/eighteenth-century/1753-26-geo-2-c-33-prevention-of-clandestine-marriages/>>.

³²¹ Parliament of the United Kingdom, *1836 (34) Marriages. A Bill for Marriages in England*, 6 & 7 William IV, c. 85, 1836.

The *Clandestine Marriage Act 1753* and the *Marriage Act 1836* are notable examples of how the British Parliament discreetly phased out religious laws from its national legislative framework and introduced a positivist legal system. These acts appear to grant Britain's faith communities some autonomy by providing avenues to legitimise their religious marriages without the extraneous involvement of the Church of England. However, for the British Parliament, the *1753* and *1836 Acts* facilitated the monitoring and regulation of citizens' lives through the systematic registration of religious buildings and marriages, while reducing the emphasis on the solemnisation of religious unions.

In the context of their colonies, the British Raj amended their foreign policies to exert control over the domestic lives of British-Indian subjects. One notable development occurred in 1937 when the British Raj enacted the *Muslim Personal Law (Shari'ah) Application Act*,³²² thereby establishing...

...a uniform legal procedure which would be common to a group of sects with common identity as "Muslims", and which would be useful for solving land entitlements issues, wealth successions, etc, under a common legal system, tried to translate a few important religious texts into English, and forged the laws somewhat based on these holy text.³²³

After India gained independence, the Nehru administration chose to maintain the *British Shariat Act (1937)*, which has influenced the lives, identity, politics, and beliefs of Indian Muslims up to the present time.³²⁴ In contrast, the personal laws governing Hindus, Sikhs, Buddhists, and Jains underwent reforms in the 1950s, moving away from the systems established during British rule. Meanwhile, Muslims continue to be governed by the Anglo-Muhammedan system, with occasional amendments made for political expediency rather than prioritising what is in the public's interest.³²⁵

³²² From here onwards, referred to as the *British Shariat Act (1937)*.

³²³ 'Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice', *Economic and Political Weekly*, 44.44 (2009), 44–49 (p. 46).

³²⁴ John R. Bowen, p. 52.

³²⁵ Sabiha Hussain, p. 11.

3.5 The *Dār ul-Qazā* and Islamic Law in Post-Independent India

The *British Shariat Act (1937)* was seen as a calculated move that served the interests of both the British government and the Muslim League. During India's struggle for independence, concerns arose among the Muslim League and the Jami'at al-'ulama-i-Hind that the religious needs of India's Muslim minority were being overlooked by both the Indian National Congress and the British government. Seeing an opportunity to gain support among India's Muslim population, the Muslim League campaigned for the codification of *Muslim Personal Law* by the British Raj, leading to the enactment of the *British Shariat Act (1937)*. This act granted Indian Muslims the legitimacy to govern their marriages, divorces, and estate management based on the rulings and guidelines of the Qur'an and hadith traditions. To address the concerns of the Jami'at al-'ulama-i-Hind, the Indian National Congress endorsed the *British Shariat Act (1937)* as a gesture of goodwill towards India's Muslims, assuring them that their beliefs, practices, and identity would be respected in post-independent India.³²⁶ After India gained independence, the government upheld its commitment by incorporating the *British Shariat Act (1937)* into the civil code, ensuring the preservation of its provisions.³²⁷

Following India's independence, the Indian National Congress continued to apply the *British Shariat Act (1937)* to India's Muslims without consulting or involving the Jami'at al-'Ulama-i-Hind in the process of codifying their rights in postcolonial India.³²⁸ The secular legislators of independent India chose to retain the British mandate regarding Muslim personal law. Meanwhile, India's traditionist 'ulamā worked discreetly to develop and promote the 'imārat-i-Shari'a, gradually establishing several *dūr ul-qazā* in different Indian provinces.

³²⁶ Shoaib Daniyal, 'A Short History of Muslim Personal Law in India', *Scroll Media Incorporation* (India, 4 September 2017) <<https://scroll.in/article/849068/a-short-history-of-muslim-personal-law-in-india>>.

³²⁷ Sabiha Hussain, p. 26.

³²⁸ Sabiha Hussain, p. 11.

3.5.1 The All-India Muslim Personal Law Board (AIMPLB)

Vying for legal autonomy and to safeguard the beliefs and identities of India's Muslim population, Deobandi 'ulamā organised the *All-India Muslim Personal Law Convention* in Mumbai from the 27 to the 28 May 1972.³²⁹ This gathering brought together prominent Muslim figures in India, including 'ulamā, Sufi leaders, academics, and civil jurists. The participants unanimously recognised the necessity of establishing an Islamic Action Committee comprising of 'ulamā, legal experts, academics, and civil servants. Their collective goal was to protect and develop Islamic family law in India, drawing upon the teachings of the Qur'an and hadith traditions, while working within the framework of the *British Shariat Act (1937)*. The proposed Islamic Action Committee would assume the responsibility of monitoring the national legislature and challenging any court rulings that infringed upon the religious rights of India's Muslims.³³⁰ On 7 April 1973, Qari Muhammad Tayyib Qasmi, the rector of the Dār al-'Ulūm of Deoband, and Maulana Syed Shah Minatullah Rahmani, a member of the Dār al-'Ulūm's legislative council, established the *All-Indian Muslim Personal Law Board (AIMPLB)* as the designated Islamic Action Committee dedicated to serving and protecting the interests of India's Muslims. AIMPLB staunchly defended the rights of Indian Muslims to practice their faith, as granted by the *British Shariat Act (1937)*³³¹ and further ratified by *Articles 25(1) and 26* of the Indian Constitution.³³²

The AIMPLB maintains that, if the Indian National Congress intends to make amendments to the *British Shariat Act (1937)*, it should consult with them as the representative body of India's 'ulamā

³²⁹ R Upadhyay, 'Is There a Need for an "All India Muslim Board"?', *South Asia Analysis Group* (New Delhi, India, 14 September 2017), 6304 edition.

³³⁰ All-India Muslim Personal Law Board, 'Aims & Objective', *All-India Muslim Personal Law Board*, 2011 <<http://www.aimplboard.in/objectives.php>>.

³³¹ Sabiha Hussain, pp. 6–7.

³³² K.N. (Secretary to the Government of India) Chaturvedi, *The Constitution of India*, 2007, pp. 1–268 (p. 13).

and also seek the consent of India's Muslims through a referendum.³³³ In an official statement, the AIMPLB expressed:

[The] All India Muslim Personal Law Board is a united platform of all the [sic] Muslims, which has been created for the protection of Shariah laws and to bring unity among the Muslims... Unity among the Muslims is the best shield which should be protected at all costs. The Board is fully aware of the attempts of the present-day government and some individuals with their vested interests to break this unity to the detriment of the entire community... This is the need of the hour for the Muslims to close ranks to have utmost confidence in the Board and all the unanimous decisions of the Board should be graciously accepted with [an] open heart and each of the Muslims should be ready for greater sacrifice of our endeavour.³³⁴

As of 2019, the AIMPLB has an executive committee consisting of 50 members, including 'ulamā, professors, former Supreme Court judges, and activists. Notably, the executive committee includes five women.³³⁵ Additionally, there are 149 general members, of whom 28 are women, representing specific regions in India with a high Muslim population.³³⁶ The 'ulamā on the AIMPLB panel predominantly apply Hanafi principles in the dūr ul-qazā of their jurisdiction.³³⁷

At a conference organised by the AIMPLB in Bhopal in 2005, Maulana Syed Mohd Rabey Hasani Nadvi, the President of AIMPLB, stressed the importance of dūr ul-qazā for India's Muslims. He argued that civil legislators in India's national judiciary were neither adequately qualified nor willing to adjudicate matters of Muslim personal law in accordance with the Qur'an and hadith traditions. The President of AIMPLB further emphasised that dūr ul-qazā ensured that "the Shariah is applied by those most knowledgeable of it."³³⁸

³³³ All-India Muslim Personal Law Board, 'Aims & Objective'; John R. Bowen, p. 53.

³³⁴ All-India Muslim Personal Law Board, *Hyderabad Declaration of All-India Muslim Personal Law Board* (Hyderabad, India: All-India Muslim Personal Law Board, 2018) <<http://aimplboard.in/important-resolutions.php>>.

³³⁵ All-India Muslim Personal Law Board, 'Executive Committee for Three Years Ending 2019', *All-India Muslim Personal Law Board*, 2011 <<http://www.aimplboard.in/board-members.php>>.

³³⁶ All-India Muslim Personal Law Board, 'General Members', *All-India Muslim Personal Law Board*, 2011 <<http://www.aimplboard.in/generalmembers.php>>.

³³⁷ Sabiha Hussain, p. 2.

³³⁸ Sabiha Hussain, pp. 1–2.

3.5.2 Article 44: India's Uniform Civil Code

The conflict between India's 'ulamā and the government centres on the government's reforms of Muslim personal law in the national legislature. The 'ulamā claim that, as experts in Islamic law, they hold the authority to make these amendments. They argue that implementing these changes without their consultation and consent violates *Articles 25(1) and 26* of the Indian Constitution, and undermines the legal precedents set by the *British Shariat Act (1937)*.

Supporters of *Article 44*, which aims to establish a uniform civil code throughout India,³³⁹ criticise the AIMPLB for treating the rules and opinions of the Hanafi legal school as immutable, equating them with the significance of the Qur'an and hadith literature.³⁴⁰ They highlight that the *British Shariat Act (1937)* was a colonial invention and argue that in today's world, Muslim-majority countries have implemented reforms to Muslim personal law within the framework of their respective constitutions.³⁴¹

The 'ulamā in India do not oppose the reform of the country's Muslim personal law to incorporate other Sunni legal systems; their concerns arises from not being consulted during these legislative reforms. The 'ulamā highlight the *Dissolution of Muslim Marriage Act 1939* as an instance where the Indian National Congress considered their advice and implemented the Maliki ruling to safeguard the rights of Muslim women in India:

When Muslim women found it problematic to wait for 90 years if their husbands were missing as stated in the dictates of the Hanafi School, the Ulema, in order to overcome this difficulty, borrowed a rule from the Maliki School, which allows the woman to wait only for a period of four years.³⁴²

The 'ulamā in India are concerned about the rights of Muslims to practice their faith and form their families in accordance with the teachings of the Qur'an and hadith traditions. They emphasise the

³³⁹ Chaturvedi, p. 23.

³⁴⁰ Sabiha Hussain, pp. 13–14.

³⁴¹ Gerald James Larson, 'Introduction: The Secular State in a Religious Society', in *Religion and Personal Law in Secular India: A Call to Judgment* (Bloomington and Indianapolis: Indiana University Press, 2001), pp. 1–11 (p. 7).

³⁴² Sabiha Hussain, p. 9.

importance of adhering to principles derived from Islamic religious texts rather than relying solely on drafts and proposals presented by the Indian government for Muslim personal law:

...the question of the application of Islamic laws to Muslims in non-Muslim countries such as India is controversial: there have been calls for the abolition of Islamic personal status laws presently applicable to Muslims.³⁴³

The ‘ulamā acknowledge that the *British Shariat Act (1937)* is a remnant of India’s colonial past. However, they argue that implementing *Article 44* would subject India’s Muslims to another inapposite government:

They [‘ulamā] argue that the freedom of religion has been guaranteed by Article 25 of the Constitution, and any change amounts to curtailing this freedom. Even the Supreme Court judges are not unanimous on the question of whether enforcing a Uniform Civil Code as per Article 44 of the Constitution would violate rights under Article 25. The Muslims feel that Articles 25 and 44 contradict each other, and there is no question of enforcing Article 44, which is anyway only prescriptive and not obligatory.³⁴⁴

In response to *Article 44*, the ‘ulamā invoke *Article 25(1)* of the Indian Constitution, which grants India’s Muslims the right to freely practice their faith according to the teachings of the Qur’an and hadith traditions. Additionally, the ‘ulamā refer to *Article 26*, which guarantees Indian citizens the right to establish alternative dispute resolution services. Examples of such services include the *dār ul-qazā*, which operates within the parameters of the *British Shariat Act (1937)* and extends to...

...all questions, (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs the rule of decision in case where the parties are Muslims shall be the Muslim Personal Law (Shariat).³⁴⁵

³⁴³ Hilary Lim and Siraj Sait, *Land, Law and Islam: Property and Human Rights in the Muslim World* (London & New York: Zed Books, 2006), p. 44.

³⁴⁴ Sabiha Hussain, p. 32.

³⁴⁵ Central Government Act, *The Muslim Personal Law (Shariat) Application Act, 2, 1937* <<https://indiankanoon.org/doc/1325952/>>.

3.5.3 The Dūr ul-Qazā in Twenty-First Century India

In post-independent India, dūr ul-qazā can be found in numerous towns and cities across the nation. Similar to shari'a councils in Britain, these dūr ul-qazā act as informal Islamic advisory boards that lack legal recognition from the government. The rulings issued by any of India's dūr ul-qazā are...

...nothing more than recommendations and advice. It is entirely up to the two parties to accept the verdict or reject it.³⁴⁶

Both the 'ulamā and the judiciary in India acknowledge that the dūr ul-qazā do not function in parallel with the Indian judicial system. Instead, their purpose is to provide Islamic legal advice within the framework of the *British Shariat Act (1937)*.³⁴⁷

Determining the exact number of dūr ul-qazā currently operating in India is challenging due to their covert nature and clients seeking to avoid public scrutiny. Information about the clients and services is held by their respective provincial 'imārat-i-Shari'a or the AIMPLB. According to *The Times of India* report, the AIMPLB oversees 68 dūr ul-qazā in the central and western regions of India,³⁴⁸ while *News 18* reported 63 dūr ul-qazā operating under AIMPLB's management.³⁴⁹

Sabiha Hussain's research revealed that the 'imārat-i-Shari'a in Bihar oversees 33 dūr al-qazā spread across Bihar, Jharkhand, Orissa, and West Bengal.³⁵⁰ Additionally, she highlights an 'imārat-i-Shari'a in North-East India, responsible for managing 88 dūr al-qazā in the region. In Delhi, Katherine Lemons' investigation identified three dūr al-qazā; two operate within madāris, while the third is located in the AIMPLB's office.³⁵¹ Furthermore, in the central Indian district of Bhopal, a dār al-qazā is reported to be...

³⁴⁶ Sabiha Hussain, p. 6.

³⁴⁷ Sabiha Hussain, pp. 6–7.

³⁴⁸ The Times of India, 'Muslim Women Gaining More from Darul Qaza, Come with 95 per Cent Complaints', *The Times of India* (Lucknow, India, 27 February 2019).

³⁴⁹ 'Qazis in Darul Qaza to Now Get Lessons in Indian Constitution', *News18* (Lucknow, India, 1 March 2019).

³⁵⁰ Sabiha Hussain, p. 17.

³⁵¹ Katherine Lemons, 'At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi' (PhD, University of California, 2010), p. 4.

...the only Shariat court in India” that receives a government grant of Rs 6,000,000 [approximately £60,000 or \$80,000] per year.³⁵²

3.5.4 Muslim Women: The Dār ul-Qazā’s Largest Client Base

Muslim women make up the largest user base of the dār ul-qazā and often seek an Islamic divorce from their husbands for various reasons, such as escaping an abusive relationship, the husband’s failure to meet familial responsibilities, and estrangement. Men also utilise dār ul-qazā services, primarily seeking an ‘ālim to mediate in their marital disputes. In a dār ul-qazā in Delhi, Lemons found that Muslim couples rarely seek financial remedies from the dār ul-qazā after an Islamic divorce. Lemons suggests...

...this has less to do with the qazis [sic] and the dar ul qaza than it has to do with the place the dar ul qaza institutions occupy in the plurality of legal institutions available to Muslims in Delhi.³⁵³

In a 2017 national study conducted by Nalsar Law University, Hyderabad, questionnaires were distributed to 150 dūr ul-qazā across the country, with 75 participating in the study. The findings revealed that 12 dūr ul-qazā reported that over 90 percent of their clientele comprised of women, while 20 dūr ul-qazā stated that around 80 percent of their clientele were women, and 26 reported that approximately 70 percent of their clients were women.³⁵⁴

In another study, Hussain approached Bihar’s ‘imārat-i-Shari’a to explore the nature of cases handled by their central dār ul-qazā. Her findings revealed that from 1993 to 2000, Bihar’s central dār ul-qazā addressed 33 khula cases and 1,004 cases of faskh (annulments). Out of the 1,004 faskh cases, 94 were initiated by women whose husbands had failed to fulfil their familial responsibilities and still owed the outstanding amount of the bridal-gift (mahr/ṣadāq).³⁵⁵ Subsequently, Hussain discussed her findings

³⁵² Sabiha Hussain, pp. 6–7.

³⁵³ Lemons, p. 2.

³⁵⁴ Flavia Agnes, ‘Darul Qaza Row: A Storm in a Teacup’, *Deccan Chronicle*, 1 August 2018, section Op Ed.

³⁵⁵ Sabiha Hussain, p. 18.

with a qadi who presided over the bench of the central dār ul-qazā. The qadi shared that the high number of faskh applications was...

...because first, women are becoming aware of their rights, particularly matrimonial rights related to divorce and maintenance, and hence do not want their husband to shirk their matrimonial responsibilities.³⁵⁶

3.5.5 Criticism of AIMPLB and the Dūr ul-Qazā

During an AIMPLB conference held at the Aishbagh Eidgah Mosque in Lucknow on 24 February 2019, the conference organiser, Qazi Tabrez Alam Qasim, expressed concerns about the effectiveness of the Indian judicial system in delivering justice. He remarked, “This [dār ul-qazā] has also taken the load off the already-burdened judicial system.”³⁵⁷ The context of this statement relates to a civil lawsuit from 2005. Advocate Vishwa Lochan Madan filed a Public Interest Litigation lawsuit against the Union of India, seeking to prohibit and dissolve all non-state Muslim dispute resolution services, including dūr ul-qazā and any Muslim organisation issuing fatāwā in India. The lawsuit aimed to enforce the application of Muslim Personal Law as stipulated in India’s Constitution.³⁵⁸ In 2014, the Supreme Court dismissed the petition, ruling that the disputed fatwa, which the litigant objected to, had been issued by a trainee ‘ālim studying at the Dār al-‘Ulūm of Deoband. The trainee ‘ālim lacked the necessary qualifications and authority to issue an official fatwa.³⁵⁹

The Union of India has not denied that Fatwas as alleged by the petitioner were not issued but its plea is that they were not issued by any of the Dar-ul-Qaza. In any event, according to the Union of India, few bad examples may not justify abolition of system, which otherwise is found useful and effective.³⁶⁰

Hussain raises concerns about the intentions of India’s ‘ulamā and their establishment of the dūr ul-qazā. She contends that ‘ulamā associated with the AIMPLB are exploiting their position and

³⁵⁶ Sabiha Hussain, p. 21.

³⁵⁷ The Times of India.

³⁵⁸ Sabiha Hussain, p. 2.

³⁵⁹ Lemons, pp. 98–102.

³⁶⁰ Supreme Court of India, *Vishwa Lochan Madan vs Union Of India & Ors*, 2, 2014, S.C. 2957, 2959.

are undermining the integrity of India's judicial system. Additionally, the presence of dūr ul-qazā in India provides the political opposition with grounds to criticise the government for not adequately addressing the religious needs of the country's Muslim population. Hussain also questions the efficacy of the dūr ul-qazā in delivering justice to Muslim women. She assesses the role of India's dūr ul-qazā...

...as a means to silence the voices of women such as those associated with the newly formed Muslim Women's Personal Law Boards, and different Muslim women's organisations.³⁶¹

For her research, Hussain interviewed women who used dār ul-qazā services. The study revealed that in 90 percent of cases, women encountered challenges in expressing their concerns to their quḍāh, most of whom were men who lacked understanding and empathy towards women's experiences.³⁶² Hussain highlighted a case where a woman was harangued by her qadi, who asserted, "He is your husband, to serve him and obey him is your duty."³⁶³

3.5.6 Feminist Responses to the Dūr ul-Qazā

The indifference shown by India's 'ulamā towards women's experiences, along with the lack of female representation on numerous dār ul-qazā panels, led women's activists Shaista Amber and Parveen Abdi to establish the *All-India Muslim Women's Personal Law Board*. The formation of this board was a response to the persistent neglect and exclusion of female clients by the AIMPLB.³⁶⁴ The *Milli Gazette* reported:

[Shaista Amber] pointed out that she had given a representation in writing to the AIMPLB appealing to the members of the Law Board to give more representation to women in the Board so that their problems could be raised and discussed threadbare and resolved promptly. She said that no heed was paid to her suggestion compelling the women to form their own law board.³⁶⁵

³⁶¹ Sabiha Hussain, p. 5.

³⁶² Justin Jones, "'Where Only Women May Judge' Developing Gender-Just Islamic Laws in India's All-Female 'Shari'ah Courts'", *Islamic Law and Society, Brill*, 26, 2019, 437–66 (p. 451).

³⁶³ Sabiha Hussain, p. 22.

³⁶⁴ Shaista Amber, 'About Muslim Women's Personal Law Board', *All-Indian Muslim Women Personal Law Board* (Lucknow, India, March 2008) <<http://muslimwomenpersonallaw.com/about.html>>.

³⁶⁵ Masood Hasan, 'Women's Personal Law Board', *The Milli Gazette* (New Delhi, India, February 2005).

According to The Milli Gazette, Amber also criticised Begum Naseem Iqtidar, a female member of the AIMPLB, stating that she “did nothing for the welfare and betterment of the women of the community.”³⁶⁶

A Muslim feminist initiative that is challenging the patriarchal control of both India’s civil courts and the *dūr ul-qazā* are the female-led *sharī’ah ‘adālatayn*³⁶⁷ (Shari’a courts). In 2013, the *Bharatiya Muslim Mahila Andolan*³⁶⁸ (BMMA, Indian Muslim Women’s Movement) launched its *sharī’ah ‘adālat* programme, creating female-led Islamic courts in major cities such as Mumbai, Pune, Ahmedabad, and Dindigul. Each of these female-led courts handle approximately two hundred cases annually. Furthermore, BMMA network members in other Indian states, including Karnataka, Madhya Pradesh, Andhra Pradesh, and Odisha, have assumed the role of female Islamic judges (*qadiyāt*)³⁶⁹ and organise Islamic court sessions in remote areas of India.³⁷⁰

The BMMA recognise that many urgent issues experienced by Muslim women in India were related to Islamic family law.³⁷¹ In order to provide non-discriminatory legal assistance, the BMMA transformed its civil support centres, which provided family counselling and legal aid, into *sharī’ah ‘adālatayn*. Some activists and support workers associated with the BMMA assumed the role of *qadiyāt*. Nishaat Husain, the head *qadiyā* of a *sharī’ah ‘adālat* in Jaipur, stated that the female staff of the BMMA assumed the role of *qadiyāt* because “our word has more value as a *qāzī* than as an activist.”³⁷²

Similar to the *dūr ul-qazā*, the *sharī’ah ‘adālatayn* operate as alternative dispute resolution mechanisms in India. However, these female-led Islamic courts distinguish themselves by providing a

³⁶⁶ Masood Hasan.

³⁶⁷ Sin: ‘adālat (عدالت), Pl: ‘adālatayn (عدالتين). “عدالت”, in Platts, p. 1550.

³⁶⁸ Bharatiya Muslim Mahila Andolan (BMMA), ‘About the BMMA’, *BMMA*, 2021 <<https://bmmaindia.com/about/>>.

³⁶⁹ Sin: qadiyā (قاضية), Pl: qadiyāt (قاضيات).

³⁷⁰ Jones, p. 440.

³⁷¹ ‘89% Muslim Women Want Government Hand in Codification of Law: Study’, *DNA India* (India, 12 August 2015) <<https://www.dnaindia.com/mumbai/report-89-muslim-women-want-government-hand-in-codification-of-law-study-2113388>>.

³⁷² Jones, p. 451.

wider spectrum of services. These services include counselling, social interventions, and legal guidance related to litigation, domestic conflicts, and cases involving violence. Many of the *qadiyāt* of these courts have backgrounds as social activists, providing support for non-confessional women's circles (*māhilah mandals*) and dispute resolution forums (*nyāya panchāyats*), where they offer legal advice and counsel to vulnerable women. Despite their contributions to women's rights in India, the rulings made by the *sharī'ah 'adālatayn* are not legally recognised by the country's judiciary.³⁷³ Nevertheless, within India's legal pluralistic framework, these informal religious services have managed to establish their own form of legal agency. This is possibly due to India having...

...delegated a degree of legal autonomy to community bodies as part of an unwritten contract of protecting the religious freedoms of its minorities.³⁷⁴

The establishment of female-led *sharī'ah 'adālat* arose in response to the patriarchal abuses Muslim women experienced within India's civil courts and *dūr ul-qazā*. Often, civil servants, law enforcement, and legal professionals would inform Muslim women that issues related to their religious communities were beyond their jurisdiction, directing them instead to their local *dār ul-qazā* for resolutions. This practice led some 'ulamā of these *dūr ul-qazā* to believe that they were effectively serving as India's judicial courts.³⁷⁵ The BMMA subsequently discovered that some 'ulamā and *quḍāh* working in these *dūr ul-qazā*...

...can be corrupt and patronising; they fail to take proper consideration of women's perspectives, and they demand female obedience to husbands.³⁷⁶

The BMMA observed that male clerical bodies in India's mosques and *dūr ul-qazā* operated as "structures of patriarchy," privileging men's interests and making decisions about Muslim women's

³⁷³ Jones, pp. 439–49.

³⁷⁴ Jones, p. 441.

³⁷⁵ Jones, p. 442.

³⁷⁶ Jones, pp. 450–51.

lives without their input or presence.³⁷⁷ To gauge the perception of *dūr ul-qazā* among India’s Muslim women, the BMMA conducted a survey with 4,710 respondents from ten Indian states.³⁷⁸ The survey results indicated that 89.5 percent of respondents believed that the *dūr ul-qazā* should be monitored by the Indian government, and 87.9 percent thought that the government should regulate the *dūr ul-qazā*’s actions on legal aid.³⁷⁹ Furthermore, 95.5 percent of the surveyed women were unfamiliar with the AIMPLB.³⁸⁰

To establish the *sharī’ah ‘adālatayn* as a reputable Islamic family legal service for India’s Muslims, the BMMA formally trained their *qadiyāt* by establishing the *Dar ul-Uloom-i-Niswān*, an *Islamic seminary for women* that provides comprehensive training and issues *qadiyāt* certifications. The curriculum of the *Dar ul-Uloom-i-Niswān* incorporates the fundamental principles of Islamic feminism advocated by the BMMA, offering a global Islamic feminist interpretation of the Qur’an and hadith traditions, while also considering the normative realities faced by Muslim women in India. By advocating for a more equitable and feminist interpretation of Islamic law, the BMMA seeks to inspire reforms within traditional Muslim communities and promote a more “gender-just” approach to Islamic law-making. The BMMA view the *qadiyāt* trained by the *Dar ul-Uloom-i-Niswān* as well as those serving on their *sharī’ah ‘adālatayn* as role models for India’s Muslim women.³⁸¹

Despite their progressive approach, the *sharī’ah ‘adālatayn* has faced criticism from conservative Muslim circles in India and has been misrepresented in the public domain. Some Muslim community leaders accuse the *sharī’ah ‘adālatayn* of undermining traditional Islamic family values. Additionally, they have also questioned the legitimacy of female judgeship within the Islamic legal

³⁷⁷ Zakia Soman and Noorjehan Safia Niaz, *Seeking Justice Within Family: A National Survey on Muslim Women’s Views on Reforms in Muslim Personal Law* (Tilakwadi, Belgaum, India: Omega Publications, Bharatiya Muslim Mahila Andolan (BMMA), 2015), p. 12.

³⁷⁸ Soman and Niaz, p. 27.

³⁷⁹ Soman and Niaz, pp. 107–35.

³⁸⁰ Soman and Niaz, pp. 71–91.

³⁸¹ Jones, pp. 443–64.

framework, casting doubt on the authority of the female judges serving on *sharī'ah* 'adālat panels for India's Muslim communities and civil courts.³⁸²

3.6 Conclusion

This chapter examined the rise of the 'ulamā of Deoband as one of the more prominent Islamic movements to have emerged during British-controlled India. Through their efforts to revive the religious beliefs, traditions, and aspirations of Muslims in the subcontinent, the Deobandi ulamā brought about an Islamic reawakening after the Indian Rebellion of 1857. The Deobandi's political party, the Jami'at al-'ulama-i-Hind, played a crucial role in this process by establishing the 'imārat-i-Shari'a, provincial offices dedicated to cultivating a traditional Islamic lifestyle among India's Muslims.

This chapter revealed how the concept of the dār al-qazā was introduced by the modernist 'ālim and journalist Maulana Abul Kalam Azad, who drew inspiration from Muhammad 'Abduh's report, *taqrir fi islah al-mahakim al-shari'a* (a report on the reform of shari'a courts). Azad modified Abduh's report to cater to the specific needs of India's Muslim minorities, thus creating his model of the dār ul-qazā.

The chapter also shared that there are numerous dūr ul-qazā operating in Indian provinces where Muslims are densely populated, with many being managed by the 'imārat-i-Shari'a, including the influential All-India Muslim Personal Law Board (AIMPLB) that oversees over 60 dūr ul-qazā.

Additionally, the chapter explored Britain's early attempts to regulate the lives of Muslims in India through the *British Shariat Act (1937)*. The chapter revealed that this *1937 Act* was not British Parliament's first attempt to regulate the lives of faith communities within its jurisdiction. By examining enactments such as the *Clandestine Marriage Act 1753* and the *Marriage Act 1836*, it

³⁸² Jones, p. 464.

becomes evident that Britain's legislative history reveals a broader context for the country's immigration and multicultural policies in the twenty-first century.

Moreover, the chapter examined the emergence of female-led *sharī'ah 'adālatayn* in India as a bold strategy to protect Muslim women's rights and promote Islamic feminism in the country. These courts challenge patriarchal norms within the Indian Muslim community and provide Islamic solutions to address the challenges faced by Muslim women, thereby aiming to effect positive change within India's Muslim community.

An important observation that can be gleaned from this chapter is the common and unique religious experiences of faith communities in India and Britain. Both countries, characterised by multiculturalism and sizable Muslim populations, share concerns about how their respective laws affect the religious practices of minority faith communities. However, while *dār ul-qazā* benches in India bring together *ulamā* from various sects to resolve family disputes and represent Indian Muslims collectively, *shari'a* councils in Britain often display sectarian divisions that stem from the historical conflict between the Deobandi and Bareilvi movements – divisions which will be examined in more detail in Part Three of this thesis.

The next chapter will delve into the settlement patterns of Muslims in Britain and examines how the country's laws facilitated this migration. It will also explore the challenges faced by British Muslims in securing concessions for Islamic family law and how these difficulties led to the development of *shari'a* councils in Britain.

Chapter 4: The Immigration and Settlement Patterns of Muslims in Britain

4.1 Introduction

This chapter examines the migration and settlement patterns of British Muslims in the latter half of the twentieth century, which coincides with the emergence of shari'a councils in Britain. One focus of this chapter is to analyse the Islamic legal traditions practiced by British Muslims, examining how these traditions are rooted in the norms, customs, and practices brought by migrants from their countries of origin. The chapter also delves into the diverse migratory pathways through which Muslims arrived to Britain and how these pathways have contributed to the emergence of Islamic legal pluralism in the country.

This chapter also investigates the settlement patterns of Muslims across the four constituent countries of the United Kingdom, drawing on data from the *2021 National Census* for England and Wales, as well as the *2011 National Censuses* of England, Northern Ireland, Scotland, and Wales. The chapter will also evaluate the challenges encountered by British Muslims following the mass migration of Muslims from the subcontinent in the mid-to-late twentieth century, with a specific focus on the interactions between migrants and those born within the country. Having analysed some of the issues that arise between different generations of British Muslims, the chapter will further explore the solutions proposed in the classic works of Islamic law for Muslims living as minorities in non-Muslim territories.

4.2 Britain's Immigration Policies and the British Muslim Demographic

After the Second World War, Britain faced the formidable task of rebuilding its infrastructure and economy. To support this endeavour, the Labour Government enacted the *British Nationality Act 1948*, which facilitated the entry of foreign workers into the country. The *1948 Act* introduced a new national status, known as *Citizens of the United Kingdom and Colonies*, which was granted to foreign

workers arriving from former colonial territories. This included regions such as the Mirpur district of Pakistan-administered Kashmir, the districts of Gujrat and Jhelum in Pakistan, and the district of Sylhet in Bangladesh. This status provided migrants from Commonwealth nations with relatively unrestricted access to Britain.³⁸³

Men in rural areas of the Indian subcontinent viewed the new national status as an opportunity to support their families, prompting them to seek work in Britain as itinerant labourers. Village elders organised groups of young men who would travel, live, and work together, following rotating labour schedules to maximise their earnings. Their goal was to accumulate enough wealth to secure their families' futures before returning home. Village elders made arrangements for the next group of young men to take their place, perpetuating the cycle of cheap foreign labour in Britain. It is important to note that many of these migrant workers had no intention of settling in the country.

Following the enactment of the *1948 Act*, an increasing number of foreign workers came to Britain to aid in post-war reconstruction. This influx of overseas labourers incited resentment among native white Britons, who felt that their livelihoods were being threatened. Foreign workers often took up menial, low-paying jobs that native Britons were unwilling to do, working longer hours and with no intention of staying in Britain. To address the rising rate of unemployment among native white Britons, the Conservative government passed the *Commonwealth Immigrants Act 1962* to control the entry of foreign workers.³⁸⁴ This Act required new foreign workers to present government-issued employment vouchers for entry; without them, they would be denied access. The regulations did not apply to either native Britons or to foreign workers who had arrived prior to the enactment of the *1962 Act*.³⁸⁵

³⁸³ John R. Bowen, pp. 10–15.

³⁸⁴ Pearl and Menski, p. 60.

³⁸⁵ Parliament of the United Kingdom, *Commonwealth Immigrants Act 1962*, 10 & 11 Eliz. 2 c. 21, 1962, x & 11 ELIZ. 2 c. 21.

The legislative changes had a profound impact on foreign workers from the Indian subcontinent who were in Britain at the time. These men, who had previously lived together, dispersed and formed communities in the northern mill-towns and cities of Britain, where they could find employment and live among their fellow countrymen. While they had no intention of staying in Britain, the *1962 Act* made them the sole source of income for their families back home, compelling them to fulfil their financial responsibilities. Securing employment vouchers was challenging, which forced many workers who had arrived in Britain before the *1962 Act* was passed to remain in the country and send remittances to their families abroad.³⁸⁶ Fortunately, the *1962 Act* included a family reunification programme, providing a pathway for these marooned Muslim workers to bring their wives and children to join them in their newly-adopted homes. This programme served as a catalyst for a second significant wave of Muslim immigration from South Asia.³⁸⁷

However, some migrants exploited Britain's immigration system by fraudulently declaring their siblings, nieces, and nephews as their spouses or children in order to bring them into the country. In response to this abuse of the immigration system, the Conservative government began to inspect family-based chain migration and the legitimacy of their marital relationships. As part of the *Commonwealth Immigrants Act 1962*, amendments were made in 1968 to impose further restrictions on the residency rights of Commonwealth citizens.³⁸⁸ The 1968 amendment mandated that new migrants from Commonwealth nations must provide evidence demonstrating their parents' or grandparents' citizenship in one of Britain's former colonies to qualify for residency.³⁸⁹

To prepare for Britain's membership of the European Union, the *Commonwealth Immigrants Act 1962* and its 1968 amendment were repealed and replaced with the *Immigration Act 1971*. The *1971 Act* introduced the concept of the *right of abode* into British law, which blocked any new claims

³⁸⁶ Pearl and Menski, p. 60.

³⁸⁷ John R. Bowen, pp. 11–15; Manea, pp. 37–38.

³⁸⁸ John R. Bowen, p. 11.

³⁸⁹ Parliament of the United Kingdom, *Commonwealth Immigrants Act 1968*, 1968 C. 9, 1968.

for permanent residency made by migrants from other Commonwealth countries. Consequently, overseas workers arriving in Britain were issued work visas with expiration dates.³⁹⁰

To address doubts surrounding the authenticity of relationships between foreign workers and their families, the Conservative government enacted the *British Nationality Act 1981*. This legislation aimed to distinguish genuine marriages conducted overseas from those entered into solely for the purposes of obtaining family entry visas.³⁹¹ In 1983, the British Government introduced the *Primary Purpose Rule* as an amendment to the *1981 Act*. This rule mandated that couples who married abroad provide evidence of their pre-marital courtship, flouting the cultural norms and religious practices of individuals of South Asian and Arab descent. Furthermore, Parliament passed the *Immigration Act 1988* to increase the scrutiny of migrants who married overseas, resulting in the revocation of entry guarantees for foreign dependents of British residents.³⁹²

Despite the tightening of Britain's immigration policy, the Muslim community in the country continues to grow. This growth is attributed to a combination of ongoing Muslim migration from abroad and the increasing numbers of British-born Muslims and individuals who convert to Islam. Also adding to the number of Muslims in Britain are Muslim refugees fleeing civil wars, oppressive regimes, and other anthropogenic catastrophes, which leave Muslims with no choice but to seek refuge in Britain. Muslims arriving from different parts of the world bring their distinct cultural traditions and interpretations of Islamic law, which characterise their societies.

4.3 Islamic Legal Pluralism in Britain

When considering the cultural traditions and Islamic legal practices observed by Britain's Muslims, it becomes important to acknowledge the potential impact of the diverse migratory pathways through which they have arrived in Britain. These pathways are likely to have contributed to the

³⁹⁰ Parliament of the United Kingdom, *Immigration Act 1971*, 1971 c. 77, 1971.

³⁹¹ Parliament of the United Kingdom, *British Nationality Act 1981*, C.61, 1981, c.61.

³⁹² John R. Bowen, p. 11.

manifestation of Islamic legal pluralism within Britain.³⁹³ Lena Larsen observes that the large-scale migration of Muslims to Western Europe following the Second World War has resulted in the formation of heterogeneous communities, who vary in their nationalities, languages, and religious traditions. Consequently, the institutionalisation and experience of Islam among these immigrant groups reflect this diversity. Larsen notes that the Islamic institutions which have developed in Western Europe in recent decades are usually extended branches of corresponding institutions in the migrant's countries of origin, with each having their own distinct religious authorities.³⁹⁴

Manea criticises the British government for disregarding the diverse ethnic, cultural, and theological backgrounds of Muslims living in Britain. Instead of acknowledging the disparate qualities of the Muslim population, the government has treated them as a homogenised religious entity, categorising them alongside other minority faith groups in the country.³⁹⁵ Manea emphasises that Muslims in Britain, like other minority faith groups, are heterogeneous and do not...

...represent one cultural block with similar and standardised features and traits. The diversity within a minority group comes to expression in different forms, on an individual level as well as the group level.³⁹⁶

Even within the significant influx of Muslims from South Asia to Britain in the latter half of the twentieth century, Manea underscores their notable geographic diversity across Bangladesh, India, and Pakistan. She also alludes to the wide-ranging cultural, ethnic, theological, and religious denominational differences within these three nations.³⁹⁷

³⁹³ Rajnaara Chowdhury Akhtar, pp. 50–51.

³⁹⁴ Lena Larsen, “‘Men Are the Protectors and Maintainers of Women...’ Three Fatwas on Spousal Roles and Rights’, in *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, ed. by Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger (London: Oneworld, 2015), pp. 322–356 (350) (p. 325).

³⁹⁵ Manea, pp. 138–71.

³⁹⁶ Manea, pp. 19–20.

³⁹⁷ Manea, pp. 19–20.

Muslims from the subcontinent migrated to Britain as diasporic communities, each bringing their distinct approaches and interpretations of the *Hanafi* legal school.³⁹⁸ The Barelvi Sufi tradition is recognised for its mystical and eulogistic practices,³⁹⁹ while the Deobandi tradition is characterised by scholastic conservatism. The Deobandis disapprove of legal eclecticism (*takhayyur*) and prioritise following (*taqlid*) the rulings set by earlier Hanafi legal authorities.⁴⁰⁰ These theological differences among followers of the Hanafi legal school are expected, given that the practice of *istihsān* – favouring a ruling or opinion that serves the best interest of the community – is a defining feature of the school.⁴⁰¹

There are also members of the Ahl ul-Hadith movement in Britain, who have been described by Manea as the “Salafis of South Asia”.⁴⁰² The Ahl ul-Hadith have little reverence for the religious and legal authorities of the four prominent Sunni legal schools. They advocate for comprehensive reforms to the entire Islamic jurisprudential tradition, insisting that the ‘ulamā interpret the rules and regulations for Muslims directly from the Qur’an and hadith collections.⁴⁰³ As nonconformists (*ghayr muqallidūn*), the Ahl ul-Hadith consider the classic works of Islamic law as mutable. They readily engage in legal eclecticism (*takhayyur*) and legal synergism (*talfīq*) by combining rules and opinions from both Sunni and Shi’a legal traditions.⁴⁰⁴

While the Ahl ul-Hadith movement is globally respected among ‘ulamā today for its hermeneutical scholasticism of Islam’s sacred texts and for spearheading the revival of the study of the Qur’an, hadith literature, and the Arabic language in South Asia during the nineteenth century, their rejection of popular folk Islamic practices and Sufism has led to their marginalisation in the public

³⁹⁸ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, pp. 219–25.

³⁹⁹ Usha Sanyal, *Scholars of Faith: South Asian Muslim Women and the Embodiment of Religious Knowledge* (Delhi, India: Oxford University Press, 2020), pp. 28–29, 108–9, 177–79.

⁴⁰⁰ Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton (USA) & Oxford (UK): Princeton University Press, 2002), pp. 26–27.

⁴⁰¹ Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge University Press, 1997), pp. 107–11.

⁴⁰² Manea, p. 175.

⁴⁰³ Zaman, *The Ulama in Contemporary Islam*, pp. 23–24.

⁴⁰⁴ Muhammad Qasim Zaman, *Islam in Pakistan: A History* (Princeton (USA) & Oxford (UK): Princeton University Press, 2018), pp. 18–22.

space. Furthermore, their campaign to diminish the influence of the Hanafi legal tradition among Muslims of the subcontinent further contributes to their marginalisation.⁴⁰⁵

Sanyal observes that, while the Hanafi legal tradition remains predominant among Muslims in South Asia, there is a significant presence of Shafi'i followers in the southern regions of India.⁴⁰⁶ Parveen, in her analysis of the Islamic Judiciary Board's (IJB) Islamic divorce case files, found that while more than 70 percent of applicants were of South Asian descent, 6 percent of applications were coming from Britain's Somali community. Parveen also highlighted the steps taken by the IJB to accommodate the religious and cultural needs of their Somali clients, which included establishing connections with local Somali mosques to provide counsel and support when the cultural context of a case was relevant.⁴⁰⁷

When Somali refugees arrived in Britain seeking asylum from the Somali Civil War, they brought with them their customs, norms and Islamic values shaped by the Shafi'i legal tradition.⁴⁰⁸ In contrast to the gradual migration of Muslims from the subcontinent over several decades, the sudden influx of Somalis to Britain during the late-1980s and early-1990s prompted shari'a councils to extend their faith-based mediatory services to this growing religious community. Bearing in mind that the institutional model of shari'a councils is based on comparable services found in the subcontinent, the demand for Islamic family mediatory services from a community the council had no prior history with led them to seek the help of specialists and faith leaders from within these communities. As will be discussed in the third part of this thesis, shari'a councils were open to receiving support from the communities they served to make up for their shortcomings.

⁴⁰⁵ Bearman, P. and others, eds., (1986), *Encyclopaedia of Islam (A-B)*, 2nd edn, 13 vols (Leiden: E.J. Brill), i, p.259.

⁴⁰⁶ Sanyal, *Scholars of Faith: South Asian Muslim Women and the Embodiment of Religious Knowledge*, p. 36.

⁴⁰⁷ Parveen, 'Do Sharia Councils Meet the Needs of Muslim Women?', p. 147.

⁴⁰⁸ I.M Lewis, *Saints and Somalis: Popular Islam in a Clan-Based Society* (London: HAAN Associates Publishing, 1998), pp. 8, 75.

In contrast to the notable presence of followers of the Hanafi and Shafi'i legal schools in Britain, the early presence of followers of the Maliki tradition in the country was minimal, but it became more prominent as the community grew. According to data from the *Office of National Statistics*,⁴⁰⁹ between 2004 and 2018, approximately 79,000 long-term migrants from North Africa settled in Britain, while 436,000 migrants arrived from sub-Saharan Africa during the same period. Although the data does not specify the religious beliefs of these 515,000 migrants from the two African regions, it is likely that those who identify as Muslim predominantly follow the Maliki legal school.⁴¹⁰

The Hanbali legal tradition gained prominence in towns and cities across Britain, due in large part to the country's strong political and fiscal ties with Saudi Arabia and other Gulf nations. Between 1982 and 2005, the Kingdom of Saudi Arabia invested over \$75 billion (\$75,000,000,000) in spreading its Wahhabi-Salafi ideology worldwide. These funds were also used to promote the Kingdom of Saudi Arabia's national Hanbali legal system, aiming to regulate the religious practices of Muslims in other countries.⁴¹¹ Saudi investments were also channelled into British universities.⁴¹²

The Kingdom of Saudi Arabia has also made investments in certain Islamic centres and seminaries in Britain associated with the Deobandi movement, with the aim of infusing these "Deobandi seminaries with Wahhabi ideology."⁴¹³ As Patrick Wintour reports in an article for *The Guardian* newspaper...

⁴⁰⁹ Office for National Statistics, 'Long-Term International Migration 2.03, Country of Birth, UK and England and Wales', 2012
<<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/longterminternationalmigrationcountryofbirthtable203>>.

⁴¹⁰ J.N.D Anderson, *Islamic Law in Africa*, Routledge Library Edition: Islam (London & New York: Routledge: Taylor & Francis Group, 2008), xii, pp. 7, 304–13, 369; Center for European Studies, 'Jurisprudence and Law- Islam' (University of North Carolina, 2009) <<https://veil.unc.edu/religions/islam/law/>>.

⁴¹¹ Youssef Michel Ibrahim, 'The Mideast Threat That's Hard to Define', *The Washington Post*, 11 August 2002
<<https://www.washingtonpost.com/archive/opinions/2002/08/11/the-mideast-threat-thats-hard-to-define/c3810fca-d2c6-4a6b-8f35-726f7a3c50cd/>>.

⁴¹² 'British Universities Receive Saudi Funds', *Arab News*, 30 September 2012 <<https://www.arabnews.com/british-universities-receive-saudi-funds>>.

⁴¹³ Puri, Lev, 'The Past and Future of Deobandi Islam', *CTC Sentinel*, 2.11 (2009), 19–22, p.20

...Saudi Arabia has, since the 1960s, sponsored a multimillion-dollar effort to export Wahhabi Islam across the Islamic world, including to Muslim communities in the west.

In the UK, this funding has primarily taken the form of endowments to mosques and Islamic educational institutions, which have in turn played host to extremist preachers and the distribution of extremist literature. Influence has also been exerted through the training of British Muslim religious leaders in Saudi Arabia, as well as the use of Saudi textbooks in a number of the UK's independent Islamic schools.⁴¹⁴

Considerable academic attention has been devoted to investigating the influence of Saudi Arabia's Salafi-Wahhabi movement on sharia councils. Authors have provided insights into how Salafi and Ahl ul-Hadith theologians have shaped the Deobandi movement's fundamentalist and isolationist tendencies.⁴¹⁵ Furthermore, these authors have underscored the close ties between the 'ulamā of the Ahl ul-Hadith and Deobandi movements and the religious establishment of Saudi Arabia. They have also drawn attention to the fact that some of these fundamentalist 'ulamā serve on Britain's more conservative shari'a councils.⁴¹⁶

Given the presence of followers of the Hanafi, Shafi'i, Maliki, and Hanbali legal traditions in Britain, Ali explains that this articulation of plurality is inevitable when Muslims from various parts of the world migrate en masse to non-Muslim territories. In the case of Britain, the ethnic, cultural, economic, and Islamic legal diversities of the country's Muslims necessitate an Islamic authority who applies an authentic form of Islamic law. In response to the urgent needs of Muslim women in Britain, whose husbands deny them their Islamic divorces, shari'a councils quickly emerged from within Britain's Muslim communities, claiming this authority.⁴¹⁷

⁴¹⁴ Wintour, Patrick, 'Report Calls for Public Inquiry into Gulf Funding of British Extremism', The Guardian, 2017 <<http://www.theguardian.com/uk-news/2017/jul/05/report-calls-for-public-inquiry-into-gulf-funding-of-british-extremism>>

⁴¹⁵ Zaman, *The Ulama in Contemporary Islam*, pp. 40–42; Zaman, *Islam in Pakistan: A History*, pp. 18–23; Manea, pp. 145–47; Fadal Karim Asim, *Tahreek Ahl ul Hadith Europe mein (The way of the ahl ul-Hadith in Europe)*, trans. by Umm-ul-Qura Publications (Lahore, Pakistan: Nomani Kutub Khana, 1997) <<https://umm-ul-qura.org/2015/08/18/biography-of-shaykh-mahmood-ahmad-mirpuri-and-mjah-uk/>>.

⁴¹⁶ Zaman, *The Ulama in Contemporary Islam*, pp. 175–76; Manea, pp. 98–99, 151–52; John R. Bowen, pp. 54–55; Larsen, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, XLIV, p. 91.

⁴¹⁷ Shaheen Sardar Ali, "'Between the Devil and the Deep Blue Sea': Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora', pp. 206–7.

Ali argues that accommodating Britain's diverse religious and cultural traditions is a slippery slope, given that the ingredients for this accommodation are contested, undefined, and boundaryless. She raises questions about the authority claimed by shari'a councils and their assertion of providing an "authentic" version of Islamic law. Ali contends that the notion of "authenticity" propounded by shari'a councils has in fact been defined by South Asian traditionalist 'ulamā (Deobandi and Ahl ul-Hadith), who provide literalist religious justification to support their claims. Ali also finds that shari'a councils reinforce patriarchal interpretations of Islamic law, which are seen through the lens of South Asian culture and traditions. Consequently, this patriarchal and subcontinental rendition of Islamic law offered by shari'a councils is further legitimised by a lack of alternative voices emerging from within Britain's Muslim communities. Furthermore, the British government's reluctance to interfere in Muslim affairs, as part of its multicultural policy aimed at avoiding offense, contributes to this legitimacy.⁴¹⁸

Expanding on Ali's observation regarding the lack of alternative voices among Britain's Muslim communities, Larsen offers valuable insights which could explain why other ethnic Muslim groups in Britain have not established alternative institutions to shari'a councils. In her book, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, Larsen investigates how Muslim leaders and muftis around the world have addressed the religious concerns of Muslim women in Britain and France during the twenty-first century.

In the context of France, Larsen highlights that French Muslims generally adhere to the Maliki legal tradition, which aligns with the settlement patterns of Muslims who migrated to France from its former colonies of Algeria, Morocco, Tunisia, and sub-Saharan Africa.⁴¹⁹ Furthermore, she draws attention to how the French Muslim lobby group, *Union des Organisations Islamiques de France*

⁴¹⁸ Shaheen Sardar Ali, "'Between the Devil and the Deep Blue Sea': Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora", pp. 208–9, 229.

⁴¹⁹ Lapidus, pp. 819–21.

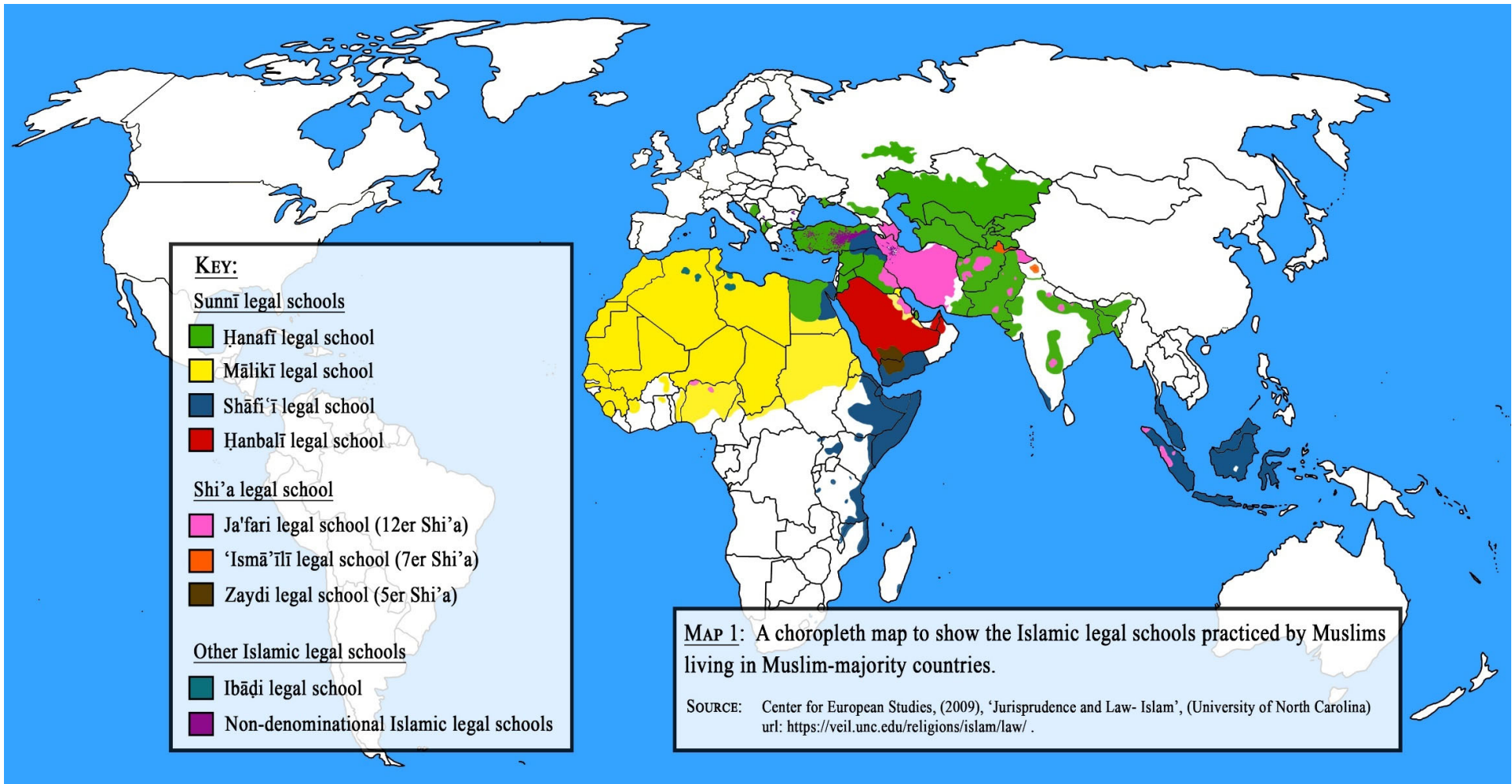
(UOIF), considers France to be a part of the *dār al-Islām*, a region where Muslims can freely practise their faith. Tareq Oubrou, a prominent figure in the UOIF and rector of the el-Houda Mosque in Bordeaux, argues that Shari'a is relative to the time and place where Muslims reside. For Oubrou, Shari'a includes French law, rather than being exclusively based on the rules of classic Islamic law. In an interview with Larsen, Oubrou emphasised that French Muslims and non-Muslims are bound to the republic by the contract of citizenship, which, according to Shari'a, is a moral contract that must be respected.⁴²⁰

In contrast to the experiences of French Muslims, Larsen finds British Muslims are more proactive in their efforts to live in accordance with classic Islamic law. During colonial rule, Muslims in British India campaigned for the British Raj to regulate their lives in accordance with classic Islamic law. In response, Britain codified the customs and religious decrees of Muslims living in its Indian territories, developing the *Anglo-Muhammadan law* which was enforced in India's colonial courts. These demands for the accommodation of Muslims' religious beliefs and practices in British territories persist to the present day. Unlike Oubrou's assertion that "Shari'a includes French law," Larsen found that Syed Mutawalli ad-Darsh, a former Imam of London's Central Mosque and one of the founding members of the Islamic Shari'a Council,⁴²¹ argued that Muslims, regardless of their location, must obey the commands and prohibitions prioritised by God. Darsh argued that the principles of legal pluralism should be implemented in Britain and that a separate law based on Islamic tradition must be applied to Muslims living in the country.⁴²²

⁴²⁰ Larsen, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, XLIV, pp. 107–19.

⁴²¹ Larsen, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, XLIV, p. 88.

⁴²² Larsen, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, XLIV, pp. 216–18.



4.4 Muslim Settlement Patterns in Scotland, Northern Ireland, England, and Wales

The settlement patterns of Muslims vary between the four constituent countries of the United Kingdom. The *2021 National Census* provides a comprehensive analysis of Muslims' settlement patterns in England and Wales, organised by counties, local authorities, districts, and boroughs. According to the *2021 Census*, out of a total population of 59,597,540 individuals in England and Wales, 3,868,133 people identified as Muslim, comprising 6.5 percent of the population.⁴²³ This represents a 42.94 percent⁴²⁴ increase in the Muslim population since the *2011 Census*.

The *2021 Census* also reveals that sixteen city-borough/local counties in England and Wales have a Muslim population that exceeds 20 percent of the local inhabitants. These areas are:⁴²⁵

- Tower Hamlets (39.9%).
- Blackburn with Darwen (35.0%).
- Newham (34.8%).
- Luton (32.9%).
- Redbridge (31.3%).
- Bradford (30.5%).
- Birmingham (29.9%).
- Slough (29.4%).
- Pendle (26.0%).
- Oldham (24.4%).
- Barking and Dagenham (24.4%).
- Leicester (23.5%).
- Manchester (22.3%).
- Waltham Forest (21.6%).
- Brent (21.4%).
- Westminster (20.0%).

⁴²³ Office for National Statistics, *Ethnicity, Identity, Language and Religion: TS030 Religion*, Census 2021 (Nomis, University of Durham: Office for National Statistics, 21 March 2021)
<<https://www.nomisweb.co.uk/output/census/2021/census2021-ts030.zip>>.

⁴²⁴ $Percentage\ increase = \frac{Muslim\ population\ in\ the\ 2021\ Census - Muslim\ population\ in\ the\ 2011\ Census}{Muslim\ population\ in\ the\ 2011\ Census} \times 100$

$$Percentage\ increase = \frac{3,868,133 - 2,706,066}{2,706,066} \times 100 = 42.94\ (2\ decimal\ places).$$

⁴²⁵ Office for National Statistics, *Ethnicity, Identity, Language and Religion: TS031 Religion (Detailed)*, Census 2021 (Nomis, University of Durham: Office for National Statistics, 21 March 2021)
<<https://www.nomisweb.co.uk/output/census/2021/census2021-ts031.zip>>.

As of the writing of this thesis, data for the *2021 Censuses* of Scotland and Northern Ireland have not been published. Furthermore, multivariate data that categorises faith communities by ethnic groups for Scotland, Northern Ireland, England, and Wales for 2021 has not been released. In order to ensure a fair analysis of Muslim settlement patterns across the four constituent countries of the United Kingdom, the analysis from this point onward will be based on the *2011 censuses*. According to the *2011 National Census* for England and Wales, out of a total population of 56,075,912 in the country, 2,706,066 individuals identified as Muslims, accounting for 4.83 percent of the population in 2011.⁴²⁶

The *2011 Scottish Census* was organised into 6,976 data zones.⁴²⁷ Multiple data zones were nested within each local authority to provide a more accurate record of the settlement patterns of faith communities across Scotland. Out of a total population of 5,118,223 Scottish citizens, 76,737 identify as Muslims. The majority of Scotland's Muslims are concentrated in and around its cities. The *2011 Scottish Census* revealed that five Scottish Council Areas had Muslim populations exceeding 1 percent of the local inhabitants. These areas were:⁴²⁸

- Glasgow City (5.4%).
- Dundee City (2.6%).
- East Renfrewshire (3.3%).
- Aberdeen City (1.9%).
- The City of Edinburgh (2.6%).

According to the *2011 Scottish Census*, 58.46 percent of the Muslim population in Scotland are of Pakistani descent, 3.98 percent are of Bengali or Bangladeshi descent, and 9.78 percent identify as Arab.⁴²⁹

In Northern Ireland, the ethnic composition of Muslims is more evenly distributed than in Scotland, England, and Wales. According to the *2011 Census of Northern Ireland*, the total population

⁴²⁶ Census 2011.

⁴²⁷ National Records of Scotland, *SNS Data Zone 2011* (Scotland: National Records of Scotland, 2011).

⁴²⁸ Elshayyal, p. 22.

⁴²⁹ Elshayyal, p. 15.

was 1,810,863, of which 3,832 were Muslim.⁴³⁰ 884 Irish Muslims were of Pakistani descent, 435 were of Bengali/Bangladeshi descent, 658 were indigenous-white Irish, and 419 were Black Irish.⁴³¹

Looking at the cumulative number of Muslims residing in the United Kingdom, the analysis found they constitute 4.43 percent of the combined population of the four constituent countries.⁴³² It is worth noting that the data for the four constituent countries of the United Kingdom does not provide details about the specific Islamic sectarian affiliations or Sunni legal schools followed by British Muslims.

Based on data from the 2011 censuses of England, Wales, Scotland, and Northern Ireland, it is revealed that 60.27 percent of British Muslims are of South Asian descent.⁴³³ Some academics have suggested that, since the majority of Muslims from the subcontinent follow the Hanafi legal tradition, it is reasonable to assume that over half of Britain's Muslims also adhere to the Hanafi tradition.⁴³⁴ However, the qualitative data analysis conducted in the third part of this thesis found that 'ulamā cautioned against such assumptions, emphasising that Britain's diversity provides opportunities for citizens to broaden their social and religious outlook. For Muslims, these opportunities include the option to choose among the four popular Sunni legal schools and a variety of Islamic theological doctrines that serve the interests of British Muslims while also respecting British laws.

Currently, there is a lack of anthropological or statistical data evaluating the specific Sunni (and Shi'a) legal traditions followed by British Muslims. The availability of such data would be

⁴³⁰ *NINIS: Religion - Full Detail.*, (2011), Report number: QS218NI, (Belfast, Northern Ireland: Northern Ireland Neighbourhood Information Service, 2011).

⁴³¹ *NINIS: Religion - Muslims (Islam) by Ethnic Group.*, (2011), Report number: CT0071NI, (Belfast, Northern Ireland: Northern Ireland Neighbourhood Information Service, 2011).

⁴³² $(\text{Total British Muslim population} \div \text{Total population of the United Kingdom}) \times 100 = (2,786,635 \div 63,004,998) \times 100 = 4.43\%$ (2 decimal places). See: Table 4.1 below.

⁴³³ Total number of Muslims in Britain whose ethnicity can be traced back to the Indian subcontinent = 405,916 + 199,280 + 1,074,201 = 1,679,397 (60.27% of the British Muslim population)

⁴³⁴ Bano, *Muslim Women and Shari'ah Councils*, p. 158; Pearl and Menski, p. 279; Shaheen Sardar Ali, "'Between the Devil and the Deep Blue Sea': Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora", pp. 219, 225.

valuable for academics, Muslim organisations, and policymakers, as it would enhance their understanding of the Islamic legal and theological pathways embraced by British Muslims. Furthermore, this data would serve as a foundation for future research in the field.

Based on the three 2011 censuses conducted in the United Kingdom,⁴³⁵ it can be inferred that 97.11 percent of Britain’s Muslims live in England and Wales. Consequently, the majority of British Muslims and their religious institutions are subject to the laws of England and Wales.⁴³⁶ For this study, there is a need to differentiate between the legal systems of England and Wales, the United Kingdom, and Islam. It is also important to recognise that the United Kingdom comprises of four distinct legal systems: England and Wales, Scotland, Northern Ireland⁴³⁷ and since May 2007, Wales has had its own legal system as a result of Welsh devolution.⁴³⁸ Whilst there are 87 mosques⁴³⁹ in Scotland and representative bodies such as the Muslim Council of Scotland and the Scottish-Islamic Foundation, most shari’a councils are located in English towns and cities where Muslims are densely populated. Hence, when this thesis mentions “the judiciary,” it will be referring to the legal system of England and Wales. However, if this study discovers instances of the legal systems of Scotland or Northern Ireland impacting the lives of British Muslims, such instances will be made clear in this thesis.

⁴³⁵ See: Table 4.1 below.

⁴³⁶ Mehmood Naqshbandi, *UK Mosque Statistics / Masjid Statistics* (Muslims in Britain, 16 September 2017) <http://www.muslimsinbritain.org/resources/masjid_report.pdf>.

⁴³⁷ Courts and Tribunals Judiciary, *The Justice System and the Constitution* (London: Courts and Tribunals Judiciary (UK), 2022) <<https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/justice-sys-and-constitution/>>.

⁴³⁸ UK Public General Acts, *Government of Wales Act 2006*, 32, 2007, p. 211 <https://www.legislation.gov.uk/ukpga/2006/32/pdfs/ukpga_20060032_en.pdf>.

⁴³⁹ Naqshbandi.

British Muslim Ethnicities									
	Arab	African	Bengali/ Bangladeshi	Caribbean	Indian	Pakistani	White	Other/mixed ethnic groups	Total Muslim population
England and Wales ⁴⁴⁰	178,195 (6.39%)	207,201 (7.44%)	402,428 (14.44%)	7,345 (0.26%)	197,161 (7.08%)	1,028,459 (36.91%)	210,620 (7.56%)	474,657 (17.03 %)	2,706,066 (97.11 %)
Scotland ⁴⁴¹	7,505 (0.27%)	5,051 (0.18%)	3,053 (0.11%)	31 (≈ 0%)	1,954 (0.07%)	44,858 (1.61%)	5,983 (0.21%)	8,302 (0.30 %)	76,737 (2.75%)
Northern Ireland ⁴⁴²	Details not provided	358 (0.01%)	435 (0.02%)	3 (≈ 0%)	165 (0.01%)	884 (0.03%)	659 (0.02%)	1,328 (0.05%)	3,832 (0.14%)
Total (Σ)	185,700 (6.66%)	212,610 (7.63%)	405,916 (14.57%)	7,379 (0.26%)	199,280 (7.15%)	1,074,201 (38.55%)	217,262 (7.80%)	484,287 (17.38%)	2,786,635 (100%)

Table 4.1: A table showing the Muslim settlement patterns in each of the four constituent countries of the United Kingdom.

⁴⁴⁰ Census 2011, *Ethnic Group by Religion*, Ethnic Group, Religion (England and Wales: Office of National Statistics, 2011).

⁴⁴¹ Elshayyal, p. 15.; *SNS Data Zone 2011*

⁴⁴² *Northern Ireland 2011 Census: Ethnicity, Identity, Language and Religion* (Northern Ireland Neighbourhood Information Services: Northern Ireland Statistics and Research Agency, 2011).

4.5 Settlement Patterns of Muslims in England and Wales

When analysing the demographic of Muslims in England and Wales, it is important to distinguish between the Muslim communities in London and those in the rest of the country. Outside of London, the majority of British Muslims trace their origins to South Asia, and they are often concentrated in the textile mill towns and cities of the North of England and the Midlands.⁴⁴³

Muslims in London come from diverse backgrounds and tend to settle in specific boroughs based on their ethnic origins. Muslims of Arab descent from the Gulf and Levant regions tend to settle in the London boroughs of Westminster, Kensington and Chelsea, Haringey, and Hammersmith, while those from North Africa usually settle in Ealing, Barnet, and Hammersmith. Shia Muslims of Iranian and Iraqi descent tend to settle in Brent and Camden. Sub-Saharan African and Caribbean Muslims typically reside in South London. Bengali Muslims are concentrated in East London boroughs such as Newham and Tower Hamlets, while Pakistani Muslims are dispersed throughout the city, with higher concentrations in Newham, Redbridge, and Waltham Forest. Indian Muslims in London are fewer in number compared to other South Asian groups, often residing in areas with larger Pakistani and Bengali populations.⁴⁴⁴

Although the British Muslim population living outside of London is diverse, their settlement patterns can be best described as polarised. Muslims tend to prefer living in close proximity to those who share similar ethnic and geographic backgrounds. For instance, Mirpuris often settle in Birmingham or Bradford, where they can find their fellow countrymen. Similarly, Pakistanis from the districts of Gujranwala usually settle in Blackburn and Darwen, while Muslims from the district of Gujrat make their way to Leicester. New arrivals from Jhelum typically settle in Waltham Forest, whereas Pakistanis from Lahore tend to reside in East London or Manchester.⁴⁴⁵

⁴⁴³ Pearl and Menski, pp. 59–60.

⁴⁴⁴ Office for National Statistics, *2011 Census: Ethnic Group, Local Authorities in the United Kingdom*, Census 2011 (Northern Ireland Statistics and Research Agency: Office for National Statistics, 2013).

⁴⁴⁵ John R. Bowen, pp. 12–14.

According to the 2011 National Census of England and Wales, an estimated 60 percent of British Muslims of Pakistani descent have their ancestral roots in the Mirpur District of Pakistan-administered Kashmir.⁴⁴⁶

The Mirpuri community in Britain is dispersed across various locations, particularly the northern mill towns of Blackburn, Bradford, Derby, Kirklees, Leeds, Oldham, Rochdale, and Birmingham. The significant presence of Mirpuri Pakistanis in Britain has also attracted migrants from other districts in Pakistan, including Peshawar, Attock, Gujranwala, Jhelum, Nowshera, Gujrat, and smaller numbers from various other districts in the Punjab.⁴⁴⁷ It is noteworthy that, compared to other English cities and towns,⁴⁴⁸ London has the highest concentration of Pakistani and Bengali residents within a government-designated region.⁴⁴⁹

The Bengali community is the second-largest ethnic group in Britain, with their geographic origins predominantly tracing back to the Sylhet district of Bengal.

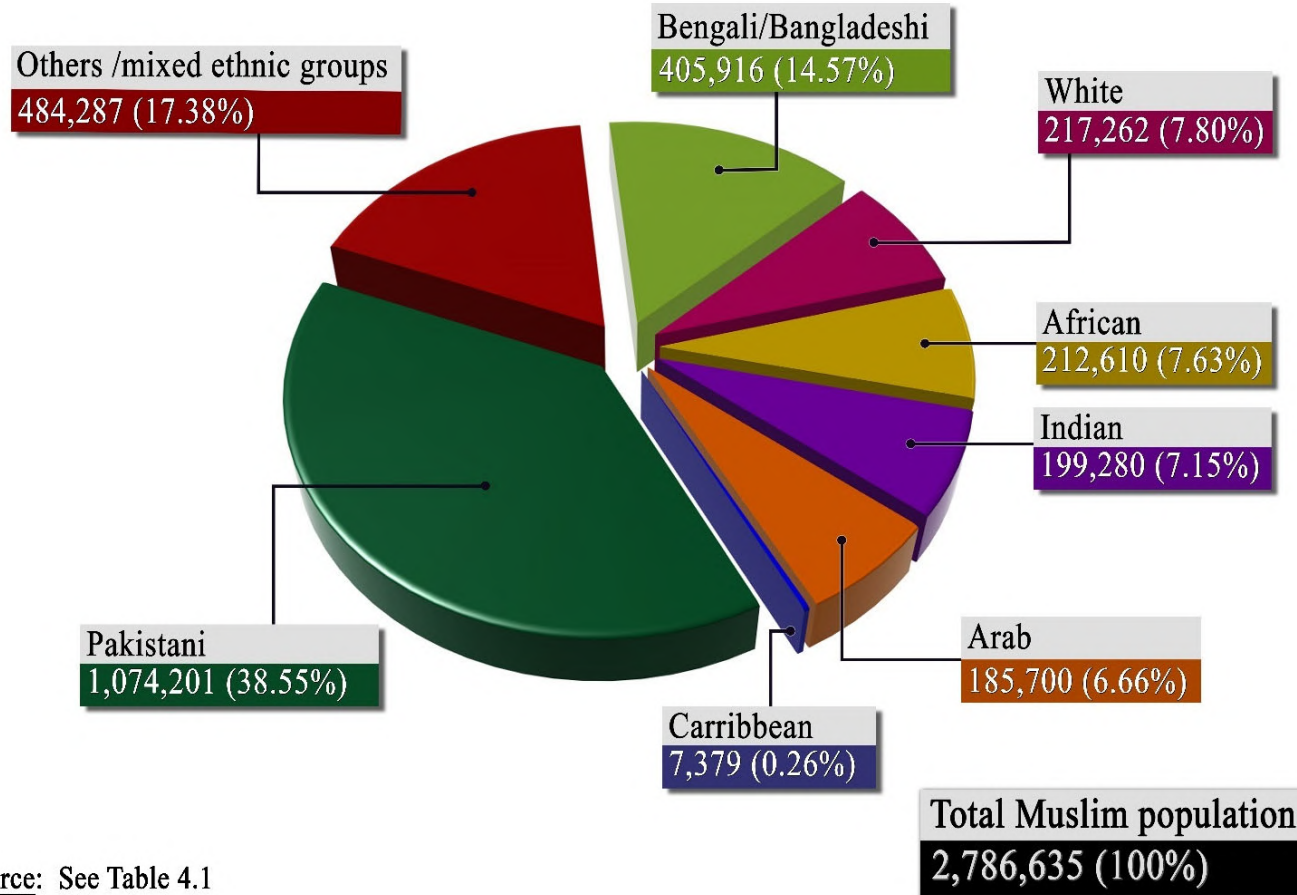
⁴⁴⁶ Institute Change, *The Pakistani Muslim Community in England*, Understanding Muslim Ethnic Communities (Crown Copyright, London: Change Institute, Department of Communities and Local Government, March 2009), p. 7.

⁴⁴⁷ Change, p. 25.

⁴⁴⁸ Office for National Statistics, *2011 Census: Ethnic Group, Local Authorities in the United Kingdom*, Census 2011 (Northern Ireland Statistics and Research Agency: Office for National Statistics, 2013).

⁴⁴⁹ County, district, or London borough.

FIGURE 4.1: A pie chart to show the population of Muslims in Britain categorised by their ethnic groups.



Source: See Table 4.1

	Regional Population	Population of Bengalis in the region	Percentage of Bengalis in relation to the regional population	Population of Pakistanis in the region	Percentage of Pakistani in relation to the regional population
Barking and Dagenham	218,850	22,393	10.2%	15,799	7.2%
Blackburn with Darwen	154,732	1,473	1.0%	27,525	17.8%
Bolton	295,969	985	0.3%	27,897	9.4%
Bradford	546,407	12,403	2.3%	139,553	25.5%
Kirklees	433,209	1,065	0.2%	54,795	12.6%
Luton	225,255	20,630	9.2%	41,143	18.3%
Newham	351,042	55,677	15.9%	31,216	8.9%
Oldham	242,090	21,754	9.0%	32,802	13.5%
Redbridge	310,263	31,895	10.3%	44,000	14.2%
Rochdale	223,776	5,170	2.3%	30,525	13.6%
Slough	158,489	910	0.6%	34,317	21.7%
Tower Hamlets	310,309	107,333	34.6%	3,341	1.1%
Waltham Forest	278,422	5,166	1.9%	28,740	10.3%
Birmingham	1,144,910	48,232	4.2%	195,102	17.0%
London	8,799,726	322,054	3.7%	290,549	3.3%
Manchester	551,929	9,673	1.8%	65,875	11.9%

Table 4.2: A table displaying the distribution of Muslims of Bengali and Pakistani ethnicities in English counties/regions where their presence is noticeable.⁴⁵⁰

⁴⁵⁰ Office for National Statistics, *Ethnicity, Identity, Language and Religion: TS031 Religion (Detailed)*.

With Britain's diverse yet polarised Muslim communities, it is common for tensions and misunderstandings to arise both within and between these communities, as well as with the wider indigenous population:

People are never isolated; they live in groups; their image for the others, and their perception of those who are members of the same group or outside it, constitute a key element in the idea they build of themselves.⁴⁵¹

Across Britain, there is a mutual feeling of superiority between the indigenous population and the British Muslim communities. First-generation Muslims sometimes perceive native Britons as uncultured and debauched, while native Britons view Muslims as conservative, regressive, and oppressive to women. These views have affected Muslim settlement patterns, leading to the concentration of Muslims into culturally-dense communities in the north of England, the Midlands, and London. While Muslims make up 6.5 percent of the national population, their presence seems more prominent due to their settlement into cloistered, culturally dense communities. Upon arrival, new Muslims often gravitate towards these communities for social and structural advantages. This includes access to halal food, South Asian grocery stores, Islamic advisory services, and the support of family and friends from their home countries. The British government had anticipated that later generations of Muslims would abandon their traditional Islamic beliefs for modern British values; however, such assimilationist theories have not materialised in practice. Instead, Muslim communities have maintained their cultural and religious traditions, with some even resisting integration into wider British society. This resistance contributes to ongoing tensions between Muslims and the indigenous population, as well as within the Muslim communities themselves.⁴⁵²

4.6 The Pakistani Birādarī and Bengali Gūshṭī Systems

In his assessment of Pakistani migration and settlement patterns in Britain, Bowen notes that Pakistani nationals typically arrive through “definable migration chains”⁴⁵³ and are sponsored by

⁴⁵¹ Paul Claval, ‘Multiculturalism and the Dynamics of Modern Civilizations’, *Université de Paris-Sorbonne*, 2001, p. 2.

⁴⁵² Pearl and Menski, pp. 60–61.

⁴⁵³ John R. Bowen, p. 13.

family members who hold permanent residency in Britain. These chain-migration strategies are one of the benefits provided by the Pakistani birādarī and Bengali gūshṭī systems to their members. The term birādarī is a generic Urdu and Hindi term used to describe the social stratification of South Asian Muslims. It is used to promote a sense of solidarity, collective interests, and security within the community. Sociologists and anthropologists commonly associate the term birādarī with the Pakistani community, both in their native country and in migratory contexts.⁴⁵⁴

The practices and traditions of the birādarī system are evident in South Asian communities, although the appellations used may vary among different stratified groups based on regional, religious, vocational, and class distinctions. In reference to the Bangladeshi/Bengali equivalent of the birādarī system, known as the gūshṭī system, Mohammad Jasim Uddin, Professor of Sociology at Shahjalal University in Sylhet, Bangladesh, remarks:

The term gushti can be taken to mean ‘symbolic domain’ in Bangladeshi society where genealogical and blood relations are not only concepts that define relatedness, rather they denote a person’s country, village, region, origin or homestead.⁴⁵⁵

The birādarī and gūshṭī systems are regarded as the “most powerful forces” for first-generation British Muslims in uniting their communities based on ethnic and geographical affiliations. These social structures allow patriarchs of British Muslim families to maintain their religious and cultural identities, while also providing them with a sense of belonging among their own people. Furthermore, these systems enable Britain’s Muslim communities to maintain contact with friends and family in Pakistan and Bangladesh, thereby facilitating family chain-migration strategies and providing benefits and support to their members. However, pariahs of the birādarī and gūshṭī communities are excluded from these advantages and are used as examples to discourage members from leaving their South Asian stratified circles.⁴⁵⁶

⁴⁵⁴ Hussain, Seddon, and Malik, p. 15.

⁴⁵⁵ Uddin, p. 69.

⁴⁵⁶ Bano, *Muslim Women and Shari’ah Councils*, p. 154.

By the late twentieth century, Muslim families belonging to birādarī and gūshṭī communities had settled in cloistered residential areas across towns and cities in Britain. These families actively distanced themselves from the British mainstream, creating uncomfortable social conditions for outsiders, including Muslims from other ethnic groups or theological beliefs. Members of the birādarī and gūshṭī discouraged outsiders from entering their neighbourhoods through overt displays of their community's cultural norms and religious practices in places like mosques, South Asian food stores, and community events. Impudence towards outsiders are further exacerbated when members of the birādarī and gūshṭī conversed in their native vernacular, which increased in others a sense of not belonging.

Membership to Britain's birādarī and gūshṭī communities is acquired through birth or migration from one of the native towns or villages of the subcontinent where these communities originated. New Muslim converts or those whose Islamic beliefs and practices diverge from the norms of the birādarī and gūshṭī may find it challenging to assimilate and become members of the community. Birādarī and gūshṭī neighbourhoods typically view members who marry outside of their community as anomalous.⁴⁵⁷

In order to maintain the purity of the birādarī and gūshṭī communities in Britain, endogamy is enacted, monitored, and occasionally enforced by community elders. When young British Muslims in birādarī and gūshṭī households come of age and visit Pakistan or Bangladesh, they may find themselves pressured into marrying their cousins or family friends by their parents, aunts, and uncles. After marriage, these young British Muslim typically returns to Britain to start the difficult process of acquiring an entry visa for their new spouse. While waiting for the visa, parents encourage their children to develop an understanding with their new spouse and plan their future together over telephone, instant messaging services and online chat applications.

⁴⁵⁷ Pearl and Menski, p. 61.

In some cases, obtaining entry visas can be challenging, and over time, the relationships between the couple may deteriorate. On other occasions, entry visas are granted, and the new spouse joins their partner in Britain. The couple may then discover that they have little in common with one another, and some of these transnational marriages may eventually break down. In either case, young British-born Muslims who are part of a *birādarī* and *gūshṭī* may feel like they are victims of an exotic cultural system that they do not fully understand and have little in common with. At this point, they may feel exploited, frustrated, and indignant towards the wishes and beliefs of their parents and their community.⁴⁵⁸

4.7 British-Born Muslims

Overall, the British Muslim population is younger than the rest of Britain. According to a 2015 report commissioned by the Muslim Council of Britain and conducted by Sundas Ali, 48 percent of Britain's Muslims were under the age of 25, compared to 31 percent of the general population. The report also revealed 4 percent of Britain's Muslims were over the age of 65, compared to 16 percent of the general population.⁴⁵⁹ British-born Muslims experience the same growing pains and teenage angst as other youths in Britain. But unlike their indigenous peers, British-born Muslims may not have the same opportunities to express their grievances. For many first-generation Muslims in Britain, Western society is "routinely dismissed as Godless, and marked by drunkenness, sexual promiscuity and lack of respect for elders."⁴⁶⁰ Nevertheless, an ICM survey conducted for Channel 4 British television found that 93 percent of Muslims surveyed stated said they feel they belong to Britain.⁴⁶¹

In 2016, ICM Unlimited conducted a survey to evaluate the opinions and sentiments of Muslims in Britain. The survey was conducted among a random, quota-based sample of 3,040 British Muslims from boroughs where Muslims represent more than 20 percent of the regional population. Of

⁴⁵⁸ Lewis and Hamid, pp. 49–50.

⁴⁵⁹ Sundas Ali, *British Muslims in Numbers* (London: The Muslim Council of Britain, 2015), p. 27.

⁴⁶⁰ Philip Lewis, *Young, British and Muslim*, annotated edition (London; New York: Continuum, 2007), p. 28.

⁴⁶¹ Kully Kaur-Ballagan, Roger Mortimore, and Glenn Gottfried, *A Review of Survey Research on Muslims in Britain* (London: Ipsos MORI Social Research Institute, 21 March 2018), p. 80 (p. 34).

those surveyed, 68 percent reported feeling hesitant to seek guidance from their community and faith leaders regarding their economic and social concerns.⁴⁶² Furthermore, 92 percent believed that young British Muslims should have a greater voice in their life decisions,⁴⁶³ and the same percentage believed that better faith leaders in their communities could help mitigate the causes of radicalisation.⁴⁶⁴ The survey also revealed that only 20 percent of Britain's Muslims would nominate their faith leaders or British Muslim organisations to represent them to their local authorities or in the political arena.⁴⁶⁵ Moreover, 63 percent of Muslims surveyed expressed support for the idea of the British government becoming involved in the training of British 'ulamā and madrassa tutors.⁴⁶⁶

First-generation British Muslims of South Asian descent and leaders of their birādarī and gūshṭī communities seek to maintain their ties with their native lands through their children. Asma Mustafa identifies four ways in which children of migrant Muslims respond to their parents' expectations:⁴⁶⁷

1. Maintaining a symbolic ethno-religious identity while keeping their faith a private matter.
2. Identifying themselves as multicultural internationalists who embrace and celebrate the diversity of Britain's Muslim communities.
3. Accepting and balancing their dual identity as British and Muslim.
4. Prioritising their Muslim identity over their national and racial identities.

British-born Muslims who prioritise their Muslim identity over other identifiers tend to reject the beliefs, practices, and expectations of their elders. Instead, they strive to return to what they

⁴⁶² ICM Unlimited, *'What Muslims Want' A Survey of British Muslims by ICM on Behalf of Policy Exchange* (London, UK: Policy Exchange, December 2016), p. 170.

⁴⁶³ ICM Unlimited, p. 701.

⁴⁶⁴ ICM Unlimited, p. 719.

⁴⁶⁵ ICM Unlimited, p. 123.

⁴⁶⁶ ICM Unlimited, p. 457.

⁴⁶⁷ Asma Mustafa, *Identity and Political Participation Among Young British Muslims: Believing and Belonging*, 2015th edition (Palgrave Macmillan, 2015), pp. 48–83.

consider to be an authentic form of Islam based on the guidance of the Qur'an, hadith traditions, and Sunni orthodoxy.⁴⁶⁸

Muslims who deviate from the cultural norms and religious demands of their birādarī and gūshṭī communities risk incurring the ire of their community elders. To avoid family conflicts, some young British Muslims remain silent until they leave home for university, where they can explore alternative interpretations and approaches to Islam. Some Muslim parents set academic goals for their children with the aim of improving their marriage prospects. This often involves encouraging them to pursue STEM subjects, law, medicine, or dentistry, with the intention of elevating their family's social, economic, and cultural standing. Parents consider studies in the arts, humanities, or the social sciences as frivolous and impractical with limited job prospects.⁴⁶⁹ Nevertheless, some British-born Muslims pursue careers in the visual and performing arts, defying their families' and communities' expectations.⁴⁷⁰

Children from birādarī and gūshṭī families in Britain are often conflicted between their familial traditions and the values of their adopted society. To increase their children's marriage prospects, migrant parents restrict their academic and professional opportunities. When parents insist on their children marrying their first cousins, it can result in potential sexual repression and emotional turmoil, as such unions are viewed as taboo in British society.⁴⁷¹ As British-born Muslims reflect on these prospects, they may begin to question their family's understanding of the Islamic faith. Through introspection, they start to question the birādarī's and gūshṭī's assertions of being the true representation of Islam.⁴⁷² In South Asia, such introspection is typically suppressed by parents and the community, but in Britain, it usually occurs outside of the Muslim household. As a result, young British

⁴⁶⁸ Peter Mandaville, *Pew Research Center: Muslim Networks and Movements in Western Europe* (Washington, D.C.: Pew Forum on Religion & Public Life, September 2010), p. 56.

⁴⁶⁹ Tahir Abbas, *The Education of British South Asians: Ethnicity, Capital and Class Structure* (Hampshire (UK), New York (USA): Palgrave Macmillan, 2004), pp. 68–69.

⁴⁷⁰ Lewis and Hamid, pp. 178–79.

⁴⁷¹ Philip Lewis, pp. 50–53.

⁴⁷² Lewis and Hamid, pp. 48–50.

Muslims develop a critical perspective on the parochial beliefs, practices, and institutions established by their elders. Muslims born in Britain often seek a refined expression of their Islamic faith that is grounded in orthodoxy, transcends cultural influences, and addresses the challenges and social context of life in Britain.⁴⁷³

4.8 Creating a Home Away from Home: The British Muslim Identity

Muslim families who settled in Britain during the 1960s and 1970s sought to establish their Islamic identities and religious institutions that reflected the practices, beliefs, ideas, and institutions found in their home countries. Over time, Muslims in Britain recast their religious and national identities through a process of “continuity and local fit.”⁴⁷⁴

The ‘ulamā, who sit on shari’a council panels, see themselves as heirs of a rich intellectual and Islamic legal heritage that spans many Muslim civilizations. They draw on a trove of ideas, opinions, debates, and interpretations of the Qur’an and hadith literature, which have been compiled into the classic works of Islamic law. Their purpose is to provide guidance to Muslims living in postmodern, multicultural, secular Britain.

4.9 The Laws of God vs the Laws of the Land

To determine the Islamic needs of British Muslims that have led to the development of shari’a councils, it is essential to examine their understanding of Islamic law and its function in their spiritual and moral development in Britain. Additionally, it is necessary to determine whether there exist any legal precedents in classic Sunni legal works for Muslims who choose to live as minorities, and how the English and Welsh legal system has selectively applied Islamic law.

Muslims have historically, legally, and morally regarded Shari’a as superior to all human-made laws, and this view still lingers among many British Muslims today. On the other hand, modern

⁴⁷³ Basia Spalek, ‘Disconnection and Exclusion: Pathway to Radicalisation?’, in *Islamic Political Radicalism: A European Perspective*, ed. by Tahir Abbas (Edinburgh: Edinburgh University Press, 2007), p. 196.

⁴⁷⁴ John R. Bowen, p. 7.

nation-states such as Britain prioritise positive law and consider all customary and religious legal systems practiced in Muslim-majority countries to be inferior to secular legal systems. British lawmakers assert that all British citizens, regardless of their ethnicity, religion, economic status, or social background, share common values and are equally accountable under British law. The principles, decrees, values, and customs of Britain's Muslim communities are celebrated as a defining feature of postmodern multicultural Britain. Nevertheless, as with other faith communities in the country, Muslims are expected to prioritise the laws and values of Britain over their religious convictions.⁴⁷⁵

By the mid-twentieth century, globalisation - driven by advancements in telecommunications and transportation - had facilitated increased mobility and mass communication between Western secular cultures and traditional religious cultures in less-developed nations. The mass migration of people from these regions to the West challenged the notion that Europe and the United States were more developed societies, where progress is measured by how much it improves the quality of life of its citizens. Today, it is considered inappropriate for Western, developed nations to assume that the religious beliefs and values of individuals in less developed nations would lead them to accept their poor quality of life. Globalisation offers opportunities for individuals in less developed societies to escape poverty and improve social conditions by moving to more developed societies with better access to jobs, social security, transportation, and technology. Nevertheless, many individuals who relocate show no signs of abandoning their traditional religious beliefs and cultural values.⁴⁷⁶

The mass migration of Muslim families from South Asia to Britain was enabled by the *Commonwealth Immigrants Act 1962*. British legislators anticipated that these newly settled Muslims would eventually abandon their traditional beliefs and values in favor of British norms and ideals. However, despite their observance of British laws, Muslims remain steadfast in their conviction that the laws of God, as outlined in the Qur'an and hadith collections, take precedence over all human-

⁴⁷⁵ Pearl and Menski, pp. 53–55.

⁴⁷⁶ Claval, p. 10.

made laws. For many British Muslims, renouncing this belief would mean denying the supremacy of God in their lives and in society.

4.10 British Muslims: Keeping the Faith

As British lawmakers realised that the Muslim population had no intention of relinquishing their faith, the challenges posed by legal pluralism and multiculturalism became increasingly evident in British society. Ballard observed that Muslims had reconstructed their lives so that Britain became their *desh pardesh* - their home away from home.⁴⁷⁷ They continue to practice their religious rituals, establishing more halal food services, and convert residential properties into mosques for congregational prayers and after-school Islamic education for their children.

British lawmakers assumed that the migrants who had settled in Britain during the 1960s and 1970s would find themselves caught between two cultures: between their ancestral heritage, which was grounded in religious and familial traditions, and the allure of a more privileged existence which could encourage Muslims to forsake their traditions and gradually assimilate into the mainstream culture. However, by the second and third generations, Muslims had become “skilled cultural navigators” in Britain, able to seamlessly adapt between two cultures and their surroundings. Today, Muslims are in their third, fourth, and even fifth generations in Britain, yet they show no signs of renouncing their faith. This observation has not gone unnoticed by British lawmakers and the judiciary.⁴⁷⁸

Efforts to maintain a systemic, secular legal system have led British legislators and the judiciary to exclude religion from their legal discourses. Neither Muslim migrants nor British legislators anticipated the clash between their traditions and values upon arrival. While aiming to establish a hegemonic secular legal system, state legislators also seek to promote multiculturalism as a contemporary British public policy. This policy has prompted individuals from Britain’s religious

⁴⁷⁷ Pearl and Menski, p. 58.

⁴⁷⁸ Pearl and Menski, p. 55.

minorities to petition their local authorities and legislators to recognise religion as a marker of community identity, and to reconsider the role of religion and legal pluralism in postmodern, multicultural Britain.⁴⁷⁹

In the global marketplace of multiculturalism, Pearl and Menski argue that British politicians often pay only lip service to the country's cultural, religious, and ethnic diversities in order to demonstrate that the nation is progressing. However, British lawmakers do not recognise "religion" as a legal marker between plaintiffs. If religion were to be accepted as a legal marker in Britain's courts, it would mean that the state has enabled religion to influence the country's public policies, thereby challenging the secular foundation of the British legal system.⁴⁸⁰ Legal pluralism remains a concern for legislators in Britain, as they fear that it may divide the nation along religious and secular legal lines, potentially leading to conflicts between the state and its minority communities.⁴⁸¹

4.11 The British Values of British Muslims

Given the British government's efforts to promote multiculturalism while spurning legal pluralism, British Muslims have mixed feelings about their government's involvement in their spiritual affairs. British Muslims have the freedom to practice their faith, but are expected not to let their faith influence their shared British values.⁴⁸² In a survey conducted by Ipsos MORI, it found "nine in ten Muslims say they feel a part of British society"⁴⁸³ and 93 percent believe that "Muslims in Britain should always obey British laws."⁴⁸⁴ When asked about their ability to practice their faith in Britain, 94 percent of Muslims surveyed believed they could do so freely and viewed Islam as compatible with the British way of life.⁴⁸⁵ However, when asked which aspects of their identity they prioritised, 74 percent of respondents stated that their faith was more important than their national and ethnic

⁴⁷⁹ Pearl and Menski, p. 65.

⁴⁸⁰ Pearl and Menski, p. 57.

⁴⁸¹ Pearl and Menski, p. 68.

⁴⁸² Pearl and Menski, pp. 53–54.

⁴⁸³ Kaur-Ballagan, Kully, Roger Mortimore, and Glenn Gottfried, (2018), *A Review of Survey Research on Muslims in Britain* (London: Ipsos MORI Social Research Institute, 21 March 2018), p. 80 (p. 33)

⁴⁸⁴ Kaur-Ballagan, Mortimore, and Gottfried, p. 69.

⁴⁸⁵ Kaur-Ballagan, Mortimore, and Gottfried, p. 8.

identities.⁴⁸⁶ In the same survey, when asked if the British government should introduce elements of Islamic family law, such as “those related to financial disputes, divorce or other family matters but which could also cover other aspects,” 43 percent of British Muslims surveyed stated they would support such a proposal, 23 percent said they neither supported nor opposed it, while 12 percent said they did not know. 22 percent stated they would oppose such a proposal.⁴⁸⁷

Conflicts between state legislators and Muslim minorities arise when it comes to Islamic family law. Legislators contend that Islamic family law violates many of Britain’s core values, particularly those outlined in the *Human Rights Act 1988*. As long as the religious beliefs and practices of British Muslims do not conflict with British public laws, the British government allows them to practice their faith unmitigated. As skilled cultural navigators, British Muslims have developed strategies for practicing Islamic law that they consider appropriate for Britain. As skilled cultural navigators, the ‘ulamā in Britain examine the classic works of Islamic law to find rules and opinions from the Sunni legal traditions that serve the interests of British Muslims while remaining in compliance with Britain’s laws.⁴⁸⁸

4.12 Fiqh al-Aqalliyyāt: Islamic Jurisprudence for Minorities

Qur’an (4:97-100)⁴⁸⁹ provides explicit instructions for Muslims to escape tyrannical regimes and seek refuge to places where they can practise their faith. In the event that individuals face persecution due to their faith and decide to flee, God in the Qur’an promises to reward them on earth and in heaven.⁴⁹⁰

According to the hadith traditions, the Prophet Muhammad and his companions were persecuted by the elites of Mecca, forcing them to seek refuge outside the city. The nascent Muslim

⁴⁸⁶ Kaur-Ballagan, Mortimore, and Gottfried, p. 37.

⁴⁸⁷ Kaur-Ballagan, Mortimore, and Gottfried, p. 60.

⁴⁸⁸ Pearl and Menski, p. 58.

⁴⁸⁹ Haleem, p. 60.

⁴⁹⁰ Pearl and Menski, p. 63.

community subsequently migrated either to the Christian sovereign state of Abyssinia or to Yathrib, a town situated to the north of Mecca. In later Muslim civilisations, Muslim populations occasionally lived as marginalised minorities, not only under non-Muslim authorities but also under caliphates whose theological views differed from the mainstream.⁴⁹¹

The concept of Muslims voluntarily leaving their Islamic community to live as minorities was uncommon and seldom discussed among the ‘ulamā and fuqahā of Sunni legal antiquity. Drawing on historical precedents found in the hadith collections and reports of various caliphal dynasties who “considered non-Muslims to be their protected minorities”,⁴⁹² ‘ulamā and fuqahā believed that Muslims and other faith communities could coexist peacefully, with each group being able to practice their faith openly and without prejudice. In cases of persecution by their leaders, the Qur’an and hadith traditions instruct Muslims to leave the hostile community and seek refuge in a more accommodating one, regardless of the new community’s faith affiliation.⁴⁹³

Following a thorough investigation of the Qur’an, hadith collections, and the classic works of Islamic law, Khaled Abou el Fadl, a Distinguished Professor of Law of Human Rights and Islamic Jurisprudence at the University of California, concluded that the opinions of the ‘ulamā on the legality of Muslims living as minorities in foreign territories are “ambivalent and diverse.” While the ‘ulamā have historically discouraged Muslims from migrating to non-Muslim lands, they have not explicitly forbidden it, and the diversity of their opinions on this matter makes it challenging to establish a definitive ruling. Fadl explains that the variations in opinions among the ‘ulamā and fuqahā regarding the Islamic legality (*shar’*) of Muslims living as minorities (*fiqh al-aqalliyyāt*) can be attributed to their historical approaches rather than being based on a clear and established Islamic legal standpoint.⁴⁹⁴ He further notes that ‘ulamā in the twenty-first century have done little to address the challenges faced by

⁴⁹¹ Pearl and Menski, p. 62.

⁴⁹² Lapidus, p. 299.

⁴⁹³ Pearl and Menski, p. 62.

⁴⁹⁴ Khaled Abou El Fadl, ‘Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries’, *Islamic Law and Society (Brill)*, 1.2 (1994), 141–87 (pp. 144–45).

Muslims living in non-Muslim territories in productive ways. Despite the Islamic legal precedents of the migration to Abyssinia and Yathrib, and the fact that approximately one-third of the world's Muslim population today live in non-Muslim countries, the...

...ambivalence characteristic of the pre-modern age continues. Few modern Muslims attempt to deal with the principles that should guide the behaviour of Muslims residing in non-Muslim territory. Few modern scholars have attempted to maintain and develop the traditional discourse on the affiliation and inviolability of Muslim minorities.⁴⁹⁵

Ali shares that the history of Muslims in Britain goes back many centuries, but it is only until the mid-twentieth century that Muslims from various parts of the world migrated to Britain and settled into their diverse communities. This settlement resulted in a need to prioritise aspects of their religious laws, which has presented a challenge for Britain's 'ulamā. One of the founding members of the Islamic Shari'a Council, Syed Mutawalli ad-Darsh, stated that British Muslims are living as a minority; and, as a minority...

...we have to consider these changes in order to be able to reflect the new situation and clarify our attitude. We have to know what is cultural and what is Islamic to be able to make valued judgements.⁴⁹⁶

Britain's 'ulamā were confronted with a variety of questions posed by the country's Muslims and their government, and they sought answers from two areas of classic Islamic law: International Islamic law (*siyār*) and *fiqh al-aqalliyāt*. Ali's research indicates that classic Islamic legal works on *siyār* do not provide a detailed analysis of Muslims living as minorities in non-Muslim territories. Ali attributes this lack of analysis to the fact that the authors of these works did not foresee a time when Muslims would choose to settle permanently in non-Muslim territories. The limited case examples

⁴⁹⁵ Khaled Abou El Fadl, 'Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries', p. 185.

⁴⁹⁶ Shaheen Sardar Ali, "'Between the Devil and the Deep Blue Sea': Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora', p. 217.

found in these works of *siyār* suggest that Muslims should “return to a Muslim country as soon as possible!”⁴⁹⁷

In more liberal works of *siyār*, modernist ‘ulamā argue that in countries classified as *dar al-ṣulh*, Muslims can implicitly accept the protection (*amān*) of non-Muslim governments, provided these governments allow Muslims to “manifest signs of Islam.” These signs include the performance of congregational prayers, fasting during the month of Ramadan, and access to halal food provisions. In the context of Muslims living in Britain, Ali finds that the terms of *dar ul-ṣulh* “normally require and sanction obedience to State law.”⁴⁹⁸

Ali finds *fiqh al-aqalliyāt* presents “a potentially more fruitful way” to explore the legal and spiritual implications of Muslims living as minorities within an Islamic legal framework. Ali finds that the modern iteration of *fiqh al-aqalliyāt* was established by Taha Jabir al-Alwani (1935 – 2016 CE) and the modernist Egyptian theologian Yusuf Al-Qaradawi. According to al-Alwani, *fiqh al-aqalliyāt* is “a specific discipline which takes into account the relationship between the religious ruling and the conditions of the community and the location where it exists.” For ‘ulamā engaging in the study of *fiqh al-aqalliyāt*, Qaradawi advises that they must strike a balance between the rules and opinions relayed in the classic works of Islamic law and contemporary social and cultural realities of their time.⁴⁹⁹

According to Ali, proponents of *fiqh al-aqalliyāt* believe it has revolutionised Islamic law by encouraging *ijtihād* among the ‘ulamā. They argue that the ‘ulamā should derive new legal rulings for Muslims living in the West directly from the Qur’an and hadith traditions. In contrast, critics of *fiqh al-aqalliyāt*, who are predominantly conservative ‘ulamā, consider any modification to classic Islamic law as religious innovation (*bid’ah*) that may lead Muslims astray from Islamic orthodoxy. Moreover,

⁴⁹⁷ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, p. 213.

⁴⁹⁸ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, pp. 213–16.

⁴⁹⁹ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, pp. 216–17.

these critics argue that Muslims living as minorities in the West are part of the global Muslim community, and hence they do not require preferential treatment with new rulings via *fiqh al-aqalliyāt*, while the rest of the Muslim world adheres to traditional Islamic law.⁵⁰⁰

The practical implications of *fiqh al-aqalliyāt* are evident in the ongoing debate between conservative and modernist ‘ulamā. One example is the issue of “limping marriages,” where certain conservative shari’a councils in Britain argue that a civil divorce does not meet the criteria for an Islamic divorce. Both Lena Larsen and Ali highlight how modernist ‘ulamā have stated that a civil divorce in non-Muslim territories fulfils the requirements of an Islamic divorce. To address this issue and the role of shari’a councils in Britain, the *European Council of Fatwa and Research* (ECFR) issued a fatwa on “rulings for divorce issued by a non-Muslim judge.”

In a non-Muslim country without an Islamic judicial system... a Muslim who has married according to the laws of the land should abide by the decision of a non-Muslim judge with regard to divorce. Since he accepted the laws governing the marriage contract, he has also implicitly accepted the consequences... This case, the Council says, may be compared with a husband delegating his power of *ṭalāq* to a judge, even if he does so implicitly, which is accepted by the majority of the scholars.⁵⁰¹

Ali contends that the fatwā issued by the ECFR provides British Muslims with Islamic concessions that allow them to comply with British laws.⁵⁰² However, some conservative shari’a councils impose additional conditions on this fatwā, which further complicates the process for women seeking their *khula*. Gohir explains that these shari’a councils consider civil divorce papers valid for an Islamic divorce when:⁵⁰³

- A husband files for a civil divorce.

⁵⁰⁰ Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, p. 217.

⁵⁰¹ Lena Larsen, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, Studies in Islamic Law and Society (Leiden; Boston: Brill, 2018), XLIV, pp. 177–78.

⁵⁰² Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, p. 218.

⁵⁰³ Gohir, p. 59.

- A wife files for a civil divorce and the husband knowingly signs the paperwork.

4.13 *Sunni Legal Rulings and Opinions on Muslims Living as Minorities*

Among the four popular Sunni legal schools, the Maliki legal school takes a hard-line stance against Muslims living as minorities. This stance is rooted in the persecution experienced by both Muslims and Jews during the Reconquista of Spain during the fifteenth and sixteenth centuries.⁵⁰⁴ The events of the Spanish Inquisition prompted Maliki fuqahā' to caution Muslims against residing in non-Muslim territories, even if it benefits them. Ahmad ibn Yahya al-Wansharisi (1431-1508 CE), a Maliki faqīh who witnessed the fall of Granada (circa 1482-1492 CE), offered rulings on the Islamic status of Muslim minorities in his book, *Kitab al-Mi'yar al-Mu'rib wa al-Jami al-Mughrib 'an fatawa Ifriqiya wa al-Maghrib*.⁵⁰⁵ In this book, al-Wansharisi classified a Muslim as an apostate if they choose to live in a non-Muslim society and accept being subjected to non-Muslim laws.⁵⁰⁶

Compared to the Maliki legal school, the Hanbali legal school takes a less critical stance on Muslims living as minorities. According to Hanbali 'ulamā, it is acceptable for Muslims to reside in non-Muslim societies, as long as they are able to freely practise their faith. However, Muslims are required to provide evidence of the potential physical, psychological, and economic harm they might face if they were to return to a Muslim society. If no harm befalls them, the Hanbali legal school suggests that Muslims should consider returning and living under Muslim rule. In a more recent Salafi-Hanbali work called *Fatāwā Islamiyah* (Islamic Verdicts) by Abdul Aziz ibn Abdullah bin Baz (1910-1999 CE) and Muhammad ibn al-Uthaymin (1925-2001 CE), caution is advised against residing in non-Muslim societies, referred to as the *dār ul-kufr* (abode of disbelief) by the authors. They argue that living in such societies makes it difficult for Muslims to practice their faith, thereby harming their

⁵⁰⁴ Khaled Abou Fadl, 'Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the 2nd/8th to the 11th/17th Centuries', *Islamic Law and Society*, 2 (1994), 141–87 (p. 163).

⁵⁰⁵ Translation: "The book of clear standards and multi-volume collection of Islamic legal opinions in Africa and Muslim Spain."

⁵⁰⁶ Said Fares Hassan, *Fiqh Al-Aqalliyat: History, Development, and Progress*, Palgrave Series in Islamic Theology, Law, and History (New York, NY: Palgrave Macmillan, 2013), p. 125.

Islamic spirit. This weakened spirit, they argue, could lead a Muslim to become negligent towards their relationship with God, thus causing harm to the global Muslim community.⁵⁰⁷

More lenient views come from ‘ulamā of the Hanafi and Shafi’i legal schools, which are the main Islamic legal schools practised in the religiously diverse societies of South and Southeast Asia (see Map 1). Compared to the Maliki and Hanbali legal schools, the Hanafi and Shafi’i schools do not view non-Muslim societies with suspicion and have a broader view of *dār ul-Islam* (the abode of Islam). ‘Ulamā of the Hanafi and Shafi’i schools argue there are sufficient precedents in the Qur’an and hadith collections to permits Muslims to live under non-Muslim rule. The Hanafi and Shafi’i schools also recommend that Muslims should remain under non-Muslim rule if they find they cannot practise their faith in a Muslim society.

However, there are differences in opinions between the Hanafi and Shafi’i legal schools regarding the extent to which Muslims can practise their faith in non-Muslim societies. ‘Ulamā of the Hanafi legal school believe that a Muslim’s ability to practise their faith means they can worship (*ibādāt*)⁵⁰⁸ their Lord without hindrance, and that the non-Muslim ruler acknowledges the precepts of Islamic law and its role in fulfilling the needs of their Muslim constituents. On the other hand, ‘ulamā of the Shafi’i legal school do not provide clear guidelines on the extent to which Muslims can practise their faith in non-Muslim societies.⁵⁰⁹

4.14 Muslims Living in Postmodern Secular Britain

This thesis’ assessment of *fiqh al-aqalliyāt* and the Sunni rulings for Muslims living as minorities reveals that there are no clear guidelines in the Qur’an and hadith collections for Muslims who choose to live in secular territories. Muslims leaving Muslim-majority territories to live as minorities in secular societies is a scenario that was not considered by the ‘ulamā and *fuqahā*’ of

⁵⁰⁷ Hassan, p. 24.

⁵⁰⁸ “عبادة”, in Wehr, p. 586.

⁵⁰⁹ Pearl and Menski, pp. 63–64.

antiquity. As a result, the classic works of Islamic law are inadequate for addressing the spiritual and social needs of British Muslims.

In his assessment of the British Muslim experience, Philip Lewis highlights that many Sunni ‘ulamā in Britain refrain from addressing questions regarding daily life and current affairs in the country. He argues that to provide suitable Islamic legal solutions and spiritual guidance to all Britons, ‘ulamā should have a comprehensive understanding of Britain’s history and the circumstances that led to Muslim migration to the country. However, Lewis discovered that British ‘ulamā are hesitant to provide Islamic legal guidance to the British Muslim community due to concerns of conflicting with British laws and deviating from established Islamic legal conventions.⁵¹⁰ ‘Ulamā based in Muslim-majority nations caution British Muslims and their religious leaders to prioritise *taqwā* (piety or God-consciousness), emphasising its significance in fulfilling both individual (*farḍ al-ayn*) and collective (*farḍ al-kifāya*) responsibilities towards God and the Ummah (global Muslim community).

Although Muslims arrived in Britain shortly after the Second World War, with the intention of securing financial and material stability and without any long-term plans to settle in the country, British Muslims today have greater liberties to practise their religion. In accordance with their faith and in remembrance of God, British Muslims now have ample opportunities of fulfilling the purpose of Shari’a in Britain.⁵¹¹

Muslims believe that the purpose of Shari’a (maqāṣid ash-Shari’a) is to fulfil the maxim of the Qur’an - “to encourage what is good and forbid what is harmful” for human existence.⁵¹² The fulfilment of any one of the five objectives of Shari’a signifies the realisation of its purpose. These five objectives are:⁵¹³

1. The preservation of religion (*ḥifẓ ‘alā al-dīn*).

⁵¹⁰ Philip Lewis, pp. 113–14.

⁵¹¹ Kaur-Ballagan, Mortimore, and Gottfried, p. 8.

⁵¹² Qur’an (3:104). Haleem, p. 42.

⁵¹³ Felicitas Opwis, *Maslaha and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*, Studies in Islamic Law and Society (Leiden, Boston: Brill, 2010), xxxi.

2. The preservation of life (*ḥifẓ ‘alā al-nafs*).
3. The preservation of progeny/family (*ḥifẓ ‘alā al-nasl*).
4. The preservation of intellect/mind (*ḥifẓ ‘alā al-‘aql*).
5. The preservation of wealth (*ḥifẓ ‘alā al-māl*).

Muslims in Britain wish to preserve their Islamic values and fulfil the objectives of Shari’a in a secular country that curtails legal pluralism and insists on a systemic application of a national legal system. Although the presence of Muslims in Britain spans over two centuries, conversations between Britain’s Muslims and their government have been spurned by state legislators. In the absence of government support and open dialogue, Britain’s Muslims established shari’a councils within their communities to address their domestic and spiritual concerns. First emerging in the early 1980s, these shari’a councils have enabled British Muslims to live in accordance with the Qur’an and hadith traditions. As informal Islamic family legal services, the British government has found it difficult to determine whether shari’a councils are abiding by the laws of Britain. Had Britain’s legislators chosen to engage with Muslims instead of spurning their requests for dialogue, transparency between shari’a councils and the government could have been established. Such dialogue would have provided an opportunity for lawmakers in England and Wales to clarify the legal boundaries of permissible practices of Islamic law for Muslims living in Britain and facilitated their compliance with state law.⁵¹⁴

As a secular state,⁵¹⁵ Britain faces unprecedented legal and social challenges in its relationship with its Muslim minorities. For ‘ulamā and fuqahā’, Muslims who choose to live as minorities in a non-Muslim society are in uncharted areas of Islamic law. On the other hand, for Britain’s legislators and judiciary, the beliefs and practices of Muslims are deemed to be cultural idiosyncrasies that do not impact the laws of Britain. This prevailing attitude among both British legislators and the ‘ulamā exacerbates the lives of British Muslims and wider society. While legislators continue to overlook the

⁵¹⁴ Pearl and Menski, pp. 64–65.

⁵¹⁵ Humanists UK, *Chancellor Rishi Sunak: ‘This Is a Secular Country’* (London: Humanists UK, 2020)
<<https://humanists.uk/2020/11/13/chancellor-this-is-a-secular-country/>>

spiritual needs of Muslims and underestimate the utility of Islamic family legal services for resolving Muslim family disputes, British ‘ulamā are hesitant to engage in ijtihād out of fear of deviating from Sunni orthodoxy.

One of the most pressing issues that has arisen in Britain due to the inflexibility of the country’s legislators and ‘ulamā on Islamic law is the human rights violation of British Muslim women who are forced into *limping marriages*. This type of marriage is a contemporary British issue that has emerged from the British and Islamic legal nexus.⁵¹⁶ This study therefore raises the question of what reservations legislators may have in accommodating Islamic family law in Britain.

4.15 Conclusion

This chapter examined the migration and settlement patterns of Muslims in Britain during the mid-to-late twentieth century. The chapter discovered that the mass migration of Muslims from South Asia to Britain can be attributed to changes in the country’s immigration policy. In particular, the *Commonwealth Immigrants Act 1962* created a sense of obligation among Muslim workers from South Asia to remain in Britain and to continue working in order to support their families overseas. The family reunification provisions of the *1962 Act* allowed these workers to bring their families to Britain, leading to an increase in the number of Muslims arriving from the subcontinent. The influx of Muslim families, along with individuals converting to Islam and Muslim refugees seeking asylum, contributed to the growth of the British Muslim population.

The chapter explored how the diverse migratory pathways of British Muslims contributed to the emergence of Islamic legal pluralism in the country. It revealed authors who criticise the British government for homogenising British Muslims and ignoring their diverse ethnic, national, economic, theological, and denominational distinctions. They highlight how British authorities have failed to acknowledge the various Sunni legal traditions practiced among Britain’s Muslims, which have shaped their cultural norms, religious beliefs, and liturgies. The chapter also examined how Britain’s political

⁵¹⁶ Pearl and Menski, p. 72.

and financial ties with Saudi Arabia and the Gulf countries have enabled the proliferation of Islamic conservatism and the Hanbali legal traditions within Britain's Islamic institutions, including shari'a councils.

Given the articulation of Islamic legal pluralism in Britain, this chapter observed Shaheen Sardar Ali challenging the shari'a councils' assertion of being the "guardians of the faith" for the country's diverse Muslim communities. Ali questioned how these councils can provide an "authentic" form of Islamic law, while they themselves are based on institutional models found in South Asia, where the Hanafi legal tradition predominates. The chapter further examined why no alternatives to shari'a councils have emerged from other Muslim communities in Britain and found that these communities' responses are predicated on the experiences of their ancestors living under colonialism. In the context of British Muslims of South Asian descent, Chapter 3 revealed how the 'ulamā in India had developed the *dār ul-qazā* to address the spiritual needs of Muslims when the Indian government had failed to do so. This chapter suggests that this phenomenon appears to have replicated itself in Britain.

The chapter revealed that 95 percent of Britain's Muslims reside in England and Wales. It differentiated between Muslims living in London, who comprise a diverse array of ethnicities, nationalities, and Islamic orientations, and those living outside of the nation's capital, who are predominantly of South Asian descent. The chapter delved into the complex relationship between immigrants and British-born Muslims, discussing how the former use the *birādarī* and *gūshī* systems to preserve their religious and cultural identities. The chapter explored how some young British-born Muslims are in search of a more "authentic" form of Islam that is firmly rooted in Sunni orthodoxy and detached from all cultural traditions. The chapter acknowledges that British Muslims continue to turn to their religious traditions for solutions and discusses the role of the 'ulamā in interpreting Islamic law.

The chapter highlighted how British ‘ulamā rely on the classic works of Islamic law, particularly in the area of minority fiqh (*fiqh al-aqalliyyāt*), to address the concerns of Muslims living as minorities in non-Muslim territories. El Fadl argues that the guidance provided in these works are insufficient in addressing the specific needs and challenges faced by Muslims living as minorities. He contends that the ‘ulamā and fuqahā of antiquity, who formulated the rules and guidelines for *fiqh al-aqalliyyāt*, approached the topic from a historical rather than a legislative perspective, and did not consider the possibility of Muslims choosing to live as minorities in non-Muslim territories.

The chapter explored the efforts of modernist ‘ulamā in providing new rulings for Muslims who choose to live as minorities in non-Muslim territories. The chapter assessed how these modernist ‘ulamā engaged in ijtihād, carefully considering the relationship between their Islamic legal traditions and the contemporary challenges of life and society in the twenty-first century. However, conservative ‘ulamā express concerns about potential deviations from Sunni orthodoxy in these modernists’ efforts, asserting that the classic works of Islamic law adequately address all contemporary needs. The reluctance of British ‘ulamā to embrace ijtihād and explore innovative solutions is attributed to fears of deviating from Sunni orthodoxy and drawing the condemnation of their Islamic legal peers in Britain and abroad.

In the next chapter, the study will explore why British ‘ulamā tend to adhere to Islamic legal tradition instead of assessing postmodern Britain’s social, cultural, political, and legal milieus and engaging in ijtihād anew.

Chapter 5: Ijtihād, Taqlīd, and Istishāb: Reasoning, Servility, and the Continuity of Islamic Law

5.1 Introduction

This chapter explores the reasons why some British Muslims rely on their Islamic legal traditions to deal with the contemporary challenges of life in postmodern, secular Britain. It begins by examining how the ‘ulamā have historically addressed the domestic, social, and political challenges of their time by seeking guidance from the Qur’an and hadith traditions. This often saw the ‘ulamā engaging in ijtihād (Islamic legal reasoning) to arrive at resolutions for the issues they encountered. The chapter will discuss some of the methods employed by the ‘ulamā in this regard.

This chapter will also examine how modern Western perceptions of Islamic law may have influenced Muslims, potentially leading to the suppression of creativity and innovation in Islamic law-making. Rather than engaging in ijtihād, many Muslims and their ‘ulamā have embraced *taqlīd*, a philosophy focused on preserving their religious traditions and cultural heritage. This outlook continues to prevail among Muslims in the twenty-first century in Britain and will be analysed in this chapter.

5.2 Ijtihād and the Theories of Islamic Law (Uṣūl al-Fiqh)

Muslims derive the Islamic rules (*aḥkām*) governing all aspects of human life, both individually and collectively, from two main sources: the Qur’an and the life and teachings of the Prophet Muhammad. The Qur’an is considered by Muslims to be the divine word of God and serves as the primary source of Islamic law, guiding individuals and societies towards an altruistic existence. Complementing the Qur’an are the sunan,⁵¹⁷ the lived examples of the Prophet Muhammad, and the hadith⁵¹⁸ collections, which are records of his statements, actions, and tacit approvals as conveyed by

⁵¹⁷ Sin: sunna (سنة), Pl: sunan (سنن). See “سنة”, in Wehr, p. 433.

⁵¹⁸ “حديث”, in Wehr, p. 161.

his companions. Both the sunan and hadith reports help clarify the guidance provided in the Qur'an.⁵¹⁹ The reports of the Prophet Muhammad's sunan and hadith traditions were compiled into various collections, including the *musnad* collections,⁵²⁰ which categorise hadith traditions and sunan based on their narrators, and the *muṣannaf* collections, which categorise them according to subject matter, which is useful in Islamic law-making.⁵²¹ 'Ulamā use both the Qur'an and hadith literature to ascertain the legality (*shar'*)⁵²² of every human act within the Islamic legal framework.

After the death of Prophet Muhammad, divine revelation ceased, leaving Muslims without direct divine guidance or further examples from their Messenger of God. As a result, Muslims today place great importance on the Qur'an and the lived examples of Muhammad and hold to these sources of Islamic law as though they are "clinging to burning ember."⁵²³ In the absence of divine guidance and a living example, Muslims, particularly the 'ulamā, engage in *ijtihād* to remind themselves of the message and guidance of the Qur'an and the examples of Muhammad.⁵²⁴

With every new generation, new intellectual and technological advancements arise. These enable the 'ulamā to reexamine and reinterpret the Qur'an and the hadith traditions through a contemporary lens. While revelation has ceased, the capacity of an 'ālim to engage in *ijtihād* evolves over time, and the results of these intellectual endeavours are passed down from one generation to the next.

The 'ulamā face challenges when the Qur'an and hadith provide no guidance for contemporary cases. Ambiguous (*mujmal*), difficult (*mushkil*), obscure (*khafī*), or unintelligible (*mutashābih*)

⁵¹⁹ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence: (Uṣūl al-Fiqh)*, 2nd Edition (Selangor, Malaysia: The Other Press, 2000), p. 275.

⁵²⁰ Muhammad Zubayr Siddiqi, *Hadith Literature: Its Origin, Development and Special Features*, 2nd Revised (Cambridge: The Islamic Texts Society, 1993), pp. 44–52.

⁵²¹ Siddiqi, pp. 52–60.

⁵²² "شرع", in Wehr, p. 465.

⁵²³ Abu 'Isa Muhammad ibn 'Isa at-Tirmidhi, 'The One Who Is Patient Upon His Religion During Fitan Is like One Holding An Ember', in *Jami' al-Tirmidhi*, trans. by Sunnah.com, 49 Books (Arabic), 46 Books (English) vols (Sunnah.com), BOOK 33 (ARABIC), HADITH NUMBER 103; BOOK 7 (ENGLISH) HADITH NUMBER 2260. <<https://sunnah.com/tirmidhi:2260>>.

⁵²⁴ Qur'an (6:90). See: Haleem, p. 86.

passages further complicate their task.⁵²⁵ Interpreting such texts usually leads to disagreements (*ikhtilāf*) among the ‘ulamā. The primary obstacle in Islamic law-making is understanding (*fiqh*)⁵²⁶ and explaining (*bayān*) passages from the Qur’an and hadith traditions. This marks the ‘ulamā’s first instance of engaging in *ijtihād* to overcome interpretive challenges.

During the classic period of Islamic law (between the seventh and twelfth centuries),⁵²⁷ the Hanafi ‘ālim Muhammad ibn ‘Abd al-Hamid al-Samarqandi (d. 1144 CE) explored the reasons for the differences of opinion (*ikhtilāf*)⁵²⁸ among ‘ulamā. Rather than supporting their views and perpetuating legal disagreements, Samarqandi advocated for the ‘ulamā to collaborate, refining their methods of Islamic law-making and minimising conflicts. He proposed that when ‘ulamā presented scriptural evidence (*dalīl*)⁵²⁹ for their legal opinions (*fatāwā*),⁵³⁰ they should acknowledge their limitations in interpreting the Qur’an and hadith collections. This acknowledgement would allow them to identify the most appropriate ruling (*ḥukm al-munāsibah*) to suit their community’s needs. By recognising their limits and working together, the ‘ulamā can better serve the Muslim community and reduce internal disagreements.⁵³¹

An ‘ālim’s *ijtihād*, their intellectual efforts, plays a pivotal role in shaping the theories of Islamic law (*uṣūl al-fiqh*) as well as in interpreting, analysing, and elaborating on passages from the Qur’an and hadith collections. During the formative period of Islamic law, spanning from the eighth to the tenth centuries, ‘ulamā aimed to establish a comprehensive legal framework that addressed the spiritual and societal needs (*ḍarūriyyāt*)⁵³² and requirements (*ḥājjiyyāt*)⁵³³ of the Muslim community.

⁵²⁵ Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta, GA: Lockwood Press, 2013), p. 56.

⁵²⁶ “فقه”, in Wehr, p. 723.

⁵²⁷ Eric L. Ormsby, *Ghazali* (Oxford: Oneworld Publications, 2007); Ebrahim Moosa, ‘Abū Ḥamid Ghazālī (d.505/1111)’, in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. by O. Arabi, D. Powers, and S. Spector (eds.), Studies in Islamic Law and Society (Brill, 2013), pp. 261–93.

⁵²⁸ “اختلاف”, in Wehr, p. 258.

⁵²⁹ “دليل”, in Wehr, p. 289.

⁵³⁰ Sin: *fatwā* (فتوى), Pl: *fatāwā* (فتاوى). See “فتوى”, in Wehr, p. 696.

⁵³¹ Zysow, p. 52.

⁵³² Sin: *ḍarūrī* (ضروري), Pl: *ḍarūrīyāt* (ضروريات). See “ضروري”, in Wehr, p. 538.

⁵³³ Sin: *ḥāja* (حاجة), Pl: *ḥājāt* or *ḥājjiyyāt* (حاجات or حاجيات). See “حاجة”, in Wehr, pp. 211–12.

In the post-formative period, ‘ulamā of each generation worked to reform the Islamic legal system by considering the linguistic (*lugāt*),⁵³⁴ cultural (*‘urf*),⁵³⁵ social (*‘āda*),⁵³⁶ and jurisdictional (*sultāt al-qaḍā’īya*)⁵³⁷ diversity of their time. They achieved this by making legal assessments (*istiqrāt*)⁵³⁸ of the Qur’an and hadith collections. The ability to explain and interpret legal texts (*nuṣūṣ*)⁵³⁹ from these sacred texts is an essential skill for an ‘ālim. From an Islamic legal standpoint, an ‘ālim must contemplate both the clear (*ṣarīḥ*)⁵⁴⁰ and figurative (*majāzī*)⁵⁴¹ meanings of words and phrases in these sacred sources of Shari’a in order to issue verdicts.

Terms such as *salat*,⁵⁴² *zakat*,⁵⁴³ *ṣawm*,⁵⁴⁴ and *hajj*⁵⁴⁵ are explicitly mentioned in the Qur’an, but their practical application demands further explanation (*bayān*). This is achieved by cross-referencing the Qur’an (*rawīya*)⁵⁴⁶ or extracting “worked examples” from the hadith literature. For instance, while the Qur’an instructs believers to worship their Lord,⁵⁴⁷ the specifics of worship - such as the method, timing, and purpose of prayers – require an ‘ālim to engage in *ijtihād* with the Qur’an and hadith collections to address these inquiries.⁵⁴⁸

5.3 The Etymology of *Ijtihād*

Ijtihād is derived from the Arabic root word *jahada*, which translates as “to endeavour,” “to struggle,” “to exert,” or “to exhaust.”⁵⁴⁹ When *jahada* takes its eighth Arabic verbal form (*ifta’ala*),⁵⁵⁰ it transforms into the reflexive verb *ijtihād*. As such, *ijtihād* signifies an “act of exertion” or “act of

⁵³⁴ “لغة”, in Wehr, p. 870.

⁵³⁵ “عرف”, in Wehr, p. 606.

⁵³⁶ “عادة”, in Wehr, p. 654.

⁵³⁷ “سلط”, in Wehr, p. 422.

⁵³⁸ Sin: *istiqrā’* (استقراء), Pl: *‘istiqrāt* (استقرات). See “استقراء”, in Wehr, p. 753.

⁵³⁹ Sin: *naṣṣ* (نص), Pl: *nuṣūṣ* (نصوص). See “نص”, in Wehr, p. 968.

⁵⁴⁰ “صريح”, in Wehr, p. 511.

⁵⁴¹ “مجازي”, in Wehr, p. 148.

⁵⁴² Qur’an (29:45).

⁵⁴³ Qur’an (73:20).

⁵⁴⁴ Qur’an (2:184-185)

⁵⁴⁵ Qur’an (2:158)

⁵⁴⁶ “روية”, in Wehr, pp. 369–70.

⁵⁴⁷ Qur’an (18:110).

⁵⁴⁸ Zysow, p. 55.

⁵⁴⁹ “جهد”, in Wehr, p. 142.

⁵⁵⁰ “فعل”, in Wehr, p. 721.

struggling” within a given task.⁵⁵¹ In Islamic law, *ijtihād* represents the intellectual struggle undertaken by an ‘ālim to guide Muslims in ways that align with what God deems suitable. The ‘ulamā argue that the Qur’an (9:122) entrusts them with the duty of Islamic law-making:

...out of each community, a group should go out to gain an understanding of the religion, so that they can teach their people when they return and so that they can guard themselves against evil.⁵⁵²

A more comprehensive description of the legislative role of the ‘ulamā and fuqahā’ is found in the hadith tradition narrated by Mu’adh ibn Jabal:

When the Messenger of God sent me to Yemen, he asked me “How will you adjudicate?” I responded, “I will judge in accordance with the Book of God, the Qur’an”. He then asked me, “What if the answer is not found in the Book of God?” I responded, “Then I will judge in accordance to your Sunna”. He then asked, “What if the answer is not found from among my sunna?”, I responded, “I will make *ijtihād* through my judgement”. The Prophet concluded, “Praise belongs to God Who made the messenger (Mu’adh ibn Jabal) of the Messenger (Muhammad) consistent with what pleases him.⁵⁵³

While some ‘ulamā have challenged the authenticity of this hadith, the twelfth-century Islamic law reformer Abu Hamid Muhammad ibn Muhammad al-Ghazali (1058-1111 CE) defended it.⁵⁵⁴ Ghazali asserted that the hadith is widely known (*mashhūr*) among the masses and has been employed as a model by Sunni ‘ulamā to formulate their Islamic legal theories (*uṣūl al-fiqh*). All four major Sunni legal schools – Hanafi, Shafi’i, Maliki, and Hanbali – begin their *ijtihād* by examining the Qur’an. If answers are not found in the Qur’an, they then refer to the hadith collections. Should they still find no answers, they proceed with making judgments based on their *ijtihād*.

While this study does not aim to comprehensively examine all the methods of *ijtihād* employed by the ‘ulamā, it is important to note that these methods can be broadly categorised into three groups:

⁵⁵¹ Wolf Dietrich Fischer, *A Grammar of Classical Arabic*, 3rd Revised edition (New Haven: Yale University Press, 2001), p. 100.

⁵⁵² Haleem, p. 127.

⁵⁵³ al-Sijistānī, Abū Dā’ūd, ‘*The Office of the Judge (Kitāb Al-Aqdiyah)*’, in *Sunan Abī Dāwūd*, trans. by sunnah.com, 43 (Arabic), 42 (English) vols (Sunnah.com), 25 (ARABIC), 24 (ENGLISH) <<https://sunnah.com/abudawud/25/22>>.

⁵⁵⁴ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd revised (Cambridge, UK: The Islamic Texts Society, 2002), p. 474.

ijtihād bayānī: The *ijtihād* of explaining (*bayān*) selected text from the Qur'an and hadith collections.

ijtihād qiyāsī: The *ijtihād* of analogical reasoning (*qiyās*).

ijtihād istiṣlāḥī: The *ijtihād* that is in the public's interest (*maṣlaḥa*).

5.3.1 *Ijtihād Bayānī*: Explaining Selected Text from the Qur'an or Hadith

Reason guides the soul, knowledge guides reason, and bayān is the interpreter of knowledge... bayān is the interpreter of the heart, the polisher of the mind, the dispeller of doubt.⁵⁵⁵

Bayān is an Arabic term that can be translated into English as “lucidity,” “explanation,” or “the means of achieving clarity.”⁵⁵⁶ The word bayān developed from its synonym *balāgha*, which refers to “rhetorical eloquence” in both speech and literature.⁵⁵⁷ During the formative period of Islamic law, bayān was commonly understood by early Arabs as “descriptive proverbs” associated with stories (*qiṣaṣ*) and religious sermons (*wa'z/khuṭba*).⁵⁵⁸ As this period progressed, the 'ulamā developed the study of bayān as the foundation of Sunni legal culture (*'urf shar'ī*).⁵⁵⁹

Of all forms of *ijtihād*, *ijtihād bayānī*, or bayān as it is conventionally referred to, is employed to provide explanations for passages of the Qur'an and reports from the hadith collections. It is the most challenging intellectual endeavour for the 'ulamā, yet also the most potent form of *ijtihād* due to the weight of scriptural evidence it offers. The difficulty with bayān arises from the elliptical construction of the Arabic language, where words are omitted from sentences for the sake of lucidity, conciseness, emphasis and syntax. In their effort to explain passages of the Qur'an and hadith traditions, 'ulamā strive to recover the omitted (*maḥdhūf*) words in order to complete their meaning,

⁵⁵⁵ *Encyclopaedia of Islam (H-Iram)*, ed. by P. Bearman and others, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), III, p. 1114.

⁵⁵⁶ “بينان”, in Wehr, p. 88.

⁵⁵⁷ *Encyclopaedia of Islam (A-B)*, ed. by P. Bearman and others, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), I, p. 1114.

⁵⁵⁸ Mohaghegh, Ameneh, and Azizollah Dabaghi, (2013), '*A Comparative Study of Figurative Language and Metaphor in English, Arabic, and Persian with a Focus on the Role of Context in Translation of Qur'anic Metaphors*', *Journal of Basic and Applied Scientific Research, TextRoad Publication*, 3.4, 275–82 (pp. 277–78).

⁵⁵⁹ Nyazee, *Islamic Jurisprudence*, p. 276.

transforming fragmented sentences into comprehensive, unambiguous ones. This effort enables the ‘ulamā to attain the intended meaning (*irāda*) of a Qur’anic passage or hadith.⁵⁶⁰ If an ‘ālim cannot clarify the meaning of a passage of the Qur’an or a hadith report by cross-referring (*riwāya*) to other texts among these two sacred sources, they turn to other sources such as pre-Islamic and post-Islamic Arabic literature, classic prose (*nathr*), poems (*shi’r/naẓm*), documents and treatises (*rasā’il*), stories (*qiṣaṣ*), and other works from the early Muslim period to broaden their research and vocabulary. In recent times, ‘ulamā prioritise legal commentaries and classic Islamic legal works (*fiqh*), as this ensures their interpretation aligns with the established methods of their Islamic legal school (*madhhab*).⁵⁶¹

The ‘ulamā employ the method of bayān to expound on divine commands (*awāmir*)⁵⁶² and prohibitions (*taḥrīmāt*)⁵⁶³ as ordained by God. The purpose of this endeavour is delineated in the verse Qur’an (16:44):

We sent them with clear signs and scriptures. We have sent down the message to you too [Prophet], so that you can explain (bayān) to people what was sent for them, so that they may reflect.⁵⁶⁴

In another verse, the Qur’an offers additional context for its encouragement to readers to contemplate on its words:

¹It is the Lord of Mercy. ²Who taught the Qur’an. ³He created humankind ⁴and taught them to explain [al-bayān] their thoughts.⁵⁶⁵

Given that many Muslims lack a proficient command of Arabic, they rely on the ‘ulamā to interpret passages from the Qur’an and hadith traditions on their behalf.

⁵⁶⁰ Sukrija Husejn Ramic, *Language and the Interpretation of Islamic Law* (Cambridge, UK: The Islamic Texts Society, 2004), pp. 29–30.

⁵⁶¹ Nyazee, *Islamic Jurisprudence*, pp. 275–76.

⁵⁶² Sin: amr (امر): pl: awāmir (وامر). See “امر”, in Wehr, p. 26.

⁵⁶³ Sin: taḥrīm (تحريم): pl: taḥrīmāt (تحريمات). See “تحريم”, in Wehr, p. 172.

⁵⁶⁴ Haleem, p. 168.

⁵⁶⁵ Qur’an (55:1-4). See Haleem, p. 353.

5.3.2 Ijtihād Qiyāsī: The Ijtihād of Analogical Reasoning (Qiyās)

In the Islamic judicial process, *qiyās* (analogical reasoning) involves evaluating legal passages (*nuṣūṣ*) from the Qur'an and hadith collections to establish their relevance to new cases (*furū'*). The process of *qiyās* begins by identifying the attributes (*awṣāf*), objects (*maḥallāt*), and individuals (*mukallaḫūn*) subject to the divine law (*ḥukm*) found in the legal precedent (*aṣl*) deduced from the Qur'an and hadith traditions.⁵⁶⁶ Subsequently, an 'ālim identifies the underlying legal cause ('*illah*) of the *ḥukm* governing the legal precedent (*ḥukm ul-aṣl*). If a new case (*far'*) shares similar attributes (*ashbāh*) with the *aṣl* and the 'ulamā determine that the '*illah* is the most appropriate legal cause ('*illah al-munāsibah*) for both the *aṣl* and the *far'*, then the *ḥukm* governing the *aṣl* (*ḥukm ul-aṣl*) can be extended (*ta'diyah*) to the *far'*.⁵⁶⁷

Qiyās is a deductive (*ittibā'*) form of *ijtihād* that extends the rules (*aḥkām*) of the Qur'an and hadith tradition to real-world situations.⁵⁶⁸ An 'ālim practicing *qiyās* must support their arguments with scriptural evidence (*dalīl*) from the Qur'an and hadith collections, demonstrating its alignment with the purpose of Shari'a (*maqāṣid al-Shari'a*).⁵⁶⁹ Among the Sunni legal traditions, the purpose of Shari'a is to establish rules that benefit society while curtailing what is harmful (*al-amr bi-l-ma'rūf wa-n-nahy 'an al-munkar*).⁵⁷⁰ *Qiyās* combines hermeneutical and empirical approaches to Islamic law-making, serving as the method that connects reason and revelation. *Qiyās* is recognised by the four popular Sunni legal schools—the Hanafi, Shafi'i, Maliki, and Hanbali—as the approach that bridges this gap effectively.⁵⁷¹

⁵⁶⁶ Nyazee, *Islamic Jurisprudence*, p. 296.

⁵⁶⁷ Ahmad Hasan, *Analogical Reasoning of Islamic Jurisprudence: A Study of the Juridical Principle of Qiyas* (Delhi: Adam Publishers and Distributors, Delhi, 2009), p. 16, 195-198.

⁵⁶⁸ Ahmad Hasan, *The Early Development of Islamic Jurisprudence*, 4th repr edition (Islamic Research Institute, 1988), p. 194.

⁵⁶⁹ Opwis, XXXI.

⁵⁷⁰ Qur'an (3:110). Haleem, p. 42.

⁵⁷¹ Nyazee, *Islamic Jurisprudence*, pp. 304–5.

5.3.3 Ijtihād Istislāhī: The Ijtihād that Is in the Public's Interest (*Maṣlaḥa*)

Ijtihād istiṣlāhī is a variant of *ijtihād* that gives precedence to the public interest (*maṣlaḥa*).⁵⁷² *Maṣlaḥa*, which is an inductive (*istinbāt*) form of *ijtihād*, can occasionally conflict with the rules of the Qur'an and hadith traditions.⁵⁷³ According to Mohammad Hashim Kamali,⁵⁷⁴ 'ulamā across the four popular Sunni legal schools have categorised *maṣlaḥa* into three types:

maṣlaḥa mu'tabarāh: When the Qur'an or authentic (*ṣaḥīḥ*)⁵⁷⁵ hadith collections explicitly validate a *maṣlaḥa*, it becomes an *accredited maṣlaḥa* (*maṣlaḥa mu'tabarāh*). Examples of *maṣlaḥa mu'tabarāh* include the Muslim congregational prayers (*salat al-jamā'ā*), marriage, and the prohibition of alcohol.

maṣlaḥa mulghā: *Maṣlaḥa mulghā* (*discredited maṣlaḥa*) pertains to public interests or actions prohibited in the Qur'an or hadith literature, which conflict with explicit injunctions in these sacred texts. For most Muslims, usury falls under this classification.

maṣlaḥa mursala: *Maṣlaḥa mursala* (*undetermined maṣlaḥa*) refers to public actions that are not explicitly endorsed or rejected in the Qur'an or hadith literature. It signifies an indeterminate social interest that prompts an 'ālim to explore the issue further and formulate an opinion based on their interpretation (*bayān*) of the sacred scriptures. If an 'ālim can present scriptural evidence (*dalīl*) aligning the *maṣlaḥa mursala* with one of the five objectives of Shari'a (*maqāṣid ash-Shari'a*), this becomes a reasonable basis (*waṣf munāsib*) for a new ruling. In cases where several 'ulamā engage in *ijtihād*

⁵⁷² Sin: *maṣlaḥa* (مصلحة), Pl: *maṣāliḥ* (مصالح). See "مصلحة", in Wehr, p. 522.

⁵⁷³ Ahmad Hasan, *The Early Development of Islamic Jurisprudence*, p. 194.

⁵⁷⁴ Kamali, pp. 351–64.

⁵⁷⁵ "صحيح", in Wehr, p. 503.

to search for such evidence but fail to reach a resolution, it is then left for Muslim society to decide whether to implement the *maṣlaḥa mursala* in the interest of the public.

As a legislative tool, *maṣlaḥa* allows an ‘ālim to consider the benefits and harms to Muslim communities in both worldly and religious matters.⁵⁷⁶ The term *maṣlaḥa* translates as “benefit,” “advantage,” or “welfare,”⁵⁷⁷ and is associated with the phrase “*jalb al-manfa’ā wa-daf’ al-maḍarrā,*” meaning “to seek what is beneficial and eliminate what is harmful.”⁵⁷⁸ It is important to note that *maṣlaḥa* shares its Arabic root letters with another legal tool, *istiṣlāḥ*, which involves considering what is in the public interest. Both *maṣlaḥa* and *istiṣlāḥ* share the root letters “sa-la-ha” or “sa-lu-ha,”⁵⁷⁹ which translate as “reconciling” or “refining” conditions related to the case.⁵⁸⁰ While *istiṣlāḥ* is recognised by the ‘ulamā as an intellectual endeavour “to seek what is good” for Muslim society, the “good” pursued through *maṣlaḥa* is the “public interest” that most effectively serves their society.⁵⁸¹

5.4 Perceptions of Islamic Law and Ijtihād in the Modern West

Much like the varied interpretations of Islamic Law and approaches to *ijtihād* among the ‘ulamā, these concepts also underwent a distinct evolution within modern Europe. During the era of European colonialism, Western views on Islamic law and Muslim society had a significant influence on the ‘ulamā for more than two centuries. This influence led the ‘ulamā to shift away from engaging in *ijtihād* and instead focus on preserving (*ḥifẓ*)⁵⁸² their Islamic legal heritage and Muslim identities, as a response to the rise of secularism in Europe. The Age of Enlightenment sparked an intellectual revolution in Europe, giving rise to new principles rooted in rationalism, materialism, and the

⁵⁷⁶ Nyazee, *Islamic Jurisprudence*, pp. 195–96.

⁵⁷⁷ Wehr, p. 522.

⁵⁷⁸ Kamali, p. 351.

⁵⁷⁹ “صلح”, in Wehr, pp. 521–22.

⁵⁸⁰ Tariq Ramadan, ‘Al-Maslaha (The Common Good)’, *Tariq Ramadan*, 2016 <<http://tariqramadan.com/english/al-maslaha-the-common-good/>>.

⁵⁸¹ Opwis, XXXI, pp. 12–13.

⁵⁸² “حفظ”, in Wehr, p. 189.

separation of church and state.⁵⁸³ Throughout the eighteenth and nineteenth centuries, European powers consolidated their control over colonies by scrutinising and reforming their legal, cultural, and religious institutions. Confronted with significant cultural, economic, political, and social transformations in their own societies, the ‘ulamā assumed the role of custodians (*ḥuffāz*)⁵⁸⁴ of the Islamic legal tradition.

When evaluating modern European writings on Islamic law, it is important to consider Europe’s perception of Muslims and their societies. The intellectual chasm between European scholars of Islamic law and traditionist ‘ulamā was the impetus for Imperial Europe’s efforts to access and comprehend the development and procedures of Islamic law for Western audiences. In the twentieth century, Joseph Franz Schacht (1903-1969 CE), a Polish-born Arab philologist, stood out among Europe’s scholars for providing European readers with a comprehensive account of the formative period of Islamic law. In his seminal work *The Origins of Muhammadan Jurisprudence*, Schacht approximated this period to have spanned from the eighth to the tenth centuries. Schacht capitalised on his role as a Visiting Professor at King Fuad University in Egypt, granting him access to rare Arabic manuscripts from the Middle East and North Africa.⁵⁸⁵

Schacht argued that the zenith of the formative period of Islamic law occurred during the rise of the ‘Abbasid Caliphate (around 750 CE), while its nadir was reached towards the end of the tenth century. During this formative period, Schacht posited that the four popular Sunni legal schools—the Hanafi, Shafi’i, Maliki, and Hanbali—came into being. He asserted that the ‘ulamā associated with these schools collectively held the view that all matters pertaining to the beliefs and practices of Muslims had been exhaustively addressed. As a result, subsequent generations of ‘ulamā saw no need to continue engaging in *ijtihād*. Schacht postulated that by the end of the formative period, a consensus

⁵⁸³ Charles Taylor, *A Secular Age* (Cambridge, Massachusetts, and London, England: The Belknap Press, Harvard University Press, 2007), p. 282.

⁵⁸⁴ Sin: *ḥāfiẓ* (حافظ), pl: *ḥuffāz*, (حفاظ). See “حافظ”, in Wehr, p. 190.

⁵⁸⁵ Bernard Lewis, ‘Joseph Schacht’, *Bulletin of the School of Oriental and African Studies*, 33.2 (1970), 377–81 (p. 378).

among these Sunni legal schools declared the conclusion of the *period of ijtihād* and the beginning of the *period of taqlīd*. Schacht also proposed that during the post-formative period (starting from the tenth century), the Sunni legal schools aimed to perpetuate (istiṣhāb) the rules and regulations they had formulated during the formative period. He argued that the rigidity characterising Islamic law in this post-formative period reflects the socio-political and economic circumstances of the early Abbasid era. He further contended that this rigidity led the Sunni legal schools to become disconnected from the subsequent developments within the Muslim state and society.⁵⁸⁶ He thus argued that the *closure of the gates of ijtihād* led to a “progressive reduction of the human element” in Islamic law, resulting in the erosion of its “mechanical methods of reasoning.”⁵⁸⁷ Schacht employed the term *taqlīd* to signify the conclusion of the formative period of Islamic law and the commencement of the period during which Sunni legal schools restricted their intellectual pursuits.

5.5 *The Closure of the Gates of Ijtihād: Rebuttal and Debunking Myths*

In phonetic Arabic, the phrase for “closure of the doors of ijtihād” is rendered as *insidād bāb al-ijtihād*⁵⁸⁸ or *iḡlāq bāb al-ijtihād*.⁵⁸⁹ Regardless of which term the ‘ulamā use, both phrases signify an ‘ālim’s intention to suspend their ijtihād.

The term *bāb* is an Arabic word translates to “a gate,” “a door,” “a chapter,” “a section,” or “a category” within a book.⁵⁹⁰ Within the context of Islamic law, it is employed to delineate “the limits of a legal method.” On the other hand, the term *insidād* stems from the verb *inṣadda*, which is derived from the root word *sadda*, and can be interpreted as “to block,” “to seal,” or “to close.”⁵⁹¹ Likewise, *iḡlāq* can be translated as “closing,” “locking,” or “shutting off.”⁵⁹²

⁵⁸⁶ Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Paperbacks, 1982), p. 75.

⁵⁸⁷ Schacht, p. 211.

⁵⁸⁸ In Arabic: انسداد باب الاجتهاد

⁵⁸⁹ In Arabic: إغلاق باب الاجتهاد

⁵⁹⁰ Sin: bāb (باب), pl: abwāb (ابواب). See “باب”, in Wehr, p. 80.

⁵⁹¹ “سد”, in Wehr, p. 402.

⁵⁹² “إغلاق”, in Wehr, p. 682.

In contemporary times, ‘ulamā and academics in both Europe and the United States have contested Schacht’s theory concerning the *closure of the gates of ijtihād*. Wael Bahjat Hallaq presented a robust rebuttal to Schacht’s theory in his 1983 doctoral thesis, *The Gates of Ijtihād: A Study in Islamic Legal Theory*, as well as in his 1984 article, *Was the Gates of Ijtihād Closed?*⁵⁹³ Hallaq contends that the closure was not a unanimous consensus reached by the four popular Sunni legal schools at the end of the tenth century, nor does it imply the termination of all intellectual activity within the Sunni legal traditions. According to Hallaq, the “closure of the gates of ijtihād” was a statement made by an ‘ālim who, after failing to find an Islamic legal solution for a specific case, suspended their ijtihād.⁵⁹⁴ In his doctoral thesis,⁵⁹⁵ Hallaq further expounds on three scenarios where an ‘ālim might suspend their ijtihād.

1. When an Islamic ruling (ḥukm) is already established in the Qur’an and authenticated hadith collections, the need for ijtihād becomes unnecessary.
2. In a generation where the ‘ulamā are not qualified to engage in ijtihād.
3. If the qualified ‘ulamā cannot reach a consensus (ijmā’) due to complications in the case or disagreements among them, they might decide to temporarily suspend their collective ijtihād (*ijtihād jamā’ī*) and postpone the case.

Despite the counterarguments against Schacht’s closure theory, present-day Sunni Muslims still adhere to it. They believe that their ‘ulamā have definitively closed the gates of ijtihād, and that the classic Sunni legal works contain solutions for all matters concerning Islamic life and Muslim society. Taha Jabir al-‘Alwani (1935-2016 CE), the founder of the Fiqh Council of America, explained that this viewpoint held by present-day Muslims is a consequence of a historical campaign initiated by traditionist ‘ulamā who lived under the colonial rule of Europe centuries earlier. These early ‘ulamā

⁵⁹³ Wael B. Hallaq, ‘Was the Gates of Ijtihad Closed?’, *International Journal of Middle East Studies*, New York, 16 (1984), 3–41 (p. 4).

⁵⁹⁴ Wael B. Hallaq, ‘The Gates of Ijtihad: A Study in Islamic Legal Theory’ (University of Washington, 1983), p. 58.

⁵⁹⁵ Hallaq, ‘The Gates of Ijtihad: A Study in Islamic Legal Theory’, pp. 47–71.

associated ijtihād with “heretics and deceivers, and, finally, with Orientalists,” as a response to the challenges posed by European imperial and intellectual trends.⁵⁹⁶

During the eighteenth and nineteenth centuries, ‘ulamā from the four popular Sunni legal schools faced significant challenges in responding to an enlightened Europe. Before the Age of Enlightenment, ‘ulamā across the Sunni legal traditions interpreted the Qur'an and hadith collections using various methods of ijtihād, while also considering contemporary intellectual, technological, and sociological advancements. Following the Age of Enlightenment, the ‘ulamā encountered difficulties not only in comprehending and adapting to the social, economic, and political changes brought about by Imperial Europe but also in addressing the intellectual challenges posed by the Enlightenment. To expedite Europe’s acquisition of Muslim territories, orientalist were tasked with conducting research and formulating social and political strategies to control these lands. As a result, they modified the meanings of numerous Islamic legal terms, including the phrase “the closure of the gates of ijtihād.”⁵⁹⁷

In the modern era, ‘ulamā faced the challenge of safeguarding their religious values, practices, and indigenous cultures against the secular philosophies and ambitions of Europe. As a precautionary measure, ‘ulamā chose to suspend ijtihād and instead promote taqlīd as a religious and cultural philosophy to unify the Muslim masses. Taqlīd, an Islamic legal concept, entails the “adoption of a legal decision of a maḏhab” and “accepting the view of another without [scriptural] proof of its correctness.”⁵⁹⁸

By institutionalising taqlīd within their religious institutions and communities, ‘ulamā succeeded in safeguarding their Islamic legal theories and practices from secular influences, quelling dissension within their ranks, and obstructing European scholars’ access to classic Islamic legal works. Bernard Weiss argued that ‘ulamā employed taqlīd to formalise the authority of Sunni legal schools,

⁵⁹⁶ Shaykh Taha Jabir Al-Alwani and Anas S. al Shaikh-Ali, *Issues in Contemporary Islamic Thought*, 1st edition (London: IIIT, 2005), p. 67.

⁵⁹⁷ Lapidus, p. 23.

⁵⁹⁸ Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihab Al-Din Al-Qarafi* (*Studies in Islamic Law and Society*) (Brill Academic Publishers, 1996), p. 79.

ensuring the consistency and continuity of Islamic law amid rapid and unpredictable societal advancements.⁵⁹⁹ According to Weiss:

Taqīd entails a choice, not of rules from a range of variant rules, but of an authority among several equally acceptable authorities.⁶⁰⁰

5.6 *The Etymology of Taqīd*

Taqīd is a verbal noun derived from the Arabic root word “qa-la-da,” which has been defined by Hans Wehr as “to adorn with a necklace.”⁶⁰¹ The term *taqīd* is associated with various Islamic legal concepts such as “imitation”⁶⁰² “blind and uncritical faith,”⁶⁰³ “servility,”⁶⁰⁴ “unquestioning acceptance,”⁶⁰⁵ and “unreasonable acceptance,”⁶⁰⁶ and carries a negative connotation among proponents of *ijtihād* and Western academics of Islamic law. However, defenders of *taqīd* contend that such portrayals are dismissive and fail to fully comprehend the purpose of Islamic law, whose...

...dictates cannot remain forever open to dispute and reconsideration, nor can it accommodate, let alone promote, change and innovation to a degree that would threaten its essential function, namely, the preservation of order.⁶⁰⁷

Practitioners of *taqīd*, known as the *muqallidūn*,⁶⁰⁸ reference the following verse from the Qur’an to underpin their approaches to Islamic law:

[Prophet], all the messengers We sent before you were simply men to whom We had given the Revelation: you [people] can ask those who have knowledge if you do not know.⁶⁰⁹

⁵⁹⁹ Bernard Weiss, *The Spirit of Islamic Law*, New Ed edition (Athens: The University of Georgia Press, 2006), p. 134.

⁶⁰⁰ Bernard Weiss, ‘The Primacy of Revelation in Classical Islamic Legal Theory as Expounded by Sayf Al-Dīn al-Āmidī’, *Studia Islamica*, 59, 1984, 79–109 (p. 97).

⁶⁰¹ “تقليد”, in Wehr, p. 786.

⁶⁰² Noel Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), p. 80.

⁶⁰³ “تقليد”, in Wehr, p. 786.

⁶⁰⁴ George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), p. 199.

⁶⁰⁵ Schacht, p. 71.

⁶⁰⁶ Ann. K. S Lambton, *State and Government in Medieval Islam*, London Oriental Series (Abingdon, Oxon: Routledge Curzon, 2006), XXXVI, p. 12.

⁶⁰⁷ Jackson, p. 80.

⁶⁰⁸ Sin: *muqallid* (مقلد), pl: *muqallidūn* (مقلدون). See “مقلد”, in Wehr, p. 786.

⁶⁰⁹ Qur’an (16:43). Haleem, p. 168.

The *muqallidūn* maintain that this verse categorises society into two distinct groups: those with the ability to perform *ijtihād* and the *muqallidūn*, who follow the guidance of those engaged in *ijtihād*.

5.7 Between *Ijtihād* and *Taqlīd*

The debate among Sunni ‘ulamā concerning *ijtihād* and *taqlīd* necessitates an evaluation of the merits and drawbacks of these two approaches to Islamic law. Advocates of *ijtihād* criticise *taqlīd* as a predominant practice within Muslim society and religious institutions. They assert that the practice of *ijtihād* is obligatory (*farḍ kifāya*) for all Muslims and substantiate their stance by referencing the Qur’an (17:36). This verse emphasises that Muslims should not simply adhere to the legal rulings (*aḥkām*) or opinions (*fatāwā*) of the Sunni legal schools without understanding the underlying rationale.

Do not follow blindly what you do not know to be true: ears, eyes, and heart, you will be questioned about all these.⁶¹⁰

Proponents of *ijtihād* also argue that interpreting the passages of the Qur’an and the hadith traditions is an individual duty (*farḍ al-‘ayn*) for Muslims. If certain passages prove challenging to understand, Muslims are permitted to seek clarification from an ‘alim. However, it is crucial for Muslims to bear in mind that the guidance provided by an ‘alim should not be taken as a legal ruling. Supporters of *ijtihād* also maintain that the Sunni legal schools are institutions overseen by the ‘ulamā, *fuqahā*, and *mujtahidūn*⁶¹¹ (individuals who practice *ijtihād*). These individuals are not infallible and may be susceptible to errors and corruption.⁶¹²

At the other end of the Islamic legal spectrum, the *muqallidūn* adhere to the decisions of an ‘alim or a Sunni legal school. The medieval Hanafī jurist Abu Zayd al-Dabusi (978-1039 CE) characterised *taqlīd* as the epitome of ignorance and deemed the *muqallidūn* as indolent, having not learned the methods of *ijtihād*. Nevertheless, al-Dabusi acknowledged that people in his era relied on

⁶¹⁰ Haleem, p. 177.

⁶¹¹ Sin: *mujtahid* (مجتهد), Pl: *mujtahidūn* (مجتهدون) or *mujtahideen* (مجتهدين). See “مجتهد”, in Wehr, p. 143.

⁶¹² Yusri Mohamad, *Contemporary Ijtihad: An Analysis of Individual and Collective Approaches* (Islamic and Strategic Studies Institute (ISSI), 2016), pp. 34–35.

the ‘ulamā for spiritual guidance and perceived the establishment of the Sunni legal schools as a safeguard for the spiritual and social well-being of Muslim society.⁶¹³

The muqallidūn contend that following the formative period of Islamic law, the mujtahidūn ceased to exist. In his examination of the Sunni legal systems, the Shafi’i ‘ālim, fāqih, and historian Jalal al-Din al-Khudayri al-Suyuti (1445–1505 CE) observed that Sunni Muslims of his era believed that the founding fathers of the four popular Sunni legal schools were the last of the mujtahidūn.⁶¹⁴

They were:

- Malik ibn Anas ibn Malik ibn Abi ‘Amir al-Asbahi (711-795 CE).
- Abu Hanifa an-Nu‘man ibn Thabit (699-767 CE).
- Abu ‘Abdullah Muhammad ibn Idris al-Shafi’i (767-820 CE).
- Ahmad ibn Hanbal (780-855 CE).

Muslims of Suyuti’s era believed that these four pioneers possessed comprehensive (*muṭlaq*) knowledge of Islamic law and were born in an era that allowed them to directly interpret God’s divine laws from the sources of Shari’a. Both Abu Hanifa and Imam Malik were successors (*tābi’ūn*) of Muhammad’s companions, making them part of the first three pious generations of Islam (*salaf al-ṣāliḥ*) and the consensus (*ijmā’*) of the Messenger of God. Additionally, Imam Shafi’i was a disciple of Imam Malik, while Ahmad ibn Hanbal studied under Imam Shafi’i and later became his associate. Sunni Muslims believe that these four founders of the Sunni legal systems share direct or close ties to the Messenger of God, who is one of the sacred sources of Islamic law. This direct access led Sunni Muslims to believe that the four founders of the Sunni legal traditions could independently (*mustaqil*) deduce the law. Consequently, the four pioneers were regarded as *complete and independent mujtahidūn* (*mujtahidūn muṭlaqūn wa mustaqilūn*), uniquely capable of establishing the Sunni legal

⁶¹³ Imran Ahsan Khan Nyazee, *The Secrets of Uṣūl Al-Fiqh: Following a Madhhab and Rules for Issuing Fatwas*, ed. by Khizar Hayat, The Secret of Uṣūl Al-Fiqh, 6 (Advanced Legal Studies Institute (ALSI), 2013), p. 47.

⁶¹⁴ Mohamad, p. 80.

system for posterity.⁶¹⁵ Suyuti observed that an ‘ālim who deviated from Sunni orthodoxy would face the disdain of their legal peers and excluded from Muslim society.⁶¹⁶ The muqallidūn argue that the absence of a new Sunni legal school emerging in the post-formative period of Islamic law proves that the mujtahidūn no longer exist. Thus, for the muqallidūn, every Muslim born after the tenth century defaults to being a muqallid of an established Sunni legal school.⁶¹⁷

Suyuti noticed a rise in the number of muqallidūn after the tenth century. Their influence expanded to include the ‘ulamā and fuqahā of the four popular Sunni legal schools. This increase was driven by the muqallidūn’s aim to protect the methods and legal traditions of these schools, ultimately resulting in their denial of the existence of a mujtahid:

...traditional doctrine is that taqlīd is lawful, and it became obligatory in the course of time, due to the absence of mujtahids ... The traditional scholars maintain, there is consensus [that] it ought to be regarded as an article of faith.⁶¹⁸

Some muqallidūn hold an extreme perspective, contending that their chosen Sunni legal school is the sole valid school. Although they do not brand adherents of other Sunni legal systems as deviants, they have a tendency to disregard the viewpoints and judgments of rival schools. This absolutist approach to Islamic law has prompted critics to accuse the muqallidūn of blind faith and dogmatism. Nevertheless, both the critics of taqlīd and the credulity demonstrated by its proponents often lead to the oversight of the nuanced applications and benefits that taqlīd can provide within the realm of Islamic law. These applications enable ‘ulamā to address the welfare of Muslim societies while preserving their Islamic legal institutions.⁶¹⁹

Presently, the prevailing belief among Sunni Muslims is that the era of the complete and independent mujtahidūn has passed. This perspective stems from the argument that, beyond the Hanafi,

⁶¹⁵ Indira Falk Gesink, *Islamic Reform and Conservatism: Al-Azhar and the Evolution of Modern Sunni Islam* (London: I.B. Tauris, 2014), p. 69.

⁶¹⁶ Mohamad, p. 81.

⁶¹⁷ Mohamad, p. 35.

⁶¹⁸ Rudolph Peters, ‘Idjihad and Taqlid in 18th and 19th Century Islam’, *Die Welt Des Islams*, XX, 3–4 (1980), p. 139.

⁶¹⁹ Mohamad, p. 30.

Shafi'i, Maliki, and Hanbali legal schools, no other Islamic legal school amassed a substantial following beyond the formative period of Islamic law. Nonetheless, not all Sunni Muslims subscribe to Schacht's closure theory. From the post-formative period to the present day, the 'ulamā of the Sunni legal traditions have continued to engage in *ijtihād*, albeit within the strictures of the four established Sunni legal traditions. An 'ālim who exercises *ijtihād* within the parameters of their Sunni legal school is classified as a *restricted* or *limited mujtahid* (*mujtahid muqayyad*). Proficiency in *ijtihād* among these *restricted mujtahidūn* varies, and classic works of Islamic law extensively categorise and discuss them. Although this study does not focus on examining the hierarchy of *mujtahidūn*, 'ulamā, and *fuqahā*' within the Sunni legal traditions in contemporary times, it is pertinent to explore how these terms apply to Muslims in Britain. This study is particularly concerned with the roles and relationships between the *mujtahidūn* and the *muqallidūn*, and how these dynamics relate to the pressing spiritual and social concerns of British Muslims, leading them to seek guidance from experts in Islamic law.

5.8 Ijtihād, Taqlīd, and the Continuity of Islamic Law in Britain

In his research investigating the use of alternative dispute resolution services within London Muslim communities, Mohammad Keshavjee observed that the work undertaken by the Muslim Law (Shariah) Council could be seen as a "a modern-day expression of *ijtihād*".⁶²⁰ He went on to say that the concept of shari'a councils emerged "quite fortuitously, through [the] sheer necessity" of Britain's Muslim communities, and that the structured and systematic regulatory framework of these councils is not uniformly applicable to all Muslims.⁶²¹ Nevertheless, earlier sections of this chapter presented passages from the Qur'an and the hadith traditions that establish the precedents for Muslims to seek the guidance of those knowledgeable in interpreting God's divine laws. Chapter 3 of this study investigated the origins and role of India's *dūr ul-qazā*, an institution that provided India's Muslims

⁶²⁰ Mohamed Keshavjee, *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community* (London; New York: I.B. Tauris, 2013), p. 10.

⁶²¹ Keshavjee, p. 137.

with an Islamic regulatory structure, ensuring that “Shariah is applied by those most knowledgeable of it”.⁶²²

Drawing on hindsight and driven by the intent to continue (*istiṣhāb*) the established Islamic legal principles laid out in the Qur’an, hadith collections, and India’s *dūr ul-qazā*, Muslim migrants arriving in Britain during the nineteenth and early twentieth centuries turned to ‘ulamā and muftis based abroad for guidance. They sought solutions to the challenges of leading an authentic Islamic life in the British context. For instance, early Moroccan settlers in Britain posed an inquiry regarding the permissibility of consuming meat slaughtered by non-Muslim butchers in Victorian Britain. This query was directed to the Grand Mufti of Egypt, Muhammad ‘Abduh, who advised that, until access to halal meat was viable, Muslims in Victorian Britain could consume kosher meat from any of the country’s Jewish abattoirs.⁶²³

Another instance of newly-settled Muslims in Britain seeking guidance from overseas ‘ulamā and muftis occurred during the mid-twentieth century. Muslim labourers who had migrated to Britain from South Asia were impacted by the introduction of the *Commonwealth Immigrants Act 1962*. Those affected by the legislation were acutely aware of the financial obligations they had towards their families and *birādarī* and *gūshṭī* networks. Consequently, a significant number of Muslim workers decided to remain in Britain and continue sending remittances to their families. Those who intended to stay sought advice from the ‘ulamā and respected elders within their *birādarī* and *gūshṭī* networks to discern the Islamic legality (*shar’*) of their permanent residence in Britain.

‘Ulamā based in South Asia cited the *Hidāyah* to remind British Muslims of the husband’s responsibility to provide maintenance (*nafaqa*) and board (*īwā’*) for their wives and children. They further clarified that, if the husband’s whereabouts are known yet he remains separated from his family, he would be unable to fulfil both his marital and religious responsibilities towards his wife. In such

⁶²² Sabiha Hussain, pp. 1–2.

⁶²³ Humayun Ansari, p. 70.

circumstances, the *Hidāyah* stipulates that, following a four-month separation, the wife has the right to dissolve the Islamic marriage.⁶²⁴

Considering the cautionary advice of the ‘ulamā and availing themselves of the civil rights afforded to them by the *1962 Act*, husbands, wives, and children were successfully reunited in Britain. Nevertheless, the significant migration of Muslim families, primarily from rural areas of South Asia to the contemporary and secular context of Britain, introduced a multitude of new personal, social, and religious challenges.

Lewis and Hamed describe how communities that settle in new territories undergo a three-generation migratory trajectory, moving from avoidance to engagement, and then to accommodation. For British Muslims, this trajectory begins with the settlement of first-generation Muslims, who, as new residents, often lack the language and social skills to engage with others in Britain and thus struggle to meet their personal, social, and religious needs. Most first-generation British Muslims “cling to the myth of return” and view themselves as “guests” in Britain.⁶²⁵

Lewis and Hamed then observed how second-generation British Muslims bridge the cultural, social, and linguistic gaps between their faith and ethnic communities and their experiences of living in Britain. These second-generation, British-born Muslims have a better command of colloquial English, which enables them to interact more easily with others in British society. However, as young British-born Muslims, they become increasingly aware of - and even prefer - British cultural and social norms.⁶²⁶ Cultural, linguistic, and generational differences between migrant Muslims and their British-born children contribute to isolation and non-communication within these households.⁶²⁷

⁶²⁴ Al-Marginani, p. 215.

⁶²⁵ Lewis and Hamid, p. 27.

⁶²⁶ Richard Phillips and others, *Storying Relationships: Young British Muslims Speak and Write about Sex and Love* (London: Zed Books, Bloomsbury Publishing PLC, 2021), p. 129.

⁶²⁷ Sughra Ahmed, *Seen and Not Heard: Voices of Young British Muslims* (Leicestershire, UK: Policy Research Centre, 2009), p. 81.

Chapter 4 of this thesis revealed that over 60 percent of British Muslims are of South Asian descent, implying that more than half of the Muslim population in Britain reside in households where young Muslims have limited opportunities to challenge their elders' beliefs, expectations, and perceptions about life in Britain. Many British-born Muslims notice the disconnect between their elders and their own day-to-day experiences. This disconnect leads some British-born Muslims to question the adequacy of the religious institutions and traditions established by their elders in Britain. Consequently, they embark on a search, both in Britain and abroad, for a more "authentic" form of Islam with which they can feel a connection.⁶²⁸

Tensions and conflicts arise between first- and second-generation British Muslims when families discuss how to engage with wider society. First-generation Muslims tend to avoid interacting with other communities, whereas the second generation believes that engagement is beneficial for their communities and dispels the negative stereotypes held against them by other Britons. According to Lewis and Hamed, these conflicts reflect the developmental challenges of a nascent community. They transition from self-imposed segregation to engagement, and by the third generation, they lead the community toward a "give-and take pattern of accommodation with wider society"⁶²⁹ and "breaking silences in many different ways."⁶³⁰

Tensions and conflicts between first and second-generation British Muslims are further exacerbated when parents express their desire to find a suitable marriage partner for their children. First-generation Muslim parents often pressure their British-born children to marry "within their culture" as a means of preserving their future generation's ethnic and cultural identities.⁶³¹ Parents sometimes burden their children with ominous depictions of potential life outcomes if they marry someone from a different cultural and ethnic background, posing questions such as, "What will your

⁶²⁸ Lewis and Hamid, p. 50.

⁶²⁹ Lewis and Hamid, p. 4.

⁶³⁰ Phillips and others, p. 171.

⁶³¹ Shelina Zahra Janmohamed, 'The Trouble with Marriage', *Emel: Muslim Lifestyle* (London, December 2010), 75th edition <https://www.emel.com/article?id=79&a_id=2210>.

children be? Who will they belong to? What will you eat? Who will make your roti?" Parents who insist on choosing their children's marriage partners often do not consider their children's potential for emotional, cultural, intellectual, and sexual fulfilment in marriage.⁶³²

Similar to other ethnically homogenous groups, first-generation British Muslims often hold negative views about mixed marriages. According to a survey conducted by Public Sector Information (PSI) that explored the perceptions of both first and second-generation British Muslims, 72 percent of British Muslims of Pakistani descent and 50 percent of those of Bangladeshi descent indicated that their communities did not view inter-ethnic and cross-cultural marriages positively.⁶³³ In British towns and boroughs with a high concentration of Muslims, Muslim parents find support from their extended families and communities, who underscore the potential advantages for Muslim youth in marrying within their own cultural group.⁶³⁴

Philip Lewis's study of British-born Muslims of Pakistani descent in Bradford revealed that more than eight in ten Muslim youths—both men and women—expressed a preference for selecting their own marriage partners. This same proportion of Muslims also expressed reservations about the compatibility of a spouse chosen from within their families based overseas.⁶³⁵ In another study focusing on the experiences of British Muslim women whose parents had arranged marriages with partners from abroad, Samia Bano shares a case to illustrate the challenges these women face when such marriages end in divorce:

For the past three years he's made our lives hell. He constantly harasses us and his family used us so he could come into this country. I want him out and I'll do everything in my power to make sure it happens.⁶³⁶

⁶³² Mohammad Shabbir, 'Stop This Madness', in *Walk Together - Blogspot* (Bradford, United Kingdom: Mohammad Shabbir, 2014) <<https://c1lrshabbir.blogspot.com/2014/11/stop-this-madness.html>>. and Lewis and Hamid, pp. 35–36.

⁶³³ Humayun Ansari, p. 216.

⁶³⁴ Phillips and others, p. 2.

⁶³⁵ Philip Lewis, p. 54.

⁶³⁶ Bano, p. 192.

A report commissioned by the Muslim Council of Britain (MCB) reviewed the *2011 National Census* and revealed a “surprisingly high” number of single Muslim parents in Britain. Out of Britain’s 745,261 Muslim households, 77,640 were headed by single Muslim parents with dependent children, a figure three percent higher than the national average.⁶³⁷ The report also expressed concerns about the significant number of Muslims living alone in Britain, which is attributed to the stringent curfews imposed by first-generation parents on their children. Philip Lewis explains that these curfews deprive young Muslims of essential social skills, making it challenging for them to live independently and find suitable partners in Britain.⁶³⁸

The *2011 National Census* offers invaluable insights for the MCB concerning the rising divorce rates among Britain’s Muslims. Confronted by these facts, the MCB discovered a lack of systematic research uncovering the causes of the rising divorce rates among British Muslims and the high number of young single Muslims living independently - situations that contrast with the expectations of first-generation British Muslims. To address these issues, the MCB emphasises the need to understand the contributing factors behind the rising divorce rates and provide better resources for Britain’s ‘ulamā, mosques, and Muslim leaders, in order to offer more effective pastoral care for young British Muslims.⁶³⁹ Essentially, the MCB asserts that equipping Britain’s Muslim authorities – ‘ulamā, mosques, and representative bodies - with a deeper understanding of the domestic and social challenges impacting the Muslim community would facilitate effective approaches to tackling these issues and deriving suitable Islamic resolutions from the classic works of Islamic law. This underscores the MCB’s belief, as the purportedly “best-known and most powerful”⁶⁴⁰ representative body for Muslims in Britain, in the capability of the country’s ‘ulamā to effectively address the challenges affecting British Muslims.

⁶³⁷ Sundas Ali, p. 36.

⁶³⁸ Philip Lewis, p. 41.

⁶³⁹ Sundas Ali, p. 36.

⁶⁴⁰ Peter Morey and Amina Yaqin, *Framing Muslims: Stereotyping and Representation after 9/11* (Cambridge, Massachusetts; London, England: Harvard University Press, 2011), p. 82.

5.9 Conclusion

This chapter began by exploring the role of *ijtihād* in Islamic law, particularly in its use of interpreting passages of the Qur'an and the teachings of the Prophet Muhammad. It underscored the importance of *ijtihād* in shaping the legal framework of Muslim societies, particularly in the formulation of new legal theories and rulings that serve the interests of the people. Over generations, 'ulamā have engaged in *ijtihād* in various ways to overcome a range of interpretive challenges that arise when the sacred texts appear to be vague or ambivalent in their guidance.

The chapter examined various *ijtihād* methodologies employed by the *fuqahā'* and 'ulamā throughout the history of Islamic law. These methodologies encompass *ijtihād bayānī*, the intellectual effort of interpreting passages from the Qur'an and hadith traditions, and *ijtihād qiyāsī*, which employs analogical reasoning to extend rules deduced from the Qur'an and hadith collections to new cases exhibiting similar attributes and contexts to established legal precedents. The study also examines *ijtihād istiṣlāhī*, an intellectual effort focused on community interests. While a detailed examination of these *ijtihād* categories falls beyond the scope of this study, the chapter nonetheless illustrates the 'ulamā's creativity in addressing the familial, social, and spiritual challenges of their time. However, by the eighteenth century, this dynamism and creativity lost momentum when confronted with the intellectual and imperial challenges posed by an enlightened Europe.

Within the context of Imperial Europe's efforts to assert control over its colonised territories, this chapter explored the role of orientalists who were commissioned to gather information about the religious beliefs and cultural practices of these colonised communities. Among these orientalists, Franz Joseph Schacht stands out in the twentieth century. His *closure of the gates of ijtihād* theory proposed that by the end of the tenth century, the human element of *ijtihād* in Islamic law-making had eroded. Schacht argued that this erosion marked the onset of *taqlīd*, a period of rigid adherence to the Sunni legal traditions. This chapter analysed how Schacht's theory not only served Europe's imperial ambitions to supplant the influence of modernist 'ulamā by shaping the beliefs and practices of the

Muslim masses, but also provided traditionist ‘ulamā with a rationale to suspend their *ijtihād* as a precaution against Europe’s secular philosophies and the preservation (*ḥifz*) of their religious traditions.

This chapter revealed how traditionist ‘ulamā’s endorsement of *taqlīd* as a religious and cultural philosophy help formalise the authority of the Sunni legal schools among the Muslim masses, as well as curtailing dissent among the ‘ulamā class. Modernist ‘ulamā who called for the re-engagement of *ijtihād* in Islamic law-making were maligned as heretics, deceivers, and associates of orientalists.

The chapter examined efforts made by Wael Bahjat Hallaq and Taha Jabir al-‘Alwani to correct the misconception among Sunni Muslims that that *the closure of the gates of ijtiḥād* meant the suspension of independent reasoning in Islamic law making. They explained that the term had been employed by ‘ulamā for centuries to denote an ‘ālim’s exhaustion of their intellectual endeavours for a particular case. Nonetheless, the institutionalisation of *taqlīd* since the nineteenth century had stymied the evolution of Islamic legal thought for generations to come, including for Muslims in Britain in the twenty-first century.

While some scholars have argued that shari’a councils embody “a modern-day expression of *ijtiḥād*” in Britain that emerged out of necessity, the findings of this study indicate that British Muslims aspiring to live in accordance with Shari’a seek to reconcile their lives with their Islamic legal and cultural traditions. This chapter delves into the aspirations of first-generation British Muslim parents who strive to preserve the ethnic, cultural, and religious traditions of their British-born children by urging them to marry partners from their home country. This aspiration for continuity (*istiṣḥāb*) of tradition is deeply ingrained in how first-generation British Muslims perceive their heritage.

Similarly, British-born Muslims who feel alienated by the cultural norms and religious expectations of their elders also seek to live their lives in accordance with a “more authentic” form of

Islam. This fortitude to maintain the continuity of their Islamic tradition in postmodern secular Britain lies at the core of the Islamic legal framework that developed in the country, creating favourable conditions for the establishment of shari'a councils.

As settled communities in Britain, some Muslims have been overwhelmed by the domestic, social, and ideological challenges of life in a secular society. The first-generation Muslims' aspiration to preserve their families' bloodlines through transnational marriages has led to "isolation and non-communication" among British Muslim families.⁶⁴¹ In response to these domestic challenges, Muslims turn to their 'ulamā, the custodians (*huffāz*) of their Islamic legal traditions. Even British Muslim women, a group whom many in Britain assume to be the self-immolating victims of Islamic law,⁶⁴² seek the support of the country's 'ulamā to resolve marital disputes in ways that honour their Islamic legal traditions.⁶⁴³

Nevertheless, 'ulamā in Britain are cautious in offering advice to Britain's Muslims so as not to break Britain's laws or face any potential backlash from their Islamic legal peers based overseas. Despite accusations that the British establishment and judiciary have ignored the requests of Muslim women for assistance with their Islamic family matters, 'ulamā in Britain have stepped up and established shari'a councils to provide the Islamic legal services these women are demanding.⁶⁴⁴

⁶⁴¹ Ahmed, p. 81.

⁶⁴² Samia Bano, *Muslim Women and Shariah Councils*, 2012 edition (Houndsmill, Basingstoke, Hampshire ; New York, NY: Palgrave, 2012), p. 261; Bano, *Muslim Women and Shariah Councils*, p. 280.

⁶⁴³ Shah-Kazemi, p. 68.

⁶⁴⁴ Siddique Patel, 'The Role of Shariah Councils in England', *Family Law*, Lexis Nexis, 2016 <https://www.familylaw.co.uk/news_and_comment/the-role-of-shariah-councils-in-england>.

PART 3

ANALYSIS OF THE DATA

Chapter 6: The Formative Years of Shari'a Councils in Britain

6.1 Introduction

This chapter seeks to provide answers to one of the six key questions posed in this study: What insights do the 'ulamā provide regarding the formative development of shari'a councils in Britain? Drawing on the methodology of Informed Grounded Theory, authors such as Elham Manea,⁶⁴⁵ John R. Bowen,⁶⁴⁶ and Shah-Kazemi⁶⁴⁷ have provided overviews of the establishment of two of Britain's earliest shari'a councils: the Islamic Sharia Council in Leyton and the Muslim Law (Shariah) Council in Ealing, West London. Bowen's work also offers insight into the tensions arising between Britain's conservative 'ulamā, who adhere to a Salafi interpretation of Islamic law, and the Egyptian 'ālim, reformer, community activist and advocate for interfaith dialogue, Muhammad Aboulkhair Zaki Badawi (1922-2006 CE).⁶⁴⁸

The insights gleaned from the literature concerning the development of the Islamic Sharia Council and the Muslim Law (Shariah) Council serve as a starting point for a grounded theory analysis of the data collected for this study. During the memoing and line-by-line coding stage of the analysis, several initial codes emerged from the transcriptions, including "Zaki Badawi," "Badawi," "Islamic Sharia Council," "ISC," "Muslim Law (Shariah) Council," "MLSC," "Mosques and Imams Council," "London's Central Mosque," "Islamic Cultural Centre," and "ICC."

6.2 Prof Mohammed Aboulkhair Zaki Badawi (1922-2006)

Chapter 4 of this study investigated the immigration and settlement patterns of Muslims in Britain. It highlighted how the legal hegemony of the British state over its citizens limits the support available to Muslims in effectively addressing their spiritual, domestic, and social challenges.

⁶⁴⁵ Manea, pp. 97–98.

⁶⁴⁶ John R. Bowen, pp. 54–62.

⁶⁴⁷ Shah-Kazemi, pp. 9–10.

⁶⁴⁸ Abdal Hakim Murad, 'Unique Man for Difficult Times', *Q-News*, February 2006, p. 39.

Consequently, British Muslims have two options: the first involves campaigning for the inclusion of Islamic family legal provisions within the existing English and Welsh legal framework. The second option entails seeking the advice of Britain's 'ulamā, with some being instrumental in establishing private Islamic family legal services within Britain's Islamic centres and mosques. These informal faith-based services gradually evolved into what is now commonly known as shari'a councils. This evolution was led by Mohammed Aboulkhair Zaki Badawi. 'Ālim 1.1 recalls:

When Prof Badawi became the Director of London Central Mosque in 1976 or 77, something like that...many women came to Central Mosque to see him, telling him 'My husband does not behave well. I would like a divorce.' And some of them went to the court and got a decree nisi or a decree absolute, but still say "I am not satisfied, I want an Islamic divorce." So, this was the main reason for the shari'a council in London's Central Mosque.⁶⁴⁹

In an edited work, Badawi assessed the challenges faced by British Muslims and outlined his approach to addressing these issues during his tenure as the chief imam of London Central Mosque.

A common problem was that you get a woman seeking a divorce in the courts and obtaining it. She becomes therefore eligible for marriage in accordance with the civil law, but her husband has not given her a talaq which is the prerogative of the husband within an ordinary contract of marriage, so the woman becomes unmarried according to the civil law but still married according to the Sharia law.⁶⁵⁰

Before his arrival in Britain in 1976, Badawi served as a Research Professor at the Hajj Research Centre, affiliated with King Abdulaziz University (KAU) in Jeddah, Saudi Arabia. Between 1977 and 1978, the Vice-Chancellor of KAU appointed Badawi as the director of the Islamic Cultural Centre (ICC) and chief imam of its affiliated mosque, London's Central Mosque.⁶⁵¹ During his tenure, Badawi made significant administrative reforms and expanded the range of services offered by the ICC. Moreover, he adopted an inclusive approach, allowing individuals from all backgrounds to access London's Central Mosque without prejudice.

⁶⁴⁹ 'Ālim 1.1.

⁶⁵⁰ Zaki Badawi, 'Muslim Justice in a Secular State', in *God's Law versus State Law. The Construction of an Islamic Identity in Western Europe*, ed. by Michael King (London: Grey Seal, 1995), pp. 73–80 (p. 77).

⁶⁵¹ Fadumo Mohamed, *Prof Zaki Badawi's Curriculum Vitae* (Muslim College, London, UK: Prof Dr M.A Zaki Badawi, 2003).

He [Badawi] was the first imam of a prominent mosque to invite leaders of other faith communities ‘for tea and theology – whatever they prefer.’⁶⁵²

Badawi successfully elevated the public profile of London’s Central Mosque and the ICC, highlighting their significant roles within Britain’s cultural and religious landscape. Serving as the chief imam of an important place of worship situated in the nation’s capital, Badawi strategically leveraged his executive position to improve the perception of Islam within the British establishment, mainstream media, the general public, and, most notably, among British Muslims:

He [Badawi] was a visionary... his vision was very wide, and he wanted people to be realistic. You know.... to have an open mind and not compromise on the basics... there is always scope for compromise. He [Badawi] was against those whose vision was very limited, limited thoughts about Islam and Muslims who wanted [them] to live separately from all other communities [in Britain] just to be in ghetto and having funny ideas of – you know living in the past, [lets] just sum it up, they are living in [the] past.⁶⁵³

Badawi’s visionary approach was complemented by his pragmatic mindset, allowing him to intuitively address the needs of his congregation. As the director of the ICC, he was an effective community strategist, adeptly leading meetings that brought together ‘ulamā, community activists, faith leaders, politicians, and dignitaries. Their collaborative efforts were directed towards advancing the welfare of Britain as a whole and ensuring a prosperous future for Muslims in the country. Badawi...

...recommended self-scrutiny, and a respectful engagement with representatives of the dominant civilisation. Only thus, he [Badawi] explained, could the word of God be made available to those who would be only repelled by abrasiveness.⁶⁵⁴

Under Badawi’s guidance, Britain’s ‘ulamā benefited from both his leadership and expertise. He proactively arranged meetings with ‘ulamā to explore strategies to “resolve the [marital] dispute without breaking either the Sharia or the law.”⁶⁵⁵ Badawi and the ‘ulamā who supported his efforts assessed a range of Islamic mediation approaches, including an analysis of the Islamic legal methods and organisational structure of India’s dūr ul-qazā. Badawi also sought advice from civil legal

⁶⁵² Fuad Nahdi, ‘Obituaries: Zaki Badawi: Grand Mufti of Islam in Britain’, *The Independent*, 27 January 2006.

⁶⁵³ ‘Ālim 1.1.

⁶⁵⁴ Murad.

⁶⁵⁵ Zaki Badawi, pp. 77–78.

practitioners in Britain, modifying their methods to align with the religious and cultural proclivities of British Muslims.⁶⁵⁶

Capitalising on his position as an ‘ālim and his executive role at the ICC, he successfully established an Islamic family counselling service within the mosque’s premises. This initiative effectively brought together ‘ulamā from diverse Sunni legal schools and theological traditions. The launch of the ICC’s Islamic family counselling service garnered an overwhelmingly positive response from British Muslim women. Despite obtaining civil divorces from English county courts, these women found their ex-husbands lingering in their spiritual periphery, keeping them bound in limping marriages. Badawi explained:

He [the husband] leaves the woman hanging there, unable to remarry, because in conscience she does not want to challenge the law of Islam because she is a committed Muslim or because she is frightened as a Muslim from doing so. Also, socially she does not want to lose face and honour in her community by marrying someone else when she is still married in the eyes of God.⁶⁵⁷

Badawi’s efforts - his ijtihād - were primarily aimed at empowering British Muslims. He intentionally refrained from using his time, energy, and influence as one of Britain’s prominent religious leaders to advance the interests of specific individuals or lobbying groups:

I don’t want the Muslim position focused on an individual but on the concept of Islamic scholarship.⁶⁵⁸

When asked why he disliked being referred to as “Britain’s unofficial Grand Mufti”,⁶⁵⁹ Badawi shared:

I never claimed leadership, I would not claim to speak for the Muslims in this country at all. This is why I have kept myself away from all the organisations. In Islam, anyone who asks for a job should be denied it. But the problem in our community is that everyone wants to be a leader. This is wrong.⁶⁶⁰

⁶⁵⁶ John R. Bowen, pp. 62, 128.

⁶⁵⁷ Zaki Badawi, pp. 77–78.

⁶⁵⁸ ‘Zaki Badawi — Unofficial Leader of UK’s Muslims’, *Dawn.Com*, 2003 <<https://www.dawn.com/news/77912>>.

⁶⁵⁹ ‘Ālim 1.1.

⁶⁶⁰ emel, ‘Dr Zaki | Feature Articles | Features | Nov / Dec 2003 | Emel - the Muslim Lifestyle Magazine’, *Emel*, 2003 <http://www.emel.com/article?id=2&a_id=1454>.

Badawi also observed that non-profit organisations and lobbying groups, who claim to campaign for the needs of British Muslims, often fail to meet their stated objectives. Instead, they tend to prioritise their own organisational agendas, influenced by political, ideological, or theological factors, rather than actively advocating for the welfare of British Muslims. In Badawi's words:

I don't think they can claim to represent all Muslims. But you do need a group that the authorities can talk to...it is a pity that they are [competing for government attention]. This is because our community has not yet developed the sense of service for service's sake. But it will come.⁶⁶¹

'Ālim 1.1 goes further to share the consequences of Badawi's discontent with British Muslim representative bodies:

He [Badawi] thought organisations such as the MCB,⁶⁶² MAB⁶⁶³ and UKIM⁶⁶⁴ were not representing [British] Muslims. He was opposed [to them]. He did not accept them. Later on, when one such group came to meet him, he voiced his opposition and then they called him [Badawi] the illegitimate child of Salman Rushdie or a *čhāplūsī*⁶⁶⁵ [stooge] of the British government. The whole organisation came after him.⁶⁶⁶

In his role as the director of the ICC, Badawi called for British 'ulamā to prioritise the interests (*mašālih*) of Britain over their personal affiliations with specific Sunni legal schools, theological sects, or special interest groups. Badawi's proposition encountered resistance and disapproval from conservative 'ulamā within the ICC committee. Badawi, as a non-conformist 'ālim who embraced a pragmatic and progressive approach to Islamic law, faced criticism and marginalisation from Britain's conservative 'ulamā. Consequently, in 1981-2, the ICC's trustees relieved Badawi of his directorial responsibilities, although he retained his role as chief imam of London's Central Mosque.

After Badawi's demotion, he was no longer responsible for chairing the Islamic family counselling service at the centre. This responsibility was assumed by the newly appointed Saudi

⁶⁶¹ emel.

⁶⁶² Muslim Council of Britain.

⁶⁶³ Muslim Association of Britain.

⁶⁶⁴ UK Islamic Mission.

⁶⁶⁵ "چاپلوسی", in Platts, p. 884.

⁶⁶⁶ 'Ālim 1.1.

director of the ICC. One of the initial tasks undertaken by the new director was the transformation of the ICC's Islamic family counselling service into an independent shari'a council with its own dedicated premises. 'Ālim 3.1 provides insights into the functioning of this new shari'a council:

We have not come out of the blue ... there is a need in the Muslim community in Britain to have such type of council that can guide them in Islamic matters, in Islamic affairs. It [the council] can solve their problems. And among the problems is the matrimonial problems as well. So, this is what the fuqahā' said that it is the duty of the Muslim community to regularise their affairs, by themselves in a non-Muslim country, but appointing themselves some people who can solve their problems like qadi and this and that. So, this means that this authority comes from the grassroots itself and it would be maintained by the fuqahā' ... In 1982, there were representative of ten Islamic centres⁶⁶⁷ they got together in Birmingham, in Jamia mosque in Birmingham in 1982. So, these Islamic centres of course they have the link with the grassroots themselves. And then the people have accepted what the people have decided. So, these representatives of the ten Islamic centres, they have established this Islamic Sharia Council.⁶⁶⁸

In contrast to Badawi's emphasis on prioritising the interests (maṣālih) of both Britain's Muslim minorities and wider British society, the newly-appointed Saudi director of the ICC facilitated the establishment of Britain's first sharia council from a literalist perspective. While 'Ālim 3.1 recognised the religious needs (ḍarūriyāt) of British Muslims, the 'ālim argued that these needs could be most effectively addressed by adhering strictly to the guidance provided by the Qur'an and hadith traditions. 'Ālim 3.1 maintained that the foundation of shari'a councils finds precedent in the Qur'an (4:59), which advises Muslims to establish Islamic legislative authorities (*ūlū al-amr*) within their communities, entities from which they can seek spiritual, moral, and legal guidance:

You who believe, obey God and the Messenger, and those in authority [*ūlū al-amr*] among you. If you are in dispute over any matter, refer it to God and the Messenger, if you truly believe in God and the Last Day: that is better and fairer in the end.⁶⁶⁹

⁶⁶⁷ Details of the ten Islamic centres are listed on: Islamic Sharia Council, 'Islamic Sharia Council Website → About Us → The Founding Organisations / Centres', *Islamic Sharia Council Website, Leyton, London, 2020* <<https://www.islamic-sharia.org/aboutus/>>.

⁶⁶⁸ 'Ālim 3.1.

⁶⁶⁹ Haleem, p. 56.

The term *ūlū al-amr* consists of two parts. The first part, *ūlū*, can be translated as “possessors” or “owners”.⁶⁷⁰ The second part, *amr*, refers to individuals who hold authority, instruct, commission, take charge or are entrusted with responsibilities.⁶⁷¹ When combined, the phrase *ūlū al-amr* refers to those entrusted with or commissioned for authority. Abdullah ibn al-Abbas (619-687 CE), a companion of the Prophet Muhammad, identified the *ūlū al-amr* as an exclusive assembly of fuqahā’ and ‘ulamā specialising in Islamic law.⁶⁷² Modernist ‘ulamā, such as Muhammad ‘Abduh and Muḥammad Rashīd Riḍā (1865-1935 CE), argued that members of *ūlū al-amr* encompass community leaders who prioritise what is in society’s best interest. According to these modernist ‘ulamā, the *ūlū al-amr* can include individuals from various fields, such as academics, economists, entrepreneurs, law enforcement officers, merchants, military personnel, physicians, teachers and even parents.⁶⁷³

The methods by which Muslims appoint their authorities, such as the *ūlū al-amr*, are evident in the practices of the Prophet Muhammad and his political successors, who consulted a body of experts known as the *shūrā*.⁶⁷⁴ The term *shūrā*⁶⁷⁵ conveys the notion of seeking counsel or advice from individuals who understand the societal consequences of decisions made by those in positions of authority. The establishment of a *shūrā* as a consultative body for community leaders finds its precedent in the Qur’an (42:38):

[Those who] respond to their Lord; keep up the prayer; conduct their affairs by mutual consultation [shūrā]; give to others out of what We have provided for them;⁶⁷⁶

In summary, the *ūlū al-amr* provide religious leadership for Muslim societies, while the *shūrā* serves as a social and political consultative process that pre-dates Islam, empowering leaders in any

⁶⁷⁰ “اولو”, in Wehr, p. 35.

⁶⁷¹ “امر”, in Wehr, p. 26.

⁶⁷² Kamali, p. 236.

⁶⁷³ Taizir, pp. 35–38.

⁶⁷⁴ Abū Dā’ūd al-Sijistānī, ‘General Behavior (Kitab Al-Adab). Chapter: Regarding Consultation.’, in *Sunan Abī Dāwūd*, trans. by sunnah.com, 43 (Arabic), 42 (English) vols (California, USA.: USC-MSA), 43 (ARABIC), HADITH 356; 42 (ENGLISH), HADITH 5109 <<https://sunnah.com/abudawud:5128>>.

⁶⁷⁵ “شورى”, in Wehr, p. 492.

⁶⁷⁶ Haleem, p. 314.

community to make well-informed decisions for the betterment of society. The significance of *shūrā* was recognised by the Prophet Muhammad and his community and was subsequently affirmed through divine revelation. At present, there is a consensus among the ‘ulamā that *shūrā* holds the status of a communal obligation (*farḍ al-kifāya*) ordained by God upon the Muslim community.⁶⁷⁷

‘Ālim 3.1 considers shari’a councils to be the modern manifestation of the *ūlū al-amr* whose members comprise of prominent figures in the British Muslim community, such as community leaders, imams, and mosque executives. These individuals are entrusted with the responsibility of assuming Islamic leadership roles, and their appointments are made by the *shūrā* of the British Muslim community:

This authority comes from this way, from the grassroot who are represented by their leaders. This is how our shari’a council was established. And those people who started it, they were in that meeting, and they had been selected to be on the panel of the shari’a council – all the post from president to secretary came from that meeting. And later, it kept on developing, that if someone, for example by death, he is no more there. Then you have to ... the panel of the scholars are going to select someone else from the community to replace him.⁶⁷⁸

In contrast to ‘Ālim 3.1, who perceives shari’a councils as the *ūlū al-amr* for British Muslims, Badawi viewed these councils as a provisional measure to assist Muslims in transitioning from one cultural context to another. Badawi’s views were influenced by his commitment to improving the social condition of British Muslims through education and personal growth, all for the common good (*maṣlaḥa*) of British society.⁶⁷⁹ Badawi envisioned a role for Britain’s ‘ulamā as consultants for the British judicial system. His vision entailed the appointment of ‘ulamā by British courts to mediate disputes involving Muslim couples or to serve as expert witnesses. In this capacity, ‘ulamā would clarify aspects of Islamic family law relevant to the case, providing valuable insights for judges and juries:

⁶⁷⁷ Ahmad Hasan, *The Early Development of Islamic Jurisprudence*, p. 39.

⁶⁷⁸ ‘Ālim 3.1.

⁶⁷⁹ M. A. Zaki Badawi, ‘The Challenge of Living Together’, Learning to Live Together Lecture Series (Liverpool: John Moores University: The Matheson Trust / Second Spring, 2005), p. 2.

Such a body [shari'a councils] could effectively sanction the creation of institutions such as Muslim legal committees with effective moral and religious authority to compel compliance. Such bodies, once in existence, will almost certainly help the British Bench in resolving issues of dispute amongst Muslims pertaining to personal status.⁶⁸⁰

Badawi's vision for the future aligns with 'Ālim 1.2's perspective. Both believe that the lack of legal recognition for Islamic family law in Britain hinders community cohesion efforts:

If you create a parallel [legal] institution where Muslims go to one institution and the rest of community go to another, we have two communities going in two different directions. We should all be going in the same direction. That is the way of community cohesion.⁶⁸¹

Like Badawi, 'Ālim 1.2 advocates for the inclusion of 'ulamā into the judicial system, offering their expert counsel to solicitors, barristers, judges, and British Muslim families. However, progress towards integrating this Islamic consultative role into Britain's courts has been slow, leaving the religious needs of British Muslims remaining unaddressed. In the absence of legal alternatives, especially for British Muslim women trapped in limping marriages, shari'a councils will continue to offer their services. 'Ālim 2.1 elaborates:

This is the reality because, for example, a Muslim husband, married [according] to his own religion and beliefs with a Muslim girl. But for some reason, they decide to divorce. The husband may not be ready to divorce. Now, [the] Muslim British girl, where should she go? If she is going to the civil court in the UK, they don't recognise her [Islamic] marriage, they don't get involved. They don't issue any [Islamic] divorce or anything, because they are saying, 'We don't recognise your [Islamic] marriage.' Although she is married, according to her religion, now where is she going to go? From here there was a need for an Islamic shari'a council to help British Muslim girls to maintain these things, her faith as well as her needs. If British court, if they support [British Muslim women] in this area, for Islamic divorce or like this, I think there would be no need for a separate Islamic shari'a council.⁶⁸²

Badawi's efforts to involve British 'ulamā in British courts were hindered when he was removed from his role as director of the ICC. Nevertheless, due to his standing as a prominent religious

⁶⁸⁰ M.A. Zaki Badawi, *Islam in Britain* (London: Ta-Ha Publishers Ltd, 1981), p. 16.

⁶⁸¹ 'Ālim 1.2.

⁶⁸² 'Ālim 2.1.

leader in Britain, the ICC trustees permitted Badawi to retain his position as the chief imam of London's

Central Mosque:

He [Badawi] had a very fixed target, anti-Saudi, to hold off [the] Saudi grip on Islam, nobody knew what was happening in London's Central Mosque ... He remained faithful to the mosque and to the audience and since he was qualified, you know, he could even deliver the sermon on Friday, he can meet any delegation from anywhere and he'd speak to them and convince them and impress them.⁶⁸³

From 1981 to 1984, Badawi used his position as chief imam of London's Central Mosque to curb the influence of conservative 'ulamā over the mosque's congregants. He bolstered his public profile by actively participating in televised and radio debates, participating in various Islamic and inter-religious panels, serving on executive boards, and launching and procuring funds for collaborative projects with religious and British organisations. More notably, Badawi attracted patrons, including the World Islamic Call Society (WICS), a charitable organisation established in Libya in 1972. WICS promotes "a moderate, Sufi-tinged version of Islam as an alternative to the strict Wahhabism that Saudi Arabia was spreading."⁶⁸⁴ With financial support from WICS, Badawi devised a strategy to depart from London's Central Mosque and train a new generation of British Muslim faith leaders:

Badawi said that he was telling the committee in London's Central Mosque that we need Imams who are trained here, in the UK. Because these Imams [those of the 1970s/1980s] they do not know English very well. They are not able to communicate with the new generation of British Muslims. So, he wanted to start a school to train them. Nobody in London's Central Mosque committee listened to him. Nobody paid attention. Prof Badawi then proposed the idea to the World Islamic Call Society, and of course, since it was an institution that was going to challenge the Saudi's, [the] World Islamic Call Society agreed. They said, "OK. Fine. Find a place."⁶⁸⁵

Having secured funds from an international organisation that advocates a "Sufi-tinged version of Islam," Badawi reached out to Britain's Sufi Muslim population, specifically focusing on the Barelvi and Turkish communities. To consolidate Sufi support in the country, Badawi organised a national

⁶⁸³ 'Ālim 1.1.

⁶⁸⁴ 'Special Report: Gaddafi's Secret Missionaries', *Reuters*, 29 March 2012.

⁶⁸⁵ 'Ālim 1.1.

conference in Wembley in 1985, which brought together imams and mosque leaders from across Britain:

The conference was partly funded by the World Islamic Call Society, but mainly by members of Barelvi mosques in Britain.⁶⁸⁶

Although Badawi extended invitations to imams and mosques across Britain to attend the Wembley conference, the majority of attendees were Barelvi 'ulamā, who subsequently nominated Badawi as the inaugural chair of the Imams and Mosques Council (UK). Encouraged by the support of Britain's Barelvi Muslim community, his esteemed reputation within the British establishment, and financial backing from WICS, Badawi relinquished his role as chief imam of London's Central Mosque in 1984. He then assumed the role of chair of the Imams and Mosques Council (UK) and became the founding principal of the Muslim College, a postgraduate Islamic seminary based in West London:

When Badawi founded the Imams and Mosques Councils and attained a premises for the Muslim College, London, he left ... of course, the older players who remained at Central mosque, they took over all his [Badawi] work, they controlled it. So, after Badawi left, in the beginning there were two councils, the Islamic Sharia Council in Leyton, and the Muslim Law Shariah Council.⁶⁸⁷

6.3 Islamic Shari'a Council and the Muslim Law (Shariah) Council

Based on interviews with the 'ulamā, two shari'a councils were established as a result of the Islamic Cultural Centre's (ICC) Islamic family counselling service. The first shari'a council emerged shortly after Badawi's removal from his directorial role in 1981-82. Under the Saudi directorship of the ICC, representatives from ten Islamic centres and mosques across Britain, who were associated with either the Deobandi, Ahl ul-Hadith, or Salafi movements, helped to establish the Islamic Shari'a Council in Leyton in 1982. The second council, known as the Muslim Law (Shari'a) Council, was established following a two-day conference organised by Badawi in October 1985. Maulana

⁶⁸⁶ 'Ālim 1.1

⁶⁸⁷ 'Ālim 1.1

Muhammad Shahid Raza (1950-2022 CE), who served as the executive secretary of the Muslim Law (Shari'a) Council at the time of writing this thesis, provided insights into its inception:

It [the conference] lasted two days and had 250 people: imams, mosque officials, scholars and they agreed that there should be a shari'a council, like the dar ul-qaza in India. The major problem was that none of us knew how to do this, there was no precedent ... The Deobandis were reluctant to go along, not for any theological reasons but because of general suspicion, but eventually they formed their own council.⁶⁸⁸

Mufti Abdul Qadir Barkatullah, a graduate of the Dār al-'Ulūm of Deoband and an 'ālim at the Islamic Sharia Council, presents an alternative account of how Britain's shari'a councils were established. In contrast to Badawi's objection, Barkatullah defends the steps taken by ICC and their efforts to set up the Islamic Sharia Council:

When we tried to set up a meeting to set common procedures, here at the London Central Mosque, Zaki Badawi had already moved to Ealing, and [was] accepted by the Barelvis, and he would not come to the meeting because he saw that the ISC [Islamic Sharia Council, Leyton] was dominated by the Salafis.⁶⁸⁹

Based on interviews with the 'ulamā, the perennial conflict between the Barelvi and Deobandi movements from the Indian subcontinent has extended its influence onto shari'a councils. The Deobandis, Salafis, and Ahl ul-Hadith movements assumed leadership roles at the Islamic Sharia Council, while the Barelvis and Alumni of Al-Azhar University managed and established the Muslim Law (Shariah) Council. Given the involvement of various pan-Islamic movements within these councils, the researcher inquired into their funding sources to determine whether these movements offered financial support or if the councils were funded through fees charged to their clients:

[The shari'a council] is there to fulfil the needs of the community and is supported by the community by charging an administration fee for its services ... we have to take a fee because it involves a lot of correspondence, telephone calls and this and that.⁶⁹⁰

⁶⁸⁸ John R. Bowen, p. 62.

⁶⁸⁹ John R. Bowen, p. 62.

⁶⁹⁰ 'Ālim 1.1.

Although ‘ulamā are aware of the need for shari’a councils services among British Muslims, they recognise that many of their clients are young, poor, and typically come from working-class backgrounds. Without family support and approval, most young British Muslims do not have the financial resources to resolve their marital disputes in ways their families would approve. Due to lack of funds and the need to preserve the religious integrity of Muslim families in Britain, ‘ulamā and staff of shari’a councils work voluntarily and hold other jobs for their income:

We like to do many things, but we lack resources. Ideally, we need full-time people to do this. I don’t have the time to do everything and others are just volunteering. We have to do other jobs for our livelihood ... our community in Britain is still young. Most young Muslims are unemployed or in low-paying jobs. Most Muslim women seeking a divorce were entirely dependent on their husband[s] and have no job. We need to take everything into account and be realistic about what we can do.⁶⁹¹

With limited resources, inadequate funding, and staff working on a voluntary basis, shari’a councils are limited in the services they can offer to Britain’s Muslims. To address these limitations, ‘ulamā discussed some of the efforts made by British Muslims to foster a constructive relationship with the government. These efforts include those made by the *Union of Muslim Organisations*,⁶⁹² as well as the *Register Our Marriage* campaign led by Aina Khan, which is “lobbying for reform of the Marriage Act 1949 for all religious marriages to be legally registered.”⁶⁹³

In order for Badawi’s vision of involving British ‘ulamā as expert witnesses in the British judiciary to be realised, it is crucial for a meaningful dialogue to begin between the ‘ulamā and British legislators. This dialogue should clarify their mutual expectations and highlight areas of agreement and disagreement pertinent to their collaboration. However, rather than fostering an accord, there seems to

⁶⁹¹ ‘Ālim 1.2.

⁶⁹² Pearl and Menski, p.58 & p.69.

⁶⁹³ Aina Khan, *Register Our Marriage: Briefing by Aina Khan OBE, Solicitor* (London: Register Our Marriage, 2019) <https://www.academia.edu/35204079/BRIEFING_on_Register_Our_Marriage_ROM_campaign_by_Aina_Khan_17_November_2017_Amended_by_MSP_pdf>.

be a growing divide between British courts and shari'a councils, with allegations of human rights violations contributing to heightened tensions between these two legal institutions.⁶⁹⁴

6.4 Conclusion

This chapter explored the formative years of shari'a councils in Britain with a particular focus on the contributions of Mohammed Aboulkhair Zaki Badawi. It highlighted the challenges experienced by British Muslims in addressing their spiritual, familial and social concerns, and how the legal hegemony of the British state restricts support for Muslims in dealing with these challenges. The chapter outlined how, by the 1980s, the concerns of British Muslims led to the emergence of informal Islamic family legal services to resolve their marital disputes and fulfilling the religious needs of their community. These services gradually evolved into shari'a councils, with Badawi playing a pivotal role in this development.

During his tenure as director of the Islamic Cultural Centre and chief imam of London's Central Mosque, Badawi recognised the plight of Muslim women in Britain. Despite having obtained civil divorces, these women still required Islamic divorces in order to sever the bonds of their limping marriages. Sympathetic to the spiritual and social struggles of these women, Badawi took the initiative to establish an Islamic family counselling service within London's Central Mosque. This initiative brought together 'ulamā from diverse Islamic legal and theological traditions, providing essential support to British Muslim women. The success of this counselling service paved the way for the creation of shari'a councils.

The chapter illustrated how the nascent shari'a councils which emerged in Britain during the 1980s were shaped by the ongoing conflicts among pan-Islamic movements originating from South Asia. It highlighted how the establishment of the Islamic Sharia Council in 1982 was influenced by the

⁶⁹⁴ Siddiqui and others, p. 9.

Deobandi, Ahl ul-Hadith, and Salafi movements, while the emergence of the Muslim Law (Shariah) Council in 1985 was forged from a Barelvi and Azhari alliance.

Furthermore, the chapter revealed that while Badawi considered shari'a councils a necessary measure that would facilitate the integration of Muslims into British society, his vision extended beyond the councils themselves. He advocated for the inclusion of 'ulamā in the British judicial system, where they could offer their expertise as mediators or expert witnesses in legal proceedings involving Muslim couples. Badawi believed that shari'a councils served as a bridge between Britain's Muslim communities and the rest of society, and that 'ulamā could serve Britain's interests (maṣāliḥ) by educating British legal practitioners about the role of Islamic family law in the lives of some Muslim citizens. Badawi's pragmatic mindset and dedication to the welfare of British Muslims also helped to improve the image of Islam within the British establishment and society as a whole.

The chapter also revealed how Britain's conservative 'ulamā, particularly those of the Deobandi, Ahl ul-Hadith, and Salafi persuasions, found Badawi's emphasis on maṣlaḥa as the underlying principle of the work of Britain's shari'a councils objectionable. These conservative 'ulamā believe that the laws of God supersede all human laws, and they maintain that the solutions to the spiritual, domestic, and social challenges besetting British Muslims are found in the Qur'an, the authentic hadith collections, and the classic works of Islamic law; in contrast, Badawi believed that shari'a councils should primarily serve the needs of British Muslims. The chapter disclosed how Britain's conservative 'ulamā claim that these councils emerged from the *shūrā* (consultative body) representing British Muslims and that the 'ulamā serving on these councils represent Britain's *ūlū al-amr* (Islamic legislative assembly).

Despite working in the interests of preserving the British Muslim identity and their traditions, shari'a councils face numerous challenges due to limited resources and funding, relying on the voluntary work of their 'ulamā and administrative team. Moreover, the gap between the British legal system and shari'a councils appears to be widening, with concerns often raised about potential human

rights violations and disadvantages faced by women in these councils. This chapter emphasises the importance of developing a constructive relationship between the British Muslim community and the government. Subsequent chapters will evaluate the extent to which the ‘ulamā of these councils and British lawmakers are working towards this constructive relationship. Chapter 10 explores the areas of agreement and disagreement between the Islamic and English legal systems. Chapters 7, 8, and 9 will examine the procedures, services, and underlying epistemological framework of these councils. Within these chapters, valuable insights are gleaned from the ‘ulamā, explaining their decision-making processes and their impact on women.

Chapter 7: Islamic Legal Precedents and Their Applications in Shari'a Councils

7.1 Introduction

This chapter aims to address one of the key questions for this study: How do clients apply for shari'a council services and how are their applications processed?

This chapter will be divided into two parts. The first part will provide an overview of the religious precedents (*uṣūl*) underlying the Islamic family legal services offered by shari'a councils. It will explore the rulings (*aḥkām*) and opinions (*fatāwā*) pertaining to Islamic marriage and divorces as described in the Qur'an, the Sunni hadith collections and the classic works of Islamic law.

The second part of this chapter presents an analysis of the qualitative and quantitative data in order to understand how shari'a councils process applications for their services and their day-to-day operational practices. The analysis employs grounded theory methods to examine transcriptions and closed-case files found in the shari'a councils' archives. Through this analysis, a range of initial codes emerged from the data, providing valuable insights into the councils' administrative processes. Notable codes include "faskh," "ḥilf," "ḥīla," "idda," "ijmā'," "īlā'," "kafā'," "khula," "kuf," "mahr," "nafaqa," "nikāḥ," "qasam," "ṣadāq," "talaq," "talaq tafwīz," "waḥsh," and "walī."

In addition to analysing the councils' Islamic divorce, marriage, and consultation services, the thematic analysis of the initial codes and transcriptions revealed several distinct themes emerging from the data. These themes include the preliminary procedures associated with talaq and khula applications, instances of Islamic divorces where the consensus of the 'ulamā was necessary, the presence of inter-legal and transnational challenges, the process by which the 'ulamā arrive at a consensus in specific cases, and the differences of opinion concerning the role of the walī.

Part 1: Islamic Legal Precedents

7.2 Islamic Marriage

In Islamic law, marriage is viewed as a civil contract between a man and a woman and is accorded the same legal status as other contracts formed under Islamic law.⁶⁹⁵ The Qur'an (30:21) characterises marriage as a civil union that not only pleases God, but also promotes peaceful coexistence on earth.⁶⁹⁶

According to Asma Lamrabet, the Qur'an (4:21) characterises marriage as an “intimate relationship” (*afḍā ba'dukum ilā ba'd*) and a “meaningful contract” (*mīthāq al-ghalīd*) between a man and a woman. The contract allows them to become intimate, procreate, and establish a formal relationship.⁶⁹⁷ Preserving the Muslim family and prioritising the well-being and identity of children are among the purposes of shari'a (maqāṣid ash-Shari'a). Consequently, marriage functions as a powerful social mechanism under Islamic law, legitimising and securing a child's status in society.⁶⁹⁸

According to a hadith tradition, the best way to demonstrate one's faith as a Muslim is to accept what God has ordained for them in the Qur'an (17:32), “Do not go anywhere near fornication: it is an outrage, and an evil path.”⁶⁹⁹ Furthermore, this conviction is reinforced by another hadith tradition:

To the young out there. Whoever can get married, get married, because it will help a man lower his roving eye and guard his modesty (i.e. controlling his sexual urges and refrain from committing fornication). Whoever is unable to get married, fast, as fasting diminishes a man's sexual urges.⁷⁰⁰

⁶⁹⁵ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?*, pp. 157–58.

⁶⁹⁶ Haleem, p. 258.

⁶⁹⁷ Asma Lamrabet, *What Are the Qur'anic Ethics of Islamic Marriage?* (Rabat, Morocco: Asma Lamrabet, 2019) <<http://asma-lamrabet.com/articles/what-are-the-qur-anic-ethics-of-islamic-marriage/>>.

⁶⁹⁸ Qur'an (60:12). Haleem, p. 81.

⁶⁹⁹ Haleem, p. 177.

⁷⁰⁰ Bukhārī, Muḥammad ibn Ismā'īl al-, '*Whoever Is Not Able to Marry, Is Recommended to Fast*', in *Ṣaḥīḥ Al-Bukhārī*, trans. by Sunnah.com, 97 Vols. (Arabic), 93 Vols. (English), (Sunnah.com), BOOK 67, HADITH NUMBER: 4 (ARABIC), BOOK 62, HADITH NUMBER: 4 (ENGLISH) <<https://sunnah.com/bukhari/67/4>>.

Presenting a Sunni orthodox description of the Islamic marriage (nikāh) contract, Mir-Hosseini

shares:

Classical jurists defined marriage as a contract of exchange whose prime purpose is to render sexual relations between a man and a woman licit. The contract is called “*aqd al-nikāh*” (literally “contract of coitus”). Regardless of how and by whom the marriage proposal is made, the contract itself has three essential elements: the offer (*ijāb*) by the woman or her guardian (*walī*), the acceptance (*qabūl*) by the man, and the payment of dower (*mahr*), a sum of money or any valuable that the husband pays or undertakes to pay to the bride before or after consummation.⁷⁰¹

Since the Qur’an characterises an Islamic marriage as a contract between a man and a woman,⁷⁰² the ceremony must be conducted before two adult witnesses,⁷⁰³ and the amount (*mahr-i-mussama/mahr-i-nāmā*) of the bridal-gift must be recorded on the Islamic marriage contract (*aqd al-nikāh/nikāh-nāmā*). The bridal-gift (*mahr/ṣadāq*) may be paid in full (*mahr-i-muajjal*), deferred by the wife (*mahr-i-mu’wajjal/mahr-i-ghayr muajjal*), or a combination of both deferment and payment.⁷⁰⁴

During the fieldwork for this study, the researcher found the ‘ulamā asking clients seeking an Islamic divorce to provide them with an Islamic marriage certificate. This requirement allows the ‘ulamā to verify whether the bridal-gift has been paid or deferred. The majority of Islamic marriage and divorce cases handled by shari’a councils primarily involve issues related to the payment or disputes concerning the bridal-gift.

7.2.1 The Bridal-Gift (*Mahr/Ṣadāq*)

In Islamic marriages, the provision of a bridal-gift (*mahr/ṣadāq*) is a mandatory requirement. The couple must mutually agree upon the amount of the bridal-gift prior to the Islamic marriage

⁷⁰¹ Mir-Hosseini, ‘Classical Fiqh, Contemporary Ethics and Gender Justice’, p. 80.

⁷⁰² Qur’an (4:21). Haleem, p. 52.

⁷⁰³ Qur’an (2:282). Haleem, pp. 25–26.

⁷⁰⁴ Qur’an (4:4). Haleem, p. 50.

ceremony (nikāḥ). The Qur'an emphasises that the bridal-gift should be discussed, agreed upon, paid and documented during the nikāḥ ceremony.⁷⁰⁵

According to the Hanafi, Shafi'i, and Hanbali legal schools, a marriage is deemed irregular (*fasid*)⁷⁰⁶ if the amount of the bridal-gift is not agreed upon in advance. To address this issue, these schools rely on a hadith tradition transmitted by Abu Dawud. The tradition recounts the story of a couple who married under the supervision of Prophet Muhammad without settling their bridal-gift. Unfortunately, the husband was fatally injured during a military expedition before they could resolve this matter:

When he was nearing his death, he said: The Messenger of God married me to so-and-so, and I did not fix a bridal-gift (ṣadāq) for her, nor did I give anything to her. I call upon you as witness that I have given my equitable share of the estate (in Khaybar) as her bridal-gift.⁷⁰⁷

Based on this hadith tradition, the Hanafi, Shafi'i, and Hanbali schools allow for the payment of an "equitable bridal-gift" (*mahr al-mithl*) by the husband if a couple consummates their marriage without settling their bridal-gift, thus removing any irregularities.⁷⁰⁸ Initially, the Maliki school considered such marriages invalid (*bāṭil*),⁷⁰⁹ but later revised its position to align with the other three Sunni legal schools.⁷¹⁰

7.2.2 The History, Etymology, and Difference Between *Mahr* and *Sadāq*

Give women their bridal gift (*saduqātihinna*) upon marriage, though if they are happy to give up some of it for you, you may enjoy it with a clear conscience.⁷¹¹

⁷⁰⁵ Qur'an (2:282), (4:4), (4:24).

⁷⁰⁶ "فاسد", in Wehr, p. 712.

⁷⁰⁷ al-Sijistānī, Abū Dā'ūd, '*Regarding One Who Married Without Specifying The Dowry And Then Died*', in *Sunan Abī Dāwūd*, trans. by Sunnah.com, 43 Books (Arabic), 42 Books (English), (Sunnah.com), BOOK 12, ḤADĪTH NUMBER:72 (ARABIC), BOOK 11, ḤADĪTH NUMBER: 2112 (ENGLISH). <<https://sunnah.com/abudawud/12/72>>.

⁷⁰⁸ Abū l-Walīd Muḥammad ibn 'Aḥmad ibn Rushd, *The Distinguished Jurist's Primer: Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid: V. 2*, trans. by Imran Nyazee, First edition, 2 vols (Reading, UK: Garnet Publishing Ltd, 1996), II, p. 31; Laleh Bakhtiar, *Encyclopedia of Islamic Law: A Compendium of the Major Schools* (Chicago, Illinois: Kazi Publications, 1996), p. 440.

⁷⁰⁹ "باطل", in Wehr, p. 509.

⁷¹⁰ Bakhtiar, pp. 440–41.

⁷¹¹ Haleem, p. 50.

The word *ṣaduqātihinna*, used in the Qur'an (4:4), is a third person, feminine, plural possessive adjective of the word *ṣadāqa*. The word *ṣadāqa* can be translated as a “charitable gift,” a “voluntary contribution of alms,” or a “freewill offering.”⁷¹² At its core, *ṣadāqa* means establishing a “friendship” through the act of gifting. In the context of marriage, the husband offers the bridal gift as a means of forging a bond of friendship with his wife.⁷¹³ The Qur'an employs various other words with different morphemes to describe the characteristics and purposes of the bridal-gift, including *ajr*,⁷¹⁴ which translates as “wage,” “stipend,” “emolument,” and “honorarium;” *farīda*,⁷¹⁵ which translates as a “sacred oath,” a “religious duty,” and a “statutory portion from a person’s estate;” and *naḥla*,⁷¹⁶ which translates as a “donation” or a “gift.”⁷¹⁷ All of these terms are used to describe the intention a groom should have when giving his bride her bridal-gift.

In contrast, the term “*mahr*” has its roots in pre-Islamic Arabia:

Among the pagan Arabs ... In the pre-Islamic period, the mahr was handed over to the walī, i.e., the father, or brother or relative in whose guardianship (walā') the girl was. Here the original character of the marriage by purchase is more apparent. In earlier times the bride received none of the mahr. What was usually given to the woman at the betrothal was the ṣadāq; the mahr, being the purchase price of the bride, was given to the walī.⁷¹⁸

With the emergence of Islam in seventh-century Arabia, the purpose of mahr among Arab marriages shifted from a tribute exchanged between a man and the father of the bride to a charitable gift given by the groom to his wife:

What jurists did was to modify the pre-Islamic “marriage of dominion” so as to accommodate the Qur'anic call for reforms to enhance women’s rights and protect them in marriage. Women became parties to, not subjects of, the contract, and recipients of the dower or marriage gift.⁷¹⁹

⁷¹² “صدقة”, in Wehr, p. 509.

⁷¹³ *Encyclopaedia of Islam (Mahk-Mid)*, ed. by P. Bearman and others, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), VI, p. 78.

⁷¹⁴ “اجر”, in Wehr, p. 5.; See Qur'an (4:24), Qur'an (28:27), Qur'an (33:50), Qur'an (60:10).

⁷¹⁵ “فريضة”, in Wehr, p. 706.; See Qur'an (2:237), Qur'an (4:24).

⁷¹⁶ “نحلة”, in Wehr, p. 947.; See Qur'an (4:4).

⁷¹⁷ Ahammad, Syed Sahid, (2016), ‘*A Critical Analysis of Dower (Mahr) in Islam*’, *IOSR Journal Of Humanities And Social Science*, 21.7, 86–91.

⁷¹⁸ Bearman and others, VI, pp. 78–79.

⁷¹⁹ Mir-Hosseini, ‘Classical Fiqh, Contemporary Ethics and Gender Justice’, p. 84.

The concept of the bridal-gift as a “statutory charitable gift” symbolising the marital union was adopted in Arab society under the guise of the mahr. Despite various approbative terms used in the Qur’an and hadith literature to describe the bridal-gift, the term *mahr* from the pre-Islamic era is still widely used today. Furthermore, the patriarchal interpretation of the pre-Islamic *mahr* was integrated into classic Islamic law, obscuring its original purpose as a “statutory charitable gift.”

The model of gender constructed by classical fiqh is grounded in the patriarchal ideology of pre-Islamic Arabia, which continued into the Islamic era, though in a modified form.... Suffice it to say that the classical jurists’ construction of the marriage contract is based on one type of marriage agreement prevalent in pre-Islamic Arabia.... this agreement closely resembled a sale through which a woman became the property of her husband.⁷²⁰

7.3 *Islamic Divorces*

In Britain, Muslim couples lack legal provisions for obtaining a religiously-sanctioned divorce. As a result, some British Muslims resort to shari’a councils to obtain their Islamic divorces. These councils are overseen by ‘ulamā who follow the divorce procedures outlined in the Qur’an and hadith traditions. Before delving into the administrative procedures carried out by these councils, it is important to understand the Islamic legal precedents of talaq, khula, and faskh – the three Islamic divorce services offered by shari’a councils.

7.3.1 Talaq

When couples wish to end their marriage, the Islamic marriage contract needs to be dissolved. By default, the husband has the authority to dissolve the marriage. The Qur’an and hadith traditions provide explicit guidelines on how a husband can free (*mutlaq*)⁷²¹ his wife, ending the marriage and fulfilling both parties’ rights and responsibilities.

⁷²⁰ Mir-Hosseini, ‘Classical Fiqh, Contemporary Ethics and Gender Justice’, p. 84.

⁷²¹ “مطلق”, in Wehr, p. 567.

Men seeking a talaq through a shari'a council must fulfil three Islamic rites under the supervision of the council's 'ulamā. These rites include:

1. The husband will cover maintenance (*nafaqa*) and board (*īwā'*) costs for his wife and children for the duration of the 'idda period.
2. Two witnesses are required for the talaq process; hence the process is also known as *talaq al-ḥakamayn*, or the talaq of two witnesses.⁷²²
3. The husband has fully paid the bridal-gift to his wife.

For the first requirement, the Qur'an stipulates a husband seeking divorce must provide maintenance (*nafaqa*) and accommodation (*īwā'*) for their wife and children during the 'idda period. The 'idda is a waiting period during which witnesses can provide evidence to support a claim for a talaq or khula.⁷²³ The duration of the 'idda period varies depending on the circumstances of the divorce and will be discussed in more detail in the following section, entitled "The 'idda: The Islamic Decree Nisi."

The second requirement for a talaq is the presence of two witnesses who observe the husband's pronouncement for a talaq during the 'idda period, or if the couple have reconciled and resolved their differences.⁷²⁴ It is also acceptable for the 'ālim officiating the talaq to serve as one of the witnesses. The inclusion of two witnesses eliminates any uncertainty regarding the woman's marital status in society.

The method of declaring a talaq differs between the Islamic legal schools. The Hanafi and Maliki legal schools accept verbal or written statements as evidence of divorce, or public displays of affection as evidence of reconciliation. The Shafi'i legal school, however, requires witnesses to be

⁷²² 'Abd ar-Rahman I. Doi, *Shariah: Islamic Law*, ed. by Dr Abia Afsar Siddiqui (London: Ta-Ha Publishers Ltd, 2008), p. 268.

⁷²³ See: Qur'an (65:4): Haleem, p. 378.

⁷²⁴ Doi, p. 273.

present during each hearing in order to witness the husband's verbal declarations of divorce or reconciliation. This requirement is based on the verse:

When they have completed their appointed term ('idda), either keep them honourably, or part with them honourably. Call two just witnesses from your people and establish witness for the sake of God.⁷²⁵

The Ja'fari legal school, which is rooted in Shi'a jurisprudence, is known to be even more meticulous than the Shafi'i legal school when it comes to the role of witnesses. Certain Sunni traditionists (*muḥaddithūn*) consider the Ja'fari school as the fifth Sunni legal school, due to its emphasis on *ijtihād* in Islamic law-making over the consensus (*ijmā'*) of the 'ulamā. Unlike the Hanafi, Maliki and Shafi'i legal schools, the Ja'fari legal school emphasises the importance of "two just witnesses" as called for in the Qur'an to ensure a judicious Islamic divorce process.

The Ja'fari legal school requires the husband to verbally declare *talaq* in Arabic, using specific phrases such as *ant' muṭlaq* (you are divorced) or *'ana talaqtuha* (I divorce her). These declarations must be made directly to the wife, face-to-face, on three separate occasions after her menstrual cycle. The Ja'fari school does not accept a husband's response to a witness' or 'ālim's questions, such as "Would you like to divorce your wife?"⁷²⁶ This meticulousness is rooted in the Qur'an (65:2-3):

²God will find ways for those who are careful (in their duty) to Him,³ and will provide of them from an unexpected source.⁷²⁷

The Ja'fari legal school interprets the Qur'an (65:3) as a call for Muslims to observe the Islamic divorce rites diligently. This interpretation is commended by many Sunni traditionists 'ulamā who emphasise strict adherence to Islamic law. 'Ulamā of both the Sunni and Ja'fari legal schools understand Qur'an (65:3)'s call for greater scrutiny as an incentive for Muslims to seek guidance from

⁷²⁵ Qur'an (65:2). Haleem, p. 378.

⁷²⁶ Bakhtiar, pp. 503–5.

⁷²⁷ Haleem, p. 378.

those who are “firmly grounded in knowledge.”⁷²⁸ For Muslims in Britain, they seek guidance from the ‘ulamā.

The third and most crucial requirement for a talaq is the payment of the bridal-gift. This payment symbolises the husband’s commitment to providing for his wife and children throughout the marriage. Shari’a councils view the payment of the bridal-gift as evidence of a valid Islamic marriage, which can then be terminated. In cases where a Muslim couple seeks an Islamic divorce through a shari’a council but had deferred the payment of the bridal-gift, the ‘ulamā may advise the husband to provide an “equitable bridal gift” (*mahr al-mithl*) to validate their Islamic marriage before initiating the talaq process. Alternatively, if the ‘ulamā determine that no valid Islamic marriage exists between the couple, they may advise the couple that pursuing an Islamic divorce is unnecessary.

7.3.2 The ‘Idda: The “Islamic Decree Nisi”

The ‘idda can be regarded as an *Islamic decree nisi*, wherein the reasons for talaq and khula petitions are examined and verified. The duration of ‘idda is determined by the ‘ulamā based on their interpretation of the Qur’an and hadith traditions, and this varies according to the circumstances that led to the breakdown of the marriage. In contrast, British County Courts issue decrees nisi based on specific causes,⁷²⁹ and supervise them for a standard period of 43 days (six weeks and one day), after which the petitioner can seek a decree absolute.⁷³⁰ The ‘idda, like a decree nisi, does not signify the end of the marriage but serves as a period of observation of the divorce process until its completion or potential reconciliation.

⁷²⁸ Qur’an (3:7). Haleem, p. 34.

⁷²⁹ Jacqueline Major and Shakti Bhagwansingh, ‘How Long Does It Take to Get a Decree Nisi?’, *HJA London Lawyers*, 2018 <<https://www.hja.net/how-long-does-it-take-to-get-a-decree-nisi/>>.

⁷³⁰ ‘*Get a Divorce*’, *GOV.UK* <<https://www.gov.uk/divorce/apply-for-a-decree-absolute>>

Etymologically, the word *'idda* translates to “number,” “to count,” or “enumerate.” It can also function as an adjective to describe the plurality of an object.⁷³¹ In Islamic family law, *'idda* refers to a...

...period of abstention from sexual relations imposed on a widow or a divorced woman, or a woman whose marriage has been annulled, before she can remarry.⁷³²

In the case of a *talaq* for a consummated marriage, the Qur'an (2:228) prescribes an *'idda* period of three menstrual cycles.⁷³³ The *'idda* period commences shortly after the wife's menstrual cycle, during which, in the presence of two witnesses, the husband makes his first declaration of divorce,⁷³⁴ known as *talaq raj'i*.⁷³⁵ This declaration is revocable, and its guidelines are set out in the Qur'an:

...husbands would do better to take them [the wives] back during this period, provided they wish to reconcile.⁷³⁶

Upon the husband's initial declaration of *talaq raj'i*, the first term of the *'idda* period begins and concludes at the onset of the wife's next menstrual cycle.⁷³⁷ Conjugal rights are maintained during this first term. Should the couple reconcile, they must inform the witnesses of the divorce proceedings, who will then observe the husband revoking the divorce or witness the couple engaging in a public display of affection. Moreover, the conditions of the original Islamic marriage certificate (*nikāḥ-nāmā*) remain applicable.⁷³⁸ If reconciliation does not occur and the first term of *'idda* expires, the divorce progresses to the *talaq bā'in*, an irrevocable divorce.⁷³⁹ The *talaq bā'in* consists of two stages: *talaq baynunaḥ suḡhra*, the minor declaration of an Islamic divorce, and *talaq baynunaḥ kubra*, the major

⁷³¹ “عدة”, in Wehr, p. 595.

⁷³² Bearman and others, III, p. 1010.

⁷³³ Haleem, pp. 25–26.

⁷³⁴ Website Islamic Sharia Council, ‘Islamic Shariah Council Official Website - Talaq’, *Islamic Sharia*, 2014 <<http://www.islamic-sharia.org/talaq/>>.

⁷³⁵ “رجعي”, in Wehr, p. 567.

⁷³⁶ Qur'an (2:228). Haleem, pp. 25–26.

⁷³⁷ *Encyclopaedia of Islam (T-U)*, ed. by P. Bearman and others, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), x, p. 154.

⁷³⁸ Ibrahim Ahmad Aliyu, ‘Termination of Marriage and Its Legal Consequences under Islamic Law’ (PhD, Ahmadu Bello University, 1996), p. 107; Doi, p. 278.

⁷³⁹ “بين”, in Wehr, p. 87.; “طلاق”, in Wehr, p. 567.

declaration of an Islamic divorce. In *talaq baynunah sughra*, the husband makes a second declaration of his intention to divorce his wife, initiating the second term of the *'idda*. Should the couple reconcile during this second term, they must do so before two witnesses. However, unlike during the first term of the *'idda* where the original *nikāḥ-nāmā* remains valid, reconciliation after declaring *talaq baynunah sughra* requires couples to renew their Islamic marriage contract. If the second *'idda* term of *talaq baynunah sughra* expires, the Islamic divorce advances to its final stage. The third and final stage of *talaq* sees the husband making his major declaration of divorce, *talaq baynunah kubra*, which irrevocably terminates the marriage. This precludes any possibility of reconciliation or renewal of the Islamic marriage contract. The wife becomes prohibited to her ex-husband, and following her third menstrual cycle, she is emancipated from him and may remarry.⁷⁴⁰

⁷⁴⁰ Aliyu, pp. 107–9.

The table below summarises the circumstances that affect the duration of the ‘*idda* period for an Islamic divorce:

Types of ‘ <i>idda</i>	The length of time of the ‘ <i>idda</i> period	Precedents (uṣūl) from the Qur’an
‘ <i>idda</i> of a woman who has not consummated the marriage.	Instantly upon the husband’s declaration of a talaq.	Qur’an (33:49)
‘ <i>idda</i> of a woman who still has her period.	3 menstrual cycles.	Qur’an (2:228)
‘ <i>idda</i> of a woman who is post-menstrual.	3 months.	Qur’an (65:4)
‘ <i>idda</i> for a woman who has become a widow.	4 months and 10 days.	Qur’an (2:234)
‘ <i>idda</i> of a woman whose husband has taken a vow of continence (īlā’) or is estranged (waḥsh).	4 months.	Qur’an (2:226)
‘ <i>idda</i> of a pregnant woman.	The full term of her pregnancy/when she gives birth.	Qur’an (65:4)

7.3.3 Khula

In the Sunni legal traditions, women do not possess the same rights as men to unilaterally terminate their marriage through a talaq. However, women have the option to initiate an Islamic divorce through a process called *khula*. *Khula* involves the wife making a request to her husband to “release” or “remove” her from their marriage. According to Islamic law, *khula* is a form of divorce based on

mutual agreement, where the wife compensates (*wafā'*)⁷⁴¹ her husband for the bridal-gift in “exchange for her release” (*bādul al-khul'*) from their marriage.⁷⁴²

In an Islamic marriage, the bride typically receives a bridal-gift from her husband as a symbolic gesture representing her expectations from him.⁷⁴³ The acceptance of the bridal-gift by the wife signifies her trust, faith, and commitment to her new husband. It also represents an oath taken by the husband to support her in fulfilling her religious obligations and caring for their children. However, if the wife discovers that her husband has violated (*shiqāq*)⁷⁴⁴ his oath during their marriage, then the Qur'an (4:128) grants her the right to seek redress and “remove herself” from their marriage.⁷⁴⁵ As part of the khula settlement (*ṣulh*),⁷⁴⁶ the amount of the bridal-gift she is required to return to her husband depends on the grounds for khula she presents to the 'ulamā.

If the presentation of a bridal-gift from the groom to the bride symbolises the union and friendship between spouses, then the return of the bridal-gift from the wife to the husband signifies her desire to terminate their Islamic marriage. Whilst the Qur'an provides clear instructions for men regarding the procedures for talaq, women are provided with implicit guidance on obtaining a khula in Qur'an (2:228):

Wives have [rights] similar to their [obligations in a divorce], according to what is recognized to be fair, and husbands have a degree [of right] over them: [both should remember that] God is almighty and wise.⁷⁴⁷

⁷⁴¹ “وفاء”, in Wehr, p. 1086.

⁷⁴² Suad Joseph and Afsaneh Najmabadi, *Encyclopedia of Women and Islamic Cultures, Vol. 2: Family, Law and Politics (Encyclopaedia of Women and Islamic Cultures)* (Brill Academic Publishers, 2005), p. 109.

⁷⁴³ 'Asqalānī, Ibn Ḥajar al-, '*Marriage*', in *Bulugh Al-Maram*, trans. by sunnah.com, 16 Books (Arabic), 16 Books (English), (Sunnah.com), BOOK 8, HADITH NUMBER 1141 (ARABIC), BOOK 8, HADITH NUMBER 1152 (ENGLISH) <<https://sunnah.com/bulugh/8/205>>

⁷⁴⁴ “شِقَاق”, in Wehr, p. 480.

⁷⁴⁵ Haleem, p. 62.

⁷⁴⁶ “صلح”, in Wehr, p. 522.

⁷⁴⁷ Haleem, pp. 25–26.

The tradition of returning the bridal-gift from the wife to the husband is documented in the hadith collections of *Bukhari*⁷⁴⁸ and *an-Nasa'i*.⁷⁴⁹ This tradition is exemplified in the story of Habibah bint Sahl al-Ansari, who encountered various difficulties in her marriage with Thabit bin Qais and grew disheartened. Seeking a divorce, she sought counsel from the Prophet Muhammad, who inquired:

‘So, you will return to him the garden he gave you as your bridal gift (ṣadāq)?’
Habibah bint Sahl al-Ansari replied to the Messenger of God, “Yes.” Muhammad then went to Thabit bin Qais and told him, “Take back your garden, and divorce her (as she wishes).

From this hadith tradition, the following can be inferred:

- Habibah bint Sahl expected her husband to help her in preserving her faith, which is one of the purposes of Shari’a (maqāṣid al-Sharī’ah). Habibah felt that her husband was failing in this regard, and that their marriage posed a risk to her faith.
- Habibah had to present to her religious authority, the Prophet Muhammad, a valid reason for wanting to divorce her husband.
- Habibah was to return the bridal-gift to her husband, which symbolised her release (khul’) from their marriage.

The hadith tradition of Habibah bint Sahl al-Ansari sets a precedent (*aṣl*) for shari’a councils in Britain on the khula process. To seek a divorce, a Muslim woman should approach her religious authorities and ask them to act as impartial arbiters. The hadith teaches the ‘ulamā the importance of impartiality when considering khula petitions.⁷⁵⁰ The ‘ulamā should carefully consider the

⁷⁴⁸ Bukhārī, Muhammad ibn Ismā‘īl al-, *‘Al-Khul’ and How a Divorce Is given According to It’*, in *Ṣaḥīḥ Al-Bukhārī*, trans. by Sunnah.com, 97 Books (Arabic), Books 93 (English) vols (Sunnah.com), BOOK 68, HADITH NUMBER: 22 (ARABIC), VOL. 7, BOOK 63, HADITH NUMBER: 197 (ENGLISH) <<https://sunnah.com/bukhari/68/22>>.

⁷⁴⁹ Nasā’ī, Abū `Abd ar-Raḥmān Aḥmad ibn Shu`ayb ibn Alī ibn Sīnān al-, *‘What Was Narrated Concerning Khul’*, in *Sunan An-Nasā’ī*, trans. by Sunnah.com, 51 Books. (Arabic), 51 Books. (English), (Sunnah.com), BOOK 27, HADITH NUMBER: 74 (ARABIC), BOOK 27, HADITH NUMBER: 3492 (ENGLISH) <<https://sunnah.com/nasai:3462>>.

⁷⁵⁰ Aliyu, pp. 154–56.

circumstances pertaining to the case, listen to testimonies, and explain to the wife her options under Islamic law.⁷⁵¹

Based on the classic works of Islamic law, ‘ulamā of the four popular Sunni legal schools have identified the following grounds upon which a woman may seek a khula:⁷⁵²

1. If the husband is abusive to his wife.
2. If the husband fails to provide maintenance (*nafaqa*) to the family household.
3. If the husband is deemed insane.
4. If the husband is impotent.
5. If the husband takes a vow of continence (*īlā’*).
6. If the husband is estranged (*wahsh*).
7. When there are allegations of adultery (*li’ān*).
8. If the husband renounces his Islamic faith.

Based on interviews with the ‘ulamā, they provided the following lists of reasons for which British Muslim women sought a khula from their shari’a councils:

1. Evidence of domestic abuse.
2. Evidence of psychological abuse.
3. Irreconcilable differences (*khilāfat la yumkin haliha*).⁷⁵³
4. The husband fails to provide maintenance (*nafaqa*) to the family household.
5. The husband has mental health issues.

⁷⁵¹ K.N Khan, *Muslim Law of Divorce* (Delhi, India: Bhavan Books (Kitab Bhavan), 1981), p. 229.

⁷⁵² Doi, p. 301.; Aliyu, p. 111.; Aliyu, p. 216.

⁷⁵³ In Arabic: خلافات لا يمكن حلها

6. The husband is impotent.
7. The husband is estranged (*wahsh*).
8. The husband has taken a vow of continence (*ilā'*).

After applying for a khula through a shari'a council, the woman must present evidence to support her claim to the 'ulamā. Unlike in a talaq, where two witnesses are sufficient to validate the dissolution of an Islamic marriage, 'ulamā require the presentation of at least three exhibits as evidence to support a wife's khula petition. Examples of evidence that can support a wife's khula petition include:

- Two witness testimonies - one from a civil servant who can verify the petitioner's legal and national status and the other from a Muslim man or woman who can verify that the petitioner is a practicing Muslim.⁷⁵⁴
- Evidence to show the couple have been living separately for at least four months. This can be used as evidence of the husband's vow of continence (*ilā'*) or estrangement (*wahsh*).
- A decree nisi or decree absolute.
- A personal statement from the wife disclosing the irreconcilable differences with her husband or his failure in his religious and familial duties.
- Written reports from doctors, police, or registered domestic violence support services to show evidence of physical or psychological abuse.
- Medical reports of her husband's infertility.
- Bank statements to show that the husband is not providing for his family.

⁷⁵⁴ The Muslim Law Shariah Council, 'Application Form for Woman & Procedure for Khula Application' (The Muslim Law Shariah Council - Application form for woman & procedure for khula application, 2019) <http://www.shariah-council.org/wp-content/uploads/2019/01/AW1-Islamic-Divorce-Application-Pack-for-Women-8.11.2018.pdf>.

After a woman submits evidence, documents, testimonies, and reports to the shari'a councils to support her claim for a khula, the 'ulamā review the case. The 'ulamā then contact the husband, informing him of his wife's khula petition and give him a chance to present his version of events. The husband's response determines the course of the khula, which typically results in one of four outcomes:

1. If the husband takes full responsibility for the marriage breakdown, agrees to his wife's khula petition, and waives his claim to the bridal-gift,⁷⁵⁵ this is recognised under Islamic law as divorce by mutual consent (*mubāra'a*).⁷⁵⁶ In this mutual agreement, the shari'a councils will ask the husband to provide his written consent to the khula. Once the council receives his consent, the khula becomes effective and the 'idda period begins.
2. The husband consents to his wife's khula petition, but on the condition that she reimburses him the full amount of the bridal-gift. Once the wife has reimbursed her husband, the 'ulamā will confirm that the condition of the wife's release from her marriage in exchange (*bādul al-khul'*) for the bridal-gift has been fulfilled, and the 'idda period begins. The Hanafi legal school requires the wife to observe the full term of the 'idda.⁷⁵⁷ For the Shafi'i and Hanbali legal schools, ibn Kathir's commentary states that these two schools prescribe the standard 'idda term of one menstrual cycle, regardless of the circumstances which led to the khula.⁷⁵⁸
3. The husband consents to his wife's khula request and agrees to a partial reimbursement of the bridal-gift as a settlement (*ṣulḥ*). Once the wife reimburses the agreed amount, the 'ulamā confirm the fulfilment of all khula conditions, and the 'idda period begins for the couple.⁷⁵⁹
4. If the husband objects or fails to respond to the wife's khula petition, and the 'ulamā find sufficient evidence to support her claim, they will intervene and annul (*faskh*) the Islamic marriage.⁷⁶⁰

⁷⁵⁵ Aliyu, p. 140.

⁷⁵⁶ Gohir, p. 56.

⁷⁵⁷ Doi, p. 302.

⁷⁵⁸ Hafiz Ibn Kathir, *Tafsir Ibn Kathir (Full Set) Darussalam 10 Vol Tafseer*, trans. by Safiur-Rahman al-Mubarakpuri, 10 vols (Uttar Pradesh, India: Darussalam, 2012), p. 572.

⁷⁵⁹ Aliyu, pp. 113–14.

⁷⁶⁰ Aliyu, pp. 154–55.

A rare fifth outcome that has perplexed Sunni 'ulamā is when the wife compensates her husband in excess (*fidyah*) to the bridal-gift she received, in order to strengthen her khula claim. Debates on the validity of such requests have been ongoing since the formative period of Islamic law. The 'ulamā have discussed what would constitute an appropriate amount of compensation a wife can give to gain her khula, as well as the maximum amount the husband should expect. In search for answers, the 'ulamā refer to the Qur'an (2:229):

It is not lawful for you [husbands] to take back anything that you have given [your wives], except where both fear that they cannot maintain [the marriage] within the bounds set by God... there will be no blame on either of them if the woman opts to give something for her release. These are the bounds set by God: do not overstep them. It is those who overstep God's bounds who are doing wrong.⁷⁶¹

'Ulamā of the Maliki and Shafi'i legal schools base their opinions on the section of the verse which states, "if the woman opts to give something for her release." The two legal schools infer that...

...it is permitted to a woman to secure redemption with more than what has come to her from the husband, by way of dower,⁷⁶²

The Hanafi legal school focuses on the restriction that a husband cannot take more than he has given to his wife, unless the marriage "cannot be maintained within the boundaries set by God." What these boundaries are is subject to interpretation. Nevertheless, Hanafi 'ulamā state that there is nothing wrong if the wife decides to give more (*fidyah*) than the bridal-gift as compensation, but this creates a moral dilemma for the husband.⁷⁶³ The hadith of Habibah bint Sahl al-Ansari⁷⁶⁴ further complicates this issue, as it does not specify whether the garden Habibah returned was a greater amount (*fidyah*) or an amount agreed upon (*ṣulh*) between Thabit ibn Qais and Habibah. Ibn Rushd provides a commentary on this matter:

So those who compared this compensation (in a khula) with all other transactions held that the amount is dependent upon mutual consent, but those who went by the literal meaning of the tradition did not permit excess, and it was as if they considered it to be the acquisition of wealth without lawful justification.⁷⁶⁵

⁷⁶¹ Haleem, pp. 25–26.

⁷⁶² Rushd, II, p. 80.

⁷⁶³ Aliyu, p. 167.

⁷⁶⁴ Bukhārī, BOOK 68, HADITH NUMBER: 22 (ARABIC), VOL. 7, BOOK 63, HADITH NUMBER: 197 (ENGLISH).

⁷⁶⁵ Rushd, II, p. 80.

As a solution, ‘ulamā have established two distinct boundaries on the matter of *fidyah*. For the wife, she may opt to pay a mutually agreed-upon amount (*ṣulh*) or a higher (*fidyah*) amount than the bridal-gift she received. As for the husband, he cannot request more than the amount of bridal-gift given at the time of the marriage.

Financial disputes frequently arise in talaq and khula petitions received by shari’a councils. In cases where couples have experienced an increase in wealth after their marriage, husbands may present bank records during shari’a council meetings to demonstrate the amount spent on their wives, often exceeding the “modest bridal-gift” that the Qur’an (2:229) recommends. To address significant financial disputes, ‘ulamā recommend that couples first resolve their disputes in civil courts before seeking an Islamic divorce.

7.3.4 Faskh (Annulment)

In the Sunni legal traditions, there are two categories of marriage that can be annulled under Islamic law:

1. The first category comprises marriages which violate the rules of the Qur’an or hadith traditions, which are consequently deemed invalid (*bāṭil*) under Islamic law. These include:
 - Relationships which the Qur’an (4:23) prohibits.⁷⁶⁶
 - Accusations of adultery (*li’an*) by either spouse.⁷⁶⁷
 - When the husband is no longer a Muslim.⁷⁶⁸

‘Ālim 2.1 shared that marriages violating the rules of the Qur’an and hadith traditions are rare in Britain.

⁷⁶⁶ Haleem, pp. 52–53.

⁷⁶⁷ Naysābūrī, Muslim ibn al-Ḥajjāj, *The Book of Invoking Curses*, in *Ṣaḥīḥ Muslim*, 56 Books (Arabic), 43 Books (English), (Sunnah.com), BOOK 19, HADITH NUMBER 11 (ARABIC), BOOK 9 HADITH NUMBER 3562 (ENGLISH) <<https://sunnah.com/muslim/19/11>>.

⁷⁶⁸ “Qur’an (60:10): Haleem, p. 369.

2. The second category of marriages that can be annulled is by a consensus (*ijmā'*) of the 'ulamā. This method necessitates the 'ulamā to review all the evidence, documents, reports, and testimonies pertaining to the case. The 'ulamā then meet with each spouse, listen to their arguments, and then deliberate among themselves before making a decision. Reasons for which an annulment through consensus may be required include:⁷⁶⁹

- The husband is impotent, or the wife is unable to conceive a child.
- Irreconcilable differences (*khilāfat la yumkin haliha*) or incompatibility (*ghayr kafā'*) between spouses.
- The husband is unable to or unwilling to pay maintenance (*nafaqa*) costs for his wife and children.
- The marriage is in decay (*fasād*) due to physical, mental, or emotional abuse or irreconcilable differences.
- A spouse is incarcerated or detained.
- A spouse converts to Islam, and the other refuses to convert.

Shari'a council annulments typically occur when khula cases are unsuccessful due to the husband's denial of the wife's request or his failure to cooperate or respond to the council's correspondence. Fortunately, the evidence collected during the khula process is sufficient for the 'ulamā to validate the annulment.

During the khula process, the 'ulamā, inspired by the example of the Prophet Muhammad,⁷⁷⁰ act as witnesses to the proceedings between the disputing parties. In cases where there is no resolution between the couple and the husband persists in denying his wife the khula she seeks, the 'ulamā consider such instances a violation (*shiqāq*) of spousal duties. The 'ulamā must then intervene and, through consensus, annul the marriage.⁷⁷¹

⁷⁶⁹ Aliyu, p. 11.

⁷⁷⁰ Bukhārī, BOOK 68, HADITH NUMBER: 22 (ARABIC), VOL. 7, BOOK 63, HADITH NUMBER: 197 (ENGLISH).

⁷⁷¹ Doi, p. 268.

Shari'a council 'ulamā serve as witnesses in talaq and khula cases to ensure the proper observance of Islamic divorce rites. Faskh cases, on the other hand, require the collective effort of the 'ulamā – their *collective ijtihād (ijtihād jamā'ī)* – whereby they carefully examine the circumstances leading to the marital breakdown, review the arguments and evidence submitted by both parties, and amicably annul the Islamic marriage.

7.3.5 Talaq Tafwīz: The Difference Between Takhyīr and Tamlik

In Islamic marriages, husbands have the option to delegate their right to divorce to their wives through a process known as *talaq tafwīz*. This conferment can be recorded on the Islamic marriage certificate (nikāḥ-nāmā). The practice of talaq tafwīz finds its precedent in verses from the Qur'an, where the wives of Prophet Muhammad sought additional financial support. In view of his limited means, the Prophet Muhammad offered his wives the choice to be released from their marriage or to remain and support him in his role as the Messenger of God.⁷⁷²

During the fieldwork, the 'ulamā drew the researcher's attention to one of the features of Pakistan's civil-Islamic marriage certificate, wherein it provides couples the option of delegating the right of divorce from the husband to the wife.⁷⁷³

Generally, the talaq tafwīz is normally found in the nikah-nama in Pakistan, printed by the government of Pakistan. They have one section on the certificate asking, "Is there any talaq tafwīz?" which is given to the wife by the husband, yes or no. The husband has to fill this. But this is only in Pakistan. But if you go to India, in their nikah-nama, they do not print this.⁷⁷⁴

However, much like the general population in Pakistan, Muslims in Britain are unaware that husbands can delegate their right to divorce to their wives. Further complicating the matter are the various ways in which, under Sunni legal traditions, a husband can delegate the power of divorce to his wife.

⁷⁷² Rushd, II, p. 86.

⁷⁷³ Ali (Barrister) Shaikh, 'Law of Divorce & Khula in Pakistan', *Mumtaz & Associates*, 2011, p. 5.

⁷⁷⁴ 'Ālim 2.1.

In the twelfth-century, the polymath, ‘ālim, and jurist of the Maliki legal school, ibn Rushd (1126 – 1198 CE), distinguished between two types of *talaq tafwīz* recognised by the popular Sunni legal schools. The first type, called *takhyīr*,⁷⁷⁵ grants the wife the *choice* to initiate an Islamic divorce, while the second type, known as *tamlīk*,⁷⁷⁶ involves the husband *transferring his power* of divorce to his wife. In his renowned work, *bidāyat al-mujtahid wa nihāyat al-muqtaṣid (The Distinguished Primer of the Discretionary Scholar)*, ibn Rushd presents the Maliki perspective on both *takhyīr* and *tamlīk* delegated powers, and then compares them to the views of the other Sunni legal schools.

According to the Maliki legal school, there are two types of *takhyīr* granted to wives by their husbands. The first is a *restricted takhyīr*, wherein the husband allows his wife to choose between pronouncing revocable Islamic divorces (*talaq rajī* and *talaq baynunaḥ suḡhra*): “Choose for yourself, the choice of a single repudiation, or two repudiations.” The second type is an *unrestricted takhyīr*, whereby the wife has the option of either declaring an irrevocable divorce (*talaq baynunaḥ kubra*) or remaining with her husband.⁷⁷⁷

Imam Malik recognises *unrestricted tamlīk* as the only valid form of *tamlīk*, granting the wife the choice between issuing an irrevocable divorce (*talaq baynunaḥ kubra*) or remain with her husband. Imam Malik considers a *restricted tamlīk* redundant since it grants the wife the authority to declare one or two revocable divorces (*talaq rajī* and *talaq baynunaḥ suḡhra*) but reserves the right of the decisive declaration to the husband. Imam Shafi’i and Abu Hanifa concur with Imam Malik, asserting that a *restricted tamlīk* holds no legal weight.⁷⁷⁸

Another point of consensus among the four popular Sunni legal schools regarding *takhyīr* and *tamlīk* pertains to the individuals authorised to annul a *talaq tafwīz* agreement. Prior to the wife’s

⁷⁷⁵ “خار”, in Wehr, p. 266.

⁷⁷⁶ “تمليك”, in Wehr, p. 923.

⁷⁷⁷ Rushd, II, pp. 84–86; Mālik bin Anas bin Mālik al-Madanī, ‘Divorce’, in *Muwatṭa*, 61 Books (Arabic), 61 Books (English) vols (Sunnah.com: Sunnah.com), BOOK 29, ḤADĪTH NUMBER 1186 (ARABIC). BOOK 29, ḤADĪTH NUMBER 30 (ENGLISH) <<https://sunnah.com/urn/412150>>.

⁷⁷⁸ Rushd, II, pp. 84–86.

declaration of her choice to divorce her husband, the husband retains the ability to revoke the *takhyīr* he granted. However, if the wife, under the assumption of having been delegated an *unrestricted takhyīr*, proceeds to irrevocably divorce her husband and the husband disputes her declaration, claiming that he only provided a *restricted takhyīr*, the wife's understanding of the agreement is given precedence if his intention was not explicitly clarified to both her and the witnesses during their marriage. In such cases, the wife's decision remains valid.⁷⁷⁹ As for *tamlīk*, the 'ulamā agree that all marital authority resides with the wife; she alone has the authority to revoke the *tamlīk* given to her by her husband. The husband cannot rescind the transfer of ownership made during the Islamic marriage, nor can he challenge his wife's statement of an irrevocable Islamic divorce (*talaq baynunah kubra*) through *tamlīk*.

After summarising the points of agreement among the four popular Sunni legal schools on *takhyīr* and *tamlīk*, ibn Rushd proceeded to discuss areas of disagreement. The Maliki and Shafi'i legal schools share similar views on the nature, validity, and procedures of *takhyīr* and *tamlīk*. However, the Shafi'i legal school went a little further, emphasising the importance of clarity in *talaq tafwīz* agreements, recognising the potential for misunderstandings when a husband granted his wife a choice (*takhyīr*) or authority (*tamlīk*) over an Islamic divorce. The Shafi'i legal school insist that the husband must specify the precise nature of the *talaq tafwīz* conferred to his wife.⁷⁸⁰

The Hanafi legal school recognises *tamlīk* as the only form of *talaq-tafwiz* that a husband can grant his wife. Regarding the 'idda period for khula, ibn Kathir observed that the Hanbali and Shafi'i legal schools advocate a duration of one menstrual cycle, regardless of the cause of the breakdown of the marriage.⁷⁸¹ On the other hand, the Hanafi legal school believes that women obtaining khula should adhere to the same 'idda terms as those of a conventional *talaq*.⁷⁸² It appears that the same 'idda terms

⁷⁷⁹ Madanī, BOOK 29, HADITH NUMBER 1186 (ARABIC). BOOK 29, HADITH NUMBER 30 (ENGLISH).

⁷⁸⁰ Rushd, II, p. 85.

⁷⁸¹ Kathir, p. 572.

⁷⁸² Doi, p. 302.

apply to all *tamlīk* divorces. According to the Shafi'i and Hanbali legal schools, the 'idda period for *tamlīk* divorces is one menstrual cycle, whereas the Hanafi legal school maintains that the full 'idda duration should be observed, similar to those of a *talaq*. As the four popular Sunni legal schools agree that *restricted tamlīk* holds no legal weight under Islamic law, the husband can only grant *unrestricted tamlīk*, thus giving the wife the choice of an *irrevocable talaq (talaq baynunah kubra)* or staying with him. Differences of opinions arise between the Sunni legal schools concerning the duration of the 'idda for women obtaining *tamlīk* divorces. The Shafi'i and Hanbali legal schools argue that *unrestricted tamlīk* allows for a single, *irrevocable talaq (talaq baynunah kubra)*, necessitating an 'idda period of one-menstrual-cycle. Conversely, the Hanafi legal school considers *tamlīk* as a "transfer of ownership" of *talaq* from the husband to the wife, thus entailing two revocable *talaqs (talaq rajī and talaq baynunah sughra)*, one irrevocable *talaq (talaq baynunah kubra)*, and the full 'idda period.⁷⁸³

Part 2: Application of Islamic Family Law by Shari'a Councils

Britain's shari'a councils offer three services:

1. Shari'a councils primarily handle Islamic divorces, which are in high demand from both men and women. While the majority of applicants are British Muslim women, a significant number of Muslim men also seek Islamic divorces through these councils. The number of applications received by shari'a councils varies. According to 'Ālim 1.2, Shari'a Council 1 receives an average of 200 Islamic divorce applications annually. Shari'a Council 2, as reported by 'Ālim 2.1, receives between 300 to 400 applications each year. 'Ālim 3.1 shared that Shari'a Council 3 receives an average of 600 Islamic divorce applications annually.
2. After Islamic divorces, the Islamic marriage service is the second most sought-after service offered by shari'a councils. Muslim couples seek the assistance of the 'ulamā of these councils to supervise their Islamic marriage rites. 'Ālim 1.2 stated that their council performs 20 Islamic

⁷⁸³ Rushd, II, p. 87.

marriages annually, while both ‘Ālim 2.1 and ‘Ālim 3.1 reported that their respective shari’a councils conduct 50 Islamic marriages per year.

3. The third service offered by shari’a councils is the Islamic consultation service, which assists clients from various fields such as finance, law, medicine, business, and academia from British universities. However, determining the precise number of consultation services provided by each shari’a council proved challenging as they were based on anecdotal statements from the ‘ulamā. Moreover, the councils lacked proper record-keeping of their consultancy services.

‘Ulamā shared that their council’s religious staff would convene as a committee to handle Islamic divorce cases. Delays occur where there was no unanimous consensus among the ‘ulamā or when plaintiffs fail to comply with Islamic legal guidelines or the councils’ advice. While Islamic law holds no legal standing in Britain, shari’a councils are not bound by the *British Limitation Act 1980*,⁷⁸⁴ which mandates the destruction of legal files by British solicitors after six years. While not legally obligated, shari’a councils voluntarily adhere to these restrictions as a gesture of respect towards British laws. Once clients receive their Islamic divorces, the councils notify them that their case files will be archived for a period of up to six years.⁷⁸⁵

Regarding Islamic marriage and consultation services, the ‘ulamā believe it is unnecessary to form a committee as “one ‘ālim could easily deal with such matters.”⁷⁸⁶ Once the Islamic marriage rites or consultation services had been completed, the outcomes of these services were not documented in the councils’ archives. The next few subsections will explore the procedures of the services offered by the three shari’a councils participating in this study.

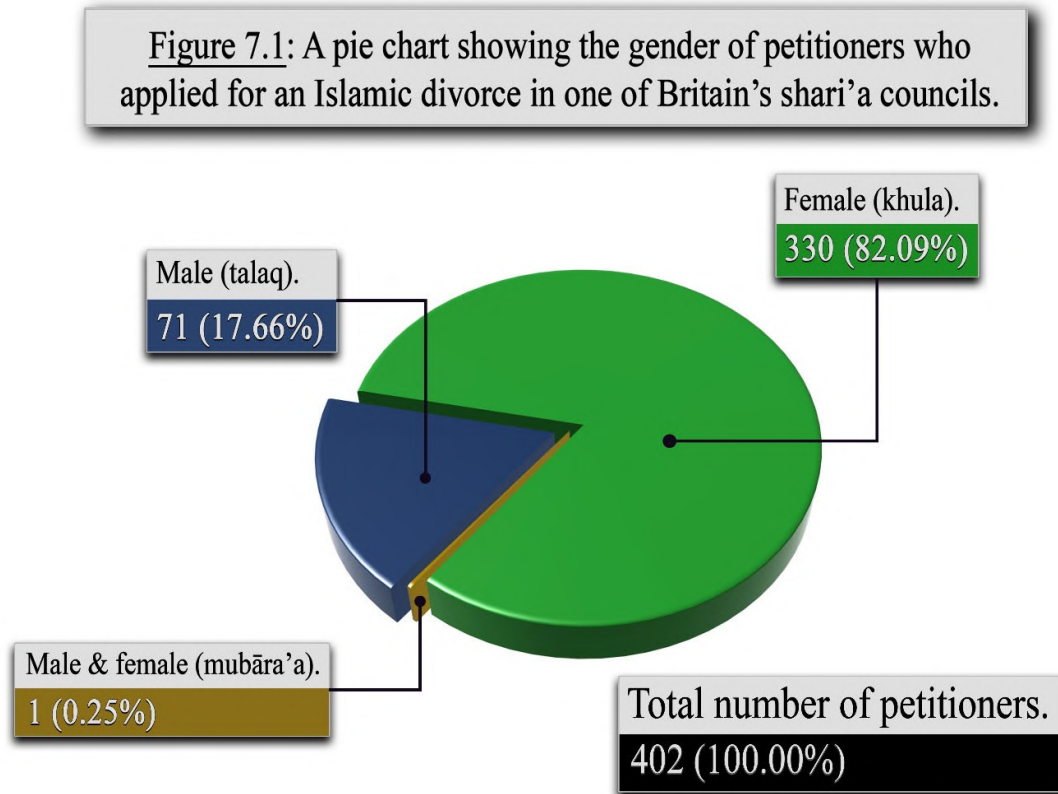
⁷⁸⁴ *Limitation Act 1980. Time Limit for Actions Founded on Tort.*, 1991, 1980 C.58. PART 1. <<https://www.legislation.gov.uk/ukpga/1980/58/section/2>>; *Limitation Act 1980. Time Limit for Actions Founded on Simple Contract.*, 1991, C58. PART 1. SECTION 5 <<https://www.legislation.gov.uk/ukpga/1980/58/section/5>>.

⁷⁸⁵ The Muslim Law (Shariah) Council UK, ‘Application Form for Woman & Procedure for Khula Application’ (The Muslim Law (Shariah) Council UK - Application form for woman & procedure for khula application, 2019), p. 14 <<http://www.shariahcouncil.org/wp-content/uploads/2019/01/AW1-Islamic-Divorce-Application-Pack-for-Women-8.11.2018.pdf>>.

⁷⁸⁶ ‘Ālim 2.1.

7.4 Shari'a Council Services: Islamic Divorces

Based on interviews conducted with 'ulamā, shari'a councils in Britain provide three types of Islamic divorces: talaq, khula, and faskh.



Based on the analysis of 402 cases, Figure 7.1 presents a pie chart illustrating the gender distribution of petitioners seeking an Islamic divorce from shari'a councils in Britain. In one case, a husband and wife mutually agreed (mubāra'a) to pursue an Islamic divorce through a shari'a councils, although it was submitted as a talaq application. Shari'a councils generally prefer to process talaq applications, as they have found the process to be less complex than a mubāra'a or khula.

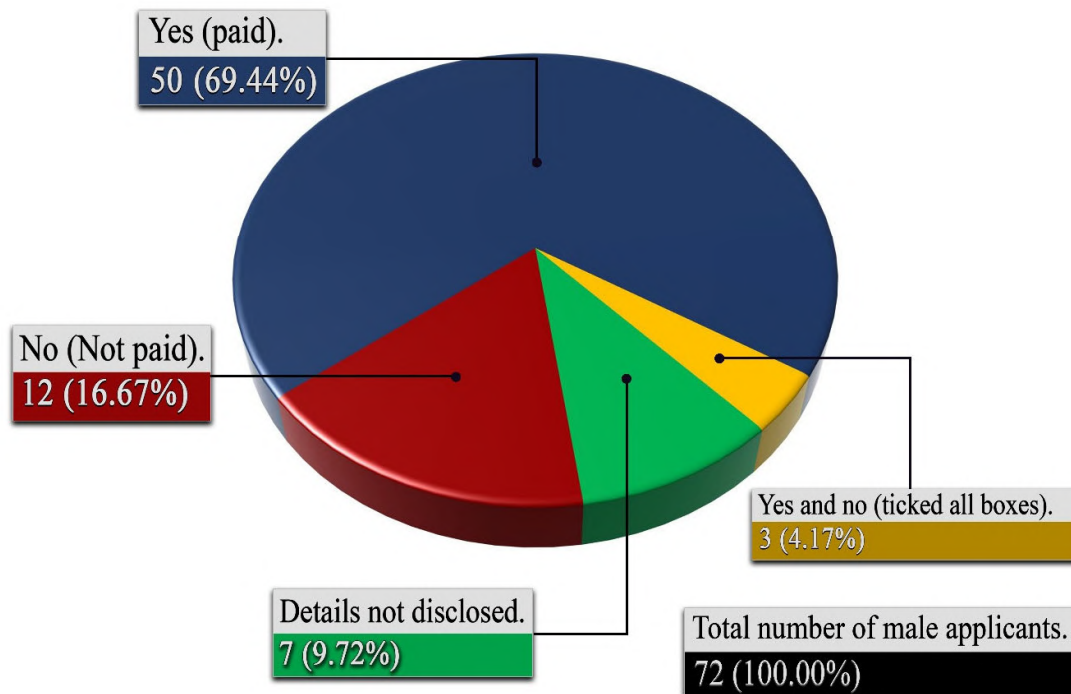
As mentioned earlier, the husband's response to the wife's khula petition can affect the Islamic divorce process. 'Ulamā have observed that some men who apply for talaq are unaware of the procedures involved and often fail to communicate their intention to divorce to their wives:

Take any ordinary person and ask him, what is the way of divorce? He will say it three times, “Talaq! Talaq! Talaq!” This is ignorance which is found among the Muslim community.”⁷⁸⁷

During meetings between a man seeking a talaq and the council’s ‘ulamā, the procedures of a talaq are explained, underscoring the serious implications for the wife and children. The ‘ulamā also use these meetings to verify that the husband has communicated his intention to divorce with his wife before proceeding with the talaq process.

Generally, we want to verify that the wife has been informed by [sic] this, then we will issue. The husband is entitled to divorce, but we want to make sure if there is anything related to the case and he has fulfilled the wife’s rights like the mahr [bridal-gift], maintenance [nafaqa] and other things relating to this.⁷⁸⁸

Figure 7.2: The pie chart illustrating the distribution of the payment of the bridal-gift (mahr/ṣadāq) for 72 cases where the husband initiated an Islamic divorce (talaq).



⁷⁸⁷ ‘Ālim 3.1.

⁷⁸⁸ ‘Ālim 2.1.

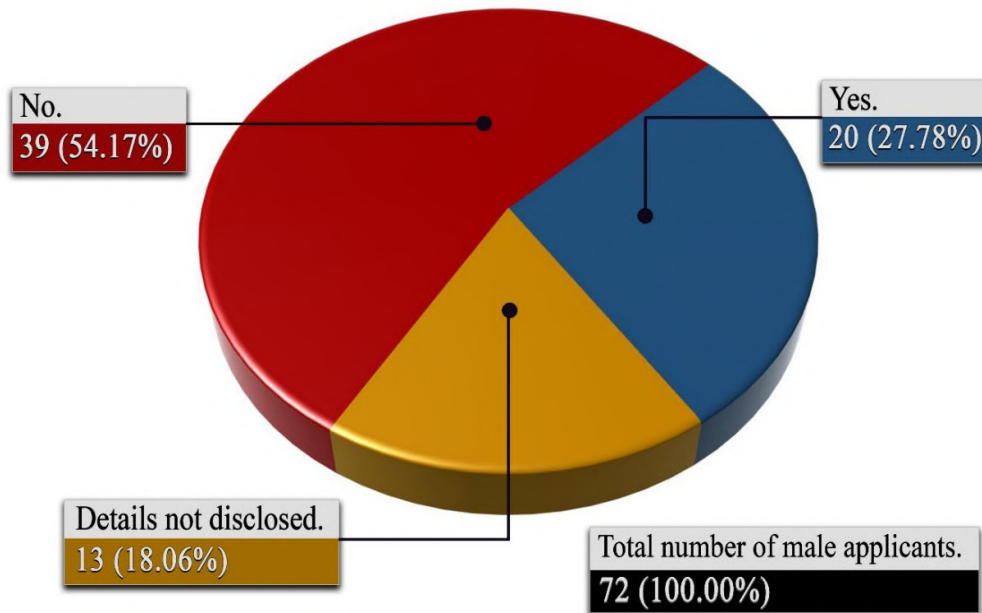
Based on the 72 talaq case files reviewed for this study, Figure 7.2 presents a pie chart illustrating the number of husbands who fulfilled their obligation of paying the bridal-gift to their wives. Interestingly, three men stated on their talaq declaration forms that they had both “paid” and “not paid” the bridal-gift. However, the files did not offer any explanation for these conflicting statements.

It is important to note that each of the 72 talaq files reviewed for the study consisted of two pages. The first page contained a copy of the talaq certificate, while the second page included a talaq declaration form with checkboxes for the husband to fulfil and tick. These checkboxes confirmed the following:

- The full payment of the bridal gift.
- Commitment to provide maintenance (*nafaqa*) during the ‘idda period.
- The presence of two witnesses for the talaq proceedings.

It is also worth noting that all talaq certificates had footnotes clarifying that Islamic law does not hold any legal standing in Britain.

Figure 7.3: A pie chart illustrating the number of men who paid maintenance (nafaqa) to their wives for the entire duration of the 'idda period in the 72 cases where the husband initiated the Islamic divorce (talaq).



When shari'a councils receive applications for khula, the 'ulamā of the council serve as impartial observers for the case. If the 'ulamā determine that there are reasonable grounds for a khula, they will contact the husband and present his wife's petition to him. The 'ulamā will then await the husband's response.

7.4.1 Preliminary Paperwork Required for Talaq and Khula Applications

With regard to Islamic divorce applications received by shari'a councils, the 'ulamā must first determine whether or not the couple have entered into an Islamic marriage:

In every shari'a council, the first thing the 'ulamā needs to find is if there is an Islamic marriage between the couple. Normally women come and say, "I need an

Islamic divorce.” We ask, ‘Do you have the [Islamic] marriage certificate?’ We need to see an Islamic marriage certificate [nikāḥ-nama].’ It must be there.⁷⁸⁹

Occasionally, the ‘ulamā may encounter applicants, particularly British nationals, who are unaware of the status of their marriage under Islamic and civil law. British applicants often attach their civil marriage certificates with their Islamic divorce applications. When asked whether applicants for an Islamic divorce are required to submit copies of their civil marriage certificates, ‘Ālim 2.1 responded “If they have it, we’ll take it. But it is not needed.” Similarly, ‘Ālim 1.2 and ‘Ālim 3.1 stated that their respective councils did not require a copy of a civil marriage certificate during the initial stage of the application. The survey responses from the ‘ulamā shared the same list of requirements that petitioners must fulfil before their cases can be reviewed. These requirements include:

- A completed Islamic divorce application form, which can be downloaded from the shari’a council’s website or requested by email, along with relevant guidelines.
- A copy of the nikāḥ certificate (nikāḥ-nama).
- Recent contact details of both the husband and the wife.
- Proof of identification, such as a passport, driving license, or national identity card.

Upon receiving an Islamic divorce application, the shari’a council’s administrative team conducts comprehensive checks to verify the submission of all the required information, documentation, and payment for their services. When queried whether a petitioner’s written statement is required with the initial application, ‘Ālim 2.1 stated: “We will ask for that later on.”

Once all the necessary paperwork has been submitted, it is subjected to a comprehensive review by an ‘ālim of the council, which can take up to four weeks. If the ‘ālim finds that there are valid grounds for an Islamic divorce, they will notify the petitioner and other members of the shari’a council, thus opening the case. The ‘ālim then contacts the defendant, informing them of their spouse’s

⁷⁸⁹ ‘Ālim 1.1.

Islamic divorce petition. Usually, physical correspondence such as letters is used; however, emails and online instant messaging services may be utilised in some cases. In the case of talaq, the wife is informed of her husband's intention to divorce her, and that her involvement is essential for the proper conduct of the talaq rites.

For khula cases, shari'a councils contact the husband to notify him that their wife has filed for an Islamic divorce, at which point the council awaits the husband's response:

If a husband does not defend his case [against a khula petition], it means he also wants a divorce. We give it a few weeks, three or maximum four weeks, it will be quite clear to us. The husband will either say, "Yes. I know that our marriage has come to an end, and you can give her [a] khula" or he will either ignore or not reply. Either way, not giving the husband the opportunity to respond makes the case, in the eyes of the shari'a council, not fully transparent and fair.⁷⁹⁰

7.4.2 Reconciliation Efforts: Their Effects and Uses in the Islamic Divorce Process

If a husband responds to the shari'a council's initial correspondence, the 'ulamā will conduct separate interviews with both the husband and wife to explore the possibility of reconciliation in order to preserve the Muslim family, which is one of the purposes of Shari'a.⁷⁹¹ 'Ālim 2.1 shared:

We will first try for reconciliation if there is any chance. Reconciliation. Şulh. We need to minimise the damage to the Muslim family.⁷⁹²

Concurring with 'Ālim 2.1, 'Ālim 3.1 adds that it is incumbent upon Muslims to mediate between disputing couples and help them settle their differences:

We have to go in line with Islamic law on these things. The main principle is to save a Muslim marriage to be more preferable than to destroy it. So, anything we can do to save the marriage, and especially when there are children involved, then we will try to reconcile the couple.⁷⁹³

⁷⁹⁰ 'Ālim 1.2.

⁷⁹¹ Opwis, XXXI.

⁷⁹² 'Ālim 2.1.

⁷⁹³ 'Ālim 3.1.

Reconciliation attempts allow ‘ulamā to assess the extent and nature of the marital dispute.

‘Ulamā may advise couples to end the marriage if they find evidence of the following:

1. All attempts at reconciling the couple have failed.
2. The husband takes a vow of continence (*īlā’*) from his wife for more than four months.
3. The defendant of an Islamic divorce fails to respond to three consecutive correspondences from a shari’a council. In such cases, the ‘ulamā will annul (*faskh*) the Islamic marriage on the grounds of estrangement (*waḥsh*).⁷⁹⁴
4. The petitioner can provide a compelling argument for the shari’a council to intervene and annul (*faskh*) their Islamic marriage. The arguments may differ based on whether it is a talaq or khula application.

After failed reconciliation efforts and the husband’s consent to his wife’s khula petition, the ‘ulamā will arrange a meeting for the couple to negotiate the terms of compensation (*wafā’*) for the husband as part of the khula settlement. If the husband does not respond to the council’s initial correspondence or attend scheduled meetings within the specified time frames (one month for husbands in Britain, two months for those abroad), the council will make two further attempts to contact him before concluding the process.⁷⁹⁵ ‘Ālim 1.2 added that a wife seeking a khula may provide evidence of the couple no longer living together, indicating that the husband has taken a vow of continence (*īlā’*) or is estranged (*waḥsh*):

If the couple are living together at the same address, it is difficult for the shari’a council to build a case. The shari’a council would like couples to be separated before we can accept an [Islamic divorce] application.⁷⁹⁶

⁷⁹⁴ “وحش”, in Wehr, pp. 1055–56.

⁷⁹⁵ The Muslim Law Shariah Council - Application form for woman & procedure for khula application.; The Islamic Sharia Council, ‘Application to File an Islamic Divorce (Khula/Dissolution/Talaq)’ (Islamic Sharia Council, 2014) <http://www.islamic-sharia.org/wp-content/uploads/2014/05/Khula_Application0216.pdf>.

⁷⁹⁶ ‘Ālim 1.2.

Whether the husband has taken a vow of continence or is estranged, a minimum period of four months living apart is sufficient grounds for the council to proceed with the khula petition:

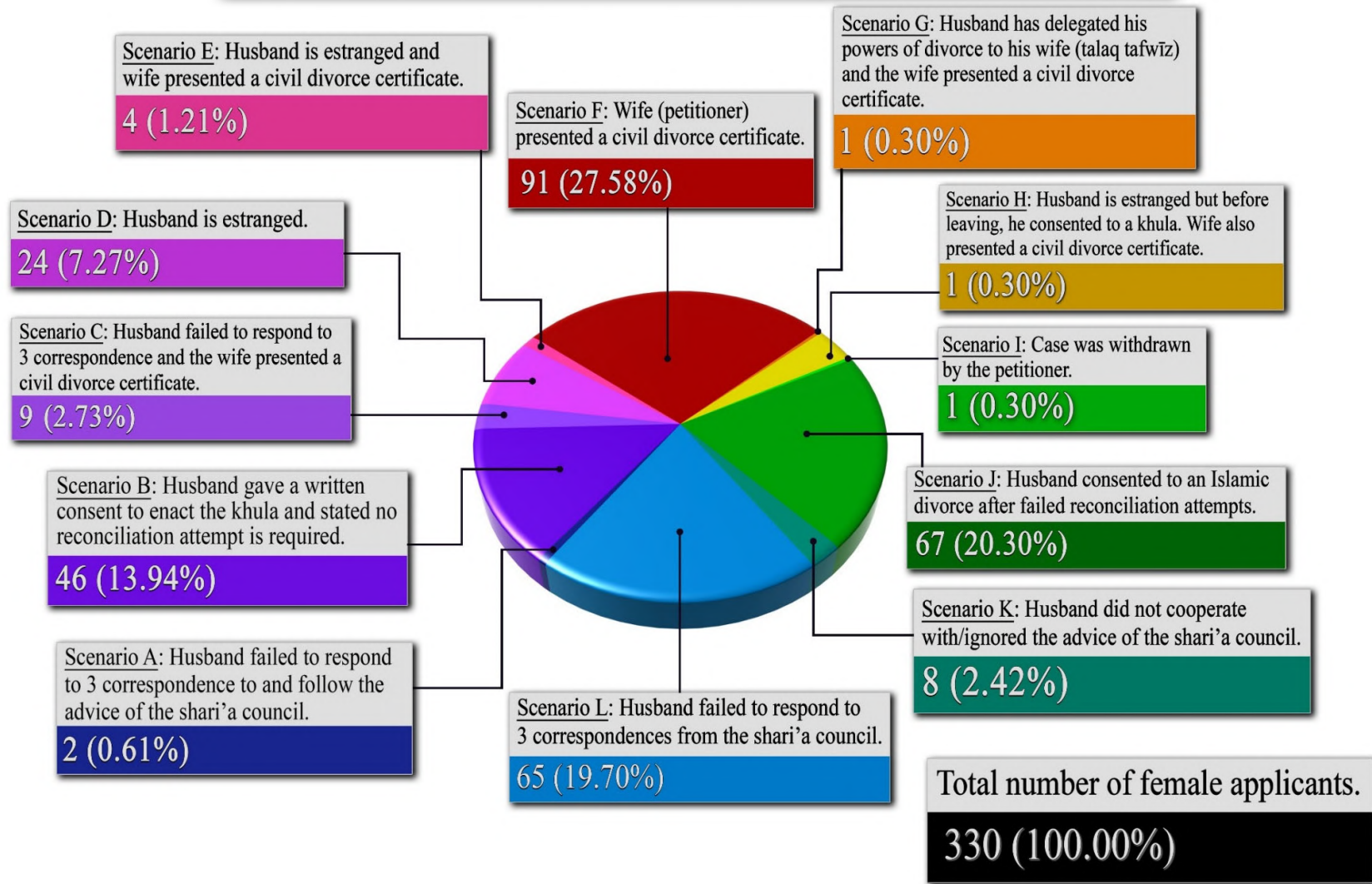
For *ilā'*, it is four months. The Qur'an says it. There is no dispute about it. Within that period, if the husband returns, he has to pay *kaffāra* [reparation payment].⁷⁹⁷

During reconciliation attempts, presenting a decree nisi or decree absolute can serve as irrefutable evidence of the couple's separation, allowing 'ulamā to intervene and annul (*faskh*) the Islamic marriage.

Figure 7.4 presents a pie chart illustrating the reasons why 330 women applied for a khula. In cases where the 'ulama advanced the case from khula to annulment (*faskh*), the 'ulamā looked to identify at least three grounds for annulling the Islamic marriage before issuing the women their Islamic divorce certificate. There was one case where the husband had delegated the power to issue a *talaq* (*talaq tafwīz*) to his wife. This Islamic marriage was conducted in Pakistan and was therefore considered both civilly and Islamically valid. The petitioner for the Islamic divorce presented her Pakistani marriage certificate to the council as evidence that her husband had granted her the right of *talaq* in the presence of two witnesses at the time of their Islamic marriage. In theory, the wife had issued a *talaq* to her husband, but the shari'a councils overseeing the case issued a standard certificate of annulment (*faskh*), which included a subscript that read, "the husband issued a *talāq tafwīz* to the petitioner."

⁷⁹⁷ 'Ālim 1.1.

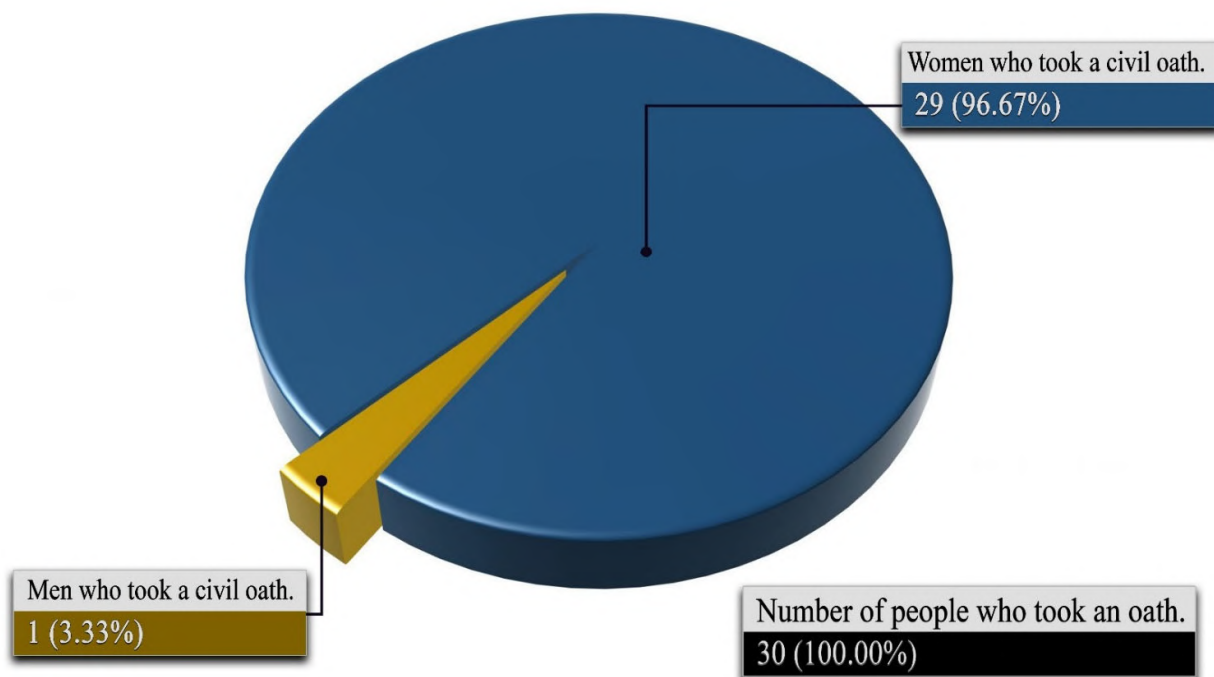
Figure 7.4: A pie chart illustrating the reasons why Britain's shari'a councils enforce wives' requests for an Islamic divorce (khula).



A husband ignoring shari'a councils notifications can be used as evidence of the couple's separation and that their marriage is irrevocably broken. Sufficient evidence is required for 'ulamā to proceed with an annulment. However, Shari'a Council 3 takes a different approach; 'Ālim 3.1 explained that when a husband fails to respond to their correspondence, their council asks the wife to take an Islamic oath (*hily*⁷⁹⁸ or *qasam*⁷⁹⁹) or to provide them with an affidavit to verify that the details of her husband that she provided are true to her knowledge. Upon receiving this oath, the 'ulamā of the Shari'a Council 3 offer the wife the opportunity to have her case reviewed and resolved by their panel.⁸⁰⁰ In contrast, 'Ālim 1.2's council took a different approach:

In cases where respondents do not reply to any of our notices, our shari'a council will decide the case in favour of the applicant."⁸⁰¹

Figure 7.5: A pie chart to show how, from the 402 cases reviewed, 30 petitioners took a civil oath of not knowing the whereabouts of their estranged (*waḥsh*) spouse.



⁷⁹⁸ “حلف”, in Wehr, p. 201.

⁷⁹⁹ “قسم”, in Wehr, p. 763.

⁸⁰⁰ 'Ālim 3.1.

⁸⁰¹ 'Ālim 1.2.

7.4.3 Islamic Divorce Cases Requiring the Consensus of a Shari'a Council

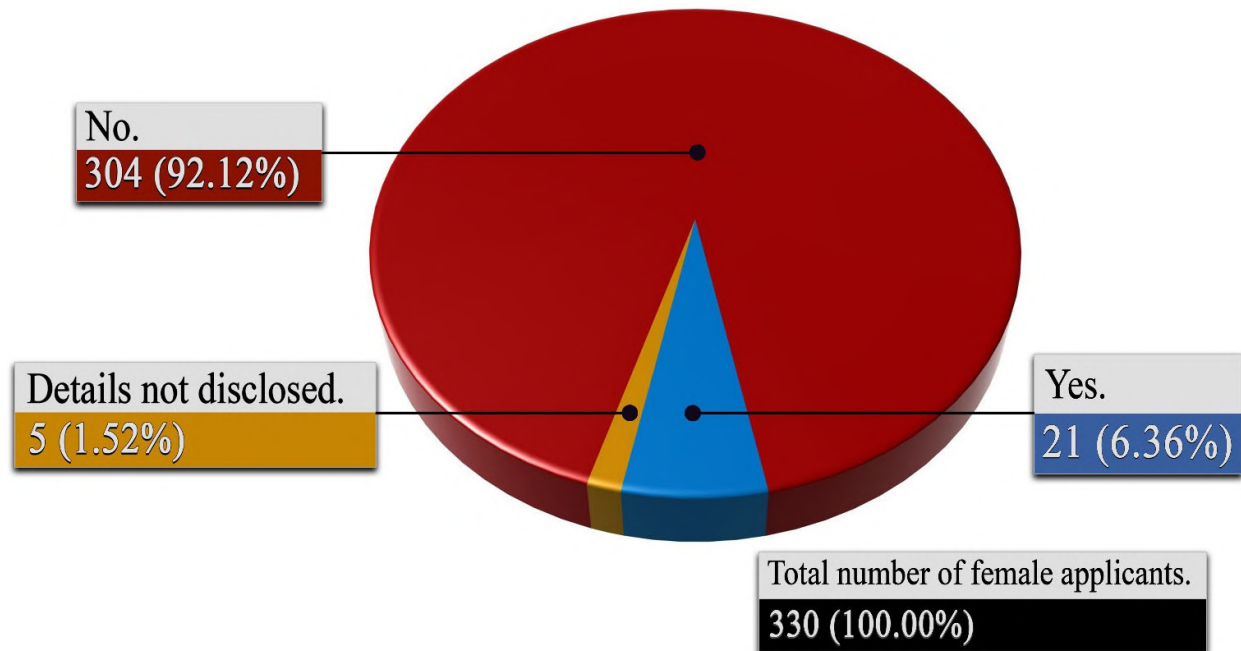
When the Islamic divorce process is disrupted, shari'a council 'ulamā believe it is their responsibility to convene, conduct an in-depth inquiry, and find a resolution. Working collaboratively, the 'ulamā examine the case materials, including evidence, testimonies, and statements from both parties involved. After reviewing the case file, the 'ulamā identify the party responsible for the disruption, express their individual opinions, and reach a consensus in order to settle the case.

The reasons why some men refuse to consent to their wives' requests for a khula vary. The 'ulamā explained that most men cooperate with their council and are willing to grant a khula, but only on the condition that they receive the compensation (*wafā'*) due to them under Islamic law. The 'ulamā support a husband's claim for compensation if they deem the wife is responsible for the breakdown of the marriage, but they emphasise that the compensation the husband will receive will not exceed the bridal-gift he paid during the nikah ceremony. Delays in the khula proceedings may arise if the wife fails to compensate the husband, resulting in the case being postponed. Once the wife fulfils her Islamic legal obligation to compensate the husband, the 'ulamā will issue her khula certificate.

If the woman is seeking a khula and the fault lies with her, then she has to pay, if she can't, then her family has to pay; because the honour of the husband has been damaged.⁸⁰²

⁸⁰² 'Ālim 1.1.

Figure 7.6: A pie chart illustrating the number of women who returned their bridal-gift (mahr/ṣadāq) to their husbands as part of their khula settlement in the 330 khula cases reviewed for this study.



In cases where husbands rejected their wives’ requests for a khula, they responded to the shari’a council’s correspondence but provided weak arguments against their wives’ petitions. When invited for an interview at the council’s office by ‘Ālim 1.2, some husbands expressed feelings of being slighted by their wives’ audacity for sharing their private matters with outsiders. ‘Ālim 1.2 acknowledged this, stating, “Yes, in many cases, they [men] feel embarrassed.”⁸⁰³

In some khula cases, particularly where women present councils with decrees absolute, husbands respond to shari’a councils’ correspondence and view proposed meetings at the council as opportunities to present their side of the dispute. During these meetings, the ‘ulamā ask husbands why they did not present their defence during the civil hearing; to which they usually respond by complaining about the exorbitant cost of the civil process and consider shari’a councils as a more affordable alternative:

⁸⁰³ ‘Ālim 1.2.

If the wife wants a divorce, and the civil courts have given it to her because the husband did not defend himself. He did not want to bear the costs [of a civil defence]. So, if the husband decides to defend himself or not [for a khula procession], the results will be the same. [However,] We want to give the husband an opportunity to share his side of the story, so we can understand if the husband wanted to divorce his wife, or if it was circumstances that lead to him divorcing his wife.⁸⁰⁴

Shari’a council ‘ulamā and their administrative team are responsible for a diverse set of tasks, such as locating uncooperative defendants, addressing cases of estranged spouses, handling bridal-gift payments and repayments, verifying legal documents, and reviewing personal statements and witness testimonies. The extent and complexity of these tasks can be overwhelming for an ‘ālim to handle alone, so the collaborative efforts of a council of ‘ulamā become necessary to effectively manage the workload:

It depends on if the case requires our decision, then yes, we form a majlis [council],⁸⁰⁵ a board meeting among the ‘ulamā. But generally, when people ask for an opinion or answers to general questions, this will be done individually. To finalise a case that requires a decision, we convene in a majlis.⁸⁰⁶

7.4.4 The Organisational Structure of Shari’a Councils

The survey results reveal the number of religious and administrative staff working in each shari’a council as follows:

	Number of religious staff (‘ulamā)	Number of administrative staff
Shari’a Council 1	15	3
Shari’a Council 2	12	6
Shari’a Council 3	10	8

Both ‘Ālim 1.1 and ‘Ālim 1.2 revealed that the fifteen religious staff of their council (Shari’a Council 1) convened four times a year. All fifteen religious personnel of Shari’a Council 1, including the council chair, worked voluntarily and held other full-time jobs as their source of income. Some ‘ulamā did

⁸⁰⁴ ‘Ālim 1.2.

⁸⁰⁵ “مجلس”, in Wehr, p. 131.

⁸⁰⁶ ‘Ālim 2.1.

paid work as imams for their local mosques in towns and cities across Britain. Others worked as executives for community development organisations and charities. They worked as academics and researchers in British universities and private colleges. Some ‘ulamā also worked as family solicitors and barristers. Each religious staff member of Shari’a Council 1 contributed religiously, culturally, socially, professionally, and legally. They also appreciated the benefits of collaborating at the council’s head office, where they could synergise their *collective ijtihād (ijtihād jamā’ī)* and resolve disputed cases. However, organising meetings where all members of Shari’a Council 1 could attend to discuss cases proved challenging due to their full-time work commitments and geographical distances, with some living hundreds of miles away from the council’s head office. In most instances, ‘ulamā of Shari’a Council 1 discussed details of disputed cases with the chairing ‘ālim by phone or email. Occasionally, the chairing ‘ālim would visit the location of a council member and arrange one-to-one meetings, recording their opinions on various disputed cases.

According to ‘Ālim 2.1, the twelve religious staff of Shari’a Council 2 meet monthly. All twelve council members are qualified ‘ulamā and hold other positions at the same venue where Shari’a Council 2 is based. The council functions as a department of an international Islamic organisation located in a large venue. This venue also includes a mosque, several Muslim charities, a youth centre, a Muslim women’s centre, events management services, Islamic funeral services, and a family counselling service. Each wing of the centre is headed by an ‘ālim appointed by the parent organisation, who also serves on the religious panel of Shari’a Council 2.

Based on interviews with ‘Ālim 3.1 and ‘Ālim 3.2, the ten religious staff of Shari’a Council 3 meet monthly. What distinguishes Shari’a Council 3 from the other two shari’a councils is the use of visiting ‘ulamā who serve as consultants for the council:

Our panel consists of ten ‘ulamā, who live in our city. And there are those who are in other cities and towns [in Britain], they are not members of our panel, but we consult them. Say for example a woman lives in Glasgow, we don’t want her to travel so far to come here. So, we have an Imam in one of Glasgow’s mosques to go interview her. In this way, we have another 15 visiting ‘ulamā throughout the

UK and Ireland. They interview clients in those towns and cities and send us a report.⁸⁰⁷

The three shari'a councils stated they offered their services in the following languages:

	Arabic	Bangla	English	Farsi	Somali	Urdu/Hindi
Shari'a Council 1	Yes	Yes	Yes	No	Yes	Yes
Shari'a Council 2	Yes	Yes	Yes	Yes	Yes	Yes
Shari'a Council 3	Yes	Yes	Yes	No	Yes	Yes

All three shari'a councils also shared they included women on their panels. In Shari'a Councils 1 and Shari'a Council 2, the female 'ulamā were the wives of other council members, while in Shari'a Council 3, the 'ālima⁸⁰⁸ (a female 'ālim) was the daughter of a male panellist. All three councils emphasised the crucial role these women held on their religious panels, especially when conducting one-to-one interviews with female petitioners. 'Ālim 3.1 went further to comment on the important role women have played in Islamic history:

In Islamic history, we have seen many women working as qadi and 'ālima, so why not today? Would you want your wife to speak to a male 'ālim? No. But when it comes to women leading the prayer, it is against Islamic principles, so this is out of the question.⁸⁰⁹

The issue with this tokenism to women by appointing their wives and daughters onto their panels stems from a historical precedent rooted in the patriarchal construct of Sunni jurisprudence. This construct mandates the authority of men over women, which has shaped the gendered power relations of Muslim societies for centuries. Mir-Hosseini notes that the religious basis for these gendered power relations in Islamic jurisprudence rests on a single postulate, which declares:

God made men qawwamun over women and placed them under male authority. For these jurists, men's superiority and authority over women was a given, legally

⁸⁰⁷ 'Ālim 3.1.

⁸⁰⁸ "عالمة", in Wehr, p. 637.

⁸⁰⁹ 'Ālim 3.1.

inviolable; it was in accordance with a conception of justice that accepted slavery and patriarchy, as long as slaves and women were treated fairly.⁸¹⁰

Mir-Hosseini explains how this postulate is rooted in the interpretations of the Qur'an (4:34) by the 'ulamā and fuqahā' of antiquity. According to their understanding, men were the *qawwāmūn*,⁸¹¹ responsible for guarding and managing the household, while a "righteous Muslim woman" was expected to fulfil her role as the *qanata*,⁸¹² being submissive, obedient, and humble towards her husband. These prescribed gender roles grant husbands control over their wives' activities outside the home, which have far-reaching social implications. One such implication is the belief that women are unsuited for positions of political or religious legal authority; given their subordination to their husbands and fathers, raising doubts about a woman's ability to act impartially in such roles.⁸¹³ The 'ulamā and fuqahā' of the Sunni legal traditions believed that "men are factually and juristically (*shar'ī*) superior to women".⁸¹⁴ Zainab Alwani's assessment of women's role and contribution to Islamic thought from the eighth to the twelfth centuries reveals that, while women held significant roles as legal advisors and consultants for the Sunni legal schools, they often worked under the shadow of the authority of their husbands and fathers, limiting their autonomy and ability to issue fatāwā independently.⁸¹⁵

7.4.5 Inter-Legal and Transnational Challenges

In her analysis of 100 khula case files from the Islamic Judiciary Board's archives, Rehana Parveen found that the majority of applicants (64 percent) were of Pakistani origin. Additionally, the Islamic Judiciary Board handled cases from various Muslim ethnicities, including Bangladeshi (7 percent), Yemeni (7 percent), Somali (6 percent), European/English converts (3 percent), Afghan (2 percent),

⁸¹⁰ Mir-Hosseini, 'Muslim Legal Tradition and the Challenge of Gender Equality', p. 38.

⁸¹¹ "قوام", in Wehr, p. 800.

⁸¹² "قننت", in Wehr, p. 792.

⁸¹³ Mir-Hosseini, 'Muslim Legal Tradition and the Challenge of Gender Equality', pp. 38–42.

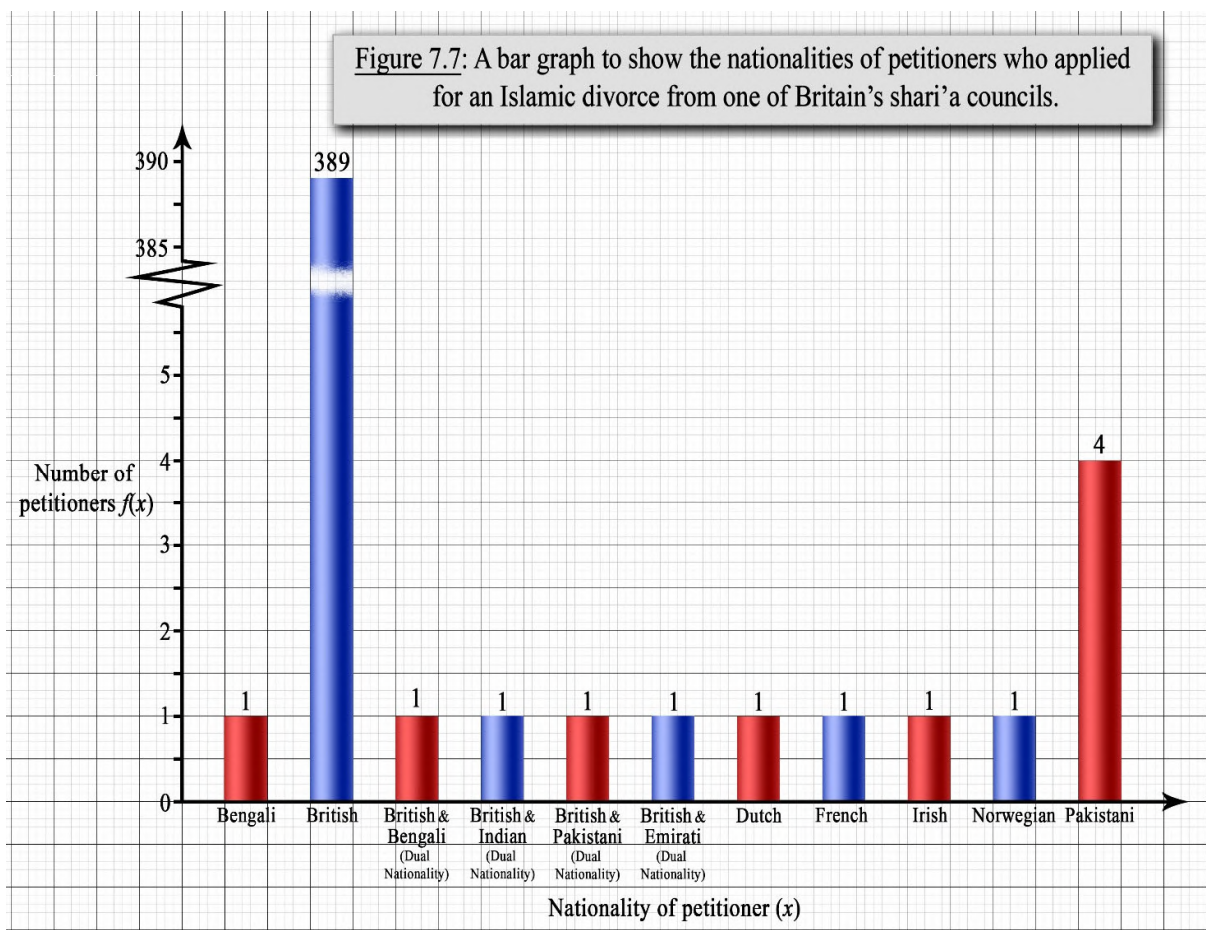
⁸¹⁴ Etin Anwar, 'Sexing the Prayer: The Politics of Ritual and Feminist Activism in Indonesia', in *Muslima Theology: The Voices of Muslim Women Theologians*, ed. by Ednan Aslan, Marcia Hermansen, and Elif Medini, Wiener Islamstudien (Frankfurt: Peter Lang, 2013), pp. 197–216 (pp. 205–8).

⁸¹⁵ Zainab Alwani, 'Muslim Women as Religious Scholars: A Historical Survey', in *Muslima Theology: The Voices of Muslim Women Theologians*, ed. by Ednan Aslan, Marcia Hermansen, and Elif Medini, Wiener Islamstudien (Frankfurt: Peter Lang, 2013), pp. 45–58 (pp. 53–55).

Kenyan (2 percent), Iranian (2 percent), and Palestinian (2 percent). Other ethnicities, such as Moroccan, Indian, Malaysian, Malawi, Zambian, and Arab, each accounted for 1 percent.⁸¹⁶

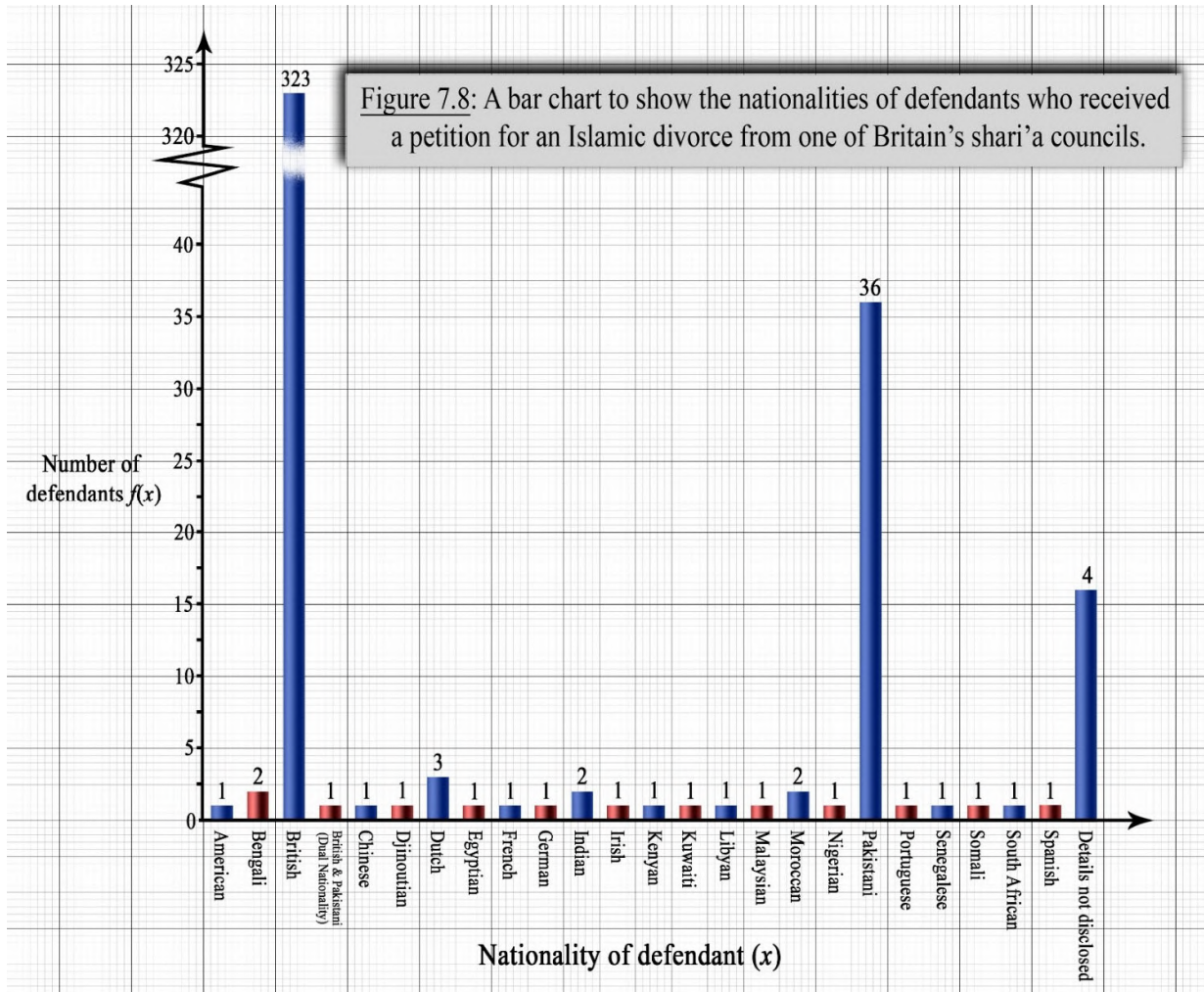
This study’s findings also highlights the diverse clientele of shari’a councils. While the ethnic origins of the clients were not documented in the 402 examined Islamic divorce cases, data was collected regarding the nationalities of both petitioners and defendants, as well as the countries where the marriages were contracted.

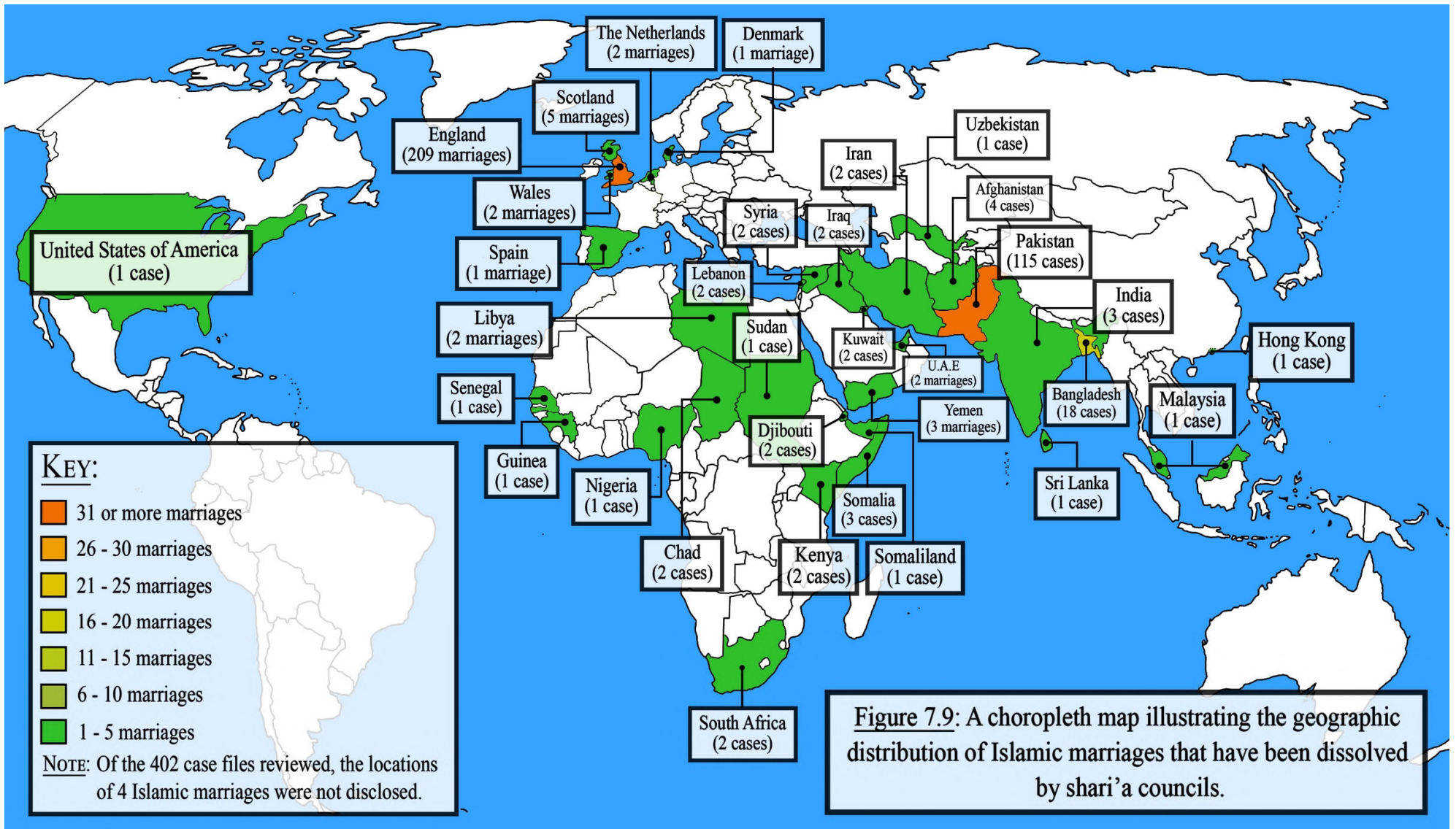
Figure 7.7 below presents a bar chart categorising the nationalities of the 402 petitioners in the reviewed Islamic divorce case files.



⁸¹⁶ Parveen, ‘Do Sharia Councils Meet the Needs of Muslim Women?’, p. 147.

Figure 7.8 presents a bar chart illustrating the nationalities of the 402 defendants of the Islamic divorce petitions reviewed for this study.





Based on a review of 402 Islamic divorce case files, shari'a councils received petitions to dissolve Islamic marriages from 33 countries. Figure 7.9 presents a choropleth map, indicating the number of dissolved Islamic marriages by country. Due to the significant frequency of Islamic marriages in England, Pakistan, and Bangladesh, a bar chart was not a suitable form for presenting the data. The analysis of the case files revealed that England had the highest number of Islamic marriages with 209 cases (52.00 percent of the sample), followed by 115 cases from Pakistan (28.60 percent), and then 18 cases from Bangladesh (4.48 percent).

Dealing with transnational legal paradigms and unregistered Islamic marriages poses a challenge for the 'ulamā, given that nearly half of the sampled group comprises Islamic marriages conducted outside Britain. Resolving this challenge requires substantial investment of time and resources to ascertain the legal and religious status of these marriages. The 'ulamā must take into account the complex relationship between Islamic and civil ceremonies in various countries, as well as the legal validity of Islamic marriage certificates issued overseas. Furthermore, a good understanding of the legal status of foreign civil unions under English and Welsh law is essential for providing guidance on dissolution procedures. In cases where an Islamic marriage certificate from abroad is notarised, shari'a councils issue an Islamic divorce certificate with specific conditions mandating the couple to obtain a civil divorce before they can remarry in Britain.

Figure 7.10: A pie chart illustrating the number of Islamic divorce certificates that stipulate the requirement for clients to obtain a civil divorce if they choose to remarry in Britain.

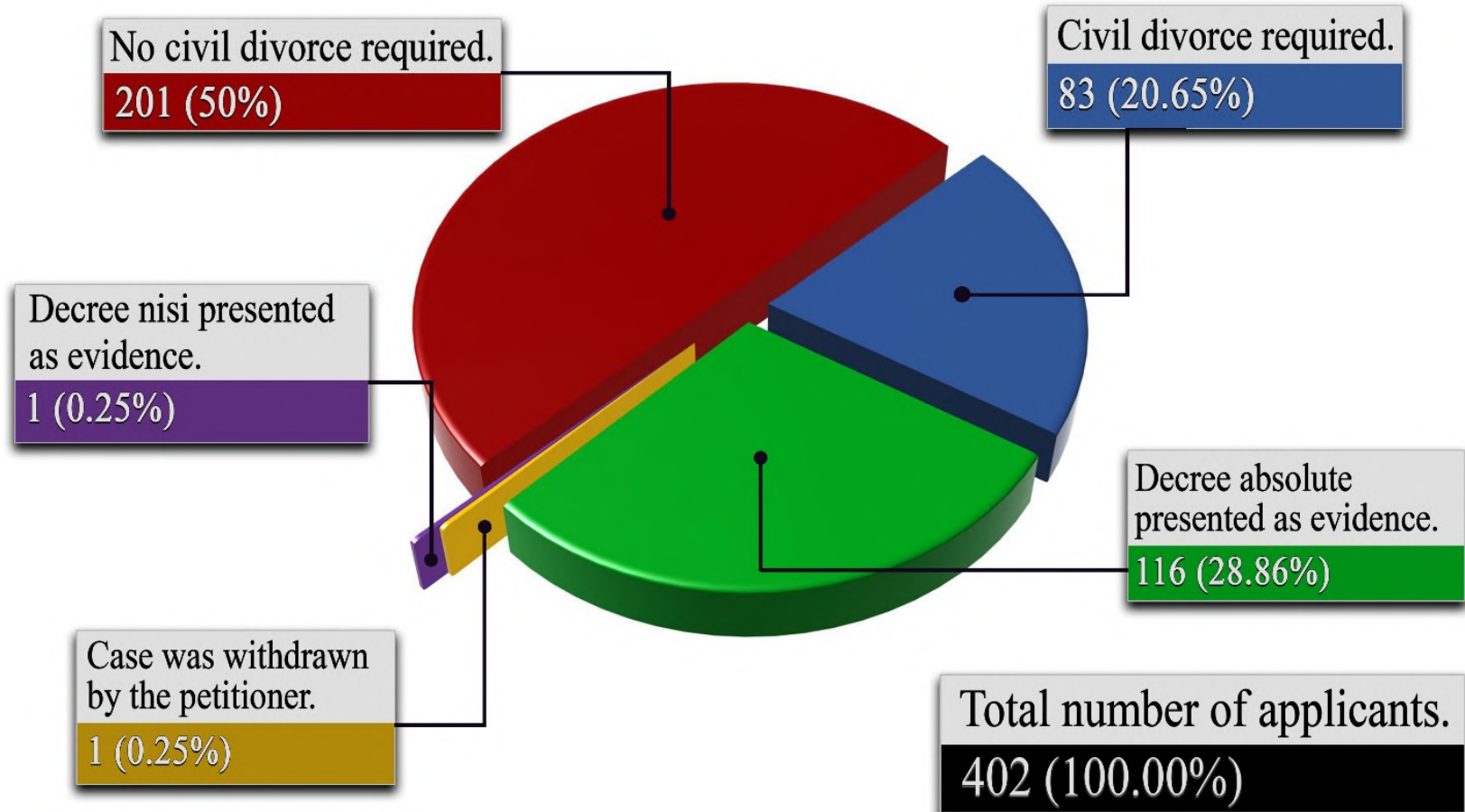


Figure 7.11: A pie chart to illustrate that from the 72 Islamic divorce cases initiated by men (talaq), the number of Islamic divorce certificates stating the need to seek a civil divorce if their clients wish to remarry in Britain.

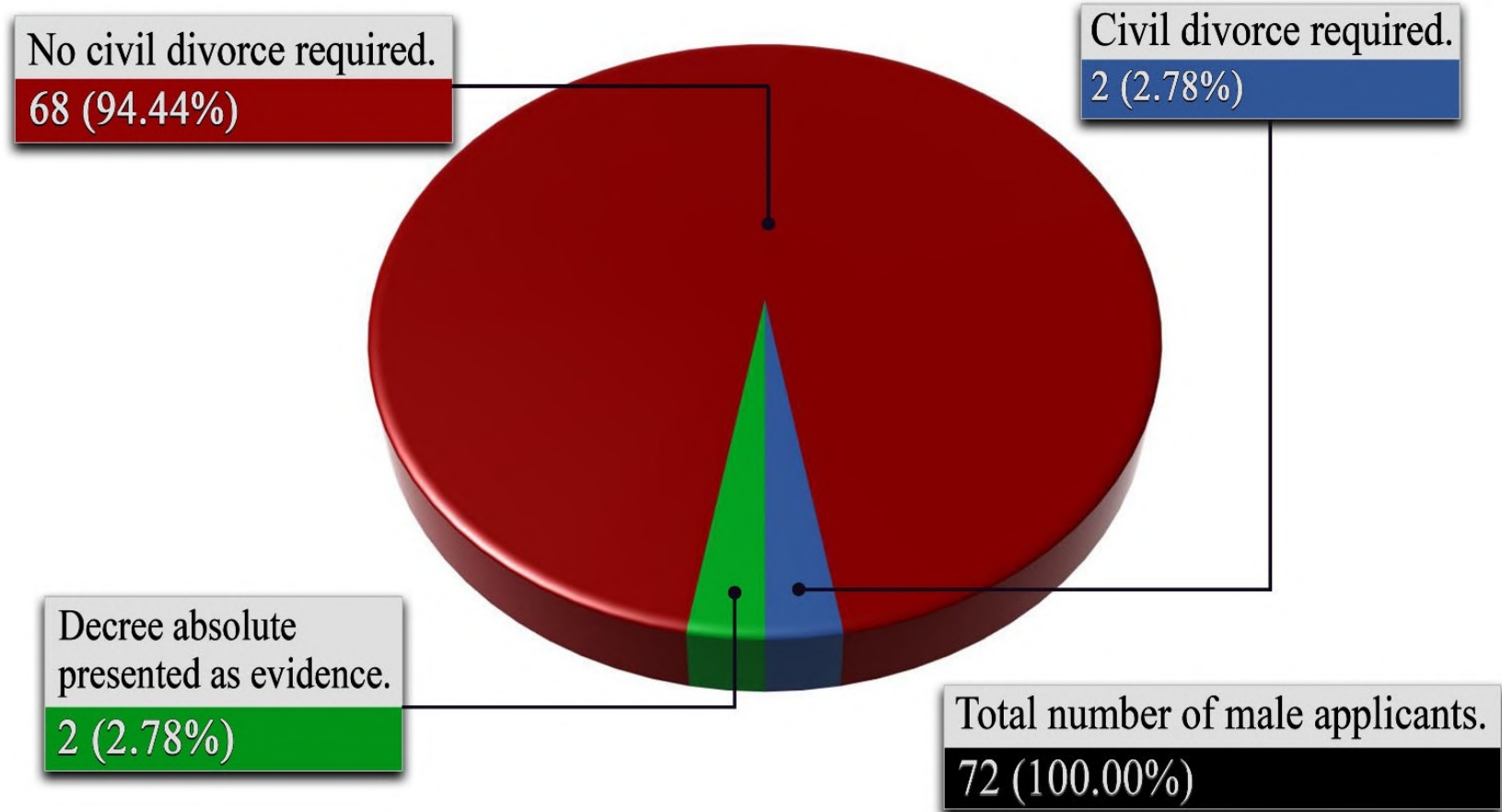
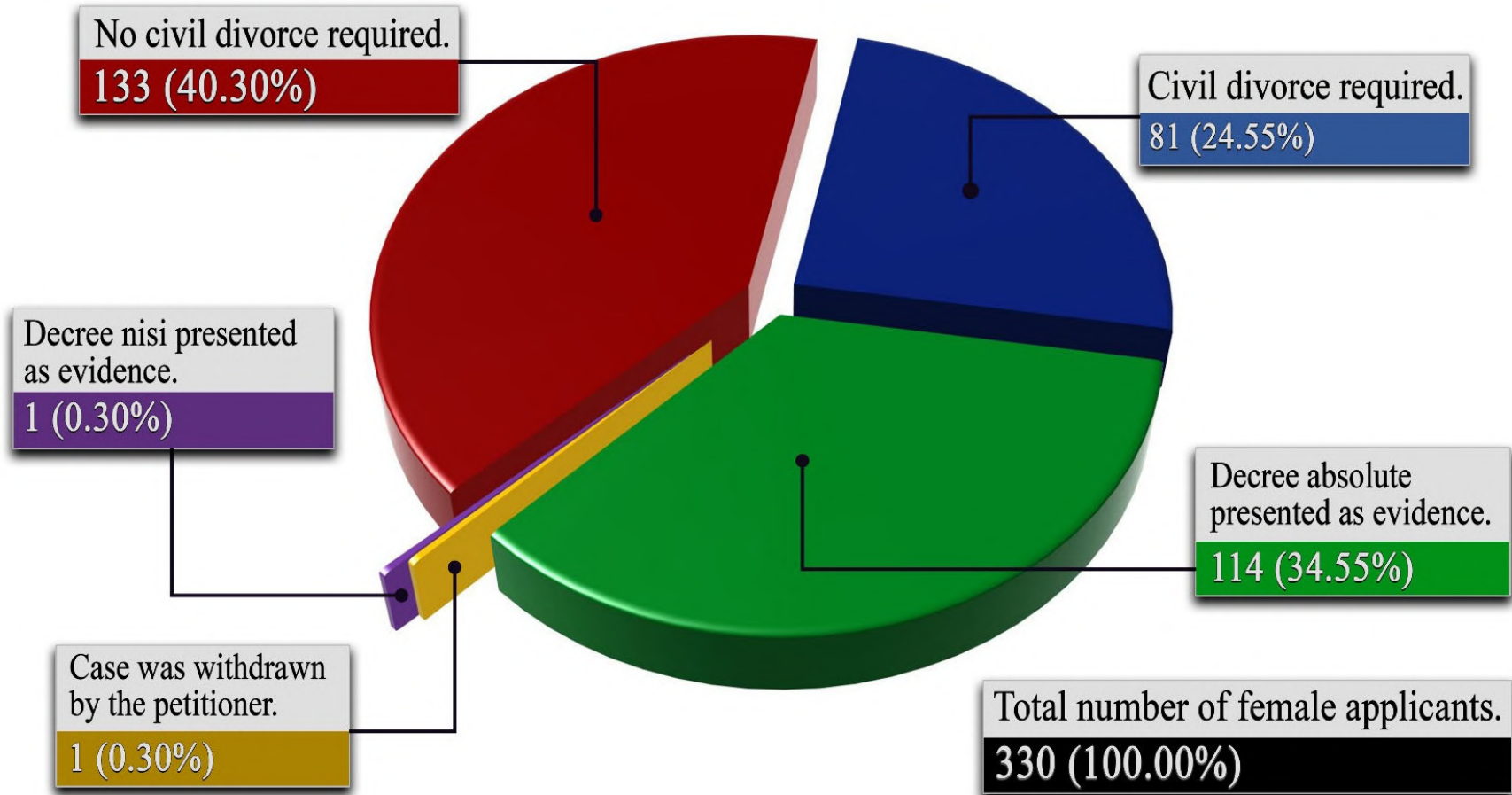


Figure 7.12: A pie chart to illustrate that from the 330 Islamic divorce cases initiated by women (khula), the number of Islamic divorce certificates stating the need to seek a civil divorce if their clients wish to remarry in Britain.



‘Ulamā interviewed for this study shared that many petitioners seeking talaq and khula divorces were unaware of the legal status of their Islamic marriage in Britain. The ‘ulamā had to clarify to these individuals that Islamic law and the fatāwā issued by their councils do not carry legal weight in British courts. In cases where the couple is Islamically married but did not civilly register their marriage, or when a decree absolute is presented, the ‘ulamā treat the case as a purely Islamic matter. However, for couples who are both Islamically and civilly married, the ‘ulamā advise them to pursue both civil and Islamic divorces. This advice is reflected in the Islamic divorce certificate issued by shari’a councils, which emphasises the need for both types of divorce in order to be eligible for remarriage in Britain.⁸¹⁷

In cases of clients with both Islamic and civil marriages, a clear distinction is observed in the use of decrees nisi and decrees absolute between khula and talaq petitions. For khula petitions, ‘ulamā may ask women to provide these legal decrees later in the process to support their petition. In contrast, men initiating talaq petitions are required to present a decree absolute as a prerequisite before beginning the talaq process. Shari’a councils often emphasise that a man must sever all civil legal ties with their wife before applying for a talaq. In an interview with Shuaib Hasan, a trustee and senior ‘ālim at the Islamic Shari’a Council, Manea discovered that...

...husband entered the petition for the civil divorce, this means that he ‘has deputised the court to give divorce on his behalf [...] and [has] given his consent.’ In this case, ‘there is no reason to stop this [Islamic] divorce.’ If the petitioner is the wife, however, the treatment changes. She is required to bring a form on which the husband states that he has consented to the civil divorce. If he refuses and says that he wants to defend the marriage, the process starts over.⁸¹⁸

The Muslim Law Shari’ah Council, based in West London, follows a similar protocol.

Section 12 of the Procedures of an Islamic Divorce (Talaq) stipulates that...

⁸¹⁷ ‘Ālim 1.2 and ‘Ālim 2.1

⁸¹⁸ Manea, p. 115.

...the Council will not issue an Islamic Divorce [Talaq] until the applicant has received their Decree Absolute in order to avoid any possible conflict between the Law of the land and Islamic Law.⁸¹⁹

In cases where women applied for khula without obtaining civil decrees, they were granted a khula based on the evidence presented. Khula certificates were issued to support these women in their civil divorce petitions.

7.4.6 Shari'a Councils' Consensus: How Decisions are Reached

In all three shari'a councils, an 'ālim, typically the council chair, advises clients on the Islamic divorce procedures according to the Qur'an and hadith traditions. Clients are instructed to provide supporting evidence for their Islamic divorce petitions, which is then compiled into a file by the council's administration and forwarded to the chairing 'ālim. The chairing 'ālim then discusses the case with each religious council member:

An 'ālim has to be very, very careful. He has to consider all the reasons... all aspects of the case. You can't just say 'I understand the situation' and give a quick decision on the spot. This is why the shari'a council cannot announce a decision before six months investigation. Ask the wife, then ask the people who know her. Ask the husband, and then ask people who know him. Then after the investigation and finding out where the fault lies, only then you reach the right conclusion and make a decision.⁸²⁰

Upon reviewing the evidence, testimonies, and details of the case, each council member shares their opinion based on their Islamic or professional perspective. During a council meeting, the chairing 'ālim collects (*muḥaṣṣil*)⁸²¹ these opinions for discussion. If a council member is absent, they can convey (*manqūl*)⁸²² their opinion to the chairing 'ālim by telephone, email, or separate meetings. Once all the opinions have been gathered, the council reaches a consensus and makes a decision:

Yes. In the shari'a council meetings, we review case files and then deliver a verdict, yes. During these meetings, we do not open new cases, normally people apply,

⁸¹⁹ The Muslim Law Shariah Council, 'Procedure for Islamic Divorce' (The Muslim Law Shariah Council, 2017), p. 2 <<http://www.shariahouncil.org/wp-content/uploads/2017/05/A1-Islamic-Divorce-Procedure.pdf>>.

⁸²⁰ 'Ālim 1.1

⁸²¹ "محصل", in Wehr, p. 183.

⁸²² "منقول", in Wehr, p. 996.

send their application and paperwork to the address. Some files go to the council meeting for a decision.⁸²³

The purpose of these council meetings is to review Islamic council case files, yes. And delivering verdicts, yes, erm.... Sometimes we talk about the management and administration of our council, but that is related in making the review of case files better.⁸²⁴

When the ‘ulamā meet, we must all take into consideration what is in the best interest [maṣlaḥa]. To do this, everything [about the case] must be made available to the ‘ulamā then we can decide to accept [an opinion] or refuse it. In the beginning, we spent the whole day debating and arguing and we did not resolve the case. What I have learnt from experience it is better not to come to meetings with a biased view.⁸²⁵

The ‘ulamā stated that opinions are explicitly (*ṣarīḥ*)⁸²⁶ expressed in shari’a council meetings, either verbally or in writing. However, they mentioned that minutes or reports from such meetings are not usually recorded due to financial constraints and lack of qualified staff:

It is a good idea to write such a report, but I don’t have the time for that. We all volunteer here. We could hire people to take minutes, but then we have to pay [them], and we can’t charge extra from clients because the [Muslim] community is not rich ... most people [who come to the shari’a council] are either unemployed or are in low-paying jobs. When Muslim women come to apply for a divorce, most of them have no jobs. So, we have to compromise. See where we can help. We have to be realistic.⁸²⁷

The researcher discovered that all three shari’a councils accepted the ‘ālim’s silent consent (*sukūṭī*)⁸²⁸ of the majority view. However, the ‘ulamā acknowledged being aware of the concept but had not yet implemented it in their meetings:

Sukūṭī ... yani [meaning] silent consent, of course Because... we mainly decide on matrimonial issues, which is decided in light of those opinions which have been agreed upon among the opinions of the fuqahā’ – Hanafi fuqahā’, Shafi’i fuqahā’, all the Sunni madhāhib. But I don’t think we have implemented this yet.⁸²⁹

⁸²³ ‘Ālim 2.1.

⁸²⁴ ‘Ālim 3.1.

⁸²⁵ ‘Ālim 1.2.

⁸²⁶ “صريح”, in Wehr, p. 511.

⁸²⁷ ‘Ālim 1.2.

⁸²⁸ “سكوتي”, Wehr, p. 417.

⁸²⁹ ‘Ālim 3.1.

7.4.7 Eligibility Criteria for a Shari'a Council Panellist

Differences emerged between the shari'a councils when the researcher asked who would be eligible to sit on their panel. One 'ālim shared:

Each council member must take into consideration what is in the best interest [maṣlaḥa].⁸³⁰

While other 'ulamā interviewed shared:

Very, very few in number are asking about the Hanafi school of thought because they come to us because we exclusively follow the Qur'an and the sunna and our clients expect this from 'ulamā.... Clients always ask us, "What does Allah and His Messenger, ṣallā -llāhu 'alayhī wa-sallam,⁸³¹ say? I just want this ruling."⁸³²

When we ['ulamā] refer to the sources of Islamic law, we don't just go for the Qur'an only, because we also have the Sunna for interpretation. Because the Qur'an has the interpretation which is the Sunna... we all agree that the opinions of ibn Taymiyyah is in line with the Qur'an and the hadith of the Prophet, ṣallā -llāhu 'alayhī wa-sallam – they are the most acceptable (opinions) for the community in Britain.⁸³³

This study found that eligibility criteria for membership on shari'a councils vary. Shari'a Council 1 gave priority to candidates who prioritise the interests (maṣlaḥa) of their clients and the British public. The council not only recruit traditionally trained 'ulamā but also allow academics, solicitors, and barristers to join their panel. 'Ālim 1.1 shared:

Research has shown our council is very academic and pragmatic. In many cases we deal with ... er... there needs to be a proper understanding of Islamic law [among shari'a council panellists], but we also need to be realistic [and] do investigation to see where the fault lies. This is why we say no [Islamic] divorce can be announced before six months investigation. We also have two lawyers ... er ... one solicitor and one barrister who is also an Oaths Commissioner. They speak and share their opinions based on what is [law] here in the UK. They insist that what our council decides it must not come into conflict with the rules of this country [Britain]. It is for this reason the case of the custody of children is not discussed.⁸³⁴

⁸³⁰ 'Ālim 1.2.

⁸³¹ Translation: "May God bless him [Muhammad] and grant him peace."

⁸³² 'Ālim 2.1.

⁸³³ 'Ālim 3.1.

⁸³⁴ 'Ālim 1.1.

In contrast, Shari’a Council 2 and Shari’a Council 3 sought ‘ulamā who focus on preserving Islamic legal traditions. Eligibility onto these two councils was restricted to traditionally trained ‘ulamā, preferably graduates of the Dār al-‘Ulūm of Deoband in India or from Saudi Arabia’s Islamic University of Medina or ‘Umm Al-Qurā University in Mecca. These conservative councils reject modern approaches to Islamic law and advocate for traditional methods. They believe that the Qur’an, authentic hadith collections, and classic works of Islamic law provide solutions to contemporary challenges faced by British Muslims. Furthermore, these conservative shari’a councils are open to seeking guidance from overseas ‘ulamā for complex Islamic divorce cases and other contemporary issues in Britain:

When we have new issues related to ijtihād as well as contemporary issues, in our council, we refer the matter to a fiqh academy in Saudi Arabia, like the famous majma al-fiqh islāmīya dauī [International Islamic Fiqh Academy]⁸³⁵ ... we can look at modern problems in many ways, but in our field ... but suppose we take two position – one related to hadith, and the other related to history; there is a difference between a historian and a muḥadith.⁸³⁶ When one speaks of a muḥadith, he will mention some tradition of Muhammad, ṣallā -llāhu ‘alayhī wa-’ālihī wa-sallam, mostly and tries to apply the rules and regulations of ulūm al-hadith [The hadith sciences] and like ‘ilm ta’dīl al-ṭabaqāt [the science of amending and categorising hadith traditions] the muḥadith apply this. But when a person is writing from a historical perspective, he is generally only taking information, so history is like a collection or a massive collection of information without any rules. That is why when we look at the sources like hadith there are very specific rule in how to apply the rules and regulations of the science, al-jarh wa al-ta’dil [invalidating and amending the hadith traditions].⁸³⁷

The researcher inquired whether the ‘ulamā of these conservative shari’a councils sought the advice of English solicitors. ‘Ālim 2.1 shared that they do consult solicitors when the nature of the case calls for it.

⁸³⁵ International Islamic Fiqh Academy, *International Islamic Fiqh Academy Website (English)* (Jeddah, Saudi Arabia: International Islamic Fiqh Academy) <<https://www.iifa-aifi.org/en/12957.html>>.

⁸³⁶ Sin: muḥadith (محدث), Pl: muḥaddithūn (محدثون) or muḥadditheen (محدثين). See “محدث”, in Wehr, p. 162.

⁸³⁷ ‘Ālim 2.1.

7.4.8 Working with Other Shari'a Councils

When it came to interacting with other shari'a councils, 'Ālim 2.1 shared:

We do try to contact other shari'a councils if there is any confusion, particularly when we find a person who has applied to more than one shari'a council.⁸³⁸

'Ālim 1.2 discussed the advantages of collaboration among shari'a councils, particularly in verifying previous filings for Islamic divorces. In a specific khula case, 'Ālim 1.2's council contacted the husband to inform him about his wife's khula application. The husband revealed that his wife had previously sought a khula from another shari'a council, but her petition was rejected. He provided details of her previous application, which indicated her refusal to fulfil her Islamic obligation of compensating him (*wafā'*) the bridal-gift she had received during their marriage. The husband expressed his willingness to grant the khula once he received his compensation. Based on this information, 'Ālim 1.2's council rejected her petition.

'Ulamā from different shari'a councils in Britain are collaborating to tackle the problem of individuals submitting multiple applications for Islamic divorces across several councils. They are exploring the possibility of establishing a *National Union for Shari'a Councils* or a *National Islamic Marriage Registry* to record Islamic marriages and divorces in Britain. However, these initiatives have been impeded by the legally null status of Islamic law in the country:

We don't have any umbrella shari'a council system here, for Islamic marriages as well as for Islamic divorces. Because we don't have any [legal] power of implementation, what we are doing can be considered as voluntary work. So, we don't have any central thing, accept, if you want to communicate with other councils to find out more about a case we have, such as, 'Do you know anything about this case?' We can only do that. Otherwise, no, we don't have a central shari'a council board.⁸³⁹

⁸³⁸ 'Ālim 2.1.

⁸³⁹ 'Ālim 2.1.

According to ‘Ālim 1.2, establishing a *National Union for Shari’a Councils* or a *National Islamic Marriage Registry* would provide shari’a councils and their ‘ulamā with a clear set of standards and a code of practice to adhere to. They believed that adhering to these standards and practices would enable ‘ulamā to provide British Muslims with a more consistent set of guidelines based on the Qur’an and hadith traditions. Currently, ‘ulamā from various shari’a councils are actively discussing the formation of this union. Some of the topics discussed in these meetings include:

- The administrative procedures for talaq and khula applications, and the similarities and differences among shari’a councils.
- The criteria employed by shari’a councils to assess the progress of Islamic divorce petitions.
- Instances when shari’a councils intervene, convene, and reach a consensus to resolve disputed cases.
- The average duration of successful talaq or khula applications.

The proposed *National Union of Shari’a Councils* will help streamline the Islamic divorce process by standardising application forms and fees. However, there are considerable disagreements among the councils regarding the Islamic legal methods they employ.

One shari’a council may incline towards a more conservative, Hanbali-Salafi method, while other may follow Hanafi school. We have to agree to disagree on this matter, but there are some common features among all the madhāhib, so we should try to be as similar as possible.⁸⁴⁰

7.5 Shari’a Council Services: Islamic Marriages

The ‘ulamā who took part in this study all shared the same advice on how British Muslims conduct their Islamic marriages. Some couples sought to solemnise their marriages under the supervision of a council ‘ālim. The ‘ulamā emphasised the importance of following the guidelines of

⁸⁴⁰ ‘Ālim 1.2.

the Qur'an and hadith traditions to ensure the validity of the marriage. Furthermore, the 'ulamā concurred that the location of an Islamic marriage holds no significance under Islamic law:

It is not the condition that you have to be in a mosque to perform an Islamic marriage, no. Wherever you are, if the couple have fulfilled all the requirements of an Islamic marriage, like having witnesses to your ceremony, the mahr [bridal-gift], the ṭjāb [offering], the qabūl [acceptance] by both the groom and the bride, and they have to both accept each other willingly. And then there is the walī, preferably the father of the bride, he [is] also there. So as long they have fulfilled these requirements, this will be considered as a genuine and proper [Islamic] marriage. This will be considered a nikāḥ.⁸⁴¹

The 'ulamā were asked whether shari'a councils accepted civil marriage certificates as valid Islamic marriage certificates. 'Ālim 2.1 answered:

Yes and no... not in general ... you see, according to Islamic law, as long as the couple fulfils all the requirements of the Islamic marriage ceremony, regardless of the place, in a masjid, or in the registration office, as long as the Islamic marriage procedure is followed properly, it will be considered an Islamic marriage.⁸⁴²

According to 'Ālim 2.1, an English civil marriage ceremony is invalid under Islamic law because it does not include the obligatory Islamic rites of the groom presenting the bridal gift:

An English marriage as a valid Islamic marriage? ... I cannot really say "yes" or "no" it depends on what they [registry office] decide. If we are conducting a civil ceremony and we inform the registry office about [the] mahr, it is up to them [registry office] if they accept it. But if we don't inform the office, they don't accept [it].⁸⁴³

7.5.1 The Benefits of Shari'a Councils' Islamic Marriage Services to Young British Muslims

British Muslim couples have various options to solemnise their Islamic marriages. They include shari'a councils, mosques offering Islamic marriage services, and Muslim community elders who are well-versed in the Islamic marriage rites. Shari'a councils and mosques offer the added advantage of providing step-by-step guidance and the flexibility to modify Islamic marriage

⁸⁴¹ 'Ālim 2.1.

⁸⁴² 'Ālim 2.1.

⁸⁴³ 'Ālim 2.1.

certificates (*nikāḥ nāmā*) by adding conditions (*shurūṭ*),⁸⁴⁴ such as specifying the amount of the bridal gift (*mahr-i-mussama*) or ensuring the marriage remains monogamous. Furthermore, an imam or ‘ālim can serve as one of the required witnesses for the ceremony:

A husband or a wife can put conditions for the Islamic marriage, such as monogamy or delegating the power of talaq [talaq tafwīz]. They have a right to do that... a woman can put the condition on the husband that he will not marry another woman, if he does, she will get out the [Islamic] marriage. This is a kind of a dispute... a *shiqāq*, yes. It will place the marriage in *faskh* [annulment].⁸⁴⁵

7.5.2 Young, Single Muslims: Advice Offered by Shari’a Councils

In contrast to conflict-ridden Islamic divorces, Islamic marriage ceremonies are typically characterised by couples who are eager to conduct their Islamic marriage rites properly and recite their marital vows precisely. Shari’a council ‘ulamā commend Muslim couples who meticulously plan their Islamic marriages. It can be argued that, while not all British Muslims adhere to all liturgical practices in their daily lives, they demonstrate a serious commitment to their faith when it comes to important life events such as marriage, divorce, or death, making dedicated efforts to ensure the correct performance of the required Islamic liturgies:

The majority of the Muslim community in Britain like some things in their life done according to Shari’a. Not everything, but in things like marriage and divorce.... They want to make sure their marriage is a legitimate Islamic marriage. Muslims do good and bad things, but when it comes to marriage, they follow the guidelines of Islam.⁸⁴⁶

Young, single British Muslims occasionally seek assistance from shari’a councils to find a suitable marriage partner. Their upbringing in Britain shapes their religious experiences, leading to differences from their parents’ perceptions of Islam. Some young British Muslims find their parents’

⁸⁴⁴ “شرط”, in Wehr, p. 465.

⁸⁴⁵ ‘Ālim 1.1.

⁸⁴⁶ ‘Ālim 1.2.

religious practices to be bizarre and capricious, and they desire a life partner with whom they can have a meaningful connection, both religiously and intimately:

They [parents] retain their cultural traditions as their major point of reference and continue to conduct their affairs wherever possible in the manner to which they are accustomed. If they prefer arranged marriages it is not for the purpose of circumventing immigration law as the press would sometimes have us believe but because, to the ordinary Pakistani and Bengali, such is the order of things as he understands them. The spectre of a young man or woman being thrown into society to seek a marriage partner is regarded by the community not only as immoral but also as irresponsible. Marriage is too serious a business for the community to be left entirely to the inexperienced whim of the young. Circumstances impose their own strictures on the community and many a young man or woman may rebel against a system so unfamiliar to those brought up in Britain. But the majority of the young still welcome the advice of their parents, sure in the knowledge that it is up to the young people them-selves to accept or reject parental choice.⁸⁴⁷

‘Ālim 3.1 highlights some of the challenges that young, single Muslims face as they attempt to reconcile their lives in Britain with their familial and cultural traditions:

If we take the criteria of Muslims who follow the Hanafī fuqahā’, there should be kafā’, meaning the man and the woman must be equal in their social status.... a man’s profession should not be considered as a low type profession in the eyes of his wife’s family. This is wrong. But we, in our shari’a council, we don’t take the Hanafī opinion, we take the opinion of the Maliki school of law here, the Maliki opinion is based on the Hanbali as well, which is based upon the hadith⁸⁴⁸ of the Prophet, ṣallā -llāhu ‘alayhī wa-‘ālihī wa-sallam, who said, ‘If a person comes to you asking for your daughter’s or sister’s hand in marriage, then you should just see two things, his dīn, the man’s religion and his akhlāq, his character.’⁸⁴⁹

7.5.3 Differences of Opinions among Shari’a Councils Regarding Islamic Marriages: The Role of the Walī

The role of the *walī*, the guardian who gives away the bride, in an Islamic marriage is a subject of debate among shari’a councils. Ibn Rushd identified two ways in which a *walī* may represent their Muslim ward in a marriage contract:

The first way, the consent [qabul] of the bride and groom is taken into account, either with the consent of their guardian [walī], or without his [walī] consent

⁸⁴⁷ M.A. Zaki Badawi, p. 12.

⁸⁴⁸ Abu ‘Isa Muhammad ibn ‘Isa at-Tirmidhi, ‘The Book on Marriage’, in *Jami’ al-Tirmidhi*, trans. by Sunnah.com, 49 Books (Arabic), 46 Books (English) vols (Sunnah.com), BOOK 11 (ARABIC) ḤADĪTH NUMBER 5; BOOK 6 (ENGLISH) ḤADĪTH NUMBER 1084. <<https://sunnah.com/tirmidhi/11/5>>.

⁸⁴⁹ ‘Ālim 3.1

according to the opinion of those [among the Sunni ‘ulamā] who do not stipulate a guardian in the case of a consent of woman who possesses the right herself. The second, the consent of the guardians alone is taken into account. In both ways there arise issues that are disputed.⁸⁵⁰

Today, ‘ulamā are divided on the issue of whether an adult, independent Muslim woman needs a guardian to represent her in an Islamic marriage. ‘Ālim 1.1 offers a summary of this ongoing debate:

With the Shafi‘i legal school, they’re very strict because ... er ... there once was a case where a brother was a walī for his sister in the presence of her father. The couple were living together, but the Shafi‘i ‘ulamā decided that their marriage is null and void. Hanafi legal school is very good in this matter, they say even if there has been a mistake in the Islamic marriage, if the couple are together, consummated the marriage, then the Islamic marriage is legal. If the person has married someone the Qur’an allows, legalise it! So, the Hanafi school then made two levels of differences in the mistake - fāsīd and bāṭil. Bāṭil is when there is an essential part missing so there is no way you can legalise it. Fāsīd is where a necessary part is missing so... if the woman married without the consent of her father, according to the Hanafi school, it is fāsīd and should not be done. But if she is living with her husband and they have consummated the marriage, then it is alright.... The Hanafi school is very practical here.⁸⁵¹

‘Ālim 3.1 provides a traditionalist’s critique of the Hanafi legal stance on the role of a walī:

The Shafi‘i legal schools say, la nikāḥ laha bila walī, there is no nikāḥ without a walī, so the Shafi‘i school is very strict about it. But most of the Hanafiyah, they say an adult woman can marry without a walī. So, people ask our council, “what is your stance on this matter?” Large sections of the Muslim community in Britain believe in the Hanafi maḏhab and they also believe a woman can marry without a walī. There was a case brought to us of a woman who married without a walī and she was asking us for a talaq. So, if we took the Shafi‘i position, it is straight forward, the marriage did not happen. According to the Shafi‘i view, it is bāṭil, the marriage is null and void. So, we could just issue a certificate stating the marriage itself was void based on the Shafi‘i maḏhab. But our council can’t take this course because for the Hanafiyah, the marriage was valid.

So, we have to approach the case in a purely Hanafi way. The true Hanafi position is that an adult woman can marry without a walī on two conditions: first she marries a man who is kuf’,⁸⁵² meaning he is suitable or equal to her status, that he is kafā’. Secondly, that she does not accept a mahr that is lower than what is acceptable to her family. The Hanafi say these are the two positions. So, if a woman comes to us and says, “I have married without a walī, but now I want to come out of this marriage.” We say, “Fine, the marriage is valid according to the Hanafi school.” The Hanafi school allows it on these two positions. But then a walī, like her father is allowed to invalidate the marriage on these two positions; they are not satisfied. In the Hanafi school, the walī has got the right to invalidate the marriage on these two conditions. So, in such cases we ask the walī to come here, or at least send a

⁸⁵⁰ Rushd, II, p. 4.

⁸⁵¹ ‘Ālim 1.1.

⁸⁵² “كُفء”, in Wehr, p. 832.

letter that he wants to cancel the marriage on these two grounds. If the walī asks this, then it becomes easy for us because, according to the Hanafi school, the marriage is now invalid.⁸⁵³

Under Islamic law, a wife can dissolve her marriage by asking her father to nullify it on the grounds that the bridal-gift does not meet his expectations. However, some ‘ulamā have criticised this Islamic legal loophole (*hīla*):⁸⁵⁴

Some fathers, who are the walī of the daughter, they are misusing this position. So how do we decide? Sometimes, in a council like here [Britain] a Muslim woman is living alone. Maybe she is 25 years old, 30 years old. She is independent. Living alone. Her father is abroad and there is no communication [between the father and daughter]. Then this woman decides to get married, but if we insist on the approval of the father as a walī, where do we stand? Where does she stand, practically? With reality? She is educated, she has good knowledge of Islam. She is a practicing Muslim. But suppose if the father is the opposite and does not bother about Islam; how do we deal with the matter of a walī?⁸⁵⁵

British Muslim women who convert to Islam face numerous personal and social challenges, one of which is the risk of being disowned by their families, with fathers being particularly hostile to their daughters’ spiritual choices. When a British woman converts to Islam and intends to marry, the issue of her *walī* arises. Fortunately, shari’a councils regularly address this question, and their responses come naturally:

Normally there is a need for a walī in an Islamic marriage. A walī is not someone to be appointed by external sources; except if she is a new Muslim, or there are some personal circumstances.⁸⁵⁶

Yes. We say the exact same thing. Even when non-Muslim couples are married and they both become Muslim, the couple come to us and ask, “Do we need to do a nikāḥ or is our previous marriage still valid?” We tell them, “Yes. Your marriage is still valid. You don’t need to do a nikāḥ.”⁸⁵⁷

⁸⁵³ ‘Ālim 3.1.

⁸⁵⁴ “حيلة”, in Wehr, pp. 217–18.

⁸⁵⁵ ‘Ālim 2.1.

⁸⁵⁶ ‘Ālim 2.1.

⁸⁵⁷ ‘Ālim 1.2.

None of the three shari'a councils kept records of Islamic marriages in their archives, as this service did not involve the collaborative efforts of their councils' 'ulamā:

Yes. matters such as Islamic counselling services, entering the Islamic faith... erm.... Islamic marriages, within and outside of our premises, yes. Consultancy, yes. Interfaith-Dialogue... all these things are not at the level of a shari'a council. They can be done on an individual level by an 'ālim.⁸⁵⁸

7.6 Shari'a Council Services: Consultancy

Despite the limited demand, all three shari'a councils provide consultation services to professionals in fields such as finance, business, law, and medicine. They also extend their services to national government bodies, local authorities, non-governmental organisations (NGOs), community groups, and other religious communities.⁸⁵⁹ Furthermore, 'ulamā mentioned that academics frequently approach their councils for research purposes.⁸⁶⁰

All three shari'a councils conceded that they did not keep a record of their consultancy services. Instead, meetings with professionals and academics were logged in visitors' logbooks, often found near their councils' reception. Email correspondence with other professional bodies also served as a record of their consultancy services. Furthermore, the 'ulamā were willing to be referenced by professional and academic clients in their publications. According to 'Ālim 1.2, shari'a councils' contributions to the academic and professional spheres will set important precedents for future generations of British Muslims and faith leaders:

Life for Muslims in Britain is not complex. It is new; we have no precedents in our books. It is a challenge we [Muslims] have to accept.⁸⁶¹

⁸⁵⁸ 'Ālim 3.1.

⁸⁵⁹ 'Ālim 1.1, 'Ālim 2.1, and 'Ālim 3.1.

⁸⁶⁰ 'Ālim 1.1 and 'Ālim 2.1.

⁸⁶¹ 'Ālim 1.2.

The lack of Islamic legal precedents for Muslims who choose to live as minorities led Zaki Badawi to foresee the cultural, political, social and epistemological challenges that await Muslims in postmodern secular Britain.

This reflects the historical fact that Muslims, from the start, lived under their own law. Muslim theologians naturally produced a theology with this in view - it is a theology of the majority. Being a minority was not seriously considered or even contemplated. The theologians were divided in their attitude to the question of minority states. Some declared that it should not take place; that is to say that a Muslim is forbidden to live for any lengthy period under non-Muslim rule. Others suggested that a Muslim living under non-Muslim rule is under no obligation to follow the law of Islam in matters of public law. Neither of these two extremes is satisfactory. Throughout the history of Islam some pockets of Muslims lived under the sway of non-Muslim rulers, often without an alternative. They nonetheless felt sufficiently committed to their faith to attempt to regulate their lives in accordance with its rules and regulations in so far as their circumstances permitted. In other words, the practice of the community rather than the theories of the theologians provided a solution. Nevertheless, Muslim theology offers, up to the present, no systematic formulation of the status of being in a minority.⁸⁶²

7.7 Conclusion

This chapter provided insights into the procedures and challenges faced by shari'a councils with regard to Islamic marriages and divorces in Britain. The chapter began by highlighting how marriage under Islamic law holds the same legal status as other contracts, while also serving as a social mechanism that strengthens familial bonds, promotes peaceful coexistence, and prioritises the well-being and identity of children.

The chapter explored the history and significance of the bridal-gift in Islamic law, emphasising its mandatory nature in symbolising a husband's commitment to support his wife and assume the financial responsibility for their new family. Differences of opinion among Sunni legal schools were examined, particularly in cases of irregular marriages (*fāsid*). Despite these differences, a consensus emerged that an "equitable bridal-gift" (*mahr al-mithl*) should be paid to rectify such irregularities. The chapter traced the evolution of the concept of the bridal-gift, from the pre-Islamic practice of the

⁸⁶² M.A. Zaki Badawi, p. 25.

mahr, where the groom pays the “purchase price” to the bride’s father, to a charitable gift (*ṣadāq*) that the groom gives to his bride during the nikāḥ ceremony. However, remnants of the pre-Islamic notion persist today, with the term *mahr* often being used to denote the “charitable gift” given during the nikāḥ ceremony.

Regarding Islamic divorces in Britain, the chapter revealed the role shari’a councils play in facilitating the process. These councils handle three types of Islamic divorces—*talaq*, *khula*, and *faskh*—following the guidelines of the Qur’an and hadith traditions. The chapter examined the specific requirements and processes involved in Islamic divorces, such as the significance of witnesses, the husband’s obligations of providing maintenance (*nafaqa*) and accommodation (*īwā’*) during the ‘idda period, and the remuneration of the bridal-gift. The ‘idda period serves as an observation period, similar to a decree nisi in the British judicial system, allowing for the possibility of reconciliation or progression to irrevocable divorce stages. Differences of opinion among Islamic legal schools regarding the role of witnesses and the ‘idda period was also examined, highlighting the complexity of divorce under Islamic law.

The chapter delved into the organisational structure of shari’a councils, assessing the roles and responsibilities of their religious and administrative personnel. It identified common challenges faced by these councils, such as transnational marriages, unregistered marriages, the limitations of Islamic law in the British legal context, and clients seeking Islamic divorces from multiple councils. Efforts have been made by these councils to address these challenges through initiatives like the *National Union of Sharia Councils* and the *National Islamic Marriage Registry*, which aim to establish standards and a code of practice for shari’a councils and provide clarity for British Muslims.

The chapter revealed that when ‘ulamā were questioned about the inclusion of women on their religious panels, they promptly replied that they had appointed their wives and daughters for this

purpose. It critically assessed that the appointment of female family members as the “resident ‘ālima” is predicated on the gender roles delineated in the classic Sunni legal works. The chapter revealed the historical context in which female scholars often worked under the shadow of their husbands’ and fathers’ authority, which curtailed their autonomy, silenced their voices, and restricted their ability to exercise independent judgment.

The chapter observed variations among shari’a councils, with some adopting progressive approaches that prioritise what is in the best interest (*maṣlaḥa*) of their clients and British society, while others employed conservative approaches, working to preserve their religious traditions in a secular society and seeking guidance from overseas ‘ulamā to ensure conformity to Sunni orthodoxy.

Regarding the role of the *walī* in a nikāḥ, the chapter highlighted differences of opinion among shari’a councils. The ‘ulamā acknowledged the Shafi’i legal school’s adage, *La nikāḥ laha bila walī* (There is no nikāḥ without a walī), while also noting the Hanafi legal school’s more lenient stance in the absence of a walī. However, this leniency is subject to two conditions: the first is that the bride marries someone of equal social and economic status (*kuf’*), and the second is her acceptance of a bridal gift deemed acceptable by her family. This second condition creates a legal loophole (*hīla*), allowing the bride’s father to dissolve the marriage if the bridal-gift does not meet his expectations. These variations underscore the ongoing debates and complexities within Islamic jurisprudence that shari’a councils are grappling with.

In addition to providing marriage and divorce services, shari’a councils offer consultancy services to professionals, government bodies, NGOs, and researchers, offering insights into the needs of British Muslims and Islamic legal guidance within the multicultural context of Britain. The study also highlighted the efforts of progressive ‘ulamā to address the lack of systematic formulation in Islamic thought concerning minority status. They emphasise the unique challenges faced by Muslims

who choose to live as minorities in Britain, drawing guidance from the experiences of British Muslims rather than relying solely on classic works of Islamic law.

In summary, this chapter sheds light on the multifaceted nature of Islamic family law and the essential services provided by shari'a councils to Muslims in Britain. It identifies challenges related to transnational marriages, legal limitations, and the role of the *wali*, calling for further discussions and potential reforms. The chapter underscored the importance of dialogue and collaboration between shari'a councils, legal authorities, and society to ensure effective service provisions and the protection of individuals' rights within the framework of British law. Overall, it contributes to a deeper understanding of the complexities involved in applying Islamic family law in the diverse and multicultural society of Britain.

Chapter 8: Shari'a Councils and the Sunni Legal Schools

8.1 Introduction

This chapter seeks to address two key questions from the six posed for this study. These questions are:

1. Which one of the four popular Sunni legal schools do shari'a council 'ulamā follow?
2. Which one of the four popular Sunni legal schools do British Muslims follow?

These two questions are closely related, as they explore the Islamic legal beliefs and practices of both British Muslims and the 'ulamā who serve on shari'a councils. After transcribing the 'ulamā's interviews and applying the methods of Informed Grounded Theory, several initial codes emerged in the context of these two questions during the memoing and line-by-line coding process. These codes included terms such as "Hanafi," "Shafi'i," "Maliki," "Hanbali," and "Ja'fari," which refer to the Islamic legal schools practiced in Britain.

Following the recommendations of Henwood and Pidgeon, this study will maintain a theoretically agnostic approach during the course of its grounded theory analysis. The purpose of this analysis is not to seek validation of the Sunni legal traditions to which the 'ulamā adhere to, nor is it intended to juxtapose different Sunni legal methodologies against what the 'ulamā apply in a speculative manner. Rather, the purpose is to allow the data, consisting of transcriptions and council archives, to speak for themselves.

8.2 Which of the Four Popular Sunni Legal Schools Do Shari'a Council 'Ulamā Follow?

The 'ulamā shared that their respective councils did not strictly adhere to a particular Sunni legal school. To substantiate their assertions, the researcher inquired about the Islamic legal approaches employed by each council in handling Islamic divorce applications:

[We look at] what is in the best interest of everyone [involved in a case]. Whether it comes from Shafi'i, Hanbali, Maliki, Hanafi madhāhib or whether it comes from outside the four madhāhib, it must respect the sources of the shari'a [Qur'an and hadith literature]. If we go outside of the shari'a, it defeats the whole purpose of [the] shari'a council.⁸⁶³

'Ālim 1.2 explained that during adjudication, their council strives to formulate opinions based on the Qur'an and hadith traditions and must refrain from exclusively adhering to one of the four popular Sunni legal schools. According to 'Ālim 1.2, an 'ālim is required to maintain a distinction between their Islamic sectarian beliefs and Sunni legal practices while working for their council. 'Ālim 1.2 believes it is crucial for the 'ulamā to maintain fairness and impartiality, avoiding any bias or prejudice towards their clients based on their religious affiliations:

It doesn't matter if the person on the council is Salafi or Sufi because the shari'a councils is not here for these [differences]. That is the not purpose of the shari'a council. Shari'a councils are here to serve the community.⁸⁶⁴

'Ālim 1.2 asserted that their council principally works for the benefit of wider British society. They provide Islamic counsel that benefits all British citizens, operating on a local level while being mindful of the wider national impact of their decisions. Like Zaki Badawi, 'Ālim 1.2 views shari'a councils as a temporary measure, currently being one of the few options available for British Muslims for Islamic advice that is grounded in tradition:

I believe shari'a councils can exist for other purposes like mediation [or] providing information on Shari'a for the Muslim community or other organisations. There is

⁸⁶³ 'Ālim 1.2

⁸⁶⁴ 'Ālim 1.2

no harm in having an organisation [like shari'a councils] where people can discuss and resolve their disputes ... but this idea of a [religious] court that deals with Muslims and a Hindu court and a Jewish court, this I am not in favour of. ... [but] there is no alternative, so we continue doing it.⁸⁶⁵

When addressing the contemporary challenges faced by British Muslims, 'Ālim 1.2 asserted that the classic works of Islamic law offer limited guidance. According to 'Ālim 1.2, there are shortcomings in contemporary Islamic legal scholarship, as 'ulamā trained in the classic Islamic traditions are unable to address the specific needs (*darūriyāt*) and demands (*hājāt*) of Muslims living as minorities in the United States and Europe. 'Ālim 1.2 contends that British 'ulamā should engage in *ijtihād* directly with the Qur'an and hadith traditions to fill the gaps in modern Islamic legal thought.

'Ālim 3.1 explained in detail why the 'ulamā of their shari'a council must be impartial when looking to apply Islamic law in Britain:

...the first moment that this shari'a council was established, we said that there should be a representation of all Sunni *madhāhib*⁸⁶⁶ in this shari'a council. So right from the beginning we have Hanafi scholars, and then we have Ahl ul-Hadith, mainly because we are coming from the subcontinent. So, these are the two communities were there [from the start]. But with the Somalis coming into this country, then we have the Somali representatives ['ulamā] as well, to represent the Shafi'i *madhāb*, and of course as for Hanbali *madhāb*, most of whom are Ahl ul-Hadith, most can represent the *hanabala*⁸⁶⁷ as well. And at some point, we used to have Arab scholars from Hanbali background as well. As for the Maliki *madhāb*, *yani* [meaning], it is always seen that even among the Hanafiyā,⁸⁶⁸ they have accepted many opinions of Imam Malik or the Maliki *madhāb*, because they facilitate in the matter of wedding and divorces.⁸⁶⁹

'Ālim 3.1 then elaborated on how their council reviewed the classic works of Islamic law. When handling divorce petitions involving women reporting their husbands as missing (*mafqūd*),⁸⁷⁰ 'Ālim 3.1 clarified that their council reviewed each case individually to determine a suitable (*munāsib*)⁸⁷¹ resolution. According to the Hanafi legal school, in cases where the wife is

⁸⁶⁵ 'Ālim 1.2

⁸⁶⁶ Sin: *madhāb* (مذهب), Pl: *madhāhib* (مذاهب). Islamic legal school(s). See "مذهب", in Wehr, p. 313.

⁸⁶⁷ Plural for followers of the Hanbali legal school.

⁸⁶⁸ Plural for a follower of the Hanafi legal school.

⁸⁶⁹ 'Ālim 3.1

⁸⁷⁰ "مفقود" in Wehr, p. 722.

⁸⁷¹ "مناسب", in Wehr, p. 960.

unaware of her husband's whereabouts, she is expected to await his return or abide by the average life expectancy of a man sharing similar attributes to her husband. Regardless of whether the husband returns after a prolonged absence or passes away, Hanafi 'ulamā uphold the position that a wife cannot initiate divorce proceedings during her husband's absence.⁸⁷² However, Hanafi 'ulamā dispute over the average life expectancy of a man. Some 'ulamā from both the Hanafi and Shafi'i legal schools subscribe to the ruling derived from the hadith traditions of 'Alī ibn Abī Ṭālib (601–661 CE) and 'Abdullāh ibn Mas'ūd (594–653 CE), which suggests that a wife whose husband is missing should patiently await his return or the discovery of his body. Other Hanafi 'ulamā advocated for a specific designated waiting period:

The benevolence of the law, suggests that the term be fixed at ninety years, as this is the shortest fixed term mentioned [by the 'ulamā] and it is difficult to ascertain anything respecting the circumstances of the missing person's co-evals or equals.⁸⁷³

In his evaluation of established Hanafi legal rulings regarding absent husbands, 'Ālim 3.1 explains how later generations of Hanafi 'ulamā incorporated the rules and opinions of their Sunni legal rivals, offering a more judicious resolution for wives of missing husbands:

...you know the famous book of Maulana Ashraf Ali Thanvi, *al-Hilatul-Najizah*,⁸⁷⁴ with the section called *lil halilatil ajiza*, have you heard about this book? This [section] is [called] the correct device for a stuck woman, because Maulana Ashraf 'Ali Thanvi who is, of course, a Hanafi scholar from India. India at that time, according to the Hanafi madhab we have some difficulties in solving the problem of a woman whose husband has disappeared, *al-mafqūd*. So, she has to wait the natural age of that person, it could be 80 or 90 years. So that is not an acceptable solution. So, this is why they say that in such a situation, we can take from the Maliki madhab. So, this is why he based this book upon four or five issues and taking the Maliki opinion in that. So, the Maliki opinion as you know is, that such a woman, according to the opinion of Sayyidina Umar [ibn Khattab] has to wait for four years. For four years. So, if the person [the husband] did not come after four years, then the qadi is allowed to declare him as *mafqūd*, and this woman has to pass 'idda, and then after the 'idda period she can marry whom she likes. So, this is a solution which is... so what I am saying is that in the Hanafi madhab, there are many opinions taken from the Maliki school, so this is why when we have the

⁸⁷² Al-Marghinani, pp. 215–16.

⁸⁷³ Al-Marghinani, p. 216.

⁸⁷⁴ Thanwi, Ashraf Ali, *Al-Hilatul-Najizah/الحيلة الناجزة* (*The accomplished legal loopholes/tricks*) (India: Maktab Razi Deobandi) <<http://archive.org/details/Al.Hilatul.Najizah.By.Ashraf.Ali.Thanwi>>

Hanafi scholars here, they are very much in familiarity with the Maliki madhhab as well.⁸⁷⁵

Maulana Ashraf Ali Thanvi (1863-1943 CE) was a prominent figure in the Deobandi movement and played a pivotal role in shaping the *Dissolution of Muslim Marriage Act 1939*.⁸⁷⁶ This Act provided Islamic legal provisions for Muslim women in India to seek a divorce through both extrajudicial (Islamic) and judicial courts. Thanvi's contribution to the drafting of the *Dissolution of Muslim Marriage Act 1939*, which was complemented by his work, *al-Hilatul-Najizah (The Accomplished [Book] of Legal Loopholes)*. In this work, Thanvi collated Hanafi and Maliki legal rulings which addressed the predicaments faced by Muslim women in India who sought to end their Islamic marriages but were often unable to do so due to their husbands' refusal to issue a talaq or grant them a release (khul') from their marriage contracts.⁸⁷⁷ Both the *Dissolution of Muslim Marriage Act 1939* and *al-Hilatul-Najizah* disclosed the concept of *talaq tafwiz*. Asaf Ali Aqshar Fyzee (1899-1981 CE), a distinguished 'alim and faqih who formerly held the position of India's Ambassador to Egypt, recognised the significance of *talaq tafwiz* in empowering Muslim women in India:

This form of delegated divorce is perhaps the most potent weapon in the hands of [a] Muslim wife to obtain her freedom without the intervention of any court and is now beginning to be fairly common in India.⁸⁷⁸

Following the questions on how 'Alim 3.1's council reviewed the various Sunni legal traditions to address khula petitions where husbands are missing, the researcher inquired about their council's use of *talfiq*. In Islamic jurisprudence, *talfiq* denotes the practice of "patching together" or "concocting" a new Islamic legal opinion from several legal precedents drawn from the classic works of Islamic law.⁸⁷⁹ Many traditionist 'ulamā regard *talfiq* as a problematic legal mechanism that leads

⁸⁷⁵ 'Alim 3.1

⁸⁷⁶ Asaf Ali Aqshar Fyzee, *Outlines of Muhammadan Law* (Delhi, India: Oxford University Press, 1964), p. 162.

⁸⁷⁷ Our Imam, *Al-Hilah an-Najizah (Women's Right to Have Their Marriage Annulled) – Introduction* (Kensington and Chelsea, UK: Ask Our Imam, 2016) <<https://www.askourimam.com/2016/04/12/a-summary-of-al-hilah-an-najizah-womens-right-to-have-their-marriage-annulled-introduction/>>.

⁸⁷⁸ Fyzee, pp. 158–59.

⁸⁷⁹ "تلفيق", in Wehr, p. 873.

an ‘ālim to deviate from Sunni orthodoxy. *Talfīq* is often associated with *takhayyur* (legal eclecticism),⁸⁸⁰ wherein an ‘ālim selects a ruling or opinion from any of the four popular Sunni legal schools without modification.

Modernist ‘ulamā contend that the changing societal dynamics over generations present challenges to the traditionist ‘ulamā in identifying relevant attributes (*awṣāf*)⁸⁸¹ and conditions (*zurūf*⁸⁸² or *hāl*⁸⁸³) from the legal precedents (*uṣūl*) of the Qur’an and hadith collections that bear a resemblance (*ashbāh*)⁸⁸⁴ to contemporary cases (*furū’*).⁸⁸⁵ The challenges posed by modernity have made *takhayyur* an obsolete form of *ijtihād*, due to the difficulty in applying the rules and opinions from the Sunni legal archives to a contemporary context. However, Wael B. Hallaq views *takhayyur-cum-talfīq* as a contemporary form of *ijtihād* that incorporates the rules and opinions of the Sunni legal schools while also accounting for the contemporary context.⁸⁸⁶ ‘Ālim 3.1 shared no reservations in seeking solutions from any of the four popular Sunni legal schools for a given case:

We take the benefit from all four Sunni legal schools, Hanafi, Shafi’i, Maliki, Hanbali the four madhahib. And ... and you have to add Ahl ul-Hadith, because [from] the Ahl ul-Hadith, they [four Sunni legal schools] normally take their inspiration from their books, OK?⁸⁸⁷

When asked about their thoughts on *talfīq*, ‘Ālim 3.1 was quick to clarify:

Talfīq is such a term which even those people who say about *talfīq*, they only mean by that a person he ... just for easiness, he is taking from this madhab or that madhab, or whatever is suitable for him. So *talfīq* got a negative impact, or a negative point, so we don't say that it is *talfīq*. *Talfīq*, nawzobillah,⁸⁸⁸ is a bad thing [laughs].⁸⁸⁹

⁸⁸⁰ *Takhayyur* (تخير) is an adverb derived from *khayr* (خير), which translates as “to choose”. See “خير”, in Wehr, p. 266.

⁸⁸¹ “وصف”, in Wehr, p. 1072.

⁸⁸² “ظرف”, in Wehr, p. 580.

⁸⁸³ “حال”, in Wehr, p. 216.

⁸⁸⁴ “تشبيه”, in Wehr, p. 453.

⁸⁸⁵ Ahmad Hasan, *Analogical Reasoning of Islamic Jurisprudence: A Study of the Juridical Principle of Qiyas*, p. 16.

⁸⁸⁶ Bearman and others, X, p. 161; Wael B. Hallaq, *An Introduction to Islamic Law*, 1st edn (Cambridge; New York: Cambridge University Press, 2009), p. 117.

⁸⁸⁷ ‘Ālim 3.1

⁸⁸⁸ Arabic: نعوذ بالله. Translation: May God protect us.

⁸⁸⁹ ‘Ālim 3.1.

The researcher asked the same question to another ‘ālim from the same council:

Talfīq is viewed as the counter-narrative to *taqlīd*, *taqlīd* means you stick to your own [Islamic legal] school, which is what the Hanafis are doing. Not only the Hanafī, Shafī‘ī, they all [four Sunni legal schools] do it.⁸⁹⁰

When queried about the use of *talfīq* by their shari’a council, ‘Ālim 3.2 responded that their council avoids such practices. Progressive ‘ulamā also refrain from advising Muslims to practice their faith in unorthodox ways. ‘Ālim 1.1 explained:

Earlier scholars would have an opinion, and their successors would compile small books in which they shared different opinions from their predecessors.... They [were open to] change. Those people [‘ulamā of the pre-modern period] had the capacity of changing. But now at the moment nobody has any [capacity to change]... they are so rigid to stick to their maḏhab, that they are not ready to listen to any other opinion.⁸⁹¹

The question of why Muslims are reluctant to diverge from religious orthodoxy segues into the next section of this chapter. Considering that the ‘ulamā of shari’a councils serve as the custodians (*ḥuffāz*) of Islamic tradition for British Muslims, and that a significant portion of them trace their origins to South Asia, this raises questions about the Sunni legal traditions that British Muslims follow.

8.3 Which of the Four Popular Sunni Legal Schools Do British Muslims Follow?

Most users of shari’a councils are Sunni Muslims, and the ‘ulamā serving on these councils often specialise in one or more of the four popular Sunni legal schools. The ‘ulamā shared that their clients seldom ask about the specific Sunni legal school followed by their council. Typically, clients express a preference for their cases to be resolved in accordance with the Qur’an and authenticated (*ṣaḥīḥ*) hadith collections. Since a significant number of British Muslims are of South Asian descent,

⁸⁹⁰ ‘Ālim 3.2.

⁸⁹¹ ‘Ālim 1.1.

it is often presumed that most British Muslims adhere to the Hanafi legal tradition.⁸⁹² However, the findings of this study challenge this presumption. Alim 2.1 explained:

No. They are very, very few in number who ask about the Hanafi school of thought because they come here believing we exclusively follow the Qur'an and hadith and our clients except this and we clearly mentioned that we're the followers of the Qur'an and hadith and we do not follow any specific madhhab. The large majority of people, they don't know about the madhāhib, only those of an academic background, only they know of this. They insist for this. But when they are mentioning that the large majority of Muslims [follow] the Hanafi school of law, I can say this is not correct. In this sense. You have to do research on this because the common person they [do] not know the difference between the Hanafi and Shafi'i. If there is any problem related to matrimonial issues such as marriage or divorce or talaq, clients are normally asking, 'What Allah and His Messenger ṣallā -llāhu 'alayhī wa-sallam⁸⁹³ say? Just I want this one! Regardless of my family, my maulvi, my Imam, my Shaykh whatever he's saying.' So, in this sense the large majority there are not Hanafi, but people are exploiting this because they think the Hanafi are in larger number, but this is not the case.⁸⁹⁴

The 'ulamā shared instances of clients requesting their case be resolved in accordance with a specific Sunni legal school. When queried about their councils' position regarding such requests, 'Ālim 1.2 responded, "Of course! ... It's [Britain] a free country. Why should we deny them?" 'Ālim 2.1 further elaborated on how shari'a councils are well-equipped, and their 'ulamā are well-trained to accommodate such requests:

When we are reading like this al-Mughnī,⁸⁹⁵ al-Mughnī will cover all the famous scholars like the Hanafi, Shafi'i, Maliki and Hanbali legal schools. But if you want to check specifically about the Hanafi school of law in detail then perhaps *Hidāyah* will help you. From ones understanding [of the local area], the majority of Muslims are either from Pakistan or India and they would obviously follow the Hanafi school, so they come here and demand a ruling in accordance to the Hanafi school"⁸⁹⁶

Revered among contemporary Sunni 'ulamā, ibn Qudamah al-Maqdisi's (1147-1233 CE) *al-Mughnī* serves as a fundamental Hanbali text studied and referenced by the 'ulamā. Besides the Qur'an

⁸⁹² Bano, *Muslim Women and Shari'ah Councils*, p. 158.

⁸⁹³ Arabic: صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ . Translation: "May the blessings of God and peace be upon the Prophet Muhammad."

⁸⁹⁴ 'Ālim 2.1

⁸⁹⁵ Muwaffaq al-Din Abu Muhammad 'Abd Allah b. Ahmad b. Muhammad Ibn Qudamah al-Maqdisi, *Al-Mughni (Hanbali)*, 9 vols (Riyadh, Saudi Arabia.: Dar 'Alam al Kutub).

⁸⁹⁶ 'Ālim 2.1

and the hadith collections, *al-Mughnī* holds an authoritative status as a source of Islamic law in the Kingdom of Saudi Arabia.⁸⁹⁷ Ibn Qudamah's *al-Mughnī* is widely recognised by Sunni 'ulamā as a reliable compendium of Islamic law, encompassing discussions on various topics from all four of the popular Sunni legal schools. Heterogeneous Islamic legal texts⁸⁹⁸ such as *al-Mughnī* enable the 'ulamā to familiarise themselves with the Islamic legal principles, rulings, and opinions of the four popular Sunni legal schools.

'Ulamā also shared that they occasionally receive divorce applications from Shi'a Muslims in Britain. Whilst such applications are rare, 'Ālim 3.1 explained how Shi'a applicants specifically request their cases be adjudicated according to the Ja'fari legal school. When shari'a councils receive applications from Britain's Shi'a Muslims, the 'ulamā inform them of options, which have been discussed in the *Siddiqui Review*:

...sharia councils are not prevalent in Shia Muslim communities. The evidence this review heard was that, for decisions on divorce, Shia couples need to consult a Grand Ayatollah or an Ayatollah that has been given authorisation from a Grand Ayatollah. The review panel met with two UK Shia organisations of which only one man had the authority, bestowed on him from foreign Grand Ayatollahs, to pronounce an Islamic divorce.⁸⁹⁹

8.4 Conclusion

This chapter analysed the Sunni legal traditions observed by British Muslims and the 'ulamā of shari'a councils. The analysis revealed that the 'ulamā of shari'a councils do not strictly adhere to a single Sunni legal tradition. Instead, 'ulamā from all of the participating shari'a councils prioritise the sources of Shari'a - the Qur'an and hadith collections - while also considering what is in the best interests of individuals involved in a case, regardless of their Islamic legal and theological affiliations. Moreover, the 'ulamā emphasised the importance of remaining impartial not only towards their clients, but also with the classic works of Islamic law they reference.

⁸⁹⁷ Frank Vogel, *Islamic Law in the Modern World: Legal System of Saudi Arabia* (Leiden; Boston: Brill, 1999), p. 332.

⁸⁹⁸ See, Appendix 4.

⁸⁹⁹ Siddiqui and others, p. 16.

In their handling of each case, the ‘ulamā employed the Islamic legal principle of *takhayyur* (legal eclecticism), whereby, for a particular case, they chose the most appropriate (*munāsib*) Islamic legal ruling from the four popular Sunni legal traditions. One of the historical precedents for the ‘ulamā to engage in *takhayyur* can be traced back to its use by Maulana Ashraf Ali Thanvi, an ‘ālim associated with the Deobandi movement. Thanvi, who played a pivotal role in drafting the *Dissolution of Muslim Marriage Act 1939*, advocated for the use of the Maliki legal ruling in cases involving women whose husbands were missing. Moreover, in his work *al-Hilatul-Najizah*, Thanvi also raised awareness of the concept of *talaq tafwīz*, which sees the husband delegating his authority for a talaq to his wife.

The chapter also examined the Islamic legal mechanism of *talfīq*, a process that entails merging opinions and rulings from different Islamic legal schools. The ‘ulamā involved in this study viewed *talfīq* as a legal mechanism that leads Muslims to stray from Sunni orthodoxy. The disapproval of *talfīq* among the ‘ulamā demonstrates their commitment to Sunni orthodoxy.

With regards to the relationship between British Muslims and shari’a councils, the chapter highlights that the majority of shari’a council clients do not typically inquire about the specific Sunni legal school followed by the council. Instead, the data reveals that clients express a preference for their cases to be resolved in accordance with the Qur’an and hadith traditions. While authors like Gohir,⁹⁰⁰ Bano,⁹⁰¹ and Ali⁹⁰² have suggested that most Muslims of South Asia follow the Hanafi legal tradition, implying a similar trend among British Muslims of South Asian descent, this study challenges that assumption. The findings demonstrate that shari’a council ‘ulamā address Islamic family legal matters on a case-by-case basis rather than strictly adhering to a particular legal tradition. While the ‘ulamā did mention rare instances of clients requesting their cases to be adjudicated in accordance with a

⁹⁰⁰ Gohir, pp. 48–49.

⁹⁰¹ Bano, *Muslim Women and Shari’ah Councils*, p. 158.

⁹⁰² Shaheen Sardar Ali, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, p. 219.

specific Islamic legal school, such requests are infrequent. Additionally, the ‘ulamā reported that the general British Muslim population is largely unaware of the differences between the Sunni legal schools.

The chapter also revealed some of the measures ‘ulamā employ to effectively address the various Islamic legal requirements of their clients. The ‘ulamā shared that they had access to Islamic legal anthologies that encompass all four popular Sunni legal traditions. Furthermore, the ‘ulamā shared that they occasionally receive Islamic divorce applications from Britain’s Shi’a Muslims, who specifically request that their case be adjudicated in accordance with the Ja’fari legal school but are then referred to a Shi’a organisation in Britain.

In summary, this chapter highlighted the nuanced approaches adopted by the ‘ulamā who prioritise the rules and guidance found in the Qur’an and hadith traditions over strict adherence to a single Sunni legal school. It sheds light on the complex dynamics between the Sunni legal schools, the ‘ulamā serving on shari’a councils, and the Islamic legal needs of Muslims living in Britain. It demonstrated the interplay between the Islamic legal tradition and the evolving circumstances faced by Muslims in Britain.

Chapter 9: Exploring the Methods of Ijtihād: An Analysis of the Decision-Making Processes Used by Shari’a Councils’ ‘Ulamā in Case Adjudication

9.1 Introduction

Building upon the previous chapter’s investigation into the extent to which Sunni legal traditions influence shari’a councils and their clients, this chapter conducts a more in-depth inquiry into the Islamic epistemologies operating within shari’a councils by answering the question: What methods of ijtihād do shari’a council ‘ulamā employ in case adjudication? A notable lacuna in the literature which this study seeks to address is a comprehensive investigation into the ‘ulamā’s understanding of the principles of Islamic jurisprudence (*uṣūl al-fiqh*). Such an investigation will enable discerning readers, who are familiar with the nuances of fiqh and uṣūl al-fiqh, to assess the expertise of the ‘ulamā who apply these principles.

‘Ālim 2.1 commended this study for its unique focus, compared to other studies on shari’a councils:

There was a student who came to visit me asking about [our council] and its system ... they looked at our files, but they did not explore the area of fiqh much; but this is specifically what your research is asking. That’s good. Mashallah. Please carry on.⁹⁰³

During the memoing and line-by-line coding stages of the analysis, some of the more explicit initial codes related to the key question of this chapter included: “Qur’an,” “Sunnā,” “hadith,” “ijtihād,” “ijmā’,” “naṣṣ,” “nuṣūṣ,” “uṣūl,” “fiqh,” “Arabic,” “qiyās,” and “maṣlaḥa.” During their analysis of the data, the researcher remained attentive to the diverse terms associated with ijtihād, as outlined in the questionnaire sent to the ‘ulamā.⁹⁰⁴

⁹⁰³ ‘Ālim 2.1.

⁹⁰⁴ See: Appendix 3, page 9, question 31.

This analysis begins by considering the views of ‘Ālim 2.1 with regard to the role of ijtihād in the Islamic law-making process:

...if you want to find out something from the Qur’an and sunna, maybe you can find out, or maybe not in detail. Therefore, there is a need for ijtihād, always. This is the case. So, we highly appreciate the use of ijtiḥad. And without ijtiḥad, you cannot guide people, you cannot issue a fatāwā ... How are you going to find out in the Qur’an? Or how you going to find out in any authentic hadith? You cannot find out. So therefore, there is a need for ijtiḥad... We do accept ijtiḥād, but it depends on where and how you are applying it. There are requirements and conditions, and this is not only for a mujtahid. Suppose you want to drive a car, you can’t just go drive a car straight away; you must learn to drive first, and then follow the rules. If you do not have a driving licence, you cannot drive. Similarly, anyone has a right to do ijtiḥād, but you can’t do ijtiḥād straight away. You first have to learn and become capable. The more experience you have, the more knowledge you have, and the better you are able to perform ijtiḥād.⁹⁰⁵

When ‘ulamā were asked what aspect of Islamic law-making fell under the category of ijtiḥād, they found the question too broad for a concise response. Consequently, the ‘ulamā suggested reframing the question into a free-flowing, semi-structured interview, which would allow for more nuanced responses. The thematic analysis of these interviews led this study to identify two categories of ijtiḥād:

1. *ijtiḥād bayānī*: This approach to ijtiḥād involves the ‘ulamā interpreting the Qur’an and the hadith collections. Some ‘ulamā may also consult classic works of fiqh (Islamic law) and uṣūl al-fiqh (Islamic legal theories) to assist in their interpretation of the Qur’an and the hadith traditions.
2. *ijtiḥād istiṣlāḥī*: This approach to ijtiḥād is concerned with determining Islamic rulings or opinions that are deemed to be in the public interest (maṣlaḥa).

⁹⁰⁵ ‘Ālim 2.1.

9.2 *Ijtihād Bayānī: The Ijtihād of Interpretation*

‘Ulamā from all three shari’a councils have affirmed their adherence to practising *ijtihād bayānī*. Notably, ‘Alim 2.1 emphasised the need for British ‘ulamā to actively engage in *ijtihād* and assume the responsibility of reinterpreting the Qur’an and the hadith traditions to address the needs of contemporary Muslim society:

How are you going to find out in the Qur’an? Or how you going to find out in any authentic hadith? You cannot find out. So therefore, there is a need for *ijtihād*.⁹⁰⁶

To determine the process of *ijtihād bayānī* as practised by the ‘ulamā, the researcher asked them whether they began their search by examining both clear (*ẓāhir*) and obscure (*khafī*) legal texts (*nuṣūṣ*) from the Qur’an, and then, upon exhausting their efforts with the Qur’an, proceeded to investigate similar texts from the hadith collections.⁹⁰⁷ Alternatively, did the ‘ulamā begin their search by focusing only on clear legal texts (*nuṣūṣ ẓāhira*) from both the Qur’an and hadith collections, and only turn to exploring obscure legal texts (*nuṣūṣ khafīya*) from these two primary sources of Islamic law if clear legal texts were not found?

The researcher also inquired about the extent to which the ‘ulamā used supplementary Islamic legal works, such as commentaries of the Qur’an (*tafāsīr*),⁹⁰⁸ condensed works (*mukhtaṣar*),⁹⁰⁹ and detailed explanations (*sharḥ*)⁹¹⁰ of the Qur’an, the hadith collections, as well as classic works of Islamic law (*fiqh*) and legal theories (*uṣūl al-fiqh*):

You find the ‘ulamā are grading the sources [of Islamic law]. The first source is the Qur’an, then the second one is the hadith, the third one is *ijmā’*, which in my view, does not exist in the modern age, and at the fourth stage is *ijtihād*, which is usually *qiyās* [analogical reasoning] ... We have to use our *ijtihād*. There are some cases that did not exist at the time of the Prophet [Muḥammad]. There is no mention of it in the Qur’an. I mean in the modern case. So, what do we do? We have to use the Qur’an as a basis for our actions. If the Qur’an speaks about saving [a] life, so

⁹⁰⁶ ‘Alim 2.1.

⁹⁰⁷ Ramic, pp. 73–111; Nyazee, *Islamic Jurisprudence*, pp. 299–300.

⁹⁰⁸ “تفسير”, in Wehr, p. 713.

⁹⁰⁹ “مختصر”, in Wehr, p. 242.

⁹¹⁰ “شرح”, in Wehr, p. 463.

anything we can do today to save a life will be recommended and allowed. Yes. This also includes the books of hadith. Not only in the six [Kutub as-Sittā]; if there is nothing to be found, I mean for the modern case, if there is no [legal] precedent [aṣl] in the Qur'an and hadith, then they engage in *ijtihād*.⁹¹¹

For a case requiring the 'ulamā's consensus, each 'ālim undertakes their preliminary research to find clear legal texts (*nuṣūṣ ḡāhira*) from the Qur'an and the hadith collections. At their first meeting, each council member presents their findings with other council members. Their findings are then collated, a consensus is formed, and a decision is declared. If the council cannot reach a consensus, another meeting is arranged for a later date. During this interval, council members conduct further research. Each 'ālim engages in *ijtihād bayānī* to find solutions for the case from obscure (*khafī*) passages of the Qur'an and hadith collections. The 'ulamā also refer to commentaries and classic works of Islamic law:

If an 'ālim of a shari'a council [in Britain] follows a particular school of law, the uṣūl they follow will either be the Hanafi or Shafi'i methods. If they follow the Hanafi school of law, they will follow the uṣūl [al-fiqh] of their school, and then they will use their books. If they are followers of the Shafi'i school, then they will follow their school. That is their defence, but the method of deduction [between the Hanafi and Shafi'i legal methods] is the same. 'Ulamā at the moment, they just rely on their books [fiqh and uṣūl al-fiqh] ... if he [an 'ālim] really is a learned person, he will check other books [from other Sunni legal schools], not only one book. Today, they have no expertise of going to many books. Only the Egyptian scholars from al-Azhar University today have tried to make *ijtihād* out of all these madhāhib and base their opinions on what is needed in the modern times. However, once the Saudis came to prominence, al-Azhar lost its [authoritative] position in the Muslim world. I mean, today, there is the International Islamic fiqh academy [IIFA] in Saudi Arabia, but these are very, very rigid people. Conservative 'ulamā who quote some books written by early scholars. That's all. They don't create something new. So, when there is a new problem, they give a fatwā saying it is ḡarām, finished.⁹¹²

Another 'ālim shared:

Qur'an has the interpretation which is the sunna... sometimes when you don't have an explicit [ruling] in the sunna, then you go to the ... er... [to] the judgments given by the quḡāh [Islamic judges] throughout Islamic history. Yes, the sunna and the judgements of the quḡāh ... books of uṣūl al-fiqh, and academic works, all of that, yes. And also, the books of judgments, especially from Saudi Arabia. Fatāwā books

⁹¹¹ 'Ālim 1.1.

⁹¹² 'Ālim 1.1.

from Saudi Arabia likes those from Shaykh bin Baz and Shaykh Uthaymīn, which is upstairs in our library.... We also look at books of *uṣūl al-fiqh* from the Hanafi, Shafi'i and Hanbali. Books of hadith, books of *tafāsīr*, yes.⁹¹³

This study discovered that while the 'ulamā are proficient in the methods of the Sunni legal traditions and hold their own theological views, in cases where clients do not stipulate a preference for a specific Sunni legal tradition, the 'ulamā are afforded the freedom to choose (*takhayyur*) the most appropriate (*munāsib*) Islamic legal ruling from any of the four popular Sunni legal schools:

...we take the benefit from all four Sunni legal schools; Hanafi, Shafi'i, Maliki, Hanbali and ... and you have to add Ahl ul-Hadith ... and you can also add here the Ja'fari maḍhab as well.⁹¹⁴

If a person comes to us and does not ask for any particular maḍhab, then we will see what is in their best interest and where we can get this from. Whether it comes from the Hanafi maḍhab, Shafi'i maḍhab, Hanbali maḍhab or Maliki maḍhab or even if it comes from outside of the four [Sunni] madhāhib. Wherever it comes from, it must be from the Qur'an and sunna. We cannot go outside of shari'a.⁹¹⁵

When an 'ālim engages in *ijtihād bayānī* with the Qur'an or the hadith collections, their proficiency in Arabic is a point for consideration. In the classic works of Islamic legal theories (*uṣūl al-fiqh*), 'ulamā of antiquity held varying views on the requisite level of Arabic proficiency for an 'ālim to be considered a mujtahid.⁹¹⁶

Some reformers of Islamic law, such as the Mutazilite jurist and theologian Abu Husayn al-Basri (d. 1044 CE),⁹¹⁷ the polymath and Shafi'i fāqih Fakhr al-Din al-Razi (1149 - 1210 CE),⁹¹⁸ and the South Asian traditionist 'ālim and theologian Shah Wali Ullah of Delhi (1703 - 1762 CE),⁹¹⁹ asserted that a mujtahid must possess an excellent command of Arabic. According to these reformers,

⁹¹³ 'Ālim 3.1.

⁹¹⁴ 'Ālim 3.1.

⁹¹⁵ 'Ālim 1.2.

⁹¹⁶ Nyazee, *Islamic Jurisprudence*, pp. 24–26.

⁹¹⁷ Hallaq, 'The Gates of Ijtihad: A Study in Islamic Legal Theory', p. 15.

⁹¹⁸ Mohamad, pp. 69–70.

⁹¹⁹ Muin-ud-din Ahmad Khan, 'Shah Wali Allah's Conception of Ijtihad', in *Shah Waliullah (1703-1762): His Religious and Political Thought*, ed. by M. Ikram Chaghatai (Lahore: Sang-e-Meel Publications, 2005), pp. 353–80 (p. 369).

a mujtahid should be capable of understanding the subtleties of the Arabic language and be familiar with the phrases, prose, syntax, and morphology found in the Qur'an and hadith collections.

Other reformers, such as the Salafi qadi and traditionist Muhammad ash-Shawkani (1759-1839 CE),⁹²⁰ and the Shafi'i fāqih and Sufi Abu Hamid Muhammad ibn Muhammad al-Ghazali (1058-1111 CE),⁹²¹ opined that mastery of the Arabic language is not a prerequisite for a mujtahid. Instead, they believed that a mujtahid should possess a strong understanding of the process of developing and verifying the Sunni hadith collections, along with being familiar with technical terms associated with the study of the Qur'an, including abrogation (*naskh*)⁹²² and cross-referencing of related verses (*rawīya*). In the context of Islamic law-making, both Shawkānī and Ghazali emphasised that a mujtahid should be able to distinguish between general (*'āmm*)⁹²³ and specific (*khaṣṣ*)⁹²⁴ rulings found within the Qur'an and hadith collections.

This study revealed that the level of Arabic proficiency among the 'ulamā across the three shari'a councils varied. Upon inquiry, it was discovered that the 'ulamā did not consider a strong command of Arabic to be a prerequisite for inclusion on their religious panels:

Some 'ulamā on our council are capable of reading Arabic and can access the classic works. Other 'ulamā, they don't have the same required level of Arabic, but they have influence in the Muslim community.⁹²⁵

No, no, no. As long as we have an understanding of the dīn [religion of Islam] fully, especially in a particular topic [of Islamic law] and you understand the methods of Shari'a, then that's it. We cannot make this as a condition that an 'ālim must master the Arabic language. We appreciate the skill, but we cannot make it a condition. We appreciate that knowledge of Arabic will be very helpful to understand the meaning and direct message of the Qur'an and hadith, but today, there are so many other sources as well nowadays. Insisting on Arabic is an unnecessary obstacle, I don't think it is workable in the UK.⁹²⁶

⁹²⁰ Mohamad, pp. 70–71.

⁹²¹ Hallaq, 'The Gates of Ijtihad: A Study in Islamic Legal Theory', p. 17.

⁹²² "نسخ", in Wehr, p. 961.

⁹²³ "عام", in Wehr, p. 641.

⁹²⁴ "خاص", in Wehr, p. 241.

⁹²⁵ 'Ālim 1.1.

⁹²⁶ 'Ālim 2.1.

To round off this study's assessment of the 'ulamā's use of *ijtihād bayānī*, we return to an earlier statement made by 'Ālim 1.1: "*Ijmā'*, which in my view, does not exist in the modern age." *Ijmā'* refers to a consensus of the mujtahidūn and is practised by the four popular Sunni legal schools. The mujtahidūn convene to discuss their Islamic legal opinions (fatāwā) on a specific matter. The opinion that best aligns with the teachings of the Qur'an and hadith traditions is then endorsed by the consensus and ratified as a legal ruling. A legal ruling ratified through *ijmā'* (*ḥukm al-ijmā'*) is regarded by Sunni Muslims as one that benefits their spiritual and social conditions.

Ijmā' is derived from the root word *jama'a*, which means "to gather," "to collect," or "to combine." In its verbal noun form (*maṣḍar*), *jama'a* becomes the word '*ajam'a*, which means "they came to terms," or "they made a joint decision,"⁹²⁷ and is a term used in the Qur'an (10:71):

Agree on your course of action [*'ajma'ū*], you and your partner-gods– do not be hesitant or secretive about it– then carry out your decision on me and give me no respite.⁹²⁸

In theory, *ijmā'* represents the universal consensus of every mujtahidūn on Earth. It embodies the *ūlū al-amr*, the Islamic legislative assembly, of the global Muslim community (*Ummah*).⁹²⁹ However, due to the practical difficulties in achieving a universal *ijmā'*, several 'ulamā have questioned the viability of establishing a consensus that accurately reflects the global Muslim community in all their diversities. Renowned 'ulamā such as Imam Shafi'i, Imam Hanbal, Ghazali, and Abu al-Hasan al-Ash'ari (873–935 CE), the founder of Sunni systematic theology, have also questioned the feasibility of collecting the opinions of every 'ālim, fāqih, and mujtahid across the Muslim Empire during their lifetimes.⁹³⁰

⁹²⁷ "جمع", in Wehr, pp.134-5.; Kamali, pp. 228–29.

⁹²⁸ Haleem, p. 133.

⁹²⁹ Kamali, p. 228.

⁹³⁰ Ahmad Hasan, *The Doctrine of Ijma' in Islam: A Study of the Juridical Principle of Consensus* (New Delhi: Kitab Bhavan, 1992), p. 159.

In the present day, despite technological advancements, such as social media, mass communication, and information dissemination, the task of gathering the opinions of every ‘ālim, faqīh, and mujtahid on Earth does not guarantee a unanimous consensus that effectively caters to the needs of approximately 1.9 billion Muslims.⁹³¹ With approximately 1.5 billion Muslims following one of the Sunni legal schools,⁹³² differences of opinion are inevitable, which lends credence to the Hanbali and Ahl ul-Hadith assertions that only the Prophet Muhammad and his community (*salaf al-ṣāliḥ*) truly practised *ijmā’*.⁹³³

9.3 *Ijtihād Istiṣlāḥī: The Ijtihād That Is in the Public’s Interest*

The second approach to *ijtihād* observed in shari’a councils, as identified in this study, is *ijtihād istiṣlāḥī*. This approach entails the ‘ulamā considering what benefits their clients and wider British society. In Chapter 7, this study discovered Badawi dedicating his efforts to understanding the needs of Muslims in Britain while also serving the country’s interests. This intellectual pursuit ultimately led Badawi to establish one of Britain’s earliest shari’a councils. It is worth noting that the reasons for establishing shari’a councils have not gone amiss among today’s ‘ulamā:

Shari’a councils was created to help the Muslim community so we [‘ulamā] will see if there is a suggestion by any of our members that is helpful.⁹³⁴

As an inductive form of *ijtihād*, *ijtihād istiṣlāḥī* can yield solutions that either align with or contradict the guidance presented in the Qur’an and hadith traditions. This ambiguity has given rise to juristic disputes (*ikhṭilāf*) among the ‘ulamā concerning its methodology, applicability, and legitimacy

⁹³¹ Drew DeSilver and Masci David, *World’s Muslim Population More Widespread than You Might Think* (Washington, DC: Pew Research Center, 2017) <<https://www.pewresearch.org/fact-tank/2017/01/31/worlds-muslim-population-more-widespread-than-you-might-think/>>.

⁹³² World Population Review, *Muslim Population By Country 2021* (Walnut, California, USA: World Population Review, 2021) <<https://worldpopulationreview.com/country-rankings/muslim-population-by-country>>.

⁹³³ Ahmad Hasan, *The Doctrine of Ijma’ in Islam*, p. 178.

⁹³⁴ ‘Ālim 1.2.

as an Islamic law-making device, sparking debates about whether *maṣlaḥa* can be regarded as “the fourth stage of *ijtihād*.”⁹³⁵

Maṣlaḥa is usually used by ‘ulamā of the Hanbali school and sometimes by the Malikis. ‘Ulamā of the Shafi’i legal school do not use it [*maṣlaḥa*]. The Hanafis, they use something different called *istiḥsān*, which is something very close to *maṣlaḥa*. *Istiḥsān* was criticised by Imām Shafi’i, who said that a person who uses *istiḥsān* is making himself the lawgiver.⁹³⁶

There is a famous terminology called *maṣāliḥ al-mursala*, which you can consider as a combination [of the legal theories] of Imām Malik, Imam Shafi’i and many other ‘ulamā. *Qiyās* is very close to the idea of *maṣāliḥ al-mursala*. If you want to issue a *fatwā* or if you want to solve a matrimonial problem, you must consider the social circumstances in which you live, so in the case of [the] UK, *maṣāliḥ al-mursala* will give you support.⁹³⁷

However, when deliberating on matters that serve the interests of British Muslims and the country, ‘ulamā face external pressures from both politicians and the judiciary:

When you look at shari’a councils in Britain, they are insisting people to observe monogamy in Britain because this is the law of the UK. It is not the ‘ulamā’s *ijtihād* that is in the public’s interest, this is the law of the land the ‘ulamā appreciate. This is pressure from outside, that forces the public interest to a very good thing. On our council, we have a barrister who practiced law in the British courts. He attends meeting regularly and he spoke and shared his opinion that is based on what is the law in the UK. He insisted that our decisions [in the council] must not come into conflict with the rules of this country.⁹³⁸

‘Ulamā also face internal pressures to ensure that the rulings they issue for their clients align with Sunni orthodoxy.

We always see ‘ulamā looking for suitable things to facilitate the matter, like we have always seen among the Hanafiyya, they have accepted many opinions of the Maliki madḥab in matters of marriage and divorce.⁹³⁹

We have cases where a man is put in prison for life, Egyptian ‘ulamā on our council gave a *fatwā* saying that a woman can seek her *khula*, from our shari’a council to get rid of him. If we consider the Hanafi opinion, the husband has absconded, nobody knows where he is, the Hanafi legal schools says she as to wait 90 years;

⁹³⁵ ‘Ālim 1.1.

⁹³⁶ ‘Ālim 1.1.

⁹³⁷ ‘Ālim. 2.1.

⁹³⁸ ‘Ālim 1.1.

⁹³⁹ ‘Ālim 3.1.

this is in their [Hanafi] books. Maybe it is in their *Hidāyah*, but in *Fatāwā-e-Alamgiri* it is definitely there. This is well known, then later, the Hanafi ‘ulamā changed it. They found it impractical. It benefitted no one, so they [Hanafi ‘ulamā], they reduced the waiting period, just like the Maliki opinion on the case [of an estranged husband]. Three or four years waiting, or something like that.⁹⁴⁰

9.4 Conclusion

This chapter examined the methods of Islamic legal reasoning (ijtihād) employed by shari'a council ‘ulamā in case adjudication. As each generation of Muslims encounters new challenges and technological advancements, it presents opportunities for ‘ulamā to re-interpret the Qur'an and hadith traditions within their contemporary context. The chapter began with the ‘ulamā expressing their appreciation for ijtihād, which they consider to be an essential Islamic legal device for guiding people and issuing fatāwā. However, the ‘ulamā also emphasised the importance of proper training and expertise before engaging in ijtihad. One ‘ālim aptly compared the process of learning how to drive a car and obtaining a driver's license with an ‘ālim learning to engage in ijtihād and securing a license to practice ijtihād before they can issue fatāwā and declare Islamic rulings.

The chapter proceeded to identify two categories of ijtihād practiced by shari'a council ‘ulamā: *ijtihād bayānī*, which involves interpreting the Qur'an and hadith traditions, and *ijtihād istiṣlāhī*, which focuses on determining Islamic rulings that serve the public interest (maṣlaḥa). In this study, all participating ‘ulamā unanimously expressed their appreciation for and adherence to *ijtihād bayānī*. They emphasised the importance of reinterpreting the Qur'an and hadith traditions to address the needs of contemporary society.

When engaging in *ijtihād bayānī*, the ‘ulamā conduct their research by analysing the Qur'an and hadith collections, often consulting commentaries and classic works of fiqh and uṣūl al-fiqh. In complex cases, ‘ulamā may refer to Islamic legal authorities based overseas, such as the International

⁹⁴⁰ ‘Ālim 1.1.

Islamic Fiqh Academy in Saudi Arabia. However, ‘Ālim 1.1 argued that relying on classic Islamic legal works and deferring cases to higher Islamic legal authorities based overseas falls under the category of taqlid, rather than ijtihād. He explained that the classic Sunni legal works, which today’s ‘ulamā rely on, were authored by ‘ulamā of the past who actively engaged in *ijtihād bayānī* during their lifetimes. In Chapter 6, ‘Ālim 1.1 lamented the rigidity of many contemporary ‘ulamā, stating that they are “so rigid to stick to their maḍhab, that they are not ready to listen to any other opinion.”

The chapter also revealed variations in Arabic proficiency among the ‘ulamā, with some emphasising its importance, while others considered it an advantageous skill but not a condition for serving on a shari’a council panel.

Additionally, the chapter showed that the ‘ulamā have the freedom to choose (takhayyur) the most suitable (*munāsib*) legal opinion or ruling from any of the four popular Sunni legal schools when clients do not specify a preference. The chapter highlighted the use of maṣlaḥa in *ijtihād istiṣlāḥī* and the debates surrounding its validity as a means of Islamic law-making.

Moreover, the ‘ulamā face external pressures from politicians and the British judiciary, who demand that the ‘ulamā make decisions that align with the Britain’s laws. The ‘ulamā also face internal pressures from British Muslims who expect them to carefully assess cases within both the civil and Islamic legal frameworks. The study provides examples of how shari’a councils navigate these pressures while striving to meet the needs of Britain’s Muslims.

The chapter also disclosed the practical challenges in achieving a universal consensus (*ijmā’*) among ‘ulamā worldwide. It shared the scepticism of the ‘ulamā as well as historical figures regarding the feasibility of attaining a consensus that adequately represents the diversity of the global Muslim community.

In conclusion, this chapter has demonstrated an understanding of how the ‘ulamā of shari’a councils engage in ijtiḥād, illustrating their commitment to interpreting Islam’s sacred texts while balancing the interests of their clients and wider society. It highlights the multifaceted challenges these ‘ulamā face in case adjudication amidst external and internal pressures.

Chapter 10: An Analysis of Shari'a Councils within the English Legal Context

10.1 Introduction

This chapter aims to address a key question outlined in this study: How are British Muslims affected by the null legal status of Islamic family law in Britain? The analysis will use the methods of Informed Grounded Theory and draw on literature that examines how the English and Welsh legal framework affects British Muslim citizens. It will also consider the views of state legislators and legal practitioners concerning Islamic law. The earlier sections of this chapter will provide an overview of the English legal context within which shari'a councils have emerged, guiding the qualitative analysis of the data.

Section 10.7 of this chapter, titled *The Impact of Islamic Family Law's Null Legal Status on British Muslims*, will present an analysis of the data which discerns the views of the 'ulamā regarding the current legal status quo in Britain. During the memoing and line-by-line coding stages of the analysis, initial codes emerged from the data that address the key question of this chapter. These codes include terms such as "Civil Code," "Cohabitation," "Common Law," "County Courts," "High Court," "Human Rights," "Legal Aid," "Legal Pluralism," "Multiculturalism," "Personal Law," "Registration," and "Registry Office." A thematic analysis of these initial codes and the transcription of the 'ulamā's interview revealed several themes that explore the congruencies and incongruencies between British and Islamic laws. These themes include: "The Impact of British and Islamic Laws on British Muslim women," "Polygamy," "The Cost of Civil and Islamic Legal Services," "The Performative Discrepancies between the Civil and Islamic Marriage Ceremonies," and "The Influence of Legal Pluralism on British Community Cohesion."

10.2 The Historical Context and Legal Pluralism: Conflicts Between Islamic and State Laws

Chapter Three of this thesis highlighted the *Clandestine Marriage Act 1753* and the *Marriage Act 1836* as instances where British Parliament covertly removed religious laws from the national legislative framework. These Acts signify Britain's shift toward a positivist legal system that aimed to regulate the lives of all citizens regardless of their religious beliefs, economic class, and social status. This shift extended to British colonies, such as India, resulting in the division of communities along religious lines between the eighteenth and twentieth centuries. The translation and codification of India's Muslim religious laws into the *Anglo-Muhammadan Law* granted British colonial judges the authority to govern Muslims' lives based on Shari'a, challenging the authority of India's 'ulamā.⁹⁴¹

Rajnaara Chowdhury Akhtar contends that in British-controlled India, the legal framework constituted a form of "weak legal pluralism", accommodating multiple legal codes for diverse religious and ethnic groups in the colonial territories. These plural laws were subordinate to the sovereign's laws. Akhtar contrasts the "weak legal pluralism" of British-controlled India against postmodern Britain's "strong legal pluralism", where non-state legal orders lack state authorisation and support.⁹⁴² Presently, Britain adopts a legal centralist attitude, asserting that the "law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions."⁹⁴³

Akhtar highlights how some legal scholars have characterised Western legal culture as secular, state-oriented, positivist, hierarchical, and universalist in terms of morality. She also shares how others

⁹⁴¹ 'Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice', p. 46.

⁹⁴² Rajnaara Chowdhury Akhtar, p. 43.

⁹⁴³ Rajnaara Chowdhury Akhtar, p. 35.

have criticised this characterisation as being “ethnocentric and do not adequately reflect global dynamism where legal culture is concerned.”⁹⁴⁴

Britain’s legal centralism has influenced the views and positions of key figures in British society, particularly in relation to Islamic law. Chapter Five of this thesis analyses how the British Empire interpreted and codified Islamic law within its colonised territories to advance its imperialist agenda. In the postmodern context, the compatibility of Islamic law with British law presents a significant challenge within Britain’s legal framework. Faith leaders, women’s and human rights groups, and legal scholars have raised compelling arguments that illustrate the conflicts between the Islamic and civil legal systems.

In his 2008 lecture, the former Archbishop of Canterbury, Dr. Rowan Williams, acknowledged the desire among some British Muslims for Shari’a-based regulation of their lives. However, he cautioned against recognising certain aspects of Islamic family law in Britain due to concerns about reinforcing “repressive and retrograde” elements that would detrimentally impact women’s autonomy and liberties.⁹⁴⁵ Feminist activist and campaigner Pragna Patel strongly opposes any government concession for religious family law in the public sphere, arguing that it is in...

...family matters that lends themselves to harm and discriminatory gender practices; the family is the only sphere that is readily amenable to culturally relativist processes and therefore to violations of women’s human rights and democratic values.⁹⁴⁶

Patel further argues that the emergence of shari’a councils reflects a gradual “Shariafication by Stealth” of postmodern Britain. According to Patel, these councils serve as Islamic legal instruments used by conservative Muslim leaders to promote adherence to Islamic legal principles within the British legal framework.⁹⁴⁷ Manea also criticises the British government for allowing Muslim leaders

⁹⁴⁴ Rajnaara Chowdhury Akhtar, p. 37.

⁹⁴⁵ Williams, ‘Civil and Religious Law in England: A Religious Perspective’, pp. 25–26.

⁹⁴⁶ Pragna Patel, ‘The Growing Alignment of Religion and the Law: What Price Do Women Pay?’, p. 100.

⁹⁴⁷ Pragna Patel, ‘The Growing Alignment of Religion and the Law: What Price Do Women Pay?’, p. 85.

to operate under the rules, norms and traditions of their countries of origin, which may conflict with British laws and values. For Manea, this highlights the inherent risks of Britain's multicultural policies, which grant ethnic and religious groups the right to self-govern, potentially leading to the government neglecting its responsibility to protect the rights and freedoms of minority citizens.⁹⁴⁸

Commenting on the ongoing appeals to reject Islamic family law in Britain, Akhtar notes there is a tendency in these appeals to conflate cultural norms with religious traditions. This conflation has contributed to misconceptions about Islamic family law, thereby hindering women's access to justice. Akhtar also raised concerns about the reliance on the unregulated services provided by shari'a councils, which operate within a "semi-autonomous social field". Within this field, citizens and religious organisations enjoy a degree of autonomy from the state, thus leaving the government with limited control over their activities.⁹⁴⁹

To mitigate tensions between Islamic family legal orders operating in multicultural societies such as Britain, Ali emphasises the importance of dialogue between the country's lawmakers and its Muslim population. This dialogue should facilitate the exchange of expectations between communities and the resolution of normative differences. Ali advocates for internal and external discussions within both communities, fostering an acknowledgement of their commonalities and "fault lines," while also recognising that the social, cultural and religious norms of their respective communities are fluid and ever-evolving.⁹⁵⁰ This chapter will present the 'ulamā's views on the congruences and incongruences between Islamic law, the expectations of British Muslims, and Britain's laws.

Before examining what the 'ulamā have identified as congruences and incongruences between Islamic and state laws, it is essential to consider the challenges posed by legal pluralism to state laws

⁹⁴⁸ Manea, pp. 112–13.

⁹⁴⁹ Rajnaara Chowdhury Akhtar, pp. 40–50.

⁹⁵⁰ Shaheen Sardar Ali, "'Between the Devil and the Deep Blue Sea': Sharia Councils and Muslim Women's Rights in the British Muslim Diaspora", pp. 229–30.

- a reality faced by many jurisdictions. The following section will explore how legal pluralism emerged from the inalienable rights granted to European citizens under the *European Convention of Human Rights (ECHR)* and has led to conflicts between Islamic and state laws.

10.3 Islamic Law and the British Human Rights Act 1998

According to Pearl and Menski, Britain's laws, despite their ostensibly liberal nature, are "not entirely culture-blind but still culture-biased". British legislators oppose cultural and religious legal practices that contravene public policy and challenges the core values protected by the *Human Rights Act 1998*.⁹⁵¹

The *Human Rights Act 1998* ensures that Britain's public policies comply with the rules, decisions, declarations, and opinions of the *European Courts of Human Rights (ECtHR)*.⁹⁵² Section 6 (1) of the *Human Rights Act 1998* guarantees that all British Public Acts adhere to the rights outlined by the *European Convention on Human Rights (ECHR)*.⁹⁵³

Schedule 1 of the *Human Rights Act 1998* grants British citizens the rights outlined in Articles 8, 9, and 11 of the *ECHR*. However, these rights may be limited by "the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country".⁹⁵⁴ The enjoyment of rights under Article 12 depends on the matrimonial laws of the relevant country, and Article 14's protections rely on the *ECHR*'s determination of what constitutes an act of discrimination.⁹⁵⁵

Article 8 of the *ECHR* is crucial for British Muslims as it ensures their right to live in accordance with their religion and customs. This includes the freedom of association and the right to

⁹⁵¹ Pearl and Menski, pp. 69–70.

⁹⁵² *Human Rights Act UK 1998*, (1998), C. 42, S 26.

⁹⁵³ Shaun D Pattinson, 'The Human Rights Act and the Doctrine of Precedent', *Legal Studies*, 35.1 (2015), p. 143.

⁹⁵⁴ *Human Rights Act UK 1998*, c. 42.

⁹⁵⁵ Mona Siddiqui and others, *The Independent Review into the Application of Sharia Law in England and Wales*, CCS0118708404 (Home Office, United Kingdom: Home Office, February 2018), p. 8.

form a family based on their beliefs. It also grants individuals the ability to end marriages that conflict with their personal convictions, cognitive abilities, or religious views. This provision grants British Muslim women the option of pursuing an Islamic divorce, even after they have already obtained a civil divorce.⁹⁵⁶

Article 9 of the *ECHR* is relevant to British Muslims, as it grants them the right to assemble as a faith community, appoint their religious leaders, and practice their faith according to their beliefs and customs.

Article 11 of the *ECHR* is relevant to British Muslims and their institutions, granting them the right to “peaceful assembly and the freedom to associate with others...for the protection of their interests.”⁹⁵⁷ This allows Muslims in Britain to nominate leaders who can safeguard and serve the interests of their religious and community groups. Thus, if British Muslims believe that shari’a councils best serve their community interests, *Article 11* of the *ECHR* allows for such assemblies.⁹⁵⁸

However, there are caveats to the rights outlined in *Articles 8, 9, and 11* of the *Human Rights Act 1998*. These articles grant individuals the freedom to practice their religion as long as it does not infringe upon the laws of democratic societies that abide by the *ECHR*.

In response to allegations of human rights violations by shari’a councils, the British government commissioned the *Siddiqui Review* to investigate potential contraventions of the *Human Rights Act 1998*. The review aimed to identify bad practices and provide recommendations. Although the *Siddiqui Review* found “little direct evidence of bad practice,”⁹⁵⁹ it did receive statements from former clients accusing shari’a councils of misconduct. Women’s and human rights groups view these

⁹⁵⁶ Siddiqui and others, p. 8.

⁹⁵⁷ *Human Rights Act UK 1998*, c. 42.

⁹⁵⁸ Siddiqui and others, p. 8.

⁹⁵⁹ Siddiqui and others, p. 9.

allegations as evidence of human rights abuses by shari'a councils and express concern over the British government's...

...acceptance of such personal laws to govern private and family matters: areas where, arguably, the greatest human rights violations of minority women in the UK take place.⁹⁶⁰

10.4 Unravelling Britain's Inconsistent Policies with Islamic Law

Contrary to assumptions, British legislators and the judiciary do not categorically reject the integration of all aspects of Islamic law into the national legal framework. Instead, they selectively use Islamic law “for the sake of demonstrating and asserting political and legal power,” particularly in Britain’s fiscal and foreign interests.⁹⁶¹ This is evident in the integration of Islamic financial instruments, contributing to London’s recognition as the “Islamic financial capital of Europe.” Additionally, the acceptance of the Islamic law of inheritance has led British courts to notarise Islamic Wills and facilitate asset distribution among Muslim families.

Another example of state legislators’ selective use of Islamic law is seen in the amendments made to *Section 1.2* of the *British Slaughter of Poultry Act 1967*⁹⁶² and *Section 36.3* of the *Slaughterhouse Act 1974*.⁹⁶³ These acts establish guidelines for the slaughter and exclusive sale of halal meat to Muslims.⁹⁶⁴ However, the exponential growth of the halal food industry in Britain indicates that these Acts serve as non-punitive guidelines applicable to all Britons. A 2011 survey

⁹⁶⁰ Siddiqui and others, p. 27.

⁹⁶¹ Pearl and Menski, pp. 68–69.

⁹⁶² Expert UK Public General Acts, *Slaughter of Poultry Act 1967*, 24 (Statute Law Database, 1967), p. 4.

⁹⁶³ Expert UK Public General Acts, *Slaughterhouses Act 1974*, 3 (Statute Law Database, 1974), p. 32.

⁹⁶⁴ Sebastian M Poulter, ‘The Significance of Ethnic Minority Customs and Traditions in English Criminal Law’, *New Community*, 16.1 (1989), 121–28 (p. 124).

revealed that the halal meat industry held a 25 percent British market share,⁹⁶⁵ despite Muslims comprising only 6.5 percent of the population.⁹⁶⁶

When British Muslims request legal concessions for Islamic family law, state legislators oppose such concessions, citing conflicts with deep-seated British public laws. Legislators highlight purported human rights violations within the Islamic legal system, as well as the allowance for men to practice bigamy, a criminal offense in Britain that carries a prison term of seven years.⁹⁶⁷ This argument forms a robust legal defence against the recognition of Islamic family law in British courts.⁹⁶⁸ Meanwhile, over a quarter of Britons identify as atheists, agnostics, or having no declared religion,⁹⁶⁹ and many couples in these groups prefer cohabitation over civil unions due to the fiscal obligations and a sense of irrevocability that civil unions carry.⁹⁷⁰ As fewer couples opt for marriage, the British government accommodates unmarried cohabitation, while Islamic law considers it a punishable offence.⁹⁷¹

The British government allows Muslims to conduct Islamic marriage ceremonies in Britain, provided they comply with British public laws. However, Islamic marriages are neither officially recognised nor prohibited in Britain, as they do not meet the requirements for a British civil union. Typically, Islamic marriages in Britain are not held in registered buildings or officiated by a

⁹⁶⁵ Admin T.E, 'Halal Meat Increase in Britain: The Correlation of Ethnicities, Faiths and Food Habits', *Think Ethnic*, 14 August 2014.

⁹⁶⁶ Office for National Statistics, *Ethnicity, Identity, Language and Religion: TS030 Religion*.

⁹⁶⁷ Pearl and Menski, p. 70.

⁹⁶⁸ The National Archive, *Offences Against the Person Act 1861, 1861 c. 100 (Regnal. 24_and_25_Vict)* (Statute Law Database).

⁹⁶⁹ UNdata, *Population by Religion, Sex and Urban/Rural Residence* (New York, United States; Sweden: United Nations Statistics Division, United Nations Department of Economic and Social Affairs, 2021) <<http://data.un.org/Data.aspx?d=POP&f=tableCode:28;countryCode:326>>.

⁹⁷⁰ Amelia Hill, 'Cohabiting Couples Fastest-Growing Family Type, Says ONS', *The Guardian* (London, United Kingdom, 7 August 2019), section Society <<https://www.theguardian.com/uk-news/2019/aug/07/cohabiting-couples-fastest-growing-family-type-ons>>.

⁹⁷¹ Rajnaara C Akhtar, p. 440.

superintendent registrar. If Muslim couples perform their Islamic marriage ceremonies in Britain without registering their unions, the British government classifies them as cohabitants.⁹⁷²

British legislators cite human rights violations as the reason for their reluctance to incorporate Islamic family law into national legislation. However, Pearl and Menski suggest that this reluctance is part of the British government's long-term strategy to establish a systemic legal system that restricts diversity and drives minority communities underground, into the realm of unofficial law and cultural practices. Developing a systemic legal system in Britain has become a challenge for legislators as minority faith communities continue to seek the services of private family legal forums. Informal religious legal practices are seen as potential threats to the Britain's laws and secular values, leading to objections from Britons who question why minority faith communities receive specialist legal services while they are left with the prosaic legal treatment.⁹⁷³

10.5 Inadequate Legal Advice Provided by Solicitors

Negative perceptions and limited understanding of Islamic family law are apparent among family solicitors in Britain. Bano also highlights their lack of experience in handling transnational marriages. Many solicitors mistakenly believe that religious marriages, whether performed in Britain or abroad, are legally valid and can be dissolved in a British civil court. Bano's research highlights Muslim women's dissatisfaction with the legal counsel they receive. Solicitors often overlook the religious and cultural context of their cases and provide advice based on misconceptions about Islamic law, particularly its perceived unfavourable views towards women. This misguided advice places vulnerable Muslim women at risk, as they may be encouraged to pursue a civil divorce, even if their marriage was not legally recognised through a civil ceremony.⁹⁷⁴

⁹⁷² Pearl and Menski, p. 71.

⁹⁷³ Pearl and Menski, pp. 56–57.

⁹⁷⁴ Bano, *Muslim Women and Shari'ah Councils*, pp. 222–27.

Shah-Kazemi's research also highlighted the condescending and unsympathetic attitudes Muslim women encounter when seeking legal advice from solicitors in Britain. She recorded instances of women being informed that their overseas marriages were not recognised in Britain. In one case, a woman was warned about potential bigamy charges if she conducted a nikāḥ ceremony with another man while obtaining a civil divorce. Another case involved a non-Muslim British solicitor drafting a "Talak Nama" upon the request of their Muslim client, but its validity under Islamic law was challenged by the Muslim Law (Shari'ah) Council.⁹⁷⁵

10.6 State Legislators Making Concessions for Other Religious Laws in Britain

Pearl and Menski characterise the English and Welsh common law system as a positivist judicial system,⁹⁷⁶ where judges deliver verdicts to maintain societal order. Verdicts from higher courts then become *stare decisis*, a binding precedent for lower courts to apply in cases that share similar attributes and circumstances.⁹⁷⁷ However, the modern, multicultural, and multi-faith diversity of Britain presents challenges for legal practitioners when applying the law.⁹⁷⁸

Despite the government's support for multiculturalism, the British judicial system is not expected to fully align with this approach. Historically, British lawmakers have acknowledged the influence of history and societal norms on the legal system,⁹⁷⁹ adopting a Durkheimian⁹⁸⁰ approach to Britain's multicultural and multi-faith landscape. Political and legislative decisions are influenced by

⁹⁷⁵ Shah-Kazemi, pp. 53–55.

⁹⁷⁶ Pearl and Menski, p. 68.

⁹⁷⁷ 'Civil Law vs Common Law.', *Diffen.Com, Diffen LLC*
<https://www.diffen.com/difference/Civil_Law_vs_Common_Law>.

⁹⁷⁸ Pearl and Menski, p. 66.

⁹⁷⁹ 'The Sociology of Law - What Is It?', (2018), *Lawteacher.Net*. (All Answers Ltd., November 2018).

⁹⁸⁰ Emile Durkheim, *The Division of Labour in Society*, trans. by W.D. Halls (Hampshire & London: Macmillan Press Ltd, 1994), p. 28.

judicial rulings, with policymakers reviewing and negotiating new bills based on these decisions before presenting them to Parliament.⁹⁸¹

To understand Britain's approach to its faith minorities, it is important to examine the country's legal and political stance before and after the mass migration of Muslims during the mid-to-late twentieth century. From the eighteenth to the mid-twentieth centuries, imperial Britain believed in its civilisational superiority, emphasising its Judeo-Christian values and later secular principles over "other infidel religions."⁹⁸² To meet the spiritual needs of Britain's Jewish and minority Christian groups, various Public Acts were introduced and amended. These include the *Designation of Schools Having a Religious Character Order*⁹⁸³ and the *Marriage Act 1949*, which recognised Jewish and Society of Friends' marriage ceremonies.⁹⁸⁴ In 1990, the *Marriage Act 1949* underwent further amendments with the inclusion of the *Marriage (Registration of Buildings) Act*, allowing religious marriage ceremonies to be held in registered buildings.⁹⁸⁵ Furthermore, the *Matrimonial Causes Act 1973* granted legal concessions to support Jewish divorce (*gett*) petitions, thereby providing further recognition to faith minority communities.⁹⁸⁶

It took a considerable amount of time for the British Parliament and judiciary to address the religious needs of Britain's Jewish and minority Christian groups. When South Asian Muslim families migrated to Britain, some Muslims expected immediate support from their local and national authorities for their religious needs. Policymakers considered these demands unreasonable, citing the time it took to address the needs of other religious communities as a precedent. Consequently, Britain's

⁹⁸¹ Gary Slapper and David Kelly, *The English Legal System*, 18th edn (Oxon: Routledge: Taylor & Francis Group, 2017), pp. 83–84.

⁹⁸² Taylor, p. 456.

⁹⁸³ UK Public General Acts, *The Designation of Schools Having a Religious Character (England) Order 2020*, 2020, CMXX.

⁹⁸⁴ UK Public General Acts, *Marriage Act 1949: Marriage of a Man and a Woman; Marriage of Same Sex Couples for Which No Opt-in Necessary*, 76, 1949, p. 60 <<https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/76/section/75>>.

⁹⁸⁵ Akhtar, p. 56.

⁹⁸⁶ UK Public General Acts, *Matrimonial Causes Act 1973: Proceedings after Decree Nisi: Religious Marriage*, 1973, XVIII, 60.

legislators and policymakers rejected the “demand for full-scale recognition of Muslim personal law” in response to the call for support without following due process.⁹⁸⁷

British legislators have established historical and legal precedents to protect the spiritual and personal needs of religious minorities in the country. These precedents have allowed for the integration of certain aspects of Islamic law into national legislation, particularly in areas such as finance and agriculture concerning livestock. However, British Muslims feel discriminated against when they observe the government catering to the spiritual needs of Jewish and Christian minorities while denying their requests for support with Islamic family law.

The argument against incorporating Islamic family law in Britain is compelling for legislators and the judiciary because many of its rulings violate several Public Acts and Articles of the *Human Rights Act 1998*. British lawmakers argue that doing so would require extensive reforms to the national legislative framework. Additionally, there are concerns among the general public about the potential imposition of “Shari’a Law” in their lives.⁹⁸⁸

Despite conflicts between the British and Islamic legal systems, the British government allows Muslims to practice Islamic family law informally, as long as they abide by state laws and uphold Britain’s multicultural values. Muslims established shari’a councils as informal religious legal services to address their matrimonial disputes and offer spiritual guidance within the British legal framework. As “skilled cultural navigators,” some British Muslims have embraced these private Islamic family legal forums to meet the religious and cultural needs of their communities in postmodern, multicultural Britain.⁹⁸⁹

⁹⁸⁷ Pearl and Menski, pp. 58–70.

⁹⁸⁸ Pearl and Menski, p. 71.

⁹⁸⁹ Pearl and Menski, pp. 57–74.

The British government's non-interventionist approach to addressing the religious needs of Muslims has led to unresolved domestic issues. Among the more pressing issues is the increasing number of British Muslim women stuck in limping marriages. Despite obtaining civil divorce certificates, many of these women still feel spiritually bound to their husbands. Seeking guidance from their community leaders and 'ulamā, these women look to acquire Islamic divorce certificates to bring closure to their marriages and move on with their lives.⁹⁹⁰

To address the increasing number of British Muslim women trapped in limping marriages, Muslim community leaders, imams, and 'ulamā in Britain have sought solutions that respect both Islamic and civil laws for resolving marital disputes. In their search, they found shari'a councils.

10.7 The Impact of Islamic Family Law's Null Legal Status on British Muslims

Shari'a councils have been serving thousands of Muslim families in Britain for over four decades. The 'ulamā of these councils possess a deep understanding of the generational, linguistic, and cultural barriers that often contribute to Muslim family disputes. They are knowledgeable about relevant aspects of Islamic family law that best addresses the needs of British Muslims.⁹⁹¹ Furthermore, the 'ulamā are knowledgeable about the similarities and differences between Britain's diverse Muslim communities, including their various ethnic groups, theological sects, and Islamic legal traditions in both the Sunni and Shi'a contexts. They are also acutely aware of the disagreements and conflicts that arise between first-generation British Muslims and their British-born children concerning their beliefs and practices.

Shari'a councils have also gained notoriety in the British public's perception due to the widely held belief among Britons that Muslims often question the compatibility of their British and Islamic values. Such concerns typically arise in personal matters, such as marriage, education, estate and

⁹⁹⁰ Zaki Badawi, pp. 77–78.

⁹⁹¹ Siddiqui and others, p. 10.

financial management, and dietary choices. In search of answers and guidance, British Muslims turn to those who are well-versed in their Islamic legal traditions, namely, the ‘ulamā.

The relationship between the English and Welsh common law system and Islamic family law highlights the congruences and incongruences between Islamic and British values. ‘Ālim 2.1 explained that in certain countries where Muslims form the majority, they employ either the common law or civil legal systems to govern their societies. For instance, in Bangladesh, India, and Pakistan, ‘ulamā and state legislators are gradually reforming aspects of their common law systems, particularly in family law, to meet the personal and spiritual needs of their Muslim populations.

France’s former colonies adopted the civil legal system established during the nineteenth century, but its reforms within post-colonial Muslim nations were gradual. Ismail Pasha (1830-1895 CE), the fifth Khedive of Egypt, established the *Mixed Courts of Egypt (al-mahākīm al-mukhṭalīṭah)* to govern his territories. This system combined the French Civil Code with Egypt’s customary laws and Islamic legal principles. ‘Abd al-Razzaq al-Sanhuri (1895-1971 CE), a prominent legal scholar, further refined the Mixed Courts system by removing French Civil Codes that conflicted with Shari’a. He introduced modern, secular humanist concepts into his revised Civil Codes, aiming to modernise Islamic law in Egypt.⁹⁹² Sanhuri’s expertise also extended to providing legal consultation for Jordan, Iraq, and Kuwait, contributing to the reform of their Civil Codes.⁹⁹³

In countries with a significant Muslim population, regardless of whether they are governed by common law or a civil code, legislators, politicians, and religious leaders collaborate to address the religious needs of their societies:

Actually, this is the situation of most Muslims countries – it divides its rules into two categories: One is related to personal law, which is known as al-ahwal ul-Shakhsiyya, this is personal law, and then there is the common or civil law systems.

⁹⁹² Chibli Mallat, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi’i International*, Cambridge Middle East Library (Cambridge University Press, 2004), p. 161.

⁹⁹³ Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford University Press, 2007), pp. 257–58.

With al-ahwal al-Shakhsiyya, personal law, you can do what you wish according to your personal beliefs and faith. So, this includes marriage, talaq, and inheritance; up to these three points, there is no problem. So, what we ask, “what is the meaning of Muslim personal law? What is the purpose of Muslim personal law?” It’s the question we ask in India, we ask in Pakistan. Exactly the same question we ask in Egypt and many other Muslim [majority] countries. So Muslim personal law, al-ahwal ul-Shakhsiyya al-Muslima; many countries are gradually doing this now.⁹⁹⁴

Compared to other nations, Britain has been relatively slow in addressing the needs of its

Muslim population:

...in a democratic society there must be an open debate. But when it comes to Islamic law in Britain, nobody is prepared for that debate. They [the British government] just don’t want to discuss [it]. They say, ‘If you want to live here, live as a minority and go to your mosque for your marriage and go to a shari’a council for your divorce. We have nothing to do with it.’⁹⁹⁵

10.7.1 Congruences Between the British and Islamic Legal Systems: Efforts to Help British Muslim Women

The absence of civil legal recognition for Islamic marriages in Britain is a cause for concern among Muslim couples. Some realise that their unions are not officially recognised, as they have not completed the civil registration process. This raises questions about the civil legality and Islamic legitimacy of their unions. Those who fail to civilly register their marriages are distressed to find that their sacred union is reduced to mere cohabitation in the eyes of the law. In the event of an Islamic marriage breakdown, Muslim women who are no longer cohabiting with their husbands are denied legal rights and provisions that legally married or civil partnership couples are entitled to. In particular, Muslim women with children must make multiple applications for state support as single mothers to obtain “reasonable provision for their own maintenance.”⁹⁹⁶

Despite financial and social difficulties caused by the lack of civil registration, some British Muslim women form strong psychological and spiritual bonds with their Muslim husbands. For those

⁹⁹⁴ ‘Ālim 2.1.

⁹⁹⁵ ‘Ālim 1.2.

⁹⁹⁶ Gouriet and Thomas.

who are separated, obtaining an Islamic divorce is often seen as a crucial milestone for moving forward in life.⁹⁹⁷ These women thus seek help from shari'a councils to secure their Islamic divorces, but the non-legal status of Islamic family law in Britain often results in the decisions of these councils being dismissed by "higher Islamic authorities" in Muslim-majority countries. 'Ulamā of the Deobandi, Salafī, and Ahl ul-Hadith movements based abroad believe that Muslims can only practice their faith in Muslim-majority countries and that 'ulamā in the United States and Europe may be influenced by non-Muslim interaction.⁹⁹⁸ In contrast, 'ulamā in Muslim-majority countries are acknowledged and supported by their governments for their Islamic legal opinions and rulings. In the British context, a defendant in an Islamic divorce petition from a shari'a council can have their case Islamically revoked by obtaining an affidavit or declaration from an 'ālim or fāqih based overseas. This affidavit asserts that any decision regarding Islamic family law made in Britain holds no legal consequence.

Islamic divorces, especially khula cases, present challenges for British 'ulamā, particularly relation to the remuneration of the bridal-gift. In some instances, wives refuse to return the bridal-gift, leading to prolonged khula cases with the expectation that their husbands will eventually relinquish their claims.⁹⁹⁹ This poses a dilemma for British 'ulamā, who have sufficient evidence to support a khula petition and issue an Islamic divorce certificate but lack the authority to enforce their decisions:

It is not about [differences in] culture, but it is also about the power of implementation. Because the national court has the power to implement whatever they decide, so we cannot overrule what they have decided.¹⁰⁰⁰

Religion continues to play a significant role in shaping marital norms and expectations in British society. Many couples still desire to have church weddings, wherein they exchange vows and rings before a minister, surrounded by family and friends. These religious conventions and sensibilities

⁹⁹⁷ Ihsan Yilmaz, 'Law as Chameleon: The Question of Incorporation of Muslim Personal Law into English Law', *Journal of Muslim Minority Affairs*, 21.2 (2001), p. 16.

⁹⁹⁸ Hassan, pp. 26–30.

⁹⁹⁹ 'Ālim 1.2.

¹⁰⁰⁰ 'Ālim 2.1.

extend to married life, where couples typically endeavour to live together and bear legitimate children. A 2012 study on British attitudes towards marriage revealed that 14 percent of Christians and 54 percent of followers of other religions considered premarital sex to be sinful or wrong, compared to only 2 percent of those with no religious affiliation.¹⁰⁰¹ The study also found that 54 percent of Anglicans believe couples should marry before having children, while 30 percent of those without a religious affiliation hold the same view.¹⁰⁰²

Despite differing views on the sanctity of marriage among Britons today, there has been a paradigm shift in the conjugal behaviours of modern Britons over the past fifty years, with “an increasing tendency for couples to cohabit, either as a precursor to, or instead of, marriage.”¹⁰⁰³

Between 1997 and 2017, the Office for National Statistics sampled 1,000 individuals annually and discovered that the marriage rate among British men and women had declined by more than a third. The rate for men dropped from 59.6 to 21.2, while for women it decreased from 47.3 to 19.5.¹⁰⁰⁴ This raises the question: How do Britain’s faith communities respond to this paradigm shift?

Under British legislation, religious marriages conducted in unregistered buildings or without the presence of a superintendent registrar are not legally recognised by the country’s judicial system. These unions are classified as cohabiting relationships and do not enjoy the same rights and benefits as registered marriages or civil partnerships.¹⁰⁰⁵ For some British Muslims who hold their unions as sacred, being classified as a “cohabiting relationship” can have adverse personal and social

¹⁰⁰¹ Alison Park and Rebecca Rhead, *Personal Relationships: Changing Attitudes towards Sex, Marriage and Parenthood*, British Social Attitudes: Article 30 (London: NatCen Social Research, 2013), p. 11 <https://www.bsa.natcen.ac.uk/media/1146/bsa30_personal_relationships_final.pdf>.

¹⁰⁰² Park and Rhead, *Personal Relationships: Changing Attitudes towards Sex, Marriage and Parenthood*, p. 12.

¹⁰⁰³ Alison Park and Rebecca Rhead, *Personal Relationships: Marriage Matters?*, British Social Attitudes, 30 (London: NatCen Social Research, 2013) <https://www.bsa.natcen.ac.uk/media/1146/bsa30_personal_relationships_final.pdf>.

¹⁰⁰⁴ Kanak Ghosh, *Marriages in England and Wales: 2017* (Newport, Wales: Office for National Statistics, UK Statistics Authority, 14 April 2020), p. 14.

¹⁰⁰⁵ Women and Equalities Committee, *The Rights of Cohabiting Partners: Second Report of Session 2022-23* (London: House of Commons, 4 August 2022), p. 36 (pp. 3–10) <<https://committees.parliament.uk/publications/23321/documents/170094/default/>>.

consequences. When unregistered Islamic marriages breakdown, shari'a councils feel powerless to protect British Muslim women from their husbands and the state:

Many Muslim women think that shari'a councils are not helping them; that we are biased towards men ... at the same time, many young British Muslim women also feel discriminated against by the state. They [British Muslim women] say, "Why do we need two marriages and [need] two divorce certificates [in Britain]?"¹⁰⁰⁶

'Ulamā who took part in this study endorse the idea of British courts extending legal coverage to shari'a councils. This would provide shari'a councils with a vital legal defence against challenges to their decisions from abroad and ensure that British Muslim women will have "full protection afforded to them in family law, and they will face less discriminatory practices."¹⁰⁰⁷ To advance this idea, the *Siddiqui Review* recommends making "short insertions" to the *Marriage Act 1949*, bringing "Islamic marriage in line with Christian and Jewish marriage in the eyes of the law."¹⁰⁰⁸ These insertions would encourage Muslim couples to register their marriages civilly, with failure to do so becoming a punishable criminal offence. The 'ulamā who participated in this study, along with British Muslim lobbying groups such as *Register Our Marriage*, also called for reforms to the *Marriage Act 1949*, making it "compulsory for all UK religious marriages to be registered."¹⁰⁰⁹

The *Siddiqui Review* also recommends changes to the *Matrimonial Causes Act 1973* to help bring "Islamic divorce in line with that of the Jewish Get" allowing British courts "to refuse to finalise a civil divorce until an Islamic religious divorce has been obtained."¹⁰¹⁰

The 'ulamā who participated in this study also suggest that, in cases of both civil and religious divorce sought by British Muslim couples, county courts should take the lead. Their proposal is in line with the recommendations of the *Siddiqui Review*,¹⁰¹¹ which suggests that the courts handle financial

¹⁰⁰⁶ 'Ālim 1.2.

¹⁰⁰⁷ Siddiqui and others, p. 17.

¹⁰⁰⁸ Siddiqui and others, p. 5.

¹⁰⁰⁹ Aina Khan.

¹⁰¹⁰ Siddiqui and others, pp. 17–18.

¹⁰¹¹ Siddiqui and others, p. 21.

and child custody matters, while the ‘ulamā handle matters related to Islamic family law. The ‘ulamā propose that they would attend civil divorce hearings, using the evidence presented to help build a talaq or khula case file. They would then deliver an Islamic legal presentation to the court, explaining their decision based on the evidence. If the judge, petitioner, and defendant are all satisfied, the court would then notarise the shari’ah council’s decision:

...if a county court in this country takes charge of officiating the divorce [between Muslim couples] ... then perhaps it will be easier way out instead of everyone suffering in a [Islamic] marriage.¹⁰¹²

However, British ‘ulamā have some reservations about county courts leading divorce proceedings for Muslim couples. ‘Ulamā find that in some khula petitions, clients submit solicitor-prepared statements that meet civil suit requirements but lack a compelling argument for an Islamic divorce. Consequently, ‘ulamā ask clients to submit a personal statement with their talaq/khula applications, wherein they explain how their marriage poses a threat to their faith:

Petitions prepared by solicitors do not consider the personal situation of their clients. They do not show the real personal and spiritual reasons for a divorce. So, we do not want to base our decisions on these [civil] petitions as they are specifically for the courts. They leave out things which can be very important for us...We don’t put any conditions on our clients on what they share, but we normally ask them to write a personal statement where they reflect on their situation that made them contact us.¹⁰¹³

The idea of ‘ulamā serving as consultants on the British Bench is not new. In the early 1980s, ‘ulamā from among Britain’s Bareilvi community and those who graduated from Al-Azhar University, came together to establish the Muslim Law (Shari’ah) Council (MLSC). Initially, the council aimed to provide spiritual and moral guidance to Britain’s Muslims. Over time, the MLSC accumulated case studies and practical experience, gaining a deep understanding of the British Muslim experience. The

¹⁰¹² ‘Ālim 1.2.

¹⁰¹³ ‘Ālim 1.2.

founder of the MLSC, Zaki Badawi, expressed optimism that their knowledge and expertise would prove to be invaluable assets for Britain's county courts:

There are strong moves within it [Muslim community in Britain] towards the creation of a representative body to take charge of all its problems. Such a body could effectively sanction the creation of institutions such as Muslim legal committees with effective moral and religious authority to compel compliance. Such bodies, once in existence, will almost certainly help the British Bench in resolving issues of dispute amongst Muslims pertaining to personal status.¹⁰¹⁴

Occasionally, shari'a council 'ulamā serve as expert witnesses and consultants on matters related to Islamic family law for Britain's county courts:

There was one time where I was asked to attend a case at one of the High Courts here [in Britain]. The case was about circumcision of a boy. The mother who is Muslim said she wanted her son circumcised. The father who was not a Muslim said no. The judge for the case was a lady and she listened to me telling them the Islamic position. She listened very carefully and then decided that when the child becomes sixteen, he can decide then if he wants to be circumcised.¹⁰¹⁵

Today, Britain's shari'a councils have not evolved into the Islamic legal consultative body that Badawi had envisaged, nor have they regressed as a temporary measure for Britain's diasporic Muslims. According to the findings of this study, the role of shari'a councils in Britain has remained consistent, in that they continue to provide Islamic family legal advice to British Muslims, responding to their personal and spiritual needs. In some cases, shari'a councils function as an emergency Islamic task-force, enabling British Muslims to access the expertise of classically-trained 'ulamā without drawing the attention of law enforcement and the social services.

10.7.2 Congruences Between the British and Islamic Legal Systems: Curtailing Polygamy in Britain

Polygamy is another contentious aspect of family law where British legislators and 'ulamā find common ground. British legislators strongly oppose the practice, viewing it as a violation of

¹⁰¹⁴ M.A. Zaki Badawi, p. 16.

¹⁰¹⁵ 'Ālim 1.1.

women's rights¹⁰¹⁶ and a threat to British societal and family values.¹⁰¹⁷ Accordingly, *Section 57* of the *Offences Against the Person Act 1861* expressly prohibits polygamous marriages. In Britain, engaging in bigamy, regardless of gender, carries a maximum prison sentence of seven years.¹⁰¹⁸

For decades, British Muslims and 'ulamā have advocated for the recognition of their Islamic marriages within the English and Welsh legal systems. Some progressive 'ulamā in Britain collaborated to create a *Model Muslim Marriage Contract*, which "claimed to improve women's rights while remaining within the rules of Islamic marriage."¹⁰¹⁹ However, conservative 'ulamā in Britain rejected this contract, citing that it deviated from various aspects of Islamic family law. Nonetheless, shari'a councils 'ulamā have continued to call for the inclusion of rules from English and Welsh common law marriage into the proposed British Islamic marriage contract. As 'Ālim 1.1 highlighted in Chapter 9, it is "a very good thing" that the British government, in the public interest (maṣlaḥa), insist that Muslims observe monogamy in Britain, as it aligns with the laws and values of the country. 'Ālim 2.1 concurs:

They [British government/judiciary] can specifically introduce this when it comes to Muslim matrimonial matters in Britain. And polygamy according to British law, as a [polygamous] marriage is wrong. It is unacceptable.¹⁰²⁰

Regarding polygamy in Islamic law, 'ulamā, both progressive and conservative, aim to correct misconceptions held by British politicians and policymakers. They emphasise that polygamy is "the exception rather than the norm in Muslim societies; there has always been a huge resistance to it."¹⁰²¹

¹⁰¹⁶ Ian Edge, '8. Islamic Finance, Alternative Dispute Resolution and Family Law: Developments towards Legal Pluralism?', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 116–43 (p. 132).

¹⁰¹⁷ Pearl and Menski, p. 51.

¹⁰¹⁸ The National Archive, *Offences Against the Person Act 1861, 1861 c. 100 (Regnal. 24_and_25_Vict)* (Statute Law Database).

¹⁰¹⁹ John R. Bowen, p. 213.

¹⁰²⁰ 'Ālim 2.1.

¹⁰²¹ Shaheen Sardar Ali, '10. From Muslim Migrants to Muslim Citizens', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 157–75 (pp. 159–60).

‘Ulamā and Muslim lobbying groups also highlight lapses by the British establishment, including their legal designation of “cohabitant,” which not only undermines the social security of many British Muslim women but also contributes to their stigmatisation within their communities:

English law criminalises bigamy but has found itself making more and more allowances for unmarried cohabitation, which would in many cases be considered a crime under Muslim law, given the powerful prohibition on sex outside of marriage (*zina*).¹⁰²²

‘Ulamā acknowledge that the normative Islamic marriage contract grants husbands exclusive authority to terminate the marriage; nevertheless, they emphasise that Muslim couples can negotiate and agree upon various aspects of the marriage contract, such as determining the amount of the bridal-gift and including stipulations (*shurūṭ*) within the *nikāḥ* contract. These stipulations can cover a wide range of areas, including marriage vows, the delegation of the choice (*takhyīr*), or the transfer of authority (*tamlīk*) for issuing a *talaq* (*talaq tafwīz*).¹⁰²³ Additionally, they may also include a clause ensuring monogamy. By incorporating these stipulations, Muslim couples can personalise their marriage agreements, potentially addressing the power imbalance inherent in the normative *nikāḥ* contract:

In this type of thing, monogamy, a woman can put a condition on the marriage that her husband will not marry another woman, she can do it. She has the right to do it. And if the husband does [Islamically marry another woman], then she can get out of the marriage straight away. It will place the marriage in *faskh* ... it is like ...er ... *shiqāq* [breach]. It means any kind of dispute or a breach. So, in this situation, it is a kind of *shiqāq* of the marriage.¹⁰²⁴

¹⁰²² Pearl and Menski, p. 70.

¹⁰²³ Rushd, II, pp. 84–86.

¹⁰²⁴ ‘Ālim 1.1.

10.7.3 Incongruences Between the British and Islamic Legal Systems: The Bridal-Gift

(Mahr/Sadāq)

‘Ulamā noted how British legislators do not appreciate the significance of the bridal-gift in Islamic family law, which distinguishes Islamic marriages from common and civil law marriages:

Do we consider an English [civil] marriage as a valid Islamic marriage? ... I cannot really say “yes” or “no” it depends on what they [registry office] decide. If we are conducting a civil ceremony and we inform the registry office about [the] mahr, it is up to them [registry office] if they accept it. But if we don’t inform the office, they don’t accept [it].¹⁰²⁵

The *Siddiqui Review* raised concerns about how some shari’a councils exert pressure on Muslim women to make financial concessions in order to obtain their khula. The review reveals that “men are never asked to make these concessions,” and that “husbands may demand excessive financial concessions from the wife.”¹⁰²⁶ Islamic law treats a khula as a divorce initiated by the wife, necessitating her to offer financial concessions in exchange for her release (*bādul al-khul’*) from her marriage. In contrast, when a man seeks a talaq, he must fulfil his outstanding financial obligations to secure his divorce:

Generally, we want to verify that the wife has been informed of this [talaq], then we will issue. The husband is entitled to divorce, but we want to make sure if there is anything related to the case and he has fulfilled the wife’s rights like the mahr [bridal-gift], maintenance and other things relating to this.¹⁰²⁷

The *Siddiqui Review* also raised concerns about Muslim men demanding excessive financial concessions from their wives, violating the human rights of British Muslim women and contravening the ruling (ḥukm) of the Qur’an (2:229).¹⁰²⁸

¹⁰²⁵ ‘Ālim 2.1.

¹⁰²⁶ Siddiqui and others, p. 16.

¹⁰²⁷ ‘Ālim 2.1.

¹⁰²⁸ Haleem, p. 26.

In some khula petitions, husbands may ask for additional compensation (*fidyah*) from their wives as a condition for his consent to her request for a khula. ‘Ālim 1.2 mentioned a khula case where the husband argued for a fair distribution of assets as their financial circumstances improved during the course of their marriage:

There was once a case where the woman, after getting her civil divorce, applied for an Islamic divorce from here. When we got in touch with the husband, he sent us copies of all the paperwork his solicitor presented in court. His papers clearly stated that he was not contesting the divorce. But it was the woman who raised the issue of getting an Islamic divorce to her solicitor which they presented in court. The husband said, ‘Look, I am ready to divorce. I am not contesting the civil divorce and I am ready to divorce her Islamically. But I have given her some very, very valuable gifts. I need them back.’ ... He even wrote to his solicitor about his wife not returning the jewellery. So, we cannot issue the [Islamic] divorce until their finances are settled.¹⁰²⁹

Both the *Siddiqui Review*¹⁰³⁰ and this study identified cases where ‘ulamā have refrained from accepting Islamic divorces involving complex financial disputes and children. To address such cases, both the *Siddiqui Review* and the ‘ulamā participating in this study propose that shari’a councils establish a collaborative relationship with Britain’s county courts. County courts would handle financial remedies and child custody arrangements, while ‘ulamā would focus on ensuring the proper observance of the Islamic divorce rites. It is important to note that financial obligations exist in both talaq and khula divorces, particularly concerning the remuneration of the bridal-gift. In talaq cases, the husband’s financial obligations extend further; he must take an oath committing to providing maintenance (*nafaqa*) and accommodation (*īwā’*) for his wife and children during the ‘idda period. Additionally, he must fulfil the payment of the bridal-gift in its entirety. Another crucial consideration in Islamic divorces is ensuring the well-being and financial stability of the children involved:

The acceptance of the premise that sharia councils only deal with, engage in or touch upon the dissolution of the religious marriage aspect of the dispute is naïve and unrealistic. In any family law or relationship dispute the issues are multi-faceted...Those functions where they deal with dowry forfeiture (or return)

¹⁰²⁹ ‘Ālim 1.2.

¹⁰³⁰ Siddiqui and others, p. 12.

financial remedies, arrangements for children and issues regarding future behaviour and conduct will impact on the civil rights of those to whom they relate.¹⁰³¹

10.7.4 Incongruences Between the British and Islamic Legal Systems: A Decree Absolute Does Not Fulfil the Requirements of an Islamic Divorce

Another incongruity between Britain's county courts and shari'a councils is the impact of a decree absolute on an Islamic divorce. According to the *Siddiqui Review*, some shari'a councils consider an Islamic divorce to be a mere formality once a decree absolute is issued.¹⁰³² However, this study revealed that 'ulamā view decrees absolutes as beneficial in supporting petitions for Islamic divorces but cannot be used as a *carte blanche* for an Islamic divorce certificate. To ensure that Islamic divorce cases are hermetically sealed and to prevent defendants from revoking a shari'a council's decision, 'ulamā must ensure that all Islamic divorce rites are properly observed and that the couple understands the consequences of ending their Islamic marriage:

We don't believe a shari'a council should act like a rubber stamp for a civil court's decision. That is not the purpose of a shari'a council. In some cases, we find discrepancies. Like when a wife applies for a khula and the husband responds and explained to us, 'Yes, I did not defend my case [in a civil hearing] for such and such a reason and I do not consent to a divorce.' I believe it is our responsibility in the shari'a council to give opportunities to both husband and wife to present their case.¹⁰³³

Both civil and Islamic divorce proceedings can be emotionally challenging for the individuals involved. As previously mentioned, 'ulamā have noted that, while solicitors' statements serve their purposes in British county courts, they often overlook the personal, emotional, and spiritual difficulties that Muslim couples experience when dissolving their Islamic marriages.

¹⁰³¹ Siddiqui and others, p. 21.

¹⁰³² Siddiqui and others, p. 17.

¹⁰³³ 'Ālim 1.2.

However, the *Siddiqui Review* discovered that when some shari'a councils ask petitioners to submit personal statements, they may subject them to "inappropriate and unnecessary questioning regarding personal relationship matters."¹⁰³⁴

10.7.5 Incongruences Between the British and Islamic Legal Systems: Civil Family Law Services Are Expensive Compared to Islamic Legal Services

Cost is a significant concern for British Muslims seeking civil legal remedies for marital disputes. Many Muslims opt not to register their marriages in Britain due to the expenses involved. Most mosques in Britain are not registered for civil ceremonies, making Islamic marriages more affordable compared to civil unions. Furthermore, there is a limited number of British Muslim leaders, 'ulamā, and imams who are authorised to perform civil marriages in the country:

When Muslim couples wish to get married, they go to a mosque or invite an imam to their home. In order to register your marriage in this country, you have to go to your registrar's office. This registrar can go to the mosque, but there is an additional fee that must be paid.¹⁰³⁵

At the time of writing this thesis, couples in Britain must consider the following expenses when registering their marriages:

Fee for giving notice: This pertains to the registration cost for marriages or civil partnerships with local authorities. Couples need to visit the Registrar's office and make an official notice of their union at least 28 days before the ceremony. They complete a marriage notice form, submit supporting documents (e.g., birth certificates and passports), sign a declaration, and pay a fee to the Registrar of Marriages. British citizens are charged £35.00 per person, while overseas citizens must pay £47.00 per person.¹⁰³⁶

¹⁰³⁴ Siddiqui and others, p. 16.

¹⁰³⁵ 'Ālim 1.2.

¹⁰³⁶ Government Digital Service (UK), (2020), '*Marriages and Civil Partnerships in England and Wales*', GOV.UK <<https://www.gov.uk/marriages-civil-partnerships/give-notice>>.

Fee for the solemnisation of the marriage: This cost covers the attendance of the registrar at an approved office or venue for civil registration. The cost of civil registration varies based on factors like time, date, and location. Prices range from £60.00 for weekday morning ceremonies at Registrar’s offices to £500.00 for Sunday or Bank Holiday ceremonies. Approved government venues charge £300.00 to £500.00, while a registrar attendance at religious venues costs around £100.00 plus travel expenses.¹⁰³⁷

Muslim couples often prefer having an Islamic marriage ceremony conducted in the privacy and comfort of their own home over the formality of a civil union.¹⁰³⁸ Unlike a civil union, which can be expensive and requires the presence of a registrar unrelated to the couple, an Islamic marriage ceremony can be conducted without a religious authority or the need for an authorised venue. The ceremony only requires the presence of the bride, groom, and two witnesses:

According to Islamic law, as long as the couple fulfils all the requirements of the Islamic marriage ceremony, regardless of the place it took place in, in India or UK... in front of a civil registrar, in the masjid, or in a civil registry office... The nikāḥ ceremony, as long as the Islamic marriage procedure is followed properly, it will be considered a valid Islamic marriage.¹⁰³⁹

Muslim couples may choose not to register their marriage due to “the belief that should the couple divorce one partner may lose out financially in civil divorce proceedings.”¹⁰⁴⁰ This concern arises from the *Legal Aid, Sentencing, and Punishment of Offenders Act 2012 (LASPO)*,¹⁰⁴¹ which provides legal aid exclusively to married couples seeking a civil divorce; however, cohabitants may be considered in cases of domestic violence. As such, many British Muslim couples opt for Islamic

¹⁰³⁷ Harrow Council, London, (2019), Harrow Register Office Charges [Online] (Harrow, London: Harrow Council, London) <<https://bit.ly/35PAFAP>>.

¹⁰³⁸ John R. Bowen, p. 176.

¹⁰³⁹ ‘Ālim 2.1.

¹⁰⁴⁰ Siddiqui and others, p. 14.

¹⁰⁴¹ UK Public General Acts, *Legal Aid, Sentencing and Punishment of Offenders Act 2012, 10*, 2012, p. 314 (p. 7).

divorces, which are comparatively less expensive. For this study, the ‘ulamā reported instances where they received khula petitions accompanied by decrees absolute. In some cases, Muslim husbands did not contest the decree absolute due to the high costs involved. Instead, they waited for their wives to file for a khula at a shari’a council, which provided a more affordable opportunity for them to voice their objections:

When we find they [a husband] did not defend the civil divorce case, it is a strong signal for us that the husband accepts the marriage has come to an end. But some husbands come to us saying they did not defend themselves because defending a civil divorce petition can be very expensive. Their solicitor advised them, ‘Your wife will get a divorce whether you defend yourself or not. If you defend, it will be more expensive and you will not be able to save the marriage; if you do not defend, then the result will be the same, but it will be less expensive.’ So, we cannot assume why he did not defend his case. We have to be careful in interpreting a civil divorce and why he did not defend his case. Did he believe his marriage came to an end or was there another reason?¹⁰⁴²

Islamic divorce services are generally more cost-effective for British Muslims. However, there are anecdotal accounts of some clients perceiving shari’a councils as money-making schemes led by dubious ‘ulamā. The *Siddiqui Review* acknowledged the lack of concrete evidence to support these claims. ‘Ulamā interviewed for this study clarified that their fees primarily cover administrative expenses, and that many religious staff work voluntarily. Some councils also waive their fee for clients who cannot afford it, particularly Muslim women.¹⁰⁴³ Conversely, ‘ulamā criticised English law firms and their motives in providing Islamic legal services:

You see solicitors’ firms, they are businesses, they are not service companies. They look after the financial interest of their company. So, why do they [solicitors’ firms] bring Islam into their business? Solicitor’s firms [in Britain] do not want to serve Islam, they want to benefit from Islam, they want more clients. We are not here to make money. Our aim is to serve our [Muslim] community.¹⁰⁴⁴

¹⁰⁴² ‘Ālim 1.2.

¹⁰⁴³ Siddiqui and others, p. 14.

¹⁰⁴⁴ ‘Ālim 1.2.

10.7.6 Incongruences Between the British and Islamic Legal Systems: Parallel Legal Systems Play Against Community Cohesion Efforts

When Muslims in Britain identify issues within their communities and discuss them with local authorities, it fosters mutual understanding between them. This benefits both the state, which gains insight into the religious and personal needs of their society, and British Muslims, who gain clarity on their responsibilities as citizens and their shared values with the country. Muslims express their concerns through their community representatives and religious leaders, though sometimes the state may not fully understand the underlying circumstances that led to these concerns.

When faced with the prospect of Muslim men entering into polygamous marriages, British legislators emphasise that bigamy, whether committed by a man or a woman, is a criminal offence. However, the lack of legal recognition for Islamic law creates a perception among some Muslim men that they may surreptitiously engage in Islamic polygamous marriages in Britain.

As discussed earlier, Muslim women in Britain who do not register their Islamic marriages, whether unwittingly or by choice, may face challenges in accessing legal aid and protection for themselves and their children. Their cohabitant status denies them the legal entitlements that married women enjoy. In such cases, while shari'a councils may not offer legal safeguards, they may provide these women with spiritual and moral guidance. Even if a Muslim woman has obtained a civil divorce through a county court, she may still seek an Islamic divorce from a shari'a councils due to psychological and spiritual ties to her husband.

Some Muslim women in Britain find that they have limited legal rights and are subject to several civil and Islamic legal restrictions that hinders their ability to secure what is necessary for themselves and their children. They perceive discrimination from both their community and the state, with neither group providing them with a fair hearing. If these concerns are not addressed, the issues

of women being trapped in limping and polygamous marriages in Britain will persist, leading to misunderstandings about Muslim beliefs and practices and jeopardising community-building efforts.

In order to facilitate ongoing dialogue between Britain's Muslims and their government, the *Siddiqui Review* recommends a nationwide awareness campaign to educate citizens, particularly faith communities, about the advantages of civil registration. The review also proposed amendments to British legislation to better protect the rights of Muslim women and children, thereby reducing their reliance on shari'a councils. Failure to address the challenges faced by British Muslim women, coupled with the assumption that current laws are sufficient, amounts to the British government's complicity in the violation of these women's rights. Until the British government listens to the concerns of these women and addresses their needs, shari'a councils will continue to operate as parallel legal enclaves, offering short-term solutions, but potentially exacerbating existing divisions and prejudices between Britain's communities. 'Ālim 1.2 shares these concerns:

If you create a parallel [legal] institution where Muslims go to one institution and the rest of community go to the other, we have two communities going in two different directions. We should all be going in the same direction. That is the way of community cohesion.¹⁰⁴⁵

Despite concerns that parallel, counter-cultural institutions in Britain can hinder community cohesion efforts, 'Ālim 1.2 argues that, as long as the state continues to neglect the spiritual needs of British Muslims, counter-cultural institutions like shari'a councils will remain. 'Ālim 1.2 proposes that, if the government wishes to foster positive community relations with Muslim citizens, then an alternative solution "should come from Parliament, or from local authorities or from the mainstream." This would offer a distinctively British solution for Muslims that is sympathetic to their spiritual needs while also clarifying their rights and responsibilities as citizens of the United Kingdom.

¹⁰⁴⁵ 'Ālim 1.2.

10.8 Conclusion

This chapter examined the complexities and challenges associated with the recognition and integration of Islamic family law within the English legal context. It explored the historical influences on the current debate and the implications of the null-legal status of Islamic family law for British Muslims and their communities. It began by exploring the impact of British legislation since the eighteenth century, highlighting the *Clandestine Marriage Act 1753* and the *Marriage Act 1836* as examples of religious laws being replaced by a positivist legal system. It further discussed how this approach extended to British colonies in India, where the translation and codification of Islamic law into the *Anglo-Muhammadan Law* eroded the authority of India's 'ulamā. This historical context sheds light on the challenges of accommodating Islamic family law in contemporary, multi-faith Britain.

The chapter then analysed the concept of legal pluralism, both weak and strong, in British-controlled India and present-day Britain, respectively. It discussed how British legislators demonstrate versatility in using Islamic law in areas such as finance, inheritance, and dietary regulations, while refraining from incorporating Islamic family law due to concerns about conflicts with public policy, human rights violations, harm to women's autonomy, and the preservation of core societal values. This reluctance stems from the ambition to institute a positivist legal system that curtails legal pluralism while emphasising adherence to sovereign laws. Consequently, questions arose about the differential treatment and access to specialised legal services for faith minorities in Britain.

The chapter also assessed the challenges faced by British Muslim women in accessing justice and protection within the current British legal framework. It identified concerns raised in the *Siddiqui Review* and other studies, including a lack of awareness among British Muslim women regarding the advantages of civilly registering their marriages, limited access to affordable legal advice and representation, and the absence of government oversight of shari'a councils. Furthermore, the chapter examined the inadequate legal advice provided by British solicitors, whose lack of knowledge of

Islamic family law and failure to consider the religious and cultural sensitivities of their Muslim clients put vulnerable Muslim women at risk. Ultimately, the chapter highlighted that the rights of Muslim women and their well-being are central to the debate of Islamic family law in Britain.

Another key issue discussed is the disparity between the requirements of marriage in the Islamic and British legal systems. Islamic marriage rites do not meet the criteria for a civil union in Britain, resulting in Muslim couples being legally classified by the state as “cohabitants.” This designation has detrimental consequences for Muslim couples, depriving them of legal rights and protections and raising doubts about the religious legitimacy of their union within their community. The chapter also highlighted the failure of British legislators and legal practitioners to recognise the importance of the bridal-gift in Islamic family law, which contributes to Muslim women being trapped in limping marriages, thus necessitating the services of shari’a councils.

Polygamy is another contentious issue discussed in this chapter. British legislators vehemently oppose polygamy, considering it a violation of women’s rights and contrary to British family values. Consequently, the prohibition of bigamy in Britain is seen as an important safeguard. The chapter also revealed how ‘ulamā seek to rectify misconceptions held by British policymakers and politicians on polygamy, emphasising that the practice is an exception rather than the norm in Muslim societies. The chapter also sheds light on the initiatives undertaken by British ‘ulamā to include provisions in Islamic marriage contracts issued in Britain, which aim to address gender power imbalances and ensure monogamy among British Muslim unions.

The chapter highlighted how the high cost of marriage and divorce in Britain leads some British Muslims to forgo civil registration of their marriages and turn to shari’a councils to resolve their matrimonial disputes. This chapter also reaffirms the findings presented in Chapter 7 of this

thesis,¹⁰⁴⁶ where ‘ulamā noted that their male clients refrained from defending their cases in civil divorce proceedings due to the prohibitive costs involved and viewed shari’a councils as a more cost-effective means to present their side of the story.

This chapter also addressed concerns about shari’a councils being profit-driven, which the government-commissioned *Siddiqui Review* refuted. Conversely, ‘ulamā raised concerns about the motives of British law firms, suspecting that their provision of Islamic family legal services is capitalising on the null-legal status of Islamic family law in Britain and exploits the marital issues faced by British Muslim couples.

The chapter concludes with an ‘ālim expressing concern about how legal pluralism, in its current incarnation in Britain, is exacerbating divisions between communities. The ‘ālim explained that while some Muslims, who strictly adhere to Islamic law, are moving in one direction in society, the rest of the country, following the laws of the land, is moving in a different direction. To promote unity between Britain’s communities, it is essential for British state legislators and ‘ulamā to engage in constructive dialogue. Such discourses would address the domestic and social issues faced by British Muslims in a manner consistent with British values and protect vulnerable Muslim women from discrimination and exploitation by both the state and their faith community. By fostering dialogue between state legislators and the ‘ulamā, they can share their concerns, challenge assumptions, and work together to navigate the complexities and challenges of Islamic family law in contemporary, multi-faith Britain.

¹⁰⁴⁶ See Section 7.4.3, “Islamic Divorce Cases Requiring the Consensus of a Shari’a Council” in this thesis.

Epilogue

While investigating the Islamic legal and cultural influences on Britain's shari'a councils, many themes emerged from the chapters of this thesis. One of these themes are the aspiration of British Muslims for support and guidance that aligns with religious orthodoxy and caters to both their personal needs and those of their families. This aspiration has persevered since informal Islamic family legal services first emerged at the turn of the twentieth century. Muslims have consistently given preference to solutions for their spiritual and societal challenges that align with their long-established religious traditions, rather than deriving new resolutions through the process of *ijtihād*. This preference for adherence to religious and societal norms – *taqlīd* – holds significant sway within modern and postmodern Muslim societies, while the call for the revival of *ijtihād* faces resistance from conservative and traditionist 'ulamā. The prevailing dominance of *taqlīd* thus acts as a pivotal force steering Muslim societies away from adopting progressive approaches to Islamic law-making. Another recurring theme this research discovered, which runs parallel to the pursuit of religious orthodoxy, is that solutions grounded in such orthodoxy often come to those who break away from the fetters of societal conventions. These pioneering individuals and groups pave the way for new discoveries and ideas, which subsequently take root and flourish within the liminal spaces of their respective societies.

An example presented in Chapter 3 of an individual who made such a transformative discovery within their tradition is Abul Kalām Azad. Having escaped the fetters of his family's traditionist legacy, Azad embarked on a voyage of discovery across the Muslim world. Along this journey, he chanced upon Muhammad 'Abduh's report on the reform of Egypt's Shari'a courts. This report served as a source of inspiration for Azad, but it was not until years later that Azad reformed Abduh's report to meet the specific needs of India's Muslims. Azad's reformatory efforts took place within the liminal space of Ranchi jail. Within this controlled environment, Azad's discovery took root and flourished, and ultimately resulted in the formation of India's *dūr ul-qazā*.

The qualitative analysis of this thesis presented in Chapter 8 offers another example of a transformative discovery through introspection, demonstrated by the Hanafi ‘ālim Ashraf Ali Thanvi. Thanvi addressed the plight of India’s estranged Muslim women by looking beyond the strictures of the Hanafi tradition. Disturbed by the Hanafi-mandated ninety-year waiting period before these women could annul their marriages, Thanvi employed the Islamic legal mechanism of *takhayyur* (legal eclecticism) to propose a solution from the Maliki legal tradition, reducing the waiting period from ninety years to four. Thanvi’s interdisciplinary research also played a pivotal role in raising awareness among India’s Muslims of the concept of *talaq tafwīz*.

In Britain, such transformative discoveries took on a more inductive quality, leading to the development of shari’a councils in the country. Chapter 6 of this thesis saw Zaki Badawi inundated with pleas for help from British Muslim women, who were trapped in limping marriages. To address these Muslim domestic issues without contravening the laws of God and the laws of the land, Badawi organised consultative meetings with Britain’s ‘ulamā. During these meetings, the ‘ulamā considered their options (*takhayyur*) that were rooted in Islamic legal tradition and best suits (*munāsib*) the needs of the country’s Muslims. Among the traditions Britain’s ‘ulamā considered were the services and organisational structure of India’s dūr ul-qazā. Badawi galvanised these ideas into action and established an Islamic family legal and counselling service within London’s Central Mosque.

However, discoveries from Islamic traditions reached a plateau when British ‘ulamā were confronted with queries from both British Muslims and their government and found that the classic works of Islamic law yielded no further insights to address these inquiries. Chapter 4 of this thesis assessed the works of Khalid Abou el Fadl and Shaheen Sardar Ali to understand how the ‘ulamā had exhausted their search of the Islamic traditions. Their findings indicate that the rules and guidance offered in the classic works of Islamic law for Muslims who choose to live as minorities are insufficient and, at best, ambivalent. Both Fadl and Ali contend that the ‘ulamā and fuqahā’ who authored these

classic works did not envision a time when Muslims would choose to live as minorities. Fadl expressed his concerns about how ‘ulamā today are not doing enough to advance the traditional discourse to clarify the Islamic legality (*shar’*) and the role of Muslims living as minorities in the context of the global Muslim community. On the other hand, Ali found that modernist ‘ulamā’s contributions to fiqh al-aqalliyyāt present “a potentially more fruitful way” of exploring the Islamic legal and spiritual implications of Muslims who choose to live as minorities. However, despite the efforts of modernist ‘ulamā to address the challenges encountered by Muslims in Britain, particularly in relation to family civil court rulings for Muslim couples and the scourge of limping marriages, this thesis highlighted how certain conservative ‘ulamā in Britain insist that Muslims should accept civil court rulings within the context of Islamic law. This conservative stance implies that the issuance of civil divorce decrees can be deemed acceptable within an Islamic legal framework provided that the husband consents to the civil petition.

Considering the differences of opinion among the ‘ulamā concerning the legality of the English civil system within an Islamic legal framework, this thesis examined how the ‘ulamā’s divergent views, their varied approaches to Islamic law-making and affiliations with pan-Islamic movements have impacted the development of shari’a councils. Chapter 6 of this thesis detailed how the doctrinal differences between the Barelvi and Deobandi movements in Britain serve as a subtext to this development. Despite the success and positive impact of London’s Central Mosque’s Islamic family legal and counselling service, the disparity between Britain’s conservative ‘ulamā and Zaki Badawi’s progressive approach to Islamic law-making saw this faith-based service bifurcating into two distinct shari’a councils. The first council to emerge was the Islamic Shari’a Council in 1982, which garnered the support of Britain’s conservative ‘ulamā associated with the Ahl ul-Hadith, Deobandi, and Salafi movements. Today, the Islamic Shari’a Council remains committed to the preservation (*hifẓ*)

of Islamic tradition and advocates for a strict, literal interpretation and application of Islamic law in Britain.

Against the formation of a shari'a council managed by Britain's conservative 'ulamā, Badawi collaborated with British Sufi Muslim groups, particularly followers of the Barelvi movement in Britain, to establish the Muslim Law (Shari'ah) Council in 1985. In contrast to the conservative ethos held by the Islamic Shari'a Council, the Muslim Law (Shari'ah) Council features a diverse panel of experts from both the English civil and Islamic legal systems. This panel espouses more progressive approaches to Islamic law-making and is predisposed to prioritising the interests (*maṣāliḥ*) of their clients and British society.

Providing context for how members of pan-Islamic movements form coalitions within shari'a councils, Chapter 7 analysed the process through which these councils appoint 'ulamā to serve on their religious panels. The research findings suggest that these councils typically prefer candidates associated with pan-Islamic movements whose doctrinal beliefs and Islamic jurisprudential practices align with those of the council. This trend resonates with the phenomenon discussed in Chapter 4, where new Muslim migrants to Britain settle in regions where they may find their fellow compatriots. This research indicates a similar phenomenon among the 'ulamā; those associated with pan-Islamic movements tend to gravitate towards Islamic institutions, charities, and entities affiliated with their movements or with other movements sharing similar doctrines, philosophies, and epistemologies. In the context of shari'a councils, those adhering to conservative principles feature a coalition of Ahl ul-Hadith, Deobandi, and Salafi 'ulamā. Similarly, councils affiliated with the Barelvi movement in Britain prefer to collaborate with other Sufi groups and forge strategic alliances with individuals and organisations that stand opposed to their doctrinal opponents.

The thesis also explored how conservative and progressive coalitions within these councils are further augmented by the influence of international Islamic organisations. Chapter 9 revealed how

some shari'a councils forward complex Islamic divorce cases and other matters necessitating authoritative Islamic pronouncements to the International Islamic Fiqh Academy in Saudi Arabia. The thesis also highlighted the patronage Badawi received from the Libyan charitable entity, the World Islamic Call Society, which aimed to counteract the Salafi influence in Britain by promoting a "Sufi-tinged version of Islam" in the country. These associations with international Islamic entities, combined with the coalitions formed within shari'a councils, have resulted in the consolidation of the religious beliefs, doctrines, and epistemologies held by the 'ulamā of these councils, while their differences from their doctrinal rivals have been further accentuated. These findings provide context to John R. Bowen's observation that the doctrinal differences between the Barelvi and Deobandi movements have seemingly "hardened and simplified" in Britain.¹⁰⁴⁷

These findings also suggest that the hardening and simplification of the beliefs, doctrines, and epistemologies of these pan-Islamic movements also occur within the coalitions of these councils. This often results in a scenario where each 'ālim juxtaposes the standards and expectations of their respective movement with those of the coalition, potentially leading to juristic disputes (*ikhtilāf*) during council proceedings. Chapter 4 examined the convergence and divergence between two conservative pan-Islamic movements originating from South Asia: the Deobandis and the Ahl ul-Hadith. Despite both movements being committed to religious orthodoxy, their Islamic epistemologies diverge significantly. While the Deobandis disapprove of legal eclecticism (*takhayyur*) and prioritise strict adherence (*taqlīd*) to the rulings presented in the classic works of the Hanafī tradition, the Ahl ul-Hadith show little regard for the religious and legal authorities of all the Sunni legal traditions. As non-conformists (*ghayr muqallidīn*) who consider the classic Sunni legal works as mutable, the Ahl ul-Hadith movement readily engages in *takhayyur* and even legal synergism (*talfīq*), which involves the blending of rules and opinions from any of the Sunni legal traditions. The analysis of the data presented

¹⁰⁴⁷ John R. Bowen, p. 230.

in Chapter 9 revealed how some ‘ulamā view *talfīq* as a counter-narrative to *taqlīd* that could lead to deviation from Sunni orthodoxy, while other ‘ulamā expressed concern about how certain members of their council adhered so strictly to a specific Sunni legal tradition that they were not willing to consider alternative viewpoints.

Throughout its chapters, this thesis underscores how the diverse migratory pathways through which Muslims have arrived in Britain have created a pick-and-mix environment for British Muslims. Within this environment, Muslims have the opportunity to critically evaluate their inherited and adopted traditions alongside other sectarian movements, ethnic groups, theological denominations, and the cultural and Islamic legal traditions that coexist in Britain; Britain’s ‘ulamā also benefit from this opportunity. In contrast to certain authors who view shari’a councils as a contingent product of the patriarchal social norms and literalist religious justifications advocated by traditionalist ‘ulamā from the Indian subcontinent, other authors, and Chapter 6 of this thesis, revealed how the initiative to establish these councils was spearheaded by the progressive, Egyptian-born alumnus of Al-Azhar University, Zaki Badawi. Badawi undertook this endeavour during his tenure as chief imam at the central mosque in Britain’s cosmopolitan capital. It is also worth noting that, in response to the inaugural shari’a council adopting a more conservative stance, Badawi established an alternative shari’a council that presented a more progressive option for British Muslims.

Furthermore, British ‘ulamā associated with these councils are well-placed to meticulously assess the efficacy of the various Islamic legal traditions observed within Britain’s Muslim communities. In Chapter 7, the ‘ulamā acknowledged that shari’a councils exhibit diversity in the legal traditions they prioritise, with some councils favouring the Hanafi legal tradition, while others prioritised the Hanbali and Salafi legal traditions. Deeper discussions with the ‘ulamā revealed their reluctance to adopt a legal centralist standpoint that would indiscriminately apply the Hanafi and Hanbali legal traditions to their clients. The ‘ulamā also reported that their clients typically lacked

awareness of the differences between the Sunni legal traditions, and often request that their cases be adjudicated in accordance with the broader principles of “What Allah and His Messenger says.” Chapter 8 of this thesis further underscores the ‘ulamā’s discerning approach in handling Islamic family legal matters in Britain. They shared that they approach the matter on a case-by-case basis and apply the principles of legal eclecticism (*takhayyur*) to select the most suitable (*munāsib*) ruling from among the four popular Sunni legal traditions.

During the course of the fieldwork, the ‘ulamā demonstrated a profound understanding of the Hanafi and Hanbali legal traditions, as well as their manifestations within Britain’s Muslim communities. The ‘ulamā also acknowledged not possessing the same level of knowledge regarding the Maliki and Shafi’i legal traditions and the communities in Britain that adhere to them. These findings align with Rehana Parveen’s study of the Islamic Judiciary Board, where she observed that, in order to cater to the Islamic legal and cultural needs of their Somali clients, the Islamic Judiciary Board established connections with local Somali mosques to provide counsel and support in accordance with the Shafi’i legal tradition.¹⁰⁴⁸

The ‘ulamā suggested that a potentially valuable avenue for future research would involve analysing and mapping the Sunni legal practices among Britain’s Muslims. Such research could potentially unveil which of the four popular Sunni legal traditions best correlates with the beliefs and practices of Britain’s Muslim population. Furthermore, this research may uncover theological and ideological differences among followers of the Shafi’i and Maliki legal traditions in the country. This investigation would entail conducting surveys and semi-structured interviews with British Muslims, assessing their beliefs, liturgies, and daily routines. The collected data would subsequently be analysed and compared against the classic Sunni legal works.

¹⁰⁴⁸ Parveen, ‘Do Sharia Councils Meet the Needs of Muslim Women?’, p. 147.

It is also essential to reflect on the ‘ulamā’s efforts to include women on shari’a council panels. The ‘ulamā’s assertions of appointing their wives and daughters for this purpose, coupled with their references to historical instances of women serving as Islamic judges (*quḍāh*) and ‘ulamā, seem like prompt responses designed to deflect further inquiries. Chapter 7 offers a critical analysis, comparing the role of women in Islamic legal history against the ‘ulamā’s statements. It revealed that the appointment of female family members as the “resident ‘ālima” is rooted in the patriarchal construct of Sunni jurisprudence. The analysis revealed that the androcentric power distribution sanctioned by Sunni legal traditions has resulted in women scholars of Islamic law working silently under the shadow of the authority held by their fathers and husbands, thus restricting their autonomy and independent thought in case adjudication. In essence, historical precedents dictate that the roles of wives and daughters within shari’a councils are tightly controlled, and their opinions on Islamic legal matters are only considered when they align with those of the male panellists. The token representation of women on shari’a councils thus serves to placate female clients into accepting the council’s decisions, leveraging the belief that such decisions align with women’s interests, given the concurrence of female scholars on these decisions. Consequently, when a female client contests a council’s decision that includes both genders on the panel, her opposition supports the council’s claim of her disobedience.

This thesis also determined that the British civil legal services are also failing to give due consideration to the experiences and expectations of British Muslim women. Chapter 10 divulged that the religious and cultural illiteracy among British family solicitors, combined with their limited experience in handling transnational and unregistered Muslim marriages, results in the dissemination of misguided legal advice that can further complicate and even endanger the lives of British Muslim women. Coincidentally, Chapter 7 revealed that ‘ulamā are also struggling with the complex nature of transnational marriages. The research findings indicate that the ‘ulamā lack the essential training to handle such complex civil legal issues, leading them to invest a considerable amount of time and resources in verifying the religious and civil legal status of their clients’ marriages.

To rebalance the inherent androcentric power distribution within shari'a councils and address the shortcomings in both the civil and Islamic family legal services in handling transnational marriages, this study recommends that councils consider employing, or outsourcing this task to highly-qualified female legal experts who specialise in transnational marriages. This female legal expert would correspond with the chairing 'ālim and the council's administrative team to assist in building cases involving transnational marriages. Depending on convenience, the female legal expert may choose to work remotely or, when necessary, visit the shari'a council offices. In conservative shari'a councils where there are reservations with the mixing of the sexes, the qualified female legal expert could communicate with other male 'ulamā or participate in consensus meetings using video-conferencing applications. The strategic inclusion of a skilled woman, whose expertise compensates for the areas in which the 'ulamā face difficulties, has the potential to augment women's agency and influence within the Islamic judicial process.

This thesis revealed how progressive shari'a councils have reported benefits from the inclusion of barristers and solicitors on their panels. These legal experts have brought attention to areas of civil law that are beyond the councils' purview, such as child custody and financial disputes. This success suggests there is potential for shari'a councils to benefit further from other professionals, such as inviting female healthcare specialists and general practitioners to join their panel. The inclusion of female medical experts on the panel would not only promote best practices for preserving client confidentiality, but they are also well-suited to discuss sensitive matters with female clients, such as matters related to menstrual cycles. Such information can help shari'a councils to accurately calculate the 'idda period, thus streamlining the Islamic judicial process.

Ultimately, enlisting the services of highly qualified women from the legal and medical sectors offers numerous benefits to shari'a councils. Their expertise will enhance and ensure good practices within these councils. Additionally, their involvement will provide a sense of assurance to vulnerable

Muslim women, as they know their cases are being handled by highly skilled professional women who are contributing to the discussions within shari'a councils.

The literature review in Chapter 1 examined a series of legislative and operational reforms for shari'a councils to help improve their services and ensure that no further gender discrimination takes place within these councils. However, these works do not seem to provide advice for the 'ulamā to carry out internal assessments of the Islamic traditions that form the basis of their councils' institutional and epistemological frameworks. Such assessments are essential to help bring about genuine change that mitigates the entrenched misogynistic practices within shari'a councils and to ensure that their services are in line with the spirit of justice which the Qur'an (57:25) mandates Muslims to establish:

We sent our messengers with clarifications, and we sent down to you all the Holy Scriptures and the Balance of Justice with them, so that justice may be established among the people.

Both Ali and Mir-Hosseini provide strategies for understanding the patriarchal influences inherent in classic Islamic law, and for uncovering the judicious voice of the Qur'an. Ali posits that it is unreasonable to assume that the gendered cultural norms prevailing within Muslim societies are intrinsic to the fundamental principles of Islam. Ali asserts that:

...the basic tone and complexion of Islam is reformative, enjoining upon people equity and justice for all. The ethical voice of the Qur'an is said to be egalitarian and non-discriminatory. At the same time, it concedes to resourceful, adult Muslim men, as the privileged members of society, responsibility to care for (and exercise authority over) women, children, orphan and the needy... [scholars] argue that norms in the Islamic traditions, discriminatory to women, are a result of the fact that historically it was men who acted as commentators and interpreters of the religious texts as well as legislators, jurists and judges and people in power.¹⁰⁴⁹

Ali's assertion is evident in Chapter 7 of this thesis, which presents an analysis of how the distribution of the bridal-gift evolved under Islamic law. This practice transformed from a pre-Islamic custom of the *mahr*, where the groom paid a "purchase price" to the father of the bride, to a *ṣadāq*, an

¹⁰⁴⁹ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?*, pp. 42–43.

Islamic charitable gift that the groom gives directly to the bride. In an effort to align seventh-century Arabian society with the new Islamic mandates, the pre-Islamic notion of the *mahr* was integrated into the Islamic concept of the *ṣadāq*. However, this amalgamation resulted in the original purpose of the prescribed charitable gift becoming obscured.

Mir-Hosseini illustrates how ‘ulamā can substitute an established Islamic legal ruling (*ḥukm al-musbat*)¹⁰⁵⁰ with a more suitable ruling (*ḥukm al-munāsibah*), provided that the scriptural evidence (*dalā’il*) for both rulings is of equal Islamic legal weight. This process may be referred to in Arabic as ‘*aḥkām waḥqān lama’dba’ al-mu’adālah*’ (Islamic rulings in accordance with the principle of equivalence).¹⁰⁵¹ Mir-Hosseini draws attention to the work of Tahir al-Haddad (1899-1935 CE), who proposed that, instead of relying on Qur’an (4:34) to define marriage under Islamic law, the verse Qur’an (30:21) should be used as the foundation for marriage. This would shift the Shari’a mandate of marriage from “obedience and maintenance” to “love and affection.”¹⁰⁵²

Another of His signs is that He created spouses from among yourselves for you to live with in tranquillity: He ordained love and kindness between you. There truly are signs in this for those who reflect.¹⁰⁵³

Through this verse, marriage becomes a partnership where a husband and wife build a life together. Each spouse will strive to enhance and preserve their emotional bonds and carry out their marital duties wilfully.

¹⁰⁵⁰ تثبت” in Wehr, p. 101.

¹⁰⁵¹ Arabic: أحكام وفقاً لمبدأ المعادلة

¹⁰⁵² Mir-Hosseini, ‘Muslim Legal Tradition and the Challenge of Gender Equality’, pp. 46–49.

¹⁰⁵³ Haleem, p. 258.

Appendices

Appendix 1: Glossaries

Arabic Glossary

Term	Arabic script	Definition
'āda	عادة	Habit. Custom. Usage. Practice. Singular form of 'awā'id.
a'rāf	اعراف	Practices. Conventions. Habits. Cultural norms. Custom. Plural form of 'urf.
adillā	دلائل	Signs. Proofs. Plural form of <i>dalīl</i> .
'ahadith	أحاديث	Reports. Accounts. Tales. Narrations relating to the advice and deeds of the Prophet Muḥammad. Plural form of <i>hadith</i> .
aḥkām	احكام	Judgments. Verdicts. Rules. Ordinances. Plural form of <i>ḥukm</i> .
aḥrām	احرام	Forbidden. Prohibited. Taboo. Sacrosanct. Sacred. Plural form of <i>ḥaram</i> .
aḥwāl	احوال	Conditions. States. Situations. Circumstances. Plural form of <i>ḥāl</i> .
a'immaḥ	ائمة	People who lead the Muslim congregational prayers. Plural form of <i>imām</i> .
ajam'a	اجمعوا	They came to terms. They made a joint decision.
ajr	اجر	Wage. Stipend. Honorarium. Emolument. Singular form of <i>ujūr</i> .
al-ahwal ul-Shakhsiyya	الأحوال الشخصية	The Personal Status [law]
al-ahwal ul-Shakhsiyya al-Muslima	الأحوال الشخصية مسلمة	Muslim Personal Status [law]
al-jarh wa al-ta'dil	الجرح والطبقات	Invalidating and amending.
'ālim	عالم	A male Islamic scholar. Singular form of 'ulamā.
'ālima	عالمة	A female Islamic scholar. Singular form of 'ulamā.
aman	امان	Protection. Security. Peace. Shelter. Immunity from punishment.

'āmm	عام	Public. General. Universal. Common.
amr	امر	Command. Instruction. Decree. Those who are entrusted. Singular form of <i>awāmir</i> .
'aqā'id	عقائد	Dogmas. Creeds. Articles of faith. Plural form of <i>aqīda</i> .
aqallīya	اقلية	Minority. Small number. Inferiority. Singular form of <i>aqalliyyāt</i> .
aqalliyyāt	اقلبيات	Minorities. Inferiorities. Plural form of <i>aqallīya</i> .
aqd al-nikāḥ	عقد النكاح	An Islamic marriage contract. Contract of coitus.
aqīda	عقيدة	Dogma. Creed. An article of faith. Singular form of <i>'aqā'id</i> .
'aql	عقل	Intellect. Mind. Insight.
ashbāh	أشبهاء	Similar. Resemblance.
aṣl	اصل	Origin. Source. Root. Islamic legal precedent. Singular form of <i>uṣūl</i> .
'awā'id	عوائد	Habits. Customs. Usages. Practices. Plural form of <i>'āda</i> .
awāmir	اوامر	Commands. Instructions. Decrees. Those who are entrusted. Plural form of <i>amr</i> .
awliyā	اولياء	Legal guardians. Patrons. Close friends. Saints. Guardians or fathers of the brides. Plural form of <i>walī</i> .
awṣāf	اوصاف	Description. Characteristics. Descriptions of a person. Plural form of <i>waṣf</i> .
badal ul-khul'	بدل الخلع	A remuneration of the bridal-gift from the bride to the groom in exchange for her release from her Islamic marriage.
balāgh	بلاغ	Information. Message. Report. Statement. Singular form of <i>balāghat</i> .
balāghat	بلاغات	Messages. Reports. Statements. Plural form of <i>balāgh</i> .
bāṭil	باطل	Vain. False. Invalid. Null. Void.
bayān	بيان	Lucidity. Explanation. The means through which clarity is achieved.
bayānī	بياني	Explanatory. Illustrative.

bid' ah	بدعة	Innovation. Novelty. Creation.
bidāya	بداية	Beginning. Start. Primer.
ḍa'if	ضعيف	Weak. Feeble. Deficient.
dalā'il	ادلة	Signs. Proofs. Plural form of <i>dalīl</i> .
dalīl	دليل	Sign. Proof. Evidence. Conclusive evidence. Singular form of <i>dalā'il</i> and <i>adillā</i> .
dār al-'ulūm	دار العلوم	House of science. An Islamic seminary of further Islamic education. Singular of <i>dūr al-'ulūm</i> .
dār al-Islam	دار الإسلام	House or abode of Islam. Refers to territories under Muslim sovereignty.
dār al-kufr	دار الكفر	House of abode of disbelief.
dār al-ṣulḥ	دار الصلح	House or abode of peace/truce. Used to describe territories that have a treaty of non-aggression or peace with Muslims.
ḍarūrī	ضروري	Imperative need. Essential. Requisite. Indispensable. Singular form of <i>ḍarūrīyāt</i> .
ḍarūrīyāt	ضروريات	Imperative needs. Essentials. Requisites. Plural form of <i>ḍarūrī</i> .
dhikra	ذكري	To recollect. To reminisce. To remind.
dūr al-'ulūm	دور العلوم	House of science. Islamic seminaries of further Islamic education. Plural of <i>dār al-'ulūm</i> .
faqīh	فقيه	A jurist. An expert in Islamic law. Singular form of <i>fuqahā'</i> .
far'	فرع	A branch. Subdivision. In Islamic law, a new case. An Islamic legal posterior. Singular form of <i>furū'</i> .
farā'ḍ	فرائض	Sacred oaths. Religious duties. Statutory portions from a person's estate. Plural form of <i>farīḍa</i> .
farḍ al- kifāya	فرض الكفاية	The obligatory act which is performed by a sufficient number of Muslims. Communal obligation. An incumbent duty for all Muslims.
farḍ al-'ayn	فرض العين	An obligatory act for a person.

farīḍa	فريضة	A sacred oath. A religious duty. A statutory portion from a person's estate. Singular form of <i>farā'd</i> .
fasād	فساد	Decay.
fāsīd	فاسد	Rotten. Spoiled. Foul. Bad.
faskh	فسخ	In Islamic family law, it is a dissolution of an Islamic marriage.
fatāwā	فتاوى	Islamic legal opinions. Plural form of <i>fatwā</i> .
fatwā	فتوى	Islamic legal opinion. Singular form of <i>fatāwā</i> .
fiḍyah	فدية	Excess. Redemption.
fiqh	فقه	To understand. To comprehend. An understanding of Islamic law.
fiqh al-aqalliyyāt	فقه الأقلية	An understanding of Islamic law for [Muslim] minorities.
fuqahā'	فقهاء	Jurists. Experts of Islamic law. Plural form of <i>faqīh</i> .
furū'	فروع	Branches. Subdivisions. In Islamic law, new cases. Islamic legal posteriors. Plural form of <i>far'</i> .
gā'ib	غيب	Unseen. Esoteric. Hidden.
ghayr	غير	Other than. Unlike. Different from. Except.
ghayr kafā'	غير كفاء	Incompatibility between spouses.
ghayr muqallid	مقلد غير	Nonconformist. Singular form of <i>ghayr muqallidūn</i> .
hadith	حديث	A report. An account. A tale. A narration relating to the advice and deeds of the Prophet Muḥammad and his companions. Singular form of ' <i>ahadith</i> .'
ḥāfiẓ	حافظ	Keepers. Guardians. Custodians. Caretakers. Singular form of <i>ḥuffāẓ</i> .
halal	حلال	Allowed. Lawful. Permitted. Permissible.
ḥāja	حاجة	Demand. Necessity. Requirement. Singular form of <i>ḥājāt</i> or <i>ḥājīyyāt</i> .
ḥājāt	حاجات	Demands. Necessities. Requirements. Plural form of <i>ḥāja</i> .
ḥājīyyāt	حاجيات	Demands. Necessities. Requirements. Plural form of <i>ḥāja</i> .

ḥajj	حج	The official Muslim pilgrimage to Mecca.
ḥāl	حال	Condition. State. Situation. Circumstance. Singular form of <i>aḥwāl</i> .
ḥaram	حرم	Forbidden. Prohibited. Taboo. Sacrosanct. Sacred. Singular form of <i>aḥrām</i> .
ḥasan	حسن	Good. Agreeable. Beautiful.
hiba	هبة	Gift. Present. Donation.
ḥidāya	هداية	Leading a person onto the right way. To guide. To show. To direct.
ḥifẓ	حفظ	To preserve. To protect. To guard. To defend.
ḥikma	حكمة	Wisdom.
ḥīla	حيلة	Legal loophole. Stratagem. Trick. Ruse. Sly. Singular form of <i>ḥiyal</i> .
ḥilf	حلف	To take an oath.
ḥiyal	حيل	Legal loopholes. Stratagems. Tricks. Schemes. Plural form of <i>ḥīla</i> .
ḥuffāẓ	حفاظ	Keepers. Guardians. Custodians. Caretakers. Plural form of ḥāfiẓ.
ḥukm	حكم	Judgment. Verdict. Rule. Ordinance. Singular form of <i>aḥkām</i> .
ḥukm al-ijmā'	حكم الاجماع	An Islamic ruling ratified via the consensus of the 'ulamā and fuqahā'.
ḥukm al-munāsibah	حكم المناسبة	The most suitable Islamic ruling.
ibādah	عبادة	To serve. To worship. To venerate. Singular form of <i>ibādāt</i> .
ibādāt	عبادات	To serve. To worship. To venerate. Plural form of <i>ibādah</i> .
'idda	عدة	Number. To count. To enumerate. The timeframe a couple waits between the announcement and enactment of an Islamic divorce. An Islamic decree nisi.
ījāb	ايجاب	Offering. Offer of a contract. In pursuance of.
ijmā'	اجماع	Agreement. Consensus of the 'ulamā and fuqahā' in Islamic law making.

ijtihād	اجتهاد	Intellectual effort. Exertion. Diligence. Independent Islamic legal reasoning.
ijtihād bayānī	اجتهاد بياني	The effort of determining of interpreting or elaborating on the Qur'an and hadith collections.
ijtihād istiṣlāhī	اجتهاد استصلاحى	The effort of determining an Islamic ruling or opinion that is in the public interest (<i>maṣlaḥa</i>).
ijtihād qiyāsī	اجتهاد قياسى	The effort of determining and Islamic ruling or opinion by analogy.
ikhtilāf	اختلاف	Difference of opinions. Disagreement. Diversity. Disparity.
ikrāh	اكره	Compulsion. Coercion. Constraint. Force.
īlā'	إيلاء	Continenence. A husband abstaining from sexual relations with his wife.
illah	علة	Underlying legal cause.
'illah al-munāsibah	علة المناسبة	The appropriate underlying legal cause.
'ilm	علم	Knowledge. Learning. Information. Singular form of <i>'ulūm</i> .
'ilm ta'dīl al-ṭabaqāt	علم تعديل الطبقات	The science of amending and categorising classic Islamic works, usually the hadith traditions.
imām	امام	A person who leads the Muslim congregational prayer. Singular form of <i>a'immaḥ</i> .
'imāra	عمارة	Building. Edifice. Singular form of <i>'imārat</i> .
'imārat	عمارات	Buildings. Edifices. Plural form of <i>'imāra</i> .
īqā'	ايقاع	Rhythm. Cadence. Harmony.
irāda	ارادة	A will. A desire. An intention.
irtifāq	ارتفاق	Use. Utilization. Ease.
islāh	اصلاح	Restoration. Reparation. Improvement. Repair.
istinbāṭ	إستنباط	Rational deduction. Inference, deducing a somewhat hidden meaning from a given text. To elicit. To extrapolate.
istiqrā'	استقراء	Investigation. Examination. Singular form of <i>'istiqrāt</i> .

istiqrāt	استقرات	Investigations. Examinations. Plural form of <i>istiqrā'</i> .
istiṣhāb	إستصحاب	Presumption of continuity or presuming continuation of the status quo ante.
istiṣlāh	استصلاح	Reclaim. Recover. Cultivation. In Islamic law, to deem something good. Juristic preference for the public interest.
iṭlāq	اطلاق	Freeing. Liberating. Releasing.
īwā'	ايواء	Accommodation.
'iwaq	عوض	To repay. To compensate.
jama'a	جمع	To gather. To unite. Combine. Bringing together.
jamī'	جامع	Comprehensive. Compiler (of a book).
kafā'	كفاء	Equality. Adequacy. Adequateness.
katātīb	كتاتيب	Elementary Islamic schools. Plural form of <i>kuttāb</i> .
khafī	خفي	Hidden. Concealed. Cryptic. Obscure.
khāṣṣ	خاص	Special. Particular. Specific.
khilāfat la yumkin haliha	خلافات لا يمكن حلها	Irreconcilable difference.
khula or khul'	خلع	In Islamic family law, is the means through which a wife requests from her husband her “ <i>release</i> ” or “ <i>removal</i> ” from their marriage.
kuf'	كفء	Equal. Alike. Adequate. Appropriate. Suitable.
kuttāb	كتاب	An elementary Islamic school. Singular form of <i>katātīb</i> .
Kutub as-Sittā	كتب السنة	The six major hadith collections in the Sunni legal traditions. They are: <i>Ṣaḥīḥ Bukhārī</i> , <i>Ṣaḥīḥ Muslim</i> , <i>Sunan Abu Dāwūd</i> , <i>Sunan at-Tirmidhī</i> , <i>Sunan an-Nasā'ī</i> and, depending on the Sunni legal school, the <i>Sunan ibn Mājah</i> (Hanafi, Shafi'i and Hanbali legal schools) or Malik's <i>Muwatta'</i> (Maliki legal school).
luga	لغة	Language. Expression. Vernacular. Singular form of <i>lugāt</i> .
lugāt	لغات	Languages. Expressions. Vernaculars. Plural form of <i>luga</i> .

madāris	مدارس	Secondary schools. High schools. Schools of higher Islamic education. Plural form of <i>madrasa</i> .
maḏhab	مذهب	An adopted legal procedure. An Islamic legal doctrine. An Islamic legal school. Singular form of <i>madhāhib</i> .
madhāhib	مذاهب	Adopted legal procedures. Islamic legal doctrines. Islamic legal schools. Plural form of <i>maḏhab</i> .
madrasa	مدرسة	A secondary school. A high school. A school of higher Islamic education. Singular form of <i>madāris</i> .
mafqūd	مفقود	Lost. Missing. Estranged. Absent.
maḥākim	محاكم	Courts. Tribunals. Plural form of <i>maḥkama</i> .
maḥall	محل	Object/subject related to a ruling/case. Singular form of <i>maḥallāt</i> .
maḥallāt	محلات	Object/subject related to a ruling/case. Plural form of <i>maḥall</i> .
maḥkama	محكمة	Court. Tribunal. Singular form of <i>maḥākim</i> .
mahr	مهر	A dower. Ransom. Price.
majālis	مجالس	Committees. Councils. Gatherings. Boards. Plural form of <i>majlis</i> .
majāzī	مجازى	Figurative. Metaphorical.
majlis	مجلس	Committee. Council. Gathering. Board. Singular form of <i>majālis</i> .
Majlis-e-Shura	مجلس الشورى	An Islamic consultative council who nominates the Caliph of the Muslim Empire.
makātib	مكاتب	Offices. Desks. Elementary schools. Plural form of <i>maktab</i> .
maktab	مكتب	An office. A desk. An elementary school. Singular form of <i>makātib</i> .
māl	مال	Wealth. Money. Fortune. Assets.
manqūl	منقول	Conveyed. Transferred. Transmitted. Transcribed.
maqāṣid	مقاصد	Purposes. Intentions. Aims. Plural form of <i>maqṣad</i> .
maqṣad	مقصد	Purpose. Intention. Aim. Singular form of <i>maqāṣid</i> .
maqāṣid ash-sharī'a	مقاصد الشريعة	The purpose of Shari'a.

mas'ala	مسئلة	Issue. Problem. Question. Singular form of <i>masā'il</i> .
masā'il	مسائل	Issues. Problems. Questions. Plural form of <i>mas'ala</i> .
maṣāliḥ	مصالح	Public benefits. Public interests. Plural form of <i>maṣlaḥa</i> .
maṣlaḥa	مصلحة	That which is beneficial. The public benefit. The public interest. Singular form of <i>maṣāliḥ</i> .
maṣlaḥa mu'tabarāh	مصالح معتبرة	A public interest (<i>maṣlaḥa</i>) that has been validated by a verse from the Qur'an or an authentic (<i>ṣaḥīḥ</i>) hadith. An accredited <i>maṣlaḥa</i> .
maṣlaḥa mulghā	مصالح مرسلة	A public interest (<i>maṣlaḥa</i>) that has been discredited by a verse from the Qur'an or an authentic (<i>ṣaḥīḥ</i>) hadith. A cancelled <i>maṣlaḥa</i> .
maṣlaḥa mursalah	مصالح ملغا	A public interest (<i>maṣlaḥa</i>) that is neither endorse nor rejected by the Qur'an or the hadith literature. An undetermined <i>maṣlaḥa</i> .
matn	متن	Firm. Strong. Solid. A transmitted message from the Qur'an or hadith collections.
mawḍū'	موضوع	When used in the study of <i>Hadith</i> , <i>mawḍū'</i> refers to fabrication.
mithl	مثل	Equivalent. Equitable. Similar. Substitute.
mīzān	ميزان	Balance. Justice. Equity. Fairness. Impartiality.
mu'tabbi	متبع	Observed. To adhere to. To comply with. To travel [down a road]
mubāra'a	مباراة	Islamic divorce by mutual consent by waiving the claim of the bridal-gift.
musbat	مثبت	Established. Installed. Maintained. Fixed.
mu'tamad	معتمد	Sanctioned. Approved. Accredited. Certified.
mufti	مفتي	An Islamic jurist who is authorised to proclaim official Islamic legal opinions. An Islamic legislator.
muḥadith	محدث	A traditionist 'ālim. An Islamic scholar who specialises in the study of hadith. Singular of <i>muḥaddithūn</i> (nominative) or <i>muḥaddithīn</i> (accusative or genitive).
muḥaddithūn	محدثون	Traditionist 'ulamā. Islamic scholars who specialise in the study of hadith. Plural of <i>muḥadith</i> .

muḥaddithīn	محدثين	Islamic scholars who specialise in the study of hadith. Plural of muḥadith.
muḥaṣṣil	محصل	A collector.
maḥdhūf	مَحذوف	A deleted word.
mujaddid	مجدد	A renewer. An innovator. A reformer of Islamic law and thought.
mujmal	مجمل	Unelaborated. Implicit. Ambivalent. Ambiguous.
mujtahid	مجتهد	Diligent. Industrious. An Islamic scholar or jurist who independently formulates an Islamic opinion or ruling. Singular form of <i>mujtahidūn</i> (nominative) or mujtahideen (accusative or genitive).
mujtahidūn	مجتهدون	Islamic scholars or jurists who each formulate Islamic opinions or rulings independently. Plural form of <i>mujtahid</i> .
mujtahideen	مجتهدين	Islamic scholars or jurists who each formulate Islamic opinions or rulings independently. Plural form of <i>mujtahid</i> .
mujtahidūn muṭlaqūn wa mustaqilūn	مجتهدون مؤلفون ومستقيمون	Islamic scholars who are independent and fully qualified.
mukallaf	مكلف	An individual subject to the law. Liable. Under obligation. Singular form of <i>mukallafūn</i> .
mukallafūn	مكلفون	An individuals who are all subject to the law. Liable. Under obligation. Plural form of <i>mukallaf</i> .
mukhtaṣar	تفسير	Abridged. Concise. Terse. Synopsis.
munāsib	مناسب	Suitable. Fitting. Appropriate. In Islamic law-making, it is the most suitable ruling or opinion for a case.
muqallid	مقلد	A person who practises <i>taqlīd</i> . A person who as blind, uncritical faith. Singular form of <i>muqallidūn</i> .
murshid	مرشد	A spiritual guide. An instructor. Singular of <i>murshidūn</i> .
murshidūn	مرشدون	Spiritual guides. Instructors. Plural of <i>murshid</i> .
mushkil	مشكل	Difficult.
musnad	مسند	A collection of texts organised by the authority of their narrator.

mussanaf	مصنف	A collection of texts categorised by their subject.
mustaqil	مستقل	Independent. Autonomous. Distinct.
mutashābih	متشابه	Unintelligible.
muṭlaq	مطلق	A person who is free. Unlimited. Unrestricted.
muttaṣil	متصل	Persistent. Continuous. Incessant. Uninterrupted.
nafaqa	نفقة	Maintenance. Cost of living. Expense. Expenditure. Singular form of <i>nifāq</i> and <i>nafaqāt</i> .
nafaqāt	نفقات	Maintenance costs. Expenses. Expenditures. Plural form of <i>nafaqa</i> .
nafs	نفس	Soul. Life. Spirit. A human being.
naḥla	فريضة	A donation. A gift. Singular form of <i>niḥal</i> .
nahy	نهي	Prohibition. Ban. Proscription.
naskh	نسخ	Abolition. Abrogation. To repeal. Cancellation.
nasl	نسل	Progeny.
naṣṣ	نص	To fix. To determine. To stipulate. In Islamic law, <i>naṣṣ</i> refers to a legal text in the Qur'an or hadith. Singular form of <i>nuṣūṣ</i> .
nathr	نثر	Prose.
naẓm	نظم	Poem.
nifāq	نفاق	Maintenance costs. Expenses. Expenditures. Plural form of <i>nafaqa</i> .
niḥal	نحل	Donations. Gift. Plural form of <i>naḥla</i> .
nikāḥ	نكح	An Islamic marriage contract. Matrimony. Wedlock.
nizām	نظام	Organised. Methodical. System of regulation.
nuṣūṣ	نصوص	In Islamic law, <i>nuṣūṣ</i> refers to a legal text in the Qur'an or hadith. Plural form of <i>naṣṣ</i> .
nuṣūṣ khafīya	نصوص خفية	Obscure Islamic legal text [in the Qur'an or hadith collections].
nuṣūṣ zāhira	نصوص ظاهرة	Clear Islamic legal text [in the Qur'an or hadith collections].
nuṣūṣ zāhira 'aw khafīya	نصوص ظاهرة أو خفية	Clear or obscure Islamic legal text [in the Qur'an or hadith collections].
qabūl	قبول	To accept. To approve. To consent. To agree.

qadi	قاضي	A judge. A magistrate. Singular form of <i>quḍāh</i> .
qadiyā	قاضية	A female judge. A female magistrate. Singular form of <i>qadiyāt</i>
qadiyāt	قاضيات	Female judges. Female magistrates. Plural form of <i>qadiyā</i> .
qanata	قنت	Submissive. Obedient. Humble.
qanitat	قَانِنَات	Obedient. Submissive. servile. Subservient. Feminine plural form of <i>qanata</i> .
qasam	قسم	An oath.
qawwām	قوام	Guardian. Custodian. Director. Keeper. Manager. Singular form of <i>qawwāmūn</i> .
qawwāmūn	قوامون	Guardians. Custodians. Directors. Keepers. Managers. Plural form of <i>qawwām</i> .
qiṣaṣ	قصص	Narrative. Stories. Tales. Plural form of <i>qiṣṣa</i> .
qiṣṣa	قصة	A narrative. A story. A tale. Singular form of <i>qiṣaṣ</i> .
qiwamah	قوامه	Stewardship. Protector. Maintainer. Guardianship.
qiyās	قياس	Measure. Comparison. Analogy. Deduction by analogy.
quḍāh	قضاة	Judges. Magistrates. Plural form of <i>qadi</i> .
raj'ī	رجع	Revocable. Used in reference to occasions in the 'idda period of an Islamic divorce where the Islamic divorce can be revoked. See: <i>ṭalāq raj'ī</i> .
rasā'il	رسائل	Treatises. Messages. Letters. Plural form of <i>risāla</i> .
rawīya	روية	Deliberation. Reflection. Consideration.
risāla	رسالة	A treatise. A message. A letter. Singular form of <i>rasā'il</i> .
riwāya	رواية	Narrative. Account. Report. Singular form of <i>riwāyāt</i> .
riwāyāt	روايات	Narrative. Accounts. Reports. Plural form of <i>riwāya</i> .
ṣadāq	صداق	Friendship. Bridal-gift.
ṣadaqa	صدقة	A charitable gift. Freewill offering. Singular form of <i>ṣadaqāt</i> .
ṣadaqāt	صدقات	Charitable gift. Freewill offerings. Plural form of <i>ṣadaqa</i> .
ṣaduqātihinna	صَدَقَاتِهِنَّ	Their gift. (Third person female plural).

ṣaḥīḥ	صحيح	Sound. Authentic. Genuine. Healthy.
ṣakk	صك	A contract. A deed. A legal instrument. A cheque. Singular form of <i>ṣukūk</i> .
salaf al-ṣāliḥ	سلف الصالح	The Prophet Muhammad's community. The first three generations of Islam.
salat	صلاة	An obligatory Islamic prayer. Benediction. Blessing. Grace. Singular form of <i>ṣalawāt</i> .
ṣalawāt	صلوات	The obligatory Islamic prayers. Blessings. Plural form of <i>salat</i> .
ṣallā -llāhu 'alayhī wa-sallam	صلى الله عليه وسلم	Translating as, "may God bless him [Muhammad] and grant him peace." Muslims often say this expression after saying the Prophet Muhammad's name.
ṣallā -llāhu 'alayhī wa-'ālihī wa-sallam	صلى الله عليه وآله وسلم	Translating as, "may God bless him [Muhammad] and grant peace upon his family." Muslims often say this expression after saying the Prophet Muhammad's name.
ṣarīḥ	صريح	Clear. Obvious. Explicit. Unambiguous.
ṣawm	صوم	Fasting. Abstention.
sharḥ	شرح	Expounding. A presentation. An illustration. Commentary.
shar'	شرع	Legitimate. With full right under Islamic law.
Shari'a	شرعي	God's eternal and immutable will for humanity.
sharṭ	شرط	Condition. Clause. Stipulation. Singular form of <i>shurūṭ</i> .
shaykh	شيخ	A chief. An elderly man. A master. A scholar. Singular form of <i>shuyūkh</i> .
shiqāq	شقاق	A violation. A breach. Discord. In Islamic family law, a violation of the Islamic marriage agreement.
shi'r	شعر	Poem.
shūrā	شورى	To consult. Deliberation. Take counsel.
shurūṭ	شروط	Conditions. Clauses. Stipulations. Plural form of <i>sharṭ</i> .
shuyūkh	شيوخ	Chief. Elderly men. Masters. Scholars. Plural form of <i>shaykh</i> .
sīra	سيرة	Biography. Singular form of <i>siyar</i> .

siyar	سير	Biographies. Plural form of <i>sīra</i>
siyār	سيار	To travel frequently. To roam the planet. International Islamic law.
ṣukūk	صكوك	Contracts. Deeds. Legal instruments. Cheques. Plural form of <i>ṣakk</i> .
sukūtī	سكوتي	Reticent. Silently. Taciturn.
ṣulḥ	صلح	Peace. Reconciliation. Settlement.
sulṭa	سلط	Power. Strength. Authority. Influence.
sulṭāt al-qaḍā'īya	سلطة القضائية	Judicial power [of the government].
sunan	سنن	Habitual practices. Norms. Habits. Actions of the Prophet Muhammad. Plural form of <i>sunna</i> .
sunna	سنة	A habitual practice. A norm. A habit. An action of the Prophet Muhammad. Singular form of <i>sunan</i> .
sunni	سني	A branch of Islam whose followers pledge to follow the sunna of the Prophet Muhammad and his community.
sūra	سورة	A chapter of the Qur'ān. Singular form of <i>suwar</i> .
suwar	سور	Chapters of the Qur'ān. Plural form of <i>sūra</i> .
ṭā'a	طاع	To obey. Render Obedient. Subdue. Subjugate.
ṭabaqa	طبقة	Layer. Stratum. Class. Category. Singular form of <i>ṭabaqāt</i> .
ṭabaqāt	طبقات	Layers. Strata. Classes. Categories. Plural form of <i>ṭabaqa</i> .
tābi'ūn	تابعون	The offspring of the companions of the Prophet Muhammad. The second generation of Islam.
ta'diyah	تعديّة	Extension. Extensibility.
tafāsīr	تفاسير	Commentaries. Interpretations. Plural form of <i>tafsīr</i> .
tafrīq	تفريق	To separate. Severance. In Islamic family law, <i>tafrīq</i> is an Islamic legal separation declared by a <i>muftī</i> or <i>qāḍī</i> .
tafsīr	تفسير	Commentary. Interpretation. Singular form of <i>tafāsīr</i> .
taḥlīl	تحليل	Dissolution. To break up. Decomposition. When a Muslim woman marries another man on the condition that he will divorce her and

make her first husband permissible to remarry. This process is known as *ḥalālah* in Urdu.

tah̄rīm	تحریم	Prohibition. Forbiddance. Ban. Singular form of <i>tah̄rīmāt</i> .
tah̄rīmāt	تحریمات	Prohibitions. Bans. Plural form of <i>tah̄rīm</i> .
takhayyur	تخیر	Legal eclecticism.
takhyīr	تخییر	To choose. To prefer. <i>Takhyīr</i> is a morpheme of the word <i>khāra</i> (خار) which can be translated as “to choose”, to “makes one’s choice”, or “to prefer”. In Islamic law-making, <i>takhyīr</i> translates as “the freedom of choice”.
talaq	طلاق	An Islamic divorce. Normally initiated and concluded by the husband.
talaq bai’n	طلاق بین	The third and final declaration of an Islamic divorce. See, <i>talaq baynunah kubra</i> .
talaq baynunah kubra	طلاق بینونة کبری	The major declaration of an Islamic divorce. The third and final declaration for an Islamic divorce. See, <i>talaq bai’n</i> .
talaq baynunah sughra	طلاق بینونة صغری	The minor declaration for an Islamic divorce. The second declaration for an Islamic divorce. See, <i>talaq raj’ī</i> .
talaq raj’ī	طلاق رجعی	The first and second declaration of an Islamic divorce where the Islamic divorce can be revoked.
talaq tafwīz	طلاق تفویض	Delegating the right to pronounce an Islamic divorce given from the husband to the wife at the time of their <i>nikāh</i> .
ṭalāqa	طلق	To set loose. Release. To set free. To forsake. To repudiate.
talfīq	تلفیق	Invention. Concoction. Legal synergism.
tamadhaba or tamadhdhub	تمذهب	Accepting the view, opinion, or ruling of an Islamic legal school without proof.
tamkīn	تمکین	Capacitate. Consolidation. Livery of seisin. Investiture.
tamlīk	تملیک	Transfer of ownership. To give away a possession. In Islamic family law, <i>tamlīk</i> is a husband transferring his authority to declare an Islamic divorce from himself to his wife.
taqlīd	تقلید	Blind uncritical faith. Unreasonable acceptance. Servility.
taqrīr	تقریر	Report. Assignment. Stipulation.

taqwā	تقوى	Piety. God consciousness. Devoutness.
ujūr	اجور	Wages. Stipends. Honorariums. Emoluments. Plural from of <i>ajr</i> .
‘ulamā	علماء	Islamic scholars. Plural form of ‘ <i>ālim</i> .
ūlū	اولو	Possessors. Owners.
ūlū al-amr	أولى الأمر	An Islamic legislative assembly who, according to Qur’an (4:59), God entrusts to assign, support and discharge those in authority.
‘ulūm	علوم	Sciences. The natural sciences. Plural from of ‘ <i>ilm</i> .
ulūm al-hadith	علوم الحديث	The hadith sciences. It is an Islamic scholastic discipline where ‘ulamā study and evaluate the hadith traditions.
ummah	أمة	Community. The [global] Muslim community.
ummah wahidah	أمة واحدة	One [global] Muslim community.
‘urf	عرف	Practice. Convention. Habit. Cultural norm. Custom. Singular form of a ‘ <i>rāf</i> .
uṣūl	اصول	Origins. Sources. Roots. Islamic legal precedents. Plural form of <i>aṣl</i> .
uṣūl al-fiqh	اصول الفقه	Islamic legal theories. The principles of Islamic law.
wafā’	وفاء	Redemption of an oath. Discharge of a promise. Compensation.
waḥdat al-wujūd	وحدة الوجود	A Sufī postulate that declares God and his creation are one. Pantheism.
waḥsh	وحش	To make lonesome. Deserted. Estranged.
wājib	واجب	Necessary. Requisite. Obligation.
walī	ولى	A legal guardian. Patron. A close friend. A saint. Guardian or father of the bride. Singular form of <i>awliyā</i> .
waqf	وقف	A trust. An endowment.
waṣf	وصف	Description. Attribute. A description of a person. Singular form of <i>awṣāf</i> .
waṣf munāsib	وصف مناسب	Reasonable grounds for a new Islamic ruling.
zāhir	ظاهر	Obvious. Apparent. Manifest.

zakaṭ	زكاة	Alms giving. Charity. Purity. Vindication.
ẓarf	ظرف	Circumstance. Condition. Singular form of <i>ẓurūf</i> .
zawāyā	زوايا	Hospices. Small mosques. Corners. Plural form of <i>zāwiya</i> .
zāwiya	زاوية	A hospice. A small mosque. A corner. Singular form of <i>zawāyā</i> .
ẓurūf	ظروف	Circumstances. Conditions. Plural form of <i>ẓarf</i> .

Urdu Glossary

Term	Urdu script	Definition
Amīr-e-Hind	امیر ہند	Emperor of India.
Angrezi Shariat	انگریزی شریعت	English Shari'a.
Anjuman 'Ulamā-i-Bihar	انجمن علماء بہار	The association/assembly of the 'ulamā of Bihar.
Azad	آزاد	Free. Independent. Liberated.
bādshāh	بادشاہ	King. Monarch. Lord. Master.
birādarī	برادری	A South Asian stratified social group.
chāplūsī	چاپلوسی	A stooge. Fawning. A sycophant.
dars-i-nizāmī	درس نظامی	An Islamic curriculum taught in many Islamic seminaries (<i>dūr al-'ulūm</i>) in south Asia.
dār ul-qazā	دار القضاء	House of Islamic judges. An Islamic court. Singular form for <i>dūr ul-qazā</i> .
dūr ul-qazā	دور القضاء	Houses of Islamic judges. Islamic courts. Plural form of <i>dār ul-qazā</i> .
fāzil	فضیل	Honourable. Eminent. Distinguished.
Firangi Mahall	فرنگی محل	Foreigner's Palace. A guesthouse for European travellers to the subcontinent during the seventeenth.
ghubar	غبار	To pass. Dust. Mist. Grief.
ḥalālah	حلالہ	Dissolution. To break up. Decomposition. When a Muslim woman marries another man on the condition that he will divorce her and make her first husband permissible to remarry. This process is known as <i>tahlīl</i> in Arabic.
hidāyat	ہدایت	Leading a person onto the right way. Guidance. A book of instructions.
'imāra	عمارة	Building. Edifice. Singular form of <i>'imārat</i> .

'imārat	عمارات	Buildings. Edifices. Plural form of 'imāra.
'imārat-i-Shari'a	عمارت شرعی	Offices of shari'a.
izzat	عزت	Glory. Honour. Prestige. Reputation. Modesty.
Jami'at al-'ulama-i-Hind	جمعیت علماء ہند	The Council of Indian 'ulamā.
kāmil	کامل	Complete. Perfect. Whole. Full.
khanqah	خانقاہ	A Sufi retreat. A convent. A monastery
khatir	خاطر	To recall. To occur to the mind. Affection. Remembrance. Melancholy.
lena-dena	لینا دینا	Give-take. Mutual concessions.
mahr al-mithl	مہر میثل	Equitable bridal-gift.
mahr-i-ghayr muajjal	مہر غیر معجل	The amount of the bridal-gift (mahr/ṣadāq) deferred at the time of the nikah.
mahr-i-muajjal	مہر معجل	The amount of the bridal-gift (mahr/ṣadāq) paid at the time of the nikah.
mahr-i-mussama	مہر مسحی	The agreed amount of the bridal-gift to be paid to the bride from the groom.
mahr-i-mu' wajjal	مہر مؤجل	The amount of the bridal-gift (mahr/ṣadāq) deferred at the time of the nikāḥ.
mahr-i-nāmā	مہر نامہ	The amount of the bridal-gift written on the Islamic marriage contract (nikāḥ-nāmā).
maulānā	مولانا	An Islamic Scholar.
murshid	مرشد	A spiritual guide. An instructor.
Muttaḥidā Qaumīyat	متحدہ قومیت	A composite Indian nationalist manifesto that unites all Indians against Britain's control of India.
nā'ib	نائب	A deputy. A substitute. A delegate. An assistant.
nikāḥ-nāmā	نکاح نامہ	An Islamic marriage contract.

pīr	پیر	A spiritual guide. A saint. A priest.
sharam	شرم	Shame. Bashfulness. To preserve from shame or disgrace.
qāzī	قاضی	A judge or a magistrate, in either the Islamic or Pakistan legal systems.

Bangla Glossary

Term	Bangla script	Definition
gūshṭī	গুষ্ঠি	Family. Race. Pedigree. Clan. Lineage. Tribe.
ijjat	ইজ্জত	Glory. Honour. Prestige. Reputation. Modesty.

Appendix 2: *IJMES Transliteration Systems*

IJMES Transliteration System for Arabic¹⁰⁵⁴

Consonants

Arabic Script	Transliteration	Arabic Script	Transliteration
ء	'	ط	t
ب	b	ظ	z
ت	t	ع	'
ث	th	غ	gh
ج	j	ف	f
ح	h	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	ه	h
س	s	و	w
ش	sh	ي	y
ص	ṣ	ة	a or at
ض	ḍ	ال	al

Vowels

	Arabic Script	Transliteration
Short	اَ	a
	اِ	i
	اُ	u
Long	آ or ئآ	ā
	و	ū
	ي	ī
Double	يَي	iyy
	وُ	uww
Diphthongs	اَ و	au or aw
	اِ ي	ai or ay

¹⁰⁵⁴ International Journal of Middle East Studies, *IJMES Translation System for Arabic, Persian, and Turkish*. (Cambridge: Cambridge University Press, 2021) <<https://www.cambridge.org/core/services/aop-file-manager/file/57d83390f6ea5a022234b400/TransChart.pdf>>.

ALA-LC Romanisation System for Urdu¹⁰⁵⁵

Consonants

Urdu Script	Romanisation	Urdu Script	Romanisation
ا	-	ص	s
ب	b	ض	d
پ	p	ط	t
ت	t	ظ	z
ٹ	ṭ	ع	'
ث	s	غ	gh
ج	j	ف	f
چ	c	ق	q
ح	ḥ	ک	k
خ	kh	گ	g
د	d	ل	l
ڈ	ḍ	م	m
ذ	z	ن	n
ر	r	ں	n̄
ڑ	ṛ	و	v
ز	z	ہ	h
ژ	zh	ة	t
س	s	ی	y
ش	sh	ے	ai

Vowels

	Urdu Script	Romanisation
Short	اَ	a
	اِ	i
	اُ	u
Long	اَآ	ā
	اِی or اِیِ	á
	اُو	ū
	اِیِ	ī
Diphthongs	او	o
	اِی or اِیِ	e
	اُو	au
	اِیِ	ai

Digraphs

Urdu Script	Aspirates
بھ	bh
پھ	ph
تھ	th
ٹھ	ṭh
چھ	ch
دھ	dh
ڈھ	ḍh
ڑھ	ṛh
کھ	kh
گھ	gh

¹⁰⁵⁵ American Library Association - The Library of Congress, *ALA-LC Romanization Tables: Urdu (in Arabic Script)* (Washington D.C., United States of America: The Library of Congress, 2013)
<<https://www.loc.gov/catdir/cpsa/romanization/urdu.pdf>>.

ABOUT THE RESEARCH PROJECT

This research project sets out to **assess the extent to which ijtihād features in Britain's Islamic Councils**. The project will determine how Islamic Councils deliberate their cases, how they derive their opinions/verdicts and if **ijtihād** enables them to resolve Islamic cases in the United Kingdom.

Latest figures show there are 3,114,992 Muslims living in the United Kingdom; 1,554,022 of whom were born overseas. A significant portion of the British Muslim population are of south-Asian origin, which implies the majority of Muslim Britons follow the **Ḥanafī maḡhab**, or do they?

Recent Muslim migration patterns challenges this premise - with the number of Muslims living in Britain growing three times over the last 25 years. This places great stress on Britain Islamic councils who are exerting great intellectual efforts (**ijtihād**) in addressing the variant needs (**ḍarūriyyāt**) and demands (**ḥājiyyāt**) of the society. What are the needs (**ḍarūriyyāt**) and demands (**ḥājiyyāt**) of Muslims living in Britain? Are the **Ḥanafī Shāfi'ī, Mālikī, and Ḥanbali madhāhib** enough to address such needs? This is what this study sets out to determine.

The purpose of the project is to understand the theory of Islamic law in Britain and whether **ijtihād** facilitates Britain's Islamic Council in their task of dealing with the modern challenges of living in the United Kingdom. It will also examine how the continuity of **fatāwā** issued by early 'ulamā benefits Muslims living in the United Kingdom. The project is a hermeneutical and theological assessment that is self-funded and regulated by classically trained Muslim academics; among them include **Prof Abdul Ali Hamid al-Azhari** and **Dr Ahmed Ahtar (Cambridge)**.

At the discretion of the participating Islamic Councils, the **Principal Investigator, Mr Shahwiqar Shahin**, would like to visit your office(s) to discuss, in confidence, some of their responses to the survey. If the **Principal Investigator** believes reviewing closed cases in the Islamic council's archive and/or sitting in Islamic legal proceedings will benefit the study, then it will be at the discretion of participating Islamic councils' entirely.

ABOUT THE SURVEY

Majority of the questions in this survey offer multiple choice responses with open-ended questions for clarification if and when required. There are **10 sections in the survey**. A glossary of the transliterated terms will be supplied at the beginning of each section.

Please fill in the survey as fully as possible.

If you have any queries with regards to the survey of aspects of the research, please contact the **Principal Investigator, Mr Shahwiqar Shahin** on: Tel: **+44 (0)#####**, email: **shahwiqar.shahin@#####.ac.uk**.

Upon completing the survey, please contact the **Principal Investigator, Mr Shahwiqar Shahin** on who will be happy to collect the survey from your office(s) and/or discuss any queries with regards to the survey.

All documents, cases studies, interviews and correspondences are to be treated as strictly confidential and will not be released to any third party unless written authorization is first obtained from participating Islamic Council and the parties involved.



DETAILS ABOUT YOUR ISLAMIC COUNCIL

Question 1

Organisation name:

Address:

Post code:

Question 2

Registration date:

Date of commencement:

Number of religious staff:

Number of administrative staff:

Question 3

How many members of staff of your Islamic Council fall in the following age ranges? (Please write down the number of staff who fall within the age ranges)

16-25 years of age

26-35 years of age

36-45 years of age

46-65 years of age

65+ years of age

Question 4

What services does your Islamic Council offer? (tick the box next to the services you offer)

Academia & education

Consultancy (Islamic Judicial consultancy)

Counselling services/mediation

Divorce

Interfaith dialogue/discussion

Marriage outside the premises

Marriage within the premises

Wills and testaments

Other service(s) not listed



DETAILS ABOUT YOUR ISLAMIC COUNCIL

Question 5

How many staff members perform religious services for your Islamic Council?

Number of religious staff members

If you can provide details of names, role and qualifications of religious members of your staff, please attach them with this survey.

Alternatively, you can fill in their details on **Appendix 1** at the end of this survey.

Question 6

How many staff members perform administrative services for your Islamic Council?

Number of administrative staff members

If you can provide details of names, role and qualifications of administrative members of your staff, please attach them with this survey.

Alternatively, you can fill in their details on **Appendix 1** at the end of this survey.

Question 7

Does your Islamic Council employ or previously employed women?

Yes

No

Question 8

Do women partake in **religious services** for your Islamic Council?

Yes

No

Question 9

Do women partake in **administrative services** for your Islamic Council?

Yes

No



DETAILS ABOUT YOUR ISLAMIC COUNCIL

Question 10

Which languages does your Islamic Council provide services for? (Please tick those languages that apply)

- | | | | | | | | |
|--------------------------|------------|--------------------------|--|--------------------------|---------|--------------------------|--------|
| <input type="checkbox"/> | Arabic | <input type="checkbox"/> | Bangla | <input type="checkbox"/> | English | <input type="checkbox"/> | Farsi |
| <input type="checkbox"/> | Hindi/Urdu | <input type="checkbox"/> | Kiswahili | <input type="checkbox"/> | Punjabi | <input type="checkbox"/> | Somali |
| <input type="checkbox"/> | Turkish | <input type="checkbox"/> | Other languages (please list them below) | | | | |

Question 11

Which Islamic legal school (madhab) does your Islamic Council principally follow? (pick one)

- | | | | | | | | |
|--------------------------|--------|--------------------------|---|--------------------------|---------|--------------------------|-------------------|
| <input type="checkbox"/> | Ḥanafī | <input type="checkbox"/> | Shāfi'ī | <input type="checkbox"/> | Mālikī | <input type="checkbox"/> | Ḥanbali |
| <input type="checkbox"/> | Ẓāhirī | <input type="checkbox"/> | Zaydi | <input type="checkbox"/> | Ja'farī | <input type="checkbox"/> | Ismā'īlī (Nizāri) |
| <input type="checkbox"/> | Ibādī | <input type="checkbox"/> | Other (please provide details in the space below) | | | | |

Question 12

Which maḏāhib does your Islamic Councils provide rulings/services for?(pick more than one if required)

- | | | | | | | | |
|--------------------------|--------|--------------------------|--|--------------------------|---------|--------------------------|-------------------|
| <input type="checkbox"/> | Ḥanafī | <input type="checkbox"/> | Shāfi'ī | <input type="checkbox"/> | Mālikī | <input type="checkbox"/> | Ḥanbali |
| <input type="checkbox"/> | Ẓāhirī | <input type="checkbox"/> | Zaydi | <input type="checkbox"/> | Ja'farī | <input type="checkbox"/> | Ismā'īlī (Nizāri) |
| <input type="checkbox"/> | Ibādī | <input type="checkbox"/> | Other (please provide details of other maḏāhib you provide services for) | | | | |



DETAILS ABOUT YOUR ISLAMIC COUNCIL

Question 13

Does your Islamic Council consult other Islamic Councils or Muslim centres **within** the United Kingdom?

Yes No

Question 14

Does your Islamic Council consult other Islamic Councils or Muslim centres **outside** the United Kingdom?

Yes No

Question 15

Do you work with charities, public services or private organisations in the United Kingdom to facilitate in your Islamic Council services?

Yes No

Question 16

Which services do your clients approach your Islamic Council for? (tick the box next to those that apply)

<input type="checkbox"/> Academia & education	<input type="checkbox"/> Consultancy (Islamic Judicial consultancy)
<input type="checkbox"/> Counselling services/mediation	<input type="checkbox"/> Divorce
<input type="checkbox"/> Entering the Islamic faith (shahada)	<input type="checkbox"/> Interfaith dialogue/discussion
<input type="checkbox"/> Marriage outside the premises	<input type="checkbox"/> Marriage within the premises
<input type="checkbox"/> Wills and testaments	<input type="checkbox"/> Other service(s) (please provide them below)

Question 17

On average, how many clients do you receive per year? (mark the range in which your actual number falls under)

0-25 25-50 50-75 75-100
 100-150 150-200 200+

If more than 200, how many?



INTERPRETING THE SOURCES OF SHARĪ'AH

Question 18

Does your Islamic Council refer directly to the **Qur'ān** for a ruling or guidance?

Yes

No

Question 19

Which services do your clients approach your Islamic Council for? (tick the box next to those that apply)

Ṣalāh - 'ibādah

Wills, oaths and rules of inheritance (farā'id)

Zakāt – 'ibādah

Criminal law ('uqubāt)

Ṣawm – 'ibādah

Marriage and divorce

Ḥajj – 'ibādah

Other (Please provide details below)

Question 20

Are there occasions when your Islamic Council find the need to refer to other sources of Sharī'ah to complement the Qur'ān?

Yes

No

Question 21

Other than the Qur'ān, what other source(s) does your Islamic Council use to reach an Islamic legal opinion?

Books of Ḥadīths

Books of uṣūl al-fiqh

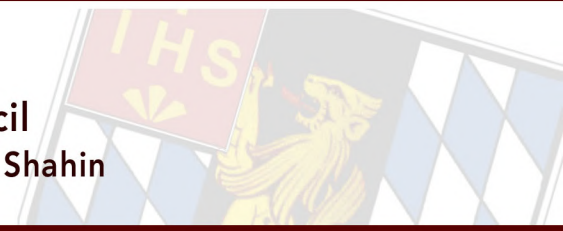
English and Welsh legal

Books of Tafsīr

Books of fiqh

Academic works

Other (please provide details below)



INTERPRETING ḤADĪTH

Question 22

If your Islamic Council makes refers to books of Ḥadīth, please list them below/tick the boxes provided.

Al-Kutub as-Sittah

Ṣaḥīḥ al-Bukhārī

As-Sunan as-Sughra (an-Nasa'i)

Sunan/Jāmi' at-Tirmidhī

Ṣaḥīḥ Muslim

Sunan Abū Dā'ūd

Sunan ibn Mājah

Other books of Ḥadīths

Musnad (Aḥmad ibn Ḥanbal)

Muwaṭṭa' (Mālik ibn Anas)

Riyadh as-Salihīn (al-Nawawi)

Other

Title of Ḥadīths	Author	Publisher	Year

INTERPRETING TAFASĪR

Question 23

If your Islamic Council makes use of commentaries of the Qur'ān or commentaries of Ḥadīths, please list them below. Answer as fully as you can.

Title of Tafsīr	Author	Publisher	Year



UNDERSTANDING UŞŪL AL-FIQH

Question 24

If your Islamic Council makes use of books that cover uşŭl al-fiqh, please list them below. Answer as fully as you can.

Title of book	Author	Publisher	Year

UNDERSTANDING FIQH

Question 25

If your Islamic Council makes use of books that cover fiqh, please list them below.

Title of book	Author	Publisher	Year



IJMĀ' / SHŪRĀ

Question 26

Do religious members of staff of your Islamic Council meet regularly?

 Yes No

Question 27

If your answer to **Question 26** is **Yes**, how often do they convene?

 Daily 1 time per month 2 times per year 1 time per week 2 times per month 3 times per year 2 times per week 3 times per month 4 times per year 3 times per week 1 time per year Never

Question 28

What are the purposes of your Islamic Council meeting?

 Reviewing Islamic Council cases Addressing the social challenges of Muslims living in Britain Delivering verdicts for Islamic Council cases Management and administration Opening new case files Other (Please provide details below)

Question 29

If your answer to **Question 26** is **No**, then please explain how your Islamic Council reviews cases on the space provided? If you do not review cases, then please explain the function of your Islamic Council?



IJMĀ' / SHŪRĀ

Question 30

Does your Islamic Council accept istiqrā' (silent consent) as a valid method of sharing an opinion?

 Yes No

METHODS OF IJTIHĀD

Question 31

Which of the follow would your Islamic Council regard as an acceptable form of ijtiḥād? Please refer to **Appendix 2** for further assistance.

 al-'abūdiyyah li'l-nuṣūṣ furūq ḥiyal iḥtiyāṭan ikhālah ikhtilāf ishārah al-naṣṣ ishtirāk istidlāl istidlāl mursal istiḥsān istiṣḥāb istiṣlāḥ maqāṣid al-sharī'ah maṣlaḥah maṣlaḥah mursalah muḥtamal munāsabah/munāsib qawā'id fiqhīyah qawā'id uṣūliyah qiyās qiyās al-adnā qiyās al-'illah qiyās al-ma'nā / qiyās fī ma'nā al-aṣl / qiyās al-awlā qiyās al-musāwī qiyās al-shabah qiyās jalī qiyās khafī qiyās mā'al fāriq qiyās manṣūṣ al-'illah qiyās mustaḥsan ra'y ra'y al-mustanad ra'y al-mujarrad rukḥṣah shūrā ta'wīl tafsīr tahqiq al-manāt taḥsīnāt takhrīj al-manāt takḥṣīṣ takhyīr talfiq tamlik tanqih al-manāt targhīb tarjih taṣḥīḥ ūlū al-amr 'urf



ISLAMIC MARRIAGE SERVICES

Question 32

Does your Islamic Council conduct Islamic marriages nikāḥ (Islamic marriage)?

 Yes No

Question 33

On average, how many marriage ceremonies did your Islamic Council perform in the last 3 calendar year?

--	--	--	--

Marriages performed in 2014

--	--	--	--

Marriages performed in 2015

--	--	--	--

Marriages performed in 2016

Question 34

Does your Islamic Council recognise the English & Welsh Common Law marriages as a valid Islamic marriage?

 Yes No

Question 35

Does your Islamic Council offer Islamic marriage services if and only if the couple have attained their civil/common law marriage certificate first?

 Yes No

Question 36

Does your Islamic Council encourage couples to apply for civil/common law marriage ceremony **before** their Islamic marriage (nikāḥ)?

 Yes No

Question 37

Does your Islamic Council encourage couples to apply for civil/common law marriage ceremony **after** their Islamic marriage (nikāḥ)?

 Yes No



ISLAMIC MARRIAGE SERVICES

Question 38

Does your Islamic Council offer a **nikāḥ-nāmah (nikāḥ certificate)** as proof of an Islamic marriage (nikāḥ)?

Yes

No

Question 39

If you provide a **nikāḥ-nāmah (nikāḥ certificate)** are the terms of the **mahr al-mussamā (mahr disclosed on the certificate)**?

Yes

No

Question 40

Does your Islamic Council have measures in place to ensure the wife has the power to initiate a khul'?

Yes

No

Question 41

Does your Islamic Council provide contingencies that offer the right of **tamlik / ṭalāq mamlak** (the right for the wife to divorce her husband)?

Yes

No



ISLAMIC MARRIAGE SERVICES

Question 42

Does your Islamic Council have measures in place to nominate a **wali** for the wife when a male relative is unable to perform such duties?

 Yes No

Question 43

Does your Islamic Council have measures in place to ensure the couple enter a monogamous marriage?

 Yes. Could you please attach documents/explain your measures in the space below. No. Could you please explain in the space below if couples ask for such guidance.

ISLAMIC DIVORCE SERVICES – DISPUTE RESOLUTION

Question 44

Does your Islamic Council offer arbitration, deliberation and/or conflict resolution services between husband and wife prior to divorce proceedings?

 Yes No

Question 45

If **Yes**, please tick any of the boxes below to indicate which services you provide or are in contact with.

 Family counselling Local Council Islamic counselling Legal specialists Couples/marital counselling Doctors / Medical centres Domestic violent shelters Mosques and religious centres Mosques and religious centres Other (please provide details below)

--



ISLAMIC DIVORCE SERVICES – DISPUTE RESOLUTION

Question 46

Does your Islamic Council provide guidance to clients of how a marriage is annulled (**faskh**)?

Yes

No

Question 47

Does your Islamic Council arrange arbitration meetings prior to a divorce application?

Yes

No

Question 48

Do these arbitration meetings serve the Islamic Council in their decisions in issuing a divorce?

Yes

No

ISLAMIC DIVORCE SERVICES – ṬALĀQ

Question 49

Does your Islamic Council provide Islamic divorce (**ṭalāq**) services?

Yes

No

Question 50

On average, how many divorces services did your Islamic Council perform in the last 3 calendar year?

--	--	--	--

Divorces services in 2014

--	--	--	--

Divorces services in 2015

--	--	--	--

Divorces services in 2016



ISLAMIC DIVORCE SERVICES – TALAQ

Question 51

What documents does your Islamic Council require to process a new **ṭalāq** application?

- | | |
|---|--|
| <input type="checkbox"/> Talaq application form completed by the husband; | <input type="checkbox"/> Written declaration from the husband |
| <input type="checkbox"/> Civil marriage certificate | <input type="checkbox"/> Written declaration from the wife |
| <input type="checkbox"/> Nikāḥ certificate (nikāḥ-nāma) | <input type="checkbox"/> Proof of identification (passport, licence, etc...) |
| <input type="checkbox"/> Decree nisi/absolute | <input type="checkbox"/> Other(s) (please provide details below) |
| <input type="checkbox"/> Contact details of husband and wife | |

Question 52

When nominating witnesses for **ṭalāq**, what does your Islamic Council deem acceptable?
(please tick more than one box if necessary)

- | | |
|--|---|
| <input type="checkbox"/> 2 male witnesses | <input type="checkbox"/> 1 male & 2 female witnesses |
| <input type="checkbox"/> 2 female witnesses | <input type="checkbox"/> 4 female witnesses |
| <input type="checkbox"/> 1 male & 1 female witnesses | <input type="checkbox"/> Other (please provide details below) |

Question 53

Do you keep written records of 2 **ṭalāq al-rajī** and 1 **ṭalāq al-bā'in**?

- Yes No No, only **ṭalāq al-bā'in**



ISLAMIC DIVORCE SERVICES – TALAQ

Question 54

Between the three pronouncements of **ṭalāq**, by the husband, how long does your Islamic Council hold the reconciliation period before the next pronouncements?

- | | |
|---|---|
| <input type="checkbox"/> Immediately (3 pronouncements at once) | <input type="checkbox"/> 2 weeks |
| <input type="checkbox"/> 1 day | <input type="checkbox"/> 1 month (1 period of ṭahur) |
| <input type="checkbox"/> 1 week | <input type="checkbox"/> Other (please provide details below) |

Question 55

Does your Islamic Council offer **ḥalālāh** (**taḥlīl**) services?

- Yes No No, only **ṭalāq al-bā'in**

Question 56

How does your Islamic Council view **ḥalālāh** (**taḥlīl**)?

- | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Endorse it | Acceptable | Indifferent | Unacceptable | Forbidden |

Question 57

Does your Islamic Council accept **DECREE NISI** of the English and Welsh Legal system as a term for the **FIRST PROCLAMATION** of an Islamic divorce (**talāq al-raji**)?

- Yes No

Question 58

Does your Islamic Council accept **DECREE ABSOLUTE** of the English and Welsh Legal system as a term for the **FIRST PROCLAMATION** of an Islamic divorce (**talāq al-raji**)?

- Yes No



ISLAMIC DIVORCE SERVICES – TALAQ

Question 59

Does your Islamic Council accept **DECREE ABSOLUTE** of the English and Welsh Legal system as a term for **FINALISING** an Islamic divorce (ṭalāq al-bā'in)?

- Yes No

Question 60

Does your Islamic Council notify the wife of her husband's application for ṭalāq?

- Yes No

Question 61

If the wife fails to respond to your Islamic Council's correspondence with regards to her husband's application for ṭalāq within 30 days (period for ṭahur), what are your next step(s)? (Tick more than one if required)

- | | |
|--|---|
| <input type="checkbox"/> Register her non-response as ṭalāq al-rajī | <input type="checkbox"/> Determine if the mahr has been paid to the wife in full |
| <input type="checkbox"/> Register her non-response as ṭalāq al-bā'in | <input type="checkbox"/> Check if the wife's correspondence is up-to-date |
| <input type="checkbox"/> Determine the amount of mahr paid to the wife | <input type="checkbox"/> Verify that the Council's correspondence have reached the wife (recorded delivery) |
| <input type="checkbox"/> Other (please give details below) | |

ISLAMIC DIVORCE SERVICES – KHUL'

Question 62

Does your Islamic Council provide dissolution of marriage (*khul'*) services?

- Yes No



ISLAMIC DIVORCE SERVICES – KHUL'

Question 63

What documents does your Islamic Council to process a new khul' application?

- | | |
|---|--|
| <input type="checkbox"/> Khul' application form completed by the wife | <input type="checkbox"/> Contact details of husband and wife |
| <input type="checkbox"/> Civil marriage certificate | <input type="checkbox"/> Written declaration from the wife |
| <input type="checkbox"/> Islamic marriage certificate (nikāḥ-nāmah) | <input type="checkbox"/> Proof of identification |
| <input type="checkbox"/> Decree nisi/absolute | <input type="checkbox"/> Other(s) (please provide details below) |

Question 64

When nominating witnesses for khul', what does your Islamic Council deem as acceptable?
(please tick more than one box if necessary)

- | | |
|--|---|
| <input type="checkbox"/> 2 male witnesses | <input type="checkbox"/> 1 male & 2 female witnesses |
| <input type="checkbox"/> 2 female witnesses | <input type="checkbox"/> 4 female witnesses |
| <input type="checkbox"/> 1 male & 1 female witnesses | <input type="checkbox"/> Other (please provide details below) |

Question 65

What documents does your Islamic Council to process a new khul' application?

- | | |
|---|--|
| <input type="checkbox"/> Domestic abuse | <input type="checkbox"/> Husband is impotent |
| <input type="checkbox"/> Psychological abuse/mental health issues | <input type="checkbox"/> Husband has abandoned the wife (ilā') |
| <input type="checkbox"/> Breach of marriage agreement (shiqāq) | <input type="checkbox"/> Husband is no longer Muslim |
| <input type="checkbox"/> Irreconcilable differences | <input type="checkbox"/> Other (please provide details below) |



ISLAMIC DIVORCE SERVICES – KHUL'

Question 66

Do you require proof from the wife if she claims that the husband has abandoned her (ilā') and fails to pay her maintenance?

- Yes No

Question 67

If the wife's application for khul' is accepted by the Islamic Council, what will be the Council's next step? (Tick more than one box if necessary)

- | | |
|---|---|
| <input type="checkbox"/> Notify the husband of her wife's application for khul' | <input type="checkbox"/> Verify any breach of marriage agreement (shiqāq) |
| <input type="checkbox"/> Verify the husband known correspondence | <input type="checkbox"/> Determine the amount of mahr paid to the wife |
| <input type="checkbox"/> Use the decree nisi/absolute as a document to validate the khul' application | <input type="checkbox"/> Determine if the wife has returned the mahr in full |
| <input type="checkbox"/> Use the decree nisi/absolute as a document to conclude the khul' | <input type="checkbox"/> Determine if the wife returned more than the value of the mahr (fidya) |
| <input type="checkbox"/> Other (please give details in the space below) | |

Question 68

If the husband responds to the Council's correspondence, what will be your next step?

- | | |
|---|--|
| <input type="checkbox"/> Arrange a mediation meeting between the husband and wife or their representatives | <input type="checkbox"/> Determine if the husband is complicit in the offences the wife accuses him of (domestic abuse, impotency, etc) |
| <input type="checkbox"/> Request a husband to initiate a divorce (ṭalāq) | <input type="checkbox"/> Determine that the husband has received the mahr he paid to his wife |
| <input type="checkbox"/> Determine if the husband has violated the terms of the marriage agreement (shiqāq) | <input type="checkbox"/> Determine if the husband is willing to accept partial payment of the mahr (sulh) or forgo the payment (mubārāt) |
| <input type="checkbox"/> Other (please provide details below) | |



ISLAMIC DIVORCE SERVICES – KHUL'

Question 69

If the husband fails to respond to your correspondence, what will be your next step?

- | | |
|---|--|
| <input type="checkbox"/> Register his failure to respond as ṭalāq al-rajī and send a second correspondence | <input type="checkbox"/> Register his failure to respond as an act of ilā' and initial the iddah period (3 months) |
| <input type="checkbox"/> Register his failure to respond as ṭalāq al-bā'in and send a second correspondence. | <input type="checkbox"/> Register his failure to respond as an act of ilā' and initiate the 4 month and 10 days' separation period |
| <input type="checkbox"/> Register his failure to respond as an act of ilā' and shiqāq, and annul the marriage (faskh) | <input type="checkbox"/> Determine if the husband is willing to accept partial payment of the mahr (sulh) or forgo the payment (mubārāt) |
| <input type="checkbox"/> Register his failure to respond as an act of ilā' and initial the iddah period (1 month) | |

Question 70

If there is not enough evidence to support the wife's claim for khul', will your Islamic Council close her application for khul'.

- Yes No

If **No**, what will be your Islamic Council's next step? (Please provide details below)

Question 71

Does your Islamic Council provide a letter of annulment (faskh) of an Islamic marriage to the husband?

- Yes No

Question 72

Do you provide a letter of annulment (faskh) of an Islamic marriage to the wife?

- Yes No



ISLAMIC DIVORCE SERVICES – KHUL'

Question 73

When the marriage is annulled (faskh), how long is the iddah period, according to your Islamic Council?

- | | |
|--|---|
| <input type="checkbox"/> Immediate divorce | <input type="checkbox"/> 3 months |
| <input type="checkbox"/> 1 day | <input type="checkbox"/> 4 months and 10 days |
| <input type="checkbox"/> 1 week | <input type="checkbox"/> Other (please provide details below) |
| <input type="checkbox"/> 1 month | |

LI'ĀN - INFIDELITY

Question 74

Does your Islamic Council receive cases of li'ān?

- Yes No

Question 75

Does your Islamic Council accept cases of li'ān?

- Yes No

Question 76

Do you provide your arbitration services to couples involved in a li'ān case?

- Yes No

Question 77

Can a wife accuse her husband of li'ān?

- Yes No No, but it is a violation of the marriage agreement (shiqāq)



LI'AN - INFIDELITY

Question 78

Do you provide solemnisation services where you arrange the petitioner takes 5 oaths to substantiate their claim for li'ān?

 Yes No

Question 79

If the case for li'ān is proven to be **TRUE**, what will be the Islamic Council's next step?

 Annul (faskh) the Islamic marriage Provide a religious certificate of li'ān for the petitioner Register the case of li'ān as evidence in favour of the petitioner Other (please give details below)

Question 80

If the case for li'ān is proven to be **FALSE**, what will be the Islamic Council's next step?

 Annul (faskh) the Islamic marriage Provide a religious certificate of qādhf for the defendant Register the case of qādhf as evidence in favour of the defendant Other (please give details below)



ENGAGING WITH THE ENGLISH AND WELSH LEGAL SYSTEM

Question 81

Which areas of the English & Welsh legal system has your Islamic Council been approached for advice?
Which areas is your Islamic Council willing to address?

Approached for advice	Willing to address		Approached for advice	Willing to address	
<input type="checkbox"/>	<input type="checkbox"/>	Anti-Discrimination Law	<input type="checkbox"/>	<input type="checkbox"/>	Family Law: Child Custody Law
<input type="checkbox"/>	<input type="checkbox"/>	Civil Litigation	<input type="checkbox"/>	<input type="checkbox"/>	Human Rights Law
<input type="checkbox"/>	<input type="checkbox"/>	Commercial Law	<input type="checkbox"/>	<input type="checkbox"/>	Immigration Law
<input type="checkbox"/>	<input type="checkbox"/>	Company Law	<input type="checkbox"/>	<input type="checkbox"/>	Intellectual Property Law
<input type="checkbox"/>	<input type="checkbox"/>	Competition Law	<input type="checkbox"/>	<input type="checkbox"/>	Labour Law
<input type="checkbox"/>	<input type="checkbox"/>	Conflict/Dispute Resolution	<input type="checkbox"/>	<input type="checkbox"/>	Legal Aid
<input type="checkbox"/>	<input type="checkbox"/>	Constitutional Law	<input type="checkbox"/>	<input type="checkbox"/>	Medical Law
<input type="checkbox"/>	<input type="checkbox"/>	Consumer Law	<input type="checkbox"/>	<input type="checkbox"/>	Private International Law
<input type="checkbox"/>	<input type="checkbox"/>	Corporate Law	<input type="checkbox"/>	<input type="checkbox"/>	Property Law (Commercial)
<input type="checkbox"/>	<input type="checkbox"/>	Criminal Law	<input type="checkbox"/>	<input type="checkbox"/>	Property Law (Private)
<input type="checkbox"/>	<input type="checkbox"/>	Employment Law	<input type="checkbox"/>	<input type="checkbox"/>	Public International Law
<input type="checkbox"/>	<input type="checkbox"/>	Environmental Law	<input type="checkbox"/>	<input type="checkbox"/>	Social Welfare and Housing
<input type="checkbox"/>	<input type="checkbox"/>	Family Law: Marriage & Divorce	<input type="checkbox"/>	<input type="checkbox"/>	Wills, Probate and Inheritance Law

If there are other aspects of the English & Welsh legal system your Islamic Council has dealt with, please provide details below.



ENGAGING WITH THE ENGLISH AND WELSH LEGAL SYSTEM

Question 82

Which other area of concern to the United Kingdom would your Islamic Council consider giving an opinion on?

- | | |
|--|---|
| <input type="checkbox"/> Abortion | <input type="checkbox"/> Life insurance |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Litigation, arbitration and investigations |
| <input type="checkbox"/> Bioethics | <input type="checkbox"/> Marriage and divorce between countries |
| <input type="checkbox"/> Blood transfusion | <input type="checkbox"/> Multi-culturalism |
| <input type="checkbox"/> Counter-extremism | <input type="checkbox"/> New technologies |
| <input type="checkbox"/> Crypto-currencies | <input type="checkbox"/> Organ donation |
| <input type="checkbox"/> Cybersecurity | <input type="checkbox"/> Organ transplantation |
| <input type="checkbox"/> Environment and Health & Safety | <input type="checkbox"/> Piracy |
| <input type="checkbox"/> Euthanasia | <input type="checkbox"/> Poverty in the United Kingdom |
| <input type="checkbox"/> Financial services | <input type="checkbox"/> Racism |
| <input type="checkbox"/> Human Rights Law | <input type="checkbox"/> Religious discrimination |
| <input type="checkbox"/> Insurance | <input type="checkbox"/> Religious education |
| <input type="checkbox"/> International trade | <input type="checkbox"/> Religious scriptural reasoning |
| <input type="checkbox"/> Cross boarder and International Law | <input type="checkbox"/> Renewable energy |
| <input type="checkbox"/> Inter-religious activities | <input type="checkbox"/> Rights' of the disabled |
| <input type="checkbox"/> Inter-religious dialogue | <input type="checkbox"/> Secular education |
| <input type="checkbox"/> Inter-religious marriages | <input type="checkbox"/> Tax advice |
| <input type="checkbox"/> Investment banking | <input type="checkbox"/> Women's rights |
| <input type="checkbox"/> Islamic banking | <input type="checkbox"/> Other(s) (please specify below) |
| <input type="checkbox"/> LGBT | |



APPENDIX 1 – MEMBERS OF STAFF

Could you please provide names, role and qualifications of members of staff working in your Islamic council?

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:

Name:

Role:

Qualification 1:

Qualification 2:

Qualification 3:



APPENDIX 2 - GLOSSARY

al-'abūdiyyah li'l-nuṣūṣ: The enslavement of the text.

decree nisi: Used in relation to a common/civil marriage, a decree nisi is court order that outlines the conditions or the date of when a marriage will end. This nisi is overruled if a good reason is given not to grant a divorce.

farā'id: The rights/laws of inheritance.

faskh: An annulment of an Islamic marriage.

fidya: Ransom. Overpayment in returning the mahr to expedite the divorce.

fiqh: Knowledge drawn from Sharī'ah.

furūq: Distinguishing between similar cases.

ḥadīth: Written record of the Sunnah, the deeds and sayings of the Prophet Muhammad (peace and blessings of God be upon him).

ḥājāt: Needs; necessities. A secondary purpose of the law that compliments the maqāṣid al-Sharī'ah.

ḥajj: The once in a lifetime obligation of pilgrimage to the holy Ka'bah (al-Kaaba al musharrafah) in Mecca.

ḥalālāh: An intervening marriage contracted for the sole purpose of legalising remarriage between a divorced couple (also see taḥlīl).

ḥiyal: Tricks. Legal stratagem. Legal loophole of avoiding a ḥukm.

ḥukm shar'ī: A law, ordinance or ruling (ḥukm) of Sharī'ah. In technical terms, a communication from God directly from the Qur'ān or Sunnah.

ḥukm: Rule. Injunction. Prescription. In technical terms, a communication from God whether directly or indirectly via ijthād.

'ibādah: Worship.

iddah: The period of waiting. The time a woman must observe after the death of her spouse or after a divorce in which she cannot marry another man.

iḥtiyāṭan: Precautions. Cautionary approaches/actions to avoid harm.

ijthād: Literally - 'an intellectual exertion'. Technically the effort a jurist makes to deduce the law, which is not self-evident, from the sources of Sharī'ah.



APPENDIX 2 - GLOSSARY

ikhala: Law based on the trust of the methodology, used by Shafi'i but rejected by other legal schools.

ikhtilāf: Disagreement. Differences.

ilā': Where the husband refrains from sleeping with the wife.

ishārah al-naṣṣ: An implied meaning that can be identified from a given text.

ishtirāk: To debate or to participate or to subscribe.

istidlāl mursal: Legal reasoning that is independent from the nusus and qiyās and drawn purely from maslaha maṣlaḥah mursalah.

istidlāl: Sound legal reasoning through qiyās that considers the public interest maslaha maṣlaḥah.

istiḥsān: To approve or sanction in light of the public interest.

istiqrā': Induction, to stabilize, or to settle down.

istiṣḥāb: Presumption of continuity, or presuming continuation of the status quo ante.

istiṣlāḥ: To deem something good, juristic preference for the public interest.

jāmi': A collection. A grouping.

khul'a/khul': Divorce on the condition that the wife pays returns the dowry as compensation.

li'ān: Accusation of adultery.

maḍāhib: Islamic legal school (plural).

maḍhab: Islamic legal school (singular).

mahr al-mussamā: Where the amount of dowry is outlined on the Islamic marriage certificate.

mahr: Dowry in an Islamic marriage.

maqāsid al-sharī'ah: The purpose of Sharī'ah.

maṣlaḥah mursalah: Preserving the public interest by factoring in what all the nuṣūṣ implicitly contribute to the matter.



APPENDIX 2 - GLOSSARY

maşlahah: That the nusus explicitly determines the best interest.

ikhtilāf: That the nusus explicitly determines the best interest.

mubārāt: To meet. To compete. In relation to an Islamic marriage; where the couple come to an agreement to dissolve the marriage.

muḥtamal: Probable meaning.

munāsabah/munāsib: Properly conforms to Sharī'ah (often associated with istiṣlāḥ).

musnad: Ḥadīth with a continuous chain of transmitters.

naṣṣ: The definitive text found in the Qur'ān and Ḥadīth

nuṣūṣ: Plural of naṣṣ. The definitive texts found in the Qur'ān and Ḥadīth

istiṣḥāb: Presumption of continuity, or presuming continuation of the status quo ante.

nikāḥ: Islamic marriage.

nikāḥ-nāmah: Islamic marriage contract.

qādhf: A slanderous accusation.

qawā'id fiqhīyah: The principles drawn from the legal opinions/rulings of a legal school.

qawā'id usuliyah: The principles drawn from the methods of interpretation of a legal school.

qiyās: Analogy, syllogism.

qiyās al-adnā: "The analogy of the inferior." A case in which the far' shows a lesser degree of 'illah than the aṣl.

qiyās al-awlā: Like qiyās al-ma'nā, "Analogy of the superior". A case in which the far' shows a greater degree of 'illah than in the aṣl. (example of this in the aṣl prohibiting saying "uff" to parents, which makes abuse of parents a far greater offence".

qiyās al-'illah: Standard method of qiyas where the far' (new case) share similarities with the aṣl / ḥukm shar'ī.



APPENDIX 2 - GLOSSARY

qiyās al-ma'nā: "Analogy of the superior". A case in which the far' shows a greater degree of 'illah than in the aṣl. (example of this in the aṣl prohibiting saying "uff" to parents, which makes abuse of parents a far greater offence".

qiyās al-musāwī: The analogy of equals. A case in which the 'illah in the aṣl and far are equal.

qiyās al-shabah: A more flexible form of qiyās where the new case does bear less similarities with the aṣl but qualifies due to its association with two or more aṣl.

qiyās fī ma'nā al-aṣl Like qiyās al-ma'nā. "Analogy of the superior". A case in which the far' shows a greater degree of 'illah than in the aṣl. (example of this in the aṣl prohibiting saying "uff" to parents, which makes abuse of parents a far greater offence".

qiyās jalī: Clear or obvious analogy. Where the analogical link between the aṣl and far' are apparent.

qiyās khafī: Hidden analogy, where the analogical link between the aṣl and far' are vague and requires further investigation. This often the case when qiyās

qiyās mā'al fāriq: An analogical argument in which the aṣl and far' link is correctly identified, but the incorrect cause ('illah) is assigned. (i.e. Alcohol is forbidden due to its intoxicating effects, but the incorrect 'illah is the fact they are both beverages)

qiyās manṣūṣ al-'illah: An analogical argument in a case in which the 'illah is clearly stated in the text.

qiyās mustahṣan: The preferred analogy. Same as istiḥsan. An occasion in which a jurist faced with a hidden analogy (qiyās khafī), gives preference to a method of ijithād which enables him to resolve a case.

ra'y: Personal opinion.

ra'y al-mujarrad: Unfiltered, wild opinion.

ra'y al-mustanad: Supported, trusted, referred opinion.

rukṣah: Exemption/modification of a law due to the presence of a mitigating matter.

ṣaḥīḥ: Valid, authentic.

ṣalāh: Obligatory prayers.



APPENDIX 2 - GLOSSARY

- ṣawm:** Fasting.
- shiqāq:** Breaching the marriage agreement.
- shūrā:** Consultation.
- sulh:** Forgoing the payment of the dowry (mahr).
- Sunan:** Plural of Sunnah. The practices of the Prophet Muhammad (peace and blessings of God be upon him).
- Sunnah:** The practice of the Prophet Muhammad (peace and blessings of God be upon him).
- ta'wīl:** Allegorical interpretation.
- tafsīr:** Commentary. Interpretation.
- taḥlīl:** An intervening marriage contracted for the sole purpose of legalising remarriage between a divorced couple (also see ḥalālah).
- tahqiq al-manāt:** Verification of an underlying cause between cases. A jurist is not required to determine such similarities from the nusus and is based on worldly matters.
- taḥsīnāt:** Improvements. Refinements. Third category of the purpose of Sharī'ah (maqāṣid al-Sharī'ah) that complimentary to the first two: maqasid and ḥājāt (need).
- ṭahur:** Purity. When a woman is outside her menses period.
- takhrīj al-manāt:** Extracting on the grounds of divine ruling. A literal interpretive method in which the ḥukm comes entirely from the nusus.
- takhṣīṣ:** Specifying. Customizing.
- takhyīr:** Choosing from an established opinion.
- ṭalāq al-bā'in:** A proclamation and official ratification of an Islamic divorce.
- ṭalāq al-rajī:** A proclamation of an Islamic divorce with the opportunity for the couple to return to each other.
- ṭalāq mamlak:** The right for the wife to divorce her husband (also see tamlik)



APPENDIX 2 - GLOSSARY

ṭalāq: Islamic divorce.

talfiq: Constructing an opinion from various opinions from various legal schools (maḍāhib).

tamlīk: The right for the wife to divorce her husband.

tanqih al-manāt: Meaning "assigning to revision". It is like qiyās, but the 'illah is derived from certainty, from the ḥukm shar'ī.

targhīb: Inducement, enticement.

tarjīh: To prioritize an opinion/far' as the dominant view of a legal school (maḍhab).

taṣḥīḥ: Amending earlier rulings due to changing circumstances.

ūlū al-amr: People in authority or in charge of community affairs.

'uqubāt: Islamic criminal law.

'urf: Custom or norms- normally associated with the customs and norms of the Prophet Muhammad (peace and blessings of God be upon him).

uṣūl al-fiqh: Legal theory of Islamic law.

walī: Guardian.

zakāh: The compulsory charitable tax levied on Muslims are a right to God and the poor.

Appendix 4: Classic Islamic Legal Works

Qur'an and Hadith Collections

- *Qur'an*.
- *Ṣaḥīḥ al-Bukhārī*: Compiled by Muhammad ibn Isma'īl al-Bukhari (810 - 870 CE), this collection is considered by Sunni Muslims as the most authoritative religious text after the Qur'an. The Bukhari collection contains 7,563 hadith reports in their various chain of narrations and are arranged into chapters by their subject (*muṣannaf*). However, if consider we take into consideration reports that relay the same message, the number of transmitted reports (*matn*) in the Bukhari collection stands at 2,602.
- *Ṣaḥīḥ Muslim ibn al-Ḥajjāj*: Another authoritative muṣannaf hadith collection for Sunni Muslims that was compiled by Muslim ibn al-Ḥajjāj ul-an-Nishāpūrī (815 -875 CE). In total, there are 7,190 hadith reports in the *Muslim ibn al-Ḥajjāj collection*. If we account for the same reports in their various chain of narrations, the number comes to 2,200 transmitted reports.
- *Sunan Abu Dawud*: The *sunan* collection of Abu Dawud al-Sijistani (817 - 889 CE) offers readers a record of the customs and daily routines of the Prophet Muhammad and his companions. The *Abu Dawud collections* offers readers 5,274 hadith reports arranged into 43 topics. The *Abu Dawud collection* is particularly useful for 'ulamā as it classifies the degree of authenticity of each hadith, ranging from *ṣaḥīḥ* (authentic), good (*ḥasan*) and weak (*ḍa'īf*).
- *Sunan/Jāmi' at-Tirmidhi*: Compiled by Abu 'Isa Muhammad at-Tirmidhi (824 – 892 CE), who was a student of *Abu Dawud al-Sijistani*, the *Tirmidhi collection* contains 3,956 hadith reports along with their degrees of authenticity.
- *Sunan an-Nasā'ī*: Compiled by another student of Abu Dawud, Abu 'Abd ar-Rahman an-Nasa'i (829 – 915 CE). The author later removed weak and fabricated hadith reports from this collection to compile his *al-Sunan al-Sughra*, which contains 5,758 hadith reports.
- *Sunan ibn Mājah*: Compiled by Yazid Ibn Majah al-Rab'i al-Qazwini (824 - 889 CE) and contains 4,341 hadith reports.

- *Muwatta'*: Compiled by Malik ibn Anas (711-795 CE), the founder of the Maliki legal school and a member of the Prophet Muhammad's community (salaf al-ṣāliḥ). The *Muwatta'* contains 1,861 hadith reports. Details of their authenticity are not given.
- *Musnad of Ahmad ibn Hanbal*: With over 27,000 reports, the *Musnad* of Ahmad ibn Hanbal (780 – 855 CE) is the largest collection of hadith reports. A shortcoming in this collection is the number of fabricated and weak reports it contains since the verification of hadith was still a new area of study at the time.
- *Al-Mustadrak ala aṣ-Ṣaḥeḥayn*: Compiled by Abu Abd-Allah Muhammad ibn Abd-Allah al-Hakim al-Nishapuri (933 – 1014 CE), the *Mustadrak ala aṣ-Ṣaḥeḥayn* contains 9,405 hadith reports. This collection is popular with Sufis and Hanafi 'ulamā.
- *Shuab ul Iman*: Compiled by the Shafi'i jurist and theologian *Abū Bakr Aḥmad ibn Ḥusayn al-Bayhaqī* (994-1066 CE), the *Shuab ul Iman* contains around 11,000 hadith traditions in its 70 chapters, with each chapter sub-divided into, as the title suggests, various branches of faith.
- *Ṣaḥīḥ ibn Khuzaymah*: Compiled by Abu Bakr Muhammad ibn Ishaq ibn Khuzaymah (845-933CE), the *Ṣaḥīḥ ibn Khuzaymah* contains around 3,000 hadith reports and is popular among the 'ulamā of the ahl ul-Hadith sect.

Commentaries of the Qur'an

- *Tafsīr al-Qur'an al-'Aẓīm*: Written by the Shafi'i jurist and historian Isma'īl ibn Kathir (1300 – 1373 CE). Commonly referred to as *Tafsīr al-Kathīr*.
- *Jāmi' al-bayān 'an ta'wīl āy al-Qur'an*: Commonly referred to as *Tafsīr al-Tabarī* and was written by the polymath Muhammad ibn Jarir ibn al-Tabari (839–923 CE).
- *Al-Jāmi' li Ahkam al-Qur'an*: Written by the Maliki jurist Abu 'Abdallah Muhammad al-Qurtubi (d. 1273 CE). The work is popularly known as the *tafsīr al-Qurṭubī*.
- *Tafhīm-ul-Qur'an*: Written in Urdu by the journalist and political activists, Abul Ala Mawdudi (1903-1979CE). Mawdudi hoped his six-volume commentary would start an Islamic revival of the Muslim world against British Imperialism.

- *Tadabbur-i-Qur'an*: An Urdu commentary written by the Pakistani 'ālim Amin Ahsan Islahi (1904 – 1997CE). The commentary attempts to illustrate the thematic coherence between the Qur'an's 114 chapters.
- *Tafsīr al-Kabīr*: Written by the Ash'arites theologian, Shafi'i jurist and polymath Fakhr al-Din al-Razi (1150 - 1210 CE). This commentary is well respect among 'ulamā today for providing rational arguments for revelation.

General Hanafi legal works

- *Al-durr al-mukhtar sharḥ tanwir al-absar*: Also known as *Durr-al-Mukhtar*, the work was written by the twelfth century mufti of Damascus Muhammad 'ala-ud-Din Haskafi.
- *Radd al-Muhtār 'ala al-Durr al-Mukhtār*: An Arabic commentary of Haskafi's *Durr-al-Mukhtar* that was written by the nineteenth century Hanafi jurist and mufti Hashiya ibn 'Abidin.
- *Al-Mukhtasar*: A Hanafi legal handbook written by Muhammad ibn Ahmad al-Baghdadi al-Quduri that gives details of over 10,000 Hanafi legal case studies.
- *Fatāwā Qazi Khan*: Its author, Fakhruddin Hasan Bin Mansoor al-Uzjandi al-Farghani (d.1214 CE), popularly known as Qazi Khan, was a Hanafi 'ālim and mufti of Fergana in Uzbekistan. The *Fatāwā Qazi Khan* is a collection of the religious opinions he issued during his tenure as mufti.
- *Kitāb al-Mabsut*: Written by the Hanafi 'ālim Muhammad ibn Ahmad al-Sarakhsi (d. 1096 CE), his *Kitāb al-Mabsut* is a commentary of an earlier Hanafi legal handbook, the *Mukhtasar* of Muhammad al-Marwazi (d. 945) which was a summary of the Hanafi legal opinions of Muhammad al-Shaybani (749-805 CE).
- *'Umdat al-Qari*: A Hanafi commentary of *Ṣaḥīḥ al-Bukhārī* written by the Turkish Hanafi 'ālim and Sufi Musa Badr al-Dīn al-Ayni (1360- 1453 CE).
- *Bazl ul-Majhtūd*: A Deobandi legal commentary of the *Sunan of Abu Dawud* written by the Indian 'ālim Khalil Ahmad Saharanpuri (1852 CE).

- *Sharḥ al-wiqāya*: Written by Ubaydullah bin Mas'ud al-Mahbubi (d.1346 CE), the *sharḥ al-wiqāya* is a hagiography of Hanafi 'ulamā taught in Deobandi dūr al-'ulūm.
- *Awjaz al-Masālik ilá Muwaṭṭa' Mālik*: An Arabic Hanafi commentary of the Muwaṭṭa' written by the Deobandi 'ālim and muḥadith Muhammad Zakariya al-Kandhlawi (1898 – 1982 CE).

Hanafi legal works for Muslims of South-Asian descent

- *Fatawa-e-Alamgiri*: Also known as *Fatawa-i Hindiyya*, this collection of fatāwā issued by Hanafi 'ulamā of the Mughal Empire and was funded by the sixth Mughal Emperor, Muhi-ud-din Muhammad Aurangzeb Alamgir (1618 - 1707 CE).
- *al-Hidāyah fī Sharḥ Bidāyat al-Mubtadī*: Commonly known as *al-Hidāyah* (the guidance), it is a compendium of Ḥanafī legal opinions with commentaries offered by its author, the twelfth-century Ḥanafī 'ālim, Burhān al-Dīn al-Marghinani (1135-1197 CE). Al-Marghīnānī referred to al-Quduri's Mukhtasar and al-Shaybānī's al-Jami' al-Saghir to write his commentary. *Al-Hidāyah* is one of the most comprehensive compendia of the Hanafi legal opinions and is the major source of Hanafi law for Muslims of the subcontinent. During the imperial rule of Britain in south-Asia, the *Hidāyah* was used to foment Britain's control in India. By the end of the 18th-century, Sir William Jones (1746-1794 CE), a judge of the Supreme Court in Calcutta, India, commissioned Charles Hamilton (1753–1792 CE) to translate the *Hidāyah* from Persian to English. This translation helped the British colonial judiciary in two ways: First, it undermined the religious and legal authorities of the muftis and quḍāh of India, who were replaced in the Islamic courts with British judges; second, it led to the development of the Anglo-Muhammadan law, the hybrid of the English and Islamic legal systems developed in British India between the eighteenth and twentieth centuries.
- *Musallam al-Subūt*: Written in the nineteenth century by two Hanafi jurists, Hidāyatullāh Fārūqī and Muḥibb Allāh ibn 'Abd al-Shakūr Bahārī. The *Musallam al-Subūt* is a textbook used by the dars-i-nizāmī curriculum to teach student the Hanafi legal theories.
- *Noor ul-Anwar*: Written by the Hanafi jurist Jeevan As-Siddiqui, the book is a preparatory text used to teach Hanafi legal theories in the Islamic schools of South Asia.

The Shafi'i legal works

- *shifā' al-ghalīl fī bayān al-shabah wa al-mukhīl wa masālik al-ta'līl*: Abu Hamid al-Al-Ghazālī's first work where he explained the theories of Islamic law in the Shafi'i legal tradition.
- *al-mustasfā min 'ilm al-uṣūl*: One of Ghazali's major contribution to the theory of Islamic law (uṣūl al-fiqh).
- *Al-majmu' sharḥ al-muhadhdhab*: An extensive commentary of the two-volume work called *al-muhadhdhab*. This commentary was written by the Shafi'i jurist Abu Ishaq al-Shirazi (1003-1083 CE).
- *Al-Risāla*: One of the seminal works of the founder of the Shafi'i legal school, Muhammad ibn Idris al-Shafi'i. The *Risāla* help establish the general theory of Sunni Islamic law.
- *Kitāb al-Umm*: Another seminal work of Idris al-Shafi'i in which he provides an authoritative guide to the Shafi'i legal theory.
- *Mughni al-Muhtaj ila ma'rifat al-ma'ani al-faz sharḥ al-Minhaj*: Written by the Shafi'i 'ālim and Arab linguist al-Khatib ash-Shirbini (d. 1570 CE), the work explains the meaning of words and idioms used in classic Shafi'i legal works.
- *al-iqna' fi halla al-fadh Abu Shuja'*: Another extensive commentary written by Shirbini that covers a range of topics and the differences of opinions between 'ulamā in the Shafi'i legal school.
- *Minhāj al-tālibīn wa-'umadat al-muftīn fī fiqh madhhab al-Shāfi'ī*: Written by Yahya ibn Sharaf al-Nawawi (1234-1277 CE) and commonly known as *minhaj al-Talibīn*. The work is used to teach students the Shafi'i legal methods using case studies and legal opinions.
- *al-iqna' fi al-fiqh al-Shāfi'ī*: Written by the Shafi'i jurist Abu al-Hasan 'Ali Ibn Muhammad ibn Habib al-Mawardi (974-1058 CE), his *al-iqna' fi al-fiqh al-Shāfi'ī* is a forty-page summary of his larger work, *Kitāb al-Ḥawī al-kabīr fī 'l-furū'*, which explains the Shafi'i legal system across its 4,000 pages.

- *i' anat at-talibīn*: A biographical encyclopaedia written by the Egyptian Shafi'i jurist Abi Bakr al-Sayyid Shata al-Bakri al-Dimyati (b.1266 – 1310 CE). The work provides readers a biographical account of famous Shafi'i 'ulamā.
- *al-Hawi lil-Fatāwā*: A legal text written by the Shafi'i and Hanbali jurist Jalal al-Din al-Khudayri al-Suyuti (1445–1505 CE). This book of Islamic law is popular with Sufis for providing Islamic legal precedents for their esoteric practices.

Maliki legal works

- *At-Tamhīd*: Written by the Andalusian Maliki jurist Yusuf ibn Abdallah ibn Mohammed ibn Abd al-Barr (978-1071 CE). The full title of this work is *at-Tamhīd limā fīl-Muwaṭṭa' min al-ma'ānī wal-asānīd*, which translates as “*The facilitation to the meanings and chains of narrations found in Mālik's Muwaṭṭa'.*” In this work, al-Barr shares his comments of how the different Sunni legal schools understand the hadith reports contained in Maliki's *Muwaṭṭa'*.
- *Mukhtaṣar ul-Khalil*: Written by the Egyptian Maliki jurist Khalil ibn Ishaq al-Jundi (d. 1374 CE), the *mukhtaṣar* is an abridgement of his earlier work, *at-Tawdīh fī sharh al-Mukhtasar al-far'i li-ibn al-Hājib*, in which he analyses and comments on classic Maliki works that predate the thirteenth century.
- *Fatāwā an-nawāzil*: A compilation of fatāwā of the Maliki jurist ibn Rushd al-Jadd (1058-1126 CE), the grandfather of the philosopher Abu l-Walid Muhammad ibn 'Ahmad Ibn Rushd (1126-1198 CE) (Averroes).
- *Al-Risālah ul Qayrawānī*: *The Epistle of Qayrawānī* was written by ibn Abi Zayd 'abd al-Rahman al-Qayrawani (922-996 CE). His *al-Risālah* was written when he was just seventeen years old and is used as a preparatory text to teach young Muslim children their Islamic beliefs and practices in accordance to the Maliki legal school.

Hanbali legal works

- *Al-Mughnī wa-yalihi al-Sharḥ al-kabīr*: Commonly referred to as *al-Mughnī*, the work was written by muḥadith ibn Qudāmah al-Maqdisi (1147-1223 CE). The *al-Mughnī* offers examples of differences of opinions between the four popular Sunni legal schools.

- *i'lām al-muwaqqi'īn 'an rabb al-'ālamīn*: Written by the influential Hanbali 'ālim and author of numerous Salafi works, ibn Qayyim al-Jawziyya (1292-1350 CE), his *i'lām al-muwaqqi'īn* is an encyclopaedic Sunni legal work written specifically for muftis, fuqahā' and 'ulamā.
- *Majmū' al-Fatāwā*: Taqi ad-Din Ahmad ibn Taymiyyah's (1263-1328 CE) *Majmū' al-Fatāwā* is a complete (majmū') collection of the fatāwā he issued during his lifetime and was compiled posthumously and is a useful guide of good Islamic legal practice for 'ulamā today.
- *Majmū' fatāwā wa-maqālāt mutanawwi'ah*: Commissioned by Saudi Arabia's Permanent Committee for Scholarly Research and Ifā' and compiled under the supervision of the late Grand Mufti of Saudi Arabia, Abdul Aziz ibn Abdullah bin Baz (1910-1999 CE), the *majmū' fatāwā wa-maqālāt mutanawwi'ah* is a 24 volume compendium of bin Baz's religious sermons, legal opinions, interviews and academic articles.
- *Fatāwā Islamiyah (Islamic Verdicts)*: Another collection of *fatāwā* commissioned by Saudi Arabia's Permanent Committee for Scholarly Research and Ifā'. This eight-volume collection includes legal opinions on contemporary issues from the late Grand Mufti Abdul Aziz ibn Abdullah bin Baz, the Salafi 'ālim and Hanbali jurist Muhammad ibn al-Uthaymin (1925-2001 CE), and the Hanbali jurist Abdullah ibn Abdulrahman ibn Jibreen (1933-2009 CE).

General Sunni legal works

- *Uṣūl al-Fiqh al-Islami*: Written by *Wahbah Mustafa al-Zuhayli* (1932-2015 CE), a Hanafi 'ālim and Professor of civil law, his *Uṣūl al-Fiqh al-Islami* is a two-volume work that explains the Islamic legal theories and philosophies of the Sunni legal systems.
- *Fiqh al-Islami wa-Adilatuhu*: A complimentary work to his *uṣūl al-fiqh al-Islami*, Zuhayli's *al-Fiqh al-Islami wa Adilataha* is a 10-volume work cataloguing the legal opinions of the four popular Sunni legal schools.
- *Fiqh al-Sunnah*: The *Fiqh al-Sunnah* was written by the 'ālim, lecturer and political activist, Sayyid Sabiq (1915-2000 CE). Sabiq's book is a compilation of his lecture notes explaining

Islamic beliefs and practices to those with no prior Islamic education. Muslims of the Russian Federations use the *Fiqh al-Sunnah* to learn the fundamentals of their faith.

- *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid*: Commonly referred to as *bidāyat al-mujtahid*, this comprehensive work of Islamic law was written by Abū l-Walīd Muḥammad ibn ‘Aḥmad ibn Rushd (1126-1198 CE) (Averroes). The *bidāyat al-mujtahid* is revered as a book that assesses the differences of opinions (ikhtilāf) between the Sunni legal schools. Ibn Rushd starts each section in his *bidāyat al-mujtahid* by proving the Islamic legal precedents from the Qur’an and hadith sources for an Islamic ruling. As a faqīh of the Maliki legal school, ibn Rushd first offers the Maliki opinions of the law and the methods through which Mālikī ‘ulamā reached their legal conclusions. He then offers the legal opinions and the methods of rival Sunnī legal schools - from the Hanafī, Shafī‘ī and Hanbali legal schools - and occasionally from defunct Sunnī legal schools such as the literalists (zahīrī), Thawri, and Awzā‘ī legal schools. The *bidāyat al-mujtahid* can be best described as a work of fiqh with instructions.
- *Nayl al-Awtar*: Written by the Yemeni Salafī ‘ālim and mufti, Muhammad al-Shawkani (1759–1839 CE), the *Nayl al-Awtar* is his commentary of the Hanbali legal hadith collection, *al-muntaqa fil-aḥkām Sharī‘ah min kalām khayr al-bariyyah*. The *Nayl al-Awtar* is an important work for traditionist ‘ulamā and is one of the precursory works for the modern Salafī and Ahl ul-Hadith movements, providing them with comments on the Sunni and Shi’a legal traditions from a literalist’s standpoint.
- *Al-Fiqh ‘Ala al-Madhahib al-Arba’ah*: Written by the Egyptian ‘ālim Abd al-Rahman Ibn Muhammad Awad al-Jaziri (1882-1941 CE), the book is a four-volume work that offers opinions from the four popular Sunni legal school for modern challenges.

Appendix 5: Islamic Law and Education in Medieval and Pre-Modern India

Islamic education in the subcontinent has a long and rich history dating back to the eighth century when Malik ibn Dinar (d.748 CE), a student of (711-795CE) and Hasan al-Baṣrī (642-728 CE), settled in Kerala, India, along with other Arab traders, soldiers, preachers, and teachers.¹⁰⁵⁶ From there, the early Arab settlers travelled to Sind and Punjab, which are now parts of Pakistan, where ibn Dinar established the first set of *madāris*¹⁰⁵⁷ to preserve and teach the Islamic faith to both Arab settlers and new Muslim converts.¹⁰⁵⁸ These early South Asian *madāris* followed the same Islamic pedagogy as those in Basra and Damascus, and became repositories of Islamic knowledge such as Qur'an commentaries (*tafāsīr*),¹⁰⁵⁹ Prophetic traditions (*ahadith*),¹⁰⁶⁰ books of Islamic jurisprudence (*fiqh*), and the principles of Islamic jurisprudence (*uṣūl al-fiqh*).¹⁰⁶¹ These *madāris* also served as repositories for works on Sanskrit and Greek literature, Mathematics, astronomy, astrology, philosophy, and medicine.¹⁰⁶²

Islamic education in the Indian subcontinent underwent frequent reforms under the patronage of the Mughal Empire. These reforms were particularly notable during the reign of the third Mughal Emperor, Jalal-ud-din Muhammad Akbar (1542 – 1605 CE: reign: 1556-1605 CE). During Akbar's reign, the Empire witnessed a progressive transformation of its educational landscape. Notably, state-funded institutions such as *makātib*¹⁰⁶³/*katātīb*,¹⁰⁶⁴ *madāris*, and *dūr al- 'ulūm* played a crucial role in

¹⁰⁵⁶ Muhammad Asjad Ansari, p. 101.

¹⁰⁵⁷ Sin: *madrassa* (مدرسة), Pl: *madāris* (مدارس). See: Wehr, p. 278. (See: مدرسة)

¹⁰⁵⁸ Muhammad Asjad Ansari, p. 101.

¹⁰⁵⁹ Sin: *tafsīr* (تفسير), Pl: *tafāsīr* (تفاسير). See: Wehr, p. 713. (See: تفسير)

¹⁰⁶⁰ Sin: *hadīth* (حديث), Pl: *'ahadīth* (احاديث). See: Wehr, p. 161. (See: حديث)

¹⁰⁶¹ Mohammad Shahiduliah, 'A Brief History of Madrasa Education in India', *Calcutta Madrasa College, Bicentenary Celebration*, Calcutta, 1985, p. 6.

¹⁰⁶² Mohammad Hanif Ahmad, 'A Study of the Secular Content of the Educational Programmes of Prominent Madrasas of Uttar Pradesh' (PhD, Aligarh Muslim University, 2002), pp. 9–11.

¹⁰⁶³ Sin: *maktab* (مكتب), Pl: *makātib* (مكاتب). See: Wehr, p. 813. (See: مكتب)

¹⁰⁶⁴ Sin: *kuttāb* (كتاب), Pl: *katātīb* (كتاتيب). See: Wehr, p. 813. (See: كتاب)

this educational reform. Listed below are three distinct levels of Islamic educational institutions that thrived in the subcontinent during the medieval and pre-modern period:

1. *Maktab/Kuttāb*: An elementary Islamic school where children, mostly boys, receive instruction in basic Arabic language skills and the recitation of the Qur'an through the method of rote learning.¹⁰⁶⁵
2. *Madrasa*: An Islamic institute of further education where students engage in advanced studies of the Qur'an and its commentaries, alongside the studies of hadith traditions and advanced Arabic grammar. During the medieval period, the Mughal Sultanate introduced compulsory secular subjects, including mathematics, logic, philosophy, and the natural sciences, to the syllabus.¹⁰⁶⁶
3. *Dār al-'ulūm*: Translating as the House of Science, one of the more prominent dūr al-'ulūm in British-controlled India was established in Deoband, a village located to the north of Delhi. The primary objective of the Dār al-'Ulūm of Deoband was to train a new generation of 'ulamā who would...

...protect Indian Muslim identity against British influences, but they also sought to steer the faithful away from what they saw as sinful, innovative local practices.¹⁰⁶⁷

Between these three tiers of Islamic education in India, educational institutions were further distinguished by their ideologies, theologies, and adherence to specific madhāhib (Islamic legal schools). Sufi-oriented makātib, madāris, and lodges (*zawiyās*) aimed to guide students towards attaining the spiritual state of *waḥdat al-wujūd* (the unity of existence, pantheism). In contrast, Deobandi katātib, madāris, and dūr al-'ulūm embraced a conservative Islamic curriculum that

¹⁰⁶⁵ Ahmad, p. 39.

¹⁰⁶⁶ *Encyclopaedia of Islam (Khe-Mahi)*, ed. by P. Bearman and others, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), v, pp. 1123–35.

¹⁰⁶⁷ Innes Bowen, p. 12.

emphasised the preservation of traditions and viewed alternative interpretations of Islamic studies as derivative from the purer form of Islam privileged within their academic framework.¹⁰⁶⁸

In his desire to bring together the religious and social diversity of the subcontinent, Akbar set out to make *Dīn-i Ilāhī* the official religion of his sultanate and presented himself as its prophet. Akbar's *Dīn-i Ilāhī* was an empire-wide social and religious reform initiative, which amalgamated the beliefs and practices of his Muslim, Hindu, Christian, Jain and Zoroastrian subjects.¹⁰⁶⁹ Among Akbar's organisers for his *Dīn-i Ilāhī* reforms was his Grand Vizier and *Sadr al-Sudur*¹⁰⁷⁰ Fathullah Shirazi (d.1589).¹⁰⁷¹ A scholar of the *Ishrāqī* tradition,¹⁰⁷² Shirazi offered Akbar justifications for his religious and social reform of his empire. Shirazi's peripatetic approach to philosophy, religions, mysticism and occultic traditions catered to Akbar's proclivities for cultural and religious eclecticism. As a polymath, Shirazi had...

...combined the study of scripture, the traditional religious sciences, and the intellectual sciences, laying the basis for the *Dars-i-Nizami*, a curriculum taught in most of Indian Madrasas till the late Mughal period.¹⁰⁷³

As Akbar's Grand Vizier and Minister of Religious Endowment (*waqf*), Shirazi was well placed to implement a policy on religious education reforms that reflected his spiritual peripateticism. In the newly drafted Sultanate curriculum, Shirazi offered a selection of secular subjects such as mathematics, astronomy, medicine, philosophy, logic, geography, agriculture, home economics, geometry, chemistry, biology, physics, Arabic, Persian and Sanskrit; as well as numerous religious subjects such as commentaries on the Qur'an (*tafāsīr*), the history and sciences of hadith, Islamic law,

¹⁰⁶⁸ Ghulam Rasool Dehlvi, 'Curriculum of the Indian Madrasas and Islamic Seminaries, *Dars-e-Nizami: Is It in Tune with the Modern Era?*', *New Age Islam*, 2015, p. 1.

¹⁰⁶⁹ Ahmad, p. 39.

¹⁰⁷⁰ Minister of Religious and charitable endowment.

¹⁰⁷¹ Said Reza Huseini, 'The First Islamic Millennium and the Making of the *Tarikh-i Alfi* in the Sixteenth Century Mughal India' (MA Thesis, Leiden University, 2017), p. 29.

¹⁰⁷² A philosophical tradition founded by Shahāb ad-Dīn Yahya ibn Habash ibn Amirak as-Suhrawardī who merged the Neoplatonist philosophies of ibn Sina, the Islamic mysticism of Abu Hamid al-Ghazali and Zoroastrian theologies.

¹⁰⁷³ Huseini, pp. 28–29.

Sufism, and Hindu religious texts such as the *Yoga-Vāsiṣṭha* and the *Mahābhārata*.¹⁰⁷⁴ Shirazi's curriculum became the official education curriculum of the Sultanate and was adopted in all religious and educational academies in the subcontinent where...

...all the students, irrespective of caste, colour, creed and place of birth, used to study together under the same roof to get [an] education.¹⁰⁷⁵

Since its inception, the secular component of the Sultanate curriculum has remained consistent, but its religious and artistic components did not meet the expectations of Muslim families and society. People in the subcontinent reminisced living under the reign of Akbar's predecessors, such as Zahir ud-din Muhammad Babar (1483 - 1530 CE, reign 1526 – 1530), a patron of the arts and calligraphy,¹⁰⁷⁶ and Sultan Shahab-ud-din Muhammad Ghori of the Ghurid Empire (1173-1206 CE), who promoted the study of fiqh in the subcontinent.¹⁰⁷⁷ Although Akbar wanted to educate his subjects equally, he did not want to be outdone by his predecessors. He made provisions for residential learning and home-schooling for those who wanted a more specialised cultural and religious education. This led to the emergence of many privately funded religious seminaries that amended the cultural and religious component of the Sultanate curriculum.¹⁰⁷⁸ One such religious seminary was the *Firangi Maḥall*, based in Lucknow, Uttar Pradesh.

During Akbar's reign, Lucknow transformed into a thriving commercial city that attracted European traders. Within the city, the *Firangi Maḥall* (Foreigner's Palace) was established by French fabric merchants as a guesthouse specifically catering for European visitors. The *Firangi Maḥall* continued to serve European guests until Sultan Muhammad Aurangzeb Alamgir, the sixth Mughal emperor (1618-1707 CE; reign: 1658-1707 CE) ascended to power and seized ownership of the

¹⁰⁷⁴ Ahmad, p. 41.

¹⁰⁷⁵ Muhammad Asjad Ansari, p. 101.

¹⁰⁷⁶ Ahmad, p. 37.

¹⁰⁷⁷ Ahmad, p. 11.

¹⁰⁷⁸ Ahmad, pp. 42–49.

building. Aurangzeb subsequently bestowed the building upon Muhammad Nizam al-Din Sihalwi (1677-1748 CE) and his brother, Kutb al-Din, as compensation for the loss of their father.¹⁰⁷⁹

Being prominent scholars of fiqh and hadith in the Indian subcontinent and disciples of the Naqshbandi Sufi order, Sihalwi and his family were given a generous government allowance to support their scholarly endeavours. This allocation of funds aligned with Aurangzeb's conservative state policy, which aimed to preserve and promote traditional Islam throughout his empire.¹⁰⁸⁰ Sihalwi utilised these funds to renovate the Firangi Maḥall, transforming it from a guesthouse into an Islamic seminary. Consequently, the establishment flourished and became a renowned centre of Islamic education during the seventeenth and eighteenth centuries.¹⁰⁸¹

Sihalwi also collaborated briefly with Shah Wali Ullah of Delhi (1703-1762 CE), a distinguished Islamic scholar, traditionist (muhaddith), and renewer (mujaddid) of Islamic thought in the subcontinent. Together, they undertook the compilation of the *Fatāwā-e-Alamgiri*, an extensive collection of Islamic legal codes that governed the subcontinent during the reigns of Sultan Muhammad Aurangzeb Alamgir and Sultan Bahadur Shah (1643-1712 CE, reign: 1707-1712 CE). Although both Sihalwi and Shah Wali Ullah commanded great respect within the 'ulamā class, they responded differently to the decline of the Mughal Empire and the increasing influence of the British in the subcontinent.¹⁰⁸² While Sihalwi and his colleagues at the Farangi Maḥall accepted and adapted to the social and political realities of the subcontinent, Shah Wali Ullah adamantly rejected the prospect of living under British occupation.¹⁰⁸³

¹⁰⁷⁹ *Encyclopaedia of Islam (Ned-Sam)*, ed. by P. Bearman and others, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), VIII, pp. 68–69.

¹⁰⁸⁰ Ahmad, pp. 45–46.

¹⁰⁸¹ Francis Robinson, *The 'Ulama of Farangi Mahall and Islamic Culture in South Asia* (C. Hurst & Co. Publishers, 2001), p. 106; Nadeem Hasnain, 'Firangi Mahal Made Lucknow an Intellectual Capital «Tornos India', *Lucknowledge*, December 2016;

¹⁰⁸² Ahmad, p. 47.

¹⁰⁸³ Lapidus, pp. 699–706.

One significant contribution that Sihaliwi made to modern Islamic thought was his development of the *dars-i-nizāmī* Islamic syllabus, which to this day shapes the beliefs and knowledge-base of ‘ulamā of the Bareilvi, Deobandi, and Ahl al-Hadith movements. Working with his faculty at the Farangi Maḥall, as well as visiting scholars and experts from other Islamic academies, Sihaliwi’s *dars-i-nizāmī* served as the cornerstone for Aurangzeb’s educational reforms in the subcontinent. These reforms were designed to uphold and preserve Islamic culture and society under Mughal rule. Considering Aurangzeb’s profound interest in the Islamic heritage of the Mughal Empire, Sihaliwi’s *dars-i-nizāmī* curriculum introduced amendments to the existing sultanate curriculum established during Akbar’s/Shirazi’s reign. Sihaliwi’s *dars-i-nizāmī* focused on fostering students’ understanding of Islamic beliefs and practices. Recognising that Muslims in the subcontinent traditionally engage in rote learning of the Qur’an and hadith traditions, the revised *dars-i-nizāmī* curriculum incorporated primers and textbooks categorised into the Revealed Sciences and the Rational Sciences, which catered to the learning preferences and habits of Muslims of the subcontinent.¹⁰⁸⁴

Revealed Sciences

Arabic Conjugation and Grammar (*‘ilm al- ṣarīf*)
 Arabic Syntax (*‘ilm al- naḥw*)
 Elaboration and rhetoric (*‘ilm al-bayan wal ma‘āni*)
 Islamic law (fiqh)
 Islamic legal theories (uṣūl al-fiqh)

Hadith

Commentaries of the Qur’an (tafāsīr)

Rational Sciences

Logic (*manṭiq*)
 Philosophy
 Theology
 Mathematics
 Astronomy

¹⁰⁸⁴ Dehlvi, p. 3.

The dar-i-nizāmī programme consists of three distinct stages, each culminating in the awarding of a certificate, which signifies the completion of a specific level of study.¹⁰⁸⁵ After seven years of study, students are granted an ‘ālim certificate, which is considered equivalent to a bachelor’s degree. Upon completing nine years, students are awarded a fāzil certificate, comparable to a master’s degree. Those who successfully complete the entire eleven-year dar-i-nizāmī programme are awarded with a kāmīl certificate, akin to a doctorate.¹⁰⁸⁶

Within the programme, each academic year is accompanied by a set of textbooks covering both the Revealed and Rational Sciences. The pedagogical approach employed involves the teacher assigning one student to read aloud passages from the assigned textbooks, while other students listen attentively. The teacher, at their discretion, tells the student to stop reading once they deem it sufficient. The teacher then explains various aspects of the text that was read by the student, providing further explanation and interpretation.¹⁰⁸⁷

During the period of British rule in India, modifications were introduced to the dar-i-nizāmī curriculum. These changes involved the inclusion of new textbooks and commentaries, as well as annotations to existing primers and textbooks, reflecting the changing educational landscape under a British sovereign.¹⁰⁸⁸

After the reign of Akbar, India’s madāris and dūr al-‘ulūm adopted Shirazi’s curriculum, although traditionist ‘ulamā informally made modifications by removing elements they considered questionable. Sihalwi’s dars-i-nizāmī curriculum received significant acclaim among Muslim students and their families. By the end of Aurangzeb’s reign, the dars-i-nizāmī had firmly established itself as the prevailing Islamic curriculum in the institutions dedicated to Islamic education across the Mughal

¹⁰⁸⁵ Ahmad, p. 61.

¹⁰⁸⁶ Ahmad, p. 62.

¹⁰⁸⁷ Muhammad Asjad Ansari, p. 105.

¹⁰⁸⁸ Ahmad, pp. 106–7.

Empire.¹⁰⁸⁹ Muhammad Taqi Uthmani, Vice President of the dār al-‘ulūm madrasa in Karachi, emphasised the importance of the dars-i-nizāmī in preserving Islamic tradition...

After the Moguls took control over India, the Dars-e- Nizami system became widespread in south Asia. India came to be known worldwide for its educational institutions imparting religious sciences. It was this very system that pushed the Asian society towards great success.¹⁰⁹⁰

In the eighteenth century, the dars-i-nizāmī curriculum played a pivotal role in nurturing a new generation of traditionalist ‘ulamā. This new cohort of ‘ulamā received better training in modern linguistics, hermeneutics, and the material sciences, which enabled them to interpret the Qur'an and hadith collections in a manner that effectively addressed the contemporary challenges besetting Muslims in India. As a result, the ‘ulamā possessed the skills and knowledge necessary to interpret these sacred texts in light of the modern context:

This system of education [dars-i-nizāmī] encompassed Arabic linguistics, exegesis, hadith, law, theology, logic and philosophy, arithmetic, medicine, and engineering. Given that the dars-i-nizāmī comprised all religious and nonreligious [literally: worldly] sciences, the Muslim students graduating from this system of education were capable of fulfilling their responsibilities in all fields of practical life. ...The basic purpose of this system of education was to enable a person to develop a mastery of his religion, to strengthen his beliefs and base his practical life on religious foundations, to be fully acquainted with demonstrative proofs for the rectitude of his belief and practice, so that foreign ideas would not deceive him ... Once he had completed this education, a student could fearlessly take up medicine and science, logic and philosophy, or exegesis, hadith, and law; in no case was there any fear that he would lose the right path.¹⁰⁹¹

¹⁰⁸⁹ Ahmad, pp. 106–7.

¹⁰⁹⁰ Dehlvi, p. 2.

¹⁰⁹¹ Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton and Oxford: Princeton University Press, 2002), p. 82.

Bibliography

3PB Barristers, Ian Edge: Overview (London: 3PB Management Services Ltd, 2021)

<https://www.3pb.co.uk/barristers/ian-edge/>

'89% Muslim Women Want Government Hand in Codification of Law: Study', DNA India (India, 12 August 2015) <<https://www.dnaindia.com/mumbai/report-89-muslim-women-want-government-hand-in-codification-of-law-study-2113388>>.

Abbas, Tahir, *The Education of British South Asians: Ethnicity, Capital and Class Structure* (Hampshire (UK), New York (USA): Palgrave Macmillan, 2004).

Abdl-Haleem, Omar, 'Lesser Known Hadith Compilations: Sahih Ibn Khuzaymah and Sahih Ibn Hibban', (Al-Jumuah, 2015) <<https://aljumuah.com/lesser-known-hadith-compilations-sahih-ibn-khuzaymah-and-sahih-ibn-hibban/>>.

Agnes, Flavia, 'Darul Qaza Row: A Storm in a Teacup', Deccan Chronicle, 1 August 2018, section Op Ed <<https://www.deccanchronicle.com/opinion/op-ed/010818/darul-qaza-row-a-storm-in-a-teacup.html>>.

Ahammad, Syed Sahid, 'A Critical Analysis of Dower (Mahr)in Islam', IOSR Journal Of Humanities And Social Science, 21.7 (2016), 86–91.

Ahmad, Mohammad Hanif, 'A Study of the Secular Content of the Educational Programmes of Prominent Madrasas of Uttar Pradesh' (PhD, Aligarh Muslim University, 2002).

Ahmed, Sughra, *Seen and Not Heard: Voices of Young British Muslims* (Leicestershire, UK: Policy Research Centre, 2009).

Akhtar, Rajnaara C, 'Modern Traditions in Muslim Marriage Practices, Exploring English Narratives', Oxford Journal of Law and Religion, 7.3 (2018), 427–54.

Akhtar, Rajnaara Chowdhury, 'British Muslims and Transformative Processes of the Islamic Legal Traditions: Negotiating Law, Culture and Religion with Specific Reference to Islamic Family Law and Faith Based Alternative Dispute Resolution' (PhD, The University of Warwick, School of Law, 2013) <<http://go.warwick.ac.uk/wrap/57689>>.

Al-Alwani, Shaykh Taha Jabir, and Anas S. al Shaikh-Ali, *Issues in Contemporary Islamic Thought*, 1st edition (London: IIIT, 2005).

Ali, Shaheen Sardar, '10. From Muslim Migrants to Muslim Citizens', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 157–75.

———, “‘Between the Devil and the Deep Blue Sea’: Sharia Councils and Muslim Women’s Rights in the British Muslim Diaspora”, in *Modern Challenges to Islamic Law* (Cambridge: Cambridge University Press, 2016), p. 206—232.

———, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (The Hague, London, Boston: Kluwar Law International, 2000).

Ali, Sundas, *British Muslims in Numbers* (London: The Muslim Council of Britain, 2015).

Aliyu, Ibrahim Ahmad, ‘Termination of Marriage and Its Legal Consequences under Islamic Law’ (PhD, Ahmadu Bello University, 1996).

All-India Muslim Personal Law Board, ‘Aims & Objective’, All-India Muslim Personal Law Board, 2011 <<http://www.aimplboard.in/objectives.php>>.

———, ‘Executive Committee for Three Years Ending 2019’, All-India Muslim Personal Law Board, 2011 <<http://www.aimplboard.in/board-members.php>>.

———, ‘General Members’, All-India Muslim Personal Law Board, 2011 <<http://www.aimplboard.in/generalmembers.php>>.

———, Hyderabad Declaration of All-India Muslim Personal Law Board (Hyderabad, India: All-India Muslim Personal Law Board, 2018) <<http://aimplboard.in/important-resolutions.php>>.

Al-Marghinani, Burhan Al-Din, *The Hedaya, or Guide 4 Volume Set: The Hedaya, or Guide: A Commentary on the Mussulman Laws: Volume 4*, trans. by Charles Hamilton (Cambridge: Cambridge University Press, 2013).

Alwani, Zainab, ‘Muslim Women as Religious Scholars: A Historical Survey’, in *Muslima Theology: The Voices of Muslim Women Theologians*, ed. by Ednan Aslan, Marcia Hermansen, and Elif Medini, *Wiener Islamstudien* (Frankfurt: Peter Lang, 2013), pp. 45–58.

Amber, Shaista, ‘About Muslim Women’s Personal Law Board’, All-Indian Muslim Women Personal Law Board (Lucknow, India, March 2008) <<http://muslimwomenpersonallaw.com/about.html>>.

———, ‘Shariat Nikahnama’, All-Indian Muslim Women Personal Law Board (Lucknow, India, March 2008) <www.muslimwomenpersonallaw.com/nikahanama.html>.

American Library Association - The Library of Congress, *ALA-LC Romanization Tables* (Washington D.C., United States of America: The Library of Congress, 2013) <<https://www.loc.gov/catdir/cpsr/roman.html>>.

———, *ALA-LC Romanization Tables: Urdu (in Arabic Script)* (Washington D.C., United States of America: The Library of Congress, 2013) <<https://www.loc.gov/catdir/cpsr/romanization/urdu.pdf>>.

‘Anas’, Mālik bin, ‘The Mukatab’, in *Muwatta’ Imām Mālik*, trans. by Sunnah.com (California, USA.: USC-MSA), BOOK 39, HADITH NUMBER: 13 (ENGLISH) <<https://sunnah.com/malik/39>>.

Anderson, J.N.D, *Islamic Law in Africa*, Routledge Library Edition: Islam (London & New York: Routledge: Taylor & Francis Group, 2008), xii.

Ansari, Humayun, *The Infidel Within: Muslims in Britain Since 1800: The History of Muslims in Britain, 1800 to the Present* (London: C Hurst & Co Publishers Ltd, 2004).

Ansari, Muhammad Asjad, ‘Modern Education in Madrasas: A Perspective Study of Dar al-Uloom Deoband’, *Asia Pacific Journal of Research*, 1.XLIV (2016), 101–8.

Anwar, Etin, ‘Sexing the Prayer: The Politics of Ritual and Feminist Activism in Indonesia’, in *Muslima Theology: The Voices of Muslim Women Theologians*, ed. by Ednan Aslan, Marcia Hermansen, and Elif Medini, *Wiener Islamstudien* (Frankfurt: Peter Lang, 2013), pp. 197–216.

Asim, Fadal Karim, *Tahreek Ahl ul Hadith Europe mein* (The way of the ahl ul-Hadith in Europe), trans. by Umm-Ul-Qura Publications (Lahore, Pakistan: Nomani Kutub Khana, 1997) <<https://umm-ul-qura.org/2015/08/18/biography-of-shaykh-mahmood-ahmad-mirpuri-and-mjah-uk/>>.

Asqalānī, Ibn Ḥajar al-, ‘Marriage’, in *Bulugh Al-Maram*, trans. by sunnah.com, 16 (Arabic), 16 (English) vols (Sunnah.com), Book 8, Hadith number 1141 (Arabic), Book 8, Hadith number 1152 (English) <<https://sunnah.com/bulugh/8/205>>.

Astewani, Amin al-, ‘Loci of Leadership: The Quasi-Judicial Authority of Shariah Tribunals in the British Muslim Community’, *Multidisciplinary Digital Publishing Institute (MDPI), Religions*, 10.406 (2019) <<https://doi.org/10.3390/rel10070406>>.

Awde, Nicholas, *Arabic-English/English-Arabic Dictionary*, trans. by K Smith (London, England: Bennett & Bloom, 2004).

Aylesworth, Gary, ‘Postmodernism’, in *The Stanford Encyclopedia of Philosophy*. SEP-Postmodernism, ed. by Edward N Zalta, Spring 2015 (1st published 2005) (Stanford, California, United States: Metaphysics Research Lab, Stanford University, 2015) <<https://plato.stanford.edu/archives/spr2015/entries/postmodernism/>>

Azad, Maulana Abul Kalam, *India Wins Freedom* (Orient BlackSwan, 1988).

Badawi, M. A. Zaki, ‘The Challenge of Living Together’, *Learning to Live Together Lecture Series* (Liverpool: John Moores University: The Matheson Trust / Second Spring, 2005) <<http://www.secondspring.co.uk/articles/badawi.htm>>.

———, *Islam in Britain* (London: Ta-Ha Publishers Ltd, 1981).

———, 'Muslim Justice in a Secular State', in *God's Law versus State Law. The Construction of an Islamic Identity in Western Europe*, ed. by Michael King (London: Grey Seal, 1995), pp. 73–80.

Baker, Paul, Costas Gabrielatos, and Tony McEnery, *Discourse Analysis and Media Attitudes: The Representation of Islamic in the British Press* (Cambridge and New York: Cambridge University Press, 2013).

Bakhtiar, Laleh, *Encyclopaedia of Islamic Law: A Compendium of the Major Schools* (Chicago, Illinois: Kazi Publications, 1996).

Balchin, Cassandra, and Sohail Akbar Warraich, *Recognizing the Un-Recognized: Inter-Country Cases and Muslim Marriages & Divorces in Britain, Women Living under Muslim Laws* (Nottingham, UK: The Russell Press, 2006).

Ballard, Roger, 'Ethnic Diversity and the Delivery of Justice', in *Migration, Diaspora and Legal Systems in Europe*, ed. by Werner Menski and Prakash Shah (London and New York: Routledge, 2006).

Bano, Samia, 'Agency, Autonomy, and Rights: Muslim Women and Alternative Dispute Resolution in Britain', in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017).

———, *An Exploratory Study of Shariah Councils in England with Respect to Family Law* (Reading: University of Reading and the British Ministry of Justice, 2 October 2012).

———, 'Complexity, Difference and "Muslim Personal Law": Rethinking the Relationship between Shariah Councils and South Asian Muslim Women in Britain.' (PhD, University of Warwick, 2004).

———, 'Islamic Family Arbitration, Justice and Human Rights in Britain', *Law, Social Justice & Global Development Journal (LGD)*, 1 (2007).

———, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law*, 1st edn (Basingstoke: Palgrave Macmillan, 2012).

Bashier, Zakaria, *War and Peace in the Life of the Prophet Muhammad* (Leicestershire: The Islamic Foundation, 2007).

Baz, 'Abdul-'Aziz bin 'Abdullah bin, Muhammad bin Salih Al- Uthaymin, and 'Abdullah bin 'Abdur-Rahman Al- Jibreen, *Fatawa Islamiyah Islamic Verdicts, The Permanent Committee and the Decisions of the Fiqh Council*, 8 vols (Riyadh, Saudi Arabia: Darussalam).

Baz, Sheikh `Abdul `Aziz Bin `Abdullah ibn `AbdulRahman ibn, *Majmoo' al-Fatawa of Late Scholar Ibn Baz*, ed. by Muhammad ibn Sa'd Al- Shway`ir, 30 vols (Kingdom of Saudi Arabia: Portal of the General Presidency of Scholarly Research and Ifta', 2001), I.

BBC News Online, Archbishop Defends Sharia Remarks (London: BBC, 2008)
<<http://news.bbc.co.uk/1/hi/uk/7236174.stm>>.

Bearman, P., Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs, eds., *Encyclopaedia of Islam (A-B)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), I.

———, eds., *Encyclopaedia of Islam (C-G)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), II.

———, eds., *Encyclopaedia of Islam (H-Iram)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), III.

———, eds., *Encyclopaedia of Islam (Iran-Kha)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), IV.

———, eds., *Encyclopaedia of Islam (Khe-Mahi)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), V.

———, eds., *Encyclopaedia of Islam (Mahk-Mid)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), VI.

———, eds., *Encyclopaedia of Islam (Ned-Sam)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), VIII.

———, eds., *Encyclopaedia of Islam (San-Sze)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), IX.

———, eds., *Encyclopaedia of Islam (T-U)*, 2nd edn, 13 vols (Leiden: E.J. Brill, 1986), X.

Bharatiya Muslim Mahila Andolan (BMMA), 'About the BMMA', BMMA, 2021
<<https://bmmaindia.com/about/>>.

Birmingham City Council, *Get Married or Register a Civil Partnership at an Approved Birmingham Venue* [Online] (Birmingham: Birmingham City Council) <<https://bit.ly/3jFZzrD>>.

Bowen, Innes, *Medina in Birmingham, Najaf in Brent: Inside British Islam*, 1st edn (London: C Hurst & Co Publishers Ltd, 2014).

Bowen, John R., *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils* (Princeton; Oxford: Princeton University Press, 2016).

Bowering, Gerhard, ed., *The Princeton Encyclopedia of Islamic Political Thought* (Princeton, New Jersey; Oxford, Oxfordshire: Princeton University Press, 2013).

Bowker, John, 'Barelvi', in *The Concise Oxford Dictionary of World Religions* (Oxford University Press, 2003)
<<http://0.www.oxfordreference.com/view/10.1093/acref/9780192800947.001.0001/acref-9780192800947-e-908>>.

Boyd, Marion, '11. Ontario's "Shari'a Court": Law and Politics Intertwined', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 176–86.

Brannen, Julia, 'Combining Qualitative and Quantitative Approaches: An Overview', in *Mixing Methods: Qualitative and Quantitative Research*, ed. by Julia Brannen, Thomas Coram Research Unit, Institute of Education, Thomas Coram Research Unit, Institute of Education (Hants, England, Great Britain: Ashgate, Biddles Limited, 1992), pp. 3–37.

Braun, Virginia, and Victoria Clarke, *Thematic Analysis: A Practical Guide* (London: SAGE Publications Ltd, 2022).

Brown, Daniel W, *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press, 1999).

Bukhārī, Muḥammad ibn Ismā‘īl al-, 'Al-Khul' and How a Divorce Is given According to It', in *Ṣaḥīḥ Al-Bukhārī*, trans. by Sunnah.com, 97 Books (Arabic), Books 93 (English) vols (California, USA.: USC-MSA), BOOK 68, HADITH NUMBER: 22 (ARABIC), VOL. 7, BOOK 63, HADITH NUMBER: 197 (ENGLISH) <<https://sunnah.com/bukhari/68/22>>.

———, 'Blood Money (Ad-Diyat). Chapter: The Foetus of a Woman.', in *Ṣaḥīḥ Al-Bukhārī*, trans. by Sunnah.com, 97 Vol. (Arabic), 93 Vols. (English) vols (California, USA.: USC-MSA), BOOK 87, HADITH NUMBER: 46 (ARABIC), BOOK 83, HADITH NUMBER: 43 (ENGLISH) <<https://sunnah.com/bukhari:6908b>>.

———, 'Conditions. Chapter: Conditions in Waqf (i.e., Religious Endowment).', in *Ṣaḥīḥ Al-Bukhārī*, trans. by Sunnah.com, 97 Vol. (Arabic), 93 Vols. (English) vols (California, USA.: USC-MSA), BOOK 54, HADITH NUMBER: 24 (ARABIC), BOOK 50, HADITH NUMBER: 895 (ENGLISH) <<https://sunnah.com/bukhari:2737>>.

———, 'Consultation', in *Al-Adab Al-Mufrad*, trans. by Sunnah.com, 57 Vol. (Arabic), 57 Vols. (English) vols (Sunnah.com), BOOK 13, HADITH NUMBER: 3 (ARABIC), BOOK 13, HADITH NUMBER: 258 (ENGLISH) <<https://sunnah.com/adab:258>>.

———, 'Consultation. Chapter: Someone Who Is Consulted Is in a Position of Trust.', in *Al-Adab Al-Mufrad*, trans. by Sunnah.com, 57 Vol. (Arabic), 57 Vols. (English) vols (California, USA.: USC-MSA), BOOK 13, HADITH NUMBER: 1 (ARABIC), BOOK 13, HADITH NUMBER: 256 (ENGLISH) <<https://sunnah.com/adab:256>>.

———, 'Whoever Is Not Able to Marry, Is Recommended to Fast', in *Ṣaḥīḥ Al-Bukhārī*, trans. by Sunnah.com, 97 Vol. (Arabic), 93 Vols. (English) vols (California, USA.: USC-MSA), BOOK 67, HADITH NUMBER: 4 (ARABIC), BOOK 62, HADITH NUMBER: 4(ENGLISH) <<https://sunnah.com/bukhari/67/4>>.

Carvalho, Christina, 'Christiaan Snouck Hurgronje: Biography and Perception.' (MA Thesis, Universiteit van Amsterdam, 2010).

Casey, Dame Louise, *The Casey Review: A Review into Opportunity and Integration* (London, United Kingdom: Department for Communities and Local Government, December 2016).

Census 2011, Ethnic Group by Religion, Ethnic Group, Religion (England and Wales: Office for National Statistics, 2011)
<https://www.nomisweb.co.uk/census/2011/DC2201EW/view/2092957703?rows=c_ethpuk11&cols=c_relpuk11>.

Center for European Studies, 'Jurisprudence and Law- Islam' (University of North Carolina, 2009)
<<https://veil.unc.edu/religions/islam/law/>>.

Central Government Act, The Muslim Personal Law (Shariat) Application Act, 2, 1937
<<https://indiankanoon.org/doc/1325952/>>.

Change, Institute, The Pakistani Muslim Community in England, Understanding Muslim Ethnic Communities (Crown Copyright, London: Change Institute, Department of Communities and Local Government, March 2009).

———, The Pakistani Muslim Community in England, Understanding Muslim Ethnic Communities (Crown Copyright, London: Change Institute, Department of Communities and Local Government, March 2009).

———, The Somali Muslim Community in England, Understanding Muslim Ethnic Communities (Crown Copyright, London: Change Institute, Department of Communities and Local Government, April 2009).

———, The Turkish and Turkish Cypriot Muslim Community in England, Understanding Muslim Ethnic Communities (Queen's Printer and Controller of Her Majesty's Stationery office: Change Institute, Department of Communities and Local Government, April 2009).

Charmaz, Kathy, Constructing Grounded Theory (London: SAGE Publications, 2006).

Chaturvedi, K.N. (Secretary to the Government of India), The Constitution of India, 2007, pp. 1–268
<https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf>.

Chisvo, Leonard C, 'UDHR and Human Rights in India', Legal Desire, 25 October 2020
<<https://legaldesire.com/udhr-and-human-rights-in-india/>>.

Citizen's Advice, Living Together and Marriage: Legal Differences (London: National Association of Citizens Advice Bureaux, 2019) <<https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/living-together-and-marriage-legal-differences/>>.

'Civil Law vs Common Law.', Diffen.Com, Diffen LLC
<https://www.diffen.com/difference/Civil_Law_vs_Common_Law>.

Claval, Paul, 'Multiculturalism and the Dynamics of Modern Civilizations', Université de Paris-Sorbonne, 2001.

Co-op Legal Services, What Does Cohabiting Mean? (Manchester, UK.: The Co-operative Legal Services, 2018) <<https://www.co-oplegalservices.co.uk/media-centre/articles-may-aug-2018/what-does-cohabiting-mean/>>.

Corbin, Juliet, and Anselm Strauss, Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory, 4th edn (United States of America: SAGE Publications, Inc, 2015).

Coulson, Noel J., A History of Islamic Law (Edinburgh: Edinburgh University Press, 1964).

———, Succession in the Muslim Family (Cambridge: Cambridge University Press, 1971).

Courts and Tribunals Judiciary, The Justice System and the Constitution (London: Courts and Tribunals Judiciary (UK), 2022) <<https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/justice-sys-and-constitution/>>.

Cox, Baroness Caroline Anne, Arbitration and Mediation Services (Equality) Bill (HL): HL Bill 12 of 2015–16 (Great Britain. Parliament. House of Lords: House of Lords: In Focus, 2015) <<https://researchbriefings.files.parliament.uk/documents/LIF-2015-0034/LIF-2015-0034.pdf>>.

Daniyal, Shoaib, ‘A Short History of Muslim Personal Law in India’, Scroll Media Incorporation (India, 4 September 2017) <<https://scroll.in/article/849068/a-short-history-of-muslim-personal-law-in-india>>.

Das, Tulshi Kumar, ‘Migration of Sylhetis to the United Kingdom: An Exploration’, Social Work Chronicle, 2.1 (2013), 69–86.

Dehlvi, Ghulam Rasool, ‘Curriculum of the Indian Madrasas and Islamic Seminaries, Dars-e-Nizami: Is It in Tune with the Modern Era?’, New Age Islam, 2015 <https://www.academia.edu/10098628/Curriculum_of_the_Indian_Madrasas_and_Islamic_Seminaries_Dars-e-Nizami_Is_it_in_Tune_with_the_Modern_Era>.

Department for Work and Pensions, Decision Makers’ Guide: Vol 3: Subjects Common to All Benefits: Staff Guide. (London, United Kingdom.: British Government Department for Work and Pensions, 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658225/dmgchl1.pdf>.

DeSilver, Drew, and Masci David, World’s Muslim Population More Widespread than You Might Think (Washington, DC: Pew Research Center, 2017) <<https://www.pewresearch.org/fact-tank/2017/01/31/worlds-muslim-population-more-widespread-than-you-might-think/>>.

Diamant, Jeff, Fact Tank: News in the Numbers - The Countries with the 10 Largest Christian Populations and the 10 Largest Muslim Populations (Washington, D.C., USA: Pew Research Center,

1 April 2019) <<https://www.pewresearch.org/fact-tank/2019/04/01/the-countries-with-the-10-largest-christian-populations-and-the-10-largest-muslim-populations/>>.

Dimiyati, Abi Bakr al-Sayyid Shata al-Bakri al-, and Zayn al-Din Ahmed b. Muhammad al-Malibari, *I'anat al-Talibin 'ala Hall Alfaz Fath al-Mu'in*, 4 vols (Syria, Lebanon, Kuwait: Dar al-Nawadir, 2013) <https://www.loohpress.com/product_info.php/products_id/1838>.

Doi, 'Abd ar-Rahman I., *Shariah: Islamic Law*, ed. by Dr Abia Afsar Siddiqui (London: Ta-Ha Publishers Ltd, 2008).

Durkheim, Emile, *The Division of Labour in Society*, trans. by W.D. Halls (Hampshire & London: Macmillan Press Ltd, 1994).

Ebrahim, Ahmed Fazel, 'A Critical Translation and Commentary of 'Allāmah Laknawī's Introduction Titled as 'Umdat-Ur-Ri'āyah to His Commentary of the Ḥanafī Fiqh Work Titled as Sharḥ-Ul-Wiqāyah' (Madrasah Arabia Islamia, 2006).

Ebrahim College, 'Mufti Abdul Qadir Barkatulla', Ebrahim College, 2015 <<https://ebrahimcollege.org.uk/mufti-abdul-qadir-barkatulla/>>.

Edge, Ian, '8. Islamic Finance, Alternative Dispute Resolution and Family Law: Developments towards Legal Pluralism?', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 116–43.

Edwardes, Michael, *Indian Mutiny* [Online] (britishempire.co.uk, 2012) <<https://www.britishempire.co.uk/forces/armycampaigns/indiancampaigns/mutiny/mutiny.htm>>.

Elgamri, Elzain, *Islam in the British Broadsheets: The Impact of Orientalism on Representations of Islam in the British Press* (Reading: Ithaca Press, 2011).

Elshayyal, Khadijah, *Scottish Muslims in Numbers: Understanding Scotland's Muslim Population through the 2011 Census* (The University of Edinburgh, Edinburgh: The Alwaleed Centre for the Study of Islam in the Contemporary World, 2016).

emel, 'Dr Zaki | Feature Articles | Features | Nov / Dec 2003 | Emel - the Muslim Lifestyle Magazine', Emel, 2003 <http://www.emel.com/article?id=2&a_id=1454>.

Engler, Steven, 'Grounded Theory', in *The Routledge Handbook of Research Methods in the Study of Religion*, ed. by Steven Engler and Michael Stausberg, Routledge Handbooks in Religion, 2nd edn (London & New York: Routledge, Taylor & Francis Group, 2021), pp. 300–312.

Fadl, Khaled Abou El, '18. Violence, Personal Commitment and Democracy', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 256–71.

———, 'Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries', *Islamic Law and Society* (Brill), 1.2 (1994), 141–87.

———, *Speaking in God's Name: Islamic Law, Authority and Women*, First Edition (Oneworld Publications, 2001).

Farghani, Fakhruddin Hasan Bin Mansoor al-Uzjandi al-, *Fatawa-i-Qazi Khan*, trans. by Yusuf Khan Bahadur and Wilayat Husain, *Tagore Law Lectures*, 2 vols (New Delhi, India: Kitab Bhavan, 2010) <<https://kitaabun.com/shopping3/fatawa-qazi-khan-with-arabic-text-hanafi-vols-p-1504.html>>.

Faruqi, Hidayatullah, and Muhibb Allah ibn 'Abd al-Shakūr Bahari, *Musallam Al-Ṣubūt* (Karachi, Pakistan: Maktaba Islamia, 2014) <<https://doraehadith.files.wordpress.com/2014/12/musallam-us-suboot.pdf>>.

Fetterman, David M, *Ethnography: Step-by-Step*, Applied Social Research Methods Series (Los Angeles and Washington DC (USA): Sage Publications, Inc, 2010), xvii.

Fidler, Ceri-Anne, 'Lascars, C.1850-1950: The Lives and Identities of Indian Seafarers in Imperial Britain and India' (Cardiff University (School of History, Archaeology and Religion), 2011).

Fischer, Wolfdietrich, *A Grammar of Classical Arabic*, 3rd Revised edition (New Haven: Yale University Press, 2001).

Flather, Baroness Shreela, *Sharia Law: Question for Short Debate*, 757 (London, United Kingdom: House of Lords (Lord's Hansard), 2014) <<https://publications.parliament.uk/pa/ld201415/ldhansrd/text/141211-gc0001.htm#14121139000326> or <https://hansard.parliament.uk/Lords/2014-12-11/debates/14121139000326/ShariaLaw>>.

Fyzee, Asaf Ali Aşghar, *Outlines of Muhammadan Law* (Delhi, India: Oxford University Press, 1964).

Geaves, Ronald Allen, 'Sectarian Influences within Islam in Britain with Special Reference to Community' (PhD, University of Leeds, 1994).

Gesink, Indira Falk, *Islamic Reform and Conservatism: Al-Azhar and the Evolution of Modern Sunni Islam* (London: I.B.Tauris, 2014).

'Get a Divorce', GOV.UK <<https://www.gov.uk/divorce/apply-for-a-decree-absolute>>.

Ghazali, Abu Hamid al-, *Shifā' al-ghalīl fī bayān al-shabah wa-al-mukhīl wa-masālik al-ta'līl* (Damascus, Syria: Dār Ninawī lil-Dirāsāt wa-al-Nashr wa-al-Tawzī', 2019) <<https://www.arabicbookshop.net/shifa-al-ghalil-fi-bayan-al-shubah-wa-al-mukhayyal-wa-masalik-al-talil/302-276>>.

Ghosh, Dr. Sarup Prasad, 'Remembering Maulana Abul Kalam Azad: A Short Biography', Maulana Abul Kalam Azad's Institute of Asian Studies, 2004.

Ghosh, Kanak, *Marriages in England and Wales: 2017* (Newport, Wales: Office for National Statistics, UK Statistics Authority, 14 April 2020), p. 14.

Ghosh, Papiya, 'Muttahidah Qaumiyat in Aqalliat Bihar: The Imarat i Shariah, 1921-1947', *The Indian Economic and Social History Review*, Indian Institute of Advanced Study, Simla, 34.1 (1997).

Gilliat-Ray, Sophie, *Muslims in Britain: An Introduction* (Cambridge; New York: Cambridge University Press, 2010).

Glaser, Barney G, and Anselm L Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (New Brunswick (U.S.A) and London (U.K): Aldine Transaction: A Division of Transaction Publishers (originally published 1967), 2006).

Gohir, Shaista, *Information and Guidance on Muslim Marriage and Divorce in Britain* (Birmingham, UK: Muslim Women's Network UK, 2016).

Gohir, Shaista, and Nazmin Akhtar-Sheikh, 'British Muslim Women and Barriers to Obtaining a Religious Divorce', in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017).

Gouriet, Michael, and Jemma Thomas, 'Couples Living Together in the UK – Financial Provision for Your Children', *Withers World Wide*, 2020 <<https://www.withersworldwide.com/en-gb/insight/article/pdf/9298>>.

Government Digital Service (UK), 'Marriages and Civil Partnerships in England and Wales', GOV.UK, 2020 <<https://www.gov.uk/marriages-civil-partnerships/give-notice>>.

Government of the People's Republic of Bangladesh, *Nikah Registrars, The Muslim Marriages and Divorces (Registration) Act, 1974, (Act Number: 52, 1974), 1974, (ACT NUMBER: 52, 1974)* <<http://bdlaws.minlaw.gov.bd/act-476/section-12186.html>>.

Griffith-Jones, Robin, '1. The "unavoidable" Adoption of Shari'a Law - the Generation of a Media Storm', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 7–20.

———, '12. Religious Rights and the Public Interest', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 188–204.

Guest, Greg, Kathleen M MacQueen, and Emily E Namey, *Applied Thematic Analysis* (United States of America: Sage Publications, Inc, 2012).

Hafiz Ibn Kathir, *Tafsir Ibn Kathir (Full Set) Darussalam 10 Vol Tafseer*, trans. by Safiur-Rahman al-Mubarakpuri, 10 vols (Uttar Pradesh, India: Darussalam, 2012).

———, ed., *Islam and English Law: Rights, Responsibilities and the Place of Shari'a* (London; New York: Cambridge University Press, 2013).

Haleem, M. A. S. Abdel, tran., *The Qur'an*, Reissue edition (Oxford: OUP Oxford, 2008).

Hallaq, Wael B., *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge University Press, 1997).

———, *An Introduction to Islamic Law*, 1st edn (Cambridge; New York: Cambridge University Press, 2009).

———, *Sharia: Theory, Practice, Transformations*, 1st edn (Cambridge, UK; New York: Cambridge University Press, 2009).

———, 'The Gates of Ijtihad: A Study in Islamic Legal Theory' (University of Washington, 1983).

———, 'Was the Gates of Ijtihad Closed?', *International Journal of Middle East Studies*, New York, 16 (1984), 3–41.

Hammad, Ahmad Zaki Mansur, 'Abū Hāmid Al-Ghazālī's Juristic Doctrine in al-Mustaṣfā Min 'ilm al-Uṣūl with a Translation of Volume One of al-Mustaṣfā Min 'ilm al-Uṣūl' (Volume I, Department of Near Eastern Languages and Civilizations, the University of Chicago, 1987).

Hammersley, Martyn, and Paul Atkinson, *Ethnography: Principles in Practice*, 3rd edn (London and New York: Routledge: Taylor and Francis Group, 2007).

Harrow Council, London, *Harrow Register Office Charges* [Online] (Harrow, London: Harrow Council, London, 2019) <<https://bit.ly/35PAFAP>>.

Hasan, Ahmad, *Analogical Reasoning of Islamic Jurisprudence: A Study of the Juridical Principle of Qiyas* (Delhi: Adam Publishers and Distributors, Delhi, 2009).

———, *The Doctrine of Ijma' in Islam: A Study of the Juridical Principle of Consensus* (New Delhi: Kitab Bhavan, 1992).

———, *The Early Development of Islamic Jurisprudence*, 4th repr edition (Islamic Research Institute, 1988).

Hasan, Masood, 'Women's Personal Law Board', The Milli Gazette (New Delhi, India, February 2005) <<https://www.milligazette.com/Archives/2005/16-28feb05-Print-Edition/162802200512.htm>>.

Haskafi, Muhammad Ala-ud-din, Durr Al-Mukhtar Sharah Tanweer al-Absar (al-Maktab al-Mujaddadiyya 2020 , (المكتبة المجددية)) <<http://www.maktabah.org/aa/item/917-durr-al-mukhtar-sharah-tanweer-al-absar----->>.

Hasnain, Nadeem, 'Firangi Mahal Made Lucknow an Intellectual Capital « Tornos India', Lucknowledge, December 2016 <<https://www.tornosindia.com/firangi-mahal-made-lucknow-an-intellectual-capital/>>.

Hassan, Said Fares, Fiqh Al-Aqalliyat: History, Development, and Progress, Palgrave Series in Islamic Theology, Law, and History (New York, NY: Palgrave Macmillan, 2013).

Heidegger, Martin, Being and Time: A Translation of Sein Und Zeit, trans. by Joan Stambaugh (Albany, New York: State University of New York Press, (Originally published 1953), 1996).

Henwood, Karen, and Nick Pidgeon, 'Grounded Theory in Psychological Research', in Qualitative Research in Psychology: Expanding Perspectives in Methodology and Design, ed. by Paul M Camic, Jean E Rhodes, and Lucy Yardley (Washington DC: American Psychological Association, 2003), pp. 131–55.

Heritage Times, 'The Media-Mullah Nexus, Darul Qaza & Progressive History of Imarat e Shariah', Heritage Times (India, 11 July 2018) <<http://heritagetimes.in/progressive-history-of-imar-at-e-shariah/>>.

Hill, Amelia, 'Cohabiting Couples Fastest-Growing Family Type, Says ONS', The Guardian (London, United Kingdom, 7 August 2019), section Society <<https://www.theguardian.com/uk-news/2019/aug/07/cohabiting-couples-fastest-growing-family-type-ons>>.

His Royal Highness George VI, British Nationality Act 1948, 56, 1948, 1(2) <<http://www.legislation.gov.uk/ukpga/Geo6/11-12/56/enacted>>.

Human Rights Act UK 1998, 1998, c. 42, 26 <https://www.legislation.gov.uk/ukpga/1998/42/pdfs/ukpga_19980042_en.pdf>.

Humanists UK, Chancellor Rishi Sunak: 'This Is a Secular Country' (London: Humanists UK, 2020) <<https://humanists.uk/2020/11/13/chancellor-this-is-a-secular-country/>>.

Huq, Mushirul, 'Past Presidents: Maulana Abul Kalam Azad', All India Congress Committee Website, 2009 <<https://web.archive.org/web/20090409232031/http://www.aicc.org.in/new/past-president-detail.php?id=35>>.

Hurgronje, Christiaan Snouck, Mohammedanism: Lectures on Its Origin, Its Religious and Political Growth, and Its Present State (e-book Number: 10163: The Project Gutenberg e-book of Mohammedanism, 2003).

Huseini, Said Reza, 'The First Islamic Millennium and the Making of the Tarikh-i Alfi in the Sixteenth Century Mughal India' (MA Thesis, Leiden University, 2017).

Hussain, Dilwar, Mohammad Siddiqui Seddon, and Nadeem Malik, British Muslims Between Assimilation and Segregation: Historical, Legal and Social Realities (Markfield: The Islamic Foundation, 2004).

Hussain, Musharraf, A Tribute to Maulana Shahid Raza OBE (Nottinghamshire, UK, 10 October 2012) <<https://www.musharrafhussain.com/maulana-shahid-raza-obe/>>.

Hussain, Sabiha, 'Shariat Courts and Women's Rights in India', Center for Women's Development Studies, Occasional Papers Series, Delhi, India, 2007 <<https://www.cwds.ac.in/wp-content/uploads/2016/09/ShariatCourts.pdf>>.

Husserl, Edmund, The Crisis of European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy, trans. by David Carr (Evanston: Northwestern University Press, 1970).

Ibn Ḥanbal Ash-Shaybānī, Abū 'Abdillāh Aḥmad ibn Muḥammad, 'Musnad `Umar b. al-Khattab', in Musnad Ahmad Ibn Hanbal, trans. by Sunnah.com (California, USA.: USC-MSA), MUSNAD AHMAD 82; BOOK 2, HADITH NUMBER: 1 (ENGLISH) <<https://sunnah.com/ahmad:82>>.

Ibn Ishāq, Muḥammad, The Life of Muhammad. A Translation of Ibn Ishaq's Sirat Rasul Allah, trans. by Alfred Guillaume, 5 (1978) (Oxford, New York, Delhi.: Oxford University Press, 1955).

ICM Unlimited, 'What Muslims Want' A Survey of British Muslims by ICM on Behalf of Policy Exchange (London, UK: Policy Exchange, December 2016).

'Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice', Economic and Political Weekly, 44.44 (2009), 44–49.

International Islamic Fiqh Academy, International Islamic Fiqh Academy Website (English) (Jeddah, Saudi Arabia: International Islamic Fiqh Academy) <<https://www.iifa-aifi.org/en/12957.html>>.

International Journal of Middle East Studies, IJMES Translation and Transliteration Guide (Cambridge: Cambridge University Press, 2021) <<https://www.cambridge.org/core/journals/international-journal-of-middle-east-studies/information/author-resources/ijmes-translation-and-transliteration-guide>>.

———, IJMES Translation System for Arabic, Persian, and Turkish. (Cambridge: Cambridge University Press, 2021) <<https://www.cambridge.org/core/services/aop-file-manager/file/57d83390f6ea5a022234b400/TransChart.pdf>>.

Iqbal, Khurshid, *The Right to Development in International Law: The Case of Pakistan*, 1st edition (London; New York: Routledge, 2009).

Isfahani, Abu Shuja' Al-, *The Ultimate Conspectus (Matn al-Ghayah)*, trans. by Musa Furber (Islamosaic, 2012) <https://www.loohpress.com/product_info.php/products_id/503>.

Islahi, Abdul Azim, 'Stages of Socio-Economic Development: Shah Wali-Allah's Concept of al-Irtifaqat' (Aligarh Muslim University, 1989) <<https://mpa.ub.uni-muenchen.de/29628/>>.

Islamic Sharia Council, 'Islamic Sharia Council Website → About Us', Islamic Sharia Council Website, Leyton, London, 2020 <<https://www.islamic-sharia.org/aboutus/>>.

———, 'Islamic Sharia Council Website → About Us → The Founding Organisations / Centres', Islamic Sharia Council Website, Leyton, London, 2020 <<https://www.islamic-sharia.org/aboutus/>>.

———, Website, 'Islamic Sharia Council Official Website - Talaq', Islamic Sharia, 2014 <<http://www.islamic-sharia.org/talaq/>>.

Izzidien, Shayma, 'I Cannot Tell People What Is Happening at Home - Domestic Abuse within South Asian Communities: The Specific Needs of Women, Children and Young People. (London: NSPCC Inform: The Online Child Protection Resource, 2008) <<https://letterfromsanta.nspcc.org.uk/globalassets/documents/research-reports/i-cant-tell-people-what-happening-home-report.pdf>>.

Jackson, Sherman A., *Islamic Law and the State: The Constitutional Jurisprudence of Shihab Al-Din Al-Qarafi (Studies in Islamic Law and Society)* (Brill Academic Publishers, 1996).

Janmohamed, Shelina Zahra, 'The Trouble with Marriage', *Emel: Muslim Lifestyle* (London, December 2010), 75 edition <https://www.emel.com/article?id=79&a_id=2210>.

Jaziri, Abd al-Rahman al-, *Al-Fiqh 'Ala al-Madhahib al-Arba'ah*, 5 vols (Beirut, Lebanon: Darul Hadith) <<https://kitaabun.com/shopping3/fiqh-madhahib-arbaah-vols-books-arabic-p-1356.html>>.

Jones, Justin, "'Where Only Women May Judge' Developing Gender-Just Islamic Laws in India's All-Female 'Shari'ah Courts'", *Islamic Law and Society*, Brill, 26, 2019, 437–66.

Joseph, Suad, and Afsaneh Najmabadi, *Encyclopedia of Women and Islamic Cultures, Vol. 2: Family, Law and Politics (Encyclopaedia of Women and Islamic Cultures)* (Brill Academic Publishers, 2005).

Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*, 3rd revised (Cambridge, UK: The Islamic Texts Society, 2002).

Kandhlawi, Muhammad Zakariya al-, *Awjaz al-Masalik ila Muwatta Malik* (أوجز المسالك إلى موطأ مالك), ed. by Taqi-ad-Dīn an-Nadwī, 17 vols (Damascus, Syria.: Dār al-Qalam, 2003)
<<http://www.waqfeya.net/book.php?bid=54>>.

Kashyab, Subhash, 'Maulana Azad as Distinguished Writer', Awaz Multimedia & Publications, 2009
<https://ummid.com/making_of_legend/azad_as_a_writer.htm>.

Kathir, Hafiz Ibn, *Tafsir Ibn Kathir (Full Set) Darussalam 10 Vol Tafseer*, trans. by Safiur-Rahman al-Mubarakpuri, 10 vols (Uttar Pradesh, India: Darussalam, 2012).

Kaur-Ballagan, Kully, Roger Mortimore, and Glenn Gottfried, *A Review of Survey Research on Muslims in Britain* (London: Ipsos MORI Social Research Institute, 21 March 2018), p. 80.

Kelle, Udo, 'The Status of Theories and Models in Grounded Theory', in *The Sage Handbook of Current Developments in Grounded Theory*, ed. by Antony Bryant and Kathy Charmaz (London (UK): Sage Publications Ltd, 2019).

Keshavjee, Mohamed, *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community* (London ; New York: I.B. Tauris, 2013).

Khaleeli, Homa, 'Inside Britain's Sharia Councils: Hardline and Anti-Women – or a Dignified Way to Divorce?', *The Guardian* (Kings Place, London, 1 March 2017), section *The Guardian: Law: Sharia law*.

Khan, Aina, *Register Our Marriage: Briefing by Aina Khan OBE, Solicitor* (London: Register Our Marriage, 2019)
<https://www.academia.edu/35204079/BRIEFING_on_Register_Our_Marriage_ROM_campaign_by_Aina_Khan_17_November_2017_Amended_by_MSP_pdf>.

Khan, K.N, *Muslim Law of Divorce* (Delhi, India: Bhavan Books (Kitab Bhavan), 1981).

Khan, Muin-ud-din Ahmad, 'Shah Wali Allah's Conception of Ijtihad', in *Shah Waliullah (1703-1762): His Religious and Political Thought*, ed. by M. Ikram Chaghatai (Lahore: Sang-e-Meel Publications, 2005), pp. 353–80.

Lambton, Ann. K. S, *State and Government in Medieval Islam*, London Oriental Series (Abingdon, Oxon: Routledge Curzon, 2006), xxxvi.

- Lamrabet, Asma, *What Are the Qur'anic Ethics of Islamic Marriage?* (Rabat, Morocco: Asma Lamrabet, 2019) <<http://asma-lamrabet.com/articles/what-are-the-qur-anic-ethics-of-islamic-marriage/>>.
- Lancashire County Council, *Marriage and Civil Partnership Fees* (Preston, Lancashire: Lancashire County Council, 2019) <<https://bit.ly/2HJstdw>>.
- Lapidus, Ira M., *A History of Islamic Societies*, 3rd edition (New York: Cambridge University Press, 2014).
- Larsen, Lena, *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, *Studies in Islamic Law and Society* (Leiden; Boston: Brill, 2018), xliv.
- , *How Muftis Think: Islamic Legal Thought and Muslim Women in Western Europe*, *Studies in Islamic Law and Society* (Leiden; Boston: Brill, 2018), xliv.
- , “‘Men Are the Protectors and Maintainers of Women...’ Three Fatwas on Spousal Roles and Rights’, in *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, ed. by Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger (London: Oneworld, 2015), pp. 322-356 (350).
- Larson, Gerald James, ‘Introduction: The Secular State in a Religious Society’, in *Religion and Personal Law in Secular India: A Call to Judgment* (Bloomington and Indianapolis: Indiana University Press, 2001), pp. 1–11.
- Lemons, Katherine, ‘At the Margins of Law: Adjudicating Muslim Families in Contemporary Delhi’ (PhD, University of California, 2010).
- Lewis, Bernard, ‘Joseph Schacht’, *Bulletin of the School of Oriental and African Studies*, 33.2 (1970), 377–81.
- Lewis, I.M, *Saints and Somalis: Popular Islam in a Clan-Based Society* (London: HAAN Associates Publishing, 1998).
- Lewis, Philip, *Young, British and Muslim*, annotated edition (London; New York: Continuum, 2007).
- Lewis, Philip, and Sadek Hamid, *British Muslims: New Directions in Islamic Thought, Creativity and Activism*, 1st edition (Edinburgh: Edinburgh University Press, 2018).
- Lim, Hilary, and Siraj Sait, *Land, Law and Islam: Property and Human Rights in the Muslim World* (London & New York: Zed Books, 2006).
- Limitation Act 1980. Time Limit for Actions Founded on Simple Contract., 1991, C58. Part 1. Section 5 <<https://www.legislation.gov.uk/ukpga/1980/58/section/5>>.

Limitation Act 1980. Time Limit for Actions Founded on Tort., 1991, 1980 C.58. Part 1.
<<https://www.legislation.gov.uk/ukpga/1980/58/section/2>>.

Madanī, Mālik bin Anas bin Mālik al-, 'Divorce', in *Muwatta*, 61 Books (Arabic), 61 Books (English) vols (Sunnah.com: Sunnah.com), Book 29, Hadith number 1186 (Arabic). Book 29, Hadith number 30 (English) <<https://sunnah.com/urn/412150>>.

Mahmood, Hamid, 'The Dars-e-Nizāmī and the Transnational Traditionalist Madāris in Britain' (Queen Mary, University of London, 2012).

Major, Jacqueline, and Shakti Bhagwansingh, 'How Long Does It Take to Get a Decree Nisi?', HJA London Lawyers, 2018 <<https://www.hja.net/how-long-does-it-take-to-get-a-decree-nisi/>>.

Makdisi, George, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981).

Mallat, Chibli, *Introduction to Middle Eastern Law* (Oxford University Press, 2007).

———, *The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi'i International*, Cambridge Middle East Library (Cambridge University Press, 2004).

Mandaville, Peter, *Pew Research Center: Muslim Networks and Movements in Western Europe* (Washington, D.C.: Pew Forum on Religion & Public Life, September 2010).

Manea, Elham, *Women and Shari'a Law: The Impact of Legal Pluralism in the UK*, 1st edition (I.B. Tauris, 2016).

Maqdisi, Muwaffaq-ud-Deen, Abdullah ibn Ahmad ibn Muhammad ibn Qudamah al-, *Al-Mughni* (Hanbali), 9 vols (Riyadh, Saudi Arabia.: Dar 'Alam al Kutub).

Martin, Vivian B, 'The Relationship between an Emerging Grounded Theory and the Existing Literature: Four Phases for Consideration', *Grounded Theory Review: An International Journal*, 5.(March/June 2006) 2 and 3 (2006).

Matondang, Ali Ya'kub, 'Ummah Wahidah in Al-Qur'an and Its Implication to Da'wah Activity', *IOSR Journal Of Humanities And Social Science*, 21.7 (2016), 1–6.

Matroudi, Abdul Hakim I. Al-, *The Hanbali School of Law and Ibn Taymiyyah: Conflict or Conciliation*, 1 edition (London; New York: Routledge, 2006).

McGoldrick, Dominic, '4. The Compatibility of an Islamic/Shari'a Law System or Shari'a Rules with the European Convention on Human Rights', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 42–71.

Merleau-Ponty, Maurice, *Phenomenology of Perception*, trans. by Colin Smith (London and New York: Routledge Classic (first English edition published 1962), 2002).

Ministry of Law & Justice, Constitution of India, 1950
<https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf>.

Mir-Hosseini, Ziba, 'Classical Fiqh, Contemporary Ethics and Gender Justice', in *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition*, ed. by Kari Vogt, Lena Larsen, and Christian Moe (London & New York: I.B.Tauris, 2009), pp. 77–88.

———, 'Muslim Legal Tradition and the Challenge of Gender Equality', in *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, ed. by Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger (London: Oneworld, 2015), pp. 36–83.

Mohaghegh, Ameneh, and Azizollah Dabaghi, 'A Comparative Study of Figurative Language and Metaphor in English, Arabic, and Persian with a Focus on the Role of Context in Translation of Qur'anic Metaphors', *Journal of Basic and Applied Scientific Research*, TextRoad Publication, 3.4 (2013), 275–82.

Mohamad, Yusri, *Contemporary Ijtihad: An Analysis of Individual and Collective Approaches* (Islamic and Strategic Studies Institute (ISSI), 2016).

Mohamed, Fadumo, *Prof Zaki Badawi's Curriculum Vitae* (Muslim College, London, UK: Prof Dr M.A Zaki Badawi, 2003).

Moore, Kathleen M, *The Unfamiliar Abode Islamic Law in the United States and Britain* (Oxford University Press, 2010).

Moosa, Ebrahim, 'Abū Hāmid Ghazālī (d.505/1111)', in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. by O. Arabi, D. Powers, and S. Spectorsky (eds.), *Studies in Islamic Law and Society* (Brill, 2013), pp. 261–93.

Morey, Peter, and Amina Yaqin, *Framing Muslims: Stereotyping and Representation after 9/11* (Cambridge, Massachusetts; London, England: Harvard University Press, 2011).

Morse, Janice M, and Lory J Maddox, 'Analytic Integration in Qualitatively Driven (QUAL) Mixed and Multiple Methods Designs', in *The SAGE Handbook of Qualitative Data Analysis*, ed. by Uwe Flick (California, United States of America: SAGE Publications, Inc, 2014), pp. 524–39.

Murad, Abdal Hakim, 'Unique Man for Difficult Times', *Q-News*, February 2006.

Murphy, Fionnuala, 'Sharia Law in the UK: Compromising the safety of women and children', in *Equal and free? Evidence in support of Baroness Cox's Arbitration and Mediation Services*

(Equality) Bill, ed. by Charlotte Rachael Proudman (Mexborough, South Yorkshire: Equal and Free Limited, 2012).

Muslim Law (Shariah) Council UK, 'Muslim Law Shariah Council (UK) Website - Home', Muslim Law Shariah Council UK, 2017 <<http://www.shariahcouncil.org/>>.

Mustafa, Abdul-Rahman, *On Taqlīd: Ibn al Qayyim's Critique of Authority in Islamic Law* (Oxford/New York: Oxford University Press, 2013).

Mustafa, Asma, *Identity and Political Participation Among Young British Muslims: Believing and Belonging*, 2015th edition (Palgrave Macmillan, 2015).

Na'im, Abdullahi An-, '16. Towards an Islamic Society, Not an Islamic State', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 238–44.

Nahdi, Fuad, 'Obituaries: Zaki Badawi: Grand Mufti of Islam in Britain', *The Independent*, 27 January 2006.

Namazie, Maryam, 'Sharia Councils in Britain: "There Is No Accountability or Oversight of These Councils"', *The Guardian* (London, 17 April 2016) <<https://www.theguardian.com/lifeandstyle/2016/apr/17/sharia-councils-britain-one-law-for-all-campaign>>.

———, *Sharia Law in Britain: A Threat to One Law for All and Equal Rights* (London: One Law for All, 2010) <https://onelawforall.org.uk/wp-content/uploads/2012/09/New-Report-Sharia-Law-in-Britain_fixed.pdf>.

Nammi, Diana, 'Iranian and Kurdish Women's Rights Organisation', in *Equal and free? Evidence in support of Baroness Cox's Arbitration and Mediation Services (Equality) Bill*, ed. by Charlotte Rachael Proudman (Mexborough, South Yorkshire: Equal and Free Limited, 2012).

Naqshbandi, Mehmood, *UK Mosque Statistics / Masjid Statistics (Muslims in Britain, 16 September 2017)* <http://www.muslimsinbritain.org/resources/masjid_report.pdf>.

Nasā'ī, Abū `Abd ar-Raḥmān Aḥmad ibn Shu`ayb ibn Alī ibn Sīnān al, 'The Book of Divorce', in *Sunan An-Nasā'ī*, trans. by Sunnah.com, 51 Books. (Arabic), 51 Books. (English) vols (Sunnah.com), BOOK 27, HADITH NUMBER: 28 (ARABIC), BOOK 27, HADITH NUMBER: 3445 (ENGLISH) <<https://sunnah.com/nasai/27/28>>.

———, 'What Was Narrated Concerning Khul', in *Sunan An-Nasā'ī*, trans. by Sunnah.com, 51 Books. (Arabic), 51 Books. (English) vols (Sunnah.com), BOOK 27, HADITH NUMBER: 74 (ARABIC), BOOK 27, HADITH NUMBER: 3492 (ENGLISH) <<https://sunnah.com/nasai/27/28>>.

National Records of Scotland, SNS Data Zone 2011 (Scotland: National Records of Scotland, 2011)
<http://www.scotlandscensus.gov.uk/documents/cde/CT_0151_2001.xlsx>.

Nawawi, Yaḥyā ibn Sharaf al-, Minhaj Al-Talibin Wa 'Umdat al-Muftiyin (Saudi Arabia: Dar al-Minhaj) <https://www.loohpress.com/product_info.php/products_id/1505>.

Naysābūrī, Ḥajjāj ibn Muslim, 'Clarifying the Number of Branches of Faith, the Best and the Least of Them, the Virtue of Modesty (Al-Haya') and the Fact That It Is Part of Faith', in Ṣaḥīḥ Muslim, trans. by Sunnah.com, 56 Vol. (Arabic), 43 Vols. (English) vols (Sunnah.com), BOOK 1, HADITH NUMBER: 61 (ARABIC), BOOK 2, HADITH NUMBER: 57(ENGLISH)
<<https://sunnah.com/muslim/1/61>>

———, 'The Book of Invoking Curses', in Ṣaḥīḥ Muslim, 56 Vol. (Arabic), 43 Vols. (English) vols (Sunnah.com), BOOK 19, HADITH NUMBER 11 (ARABIC), BOOK 9 HADITH NUMBER 3562 (ENGLISH) <<https://sunnah.com/muslim/19/11>>

———, 'The Book of Jihad and Expeditions', in Ṣaḥīḥ Muslim, 84 Vol. (Arabic), 4375 Vols. (English) vols (Sunnah.com), BOOK 32 (ARABIC), BOOK 19 (ENGLISH)
<<https://sunnah.com/muslim/32>>.

Nielsen, Jorgen S., Towards a European Islam (Basingstoke, Hampshire: Palgrave Macmillan, 1999).

NINIS: Religion - Full Detail. (Belfast, Northern Ireland: Northern Ireland Neighbourhood Information Service, 2011)
<<https://www.ninis2.nisra.gov.uk/Download/Census%202011/QS218NI.ods>>.

NINIS: Religion - Muslims (Islam) by Ethnic Group. (Belfast, Northern Ireland: Northern Ireland Neighbourhood Information Service, 2011)
<<https://www.ninis2.nisra.gov.uk/Download/Census%202011/CT0071NI.ods>>.

Northern Ireland 2011 Census: Ethnicity, Identity, Language and Religion (Northern Ireland Neighbourhood Information Services: Northern Ireland Statistics and Research Agency, 2011)
<<https://www.ninis2.nisra.gov.uk/public/SearchResults.aspx?sk=KS201NI;>>.

Nyazee, Imran Ahsan Khan, Islamic Jurisprudence: (Uṣūl al-Fiqh), 2nd Edition (Selangor, Malaysia: The Other Press, 2000).

———, The Secrets of Uṣūl Al-Fiqh: Following a Madhhab and Rules for Issuing Fatwas, ed. by Khizar Hayat, The Secret of Uṣūl Al-Fiqh, 6 (Advanced Legal Studies Institute (ALSI), 2013).

Office for National Statistics, 2011 Census: Ethnic Group, Local Authorities in the United Kingdom, Census 2011 (Northern Ireland Statistics and Research Agency: Office for National Statistics, 2013).
<<http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-and-quick-statistics-for-local-authorities-in-the-united-kingdom---part-1/rft-ks201uk.xls>>.

- , *Ethnicity, Identity, Language and Religion: TS030 Religion, Census 2021* (Nomis, University of Durham: Office for National Statistics, 21 March 2021) <<https://www.nomisweb.co.uk/output/census/2021/census2021-ts030.zip>>.
- , *Ethnicity, Identity, Language and Religion: TS031 Religion (Detailed), Census 2021* (Nomis, University of Durham: Office for National Statistics, 21 March 2021) <<https://www.nomisweb.co.uk/output/census/2021/census2021-ts031.zip>>.
- , ‘Long-Term International Migration 2.03, Country of Birth, UK and England and Wales - Office for National Statistics’, Office for National Statistics, 2019 <<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/longterminternationalmigrationcountryofbirthtable203>>.
- Opwis, Felicitas, *Maslaha and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*, *Studies in Islamic Law and Society* (Leiden, Boston: Brill, 2010), xxxi.
- Ormsby, Eric L., *Ghazali* (Oxford: Oneworld Publications, 2007).
- Our Imam, *Al-Hilah an-Najizah (Women`s Right to Have Their Marriage Annulled) – Introduction* (Kensington and Chelsea, UK: Ask Our Imam, 2016) <<https://www.askourimam.com/2016/04/12/a-summary-of-al-hilah-an-najizah-womens-right-to-have-their-marriage-annulled-introduction/>>.
- Park, Alison, and Rebecca Rhead, *Personal Relationships: Changing Attitudes towards Sex, Marriage and Parenthood*, *British Social Attitudes: Article 30* (London: NatCen Social Research, 2013) <https://www.bsa.natcen.ac.uk/media/1146/bsa30_personal_relationships_final.pdf>.
- , *Personal Relationships: Marriage Matters?*, *British Social Attitudes, 30* (London: NatCen Social Research, 2013) <https://www.bsa.natcen.ac.uk/media/1146/bsa30_personal_relationships_final.pdf>.
- Parliament of Great Britain, and Philip Yorke (The Earl of Hardwicke), *Clandestine Marriages Act 1753, 26 George 2 c.33, 1754* <<http://statutes.org.uk/site/the-statutes/eighteenth-century/1753-26-geo-2-c-33-prevention-of-clandestine-marriages/>>.
- , *Clandestine Marriages Act 1753, 26 George 2 c.33, Section XVIII, 1754* <<http://statutes.org.uk/site/the-statutes/eighteenth-century/1753-26-geo-2-c-33-prevention-of-clandestine-marriages/>>.
- Parliament of the United Kingdom, *1836 (34) Marriages. A Bill for Marriages in England, 6 & 7 William IV, c. 85, 1836.*
- , *British Nationality Act 1981, C.61, 1981, c.61* <<https://www.legislation.gov.uk/ukpga/1981/61/contents>>.
- , *Commonwealth Immigrants Act 1962, 10 & 11 Eliz. 2 c. 21, 1962, x & 11 Eliz. 2 c. 21* <<https://web.archive.org/web/20110927012831/http://www.britishcitizen.info/CIA1962.pdf>>.

———, Commonwealth Immigrants Act 1968, 1968 C. 9, 1968
<<https://www.legislation.gov.uk/ukpga/1968/9/contents/enacted>>.

———, Immigration Act 1971, 1971 c. 77, 1971
<<http://www.legislation.gov.uk/ukpga/1971/77/contents/enacted>>.

Parveen, Rehana, 'Do Sharia Councils Meet the Needs of Muslim Women?', in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017), pp. 142–62.

———, 'Do Shari'a Councils Meet the Needs of Muslim Women? (PhD)' (PhD thesis, Birmingham Law School, College of Arts and Law, University of Birmingham, 2017).

Patel, Pragna, 'The Growing Alignment of Religion and the Law: What Price Do Women Pay?', in *Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration*, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017).

———, *The Sharia Debate in the UK: Who Will Listen to Our Voices?* (London: openDemocracy, 2016) <<https://www.opendemocracy.net/en/5050/sharia-debate-who-will-listen-to-us/>>.

Patel, Siddique, 'The Role of Shariah Councils in England', *Family Law*, Lexis Nexis, 2016
<https://www.familylaw.co.uk/news_and_comment/the-role-of-shariah-councils-in-england>.

Pattinson, Shaun D, 'The Human Rights Act and the Doctrine of Precedent', *Legal Studies*, 35.1 (2015).

Peach, Ceri, and Richard Gale, 'Muslims, Hindus, and Sikhs in the New Religious Landscape of England', *Geographical Review*, 93.4 (2003), 469–90.

Pearl, David, and Werner Menski, *Muslim Family Law*, 3rd edition (London: Sweet & Maxwell, 1998).

Peers, Douglas M., *India Under Colonial Rule 1700-1885*, 1 edition (Harlow, England; New York: Routledge, 2006).

Perring, Rebecca, Boris Johnson: 'Sharia Law in the UK Is Absolutely Unacceptable' (London: Daily Express, 2015) <<https://www.express.co.uk/news/politics/566111/Boris-Johnson-Sharia-law-UK-absolutely-unacceptable-Islamic-legal-code>>.

Peters, Rudolph, 'Idjtihad and Taqlid in 18th and 19th Century Islam', *Die Welt Des Islams*, XX, 3–4 (1980).

Phillips, Richard, Claire Chambers, Nafhesa Ali, Kristina Diprose, and Indrani Karmakar, *Storying Relationships: Young British Muslims Speak and Write about Sex and Love* (London: Zed Books, Bloomsbury Publishing PLC, 2021).

Platts, John Thompson, *A Dictionary of Urdu, Classical Hindi and English* (1884 Edition), Urdu, English and Hindi Edition, London 1884 (London: Munshiram Manoharlal (Reprint 2004), 1884).

Poole, Elizabeth, *Reporting Islam: Media Representations of British Muslims* (London: I.B. Tauris, 2002).

Poulter, Sebastian M, 'The Significance of Ethnic Minority Customs and Traditions in English Criminal Law', *New Community*, 16.1 (1989), 121–28.

Press Trust of India, 'Indian-Origin Imam Conferred Honorary Doctorate by UK University - Times of India', *The Times of India* (Mumbai, Maharashtra, India, 25 January 2016) <<https://timesofindia.indiatimes.com/nri/other-news/Indian-origin-imam-conferred-honorary-doctorate-by-UK-university/articleshow/50712805.cms>>.

Proudman, Charlotte Rachael, ed., *Equal and free? Evidence in support of Baroness Cox's Arbitration and Mediation Services (Equality) Bill* (Mexborough, South Yorkshire: Equal and Free Limited, 2012) <http://equalandfree.org/wp-content/files_mf/1441879624Equal_Free_booklet_May_2012.pdf>.

'Qazis in Darul Qaza to Now Get Lessons in Indian Constitution', *News18* (Lucknow, India, 1 March 2019) <<https://www.news18.com/news/india/qazis-in-darul-qaza-to-now-get-lessons-in-indian-constitution-2052991.html>>.

Qazwīnī, Abū 'Abdillāh Muḥammad ibn Yazīd Ibn Mājah al-Rab'ī, 'The Chapters on Marriage', in *Sunan Ibn Mājah*, trans. by Sunnah.com, 37 Books. (Arabic), 37 Books. (English) vols (Sunnah.com), BOOK 9, HADITH NUMBER: 1919 (ARABIC) , BOOK 9, HADITH NUMBER: 1846 (ENGLISH) <<https://sunnah.com/urn/1261630>>

———, 'The Chapters on Marriage', in *Sunan Ibn Mājah*, trans. by Sunnah.com, 37 Books. (Arabic), 37 Books. (English) vols (Sunnah.com), BOOK 9, HADITH NUMBER: 2009 (ARABIC) , BOOK 9, HADITH NUMBER: 1934 (ENGLISH) <<https://sunnah.com/urn/1262530>>.

Rahman, Md Mizanur, 'Triangular Confluence: Islam and Modernity in Bangladesh', *Journal of Asian and African Studies*, 53.6, 866–79.

Ramadan, Tariq, '17. Following Shari'a in the West', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 245–55.

———, 'Al-Maslaha (The Common Good)', Tariq Ramadan, 2016 <<http://tariqramadan.com/english/al-maslaha-the-common-good/>>.

Ramic, Sukrija Husejn, *Language and the Interpretation of Islamic Law* (Cambridge, UK: The Islamic Texts Society, 2004).

Robinson, Francis, *The 'Ulama of Farangi Mahall and Islamic Culture in South Asia* (C. Hurst & Co. Publishers, 2001).

Robinson, Francis, and Ira M. Lapidus, *The Cambridge Illustrated History of the Islamic World*, Cambridge Illustrated Histories (Cambridge University Press, 1996).

Roychowdhury, Adrija, 'Shariat and Muslim Personal Law: All Your Questions Answered', *The Indian Express* (New Delhi, India, 22 August 2017)

<<https://indianexpress.com/article/research/shariat-muslim-personal-law-sharia-history-shayara-bano-shah-bano-triple-talaq-personal-laws-religious-laws-uniform-civil-code-2784081/>>.

Rushd, Abū l-Walīd Muḥammad ibn 'Aḥmad ibn, *The Distinguished Jurist's Primer: Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid: V. 2*, trans. by Imran Nyazee, First edition, 2 vols (Reading, UK: Garnet Publishing Ltd, 1996), ii.

Saharanpuri, Khalil Ahmad, *Badl Al-Majhud Fi Hall Abi Dawud*, ed. by Adel bin Sa'd, 20 vols (Beirut, Lebanon: Dar Al-Kotob Al-Ilmiyah, 2015) <<https://kitaabun.com/shopping3/badl-majhud-hall-dawud-khalil-saharanpuri-arabic-p-4324.html>>.

Sahgal, Gita, 'On Sharia Council and Muslim Arbitration Tribunals: Frequently Asked Questions and Answers', in *One Law for All. No Religious Laws - One Secular Law for All. Rights Are for People Not Beliefs*, ed. by Maryam Namazie (London, United Kingdom: One Law for All, 2016).

Sajjad, Mohammad, *Muslim Politics in Bihar: Changing Contours* (Routledge India, 2014).

Sanyal, Usha, Ahmad Riza Khan Bareilwi: *In The Path Of The Prophet* (Oxford: Oneworld Publications, 2005).

———, *Scholars of Faith: South Asian Muslim Women and the Embodiment of Religious Knowledge* (Delhi, India: Oxford University Press, 2020).

'Sayyid Sabiq: The Man Who Wrote Fiqh As-Sunnah', *Arab News*, 2005
<<https://www.arabnews.com/node/270389>>.

Schacht, Joseph, *An Introduction to Islamic Law* (Clarendon Paperbacks, 1982).

Schimmel, Annemarie, *Mystical Dimensions of Islam* (Chapel Hill: University of North Carolina Press, 1975).

Shabbir, Mohammad, 'Stop This Madness', in *Walk Together - Blogspot* (Bradford, United Kingdom: Mohammad Shabbir, 2014) <<https://cllrshabbir.blogspot.com/2014/11/stop-this-madness.html>>.

Shafaqna India Press, 'What Makes Maulana Dr. Syed Kalbe Sadiq a Reformer?', Shafaqna India - India Shia News Agency (Srinagar, Kashmir, 29 December 2013).

Shah-Kazemi, Sonia Nûrîn, *Untying the Knot: Muslim Women, Divorce and the Shariah*, Child Welfare and Development (Nuffield Foundation, 2001), p. 80
<<http://www.nuffieldfoundation.org/untying-knot-muslim-women-divorce-and-shariah>>.

Shah, Prakash, '9. Judging Muslims', in *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 144-56.

Shah, Zahida, Clare G Wenger, and Vanessa Burholt, *Older Sylhetis in Bangladesh, Families and Migration: Older People from South Asia* Department for International Development (DFID) (United Kingdom: UK Department for International Development, 2003).

Shahiduliah, Mohammad, 'A Brief History of Madrasa Education in India', Calcutta Madrasa College, Bicentenary Celebration, Calcutta, 1985.

Shaikh, Ali (Barrister), 'Law of Divorce & Khula in Pakistan', Mumtaz & Associates, 2011.

'Sharia Law Is "Not Fit for the UK", Says a Labour Muslim MP', MailOnline, Dailymail.Co.Uk (London, 12 October 2008) <<https://www.dailymail.co.uk/news/article-1056794/Sharia-law-fit-UK-says-Labour-Muslim-MP.html>>.

Shirbini, al-Khatib ash-, *Mughni Al-Muhtaj Ila Ma'rifat al-Ma'ani Alfaz Sharh al-Minhaj* (Damascus, Syria: Dar al-Fayha / Dar al-Manhal Nashirun, 2009)
<https://www.loohpress.com/product_info.php/products_id/2286>.

Siddiqi, Ahmad Mullah Jeevan As-, Nurul Anwar: *Sharh Risala al-Manar*, 2 vols (Karachi, Pakistan: Maktabah al Bushra) <<https://kitaabun.com/shopping3/nurul-anwar-mullah-jeevan-hashiyas-standard-arabic-p-2866.html>>.

Siddiqi, Muhammad Zubayr, *Hadith Literature: Its Origin, Development and Special Features*, 2nd Revised (Cambridge: The Islamic Texts Society, 1993).

Siddiqi, Mona, Anne-Marie Hutchinson, Sam Momtaz, Mark Hedley, Qari Muhammad Asim, and Sayed Ali Abbas Razawi, *The Independent Review into the Application of Sharia Law in England and Wales*, CCS0118708404 (Home Office, United Kingdom: Home Office, February 2018).

Sijistānī, Abū Dā'ūd al-, 'General Behavior (Kitab Al-Adab). Chapter: Regarding Consultation.', in *Sunan Abī Dāwūd*, trans. by sunnah.com, 43 (Arabic), 42 (English) vols (California, USA.: USC-MSA), 43 (ARABIC), HADITH 356; 42 (ENGLISH), HADITH 5109
<<https://sunnah.com/abudawud:5128>>.

———, ‘Marriage (Kitab Al-Nikah)’, in Sunan Abī Dāwūd, trans. by sunnah.com, 43 (Arabic), 42 (English) vols (California, USA.: USC-MSA), BOOK 12, HADITH NUMBER 72 (ARABIC), BOOK 11, HADITH NUMBER 2112 (ENGLISH) <<https://sunnah.com/abudawud/12/72>>.

———, ‘Marriage (Kitab Al-Nikah). Chapter: Seeking The Girl’s Permission.’, in Sunan Abī Dāwūd, trans. by sunnah.com, 43 (Arabic), 42 (English) vols (California, USA.: USC-MSA), 12 (ARABIC), HADITH 50; 11 (ENGLISH), HADITH 2090 <<https://sunnah.com/abudawud:2095>>.

———, ‘Regarding One Who Married Without Specifying The Dowry And Then Died’, in Sunan Abī Dāwūd, trans. by sunnah.com, 43 Books (Arabic), 42 Books (English) vols (California, USA.: USC-MSA), BOOK 12, HADITH NUMBER:72 (ARABIC), BOOK 11, HADITH NUMBER: 2112 (ENGLISH). <<https://sunnah.com/abudawud/12/72>>.

———, ‘The Office of the Judge (Kitab Al-Aqdiyah)’, in Sunan Abī Dāwūd, trans. by sunnah.com, 43 (Arabic), 42 (English) vols (California, USA.: USC-MSA), 25 (ARABIC), 24 (ENGLISH) <<https://sunnah.com/abudawud/25/22>>.

Sikdar, Shubhomoy, ‘More than Just a Chronicle’, The Hindu Newspaper, 2012 <<https://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/more-than-just-a-chronicle/article3633850.ece>>.

Slapper, Gary, and David Kelly, The English Legal System, 18th edn (Oxon: Routledge: Taylor & Francis Group, 2017).

Soman, Zakia, and Noorjehan Safia Niaz, Seeking Justice Within Family: A National Survey on Muslim Women’s Views on Reforms in Muslim Personal Law (Tilakwadi, Belgaum, India: Omega Publications, Bharatiya Muslim Mahila Andolan (BMMA), 2015).

Spalek, Basia, ‘Disconnection and Exclusion: Pathway to Radicalisation?’, in Islamic Political Radicalism: A European Perspective, ed. by Tahir Abbas (Edinburgh: Edinburgh University Press, 2007).

‘Special Report: Gaddafi’s Secret Missionaries’, Reuters, 29 March 2012 <<https://in.reuters.com/article/us-libya-missionary-idINBRE82S07T20120329>>.

Suad Joseph and Afsaneh Najmabadi, Encyclopedia of Women and Islamic Cultures, Vol. 2: Family, Law and Politics (Encyclopaedia of Women and Islamic Cultures) (Brill Academic Publishers, 2005).

Summary Report: Understanding Muslim Ethnic Communities., Understanding Muslim Ethnic Communities (Office of Public Sector Information, Surrey: Change Institute, Department of Communities and Local Government, April 2009).

Supreme Court of India, Vishwa Lochan Madan vs Union Of India & Ors, 2, 2014, S.C. 2957, 2959. <<https://indiankanoon.org/doc/22464727/>>.

Tabrizi, Imam Khatib at-, 'Oaths and Vows.', in Mishkat Al-Masabih, trans. by Sunnah.com, 24 Books. vols (California, USA.: USC-MSA), MISHKAT AL-MASABIH 3439; BOOK 15, HADITH NUMBER: 33. <<https://sunnah.com/mishkat:3439>>.

Taizir, Aswita, 'Muhammad 'Abduh and the Reformation of Islamic Law' (McGill University, 1994).

Talwar, Divya, 'Growing Use of Sharia by UK Muslims', BBC Asian Network, 16 January 2012 <<https://www.bbc.co.uk/news/uk-16522447>>.

Tariq, Saher, 'Muslim Mediation and Arbitration: Insights from Community and Legal Practice', in Gender and Justice in Family Law Disputes: Women, Mediation, and Religious Arbitration, ed. by Samia Bano (Waltham, MA: Brandeis University Press, 2017).

Taylor, Charles, A Secular Age (Cambridge, Massachusetts, and London, England: The Belknap Press, Harvard University Press, 2007).

T.E, Admin, 'Halal Meat Increase in Britain: The Correlation of Ethnicities, Faiths and Food Habits', Think Ethnic, 14 August 2014 <<https://thinkethnic.com/halal-meat-increase-britain-correlation-ethnicities-faiths-food-habits/>>.

Thanvi, Ashraf Ali, Al-Hilatul-Najizah/الحيلة الناجزة (The accomplished legal loopholes/tricks) (India: Maktab Razi Deobandi).

The Federal Government of Pakistan, The Muslim Family Laws Ordinance 1961, 1961, VIII, S7 & S8 <<http://punjablaws.gov.pk/index1.html>>.

The Islamic Shariah Council, 'Application to File an Islamic Divorce (Khula/Dissolution/Talaq)' (Islamic Sharia Council, 2014) <http://www.islamic-sharia.org/wp-content/uploads/2014/05/Khula_Application0216.pdf>.

The Muslim Law Shariah Council, 'Application Form for Woman & Procedure for Khula Application' (The Muslim Law Shariah Council - Application form for woman & procedure for khula application, 2019) <<http://www.shariahouncil.org/wp-content/uploads/2019/01/AW1-Islamic-Divorce-Application-Pack-for-Women-8.11.2018.pdf>>.

The National Archive, Offences Against the Person Act 1861, 1861 c. 100 (Regnal. 24_and_25_Vict) (Statute Law Database) <<https://www.legislation.gov.uk/ukpga/Vict/24-25/100/crossheading/bigamy>>.

'The Sociology of Law - What Is It?', Lawteacher.Net. (All Answers Ltd., November 2018) <<https://www.lawteacher.net/free-law-essays/english-legal-system/sociology-of-law.php?vref=1>>.

The Times of India, 'Muslim Women Gaining More from Darul Qaza, Come with 95 per Cent Complaints', The Times of India (Lucknow, India, 27 February 2019) <<https://timesofindia.indiatimes.com/city/lucknow/muslim-women-gaining-more-from-darul-qaza-come-with-95-per-cent-complaints/articleshow/68177477.cms>>.

Thornberg, Robert, 'Informed Grounded Theory', *Scandinavian Journal of Educational Research*, 56.3 (2012), 243–59.

Tirmidhi, Abu 'Isa Muhammad ibn 'Isa at-, 'Chapter: About The 'Aqiqah', in *Jami' al-Tirmidhi*, trans. by Sunnah.com, 49 Books (Arabic), 46 Books (English) vols (Sunnah.com), BOOK 19 (ARABIC), BOOK 17 (ENGLISH) <<https://sunnah.com/tirmidhi/2/169>>.

———, 'The Book on Marriage', in *Jami' al-Tirmidhi*, trans. by Sunnah.com, 49 Books (Arabic), 46 Books (English) vols (Sunnah.com), BOOK 11 (ARABIC) HADITH NUMBER 5; BOOK 6 (ENGLISH) HADITH NUMBER 1084. <<https://sunnah.com/tirmidhi/11/5>>.

———, 'The One Who Is Patient Upon His Religion During Fitan Is like One Holding An Ember', in *Jami' al-Tirmidhi*, trans. by Sunnah.com, 49 Books (Arabic), 46 Books (English) vols (Sunnah.com), BOOK 33 (ARABIC), HADITH NUMBER 103; BOOK 7 (ENGLISH) HADITH NUMBER 2260. <<https://sunnah.com/tirmidhi/2260>>.

Toğuşlu, Erkan, 'Fethullah Gülen, Tariq Ramadan and Yusuf al-Qaradawi: The Pluralisation of Islamic Knowledge', in *Modern Islamic Thinking and Activism: Dynamics in the West and in the Middle East*, ed. by Erkan Toğuşlu and Johan Leman (Belgium: Leuven University Press, 2014).

Uddin, Mohammad Jasim, *The Micro-Politics of Microcredit: Gender and Neoliberal Development in Bangladesh* (Abingdon, UK; New York, USA: Routledge, 2015).

UK Public General Acts, Government of Wales Act 2006, 32, 2007, p. 211 <https://www.legislation.gov.uk/ukpga/2006/32/pdfs/ukpga_20060032_en.pdf>.

———, Legal Aid, Sentencing and Punishment of Offenders Act 2012, 10, 2012, p. 314 <https://www.legislation.gov.uk/ukpga/2012/10/pdfs/ukpga_20120010_en.pdf>.

———, Marriage Act 1949: Marriage of a Man and a Woman; Marriage of Same Sex Couples for Which No Opt-in Necessary, 76, 1949, p. 60 <<https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/76/section/75>>.

———, Matrimonial Causes Act 1973: Proceedings after Decree Nisi: Religious Marriage, 1973, xviii, 60 <<https://www.legislation.gov.uk/ukpga/1973/18/section/10A>>.

———, The Designation of Schools Having a Religious Character (England) Order 2020, 2020, cmxx <<https://www.legislation.gov.uk/uksi/2020/920/contents/made>>.

UK Public General Acts, Expert, Slaughter of Poultry Act 1967, 24 (Statute Law Database, 1967), p. 4 <https://www.legislation.gov.uk/ukpga/1967/24/pdfs/ukpga_19670024_en.pdf>.

———, Slaughterhouses Act 1974, 3 (Statute Law Database, 1974), p. 32
<https://www.legislation.gov.uk/ukpga/1974/3/pdfs/ukpga_19740003_en.pdf>.

UNdata, Population by Religion, Sex and Urban/Rural Residence (New York, United States; Sweden: United Nations Statistics Division, United Nations Department of Economic and Social Affairs, 2021) <<http://data.un.org/Data.aspx?d=POP&f=tableCode:28;countryCode:826>>.

Upadhyay, R, ‘Is There a Need for an “All India Muslim Board”?’ , South Asia Analysis Group (New Delhi, India, 14 September 2017), 6304 edition <<https://www.eurasiareview.com/15092017-is-there-a-need-for-an-all-india-muslim-board-analysis/>>.

Vogel, Frank, *Islamic Law in the Modern World: Legal System of Saudi Arabia* (Leiden ; Boston: Brill, 1999).

Waters, Anne-Marie, ‘One Law for All’ , in *Equal and free? Evidence in support of Baroness Cox’s Arbitration and Mediation Services (Equality) Bill*, ed. by Charlotte Rachael Proudman (Mexborough, South Yorkshire: Equal and Free Limited, 2012).

Watt, William Montgomery, *Islam and the Integration of Society* (Oxon: Routledge and Kegan Paul Ltd, 1961).

Wehr, Hans, *Dictionary of Modern Written Arabic: Arabic-English.*, ed. by J. M. Cowan, 3rd edn (Ithaca, New York: Spoken Language Services Inc, U.S, 1976).

Weiss, Bernard, ‘The Primacy of Revelation in Classical Islamic Legal Theory as Expounded by Sayf Al-Dīn al-Āmidī’, *Studia Islamica*, 59, 1984, 79–109 <<https://doi.org/10.2307/1595296>>.

———, *The Spirit of Islamic Law*, New Ed edition (Athens: The University of Georgia Press, 2006).

Williams, Rowan, ‘Civil and Religious Law in England: A Religious Perspective’ , in *Islam and English Law: Rights, Responsibilities and the Place of Shari’a*, ed. by Robin Griffith-Jones (London; New York: Cambridge University Press, 2013), pp. 20–33.

———, ‘Sharia Law’ - What Did the Archbishop Actually Say?, Dr Rowan Williams: 104th Archbishop of Canterbury (Cambridge: Rowan Williams 2021, 2008).
<<http://rowanwilliams.archbishopofcanterbury.org/articles.php/1135/sharia-law-what-did-the-archbishop-actually-say.html>>.

World Population Review, *Muslim Population By Country 2021* (Walnut, California, USA: World Population Review, 2021) <<https://worldpopulationreview.com/country-rankings/muslim-population-by-country>>.

Yilmaz, Ihsan, ‘Law as Chameleon: The Question of Incorporation of Muslim Personal Law into English Law’ , *Journal of Muslim Minority Affairs*, 21.2 (2001)
<<https://doi.org/10.2139/ssrn.1782170>>.

'Zaki Badawi — Unofficial Leader of UK's Muslims', Dawn.Com, 2003
<<https://www.dawn.com/news/77912>>.

Zaman, Muhammad Qasim, *Islam in Pakistan: A History* (Princeton (USA) & Oxford (UK): Princeton University Press, 2018).

———, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton (USA) & Oxford (UK): Princeton University Press, 2002).

Zee, Machteld, *What Happens at Sharia Councils? Part Four: The Legal Status and Future of Sharia Councils*, *Interdisciplinary Study of the Law* (Universiteit Leiden, Netherlands: Leiden Law Blog, *Interdisciplinary Study of the Law*, 2013) <<https://www.leidenlawblog.nl/articles/the-legal-status-and-future-of-sharia-councils>>.

———, *What Happens at Sharia Councils? Part Two: The Most Liberal One*, *Interdisciplinary Study of the Law* (Universiteit Leiden, Netherlands: Leiden Law Blog, *Interdisciplinary Study of the Law*, 2013).

Zuhayli, Wahbah, *Fiqh Al-Islami Wa-Adilatuhu* (Beirut, Damascus: Dar al-Fikr, 2001).

———, *Usulul Fiqh Al-Islami*, 1 vols (Beirut, Damascus: Darul Fikr, 2017)
<<https://kitaabun.com/shopping3/usulul-fiqh-islami-arabic-only-zuhayli-p-3507.html>>.

Zysow, Aron, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta, GA: Lockwood Press, 2013).