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Islamic Law and the Pakistani Judicial System: An Analytical Review of the Application of Shariah Principles

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Abstract

The relationship between Islamic law and Pakistan's judicial system represents a distinctive constitutional and jurisprudential model in which the injunctions of the Qur'an and Sunnah interact with a modern statutory, constitutional, and precedent-based legal structure. The Constitution of the Islamic Republic of Pakistan recognizes Islam as a foundational normative source of the legal order and establishes institutional mechanisms for bringing existing laws into conformity with the Injunctions of Islam. This study analytically examines the constitutional, judicial, and practical application of Shariah principles in Pakistan, with particular reference to Article 227 of the Constitution, the jurisdiction of the Federal Shariat Court under Article 203D, the appellate role of the Shariat Appellate Bench of the Supreme Court, and the Enforcement of Shari'ah Act, 1991. The study further analyses selected areas in which Islamic legal principles have materially influenced Pakistani jurisprudence, particularly ribā, khul', women's inheritance rights, judicial responsibility, legislative conformity, and the relationship between Islamic injunctions and constitutional rights. Employing descriptive, analytical, and comparative methods, the research draws upon Qur'anic injunctions, authentic Prophetic traditions, constitutional provisions, statutory enactments, and significant judgments of the Federal Shariat Court. Particular attention is also given to methodological challenges involving juristic disagreement, institutional coordination, enforcement of Shariah judgments, and the need for specialized judicial expertise. The analysis demonstrates that Pakistan has developed neither a purely classical fiqh-based judicial order nor a secular legal system isolated from Islamic norms; rather, it operates through a constitutionally regulated model of legal pluralism. The study concludes that the effective application of Shariah principles requires methodological consistency, specialized judicial expertise, coherent legislation, institutional coordination, transparent judicial reasoning, and effective implementation of judicial decisions.

Keywords

Islamic Law, Shariah, Pakistan, Judicial System, Federal Shariat Court, Shariat Appellate Bench, Constitution of Pakistan, Islamic Jurisprudence, Judicial Review, Islamic Legislation

Introduction

Pakistan's legal and judicial system represents a distinctive constitutional and legal experience in which the injunctions of the Qur'an and Sunnah, the classical juristic tradition, modern state law, a written constitution, parliamentary legislation, judicial precedent, and an institutional structure inherited in part from the British legal system interact within a single legal order. Since the establishment of Pakistan, a central academic and legal question has concerned the manner in which Islamic Shariah may be granted an effective, systematic, and constitutionally regulated role in legislation and judicial decision-making within a modern nation-state.

The Constitution of Pakistan has provided this relationship with a formal constitutional framework through a number of Islamic provisions. The Objectives Resolution, Article 227,

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Articles 203A–203J relating to the Federal Shariat Court, the Council of Islamic Ideology, and other relevant constitutional provisions establish an institutional relationship between the injunctions of the Qur'an and Sunnah and state law. Article 227, in particular, requires that existing laws be brought into conformity with the Injunctions of Islam as laid down in the Qur'an and Sunnah and prohibits the enactment of laws repugnant to those injunctions.

For the practical implementation of this constitutional commitment, the Federal Shariat Court has been granted a specific power of Shariah judicial review under Article 203D, while appeals from relevant decisions of the Federal Shariat Court may be brought before the Shariat Appellate Bench of the Supreme Court under Article 203F. This structure demonstrates that the question of Shariah conformity in Pakistan is not merely theological or ideological; rather, it forms an integral part of constitutional adjudication.

Nevertheless, the practical application of Islamic law continues to generate significant scholarly, juristic, and institutional complexities. These include juristic disagreement, statutory codification, judicial jurisdiction, fundamental rights, the modern financial system, family law, women's rights, customary practices, and the implementation of judicial decisions. In particular, cases relating to ribā, khul', and women's inheritance rights demonstrate that Shariah-based judicial review can directly affect Pakistan's economy, family structure, and broader system of social justice.

The present study is organized into three principal sections. The first examines the normative foundations of Islamic law, Article 227, the Enforcement of Shari'ah Act, and the methodology of juristic interpretation. The second analyses the Federal Shariat Court, the Shariat Appellate Bench, the jurisdiction of ordinary courts, judicial expertise, and institutional coordination. The third examines practical applications in the fields of ribā, khul', and women's inheritance rights, together with questions of implementation, fundamental rights, and legal reform.

Section One: Islamic Law, the Constitutional System of Pakistan, and the Intellectual and Legal Foundations of Shariah-Based Legislation

An understanding of the application of Shariah principles within Pakistan's judicial system first requires an examination of the normative sources, judicial philosophy, and constitutional foundations of Islamic law. Islamic law is not an unstructured body of religious instruction; rather, it is a comprehensive legal tradition grounded in the Qur'an, Sunnah, usul al-fiqh, juristic reasoning, justice, trust, accountability, and public welfare. Pakistan has attempted to integrate these principles with modern constitutional institutions and codified law. In this context, Article 227, the Objectives Resolution, and the Enforcement of Shari'ah Act, 1991 are of particular significance.

1. The Concept and Sources of Islamic Law and the Responsibility of Judicial Authority

In Islamic law, adjudication is not merely a mechanism for terminating disputes; it is an institution intended to establish justice, truth, and the protection of rights. A judge does not possess an unrestricted authority to decide cases according to personal preference, political pressure, or social influence. Proper knowledge, legal competence, impartiality, and moral integrity are indispensable requirements of judicial responsibility.

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُم بَيْنَ النَّاسِ أَن تَحْكُمُوا بِالْعَدْلِ﴾[1]

Translation: Indeed, Allah commands you to render trusts to whom they are due, and when you judge between people, to judge with justice.

This verse combines two foundational elements of judicial authority: entrusting responsibility to those qualified to exercise it and administering that authority with justice. From an Islamic

[1] Al-Qur'an, al-Nisa', 4:58.

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perspective, judicial office is fundamentally a trust rather than a privilege. Its proper exercise therefore requires not only personal piety but also professional competence. In the context of Shariah adjudication in Pakistan, this principle has particular significance because a judge of the Federal Shariat Court must be capable of engaging with classical Islamic jurisprudence while also understanding constitutional law, statutory interpretation, precedent, and the institutional structure of the modern state. If a person possesses knowledge of fiqh but lacks an understanding of constitutional jurisdiction, or is trained in constitutional law but lacks competence in Islamic legal methodology, the resulting adjudication may become intellectually unbalanced. The Qur'anic command to entrust responsibilities to those qualified for them therefore has direct relevance to judicial appointment, specialization, and professional competence.

It is narrated from Buraydah (may Allah be pleased with him) that the Prophet ﷺ said:

«الْقُضَاةُ ثَلَاثَةٌ: وَاحِدٌ فِي الْجَنَّةِ، وَاثْنَانِ فِي النَّارِ، فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ...»[2]

> Translation: Judges are of three types: one is in Paradise and two are in Hell. The one who is in Paradise is a man who knows the truth and judges according to it.

This Prophetic statement distinguishes between judicial competence and judicial integrity as separate but equally necessary qualities. A judge may know the law yet deliberately act unjustly, while another may decide cases without sufficient knowledge. Both situations are condemned. This distinction becomes particularly significant in Pakistan when a court is asked to determine whether a law is repugnant to the Injunctions of Islam. Such a determination may affect not only the immediate litigants but also the wider statutory and constitutional framework. For this reason, judges involved in Shariah adjudication require expertise, intellectual honesty, verification of sources, and transparent legal reasoning. The legitimacy of an Islamic court cannot rest merely upon its institutional title; rather, it must also arise from the intellectual integrity and procedural quality of its decision-making process.

The Prophet ﷺ further stated:

«مَنْ جُعِلَ قَاضِيًا بَيْنَ النَّاسِ فَقَدْ ذُبِحَ بِغَيْرِ سِكِّينٍ.»[3]

> Translation: Whoever is appointed as a judge among the people has, in effect, been slaughtered without a knife.

This powerful expression emphasizes the burden of judicial responsibility rather than the prestige of judicial office. The authority granted to a judge directly increases the seriousness of his or her accountability. In a modern legal system, judicial independence must therefore be accompanied by judicial accountability. A judge who pronounces upon a matter in the name of Shariah is accountable not merely to the litigants but also to the intellectual tradition and normative standards of Islamic law. Consequently, Shariah adjudication requires judicial humility, restraint, and careful reasoning.

Article 227(1) of the Constitution of Pakistan provides:

> "All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah…"[4]

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[2] Abu Dawud, Sulayman ibn al-Ash'ath, *Sunan Abi Dawud*, ed. Muhammad Muhyi al-Din 'Abd al-Hamid (Beirut: al-Maktabah al-'Asriyyah, n.d.), 3:299, Hadith no. 3573.

[3] Abu Dawud, *Sunan Abi Dawud*, 3:298, Hadith no. 3572.

[4] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 8th ed. (Islamabad: National Assembly Secretariat, 2022), 127, Article 227(1).

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Translation: All existing laws shall be brought into conformity with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

This constitutional formulation transforms Islamic injunctions from a purely moral aspiration into a substantive standard within Pakistan's legislative order. Article 227, however, cannot properly be understood in isolation. The Constitution also establishes the institutional mechanisms through which questions of Shariah conformity are to be determined. Islamic normative authority and constitutional procedure therefore operate as complementary elements within the Pakistani legal system.

2. Article 227, the Objectives Resolution, and the Constitutional Status of Islamic Legislation

Article 227 is among the central provisions of Islamic constitutionalism in Pakistan. It connects both existing laws and future legislation with the Injunctions of Islam. Its practical meaning, however, emerges more clearly when read together with the Objectives Resolution, Article 2A, and the constitutional mechanisms established for Shariah adjudication.

The Qur'an states:

﴿وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَن يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ﴾[5]

Translation: It is not for a believing man or woman, when Allah and His Messenger have decided a matter, to have any choice in their affair.

This verse provides the normative foundation of Islamic legal authority. In a modern constitutional state, however, that authority is institutionally expressed through Parliament, the judiciary, and constitutionally established mechanisms. Pakistan has not granted unrestricted legislative authority to individual judges or religious scholars. Instead, Islamic principles have been incorporated into the Constitution itself. This produces an important principle: the institutionalization of Shariah through constitutional mechanisms is itself a means of preserving legal certainty and the rule of law.

The Objectives Resolution, incorporated into the Constitution through Article 2A, establishes:

"Sovereignty over the entire Universe belongs to Almighty Allah alone and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust."[6]

This constitutional formulation brings Islamic normative sovereignty and modern democratic representation into a structured relationship. Parliament is not sovereign in an unrestricted British parliamentary sense; its legislative authority remains subject to the Constitution. Within that constitutional order, Islamic injunctions also function as an important substantive concern. Thus, Pakistani constitutionalism embraces neither absolute parliamentary sovereignty nor unrestricted clerical authority. Rather, it situates Islamic norms within a system of institutionalized constitutional supremacy.

Article 227(1) further provides:

"No law shall be enacted which is repugnant to such Injunctions."[7]

Translation: No law shall be enacted which is repugnant to the Injunctions of Islam.

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[5] Al-Qur'an, al-Ahzab, 33:36.

[6] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 5–6, Article 2A and the Objectives Resolution.

[7] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 127, Article 227(1).

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This provision places a substantive constitutional restraint upon future legislation. Nevertheless, the determination of whether a particular law is in fact repugnant to the Injunctions of Islam is a legal question requiring textual, juristic, and constitutional analysis. It cannot be resolved through political rhetoric or an unstructured religious claim. This is precisely why the Constitution has conferred a specific repugnancy jurisdiction upon the Federal Shariat Court.

Article 227(3) provides:

> "Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens."[8]
>
> Translation: Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

This clause represents an important element of religious pluralism within Pakistan's Islamic constitutional model. Rather than treating Islamic identity and minority protection as mutually exclusive, the Constitution seeks to regulate both within the same legal framework. Consequently, the interpretation of Article 227 must take into account not only Islamic conformity but also the protection of religious diversity and citizenship rights expressly recognized by the Constitution.

3. The Enforcement of Shari'ah Act, Juristic Disagreement, and the Methodology of Judicial Interpretation

The Enforcement of Shari'ah Act, 1991 represents an important legislative attempt to articulate the status of Shariah within Pakistan's legal order. The Act defines Shariah, addresses interpretive issues, and identifies certain responsibilities of state institutions. At the same time, the existence of juristic diversity within Islamic law makes the practical application of the Act dependent upon a sophisticated legal methodology.

The Qur'an states:

﴿فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ﴾[9]

> Translation: Judge between them according to what Allah has revealed.

This verse establishes the centrality of revelation within Islamic adjudication. In a modern legal state, however, an immediate question arises as to how what Allah has revealed is to be translated into statutory interpretation. A judge must simultaneously engage with Qur'anic texts, the Sunnah, established principles of interpretation, classical fiqh, statutory language, constitutional limits, and relevant precedent. This is the point at which Islamic jurisprudence and modern legal reasoning must interact in a systematic manner.

The Enforcement of Shari'ah Act, 1991 provides:

> "Shari'ah means the Injunctions of Islam as laid down in the Holy Quran and Sunnah."[10]
>
> Translation: Shariah means the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

This definition does not designate any single school of Islamic jurisprudence as the exclusive legal doctrine of the state. Instead, it identifies the Qur'an and Sunnah as the primary normative authorities. The Explanation to the Act also permits reference to the views of recognized jurists

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[8] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 127, Article 227(3).

[9] Al-Qur'an, al-Ma'idah, 5:48.

[10] Government of Pakistan, The Enforcement of Shari'ah Act, 1991, Act X of 1991 (Islamabad: Government of Pakistan, Ministry of Law and Justice, 1991), 3, Section 2.

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and prevailing Islamic schools. This flexibility accommodates juristic pluralism, but it also places a greater methodological responsibility upon courts. If one authoritative juristic position is preferred over another, the reasons for such preference should be explicitly articulated in the judgment.

Section 3 of the Act provides:

> "The Shari'ah … shall be the supreme law of Pakistan."[11]
>
> Translation: Shariah shall be the supreme law of Pakistan.

This provision must be read harmoniously with constitutional supremacy. Since the Enforcement of Shari'ah Act is ordinary legislation, it cannot itself override the Constitution. Its practical meaning therefore lies in directing statutes, policies, and legal interpretation toward conformity with Shariah within the procedural and institutional arrangements established by the Constitution.

The Qur'an further states:

﴿فَاسْأَلُوا أَهْلَ الذِّكْرِ إِن كُنتُمْ لَا تَعْلَمُونَ﴾[12]

> Translation: Ask those who possess knowledge if you do not know.

This verse highlights the importance of specialization in Shariah adjudication. Contemporary problems such as Islamic banking, cyber-contracts, biotechnology, medical ethics, and corporate structures cannot always be resolved merely through familiarity with classical legal texts. Courts may require assistance not only from jurists but also from economists, physicians, technologists, and other subject-matter specialists. Respect for expertise is therefore an integral feature of the Islamic intellectual method rather than something external to it.

The Prophet ﷺ said:

«إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ فَأَصَابَ فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ فَأَخْطَأَ فَلَهُ أَجْرٌ.»[13]

> Translation: When a judge exercises ijtihad and reaches the correct conclusion, he receives two rewards; and when he exercises ijtihad but errs, he receives one reward.

This hadith recognizes the legitimacy of qualified judicial reasoning. Juristic disagreement does not imply intellectual disorder; rather, disciplined ijtihad provides a method through which stronger interpretations may be identified among competing possibilities. Pakistani Shariah courts should therefore articulate their principles of preference, source hierarchy, and legal reasoning with particular clarity. Such transparency contributes to judicial predictability and scholarly credibility.

Section Two: The Federal Shariat Court, the Shariat Appellate Bench, and Shariah Jurisdiction within the Pakistani Judicial System

The most visible judicial mechanism for Shariah conformity in Pakistan is the Federal Shariat Court. This Court exercises a specific constitutional jurisdiction distinct from the ordinary judiciary, while the Shariat Appellate Bench of the Supreme Court provides appellate review. This arrangement integrates modern constitutional adjudication with Islamic legal scrutiny within a structured institutional hierarchy. Questions of ordinary-court jurisdiction, judicial expertise, institutional coordination, and enforcement are therefore central to any assessment of the system.

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[11] Government of Pakistan, The Enforcement of Shari'ah Act, 1991, 3, Section 3(1).
[12] Al-Qur'an, al-Nahl, 16:43.
[13] Abu Dawud, *Sunan Abi Dawud*, 3:299, Hadith no. 3574.

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1. The Constitutional Jurisdiction of the Federal Shariat Court and Judicial Responsibility

The Federal Shariat Court is a specialized constitutional court. Article 203D empowers it to examine certain laws and legal provisions in light of the Injunctions of Islam contained in the Qur'an and Sunnah. The significance of this authority lies in the fact that the Court's judgments may affect legislation beyond the immediate dispute before it.

Article 203D(1) provides:

> "The Court may … examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam…"[14]
>
> Translation: The Court may examine and decide whether a law or provision of law is repugnant to the Injunctions of Islam.

This wording clearly distinguishes the Federal Shariat Court from an advisory institution. The Council of Islamic Ideology primarily issues recommendations, whereas the Federal Shariat Court performs a constitutionally adjudicative function. Its determinations may therefore produce binding legal consequences. Where the Court declares a provision repugnant to the Injunctions of Islam, the constitutional process may require legislative amendment or result in the provision becoming ineffective.

The Qur'an states:

> ﴿يَا دَاوُودُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَىٰ﴾[15]
>
> Translation: O David, We have made you a successor on the earth; therefore judge between the people with truth and do not follow desire.

This verse links judicial authority with truth-oriented restraint. The institutional legitimacy of the Federal Shariat Court is strengthened when its judgments present Qur'anic texts, Prophetic traditions, juristic opinions, statutory provisions, and constitutional rules within a coherent methodological framework. It is not sufficient that the conclusion be presented as Islamic; the reasoning itself must also be transparent, disciplined, and legally intelligible.

In Messrs Farooq Brothers and Others v. United Bank Limited and Others, the Federal Shariat Court delivered a detailed judgment on 28 April 2022 examining statutory provisions relating to interest under Article 203D.[16]

This case illustrates the practical breadth of the Court's jurisdiction. The consequences of such a judgment extend beyond individual litigants and may affect the banking system, public finance, and the broader national economy. Consequently, adjudication in such cases requires not only expertise in fiqh al-mu'amalat but also a meaningful understanding of modern economics, banking practice, financial regulation, and transitional legal mechanisms. The case therefore illustrates both the advantage and the responsibility associated with specialized judicial review.

Article 203C of the Constitution provides for the participation of members possessing expertise in Islamic law within the composition of the Federal Shariat Court.[17]

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[14] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 107, Article 203D(1).

[15] Al-Qur'an, Sad, 38:26.

[16] Federal Shariat Court of Pakistan, Messrs Farooq Brothers and Others v. United Bank Limited and Others, Shariat Petition No. 30-L of 1991 and 81 Connected Matters (Islamabad: Federal Shariat Court of Pakistan, judgment dated April 28, 2022), 1–3, 52–53.

[17] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 105–106, Article 203C.

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This constitutional provision recognizes the necessity of specialized knowledge. Nevertheless, contemporary litigation frequently requires interdisciplinary expertise as well. Cases relating to ribā may demand economic knowledge; medical-law disputes may require biomedical expertise; and digital transactions may necessitate technical understanding. Strengthening the Court's multidisciplinary research capacity would therefore help fulfil the purpose of specialized Shariah adjudication more effectively.

2. The Shariat Appellate Bench, Appellate Scrutiny, and Judicial Expertise

The appellate mechanism available against decisions of the Federal Shariat Court constitutes an important component of Pakistan's Shariah judicial model. It preserves the specialized role of the Federal Shariat Court while simultaneously subjecting important decisions to Supreme Court-level scrutiny.

Under Article 203F(1), a party aggrieved by a final decision of the Federal Shariat Court under Article 203D may appeal to the Supreme Court.[18]

This appellate right is a fundamental safeguard within the rule of law. Where the validity of legislation is in question, it would be problematic to grant absolute finality to a single level of adjudication. Appellate review provides an institutional opportunity to reconsider interpretive errors, procedural shortcomings, and doctrinal inconsistencies.

The Qur'an states:

﴿فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾[19]

Translation: If you disagree over anything, refer it to Allah and the Messenger.

In the context of Shariah appellate adjudication, this principle requires a disciplined return to the primary sources. The Appellate Bench should not merely repeat the authorities cited by the lower court; rather, it must assess the soundness of the interpretation, juristic preference, and statutory consequences adopted below. Through such scrutiny, Shariah jurisprudence can develop greater institutional maturity.

Article 203F also provides for the inclusion of experts in Islamic law alongside Muslim judges of the Supreme Court within the Shariat Appellate Bench.[20]

This mixed composition represents an institutional attempt to integrate modern constitutional law with classical Islamic jurisprudence. Expertise in these two fields should not be treated as interchangeable; rather, they are complementary. Specialists in Islamic law contribute knowledge of the textual and juristic tradition, while Supreme Court judges bring expertise in constitutional doctrine, precedent, procedural law, and statutory consequences. A sophisticated Shariah appellate jurisprudence requires meaningful intellectual interaction between both forms of expertise.

Article 203E(7) further empowers the Federal Shariat Court to seek assistance from persons possessing specialized knowledge of Islamic law.[21]

This constitutional facility has considerable potential for institutional development. If expert assistance were structured through regular research mechanisms rather than being used only occasionally, judicial reasoning could become considerably more robust. Comparative fiqh

[18] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 110, Article 203F(1).

[19] Al-Qur'an, al-Nisa', 4:59.

[20] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 110–111, Article 203F.

[21] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 110, Article 203E(7).

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memoranda, economic-impact studies, technical expert briefs, and authenticated hadith research could all contribute significantly to the quality of Shariah adjudication.

3. The Jurisdiction of Ordinary Courts, Institutional Coordination, and the Enforcement of Shariah Judgments

Islamic legal questions do not arise exclusively before the Federal Shariat Court. High Courts, the Supreme Court, Family Courts, and subordinate courts regularly consider disputes in which Islamic principles are relevant. Nevertheless, formal statutory repugnancy review remains a separate constitutional jurisdiction. Maintaining this distinction is essential for legal certainty. Article 203G places limitations upon the jurisdiction of other courts in matters falling within the constitutional sphere of the Federal Shariat Court.[22]

This provision helps prevent parallel constitutional adjudication. If different High Courts were independently empowered to invalidate the same federal statute on the basis of alleged repugnancy to the Qur'an and Sunnah, conflicting legal regimes could arise throughout the country. The specialized route provided through the Federal Shariat Court reduces this risk of fragmentation.

The Federal Shariat Court also emphasized the specialized nature of its Article 203D jurisdiction in its ribā judgment.[23]

This principle does not mean that ordinary courts are prohibited from referring to Islamic principles. High Courts and the Supreme Court may consider Islamic constitutional values, statutory context, and relevant precedent in the process of legal interpretation. The formal legal consequence of declaring a statute repugnant to the Injunctions of Islam, however, arises through the specific constitutional mechanism established for that purpose. This distinction forms a central component of institutional discipline.

The Qur'an states:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ﴾[24]

Translation: O you who believe, be steadfast in upholding justice.

The concept of being steadfast in justice highlights the dimension of implementation. A Shariah judgment does not achieve substantive justice merely by being pronounced. Following the judicial declaration, Parliament, executive authorities, regulators, and administrative bodies may be required to undertake implementation measures. Justice must therefore be established and maintained institutionally.

Section 14 of the Enforcement of Shari'ah Act provides for reform of the Nizam-i-Adl with particular attention to delay, multiplicity of proceedings, and litigation expenses.[25]

This provision is especially significant because the Islamization of law should not be reduced merely to the enactment of substantive fiqh rules. Speedy justice, affordable access to courts, and reduction of procedural abuse are equally relevant to an Islamic system of justice. If a Shariah judgment is technically sound but litigants must wait for decades to obtain relief, the practical objective of justice is undermined.

[22] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 111, Article 203G.
[23] Federal Shariat Court of Pakistan, Farooq Brothers v. United Bank Limited, 52–53.
[24] Al-Qur'an, al-Nisa', 4:135.
[25] Government of Pakistan, The Enforcement of Shari'ah Act, 1991, 6, Section 14.

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Section Three: Practical Applications of Shariah Principles in the Pakistani Judicial System, Constitutional Rights, and Prospects for Reform

The real effectiveness of Pakistan's Islamic constitutionalism becomes most visible in practical cases. Ribā, khul', and women's inheritance rights are three major areas in which the Qur'an and Sunnah, statutory law, judicial review, and social realities directly intersect. These cases also illuminate important questions concerning implementation, fundamental rights, institutional coordination, and future legal reform.

1. Ribā, Islamic Finance, and Judicial Implementation

Ribā is among the most complex and long-running issues in the history of Islamic adjudication in Pakistan. The question extends far beyond individual lending arrangements and directly affects commercial banking, government finance, monetary policy, and the national economy. Translating judicial prohibition into a workable alternative financial system is therefore a multidisciplinary challenge.

The Qur'an states:

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾[26]

Translation: Allah has permitted trade and prohibited ribā.

This verse establishes a foundational distinction in Islamic financial jurisprudence. Commercial transactions may involve exchange, risk, productive activity, and investment, whereas ribā concerns a prohibited form of increase. In modern banking litigation, courts must therefore examine the substance of a transaction rather than relying merely upon its terminology. The labels profit, markup, or interest do not by themselves determine the Shariah character of a transaction; the underlying contractual and economic structure is more important.

The Qur'an further states:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُم مُّؤْمِنِينَ﴾[27]

Translation: O you who believe, fear Allah and give up what remains of ribā, if you are truly believers.

This verse presents the prohibition as a clear normative command. The Constitution of Pakistan also connects state policy with the elimination of ribā through Article 38(f).[28] Thus, the normative rejection of ribā possesses both religious and constitutional expression within the Pakistani legal framework.

In Messrs Farooq Brothers and Others v. United Bank Limited and Others, the Federal Shariat Court delivered its detailed judgment concerning interest-related laws on 28 April 2022.[29]

This judgment is among the most significant contemporary developments in Pakistan's Shariah jurisprudence. The Court sought to relate modern banking provisions to the classical prohibition of ribā. Yet the most difficult challenge arises after the judicial declaration: transforming an entire financial system toward non-interest-based alternatives requires regulatory, fiscal, institutional, and economic reform. The case therefore demonstrates that Shariah judicial review and economic policy implementation must operate together.

Section 8 of the Enforcement of Shari'ah Act, 1991 envisages institutional measures aimed at the Islamization of the economy and the elimination of ribā.[30]

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[26] Al-Qur'an, al-Baqarah, 2:275.
[27] Al-Qur'an, al-Baqarah, 2:278.
[28] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 19, Article 38(f).
[29] Federal Shariat Court of Pakistan, Farooq Brothers v. United Bank Limited, 1–3, 52–53.
[30] Government of Pakistan, The Enforcement of Shari'ah Act, 1991, 5, Section 8.

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The analytical significance of this provision lies in the recognition that the elimination of ribā is not exclusively a judicial responsibility. Parliament must legislate, the State Bank must develop regulatory standards, financial institutions must create workable Shariah-compliant instruments, and Islamic jurists must provide technical oversight. Only a coordinated institutional model can transform Shariah implementation from a symbolic judicial declaration into practical economic reform.

2. Khul‘, Family Justice, and Statutory Interpretation

Khul‘ is an important area of Pakistani family law in which Qur’anic principles, Prophetic precedent, statutory procedure, and judicial discretion interact. The issue involves questions of a woman’s marital autonomy, dower, marital breakdown, and the jurisdiction of Family Courts. The Qur’an states:

﴿فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ﴾[31]

> Translation: If you fear that the two will not be able to maintain the limits of Allah, there is no blame upon either of them concerning what she gives up to obtain her release.

This verse provides the principal Qur’anic foundation for khul‘. Islam does not require a marriage to be preserved at all costs. Where a marital relationship reaches a stage at which proper observance of the limits of Allah becomes seriously difficult, Shariah recognizes a legitimate mechanism for dissolution. The verse therefore connects family law not with rigid preservation of marriage but with justice-oriented continuation of marital relations.

It is narrated from Ibn ‘Abbas (may Allah be pleased with him) that the wife of Thabit ibn Qays (may Allah be pleased with him) approached the Prophet ﷺ and explained that she could no longer continue the marital relationship. The Prophet ﷺ said:

«أَتَرُدِّينَ عَلَيْهِ حَدِيقَتَهُ؟ ... اقْبَلِ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً.»[32]

> Translation: Will you return his garden to him? He ﷺ then said to the husband: Accept the garden and divorce her with one divorce.

This Prophetic precedent clarifies the practical contours of khul‘. The wife did not accuse the husband of religious or moral misconduct; rather, she expressed an inability to continue the marital relationship. This demonstrates an important principle: dissolution of marriage does not always depend upon proof of matrimonial fault. In some circumstances, the breakdown of marital compatibility may itself become a genuine legal concern.

In Imran Anwar Khan v. Government of Punjab and Others, PLD 2022 FSC 25, the Federal Shariat Court examined the Shariah validity of the statutory financial formula relating to khul‘ under Punjab family-law legislation.[33]

This judgment is significant because the Court tested a fixed legislative formula against the Injunctions of Islam. Family relationships are inherently fact-sensitive, and uniform financial consequences may not always produce substantive justice. The judgment therefore raises a wider question concerning the extent to which legislatures may codify classical fiqh through mechanically uniform rules.

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[31] Al-Qur’an, al-Baqarah, 2:229.

[32] Al-Bukhari, Muhammad ibn Isma‘il, *Sahih al-Bukhari*, ed. Muhammad Zuhayr ibn Nasir al-Nasir (Beirut: Dar Tawq al-Najah, 1422 AH), 7:46, Hadith no. 5273.

[33] Federal Shariat Court of Pakistan, Imran Anwar Khan v. Government of Punjab and Others, PLD 2022 Federal Shariat Court 25, 25–58, judgment dated February 17, 2022.

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Subsequently, in Haji Saif-ur-Rahman Shaheen v. Islamic Republic of Pakistan, PLD 2024 FSC 9, the Federal Shariat Court clarified the distinction between an individual decree of khul' and the Court's Article 203D jurisdiction to determine the Shariah conformity of laws.[34]

This distinction is crucial for the maintenance of judicial structure. The Federal Shariat Court is not a substitute for the ordinary appellate jurisdiction of Family Courts. Its specialized constitutional function concerns the Shariah conformity of laws. Islamic justice therefore requires not only a substantively just outcome but also adjudication through the constitutionally appropriate forum and procedure.

3. Women's Inheritance Rights, Fundamental Rights, and Social Justice

Women's inheritance rights constitute an area in which Qur'anic law is exceptionally clear, yet certain social customs may weaken or obstruct the practical realization of those rights. Pakistan's judicial experience demonstrates that effective Shariah enforcement requires simultaneous attention to custom, criminal law, property administration, and constitutional rights.

The Qur'an states:

﴿لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ﴾[35]

> Translation: For men there is a share in what parents and close relatives leave behind, and for women there is also a share in what parents and close relatives leave behind.

This verse establishes a woman's inheritance as a legal entitlement rather than a familial favour. The term nasib conveys the meaning of an established share. Accordingly, families or local communities do not possess the authority to nullify this entitlement through customary pressure, emotional coercion, or informal relinquishment. The real effectiveness of Islamic inheritance law must be assessed by whether women can actually obtain possession and enforceable access to their legal shares.

The Qur'an further states:

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ﴾[36]

> Translation: Allah commands you concerning your children.

This expression further strengthens the normative character of Islamic inheritance rules. Custom possesses no authority to override a divinely established allocation. The principle has particular relevance in Pakistan because certain customary practices have historically affected women's ability to realize their Shariah inheritance rights.

In Syeda Fouzia Jalaal Shah v. Federation of Pakistan and Others, Shariat Petition No. 10/I of 2023, decided on 19 March 2025, the Federal Shariat Court examined practices including "Chaddar" and "Parchi" through which women were deprived of inheritance and declared such customs inconsistent with the Injunctions of Islam.[37]

This judgment represents an important rights-oriented development in Pakistani Shariah jurisprudence. The Court affirmed that Islamic law protects women's property rights and that

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[34] Federal Shariat Court of Pakistan, Haji Saif-ur-Rahman Shaheen v. Islamic Republic of Pakistan, PLD 2024 Federal Shariat Court 9, 9–19, Shariat Petition No. 16/I of 2022, judgment dated October 6, 2023.

[35] Al-Qur'an, al-Nisa', 4:7.

[36] Al-Qur'an, al-Nisa', 4:11.

[37] Federal Shariat Court of Pakistan, Syeda Fouzia Jalaal Shah v. Federation of Pakistan and Others, Shariat Petition No. 10/I of 2023 (Islamabad: Federal Shariat Court of Pakistan, judgment dated March 19, 2025), 2–3, 19–21.

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oppressive customs cannot acquire Shariah legitimacy. The decision also challenges the assumption that Shariah and women's legal rights are necessarily in conflict. In many circumstances, Islamic injunctions themselves provide a strong legal basis for protecting women's rights.

Section 498-A of the Pakistan Penal Code imposes criminal liability for depriving a woman of inheritance through deceitful or illegal means.[38]

This statutory provision gives an enforcement dimension to the substantive Islamic entitlement. If deprivation of inheritance is not met with effective criminal consequences and accessible legal remedies, the Qur'anic right may remain largely theoretical. Shariah implementation therefore needs to be integrated with criminal law, civil remedies, land-record systems, and administrative enforcement.

Article 25 of the Constitution provides:

> "All citizens are equal before law and are entitled to equal protection of law."[39]
> Translation: All citizens are equal before law and are entitled to equal protection of law.

This constitutional principle of equality can reinforce Qur'anic inheritance rights rather than contradict them. Preventing a woman from being deprived of her established property rights is both a Shariah command and a constitutional matter of equal legal protection. Islamic norms and fundamental rights should therefore not automatically be treated as competing frameworks; in many areas they can function within a harmonized rights-protection model.

Conclusion

The present study demonstrates that the relationship between Islamic law and the Pakistani judicial system is structured through a formal constitutional framework. Pakistan has adopted neither a purely classical fiqh-based judicial model nor a secular legal order in which Islamic norms possess no constitutional relevance. Instead, a multi-institutional model has emerged through the Constitution, Parliament, the Federal Shariat Court, the Shariat Appellate Bench, the ordinary judiciary, and the Council of Islamic Ideology.

The first section showed that Islamic judicial thought is founded not merely upon substantive legal rules but also upon justice, trust, knowledge, professional competence, and accountability. The Qur'anic command to judge with justice and the Prophetic tradition concerning the three categories of judges demonstrate that competent and impartial adjudication is as essential as substantive legal correctness. Article 227 and the Enforcement of Shari'ah Act, 1991 seek to translate these normative commitments into constitutional and statutory form.

The second section demonstrated that the Federal Shariat Court is the principal specialized constitutional institution for Shariah repugnancy review in Pakistan. Article 203D grants it the power to review laws, while Article 203F provides appellate scrutiny through the Shariat Appellate Bench. This two-tier structure integrates Islamic judicial review with the modern constitutional hierarchy. Articles 203C and 203E also recognize the importance of specialized expertise, confirming that Shariah adjudication frequently requires multidisciplinary knowledge.

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[38] Government of Pakistan, The Pakistan Penal Code, 1860, Act XLV of 1860, as amended, Section 498-A.

[39] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan, 1973, 15, Article 25(1).

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It was further shown that clarity in the jurisdictional relationship between ordinary courts and the Federal Shariat Court is essential. Article 203G limits the possibility of parallel or conflicting constitutional adjudication. At the same time, the effectiveness of a Shariah-oriented legal system depends not merely upon judicial jurisdiction but also upon institutional coordination and implementation of judgments. Section 14 of the Enforcement of Shari'ah Act also demonstrates that speedy and affordable justice is itself an important element of Islamic judicial reform.

The third section showed through the practical examples of ribā, khul', and women's inheritance rights that Shariah judicial review can affect diverse social and economic sectors. Ribā litigation illustrates the complexity of macroeconomic transition; khul' jurisprudence demonstrates the interaction of classical family law, statutory codification, and judicial discretion; and the 2025 inheritance judgment confirms that Islamic law can perform a rights-protective function against oppressive customary practices.

A major conclusion of this study is that Islamic law and fundamental rights should not automatically be regarded as contradictory frameworks. In areas such as inheritance rights, due process, judicial impartiality, dignity, and equal legal protection, Qur'anic norms and constitutional rights may reinforce one another. What is required is a coherent interpretive methodology capable of relating Islamic texts, classical fiqh, constitutional law, and contemporary realities in a principled and intellectually responsible manner.

Pakistan possesses a substantial constitutional foundation for the judicial application of Shariah principles. Nevertheless, the long-term effectiveness of this framework depends upon methodological consistency, qualified scholarship, multidisciplinary judicial expertise, legislative follow-up, institutional coordination, clear jurisdictional boundaries, transparent judicial reasoning, and effective implementation. Strengthening these elements can enable Pakistan's Islamic constitutional model to establish a more coherent, equitable, and workable relationship between modern state law and the classical Islamic legal tradition.

Recommendations

1. A permanent and multidisciplinary Islamic Jurisprudence and Contemporary Law Research Wing should be strengthened for the Federal Shariat Court and the Shariat Appellate Bench.
2. Courts should explicitly state the principles used to prefer one juristic opinion over another in Shariah-related judgments.
3. Comprehensive judicial guidelines should be developed concerning the jurisdictional relationship among Articles 203D–203G.
4. A formal monitoring mechanism should be created for legislative and executive implementation of major Shariah judgments.
5. Article 203E should be used more systematically to obtain assistance not only from Islamic jurists but also from specialists in economics, medicine, technology, finance, and other relevant disciplines.
6. Shariah litigation concerning Islamic finance should incorporate joint research by jurists, economists, banking experts, and financial regulators.
7. A permanent implementation framework involving the State Bank of Pakistan, Parliament, the Ministry of Finance, Islamic-finance experts, and jurists should be established for the gradual elimination of ribā.
8. Judges of Family Courts should receive specialized training in khul', mahr, nafaqah, and Islamic family jurisprudence.

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9. Implementation of the Federal Shariat Court's 2025 judgment concerning women's inheritance rights should be strengthened through coordination among revenue authorities, police, and judicial institutions.
10. Investigation and prosecution under Section 498-A of the Pakistan Penal Code should be made more effective in cases involving deprivation of women's inheritance rights.
11. Judicial jurisprudence should promote a harmonious interpretation of Islamic injunctions and fundamental constitutional rights.
12. Shariah judgments should not merely reproduce classical quotations; they should also explain source authenticity, juristic disagreement, and the methodology of legal preference.
13. Law schools should expand specialized teaching in Islamic Constitutional Law, Federal Shariat Court Jurisprudence, Usul al-Fiqh, and Comparative Fiqh.
14. An authenticated, searchable, and academically indexed digital database of major judgments of the Federal Shariat Court and the Shariat Appellate Bench should be further developed.
15. Islamic judicial reform should prioritize not only substantive Islamic rules but also speedy adjudication, affordable litigation, procedural simplification, and effective access to justice.

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