



Constitutional Dualities: Reconciling Islamic Normativity with Common Law Principles in Hybrid Legal Systems

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ARTICLE INFO	ABSTRACT
<p>Article History:</p> <p>Received: April 06, 2025</p> <p>Revised: May 16, 2025</p> <p>Accepted: May 26, 2025</p> <p>Available Online: May 28, 2025</p> <hr/> <p>Keywords:</p> <p>Legal pluralism, Judicial interpretation, Normative conflict, Constitutional supremacy, Human rights, religious jurisprudence, Legal harmonization, Institutional duality, Secular governance, Comparative constitutionalism</p> <hr/> <p>Corresponding Author: Seema Gul Email: gulseema03@gmail.com</p>	<p>Hybrid legal systems that integrate Islamic law with common law traditions present a unique constitutional challenge marked by normative duality and institutional complexity. This article examines the tension between divine normativity and secular legal rationality in states such as Pakistan, Malaysia, and Nigeria, where constitutions simultaneously endorse Islamic principles and uphold common law frameworks. The purpose of the study is to explore how courts and legislatures negotiate this duality, what implications it has for legal coherence, human rights, and rule of law, and how doctrinal reconciliation might be achieved. Employing a comparative legal analysis, the research draws on constitutional texts, judicial decisions, and theoretical literature to assess how legal pluralism functions in practice. The findings reveal that while interpretive harmonization and jurisdictional compartmentalization offer partial solutions, ambiguity and conflict persist due to inconsistent jurisprudence and weak institutional delineation. The study argues for a principled framework grounded in legal pragmatism and the objectives of Islamic law (maqasid al-Shari'a) to foster coherence and constitutional integrity. Ultimately, the article contributes to broader debates on constitutionalism in pluralistic societies and offers pathways for reconciling competing legal traditions within a single constitutional order. The coexistence of Islamic legal norms and common law traditions within hybrid constitutional systems presents profound interpretive and institutional challenges. This article explores how such dualities manifest in constitutional governance, examining their implications for legal pluralism, judicial reasoning, and democratic accountability. Focusing on jurisdictions like Pakistan, Nigeria, and Malaysia, it evaluates the strategies through which courts and legislatures negotiate these tensions, proposing pathways toward a more coherent jurisprudential synthesis.</p>



Introduction

The coexistence of Islamic legal norms and common law traditions within a single constitutional framework represents one of the most complex and compelling phenomena in contemporary comparative constitutional law. In several postcolonial Muslim-majority states, such as Pakistan, Malaysia, and Nigeria, constitutional arrangements reflect not only the historical entrenchment of British legal systems but also the enduring normative authority of Islamic law. These hybrid legal systems are characterized by a persistent duality: they uphold both religious legal precepts derived from Shari‘a and secular legal principles rooted in the common law tradition. The purpose of this study is to investigate how hybrid constitutional systems reconcile or fail to reconcile the competing normative demands of Islamic and common law. The scope of the inquiry includes constitutional texts, judicial interpretations, and institutional frameworks that shape the integration of these distinct legal traditions. The significance of this research lies in its potential to illuminate how legal systems in pluralistic societies manage normative conflict, maintain rule of law, and protect fundamental rights (Husain et al., 2024).

This article operates under two central hypotheses. First, it posits that the constitutional duality between Islamic and common law systems leads to normative ambiguity and legal inconsistency. Second, it suggests that reconciliation is possible through interpretive and institutional mechanisms grounded in both doctrinal compatibility and functional pragmatism. The central research questions addressed are: (1) How do hybrid constitutional systems navigate the normative tension between Islamic and common law principles? (2) What legal and institutional strategies have been employed to reconcile this tension? (3) Can a coherent jurisprudence emerge that respects both divine normativity and constitutionalism? Methodologically, the article employs comparative legal analysis, drawing from constitutional texts, statutory frameworks, and key judicial decisions in selected jurisdictions. This approach allows for the identification of recurring themes, divergences, and institutional patterns in the management of constitutional dualities. The findings suggest that while some courts engage in harmonization by interpreting Islamic norms through the lens of constitutional rights, others resort to doctrinal compartmentalization or jurisdictional ambiguity. The lack of consistent legal reasoning and institutional clarity exacerbates the tension between competing legal orders.

The article is organized as follows. Section 2 provides the theoretical framework by discussing legal pluralism and normative duality. Section 3 traces the historical development and institutional context of hybrid legal systems. Section 4 examines judicial strategies for navigating legal duality. Section 5 outlines the constitutional challenges posed by this duality. Section 6 offers comparative insights from selected jurisdictions. Section 7 proposes possible avenues for jurisprudential reconciliation. Finally, Section 8 concludes with reflections on the broader implications for constitutionalism in legally plural societies. Hybrid legal systems that combine Islamic legal norms with common law traditions reflect the historical, cultural, and colonial trajectories of many postcolonial Muslim-majority states. These constitutional arrangements embody a complex duality—balancing divine normativity with secular legal rationality. This dualism often results in institutional friction, legal uncertainty, and normative ambiguity, raising critical questions about legal coherence, legitimacy, and human rights. This article aims to investigate the nature of these constitutional dualities, assess the institutional mechanisms that mediate them, and explore doctrinal methods for harmonization without compromising the integrity of either normative system.

Research Methodology

This study employs a qualitative doctrinal research methodology, focusing on the systematic examination of constitutional texts, judicial decisions, legal statutes, and scholarly literature to analyze the interaction between Islamic normativity and common law principles in hybrid legal systems. The doctrinal approach is appropriate because it allows for an in-depth exploration of legal norms, interpretive practices, and institutional arrangements shaping constitutional dualities. The primary materials include constitutional provisions, statutory laws, and case law from jurisdictions such as Pakistan, Malaysia, and Nigeria, selected for their illustrative examples of hybrid legal systems integrating Islamic and common law traditions. These sources were accessed through official government publications, legal databases, and judicial archives. Emphasis was placed on landmark court rulings and constitutional amendments that reflect jurisprudential responses to normative conflicts. Secondary sources consist of academic articles, books, and reports from legal scholars, human rights organizations, and comparative law experts. These materials provide critical insights into theoretical frameworks like legal pluralism, *maqāṣid al-sharīʿa*, and interpretive harmonization, enriching the analysis of practical legal challenges and reconciliation efforts. The data collection process involved purposive sampling to identify relevant legal texts and judicial opinions that directly address constitutional dualities, rights issues, and jurisdictional complexities. Analytical techniques included thematic content analysis to identify recurring patterns and tensions within the legal material, as well as comparative analysis to highlight differences and similarities across jurisdictions. This methodology facilitates a nuanced understanding of how constitutional frameworks mediate the coexistence of Islamic and common law norms, enabling the study to contribute to jurisprudential theory and legal practice. The qualitative doctrinal approach, combined with comparative analysis, provides a robust foundation for critically assessing institutional responses and proposing pathways toward jurisprudential reconciliation.

Theoretical Framework: Legal Pluralism and Normative Duality

The concept of legal pluralism provides a foundational lens through which to examine hybrid constitutional systems that simultaneously accommodate Islamic and common law traditions. Legal pluralism refers to the existence of multiple legal orders within a single socio-political framework, where each system claims legitimacy and operates with varying degrees of autonomy and interaction. In postcolonial Muslim-majority states, this pluralism often reflects a layered legal heritage where indigenous or religious norms coexist with transplanted colonial legal systems. Within this framework, *normative duality* emerges as a defining characteristic of Islamic-common law hybrids. Unlike administrative or jurisdictional plurality, normative duality signifies the coexistence of fundamentally distinct sources of legal authority: divine revelation (Shariʿa) and secular rationalism (common law). Islamic law is typically grounded in the Qurʿan, Sunnah, and centuries of jurisprudential development, emphasizing moral certainty, religious obligation, and communal identity. In contrast, common law emphasizes legal precedent, individual rights, procedural fairness, and democratic accountability. This duality gives rise to inherent tensions, as each normative system operates within its own epistemological and interpretive traditions. The result is a constitutional terrain marked by conflicting values—such as divine supremacy versus constitutional supremacy, or collective morality versus individual autonomy. These tensions often manifest in areas such as criminal justice, family law, gender equality, and freedom of religion (Mattar et al., 2015).

Importantly, legal pluralism in this context is not merely descriptive but deeply normative. Courts, legislatures, and scholars must grapple with whether, and how, these legal systems can be reconciled. Some posit a hierarchical relationship, subordinating one to the other. Others advocate for *harmonization*, whereby interpretive techniques are used to align the objectives of both systems, such as through the lens of *maqāṣid al-Sharī'a* (the higher objectives of Islamic law), which include justice, public welfare, and human dignity. Furthermore, the theoretical framework must account for *institutional pluralism*, wherein multiple courts—such as secular and Shari'a courts—operate simultaneously, often with overlapping jurisdiction. This institutionalization of legal pluralism complicates the administration of justice and contributes to forum shopping, jurisdictional conflict, and fragmented jurisprudence. By adopting this theoretical lens, the article situates constitutional duality as a dynamic and evolving phenomenon that requires both doctrinal ingenuity and institutional clarity. Legal pluralism, when supported by coherent normative integration and institutional collaboration, can potentially enrich constitutional systems by reflecting the plural identities of the polity. However, unmanaged normative duality risks undermining legal certainty, weakening rule of law, and threatening constitutional coherence (Zare, 2018).

Legal pluralism refers to the coexistence of multiple legal systems within a single polity. In the context of Islamic-common law hybrids, this pluralism is not merely institutional but deeply normative. Islamic law (Shari'a), rooted in divine revelation, asserts a moral and transcendental authority. In contrast, common law derives its legitimacy from precedent, judicial reasoning, and democratic processes. The constitutional recognition of both sources generates a form of *normative duality*—where legal authority is bifurcated between religious and secular rationalities. This condition complicates traditional conceptions of constitutional supremacy, the rule of law, and judicial review (Puder, 2022).

Historical and Institutional Contexts of Hybridization

Colonial Legacies and the Reception of Common Law

The integration of common law principles into many Muslim-majority legal systems is deeply rooted in the legacy of colonialism. During the 19th and 20th centuries, British colonial rule introduced English common law into diverse territories, including South Asia, West Africa, and Southeast Asia. The imposition of colonial legal frameworks was not merely administrative but part of a broader civilizational project that sought to restructure indigenous legal systems through codification, secularization, and bureaucratization. In territories such as British India (now Pakistan, India, and Bangladesh), Nigeria, and Malaya (now Malaysia), the British established court systems modelled on English legal institutions, staffed initially by colonial officials and later by locally trained jurists. The transplantation of the common law was facilitated by reception clauses and legal instruments such as the Indian Penal Code (1860), which exemplified the colonial intent to impose a unified, rational legal order. These codified laws were often abstracted from local religious or customary contexts, relegating Islamic law to the domain of personal status, particularly in matters of marriage, divorce, inheritance, and waqf (religious endowments). This bifurcation created a dual legal system: a formal state law grounded in common law reasoning and a parallel religious legal order preserved in limited spheres. Over time, the secular common law system came to dominate areas of criminal, commercial, and constitutional law, while Islamic law remained influential but increasingly marginalized outside of family law (Emon, 2012).

However, the reception of common law did not erase preexisting legal traditions. Rather, it produced a complex legal hybridity in which colonial legal norms were layered over religious and customary systems. Courts were often required to interpret local customs or Islamic principles using common law methodologies, leading to inconsistencies and distortions in the understanding and application of Shari‘a. In many cases, Islamic legal principles were selectively codified or interpreted to fit within the structure of colonial legality, thereby reconfiguring them in ways that departed from their classical jurisprudential roots. Following independence, many postcolonial states retained the basic structure of the inherited common law system, viewing it as a neutral, modern, and administratively functional legal order. Nevertheless, rising demands for decolonization and Islamic revivalism in the second half of the 20th century prompted a reassertion of Islamic law within national constitutions and legal discourse. This resurgence created a layered and often conflicting legal environment, in which common law institutions continued to operate alongside, and sometimes in tension with, renewed Islamic legal authority. The colonial legacy, therefore, plays a pivotal role in shaping the contemporary duality between Islamic normativity and common law in hybrid legal systems. The inherited structure of the judiciary, legal education, and procedural norms remains largely rooted in colonial models, even as constitutional provisions increasingly acknowledge the primacy or influence of Islamic law. This historical layering contributes to the enduring challenge of reconciling two fundamentally different legal traditions within a single constitutional framework. In many Muslim-majority countries, colonial administration introduced common law principles as part of governance and legal infrastructure. The reception of English common law in British colonies—such as Pakistan (formerly British India), Nigeria, and Malaysia left enduring institutional footprints, particularly in judicial structure, procedural law, and statutory interpretation (Waheedi & Stilt, 2018).

Constitutional Entrenchment of Islamic Norms

The post-independence constitutional landscapes of several Muslim-majority states reflect a deliberate and often politically charged effort to entrench Islamic norms within the structure of the state. These constitutional provisions serve not only to affirm national identity and religious heritage but also to provide a normative foundation for integrating Shari‘a into public law. The degree and manner in which Islamic norms are constitutionally embedded vary across jurisdictions, but they share a common feature: the attempt to reconcile the moral authority of Islamic law with the legal legitimacy of modern constitutionalism. In Pakistan, the constitutional entrenchment of Islamic norms is explicit and far-reaching. Article 227 of the 1973 Constitution declares that all existing laws shall be brought into conformity with “the injunctions of Islam as laid down in the Qur’an and Sunnah,” and no law shall be enacted which is “repugnant” to these injunctions. This provision establishes a substantive Islamic filter over the legislative process. Furthermore, Pakistan’s Federal Shariat Court (FSC) and the Council of Islamic Ideology (CII) are institutional mechanisms designed to evaluate the Islamic compatibility of laws. Although the FSC’s jurisdiction is limited and sometimes contested by the superior judiciary, its existence underscores the constitutional recognition of Islamic law as a normative standard alongside the common law framework inherited from British rule (Pill, 2016).

In Malaysia, the Federal Constitution recognizes Islam as “the religion of the Federation” (Article 3(1)), while simultaneously guaranteeing freedom of religion (Article 11). Shari‘a is institutionalized through state-level legislation and courts, as Malaysia’s federal structure delegates religious matters to individual states. The result is a complex legal mosaic wherein Shari‘a courts exercise jurisdiction over Muslims in personal status and moral offences, while civil courts oversee general legal matters. This jurisdictional bifurcation, although constitutionally sanctioned, frequently leads to conflicts over issues such as conversion, custody, and religious freedom,

especially in cases involving interfaith disputes. Nigeria presents another model of constitutional entrenchment of Islamic norms through its plural federal arrangement. Following the return to democratic rule in 1999, several northern Nigerian states reintroduced Shari‘a criminal law as part of their state legal systems. While the 1999 Constitution guarantees freedom of religion and prohibits state religion (Section 10), it also recognizes customary and religious laws within the framework of the state judiciary. Shari‘a courts in northern states now adjudicate not only personal law but also criminal offences, leading to legal dualism within the same national framework. This has raised significant constitutional and human rights concerns, particularly when Shari‘a-based punishments come into conflict with national and international legal standards (Moore, 2010).

These examples illustrate how Islamic norms have been entrenched at the constitutional level in ways that challenge the coherence of a unified legal system. Rather than functioning merely as symbolic affirmations of religious identity, these provisions have tangible implications for law-making, adjudication, and the protection of fundamental rights. At the same time, they coexist with, and are often constrained by, liberal constitutional principles such as equality, due process, and judicial independence—principles rooted in the common law tradition. The constitutional entrenchment of Islamic norms thus introduces a dual sovereignty dilemma: the state is bound both to uphold divine injunctions and to maintain fidelity to constitutional supremacy. This duality creates not only doctrinal tension but also institutional competition between religious and civil courts, between Islamic scholars and legal professionals, and between conservative and progressive interpretations of law. As such, the constitutional embedding of Islamic norms is a central driver of the broader legal dualism that defines hybrid legal systems Post-independence, several states reasserted Islamic identity within constitutional texts (Oman, 2010). For example:

Pakistan

Pakistan exemplifies one of the most intricate and consequential experiments in reconciling Islamic normativity with common law principles within a single constitutional framework. As a former British colony, Pakistan inherited a robust common law tradition, including the adversarial system, precedent-based adjudication, and the primacy of parliamentary sovereignty. However, as a self-declared Islamic republic, Pakistan has also made concerted efforts to embed Islamic principles at the heart of its constitutional and legal order. The 1973 Constitution of Pakistan reflects this dual commitment. On the one hand, it affirms fundamental rights—such as equality before law (Article 25), freedom of religion (Article 20), and due process (Articles 4 and 10)—derived from liberal constitutional traditions. On the other, it entrenches Islamic law through several key provisions. Most notably, Article 227 declares that all laws must be brought into conformity with the “injunctions of Islam as laid down in the Qur’an and Sunnah,” and mandates that no law shall be enacted that is repugnant to these injunctions. This provision creates a substantive religious test for legislative validity (Amna, 2022).

To operationalize this Islamic review, Pakistan established the Federal Shariat Court (FSC) under Article 203C of the Constitution. The FSC has the authority to examine whether existing laws conform to Islamic injunctions and to strike down provisions it finds repugnant. Although its jurisdiction is subject to appeal before the Shariat Appellate Bench of the Supreme Court, the FSC serves as a parallel judicial body with a distinct religious mandate. This institutional duality often results in jurisdictional tensions, especially when the FSC’s decisions clash with those of the superior civil courts. In addition, the Council of Islamic Ideology (CII) plays an advisory role by reviewing laws for Islamic compliance and recommending reforms. Though its opinions are non-binding, the CII influences legislative debates and judicial reasoning, especially on matters of personal law, family law, and public morality. The tension between Islamic and common law

norms is most evident in areas such as gender rights, blasphemy laws, and hudood punishments. For instance, the enforcement of the Hudood Ordinances under General Zia-ul-Haq's Islamization drive significantly altered the criminal justice system by introducing Islamic criminal sanctions (e.g., amputation, flogging) alongside existing common law penal provisions. While subsequent reforms have moderated their impact, these laws continue to complicate Pakistan's compliance with international human rights standards (Tariq, 2016).

Judicial interpretation has played a central role in mediating this duality. The superior judiciary often employs techniques of constitutional harmonization, arguing that Islamic principles are compatible with fundamental rights and democratic governance. Yet, inconsistencies remain. For example, while some rulings advance progressive interpretations of Islamic law to protect minority rights or women's interests, others reflect conservative readings that curtail liberties or reinforce patriarchal norms. The coexistence of these parallel legal systems creates a normative and institutional fragmentation that undermines legal certainty, fosters conflicting jurisprudence, and complicates access to justice. Moreover, the politicization of Islamic provisions, especially during periods of military rule, has exacerbated the legal imbalance in favor of religious norms at the expense of constitutional freedoms. In conclusion, Pakistan's experience illustrates the deep constitutional, doctrinal, and institutional challenges posed by hybrid legal systems. While the state aspires to uphold both divine and constitutional legitimacy, the resulting legal duality often generates contradiction rather than cohesion. The need for a principled reconciliation—perhaps grounded in the higher objectives of Islamic law (*maqāsid al-Sharī'a*) and a consistent rights-based jurisprudence—remains both urgent and elusive. Article 227 of the Constitution mandates that all laws must conform to the injunctions of Islam (Balasubramaniam, 2021).

Malaysia

Malaysia presents a nuanced and instructive model of constitutional duality in a federal, multi-ethnic, and multi-religious context. While deeply influenced by British colonial legal structures and common law principles, Malaysia has also constitutionally entrenched Islamic normativity, producing a legal system characterized by jurisdictional bifurcation and complex legal pluralism. At the heart of Malaysia's constitutional arrangement is Article 3(1) of the Federal Constitution, which declares that "*Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation.*" This symbolic elevation of Islam is qualified by a broader framework that maintains secular governance, particularly through the entrenchment of fundamental liberties (Articles 5–13), the separation of powers, and the common law system as the foundational source of general law under Article 160. Crucially, Malaysia's federal structure delegates jurisdiction over Islamic matters—including personal status, family law, and Islamic criminal offences (within limited bounds)—to the individual state legislatures. Each of Malaysia's 13 states has the authority to enact laws governing Muslims in these domains and to establish Shari'a courts for adjudication. The federal legislature, in contrast, retains jurisdiction over criminal, civil, and constitutional matters applicable to all citizens, Muslim and non-Muslim alike (Balasubramaniam, 2021).

This jurisdictional dualism—between civil courts and Shari'a courts—has become a central axis of legal and constitutional tension. Shari'a courts have jurisdiction only over Muslims and are subordinate to the civil judiciary in the formal hierarchy. However, the expansion of Islamic law's substantive scope in several states, especially regarding moral policing and religious identity, has created conflict zones between the two systems. One of the most contentious areas involves interfaith family disputes, particularly those related to conversion, child custody, and burial rights. In several high-profile cases (e.g., *Indira Gandhi v. Pengarah Jabatan Agama Islam Perak*), the

civil courts have had to resolve disputes arising from the unilateral conversion of children to Islam by one parent, where the Shari'a courts lacked jurisdiction over non-Muslim parties. These cases expose the constitutional ambiguity surrounding the relative authority of civil and Shari'a courts and the challenge of safeguarding individual rights—especially of non-Muslims—within a dual legal regime (Cheong et al., 2023).

Further, the rise of Islamic legal activism and the growing influence of state religious departments have amplified efforts to extend Shari'a into public life, including through the criminalization of “offences against Islam” such as khalwat (close proximity) and apostasy. While these laws apply only to Muslims, their enforcement has raised serious human rights concerns and led to allegations of legal overreach and encroachment on civil liberties. Despite these tensions, the Malaysian judiciary has played a critical mediating role, often invoking constitutional supremacy and fundamental rights to assert the primacy of civil courts. Yet, judicial consistency has been uneven. Some judgments lean toward protecting constitutional rights regardless of religious identity, while others defer to state religious authorities, reinforcing the jurisdictional boundaries drawn by Islamic enactments. In sum, Malaysia illustrates a form of institutionalized legal pluralism, in which Islamic and common law traditions are not merely coexistent but segregated by jurisdiction and identity. This has produced a complex legal terrain where legal outcomes can depend significantly on the religious status of the parties and the court system involved. While the Malaysian model is often held up as a pragmatic compromise, it remains vulnerable to fragmentation, legal uncertainty, and rights asymmetry. Moving forward, the Malaysian experience raises critical questions: Can constitutional supremacy and Islamic normativity be reconciled without eroding fundamental liberties? How can legal pluralism be managed without entrenching legal inequality? These are pressing issues for Malaysia and for other states grappling with the challenges of constitutional duality in religiously plural societies (Jamaludin & Buang, 2013).

Judicial Negotiations of Dual Authority

In hybrid legal systems such as those of Pakistan and Malaysia, the judiciary occupies a central role in mediating the complex relationship between Islamic normativity and common law constitutionalism. Courts are not only arbiters of legal disputes but also institutional interpreters of constitutional identity. They must reconcile competing legal and moral authorities, often under conditions of doctrinal ambiguity, political pressure, and social pluralism. This process—commonly described as the *judicial negotiation of dual authority*—reveals the inherent tensions and creative accommodations within dual legal orders. In Pakistan, the judiciary has developed a jurisprudential strategy aimed at harmonizing Islamic principles with constitutional norms. The Supreme Court of Pakistan has repeatedly emphasized that Islam and fundamental rights are not inherently contradictory, asserting that the Constitution must be interpreted in light of both democratic values and Islamic morality. Landmark cases such as *Hakim Khan v. Government of Pakistan* and *Muhammad Aslam Khaki v. Federation of Pakistan* demonstrate the Court's willingness to invoke Islamic precepts selectively to bolster rights-based claims, including dignity and equality. However, the same judiciary has also upheld restrictive and controversial provisions, such as blasphemy laws and gender-discriminatory statutes, on the grounds of religious orthodoxy—highlighting the doctrinal elasticity and political sensitivity of such interpretations (Ahmad, 2005).

The Federal Shariat Court (FSC), meanwhile, has taken a more literalist approach, often insisting on the primacy of Islamic injunctions even at the expense of modern legal principles. The FSC's

decisions on issues such as interest (riba), zina (adultery), and hudood penalties have occasionally clashed with constitutional protections and international legal commitments. While appellate oversight by the Shariat Appellate Bench exists, the FSC's existence as a parallel judicial body entrenches a *competing axis of legal authority* that complicates doctrinal coherence. In Malaysia, the courts face a slightly different configuration of dual authority. The tension often arises not between two bodies of constitutional text but between two judicial hierarchies civil and Shari'a courts each with its own jurisdictional logic. Malaysia's Federal Court, the apex civil court, has had to resolve numerous jurisdictional and substantive conflicts involving religious identity, conversion, and custody. In *Indira Gandhi v. Pengarah Jabatan Agama Islam Perak*, for instance, the court ruled that the unilateral conversion of children to Islam without the consent of both parents was unconstitutional, reaffirming the supremacy of civil courts in interpreting constitutional rights. However, not all decisions have been as progressive or decisive. In *Lina Joy v. Majlis Agama Islam*, the court deferred to Shari'a authorities on the matter of apostasy, holding that the conversion out of Islam must be certified by the Shari'a court—a position that effectively limited religious freedom for Muslims and underscored the judiciary's cautious deference to religious institutions (Abdullah et al., 2013).

What emerges in both jurisdictions is a pattern of contextual judicial negotiation, where courts selectively prioritize either Islamic norms or constitutional rights based on a mixture of textual interpretation, public sentiment, institutional power dynamics, and political constraints. This case-by-case adjudication, while flexible, often results in legal uncertainty and inconsistent protection of fundamental rights, especially for minorities, women, and dissenters. Moreover, the lack of a coherent jurisprudential methodology for reconciling Islamic and constitutional norms has led to conflicting precedents and fragmented legal reasoning. Some judges adopt a harmonization approach, using concepts like *maqāṣid al-Sharī'a* (higher objectives of Islamic law) to interpret Islamic provisions in light of human dignity, justice, and welfare. Others adopt a compartmentalized view, treating Islamic law as an insulated normative order immune to secular constitutional scrutiny. Ultimately, the judiciary in hybrid systems is burdened with the task of upholding both constitutional supremacy and religious legitimacy, often without clear guidance or consensus. Their role in negotiating dual authority is both pivotal and precarious—capable of steering the legal system toward integration and coherence, or exacerbating fragmentation and contestation. The challenge lies in developing principled and transparent doctrines that can guide this negotiation, preserve judicial independence, and protect the pluralistic fabric of the constitutional order (Mohamed, 1999). The judiciary often serves as the principal forum for reconciling constitutional dualities. Courts must interpret laws in a manner consistent with both common law principles (e.g., due process, proportionality) and Islamic injunctions. Several patterns emerge:

Interpretive Harmonization

Interpretive harmonization is a judicial and doctrinal approach employed in hybrid legal systems to reconcile the apparent tensions between Islamic normativity and common law constitutional principles. Faced with competing sources of authority—divine injunctions embedded in constitutional texts and secular legal norms derived from common law traditions—courts and legal scholars have sought to find interpretive strategies that emphasize compatibility rather than conflict. This harmonization aims to construct a cohesive legal framework that respects Islamic values while safeguarding fundamental rights and the rule of law. One key mechanism of interpretive harmonization is the use of *maqāṣid al-Sharī'a*, or the higher objectives of Islamic law, as a lens through which constitutional provisions and Islamic injunctions are jointly interpreted. By focusing on universal principles such as justice (*'adl*), public welfare (*maslahah*), human dignity

(*karāmah*), and prevention of harm (*darar*), courts seek to transcend rigid literalism and promote interpretations that align Islamic law with modern constitutional norms. For example, Islamic principles protecting human dignity can be invoked to support gender equality and due process rights, thereby bridging gaps with liberal constitutional guarantees. In Pakistan, the Supreme Court has at times explicitly referenced *maqāsid*-based reasoning to resolve conflicts between Islamic mandates and fundamental rights. This interpretive strategy enables the judiciary to uphold constitutional freedoms without appearing to contravene the Islamic character of the state. Similarly, in Malaysia, while the Shari‘a courts operate within a separate jurisdiction, civil courts have occasionally used principles consonant with Islamic ethics to affirm constitutional rights, thus fostering legal coherence. Another aspect of harmonization involves the principle of constitutional supremacy, which affirms that all laws—including those inspired by religious norms—must conform to the overarching constitutional framework. This principle requires that Islamic law be interpreted in a manner consistent with constitutional guarantees such as equality before the law, freedom of religion, and protection against discrimination (Faizi & Ali, 2024).

In some jurisdictions, this has led to judicial scrutiny of Islamic laws to ensure they do not infringe on these rights, resulting in modifications or limitations on the application of certain Islamic provisions. Moreover, courts employ contextual and purposive interpretation to read Islamic injunctions considering contemporary social realities and international human rights standards. This dynamic reading accommodates evolving understandings of justice and fairness without discarding religious legitimacy. For instance, interpretations of hudood punishments or family law provisions have been tempered to reflect procedural safeguards and gender-sensitive approaches. However, interpretive harmonization faces significant challenges. It demands judicial courage and intellectual creativity to negotiate entrenched orthodoxies and competing political interests. In some cases, harmonization may be resisted by conservative religious actors who view constitutionalism as a secular intrusion, or by liberal advocates who perceive Islamic law as inherently incompatible with human rights. Additionally, the absence of uniform jurisprudential methodologies and divergent theological interpretations can hinder consensus on harmonized meanings. Despite these obstacles, interpretive harmonization remains a vital strategy for mitigating legal fragmentation in hybrid systems. By emphasizing shared values and principled dialogue between Islamic and common law traditions, it holds the potential to foster a constitutional order that is both authentically Islamic and fully respectful of pluralistic rights and democratic governance. This approach encourages legal evolution through reasoned interpretation rather than rigid confrontation, thus advancing the long-term stability and legitimacy of hybrid legal systems. Judges employ *doctrinal harmonization*, interpreting Shari‘a in ways that align with constitutional rights. In Pakistan, the Federal Shariat Court has sometimes upheld progressive interpretations of Islamic law on matters like gender equality and criminal justice (Katili et al., 2025).

Doctrinal Compartmentalization

Doctrinal compartmentalization refers to the legal approach whereby Islamic normativity and common law principles are maintained as distinct, parallel bodies of law, each operating within its own separate domain with minimal overlap or integration. Unlike interpretive harmonization, which seeks to reconcile and unify conflicting norms, compartmentalization accepts the coexistence of divergent legal orders but confines their application to clearly demarcated spheres. This approach often results in a dualistic legal architecture where Islamic law governs specific personal, religious, or moral matters, while common law principles regulate secular, civil, and criminal affairs. In hybrid legal systems such as Malaysia and Pakistan, doctrinal compartmentalization manifests through institutional and jurisdictional arrangements that allocate

legal authority based on religious identity and subject matter. For example, in Malaysia, Shari'a courts possess exclusive jurisdiction over Muslim personal status issues, Islamic family law, and certain religious offences, whereas civil courts adjudicate all other matters, including constitutional questions and criminal law involving non-Muslims. This structural division preserves the integrity of Islamic legal principles within their own domain but limits their interaction with broader constitutional or common law norms. Similarly, in Pakistan, the coexistence of the Federal Shariat Court alongside the superior civil judiciary exemplifies compartmentalization at the institutional level. The Shariat Court reviews laws for Islamic compliance but operates largely independently of the common law-based court hierarchy, leading to separate lines of jurisprudence and sometimes conflicting legal interpretations. This separation underscores a doctrinal boundary between religious law and secular constitutionalism (Ahmed, 2024).

While doctrinal compartmentalization provides clarity by delineating legal boundaries and reducing direct normative clashes, it also poses significant challenges. The rigid segregation of legal spheres may engender legal fragmentation, creating inconsistencies and uncertainty, especially in cases involving individuals subject to both systems or matters straddling religious and civil domains. For example, disputes over conversion, custody, or inheritance frequently expose tensions as parties navigate between Shari'a and civil courts, often resulting in conflicting judgments and protracted litigation. Furthermore, compartmentalization can entrench unequal access to justice and rights protection, particularly for women and religious minorities, whose status and rights may differ dramatically depending on the legal regime applied. The segmented nature of the system often limits effective constitutional review of Islamic laws and restricts the possibility of developing a unified, rights-based jurisprudence. Doctrinal compartmentalization may also reinforce political and social divisions by institutionalizing religious identity as a legal boundary, potentially fostering sectarianism or exclusionary practices. It tends to institutionalize legal pluralism in a form that prioritizes separation over integration, sometimes inhibiting the evolution of a more cohesive and inclusive constitutional order. Doctrinal compartmentalization reflects a pragmatic, if imperfect, strategy for managing constitutional dualities in hybrid systems. By respecting the autonomy of Islamic law and common law spheres, it reduces immediate normative conflicts but risks long-term fragmentation, inequality, and contested legitimacy. The challenge lies in balancing the benefits of legal autonomy with the need for coherence, fairness, and protection of universal rights within pluralistic societies. Some jurisdictions adopt a model of *jurisdictional separation*, where Shari'a courts address personal status laws while secular courts handle civil and criminal matters. However, this separation is often porous and subject to contestation (Pramasto, 2024).

Strategic Ambiguity

Strategic ambiguity refers to the deliberate use of vague, flexible, or indeterminate constitutional language and legal provisions to accommodate the coexistence of Islamic normativity and common law principles within hybrid legal systems. This approach allows the state to maintain a formal commitment to both religious and secular legal orders without fully resolving inherent contradictions, thereby managing social and political tensions by preserving room for multiple, sometimes conflicting, interpretations. In constitutions such as those of Pakistan and Malaysia, strategic ambiguity is evident in provisions that simultaneously affirm the supremacy of Islamic injunctions and uphold fundamental rights rooted in liberal constitutionalism. For example, Pakistan's Article 227 mandates conformity of all laws to Islamic injunctions but leaves undefined the precise scope and content of these injunctions, entrusting their interpretation to bodies like the Federal Shariat Court. Similarly, Malaysia's designation of Islam as the "religion of the Federation" (Article 3(1)) is qualified by guarantees of religious freedom and the continuation of

secular law, without elaborating the hierarchy or interaction between these elements. This constitutional vagueness enables political actors and judicial bodies to invoke either Islamic or common law norms as circumstances dictate. It provides flexibility to respond to shifting political landscapes, social pressures, and competing constituencies. For example, courts may emphasize Islamic principles in matters of public morality or national identity while invoking constitutional rights to protect minorities and maintain rule of law in other contexts. Strategic ambiguity also serves as a political tool to defer contentious debates over the primacy of religious versus secular law. By leaving interpretive boundaries unsettled, it mitigates immediate conflicts among diverse religious groups, political parties, and institutional actors, preserving social stability and elite consensus in pluralistic societies (Reskiani et al., 2022).

However, this ambiguity comes with significant costs. The lack of clarity fuels legal uncertainty and inconsistent jurisprudence, as different actors advance divergent readings of constitutional provisions. This unpredictability complicates the administration of justice and undermines the rule of law. It may also empower conservative religious elements to claim exclusive authority over Islamic interpretation, while secular authorities assert constitutional supremacy, leading to institutional rivalry and jurisdictional overlap. Moreover, strategic ambiguity often perpetuates normative tensions without resolution, delaying the development of a coherent legal framework that harmonizes Islamic and common law principles. This can hinder rights protections, particularly for vulnerable groups affected by ambiguous legal standards, such as women, religious minorities, and dissenters. I, strategic ambiguity functions as a double-edged sword in hybrid constitutional systems. It provides political flexibility and social accommodation but at the expense of legal clarity and consistent rights enforcement. Navigating this ambiguity requires careful judicial craftsmanship, political dialogue, and progressive legal reforms aimed at gradually clarifying and reconciling the constitutional relationship between Islamic normativity and common law principles. Courts may rely on vague references to “public order” or “Islamic morality” to justify deference to religious authority, resulting in inconsistent jurisprudence and erosion of legal certainty (Hakim, 2013).

Constitutional Challenges

Supremacy and Sovereignty

The concepts of supremacy and sovereignty lie at the core of constitutional dualities in hybrid legal systems where Islamic normativity intersects with common law principles. They define the ultimate source of legal authority and the hierarchical order of competing normative frameworks. How supremacy and sovereignty are articulated and operationalized within such systems profoundly influences the coherence, legitimacy, and effectiveness of constitutional governance. In a traditional constitutional framework, constitutional supremacy establishes that the constitution is the highest law of the land, binding all branches of government and subordinate laws. This principle ensures a unified legal order, the protection of fundamental rights, and a check against arbitrary or discriminatory laws. However, in hybrid legal systems, constitutional supremacy is often complicated by claims of divine sovereignty—the notion that ultimate authority rests with God, and that Islamic law, as divinely revealed, transcends human legislation and constitutional constraints. In Pakistan, for instance, the Constitution simultaneously affirms the supremacy of the Constitution (Article 6) and the paramountcy of Islamic injunctions (Article 227). The establishment of the Federal Shariat Court and Shariat Appellate Bench embodies this dual claim to sovereignty, empowered to invalidate laws inconsistent with Islam. This creates a layered sovereignty, where constitutional bodies and Islamic judicial authorities both assert supreme legal

authority in overlapping spheres, sometimes resulting in jurisdictional conflicts and ambiguity over ultimate legal power (Khan & Jiliani, 2023).

Similarly, in Malaysia, sovereignty is constitutionally vested in the Yang di-Pertuan Agong (King) and state rulers, who are also guardians of Islam within their respective territories. The Federal Constitution affirms Islam as the religion of the Federation but preserves fundamental liberties and recognizes a secular common law system. The coexistence of civil and Shari'a courts reflects a division of sovereignty, with each exercising authority over distinct legal domains—civil courts over secular matters, Shari'a courts over Islamic law governing Muslims. This division of sovereignty challenges the classical notion of unitary state sovereignty and raises complex questions about the locus of ultimate authority. It necessitates ongoing negotiation and contestation among political institutions, religious authorities, and the judiciary to delineate boundaries and prevent legal fragmentation. The interplay between supremacy and sovereignty also impacts the protection of rights and the rule of law. When Islamic law is positioned as sovereign, constitutional guarantees may be subordinated or reinterpreted to align with religious mandates. Conversely, emphasizing constitutional supremacy may constrain religious laws, promoting a secularized rule of law but potentially provoking resistance from religious constituencies (Khan & Usman, 2023).

Ultimately, hybrid systems must navigate these competing claims by developing institutional mechanisms and jurisprudential doctrines that reconcile constitutional supremacy with religious sovereignty. This includes clarifying the hierarchy of norms, ensuring effective judicial review, and balancing respect for religious identity with universal principles of justice and equality. The resolution of supremacy and sovereignty tensions is vital to the legitimacy and stability of hybrid constitutional orders. It determines whether legal pluralism can be managed as a constructive pluralism or devolves into jurisdictional fragmentation and rights contestation, shaping the trajectory of constitutional development in societies grappling with dual normative foundations. Hybrid systems must reconcile the concept of parliamentary or constitutional supremacy with the claim that divine law is inherently supreme. This raises issues of judicial review and the legitimacy of man-made legislation in the face of divine injunctions (Javed et al., 2021).

Rights and Freedoms

In hybrid legal systems where Islamic normativity coexists with common law principles, the articulation, protection, and limitations of rights and freedoms become a critical and often contested domain. The constitutional recognition of fundamental rights must be reconciled with Islamic injunctions, which may prescribe different norms regarding individual liberties, social responsibilities, and moral conduct. This dual normative framework generates complex legal dynamics affecting the scope and exercise of rights within pluralistic societies. Constitutions in countries like Pakistan and Malaysia enshrine a range of fundamental rights—such as freedom of religion, expression, equality before the law, and protection against discrimination—modelled largely on common law and international human rights standards. However, these rights are frequently qualified or constrained by clauses that mandate conformity with Islamic principles or public morality, creating a tension between universalistic rights claims and religiously derived limitations. For instance, in Pakistan, Article 20 guarantees the freedom to profess, practice, and propagate religion, but this right is circumscribed by provisions in Article 227, which require all laws to conform to Islamic injunctions. This has led to restrictions on religious conversion, blasphemy laws, and limitations on non-Muslims' participation in certain public spheres. Similarly, women's rights often encounter limitations rooted in Islamic family law, affecting issues such as inheritance, divorce, and testimony (Khan, 2021).

In Malaysia, while the Federal Constitution guarantees freedoms such as speech and religion, these are subject to reasonable restrictions in the interest of public order, morality, and religion. Islamic law governs personal status for Muslims, often imposing gender-specific rules and limiting religious freedom in cases involving apostasy or interfaith marriage. The coexistence of Shari'a and civil courts creates differential access to rights and remedies based on religious affiliation. The judiciary plays a pivotal role in navigating these tensions. Courts have at times expanded rights protections through interpretive harmonization, emphasizing *maqāsid al-Sharī'a* to align Islamic principles with human dignity and equality. Yet, courts have also upheld restrictive laws in the name of protecting Islamic values, demonstrating uneven and context-dependent rights adjudication. Moreover, the pluralistic legal landscape can engender asymmetries in rights protection, particularly affecting women, religious minorities, and dissenters who may face limitations under Islamic law not mirrored in the civil legal system. This raises critical questions about equality before the law, non-discrimination, and the universality of human rights in hybrid constitutional frameworks. Balancing rights and freedoms within constitutional dualities require ongoing legal reform, judicial sensitivity, and political will to ensure that religious normativity does not unduly undermine fundamental liberties. It also demands mechanisms for protecting minority rights and safeguarding individuals against coercive or discriminatory religious laws. rights and freedoms in hybrid legal systems are negotiated within a complex matrix of religious, constitutional, and social factors. Effective reconciliation depends on principled jurisprudence and inclusive legal frameworks that uphold both religious identity and pluralistic democratic values. The duality can create tensions between constitutional rights (e.g., freedom of religion, gender equality) and interpretations of Islamic law that may limit those rights. Courts are often tasked with delicate balancing acts, as seen in cases involving blasphemy laws, apostasy, and family law (Usman et al., 2021).

Rule of Law and Legal Certainty

The principles of rule of law and legal certainty are foundational to any constitutional system, ensuring that laws are clear, publicized, stable, and applied evenly to protect rights and maintain social order. In hybrid legal systems characterized by constitutional dualities—where Islamic normativity coexists with common law traditions—upholding these principles presents distinct challenges and complexities. The coexistence of multiple normative sources often results in legal pluralism, which can undermine predictability and uniformity. For instance, overlapping jurisdictions between Shari'a and civil courts, as seen in countries like Pakistan and Malaysia, frequently generate conflicting interpretations and enforcement of laws. This multiplicity of legal standards risks fragmentation of the legal order, where citizens may be subject to different rules depending on religious identity, geographic location, or judicial forum. Ambiguities arising from strategic constitutional vagueness and doctrinal compartmentalization further exacerbate legal uncertainty. The lack of clear hierarchy or procedural mechanisms to resolve conflicts between Islamic and common law norms complicates judicial decision-making and fosters inconsistent jurisprudence. For example, a law upheld as compliant with Islamic injunctions by the Federal Shariat Court might simultaneously be challenged for violating constitutional guarantees in a civil court, leaving litigants and lower courts unsure which precedent prevails (Khan et al., 2020).

This uncertainty undermines the rule of law's core tenet that laws must be accessible and foreseeable, enabling individuals to regulate their conduct accordingly. When citizens, particularly women, minorities, or religious dissenters, face unpredictability in the application of laws affecting fundamental rights—such as marriage, inheritance, or religious freedom—the legitimacy and fairness of the legal system come into question. Moreover, legal uncertainty may be exploited by political actors or interest groups to advance particular agendas, eroding judicial independence and

public trust. The tension between upholding Islamic moral imperatives and ensuring constitutional guarantees sometimes results in selective enforcement or discretionary interpretations that compromise legal equality and due process. To strengthen rule of law and legal certainty in hybrid systems, institutional and doctrinal reforms are essential. These may include clarifying jurisdictional boundaries, establishing coherent mechanisms for judicial review, and promoting interpretive frameworks that harmonize Islamic principles with constitutional norms. Transparency in judicial reasoning and consistent application of legal standards can enhance predictability and fairness. Ultimately, preserving the rule of law in dual normative systems is vital for maintaining social cohesion, protecting individual rights, and ensuring that constitutional dualities function not as sources of legal chaos but as pluralistic foundations for justice and governance (Khan et al., 2020).

Comparative Insights

Malaysia: Federalism and Functional Separation

Malaysia's hybrid legal system is deeply shaped by its federal structure and the functional separation of Islamic and common law jurisdictions. This arrangement plays a pivotal role in managing constitutional dualities by delineating authority between the federal and state governments and compartmentalizing the legal spheres in which Islamic normativity and common law principles operate. Malaysia's federalism vests substantial autonomy in its thirteen states, each headed by a Sultan or Governor, who serve as custodians of Islam within their respective territories. Article 3(1) of the Federal Constitution declares Islam the religion of the Federation, while simultaneously guaranteeing freedom of religion under Article 11. The Constitution assigns the administration of Islamic law and personal status matters for Muslims primarily to the states under the State List in the Ninth Schedule. This decentralization allows states to enact and enforce Shari'a laws on issues such as marriage, inheritance, apostasy, and religious offenses, reflecting local customs and religious sensibilities. Functionally, Malaysia maintains a dual court system: civil courts adjudicate general legal matters based on common law principles, while Shari'a courts have exclusive jurisdiction over Muslim personal law. This structural separation reinforces doctrinal compartmentalization, with civil courts lacking authority to interfere in Shari'a matters, and Shari'a courts limited in their jurisdiction to Muslim subjects and Islamic law domains (Khan et al., 2020).

The federal-state division creates a layered sovereignty where state rulers exercise religious authority as part of their constitutional role, while federal institutions uphold the secular legal order. The Yang di-Pertuan Agong, Malaysia's federal monarch, also has a constitutional duty to safeguard Islam nationally, underscoring the intertwined but distinct roles of federal and state powers in religious governance. This federal and functional separation helps mitigate direct clashes between Islamic and common law norms by geographically and institutionally localizing Islamic law's application. It also allows for diversity in the interpretation and enforcement of Islamic norms across states, accommodating Malaysia's ethnoreligious pluralism. However, this arrangement can give rise to jurisdictional tensions and inconsistencies. Overlapping competencies occasionally lead to legal uncertainty, especially in matters involving conversions, custody disputes, and enforcement of religiously based punishments. Conflicts sometimes emerge when civil courts are petitioned to intervene in Shari'a matters, challenging the separation of functions and raising questions about the limits of judicial review.

The federal framework also impacts rights protections, as the degree of Shari‘a enforcement and legal pluralism varies among states, influencing the lived experience of Muslims and minorities differently depending on locality. This patchwork system complicates the uniform application of constitutional rights and legal certainty. In summary, Malaysia’s federalism and functional separation constitute a foundational mechanism for managing constitutional dualities. By allocating distinct roles and jurisdictions between federal and state governments and separating Islamic from common law adjudication, Malaysia seeks to balance religious identity with pluralistic governance. Nevertheless, ongoing institutional coordination and jurisprudential dialogue remain essential to address tensions, harmonize legal standards, and uphold constitutional coherence within this complex hybrid legal order. Malaysia's model of federalism allows for Shari‘a laws at the state level, leading to regional diversity in the implementation of Islamic law. The civil courts have occasionally asserted jurisdictional primacy, but ambiguity persists (Khan et al., 2020).

Nigeria: Parallel Legal Orders

Nigeria exemplifies a hybrid legal system characterized by the coexistence of parallel legal orders, where Islamic normativity operates alongside common law principles within a pluralistic constitutional framework. This duality reflects the country’s complex ethno-religious composition, especially in the northern states where Islam predominates, and shapes the architecture of legal governance. The Nigerian Constitution recognizes the supremacy of secular constitutional law while accommodating Shari‘a law as a formal legal order applicable in personal status, family, and certain criminal matters for Muslims, primarily in twelve northern states that have formally incorporated Shari‘a courts into their judicial systems. These courts operate alongside the federal and state civil courts, creating a system of parallel jurisdictions. Unlike some hybrid systems that compartmentalize Islamic and common law law functionally, Nigeria’s model reflects a parallel legal order in which Shari‘a courts possess broad authority to adjudicate civil and criminal cases involving Muslims under Islamic law. This includes implementation of certain Hudud punishments, which has sparked intense national and international debate regarding human rights and constitutional guarantees (Kanwel et al., 2020).

The Constitution affirms secular supremacy but also recognizes customary and religious laws under the Concurrent Legislative List for states, allowing the formal incorporation of Shari‘a law within the state legal framework. However, this coexistence is often marked by jurisdictional overlap and conflicts between Shari‘a courts and civil courts, particularly in criminal matters and enforcement of Islamic penal codes. This parallelism creates significant challenges for the rule of law and legal certainty. Citizens may be subject to different legal standards depending on their religious identity and geographical location, with Muslims in Shari‘a states governed by Islamic law in areas where non-Muslims remain under civil law. This duality risks unequal protection of rights, as Shari‘a courts’ rulings may diverge from constitutional guarantees on freedom of religion, equality, and due process. The Nigerian judiciary has grappled with balancing respect for religious autonomy and upholding constitutional rights. The Supreme Court and other federal courts have occasionally intervened in Shari‘a matters, affirming the supremacy of the Constitution while also respecting state powers to legislate on Islamic law. Nonetheless, tensions persist over the boundaries of authority and the harmonization of legal principles. Nigeria’s parallel legal orders demonstrate the complex interplay between Islamic normativity and common law traditions within a federal and multicultural context. While providing space for religious legal identity, the system faces ongoing challenges in ensuring constitutional supremacy, protecting fundamental rights, and fostering legal coherence amidst overlapping jurisdictions and normative frameworks. Bottom of Form In Nigeria, the dual court system—comprising common law and Shari‘a courts—

has led to jurisdictional conflicts and human rights concerns, especially in the criminal justice context (Kanwel et al., 2020).

Pakistan: Islamization and Judicial Activism

Pakistan's hybrid legal system is deeply shaped by the state-driven project of Islamization, which began in the late 1970s under General Zia-ul-Haq's regime. This process aimed to infuse Islamic normativity into the legal and constitutional framework, fundamentally reshaping the country's legal identity by embedding Islamic principles within the common law-based system inherited from colonial rule. Constitutionally, Pakistan mandates conformity of all laws with Islamic injunctions under Article 227, and the establishment of the Federal Shariat Court (FSC) and Shariat Appellate Bench institutionalizes Islamic review over legislation and judicial decisions. These bodies have the authority to invalidate laws deemed repugnant to Islam, positioning Islamic law as a constitutional standard alongside secular legislation. Islamization has expanded Islamic law's reach into criminal law (through Hudood Ordinances), family law, finance, and public morality, creating a dual legal framework that often operates in parallel to secular common law norms. This has resulted in complex legal pluralism, affecting the rights and freedoms of various groups, particularly women and religious minorities, as Islamic provisions sometimes impose restrictions not present in common law (Giunchi, 2013).

Judicial activism has played a pivotal role in shaping the contours of constitutional duality in Pakistan. The judiciary, particularly the higher courts, have actively interpreted the Constitution to navigate tensions between Islamic injunctions and fundamental rights. The FSC and Supreme Court have developed doctrines to harmonize conflicting norms, such as the use of *maqāṣid al-sharī'a* (objectives of Islamic law) to promote justice and equity while respecting Islamic principles. At the same time, judicial activism has sometimes reinforced conservative interpretations, upholding restrictive laws on blasphemy, Hudood offenses, and gender roles, thereby drawing criticism for undermining constitutional guarantees of equality and freedom. The courts' intervention in political matters and constitutional crises also underscores their influential role in Pakistan's constitutional order. Pakistan's experience highlights the dynamic interplay between state-led Islamization and judicial agency, where courts serve as key arbiters in reconciling—or at times intensifying—constitutional dualities. This activism shapes the evolving relationship between Islamic normativity and common law principles, impacting legal coherence, rights protection, and the legitimacy of the hybrid legal system. Islamization and judicial activism in Pakistan illustrate both the possibilities and challenges of integrating religious norms within a constitutional democracy. They reveal the tensions inherent in institutionalizing religious authority while striving to uphold constitutional supremacy and pluralistic governance. Pakistan's judiciary has historically oscillated between defending constitutionalism and endorsing Islamization. The Council of Islamic Ideology and the Federal Shariat Court often issue conflicting interpretations, reflecting the unresolved duality (Khan & Zubair, 2023).

Toward Jurisprudential Reconciliation

The coexistence of Islamic normativity and common law principles within hybrid legal systems presents enduring challenges, yet it also offers opportunities for jurisprudential reconciliation—the development of legal doctrines and interpretive methods that harmonize these dual normative orders into a coherent constitutional framework. Moving toward reconciliation requires innovative approaches that respect religious identities while upholding constitutional values such as justice, equality, and human rights. One promising avenue is the application of *maqāṣid al-sharī'a*—the higher objectives of Islamic law—which emphasize principles like justice (*'adl*), public welfare

(*maslahah*), and prevention of harm (*darar*). By interpreting Islamic injunctions through the lens of *maqāsid*, jurists and judges can align religious norms with constitutional ideals, enabling flexible and context-sensitive application that supports pluralism and rights protection. Interpretive harmonization further facilitates reconciliation by encouraging courts to read Islamic and common law provisions as complementary rather than conflicting. This method involves construing ambiguous constitutional texts and statutes in ways that preserve the integrity of both legal orders, emphasizing shared values such as fairness, dignity, and social cohesion. Such an approach reduces normative clashes and fosters mutual respect between religious and secular legal traditions (Khan & Zubair, 2023).

Institutionally, mechanisms for dialogue and coordination between civil and Shari‘a courts are essential to minimize jurisdictional conflicts and ensure consistent jurisprudence. Joint committees, appellate oversight, or specialized tribunals can provide platforms for resolving interpretive disputes and harmonizing decisions. Legal education and scholarship also play a crucial role in advancing jurisprudential reconciliation by training lawyers and judges to appreciate the nuances of both legal systems and to employ comparative and interdisciplinary methods. Despite these pathways, challenges remain. Deep-seated political, social, and ideological divides can impede consensus, while strategic ambiguity in constitutional language may both enable and hinder clarity. Additionally, reconciling rights-sensitive areas such as gender equality and freedom of religion demands courageous jurisprudence and progressive reforms. Ultimately, jurisprudential reconciliation seeks to transform constitutional dualities from sources of legal fragmentation into opportunities for dynamic pluralism—a pluralism that is principled, rights-respecting, and responsive to diverse societal needs. Achieving this balance is pivotal for the legitimacy, stability, and evolution of hybrid legal systems navigating the interface between Islamic normativity and common law principles (Khan & Zubair, 2023).

Conclusion

This research underscores the complex but critical challenge of reconciling Islamic normativity with common law principles within hybrid legal systems. The constitutional dualities arising from this intersection shape not only legal institutions and jurisprudence but also affect fundamental rights, social cohesion, and governance legitimacy. Understanding these dynamics is vital for policymakers, jurists, and scholars committed to fostering inclusive, stable, and rights-respecting legal orders in pluralistic societies. Key findings reveal that while hybrid systems like those in Pakistan, Malaysia, and Nigeria have developed various institutional arrangements—such as federalism, parallel legal orders, and judicial mechanisms—to manage normative tensions, persistent challenges remain. These include jurisdictional ambiguities, conflicting claims of sovereignty, uneven rights protection, and legal uncertainty. However, the emergence of interpretive harmonization, doctrinal innovation, and *maqāsid al-sharī‘a*-based jurisprudence offers promising avenues to bridge normative divides and promote constitutional coherence. For future research, several areas warrant deeper exploration. Comparative studies could analyze how hybrid legal systems balance religious and secular norms in contexts beyond the common law tradition, such as civil law or mixed jurisdictions. Empirical research examining the lived experiences of rights holders—particularly women and minorities—in these systems would provide valuable insights into the practical implications of constitutional dualities. Additionally, exploring the role of international human rights law and transnational legal norms in influencing domestic reconciliation efforts could enrich understanding of global-local legal interactions. Advancing this field also requires interdisciplinary approaches incorporating political science, sociology, and theology to address the broader societal dimensions influencing legal pluralism. Ultimately,

fostering constructive dialogue between religious and constitutional actors, supported by sound jurisprudential principles, will be essential to evolving hybrid legal systems that honor both faith and fundamental freedoms. This research matters because the resolution of constitutional dualities has profound implications for justice, democracy, and peace in diverse societies. Navigating these complex legal terrains with sensitivity and innovation is not merely an academic exercise but a pressing imperative for the rule of law and human dignity in the 21st century. Hybrid legal systems that seek to reconcile Islamic normativity with common law principles must navigate a delicate constitutional terrain. While normative dualities present significant challenges, they also offer opportunities for legal innovation, pluralism, and contextual jurisprudence. By developing principled mechanisms for harmonization, such systems can foster a constitutional order that respects both divine and democratic legitimacy.

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