

The Confluence of Divine Law and Modern Legal Systems: Insights from Sharia on Achieving Balance Between Justice and Equity

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Abstract

Sharia law, derived from the Quran and Hadith, offers a comprehensive framework for addressing societal issues and promoting justice and equity. Despite Western misconceptions, Sharia law effectively meets the needs of contemporary society. Through a comparative analysis, this article explores Sharia's stance on key legal concepts such as polygamy, punishment for murder, the right to wear the hijab, and inheritance. It navigates the complex interaction between Sharia and Western legal systems, proposing policy reforms to harmonize distinct legal traditions while upholding justice and equity through Sharia law. Utilizing empirical evidence and multimodal decision-making methodologies, such as the Analytic Hierarchy Process (AHP), the article advocates for practical reforms that empower marginalized groups, foster societal cohesion, and address contemporary challenges. By debunking misconceptions and highlighting Sharia law's relevance and adaptability, this paper offers a deeper understanding of justice and equity based on Sharia to meet the demands of the contemporary world.

Keywords: Divine Law, Sharia Law, Justice and Equity, Secularism, Legal Reform.



Introduction

The Holy Quran is regarded as the sacred scripture of Islam by Muslims. The Quran was revealed gradually (The Quran, 25:32) over a period of approximately 23 years, beginning in 609 CE (Lumerlearning, n.d.), to the Prophet Muhammad (peace be upon him) by the Angel Gabriel in the cave known as Hira (Sahih al-Bukhari, 1:1:3), located on Mount Jabal al-Nour near Mecca (Lumerlearning, n.d.). It is revered by Muslims as an immense source of guidance, motivation, and wisdom. To fully appreciate the central themes and topics mentioned in the Quran, it is crucial to understand that, in Islamic law, the Quran is the most important source of law, known as al-Shari'ah (AIMS, n.d.).

This article utilizes a comparative research model to demonstrate that the scriptures in the Quran and the teachings of Sharia can serve not only as a source of guidance for Muslims in matters of religious command and salvation in the afterlife but also as a means to address various practical issues within society. These teachings are applicable to individuals of all faiths and can be relevant to both believers and non-believers when viewed from a contextual standpoint¹ (Rysiew et al., 2023).

The article further aims to debunk some common misconceptions about Sharia and present it as a practical framework for addressing social, economic, and other everyday issues. It highlights the innovative ideas within Sharia that, if implemented, could lead to the overall well-being of humanity. The ethico-legal writings of the Quran are highly relevant in the context of the modern world (Saeed et al., 2021).

1. Understanding Sharia Law

Sharia law provides divine guidance for all Muslims to follow the righteous path (Robinson, 2021). It establishes norms for mental, spiritual, and physical behavior and lifestyle that Muslims should adhere to (Robinson, 2021). The term "Sharia" has been described as "a path to a watering hole" (Steiner, 2001), emphasizing that the path to a watering hole is straight and direct, free from distractions, ensuring a swift and safe arrival at the water source. This metaphor implies that Sharia represents a divinely ordained path of conduct that guides Muslims in practicing their religious beliefs in this life and aims to attain divine favor in the hereafter (Britannica, n.d.). This conceptualization is reflected in the Quran, specifically in Surah al-Jathiah, where it is stated:

"And now, We have set you (O Muhammad) on a clear way of religion; so, follow it and do not follow the desires of those who are ignorant (of the truth)" (The Quran, 45:18).

1. Contextualism is a philosophical approach that emphasizes the importance of context in understanding and interpreting various aspects of human experience, such as language, knowledge, morality, and behavior.

This verse emphasizes the establishment of a comprehensive religious framework, which is Sharia law. Sharia originates from two primary sources: the Quran and the Hadith (Robinson, 2021). The Quran is considered the direct word of God, while the Hadith refers to the practices of Prophet Muhammad (peace be upon him) and the way he lived his life. Sharia is regarded as embodying immutable and quintessential values known only to God, while Islamic laws are generally understood to be interpretations of Sharia. Islamic law varies from country to country and evolves under the influence of local customs (Robinson, 2021).

In the traditional sense of Western jurisprudence, the law is a set of rules and regulations that have a binding effect on all citizens, meaning that the citizens of a state must follow the statutory law (Lumerlearning, n.d.). According to Salmond, formal legal sources are understood as the will of the state, manifested through judicial decrees. A perfect example of such material sources is custom, which arises from habits or practices followed by people in society (Wanto et al., 2019). However, custom becomes a legal source not merely because it acts as a norm, but when it is given validation through a court judgment (Wanto et al., 2019).

Sharia, on the other hand, is a religious law sourced from the Quran, which serves as the ultimate guide for all Muslims, along with the Sunnah (Robinson, 2021). Many critics argue that the Quran does not serve as a complete legal code and that Sharia is not practical in real-life situations. They further contend that, due to its limitations, it lacks broader applicability, even in Muslim-majority countries. Except in Saudi Arabia (Lavie, 2022), Islamic law is seldom enforced in secular states, even in nations with a Muslim majority such as Indonesia (Iqlas, 2020), Senegal (Iqlas, 2020), and Nigeria (Robinson, 2021). Several Islamic nations worldwide claim adherence to Sharia law primarily in matters pertaining to family and personal status. However, in all other areas, they employ a European-style legal framework that emerged during the era of colonization (An-Nai'm, n.b.). This study has chosen to focus on four prominent areas of Sharia law to facilitate the research process and refute the widespread misconceptions regarding Sharia. However, it is important to note that similar discussions could undoubtedly be held in numerous other contexts.

2. Crime and Sharia

Many people from secular states view the sanctions or punishments under Sharia law as ruthless, describing them as relics of barbarism (World Population Review, 2024). According to these critics, punishments such as amputation of the hand for theft (Souryal et al., 1996), stoning to death for apostasy (Kitab Al-Hudud), and a hundred lashes for adultery (Kitab Al-Hudud) are examples of extreme measures. Critics have vehemently argued that such strict punishments

are cruel and barbaric, finding them to infringe upon modern principles, including women's rights, democracy, LGBTQ rights, and the rules set out in the United Nations' Universal Declaration of Human Rights (World Population Review, 2024).

It is noted that countries applying Islamic laws, such as Saudi Arabia, experience fewer thefts due to their strict punishments for thieves (Gouda, 2016). As a result, the laws in Saudi Arabia are seen as more practical because they are not only theoretical but also applied in practice, leading to lower crime rates in that part of the world (Alfaraj, 1995). This practical application serves as a deterrent to potential offenders, contributing to the overall stability and security of society.

It is important to note that the severity of these substantive laws of Sharia is effectively balanced by strict procedural regulations. These regulations ensure that punishment is only administered to individuals who cannot object based on the principles of Western legal systems, from an objective perspective. While some may conclude that these punishments seem rigid and brutal, the burden of proof for such punishments remains very high (Summers, 2022). Strong and evident proof is required before imposing rigorous punishment on any individual. In criminal law, which involves questions of life and death, the burden of proof is very high, requiring proof beyond "any reasonable doubt," a principle also upheld by the right to a fair trial under Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). There are three categories of offenses within the ambit of Sharia law: Qisas (retaliation, such as an eye for an eye), Hudud (claims against God), and Ta'zir (claims by the state or society) (Hascall, 2011).

In the case of 'Qisas' crimes, which refer to the theory of retribution – such as an eye for an eye or a tooth for a tooth – this principle is applied in cases of very serious offenses like murder or intentional bodily harm. These offenses include (1) first-degree murder, (2) second-degree murder, (3) unintentional murder (manslaughter), (4) battery (physical intentional injury), and (5) semi-intentional/unintentional injury (PRI, 2015). The Quran, which ensures fairness, explicitly mentions that in the case of Qisas, if the victim or their family pardons the offender and instead seeks financial compensation, then the court will not impose retribution (Absar, 2020). The payment of compensation is termed 'diyya,' also referred to as blood money (Absar, 2020). It has been repeatedly demonstrated that there is nothing wrong with accepting this kind of compensation, as it is explicitly stated in the Quran that it can be taken as a matter of right (Britannica, n.b.). This concept is similar to the notion of damages awarded under both civil and criminal law in the Western context. In the Quran, Surah An-Nisa [4:92] states,

“...And whoever kills a believer by mistake – then the freeing of a believing slave and a compensation payment [diyah]

presented to his [i.e., the deceased's] family [is required], unless they give [up their right as] charity..."

And in Surah Al-Isra [17:33],

"...And whoever is killed (intentionally with hostility and oppression and not by mistake), We have given his heir the authority [to demand Qisas, Law of Equality in punishment or to forgive, or to take Diyya (blood money)]."

Many reputed Muslim scholars argue that Sharia law is inclined toward forgiveness and finding alternative solutions between the offender and the victim's next of kin (PRI, 2015). In cases where there are no next of kin, the state assumes the role of prosecutor. The very notion of seeking forgiveness and foregoing punishment aims to ensure a just and fair outcome without taking another life. According to the Quran, if someone has been spared the punishment of death, they deserve to repent for their sins and be given a second chance through the methods of Sharia (Word of Allah, n.d.). This demonstrates that Sharia law promotes the idea that God desires to uphold justice by offering individuals an opportunity to live through the concept of Qisas (PRI, 2015). Prophet Muhammad (peace be upon him) also emphasized that seeking forgiveness and repenting for sins is a wiser and more honorable option than receiving the death penalty as the highest form of punishment (PRI, 2015). The main reason behind this belief is the promotion of life. This is supported by a verse in the Quran, Surah Al-Baqarah [2:178], which states,

"And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from your Lord."

When comparing and contrasting the principles applied in Qisas under Sharia law with those of Western law, Sharia law appears to be not only more lenient but also contextual, contrary to what many people believe. Islam has consistently emphasized the importance of forgiveness, providing Islamic countries with a valuable opportunity to reform their criminal justice systems and base them on retribution rather than seeking revenge and perpetuating a never-ending cycle of violence (Muhammad, 2020). The killing of one human being can result in an endless loop of more bloodshed and killings, which benefits no one. Hence, Islamic law does not support this.

On the other hand, 'Hudud' crimes are those that are punished by mandatory penalties specified under Sharia. There are six offenses under this category, known as crimes against religion, namely: (1) Zina (fornication and adultery), (2) Riddah (apostasy), (3) Hirabah (starting a war against God), (4) Qadhif (making false accusations about someone), (5) Sariqa (theft), and (6) Shurb-al-khamr (alcohol consumption) (Kamali, 2019). Among these offenses, the first

three categories are punishable by death (Mansour, 1982). The application of Hudud punishments, particularly in cases of apostasy and adultery, has been criticized for infringing international law, especially the standard mentioned under Article 6(2) of the ICCPR (Ismail, 2005). It is important to remember that the principles underlying Hudud offenses date back to the time of Prophet Muhammad (peace be upon him) and his first four Khulafas (Britannica, n.b.). These principles are tried and tested methods with extremely strict and rigid requirements that must be perfectly met for punishment to be imposed. For instance, in the case of Qisas offenses, the burden of proof requires that the alleged defendant's guilt be established beyond any reasonable doubt. Additionally, in Hudud cases, the court will only impose punishment if the defendant confesses and there are at least two male witnesses present; in cases of adultery, four witnesses are strictly required (Wiechman et al., n.d.), and they must witness the act of intercourse (Kitab Al-Hudud). In the case of Zina, it is treated as a serious sin, with the punishment being flogging (Quran Commentary 24:6 to 24:10). This may initially seem extremely harsh and inhuman, but the evidential requirements to prove adultery remain very high (Islam Question & Answer, n.b.).

In the case of zina or adultery, to administer punishment, the first requirement that needs to be proven is that the person is a Muhsan. According to Sharia, this means that the person cannot be a slave, must have consummated a lawful marriage to a free partner, or has never committed an act of illicit intercourse (Muhsan, n.d.; PRI, 2015). There are typically two ways to prove whether a person is a Muhsan. The first way is through a proper confession (Islamic Fiqh, n.d.). Such a confession must be explicit, willful, and unambiguous, providing a clear statement (Islamic Fiqh, n.d.). If the person revokes their confession, then there will no longer be any punishment, as there is no longer anyone to attest to the wrongful act of zina. Additionally, when accepting a confession, various factors are considered: the confessor must be sane, the confession can be made through an agent, and it must be made no less than four times, among other requirements (Ahmad, 2012).

The second way to prove the status of Muhsan is through testimony by at least four reliable male Muslim eyewitnesses who must directly witness the act of penetration—meaning all must have seen the act of sexual intercourse (Islamic Fiqh, n.d.). To better understand, even if a man and a woman are lying in a posture that suggests sexual activity, it would not hold any importance unless the required number of witnesses actually sees the act of penetration (Kamali, 2019). There are also strict conditions regarding where the testimony can be presented. Some of these conditions include that the testimony must be made verbally, in the presence of the accused, before a neutral and independent judge, and so on (Kamali, 2019). According to Sharia law, the judge, who must also be male, will closely observe whether these requirements are strictly met.

For instance, if the witnesses appear confused, their testimony will not be accepted and will instead be treated as slander, meaning the false accusation of someone (Kamali, 2019). If a witness claims to have seen zina taking place through a glass window that obscured their vision in some way, even then, their testimony will not be considered relevant (Soumaya, 2015).

It has been deduced that due to the extremely strict requirements, such as those related to witnesses and how testimony is taken, it is almost impossible to prove that zina has taken place unless it occurred publicly in front of everyone, which would be utterly distasteful (Quran Commentary 4:15). Therefore, it can be said with some conviction that proving zina is very difficult, which is why the punishment for zina is rarely carried out. If someone frivolously accuses another of zina and it is proven false, the accuser will be punished with 80 lashes, which serves to deter people from making unnecessary accusations of zina (Quran Commentary 4:15).

Moreover, there has never been a case in Islamic history where testimony given by four witnesses led to a conviction; instead, such cases have always been proven through confession, and even then, strict rules have been maintained (Al-Laheidan, 1980). This again proves that Islam, as a religion, advocates for a merciful and lenient approach. From a social context, this means that one cannot simply accuse someone without meeting these tough requirements. Additionally, it is practical because promoting life is given more priority than imposing a death sentence.

According to Sharia law, the judge is required to thoroughly examine the case for any potential legal technicalities or arguments that might benefit the defendant. If such loopholes are found, the judge has the authority to waive the sentence (The Embassy of The Kingdom of Saudi Arabia, n.d.). This illustrates how Sharia law considers both the imposition of severe penalties and the granting of pardons when deemed appropriate. Therefore, it may be said that the implementation of Islamic law aims to guarantee both justice and compassion, in contrast to Western law, which primarily emphasizes achieving these objectives through penalties of varying degrees. Islamic jurisprudence prioritizes achieving a fair balance and refrains from implementing severe penalties in cases where they may seem harsh for the accused (Husni et al., 2019).

For instance, if a prominent entrepreneur were to be sentenced to capital punishment for killing his impoverished employee, it could have a significant adverse effect on society¹ (TBS Report, 2021). This is because many individuals rely on him for their sustenance, and if he were to die, many people would be severely impacted. Furthermore, it may be reasonable for the deceased's closest relatives to accept a substantial sum of blood money as compensation if their

1. Western jurisprudence has failed to strike a fair balance between the complainant and the defendant, leading to a disorganized and haphazard state of legal solutions.

means of earning a living are damaged and their financial stability is at risk after the killing. This could also be justified based on contextual considerations in contemporary society. Assassinating a socially valuable person might destroy the livelihoods of many who rely on him. However, by protecting his life, many other lives, including those of the victims' impoverished families, could be preserved.

3. The Concept of 'Hijab' in Sharia

Hijab refers to the Muslim veil in Islamic society and means 'what can divide' or 'a barrier between two things' (Al-Qazwini, n.b.). It symbolizes the innate division that exists between men and women, which is evident in matters such as marriage and inheritance. Women are perceived as embodying the purity of both the family and society at large. However, they can also be seen as potential sources of turmoil and societal chaos, often resulting from sins attributed to women (Badawi, n.b.). Therefore, to maintain a proper balance and avoid societal disorder, women are encouraged to cover themselves and uphold the purity they are innately believed to possess. The obligation for women to wear the hijab or veil is expressed in the Quran, Surah An-Nur [24:31], which states,

"Tell believers to glance down to be pure and not to show their ornaments but just what appears, to leave their veil reached to their breast and not to show their ornaments to others but their husbands, their sons, their husband's sons, to their women, to their female slaves, to their male desire-less slaves, to that puberal boys with no interest in women hidden body parts."

Although many reasonable analogies have been drawn regarding the wearing of the hijab by Muslim women, it has been viewed as a threat or a restriction of women's freedom and has often been labeled as regressive by Western countries (Assignzen, n.d.). Women have faced many brutal hardships simply for wearing hijabs; they have been expelled from schools or universities, fired from workplaces, and statistically, more than 24,000 teachers were expelled for wearing the Muslim veil (Abdo, 2008). The most controversial and highly publicized hijab case is the Sahin v. Turkey case, where a Muslim woman was not permitted to take her exam in her fifth year at the Faculty of Medicine at the University of Bursa, despite having worn the hijab since her first year at the university (Sahin v. Turkey, 2006). Sahin later took her case to the European Court of Human Rights (ECHR), arguing that wearing the hijab was not against her freedom of thought, religion, or conscience.¹ In France, a controversial case

1. However, the court in Turkey simply stated that the hijab imposes significant restrictions on the rights and freedoms of others; therefore, the limitations imposed on wearing the hijab were also justified by the court (Abdo, 2008). This matter may indeed be criticized as an example of westernized societies' inability to achieve their stated goals of (a) protecting equity and reasonably supporting personal

in 1989 involved the suspension of three Muslim girls from a public school for wearing hijabs (Jones, 2009). However, the Conseil d'État, the highest administrative court in France, held that as long as the hijab-wearing girls did not impose pressure, invite, or provoke others to wear hijabs, they should be permitted to wear them (Abdo, 2008). Nevertheless, many countries have banned hijabs, including Norway, Belgium, Sweden, Tunisia, Singapore, and Somalia.

Both men and women have a sexual drive, which is a natural aspect of human existence. One reason for this drive could be to facilitate reproduction and the continuation of the species. No one can deny that this drive exists. If men have this drive, many may struggle to avoid or stay away from women who are not modestly dressed (Islamweb.net, 2015). It is reported that every six minutes in the United States, someone is forcibly raped (GNESA, n.d.). Indeed, women wearing hijabs on bustling streets are often subjected to catcalling (Alhakk, 2023). In Bangladesh, a Muslim-majority country, the Penal Code of 1860 was amended to prohibit eve teasing, making words, gestures, or acts intended to insult the modesty of a woman a criminal offense under section 509 (Islam et al., 2016). However, it is an irrefutable reality that the level of harassment is significantly higher when women are attired in yoga pants, tank tops, and other prevalent Western fashion choices (Alhakk, 2023).

The hijab worn by Muslim women can be seen as a means of honoring the natural order and maintaining a balanced and respectful society. It is not regressive or restrictive of their rights or freedom; rather, it serves to protect women from unwanted attention and potential harm caused by unruly males (Global Campus of Human Rights, 2023). This reasoning can be justified as realistic and functional because women wearing hijabs are protected, leading to fewer crimes being committed, as men are less likely to experience lustful emotions toward properly covered women. Additionally, many women view wearing the hijab as a gift and privilege, and they do so voluntarily. Islam does not advocate forcing anyone to wear the veil; rather, it is seen as being in the best interests of society, promoting modesty and maintaining societal harmony (Guidance, n.d.).

4. The Sharia and The Right of Inheritance

Succession is the orderly transfer of power, assets, or other property from one entity to another (Kagan, 2021). The concept of succession, when understood in a more specific sense, refers to the rights of inheritance of specific assets, where the transfer of such assets is made from a deceased person to a living person

freedoms, and (b) maintaining their commitment to secular traditions without confusion and contradiction.

(Kroppenberg, 2012). Muslim jurists have placed significant emphasis on the term 'inheritance,' often quoting the Prophet (peace be upon him), who said:

"Learn the laws of inheritance and teach them to the people, for they are one half of useful knowledge."

The sources from which the laws of inheritance are derived include the Holy Quran, Hadiths, and Ijma, which means consensus. In the Quran, God has outlined a clear method of inheritance in Surah An-Nisa [4:11], stating,

"Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two 'or more' females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth – after the fulfillment of bequests and debts..."

The general ratio of inheritance is 2:1 in favor of males (Islamicstudies.info, n.d.), which has attracted considerable controversy among scholars. In Ghana, the 'Intestate Succession Bill 2018' was enacted with the aim of ensuring that Muslim women's rights of inheritance are the same as those of non-Muslim women. However, this Act was met with resistance from many Muslim scholars, who were compelled to write a memorandum to lawmakers, urging them to revisit the Act and incorporate Muslim inheritance laws (Husein, 2019). Under the general rule, there are four types of rights that must be fulfilled and settled regarding the property of the deceased: the payment of funeral and burial expenses, the clearance of all debts owed by the deceased to creditors, the payment of bequests up to one-third of the remaining property, and, according to Sharia law, the distribution of the remaining estate among the deceased's heirs (Husein, 2019).

When it comes to women, it is important to understand that "women" refers to four different types of relations: daughter, mother, sister, and wife. Islamic law explicitly states that it does not deny any of these women their right to inheritance. Depending on their relationship with the deceased, the property will be distributed accordingly, and each will be entitled to receive their share and enjoy it as they see fit (Badawi, n.d.). The women mentioned above are termed 'Ashabul-Furud,' meaning 'sharers' according to the science of inheritance. This is explicitly mentioned in both the Quran and the Sunnah, and no one has the right to deny them their inheritance (Badawi, n.d.).

Islamic law has always treated women with kindness, particularly in matters of inheritance, demonstrating how carefully their rights are protected under Muslim law (Patori, 2019). For example, although a man receives double the woman's share of inheritance, he has the religious responsibility to care for the

entire family. In contrast, when a woman receives her share of the property, it is exclusively for herself. A woman has no religious duty to financially maintain her husband or other family members; she is free to enjoy her share of the property as she pleases. On the other hand, a man must use his share to meet the needs of his wife and children (Badawi, n.d.).

In the pre-Islamic period, women were brutally oppressed and mistreated (Muslim Women's League, 1995). They faced cruel injustices, such as being denied inheritance from their husbands and fathers, with the justification that they did not fight in wars and therefore did not deserve any inheritance. To rectify these injustices, Islamic law established women's rights to inheritance through a declaration that guarantees their entitlement. When Ibn Jarir from Ibn Abbas discussed the share proportion of family members like the son, daughter, and parents, some people objected, questioning why women should receive a quarter, an eighth, or half when they had not contributed in battle (Husein, 2019). If a man, who has religious and societal obligations to support his family, is denied the larger portion of the inherited property, he may struggle to provide for his family, which may include female members such as his daughter, wife, or elderly mother.

Critics of Islam often argue that inheritance laws for women are discriminatory and that women are short-changed (Patoari, 2019). However, the truth is that Islam has always been fair to women and has held them in high esteem, especially when compared to their status before the advent of Islam. One will understand how highly Islam regards women and the steps it has taken to maintain a sane and stable society. Women in Islam have no financial obligation to run their families, and their share of the property continues to grow, while a man's share is used and consumed. Therefore, Islamic law is fair in its judgments, consistent with reality, and never discriminatory towards women. Sharia places more emphasis on the hereafter, considering it more significant and enduring than the fleeting nature of earthly life. It is thus justified that Islamic law preserves justice and equitability. As the Prophet (peace be upon him) stated, women are the "queens of their house" (Doi, n.d.), and Islamic law truly accords them that status.

5. Polygamy and Sharia

The concept of marriage holds a very sacred position in Islam, where it is compulsory (Kitab Al-Nikah) to get married (About Islam, 2016) and maintain a harmonious relationship with one's partner. 'Polygamy,' as defined by the Oxford dictionary, means having more than one spouse (Law et al., n.d.). There are three categories of polygamy: polygyny, where one man marries two or more women; polyandry, where one woman marries two or more men; and

polygynandry, which involves group marriage and is rare in practice (Long, n.d.).

Polygamy has been a highly controversial issue, often viewed with skepticism because it allows men in Islam to have up to four wives. However, it is crucial to understand the conditions that must be met before a man can engage in polygamy. These conditions include financial solvency, the ability to physically and emotionally satisfy all wives equally, and a strict requirement that no discrimination among wives will be tolerated (Islam Questions & Answer, n.d.). The man must also exercise fair judgment in matters concerning his wives, such as clothing, food, and other daily needs, and must maintain this commitment even if he is ill (Toppr, n.d.). For example, if a husband wishes to spend more time with one of his wives, he must obtain the consent of the other wives (Muradi, n.d.).

These conditions illustrate that it is a rigorous test for a man to take more than one wife and that he must demonstrate equal treatment and wise decision-making. In today's world, maintaining such a challenging commitment is almost impossible (Muradi, n.d.). The societal, financial, and emotional responsibilities of polygamy require immense dedication and resources, making it impractical for many in modern times.

Islam provides the provision for polygamy, but it is not mandatory for all Muslim men to engage in it without careful consideration (UCIS, n.d.). Historically, polygamy became common during times of war when the number of men was reduced due to casualties, leading to an increase in widows and orphans (UCIS, n.d.). This created a significant imbalance between the male and female populations, and polygamy was permitted to provide shelter and support for widows and orphans. Rather than abandoning them, Islam viewed polygamy as a compassionate and practical solution. The Quran in Surah An-Nisa [4:3] states,

“If you fear that you may not deal justly with the orphans, then marry [other] women that you like, two, three, or four. But if you fear that you may not treat them fairly, then [marry only] one...”

Nowhere in the Quran is it mentioned that polygamy is allowed for men merely to satisfy their lustful desires. Therefore, the misconception that Islam permits polygamy for men to lead a lustful life is far from the truth (Iqbal, n.d.). Islam supports marriage as a way to protect individuals from the temptations of the world, offering marriage as an outlet to fulfill natural desires in a lawful manner, rather than engaging in prostitution or risky sexual relations, which could hinder the continuation of human life (UCIS, n.d.).

In conclusion, the misunderstanding that Islam allows polygamy as a means for men to satisfy their lust is indeed a misconception. The tests and conditions that a man must fulfill before engaging in a polygamous marriage are extremely

challenging, requiring just and fair treatment of all wives. These stringent requirements make it clear that Islam has made polygamy difficult to prevent its misuse.

It is also important to note that men were originally allowed to engage in polygamy primarily to exercise justice with orphans, making this the primary prerequisite in Islam for allowing multiple marriages. Polygamy is not a requirement but rather a provision that should be practiced with care and subtlety, as Islam emphasizes fairness and justice (Iqbal, n.d.). The concept of polygamy can also be socially justified, as there may be men who are financially capable and unable to resist their sexual impulses. In such cases, divorcing the existing wife to marry another would cause disaster not only for the woman but also for the entire family. Polygamy may provide a pragmatic solution by offering support and protection to orphans and widowed women, especially those who have lost their husbands and face a bleak future. By entering into a polygamous relationship, these individuals can receive the necessary care, including shelter, food, and other essential needs, from a man who has willingly taken on these responsibilities.

In the end, polygamy in Islam can be justified through the philosophical theory of contextualism, recognizing that the interpretation and application of polygamy have evolved in response to changing societal dynamics and ethical considerations. While polygamy may have been permissible in certain historical contexts, its practice today is subject to stricter regulations and ethical standards to ensure fairness and justice for all parties involved. This approach acknowledges that the acceptance and understanding of polygamy depend on various stringent factors, including historical context, cultural norms, and societal conditions. In the historical context of early Islam, polygamy emerged as a practical solution to address the needs of widows, orphans, and societal imbalances resulting from war casualties. Islam did what was necessary to keep society functional and stable. Therefore, the controlled implementation of polygamy is closely linked to the stability of family life, which is a fundamental cornerstone of a just and fair society.

6. A Call for Reform

Introducing Islamic law as a basis for legal reform in countries that primarily follow Western legal traditions can be challenging. While Western legal systems have their strengths, they may not always provide comprehensive solutions to certain issues due to limited perspectives. In contrast, Sharia law, as discussed above, offers a holistic approach to addressing real-life issues from various angles, making it more functional and comprehensive. In some areas, Sharia law offers the best possible solutions through principles of fairness, equilibrium, and equity, aiming to address societal issues comprehensively and justly.

However, the practical implementation of Sharia law often faces challenges due to policy uncertainty. For example, this article identifies two specific areas – polygamy and punishment for murder – where policy reforms could help achieve the goal of incorporating Sharia law to enhance justice and fairness in the traditional sense. Novel Islamic legal concepts, such as those found in Sharia law, address a wide range of societal issues and provide remedies for problems that may not be adequately addressed by Western legal systems alone. By carefully considering reforms in areas like polygamy and murder punishment, countries can work towards integrating aspects of Sharia law into their legal frameworks to provide the best possible solutions while navigating the complexities of policy implementation.

The most effective method for proposing policy recommendations is through a scientific process that identifies the ideal aggregate policy among the alternative options presented in this article. This can be achieved by employing a multiple-attribute decision-making method, such as the Analytic Hierarchy Process (AHP) (Passage Technology, n.d.), which incorporates input from all major stakeholders in Sharia law to inform policy-making decisions. Using this method, nations may find solutions to implement better provisions of Sharia law as a comprehensive guideline in their countries. This article argues that the determination of a scientifically proven policy that is best for the nation, incorporating input from its domestic and primary stakeholders, would uphold its democratic values. AHP is widely used by various countries for policy decision-making; for example, in Brazil, AHP is used to develop energy policies (Salvia et al., 2019), in the United States, AHP is used in healthcare decision-making (Liberatore, 2008), and the governments of Thailand and Italy use AHP for environmental regulations (Sarjono et al., 2020). Additionally, countries such as Malaysia, Taiwan, India, and China have used AHP to reform their policies in ways that safeguard national interests (Sarjono et al., 2020). This article aims to clarify the role of Sharia law as a practical guideline, emphasizing that stakeholders will collectively determine the most effective approach.

It is important to note that while formulating policy recommendations, this article emphasizes solutions that are relevant to both Muslim and non-Muslim communities. As previously discussed, the article will primarily focus on two areas, and direct consultation with stakeholders would be essential for policy development, as outlined below:

6.1. Polygamy

Even though polygamy is allowed and legalized in Muslim countries following Sharia law, Western legal tradition has consistently opposed polygamy throughout its 1850-year history, exerting constitutional and cultural pressure to prohibit its practice (Witte, 2015). Despite mainstream religions like Islam (Iqbal, n.d.), Christianity (Press, 2021), and Hinduism (Vaniquotes, 2014)

allowing polygamy, the Western legal system has criminalized the practice (Witte, 2015). Countries such as the USA (McDuffey et al., 2023), UK (Ardens Solicitors, 2022), Australia (Sheahan, n.d.), Canada (Government of Canada, 2020), and India (Anand, 2023) have made polygamy illegal, imposing punishments of either imprisonment or fines. Even the United Nations Human Rights Committee has called for countries to abolish polygamy wherever it exists (Kramer, 2020). In the United States, various communities still practice polygamy secretly under the supervision of religious and cultural leaders (Witte, 2015). Notably, Sharia law does not widely encourage polygamy but provides the option for those who wish to practice it under specific conditions (UCIS, n.d.). However, Western law completely criminalizes it, making it difficult for people who want to practice polygamy out of goodwill or to exercise rights given by their religion. Sharia law promotes moral control and justice (An-Naim, n.d.). Polygyny is allowed in Islam to help women maintain a dignified identity and to ensure care in unavoidable circumstances. However, adhering to Western family law often undermines religious practices, human rights, and moral principles, as it does not consider the afterlife scenarios that believers do. Legalizing polygamy through Sharia law for the betterment of humanity requires the direct involvement of stakeholders. Based on consultations with several experts, including religious leaders, the following three possible decision options may be suggested:

1. Marriage and family relationships should be governed exclusively by respective religious or cultural norms, removing them from the purview of criminal law.
2. Women should be empowered through access to information regarding their rights and options. Developing a social system that includes mechanisms to scrutinize polygamy cases and discourage those who abuse the process.
3. Uphold existing norms and values on polygamy by developing a special economic empowerment initiative targeting women whose only option for a better life is to marry a polygamous male.

These three alternatives focus on different contexts and criteria—religious, social, and economic, respectively. These criteria can be assessed subjectively or objectively. Once a clear goal is established, such as sustainability in familial relationships within society, and the criteria to achieve that goal are defined, the decision option in policy that represents the highest aggregate value can be determined through the application of the Analytic Hierarchy Process (AHP) (Ding et al., 2016).¹

1. Multiple Attribute Decision-Making (MADM) is one of the most common and popular research fields in decision science. A variety of methods have been proposed to address such problems. One of these processes includes AHP, or the Analytic Hierarchy Process.

6.2. Punishment for Murder (Diyya)

In Western law, murder is a criminal offense whose ultimate punishment is either life imprisonment or death, and may also include a fine as the court deems fit, as mentioned in Section 302 of the Penal Code, 1860 of Bangladesh. Murder is considered such a serious crime that, in most cases, when guilt is proven, the only punishment deemed fit is the death penalty (Sentencing Council, n.d.). In no Western jurisprudence is there any scope for compensation to the victim's family or next of kin as an alternative to the mentioned punishments. 'Blood-for-blood' is mentioned in Sharia law as well, but Sharia law does not solely focus on executing the murderer; it also emphasizes sanctions based on compassion and justice (Hussain et al., 2023). In the Quran, Diyya is introduced as compensation paid to the victim's heir for murder (Nowais, 2016).

Diyya may be more desirable to many victims' families than the death penalty or life imprisonment, which only address punitive justice, covering emotional loss but not addressing the practical loss and the sudden and painful change in the standard of living for the dependents of the victims resulting from the murder. Many families of victims in countries following Western legal systems have expressed a preference for compensation over the death penalty as a form of justice for the crime committed (Death Penalty Information Center, n.d.). Additionally, families of murderers suffer lifelong trauma (Gushtyn, 2018). Following Sharia law, introducing Diyya in appropriate cases in the criminal justice system may benefit both the victim's family and society without compromising the principle of retributive justice, as argued by Western jurists, since the option of either taking a life or receiving blood money remains in the hands of the next of kin (Nowais, 2016).

Based on consultation with various stakeholders, including civil society leaders, social and political leaders, Muslim leaders, and experts, several possible solutions have been suggested in this article for the implementation of Diyya in countries:

1. Implementing orders of restitution as part of the sentencing process, requiring convicted offenders to financially compensate the families of murder victims for their losses, with the amount determined based on Sharia law and factors such as the severity of the crime, the offender's financial capacity, and the financial impact on the victim's family.
2. Empowering the victim's family in the punishment decision by allowing them to choose between full compensation or the death penalty, with the option of reducing the death penalty to life imprisonment as they participate in determining the punishment.
3. To protect the economic interests of society at large, the state may negotiate with the next of kin of the murder victim during the sentencing stage, without compromising the rights of the victim's family and society, to uphold compensatory, punitive, and retributive justice.

Each of the decision options mentioned above involves different degrees of religious, social, and economic contexts and components in various combinations. Granting compensation can yield social benefits, as it can elevate the social status of the victim's family in society due to the financial support received. Additionally, with increased financial resources, they may be better positioned to contribute to the country's economy. Furthermore, sparing a murderer from the death penalty or life imprisonment can preserve their potential contributions to the economy through their business ventures or employment. Moreover, adhering to Sharia law for Diyya is not only religiously compatible but also offers a beneficial framework that extends its advantages to individuals of different faiths. Using the above criteria, either subjectively or objectively, through the AHP Model could be a viable approach for relevant stakeholders in a country.

Conclusion

Modern society often perceives Sharia law as inherently immutable, unfair, and barbaric. However, this notion is fallacious because Sharia law is not a static legal system; it is changing and evolving to accommodate the needs of contemporary society. It has a broader perspective in many areas and has reinterpreted certain notions from new perspectives that are not only attractive but also scientific (PRI, 2015). Many examples attest to the fact that Sharia law is indeed evolving in accordance with changing societal norms. For instance, one of Umar ibn Al-Khattab's rulings was to suspend the punishment for theft, which involved amputating the hands of the offender, during a time of famine, recognizing that people were starving and some resorted to stealing out of desperation (Elias, 2012). The concept of "an eye for an eye, blood for blood, and a tooth for a tooth" brings a strong psychological effect to the mind of the attacker, serving as a significant deterrent against those with a propensity for similar crimes. Even when the death penalty is prescribed as a punishment under Sharia law, its actual imposition has been extremely rare and is reserved for the most severe crimes and offenses (PRI, 2015).

Thus, Sharia supports the idea of togetherness and maintaining harmonious relationships, and does not encourage or promote brutality or animosity in any way. It is evident that certain legal provisions based on Sharia are more practical and relevant, to varying extents, when compared to present Western jurisprudence, thereby improving its overall quality. Despite attempts by Western laws or secular mindsets to portray it as unfair, harsh, and barbarous, the reality is different. The accumulated information, along with the illustrations and verses above, clearly demonstrates that the proposition to merge Sharia-

based justice¹ with the current Western legal system can be justified as advantageous from a practical standpoint, benefiting societal and economic realignment. This proposal holds significant relevance in the context of our contemporary, modern world.



1. Similarly, it is acknowledged and embraced that the practical ideals of the Western legal system may be enhanced by integrating superior provisions from other prominent legal traditions, such as Christianity, Hinduism, or Judaism.

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