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Adjudicating Conflicts of Personal Law in Multicultural Societies: An Islamic Private International Law Perspective

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1. Introduction

In today's increasingly interconnected world, the dynamics of multicultural societies present unique challenges and opportunities, particularly in the realm of adjudication and legal authority. This paper explores the intricate relationship between Muslims and non-Muslims living under each other's legal frameworks, focusing on the pivotal role of adjudication in resolving disputes that arise within this complex socio-legal landscape. The judiciary, as a fundamental institution within Islamic law, is tasked with upholding justice and ensuring the fair resolution of conflicts, both among Muslims and between Muslims and non-Muslims.

This exploration is particularly relevant in contemporary contexts where legal pluralism exists, and individuals come across multiple legal systems that may sometimes conflict. By examining the principles of Islamic law and their application to various scenarios involving interfaith disputes, this paper seeks to establish a framework for understanding how adjudication can be effectively carried out in such multicultural environments. Furthermore, this analysis aims to contribute to the development of Islamic Private International Law, identifying potential pathways for finding relevance for Islamic legal principles in the modern contexts. It addresses crucial questions regarding jurisdiction, the validity of non-Muslim laws, and the ethical obligations of judges in multicultural settings. Ultimately, this work aspires to lay the groundwork for an understanding of how Islamic law can coexist with other legal traditions, facilitating justice and equity in diverse societies.

This paper has been structured into various parts: Part one entails introduction, part two is devoted for explaining the importance of adjudication in Islamic law, part three undertakes an examination of the rules of Islamic law on Muslim Minority living under the authority of Non-Muslims, part four examines the rules of Islamic law on Non-Muslim Minority living under the Muslim authority to understand how does Islamic law treat their matters in terms of adjudication, and last part presents some conclusions.

2. Importance of Adjudication and its Relevance to Multicultural Society

Islamic law accords significant position to the *judiciary (qaḍāʾ)*. It is defined as a binding statement issued under a general authority for: the resolution of disputes,

determination of right, and termination of conflicts. Highlighting the invaluable nature of this job, the Jurists hold that: "Judging with justice is among the most powerful religious obligations and one of the noblest acts of worship after belief in God, the Exalted."[1] Muslim jurists deem the appointment of a judge is a religious obligation because the judge is appointed to uphold a duty that is itself obligatory; namely, administration of justice adjudicating disputes among people.[2] God Almighty says in the Qurʾān:

> "O David, We have appointed you vicegerent on earth. Therefore, rule among people with justice and do not follow (your) desire lest it should lead you astray from Allah's Path. Allah's severe chastisement awaits those who stray away from Allah's Path, for they had forgotten the Day of Reckoning."[3]

And He says to His Prophet Muhammad (peace be upon him):

> "Then We revealed the Book to you (O Muhammad!) With Truth, confirming whatever of the Book was revealed before, and protecting and guarding over it. Judge, then, in the affairs of men in accordance with the Law that Allah has revealed, and do not follow their desires in disregard of the Truth which has come to you."[4]

For Islamic law, a judge derives the legitimacy of their authority from ruler's authority, for the appointment of a ruler is obligatory over entire Muslim community for the implementation of laws, redress of grievances, resolution of disputes, and other public interests that can only be achieved under an Islamic authority. However, the *Imām* (ruler) needs a deputy to undertake some of the responsibilities. In matters pertaining to administration of justice, resolution of conflicts and demining the rights, this deputy is the judge (*qāḍī*). For this reason, the Prophet Muhammad (peace be upon him) used to appoint judges to distant regions. He sent Muʿādh ibn Jabal (may God be pleased with him) to Yemen and ʿAttāb ibn 'Usayd (may God be pleased with him) to Makkah,[5] even though he also personally adjudicated cases.[6] The rightly guided Caliphs followed this practice as well: they ruled directly,[7] and also delegated judicial authority to others as well. For instance, ʿUmar ibn al-Khaṭṭāb (may God be pleased with him) appointed Abū Mūsā al-Ashʿarī (may God be pleased with him) as a judge in Basra and ʿAbdullāh ibn Masʿūd (may God be pleased with him) as a judge in Kūfah. As became evident from all of this, the judiciary holds a lofty and essential position in Islam and it is a firmly established obligation. However, it is considered a *collective obligation (farḍ kifāyah)*, which means that if it is fulfilled by a sufficient members of the community, the obligation is lifted from the rest.[8] This chapter undertakes to explore the classic Islamic law on this important obligatory rule and address some questions that arise in the modern world context. Questions mainly are those that revolve around the role of faith, that is, does faith play a role in conferring or limiting jurisdiction for an authority. Does a Muslim authority have jurisdiction, and if yes, then to what extent, over its non-Muslim minority? In contrast, does Islamic law allow/confine jurisdiction for non-Muslim authority over Muslim Minority reside in their territorial jurisdiction? This chapter is devoted to explore Islamic law rules on jurisdiction in interfaith context, and relate them with the cotemporary Lego-political realities.

The Qurʾān refers on several occasions to the adjudication of disputes involving non-Muslims, as well as cases between Muslims and non-Muslims, especially when the Prophet Muhammad (peace be upon him) was called upon to decide matters concerning the People of the Book. Set out below are certain Qurʾānic verses pertinent to adjudication among non-Muslims, which will be followed by a juristic analysis. The

Qurʾān states:

> "They are listeners of falsehood and greedy devourers of unlawful earnings. If they come to you, you may either judge between them or turn away from them. And were you to turn away from them they shall not be able to harm you; and were you to judge between them judge with justice. Surely Allah loves the just."[9]

The following verse states:

> "Yet how will they appoint you a judge when they have the Torah with them, wherein there is Allah's judgement - and still they turn away from it? The fact is, they are not believers."[10]

In the same *sūrah* a few verses later, the Qurʾān states:

> "Then We revealed the Book to you (O Muhammad!) with Truth, confirming whatever of the Book was revealed before, and protecting and guarding over it. Judge, then, in the affairs of men in accordance with the Law that Allah has revealed, and do not follow their desires in disregard of the Truth which has come to you. For each of you We have appointed a Law and a way of life. And had Allah so willed, He would surely have made you one single community; instead, (He gave each of you a Law and a way of life) in order to test you by what He gave you. Vie, then, one with another in good works. Unto Allah is the return of all of you; and He will then make you understand the truth concerning the matters on which you disagreed."[11]

At another occasion it states:

> "Allah does not forbid that you be kind and just to those who did not fight against you on account of religion, nor drove you out of your homes. Surely Allah loves those who are equitable."[12]

After reading these verses, a few questions arise: Are Muslims living in non-Muslim territories bound to abide by the laws enacted by non-Muslim authorities? If they violate such laws, does it constitute a breach of the pledge that Muslims provided before being allowed to enter the territory of non-Muslims? If Muslims honor their treaty and abide by the laws of a non-Muslim territory, but those laws contradict Islamic teachings, should Muslims still follow them? Similarly, questions arise regarding non-Muslim minorities living under Muslim authority: Are Muslim judges bound to adjudicate their matters to ensure that violations of Islamic teachings do not occur? Are Muslim judges permitted to adjudicate the matters of non-Muslims only if the latter bring their cases to the Muslim courts themselves? Is the jurisdiction of Muslim judges limited to certain matters or specific areas? And so on. All such questions are addressed under the following appropriate subheadings.

3. Muslim Minority under the Judicial Authority of Non-Muslims

The previous discussion should have revealed clearly that Muslims are under an obligation to abide by Islamic law everywhere in the universe. However, since the enforcement of certain aspects of Islamic law requires political sanction of an Islamic government, adherence to these rules becomes more flexible in the absence of an Islamic polity. It does not carry the same binding force as it would under a legitimate Islamic government. With regards to such rules in the absence of a legitimate Islamic government, stressing their importance, Mawdūdī classifies all Islamic rules into three categories, each with its purpose, scope, and implications:

1. Doctrinal or Faith-Based Law (*Iʿtiqādī Qānūn*), governing *beliefs* and *moral obligations* of all Muslims regardless of where they live.[13]
2. Constitutional or Political Law (*Dastūrī Qānūn*), dealing with the sovereignty, authority, governance, and issues relating to the territorial jurisdiction of the Islamic state. This branch of Islamic law serves this purpose by dividing the world into different abodes (*dār*s), each with a different set of rules in respect of the jurisdiction of the Islamic state.
3. International Law (*Qānūn-e-Taʿāluqāt-e-Khārijiyyah*), governing the relations of Muslims with non-Muslims in terms of war, peace, treaties, and the treatment of non-Muslims residing in Islamic state.[14] The jurisdiction of Islamic courts regarding all three branches of Islamic law is regulated by nuanced and sophisticated rules.

3.1. Residence in Non-Muslim Lands: A Survey of Classical Legal Views

A debate relating to this is whether Muslims reside in non-Muslim lands where laws other than Islamic law prevail. Muslims had lived under the authority of a non-Muslim authority: a group of Muslims migrated to and lived in Abyssinia, a Christian state, escaping persecution in Makkah. There is no disagreement on the obligation of migration to Madinah when it was established. However, in later periods, when just like non-Muslims lived in Muslim lands, Muslims also started residing in non-Muslim lands, the question of such residence was raised and attracted juristic debates.[15]

Al-Shaybānī, an authoritative Ḥanafī jurist, reports that the obligation to migrate to the land of Islam after conversion to Islam was abrogated at the time of the Prophet Muhammad (peace be upon him). However, Abū Ḥanīfa, as al-Shaybānī reports, disapproved residence for Muslims in non-Muslim territory.[16] Later Hanafi jurists like al-Sarakhsī insisted that permanent residence in non-Muslim lands is discouraged, though trade was permitted. Al-Sarakhsī argued that *hijrah* had lapsed as a legal duty, though he cautioned against raising children in non-Muslim lands due to the risks of assimilation or enslavement.[17]

In Mālikī School, varying views have been reported.[18] Ibn Rushd, a prominent Mālikī jurist, built upon the early judgments of Malik b. Anas (may god be pleaed with him) argued that it is firmly prohibited for a Muslim to live in *dār al-ḥarb*. Trade is prohibited if it requires sojourning in *dār al-ḥarb*, although permitted if non-Muslims enter *dār al-Islām*. He believed that by residing in non-Muslim lands, a Muslim would be subject to non-Muslim law, which only a corrupt Muslim would accept.[19] Ibn al-ʻArabi classifies *hijrah* into six distinct categories:

1. **Migration from Dār al-Ḥarb to Dār al-Islām:** to live under Islamic rule. It was obligatory in the time of the Prophet Muhammad (peace be upon him);
2. **Migration from the Land of Innovation (Bidʿah):** It is not permissible for a Muslim to reside where foundational Islamic figures are vilified;
3. **Migration from a Land Dominated by Prohibited Activities:** If a place is overwhelmed by unlawfulness (*ḥarām*), migration becomes obligatory because seeking a lawful livelihood is a religious duty upon every Muslim;
4. **Fleeing Physical Harm:** where one's life or safety is at risk, permission is granted to migrate from that place;
5. **Relocating from unhealthy regions**, with prophetic precedent permitting such movement. However, fleeing from the plague is prohibited, though some scholars have regarded it as merely disliked (*makrūh*).

6. Migration to protect wealth or family: a person should migrate from areas where their life or property is insecure, even if these areas are technically part of *dār al-Islām*.[20]

Shāfiʿī jurists believed that migration from a land of sin is mandatory, and a Muslim should always migrate to the land where they can best worship.[21] Careful reading of another Shāfiʿī jurist al-Māwardī illuminates us that "*hijrah*, later context after the period of Prophet Muhammad (peace be upon him) refers primarily to the migration of converts to Islam from non-Muslim territories (*Dār al-Ḥarb*) to regions governed by Islamic law (*Dār al-Islām*). This duty is not limited to allegiance to a specific Muslim ruler but varies according to an individual's circumstances, which can be categorized into four main scenarios:

1. Ability to protect faith and engage in *daʿwah* or combat: The individual is obliged to remain in *Dār al-Ḥarb* to promote Islam and contribute to its transformation into *Dār al-Islām*.
2. Ability to protect faith but not to proselytize or fight: The individual should remain, as their presence sustains Islamic identity in the region.
3. Ability to protect faith but unable to isolate or engage publicly: There is no definitive obligation to migrate or stay; the decision rests on a contextual assessment of potential benefits for Islam.
4. Inability to protect faith but ability to migrate: Migration becomes obligatory, and neglecting it constitutes a sin.[22]

Attempts have been made to explore the classical juristic debates on whether Muslims are allowed, permanently or temporarily, to reside in non-Muslim lands. While early Hanafi scholars like al-Shaybānī viewed *hijrah* from non-Muslim lands to Islamic territory as no longer obligatory, others like al-Sarakhsī discouraged permanent residence due to risks to faith and identity. Mālikī and Shāfiʿī jurists offered varied views: some of them strictly prohibited such residence, while others based the duty to migrate on individual circumstances, the ability to practice Islam, and the potential for promoting the faith there.

3.2. Modern Juristic Views on Residence for Muslims in non-Muslim Countries

Modern juristic views on residence for Muslims in non-Muslim lands can be classified into a few categories.

A. First category, which may be called a contextual/permissive view. According to this view, it is permissible for Muslims to reside in non-Muslim lands if they can practice their religion, preserve their identity, and contribute positively to society. Muslim residents in non-Muslim lands can prove beneficial for spreading Islam. This is a mainstream view, adopted by the European Council for Fatwa and Research (ECFR) and Yūsuf al-Qaradāwī and others.[23]

B. In the second category, those views that rely on classic arguments in the sense that if Muslims are unable to freely practice their religion in non-Muslim lands, and have the ability to migrate, then *hijrah* is obligatory. Muṣṭafā al-Zarqāʾ argues that "*Hijrah* is not generally required today, but may become obligatory if religious practice is impossible."[24] Similarly, Shaykh Ibn Bāz confirms that "*hijrah* is obligatory when a Muslim cannot maintain their faith or religious obligations in a non-Muslim land."[25]

C. In the third category, those views are falling that redefine the classical bifurcation beyond *Dār al-Islām* and *Dār al-Ḥarb.* For them, the binary classification of the world into *dār al-Islām* and *dār al-ḥarb* is to be replaced by

modern concepts such as citizenship, constitutional rights, and human dignity, to better determine the legitimacy of Muslim residence. After challenging the textual bases of the *dār al-islām* and *dār al-Ḥarb* binary, Muhammad Hashim Kamali argues that "The state is the unit of organization at present and the *dār al-islām* of the past has been dismembered and replaced by territorial units. It is no longer realistic to identify a certain part or region of the world as *dār al-Ḥarb*, for peace is now the generally accepted norm and individuals and states relate to one another through reciprocity and peaceful agreements."[26] Tariq Ramadan, Tareq Oubrou, and Aref Ali Nayed share the view that traditional territorial categories such as *dār al-islām, dār al-ḥarb*, and *dār al-ʿahd* misrepresent the current state of both international affairs and Muslim/non-Muslim relations.[27]

D. In fourth category, I count some Institutional Fatwas:
    a. Dār al-Iftāʾ al-Miṣriyya (Egyptian Fatwa Authority): It affirms that Muslims may reside in non-Muslim lands as long as they can uphold their faith and transmit it to their families.[28]
    b. Al-Azhar University Scholars: they repeatedly endorsed the idea that Western societies that protect freedom of religion do not qualify as *dār al-ḥarb*.[29]
    c. Different Institutions in Paksitan and India, to which the public makes recourse for shariah guidance (*fatwā*) and these institutions possess profound impact in narrative shaping among Muslims in religious matters, allow residence in non-Muslim countries in extreme necessity, such as medical treatment, avoiding risk to person or property, providing Islamic education when himself adequately equipped or alike.[30]

3.3. Muslim Personal Law in Secular Jurisdictions: Challenges of Applicable Law

An important question arises regarding the intervention of non-Muslim courts in matters concerning the Muslim minority, particularly those regulated exclusively by Islamic law: to what extent does Islamic law permit its Muslim subjects to accommodate foreign law? This section is devoted to exploring Islamic legal manuals to identify relevant governing rules. First, the legal status of a Muslim entering a non-Muslim abode should be deciphered, which will pave the way for further discussion. In this connection, major of the rules are discussed in the context of a Muslim entering into the abode of war (*dār al-Ḥarb*); these rules are equally applicable in the current context, where most often a Muslim finds himself or herself in an abode of treaty (*Dar al-Muwāḍaʿah*). In the following, some of the governing rules from Shaybānī's seminal work are reproduced.

Careful reading of Shaybānī's work suggests that a Muslim entering *Dār al-Ḥarb* under the peace treaty (*amān)* means that the Muslim acquire their trust through assurance to them to not harm their persons, their properties, and respect their public interests and laws. He must not betray that trust and must honour the terms of the treaty (*amān*). Violating the terms of entry (e.g., spying, theft, or harming civilians) is strictly prohibited. Sarakhsi states, "When a Muslim enters the Abode of War (*Dār al-Ḥarb*) under a peace treaty (*amān*), he is bound by the contract of *amān* not to betray them; therefore, he must avoid any act of treachery."[31] A Muslim *mustaʾmin* cannot harm the lives or property of those in *Dār al-Ḥarb*, as long as they are protected under the *amān*. Shaybānī and Sarakhsī, argue that "If a Muslim is a *mustaʾmin* in the Abode of War, by entering under peace treaty (*amān*), he has undertaken not to act treacherously towards them, nor to harm them in any such way. Therefore, he is commanded to fulfil what he

has guaranteed."[32]

Moreover, despite the fact that observing the terms of the peace treaty is indispensable for Muslim *mustaʾmin* in the abode of war, the jurist argued that this treaty does not change the legal status of a *mustaʾmin*.[33] It means that if a disbeliever enters Islamic territory as *mustaʾmin* he will be the subject of the law of his or her original abode. Similarly, a Muslim will remain the subject of Islamic territory in the abode of war as *mustaʾmin* and, juristically speaking, Muslim *mustaʾmin* will not be the subject of law of the abode of war. Once again, they are under obligation of observe the terms of the treaty. However, it is not allowed for Muslims at the time of drawing the peace treaty to accept conditions that are in contravention to Islamic law. Further, even if such conditions have already been accepted, then, exceptionally they would not observed.[34] The prophet Muhammad states "Muslims must abide by their conditions, except a condition that makes something unlawful lawful, or something lawful unlawful."[35]

Notably, in the current context, Muslims residing in the non-Muslim countries are treated as *mustaʾmin*, rather, they are bound by the laws made by them. This requires the creative thinking and powerful reflection to reinterpret the classic rules, to comprehend the Islamic legal perspective on Muslim residence in non-Muslim lands and the extent to which adherence to secular legal systems is permissible. Islamic law acknowledges the binding nature of agreements (*ʿuqūd*) and covenants (*ʿuhūd*), a principle extended to the residence in non-Muslim lands: that is complete adherence to, and regulating all their matters by, Islamic law. However, sometime, one may finds himself in a situation where both legal systems require strict adherence but at the same time they are conflicting, it is an avenue where our following discussion takes us to.[36]

In terms of accommodating the foreign judicial authority, the categorization of the matters by Islamic law in two distinct types for the purpose of implementation and having legal effect will be much helpful for us. Islamic jurisprudence classifies the matters into two categories; namely, (a) those that require only the presence of a *sharʿī* cause (*sabab sharʿī*) for legal effect, and (b) those that require both a *sharʿī* cause and the explicit ruling of a *qāḍī* (Islamic judge). Matters where the legal effect arises directly from the occurrence of a cause, such as inheritance rights activated by death, or property transfer through valid sale, do not necessitate a judicial ruling. In such cases, the judgment of a non-Muslim court may be considered valid, provided that the evidentiary basis aligns with what Islamic law deems acceptable.

Conversely, for issues where judicial discretion is an integral component and only *sharʿī* cause (*sabab sharʿī*) is not sufficient for legal effect, such as marriage, divorce, *khulʿ* (mutual dissolution), *waqf* (endowment), will execution, annulment of marriage, moon sighting, insolvency declarations, and especially *ḥudūd* (prescribed punishments) and *qiṣāṣ* (retaliatory justice), Islamic law requires a decree from a *sharʿī* judge. In these matters, a ruling by a non-Muslim judge is not binding from an Islamic legal perspective. This is based on a tradition of the Prophet Muhammad (peace be upon him): "whoever I judge in his favour regarding his brother's right, let him not take it, for I am only giving him a piece of the Fire."[37] Accordingly, a non-Muslim court's decision is only acceptable if based on *sharʿī* admissible testimony and when no exclusive Islamic judicial process is required.

Adopting a different approach, some of the scholars argue that Islamic legal tradition further divides judicial matters into four categories:

1. Cases involving God's rights (e.g., *ḥudūd*),
2. Cases relating to individual rights (e.g., debt disputes),

3. Cases of mixed-rights where God's right dominates (e.g., theft), and
4. Cases of mixed-rights where human rights dominate (e.g., *qiṣāṣ* in murder).

In categories two and four, where the rights of individuals are central, a non-Muslim judge may be treated as a representative (*wakīl*) of the disputing parties, who resolve the dispute as arbitrator (*tahkīm*), especially in matters where Islamic judicial oversight is not indispensable. An argument has been drawn from a statement of Ibn ʿĀbidīn, wherein he cites al-Ḥamawī regarding the condition that the ruler's authorization is required for the execution of *ḥudūd* punishments, but not for *qiṣāṣ*. Ibn ʿĀbidīn states:

> "Testimony may be heard without the presence of a formal claim (*daʿwā*) in cases involving purely divine rights (*ḥadd khāliṣ*), endowments (*waqf*), the manumission of a slave woman (*ʿitq al-ʾamah*) and her original freedom, and in matters purely related to Allah, such as fasting in Ramadan. This also applies to issues of divorce, oaths of abstinence (*īlāʾ*), and *ẓihār*.
>
> (His statement: "except for the *ḥadd* of *qadhf*") – And likewise the *ḥadd* of theft, because it was previously established that in such cases, the request of the stolen-from party is a condition for the punishment to be carried out. So, if someone confesses to stealing the property of an absent person, implementation is delayed until that person is present and makes a legal claim."[38]

Argument is drawn from this passage that there are some matters that do not require judicial authorization and they may be undertaken if sufficient causes exist. Finally, some scholars have extended this leniency to financial disputes and civil matters where the rulings of non-Muslim courts do not conflict with Islamic principles. For instance, Mālikī jurist al-Khurshī permits the acceptance of non-Muslim court judgments in cases like the identification of product defects, even if the evidence comes from non-Muslim or non-*ʿadl* (non-upstanding) witnesses.[39]

To sum, Muslims are under obligation to abide by Islamic law, regardless if where they may be. However, if they reside under a non-Muslim authority, a few points are addressed by Muslim jurists. First the legitimacy of their residence in non-Muslim authority, difference of opinions in classic law is found. However, modern juristic discourse generally permit such residence with some conditions. Second, Islamic law strictly requires them to observe the terms of their treaty with non-Muslim authority, excluding, however, those terms which are inconsistent with Islamic law. For adherence to the non-Muslims judgments, particularly on their matters, Islamic law categorises the matters and rights involved: those which do not require judicial decree, non0Muslim judgements may be accepted, as arbitrators, and those matters where judicial decree is mandatory for implementing, non-Muslim judgements cannot be accepted. Since this section aimed to explore a broader context, this discussion will be complemented by Chapter Five on divorce where the intervention of secular courts in Muslim marriages will be discussed in details.

4. Non-Muslim Minority under the Muslim Authority

The above-mentioned Qurʾānic verses do not explicitly address whether Muslim authority is under an obligation to adjudicate upon matters about its non-Muslim minority or it is an option, that is, the Muslim authority has the discretionary power either to adjudicate or not upon the cases brought to it by the non-Muslim minority. Different opinions have been recorded in classic Islamic law.

4.1. The Ḥanafī School on Judicial Authority over Non-Muslims

Hanafi jurisprudence classifies the cases into various categories, and then it applies

different rules to each category. The seminal books of the School record differences of opinion among the School founders regarding the governing rules.

First, in matters concerning *marriage*, Abū Ḥanīfah, the eponym founder of the School, maintains that the Islamic court will have jurisdiction only if both parties submit their free consent to an Islamic judge for a judgment to be issued. If either party is not willing to adjudication of their matters adjudicated by an Islamic court, the court will lack jurisdiction. Abu Hanifhah's prominent disciples—Abū Yūsuf, Muḥammad ibn al-Ḥasan al-Shaybānī, and Zufar—do not require mutual consent. According to their view, it suffices for one of the parties to bring the case before the judge; in such instances, the Islamic court will have jurisdiction, and the judge is obliged to rule on the matter.[40]

The disciples offer rationale for their view by arguing that through initiating legal proceedings before a Muslim judge, the claimant demonstrates consent to the jurisdiction of Islamic law, thereby necessitating the enforcement of its ruling upon them. This obligation inevitably extends to the defendant as well, similar to cases in which one of the spouses converts to Islam—an act that necessitates legal intervention regardless of the other party's stance.[41] Abū Ḥanīfah, however, offers a different line of reasoning. He argues that non-Muslims are recognized in Islamic law as being bound by their own marital systems (*muqarrarūn ʿalā ankiḥihim*), and therefore must not be interfered with in such matters. If only one of the two disputants refers the case to an Islamic court, the consent and belief of the other party, who does not recognize Islamic law, should be respected. This non-consent preserves the marital bond and prevents interference with the non-Muslim's religiously sanctioned status. The mere submission of one party does not nullify the legal entitlement of the other to preserve the marriage as recognized in their tradition.[42]

Second, in disputes other than marriage, the Ḥanafī School maintains that non-Muslims are subject to the general judicial authority of the Islamic state, just as Muslims are. It is not a condition that both disputing parties voluntarily submit their case to a Muslim judge. Rather, it is sufficient for one of the parties to bring the matter before the judge, who is then obligated to adjudicate the dispute brought before him.[43] The juristic basis for this obligation lies in the understanding that the verse: "Judge, then, in the affairs of men in accordance with the Law that Allah has revealed,"[44] has abrogated the earlier directive that had stated: "If they come to you, you may either judge between them or turn away from them."[45] Thus making the application of Islamic rulings upon non-Muslims obligatory when a case is brought to the judge.[46]

Third, as for the matters in which non-Muslims are not granted legal recognition or, in other words, their law is not affirmed, in Hanafi law without any disagreement, non-Muslims are treated in the same as Muslims. For the purpose of jurisdiction to be exercised by Islamic court, the Hanafi Schools does not require that *both* disputing parties submit the case to the judge or agree to be governed by Islamic law. Instead, it suffices that one of them initiates the claim in issues and in which non-Muslims are not granted legal recognition. Further, in cases concerning the violation of the rights of God—such as the implementation of *ḥudūd* (prescribed punishments)—which do not require formal litigation, the Islamic court can exercise jurisdiction over non-Muslims in such matters. An exception is made for the *ḥadd* of drinking (alcohol), (if it's permitted in their religion), unless it leads to public harm.[47] The determining factor in compelling the defendant to appear before the court is the valid request of the claimant, provided the claim is legally sound and, if established, imposes a binding obligation upon the defendant.

4.2. The Shāfiʿī School on Judicial Authority over Non-Muslims

In following the jurisprudence of the Shāfiʿī School is discussed regarding judicial authority of Muslims over non-Muslims. The Shāfiʿī School classifies the cases involving non-Muslim, and a Muslim judge is obliged/permitted to adjudicate upon it, into a few categories. The discussion is structured around three scenarios and draws on evidence and authoritative juristic sources within the Shāfiʿī legal tradition.

First, when one party to the dispute is a Muslim, if one of the litigating parties is a Muslim, the judge is obligated to adjudicate the case. This is irrespective of whether the other party is a *dhimmī* (non-Muslim subject under Islamic protection) or a *mustaʾmin* (a non-Muslim granted temporary security), and it is also regardless of whether the subject matter of the case pertains to marriage or otherwise, and whether both parties have or only one has brought the matter before the court. This applies whether the Muslim is the claimant or the defendant, because the judge must prevent either party from oppressing the other.[48]

Second, where both parties are *dhimmīs*. If both disputants are *dhimmīs* and adhere to the same religion, the prevailing view within the Shāfiʿī School is that adjudication is obligatory. The School relies on the Qurʾānic verse: "And judge between them by what God has revealed."[49] Furthermore, it is included in the obligations of the Muslim judge to prevent injustice among the *ahl al-dhimmah* (protected non-Muslims). However, if the two litigating parties belong to different religious communities, then adjudication between them becomes definitively obligatory.[50] These rulings apply regardless of whether the case concerns marriage or other matters, and whether both parties bring the case voluntarily or only one does.[51]

Third, when both parties are *Mustaʾmins* (Temporary Non-Muslim Residents of an Islamic state). If both disputants are *mustaʾmins*, then the court of the Islamic state may not exercise its jurisdiction over their matter unless they submit it and accept the authority of the Islamic state. If they refer the matter to a Muslim judge with their mutual consent, the judge has the discretion to decide: either to adjudicate between them or to refrain from it. The argument is based on the Qurʾānic verse: *"If they come to you, judge between them or turn away from them."*[52] Shāfiʿīs argue that this verse refers specifically to *muʿāhadūn* (non-Muslims bound to Muslims and Islamic law by a fixed-term treaty). They, therefore, do not fall within the scope of the verse stating *"And judge between them by what God has revealed,"*[53] which indicates a mandatory ruling, but applies specifically to *ahl al-dhimmah*.[54]

4.3. The View of the Mālikī and Ḥanbalī Schools

According to Mālikī and Ḥanbalī Schools, the adjudication of disputes between two *mustaʾmins* (non-Muslims under temporary protection within Islamic state) before a Muslim judge requires the free consent of both parties: the claimant and the defendant. However, the Ḥanbalī School specifically adds that it is sufficient for either one of the parties to present the claim to the judge and request a ruling against their *dhimmī* opponent, if the litigants are *dhimmīs*. Mālikī School, on the other hand, stipulates that the consent of both *dhimmī* parties is must for their case to be heard before a Muslim judge. If this condition of mutual consent is met, then the Muslim judge is granted discretion: he may choose either to exercise or decline the adjudication. They ground their argument on the Qurʾānic verse: *"If they come to you, judge between them or turn away from them."*[55] This verse grants the Muslim judge the option in such cases. Notably, suppose one of the two parties is a Muslim. In that case, the judge is under an obligation to exercise the jurisdiction and to rule between them, either to secure justice for the Muslim or to prevent him from committing injustice with a *dhimmi*—should he

be the aggressor. This applies irrespective of the subject matter of the dispute, whether it pertains to *marriage* or any other issue.[56]

4.4. The Ẓāhirī School

The Ẓāhirī jurists maintained that the Muslim judge must adjudicate disputes between non-Muslims, regardless of whether either party or both of them express their consent to submit the case to the Muslim court. Their reasoning is based on the Qurʾānic verse: "*And judge between them by what Allah has revealed,"*[57] which, they argue, cancels or abrogates the earlier verse stating: *"If they come to you, judge between them or turn away from them."*[58] The Ẓāhirī opinion apparently applies equally to both *dhimmī*s and *mustaʾmin*s, without distinction between the two.[59]

4.5. Applicability of Non-Muslim Personal Law in Muslim Jurisdiction

In the previous section, Islamic law and the opinions of Sunni legal Schools were examined regarding whether an Islamic authority can exercise judicial authority over its non-Muslims inhabitants or not. Different views were there, according to some of the views Islamic State can exercise juridical authority over certain matters, excluding some other matters from the domain of judicial authority of an Islamic state; some views suggested discretion for the Islamic court; whereas some other views oblige the Islamic court to exercise jurisdiction if a case involves a Muslim party. This debate gives rise to a question that regards to the applicable law: if the Islamic court has to exercise, or is willing to exercise its discretionary, judicial power, which is to be applicable. A number of opinions have been recorded in the manuals of Islamic law. In the following, relevant Qurʾānic verses are reproduced, followed by the juristic discussion. With regards to the obligation of judging by divine revelation, the Qurʾān states "Those who do not judge by what Allah has revealed *are indeed the unbelievers*."[60] Reaffirming the same obligation in another verse, the Qurʾān states "Those who do not judge by what Allah has revealed *are indeed the wrong-doers.*"[61] The Qurʾān repeats the same obligation as: "Those who do not judge by what Allah has revealed *are the transgressors.*"[62]

The Qurʾān describes its position as guardian over the previous revelations and its foundational status in terms of legal judgements as:

> "Then We revealed the Book to you (O Muhammad!) with Truth, confirming whatever of the Book was revealed before,78 and protecting and guarding over it.79 Judge, then, in the affairs of men in accordance with the Law that Allah has revealed, and do not follow their desires in disregard of the Truth which has come to you. For each of you We have appointed a Law and a way of life."[63]

The Qurʾān reaffirms the imperative of judging by divine revelation despite social pressure as:

> "Therefore, judge between them by what Allah has revealed and do not follow their desires, and beware lest they tempt you away from anything of what Allah has revealed to you. And if they turn away, then know well that Allah has indeed decided to afflict them for some of their sins. For surely many of them are transgressors."[64]

The following verse must be reflected on in the sense that it rejects all other laws. The Qurʾān states:

> "(If they turn away from the Law of Allah), do they desire judgement according to the Law of Ignorance? But for those who have certainty of belief, whose judgement can be better than Allah's?"[65]

In his exegetic work on the Qurʾān, Mawdūdī writes:

> "The word jahiliyah (literally 'ignorance') is used as an antonym to Islam. Islam is the way of *ʿilm* (true knowledge), since it is God Himself Who has shown this way, and His knowledge embraces everything… The appellation '*jāhiliyyah'* will apply to every aspect of life which is developed in disregard of the knowledge made available by God, based only on man's partial knowledge blended with imagination, superstitious fancies, conjectures, and desires."[66]

The plain reading of the above verses makes evident that the administration of justice through the application of Islamic law is indispensable. However, in light of some other textual evidence, it is suggested to accommodate, to some extent, other non-Muslims along with their religious practices in an Islamic state. Explaining that limited accommodation is a matter of juristic enterprise, which the jurists have deliberated and come up with slightly conflicting conclusions.

For Ḥanafīs, with the exception of marriage, denial of dowry, and the ownership and use of alcohol and pork, non-Muslims, whether *dhimmīs* or *mustaʾmīn,* are considered like Muslims: all their contracts and dealings are treated as Muslims' are treated and Islamic law rules apply to them as they apply to Muslims.[67] Concerning their marriage, the application of their religious law is generally limited to the extent of being in line with Islamic law; however, some differences regarding some rules have been recorded in the classic law books of the School.[68] Further details will be examined in the third chapter of this work in the discussion on which Islamic law recognises non-Muslim marriages. Some of the aspects will also be reflected upon in Chapter Four of this work during the discussion that the Islamic state is obliged to separate non-Muslim couples if their marriage does not align with Islamic laws.

In Mālikī School, since the Islamic court has the discretionary power to adjudicate or avoid, the School maintains that if the Islamic court chooses to adjudicate between non-Muslims, it must apply Islamic Law, as Islamic law applies to the cases concerning Muslims.[69] Their marriages are also recognized as long as, at the time of litigation, the wife remains lawfully permissible for the husband according to Islamic law.[70]

According to the Ḥanbalī and Shāfiʿī Schools, Islamic law governs cases involving non-Muslims in the same manner as it governs cases involving Muslims.[71] An exception, however, is made in cases involving non-Muslims' transactions with regard to wine and pork. If such a transaction is completed by taking a position on the subject matter of the contract before the matter is brought to the court, the contract will be considered valid, otherwise, if the position of the subject matter of the contract has not been taken and the matter is brought to the court, the court will invalidate the transaction. As for marriage, non-Muslim marriages are recognized by the Islamic courts after litigation, even if the contract does not meet all the conditions required for Muslims, so long as the wife remains legally permissible to the husband at the time of adjudication.[72]

The Ẓāhirīs argue that Islamic court must adjudicate the cases of non-Muslims according to Islamic law, as in the same manner of Muslims. It is not permitted to apply any law other than Islamic law, nor is it allowed to refer them to the rulings of their own religions in any case. Their argument is based on the Qurʾānic verse: *"And judge between them by what Allah has revealed,"*[73]*which does not give any option for the application of any law other than Islamic law.*[74] However, this School makes an exception in respect of the issue of divorce, which, they argue, is not lawfully valid in their case, as the Sharīʿah does not explicitly validate such a divorce. In all other

matters, Islamic must be applied to their cases.[75]

5. Concluding Remarks

This study has explored the complex interplay between Islamic law and multicultural legal environments, focusing on the role of adjudication in contexts where Muslims and non-Muslims coexist under each other's legal authority. The analysis demonstrates that Islamic law provides a detailed framework for addressing interfaith disputes, balancing the obligations of Muslims to uphold their faith with the practical necessity of living under non-Muslim jurisdictions. Classical juristic opinions reveal both flexibility and caution in permitting Muslims to reside in non-Muslim territories, while emphasizing adherence to covenants and treaties, provided such agreements do not contravene the core principles of Islamic law.

The examination of Sunni legal schools—Hanafi, Shāfiʿī, Mālikī, Ḥanbalī, and Ẓāhirī—highlights both convergences and divergences regarding the judicial authority over non-Muslim minorities. While some schools grant discretion to the Muslim judge, others prescribe obligatory adjudication, particularly when a Muslim party is involved. The discussion further clarifies how Islamic law categorizes matters, distinguishing between those requiring judicial intervention and those for which non-Muslim courts' decisions may be acknowledged. This distinction enables the coexistence of Islamic legal principles alongside secular legal frameworks in contemporary pluralistic societies.

Overall, the study underscores the enduring relevance of Islamic jurisprudence in navigating legal pluralism. By adhering to core Islamic principles while accommodating contextual realities, Muslim communities can maintain their religious identity, safeguard justice, and contribute to harmonious relations in diverse legal and social settings. The findings also provide a foundation for further development of Islamic Private International Law, offering guidance for adjudication in modern multicultural and multi-jurisdictional contexts.

References

[1] *Al-Sarakhsī, al-Mabsūṭ,* (Beirut: Dār al-Maʿrifah, 1993), 16: 59; ʿAbd al-Raḥmān ibn Muḥammad ibn Sulaymān Shaykhīzādah, *Majmaʿ al-Anhur fī Sharḥ Multaqā al-Abḥur* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d.), 2: 150-151.

[2] Ibid.

[3] Qurʾān 38: 26.

[4] Qurʾān 5: 48.

[5] See for further details on the judiciary in early era of Islam: Muḥammad Raʾfat ʿUthmān, *al-Niẓām al-Qaḍāʾī fī al-Fiqh al-Islāmī*, (Beirut: Dār al-Bayān, 2nd ed., 1994).

[6] See for the compilation of the judgements rendered by the Prophet Muhammad (peace be upon him): Muḥammad ibn al-Faraj Ibn al-Ṭallāʿ al-Qurṭubī al-Mālikī, *Aqḍiyat Rasūl Allāh* (Beirut: Dār al-Kitāb al-ʿArabī, 2005); and visit this link for some other compilations as well, (last accessed June 25, 2025).

[7] See for the compilation of the judgements rendered by Four Righteous Caliphs: Ar-Kī-Nūr Muḥammad Ibn Ar-Kī-Muḥyī al-Dīn, *Aqḍiyat al-Khulafāʾ al-Rāshidīn: Jamʿan wa Dirāsah* (Beirut: Dar al-Salaam, 2003).

[8] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ,* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1406 AH/1986CE)*, 7: 2;* ʿAbd Allāh ibn Aḥmad Ibn Qudāmah, *al-Mughnī* (Cairo: Maktabat al-Qāhirah, n.d.), 10: 32; *and* Abū Isḥāq Ibrāhīm ibn ʿAlī ibn Yūsuf al-Shīrāzī, *al-Muhadhdhab fī Fiqh al-Imām al-Shāfiʿī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.), 3: 376.

[9] Qurʾān 5: 42.

[10] Qurʾān 5: 43.

[11] Qurʾān 5: 48.

[12] Qurʾān 60: 8.

[13] This is what Abū Yūsuf explains as "A Muslim is obligated to uphold the rulings of Islam, regardless of where he resides." See: *Al-Sarakhsī, al-Mabsūṭ,* 10: 95. Approximate to this, one may find in premodern

juristic debates what the jurists refer to wit the term of *ethics,* for example they may argue permissibility of an act for a judiciary, bit the non-permissibility of the same act in terms of ethics (*diyānatan*). This bifurcation is not limited to a specific chapter of Islamic law, instead, it is found throughout all chapters of Islamic law.

[14] Mawdūdī has come up with this exposition in adequate details in his critique over Mawlānā Manāẓir Aḥsan Gailānī, Mawdūdī's contemporary who argued for permissibility of interest-based transaction of Indian Muslims, considering India as the abode of war (*dar al-Harb*) where according to classic Hanafi law such transactions were valid. Mawdūdī undertook profound critique over his views, arguing the after take over by British Government India had maximum become the abode of disbelief (*dar al-Kufr*) which is different than the abode of war (*dar al-harb*). He further argues that the first branch of Islamic law, Doctrinal or faith-based rules, is applicable to all Muslims regardless of where they live. Arguments of both leading Scholars were published as Third Annexure in Mawdūdī's Book: *Masʾalah-e Sūd* Lahore: Islamic Publications, n.d.).

[15] See for historical, juristic and later legal development of these discussions: 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 1.2 (1994): 141–187. This is a tremendous work especially for tracing the origins of what is known in modern context as *Muslim minority jurisprudence* in classic juristic works.

[16] Abū ʿAbd Allāh al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Siyar*, English trans., Majid Khadduri (Maryland: The Johns Hopkins Press, 1966), p. 187; and Abu Yusuf Ya'qub ibn Ibrahim, *al-Radd ʿalā Siyar al-Awzāʿī*, (Beirut: Dār al-Kutub al-ʿIlmiyya, ed. Abū al-Wafāʾ al-Afghānī, n.d.), p. 124.

[17] See: *Al-Sarakhsī, al-Mabsūṭ,* 10: 6-7, 74, 92

[18] Al-Qurṭubī, *al-Jāmiʿ li-Aḥkām al-Qurʾān*, 5: 346–349, [commenting on Qurʾānic verse 4: 100'].

[19] Muḥammad ibn Aḥmad Ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, edr. Muḥammad Ḥijjī, 1st edn. (Beirut: Dār al-Gharb al-Islāmī, 1988), 2: 151-154; and Ibid., *Al-Bayān wa al-Taḥṣīl wa al-Sharḥ wa al-Tawjīh wa al-Taʿlīl li-Masāʾil al-Mustakhrajah*, Edr., D. Muḥammad Ḥajjī and others, (Beirut: Dār al-Gharb al-Islāmī, 1408 H / 1988 CE), 4: 170-171.

[20] Abū Bakr Muḥammad ibn ʿAbd Allāh Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, rev. and ann. Muḥammad ʿAbd al-Qādir ʿAṭā, 3rd ed. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 1: 611-612, [commenting on Qurʾānic verse, 4: 101].

[21] Yaḥyā ibn Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, with the completion of Taqī al-Dīn al-Subkī and Muḥammad Bakhīt al-Muṭīʿī (Beirut: Dār al-Fikr, n.d.), 19: 265. And see also: Muḥammad ibn Aḥmad Shams al-Dīn al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāẓ al-Minhāj*, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1994), 6: 54-55; and Aḥmad al-Qalyūbī and Aḥmad al-Barlisī ʿUmayrah, *Ḥāshiyatā Qalyūbī wa ʿUmayrah*, (Beirut: Dār al-Fikr, 1995), 4: 227.

[22] Abū al-Ḥasan ʿAlī ibn Muḥammad al-Māwardī, *al-Ḥāwī al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfiʿī,* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 14: 102.

[23] Yūsuf Al-Qaradāwī, *Fiqh al-Aqqalliyyāt al-Muslimah* (Cairo: Dar al-Shururq, 2001); and ECFR Fatwa Archive. Full text of the Fatwa can be read under: Fatwa (1)" regarding permanent residence in non-Muslim lands. (Last accessed: June 28, 2025).

[24] *Mustafā al-Zarqāʾ, al-Fatāwā*, (Damascus: Dar al-Qalam, 2002), p. 388.

[25] Ibn Bāz, different rulings issued by Ibn Baz on this subject can be accessed on this link: https://binbaz.org.sa/categories/objective/395 (last accessed June28, 2025).

[26] Mohammad Hashim Kamali, "Citizenship: An Islamic Perspective," *Journal of Islamic Law and Culture* Vol. 11, No. 2, May 2009, pp. 121–153, at: 127, and 152.

[27] Sarah Albrecht, *Dār al-Islām Revisited*, p. 309.

[28] Fatwa No. 3788, https://www.dar-alifta.org

[29] See *Majallat al-Azhar*, Vol. 77, (2005).

[30] See Fatawa Dar al-Uloom Dwoband: Response to Question No. 224475 (last accessed: June 28, 2025); Jam'ah Uloom Islami Allama Banoori Town, Karachi: Fatwa Number: 144201200956, and 144004200282 (last accessed: June 28, 2025); Jamiah Bainoriah, Karachi: Fatwa Number. 34005 (last accessed: June 28, 2025).

[31] Muḥammad b. al-Ḥasan al-Shaybānī and Muḥammad b. Aḥmad al-Sarakhsī. *Sharḥ Kitāb al-Siyar al-Kabīr*. (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1997), 4: 183; and see also: *Al-Sarakhsī, al-Mabsūṭ,* 7: 237. Some elsewhere, Sarakhsī reaffirms the same in even more powerful manner stating "the [Muslim'] *musta'min* in the Abode of War (Dār al-Ḥarb) is not permitted to conceal defects in what he sells to them — whether such concealment would be permissible in *Dār al-Islām* or not." See: Ibid., *Sharḥ al-Siyar al-Kabīr,* 4: 233.

[32] See: Shaybānī and Sarakhsī, *Sharḥ al-Siyar al-Kabīr,* 2: 91.

[33] Sarakhsī argues that "those who enter a land under a peace treaty (*mustaʾminīn*) do not become part of the residents of the land they have entered [under *amān, rather retain the status of their original homeland*]." Shaybānī and Sarakhsī, *Sharḥ al-Siyar al-Kabīr,* 5: 11.

[34] See for further analysis: Khaled Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani's Siyar* (Cheltenham: Edward Elgar Publishing, 2018), p. 238.

[35] Aḥmad ibn Muḥammad al-Ṭaḥāwī, *Sharḥ Maʿānī al-Āthār*, (Beirut: ʿĀlam al-Kutub, 1st ed., 1994), 4: 90; and Abwābu al-Aḥkām: Bābu mā dhukira ʿan Rasūli Llāhi fī al-ṣulḥi bayna al-nās, ḥadīth no. 1353

[36] The following discussion is mainly based on profound work undertaken by Islamic Fiqh Academy, India, titled as *Ghair Muslim Mamālik Mein ʿAdālaton Kī Ṭalāq* (Delhi: IFA Publications, 2011). This work is based on a conference where prominent scholars have presented their research on a few thematic questions. One of such questions was relating to enforcement of secular laws on Muslims in their personal matters, mainly divorce. Almost all of the scholars have addressed this question and presented their views which are summarized very elegantly by Qazi Muhammad Kamil Qasimi from page 20 to 67. The summary of the views may be found in pp. 52-66.

[37] Mālik ibn Anas ibn Mālik ibn ʿĀmir al-Aṣbaḥī al-Madanī, *al-Muwaṭṭaʾ*, ed. Bashshār ʿAwwād Maʿrūf and Maḥmūd Khalīl (Beirut: Muʾassasat al-Risālah, 1412 AH), 2: 459, Hadith No. 2877.

[38] Muḥammad Amīn Ibn ʿUmar Ibn ʿĀbidīn Al-Shāmī, *Ḥāshiyat Ibn ʿĀbidīn: Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, Edr., Ḥusām al-Dīn ibn Muḥammad Ṣāliḥ Farfūr. (Damascus: Maktab Dār al-Thaqāfah wa-al-Turāth li-al-Taḥqīq, 2000)*,* 23: 97-98.

[39] Al-Khurshī argues that when two parties to a sale dispute over a defect in the item sold, testimony from non-upright individuals (*ghayr al-ʿudūl*) may be admitted to identify the defect, even if they are polytheists, so long as reliable, trustworthy individuals (*ʿudūl*) are not available. This is because such matters are established through report, provided that the report is free from the suspicion of falsehood. Accordingly, the testimony of a single individual from among them, or from among the Muslims, is deemed sufficient. (Emphasize added.) Muḥammad ibn ʿAbd Allāh al-Khurshī al-Mālikī, *Sharḥ Mukhtaṣar Khalīl*, (Beirut: Dār al-Fikr li-al-Ṭibāʿah, n.d.), 5: 148-149.

[40] Abū Bakr Aḥmad ibn ʿAlī al-Rāzī Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, ed. Muḥammad Ṣādiq al-Qamḥāwī (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1985), 4: 89-90. [Commenting on: Qurʾānic verse 5: 49]; and ʿAbd al-ʿAzīz ibn Aḥmad ibn Muḥammad al-Bukhārī, *Kashf al-Asrār Sharḥ Uṣūl al-Bazdawī* (Cairo: Dār al-Kitāb al-Islāmī, n.d.), 4: 331-332. (In the beginning of the Chapter on the Impediments to Legal Capacity).

[41] In cases of non-Muslim marriage, if the wife embraces Islam the court will have the jurisdiction and it will thus offer to the husband if he accepts Islam, their marriage will be retained, and otherwise separation will take place. There are some other cases as well attracting different cases. A detailed analysis will be undertaken under chapter four.

[42] As for the case of marriage, where by the accepting Islam and hence submission of one party to the Islamic court, the court will have jurisdiction, their counterargument is that such scenarios Islamic law becomes applicable to the Muslim party. And the belief and legal status of the non-Muslim spouse cannot override the superiority of Islamic law, as encapsulated in the legal maxim: *"Islam prevails and is not prevailed over."* Similarly, if both parties voluntarily submit their dispute to an Islamic judge, a judgment must be rendered, as their consent renders the judge's role analogous to that of an arbitrator (*muḥakkim*). See: Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ, 2: 312; and* Muḥammad ibn ʿAbd al-Wāḥid al-Sīwāsī, known as Ibn al-Humām, *Fatḥ al-Qadīr* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 3: 391-392.

[43] Muḥammad Bakhīt al-Muṭīʿī. *Irshād al-ʾummah ilā aḥkām al-ḥukm bayna ahl al-dhimmah*. (Egypt: al-Maṭbaʿah al-Adabiyyah, 1317 AH), pp. 12-14.

[44] Qurʾān 5: 48; and Abū Jaʿfar Aḥmad ibn Muḥammad ibn Ismāʿīl ibn Yūnus al-Murādī al-Naḥḥās, *al-Nāsikh wa al-Mansūkh*, ed. Muḥammad ʿAbd al-Salām Muḥammad (Kuwait: Maktabat al-Falāḥ, 1988), p. 398.

[45] Qurʾān 5: 42.

[46] Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 4: 97. [Commenting on: Qurʾānic verse 5: 48].

[47] Al-Jaṣṣāṣ's note is important. He argues that "Our scholars have stated that the *ahl al-dhimmah* are subject to the rulings of Islam in matters such as sales, inheritance, and other contractual agreements, just like Muslims, except in the case of transactions involving wine and pork. Such transactions are permitted between them, because they are recognized as possessing legal ownership (*māl*) of these items. If it were not permissible for them to transact, dispose of, and benefit from such items, then those items would not qualify as their property. Consequently, there would be no obligation to compensate a *dhimmī* if such property were destroyed. Yet we know of no disagreement among the jurists that anyone who consumes or destroys a *dhimmī*'s wine is required to pay its value." See: Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 4: 89. [Commenting on: Qurʾānic verse 5: 49].

[48] Al-Shirbīnī, *Mughnī al-Muḥtāj*, 4: 329; and Muḥyī al-Dīn al-Nawawī, *Rawḍat al-Ṭālibīn wa ʿUmdat al-Muftīn*, ed. ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿwaḍ (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.), 5: 491; and ʿAbd al-Karīm ibn Muḥammad *al-ʿAzīz Sharḥ al-Wajīz al-Maʿrūf bi-l-Sharḥ al-Kabīr*, also known as *al-Sharḥ al-Kabīr,* ed. ʿAlī Muḥammad ʿAwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1997), 8: 104.

[49] Qurʾān 5: 49.

[50] Al-Shirbīnī, *Mughnī al-Muḥtāj*, 4: 329; and Al-Nawawī, *Rawḍat al-Ṭālibīn*, 3: 167.

[51] Al-Rāfiʿī, *al-ʿAzīz Sharḥ al-Wajīz/al-Sharḥ al-Kabīr*, 8: 104.

[52] Qurʾān 5: 42.

[53] Qurʾān 5: 49.
[54] Muḥammad ibn Idrīs al-Shāfiʿī, *Kitāb al-Umm* (Beirut: Dār al-Maʿrifah, 1990), 4: 222; Aḥmad ibn al-Ḥusayn Abū Bakr al-Bayhaqī, *Aḥkām al-Qurʾān li al-Shāfiʿī*, comp. al-Bayhaqī, (Cairo: Maktabat al-Khānjī, 1994), 2: 78; and Ismāʿīl ibn Yaḥyā ibn Ismāʿīl al-Muzanī, *Mukhtaṣar al-Muzanī*, printed as an appendix to al-Shāfiʿī's *al-Umm*, 8: 388.
[55] Qurʾān 5: 42.
[56] See: Mālik ibn Anas, *Al-Mudawwanah al-Kubrā*, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1994), 4: 190-191; and Al-Qurṭubī, *Al-Jāmiʿ li-Aḥkām al-Qurʾān*, 6: 184-185 [Commenting on Qurʾānic verse: 5: 42]. And See for the Hanbali School: Manṣūr ibn Yūnus al-Buhūtī, *Daqāʾiq Ūlī al-Nuhā li-Sharḥ al-Muntahā* known as *Sharḥ Muntahā al-Irādāt* (Beirut: ʿĀlam al-Kutub, 1993), 1: 668-669; Manṣūr ibn Yūnus al-Buhūtī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.), 3: 140; and Ibn Qudāmah, *al-Mughnī*, 12: 382 and 13: 250.
[57] Qurʾān 5: 49.
[58] Qurʾān 5: 42.
[59] Ibn Ḥazm, one of the authorities over Ẓāhirī School, argues: "Judgment is to be rendered by Islamic court regarding matters brought by Jews, Christians, and Magians according to the law of the Muslims in all matters, whether they have consented for adjudication by Islamic court or not, and whether they come to us or do not come to us. It is not permissible to refer them back to the rulings of their own religion, nor to their own judges, in any respect whatsoever." See: ʿAlī ibn Aḥmad Ibn Ḥazm, *al-Muḥallā bi-l-Āthār* (Beirut: Dār al-Fikr, n.d.), 8: 520.
[60] Qurʾān 5: 44. (Emphasize added.)
[61] Qurʾān 5: 45. (Emphasize added.)
[62] Qurʾān 5: 47. (Emphasize added.)
[63] Qurʾān 5: 48.
[64] Qurʾān 5: 49.
[65] Qurʾān 5: 50.
[66] Mawlana Abu al-'A'la al-Mawdūdī, *Tafhim al-Qurʾān,* English tran., Zafar Ishaq Ansari, *Towards Understaing Qurʾān,* access at: https://www.islamicstudies.info/tafheem.php?sura=5&verse=44&to=50 (last visited June 27, 2025.)
[67] Muḥammad Bakhīt al-Muṭīʿī, *Irshād al-ʾummah*, p. 21; and See also: ʿAbd al-Karīm Zaydān, *Aḥkām al-Dhimmiyyīn wa'l-Mustaʾminīn fī Dār al-Islām* (Beirut: Muʾassasat al-Risālah, 1982), pp. 590, 356, and 552.
[68] See: al-Muṭīʿī, *Irshād al-ʾummah*, p. 21. There are different juristic opinions the analysis of which is out of the domain of this artile.
[69] See: Mālik ibn Anas, *Al-Mudawwanah*, 4: 190-191; and Al-Qurṭubī, *Al-Jāmiʿ li-Aḥkām al-Qurʾān*, 6: 184-185 [Commenting on Qurʾānic verse: 5: 42].
[70] Al-Khurshī, *Sharḥ Mukhtaṣar Khalīl*, 3: 230; and Abū al-Walīd Muḥammad ibn Aḥmad ibn Rushd al-Qurṭubī, *al-Bayān wa'l-Taḥṣīl wa'l-Sharḥ wa'l-Tawjīh wa'l-Taʿlīl li-Masāʾil al-Mustakhraja*, (Beirut: Dār al-Gharb al-Islāmī, 1988), 4: 187.
[71] It is based on Qurʾānic verse frequently referred to: 5: 42; and another verse that states: "*And judge between them by what Allah has revealed, and do not follow their desires*" Qur'ān 5: 49.
[72] Al-Buhūtī, *Daqāʾiq Ūlī al-Nuhā li-Sharḥ al-Muntahā* known as *Sharḥ Muntahā al-Irādāt*, 1: 668-669; Ibid., *Kashshāf al-Qināʿ*, 3: 140; and Ibn Qudāmah, *al-Mughnī*, 12: 382 and 13: 250. See for the Shāfiʿī School: Al-Shāfiʿī, *al-Umm*, 4: 222; and al-Shīrāzī, *al-Muhadhdhab*, 3: 316-317.
[73] Qur'ān 5:49.
[74] See: Ibn Ḥazm, *al-Muḥallā*, 3: 292, and 8: 520. Ibn Ḥazm frequently refers to this argument in his book.
[75] See: Ibn Ḥazm, *al-Muḥallā*, 9: 461.