

a right that is increasingly called into question by the Federal *Shari'ah* Court. Also, the right to be heard was not extended to religion. Capital punishment for blasphemy is often pronounced, even if it is usually not carried out, and an automatic identity of certain religious doctrines with blasphemy is automatically and without any further procedure, established. The Ahmadîs are considered blasphemous. Due to the very nature of Islamic Law and the possibility of its adaptation to modern life the question arises: Can an authoritative law, which is regarded as firmly based upon divine revelation, so be adapted as to enable it to resolve the typical conflicts of industrial society?<sup>14</sup>

### 8.2.2 *The Future of Islamic Law in non-Muslim Countries*

There is another new debate on the partial application of Islamic law in non-Muslim countries like America and the United Kingdom. A typical dispute involving a debate of an Islamic law issue may arise in two different sets of cases. *First*, Islamic law may be applied as foreign law in accordance with the rules of conflict of law. *Second*, Islamic law issues may be addressed and decided by a foreign judge before the rules of local law may be applied. In these cases, the application of the local law requires the judge to interpret issues of Islamic law.<sup>15</sup>

Muslim populations are now spread widely throughout the world, both as a result of the earlier expansion of Islamic civilization and as a result of contemporary patterns of migration and conversion. The exchange between Islamic law and other laws thus often takes place beneath a constitutional umbrella of a host state, while the identification of the Muslim *ummah* becomes less precise, as host state laws displace, in variable measure, the application of Islamic law. This is the case even in Muslim countries such as Turkey. There are two models for this issue:

In the *first model*, Islamic Law is guaranteed formal status as the law of Muslim community like India and Nigeria in which Islamic personal law and inheritance law are applicable to Muslim minorities

The *second model* is that of most Western states, which are marked by the exclu-

<sup>14</sup> Christopher Toll, Jakob Skovgaard-Petersen, *Law and the Islamic world past and present*, (Copenhagen: Royal Danish Academy, 1995), pp. 15-22; Baber Johansen, "The Future Contests of Islamic Law and Politics," <http://www.law.emory.edu/index.php?id=5121> (accessed 9/6/2009). See also: James N.D. Anderson, "The Future of Islamic Law in British Commonwealth Territories in Africa," in Hans W. Baade (ed.), *African Law: New Law for New Nations* (Dobbs Ferry: Oceana Publications, 1963), pp. 83-97; Cf., with explanation, Ziauddin Sardar, *The Future of Muslim Civilization* (London: Taylor & Francis, 1979), pp. 41-70.

<sup>15</sup> Michael W. Suleiman, *Arabs in America: Building a New Future*, (Philadelphia: Temple University Press, 1999), pp. 102-4.

sivity of the state sources of law and hence deny in principle the existence of personal laws, either Christian or Islamic. But in many Western states religious tribunals may function privately for their adherents, and there are indications that Islamic Law adjudicators are increasingly active in settling disputes among Muslim people in these states. Islamic Law may therefore play an important role in the lives of Muslim people living in the West, whether or not it is recognized by the state. For example, the Archbishop of Canterbury called for Britain to adopt aspects of Islamic *Sharī'ah* law alongside the existing legal system. His speech set off a storm of opposition among politicians, lawyers and others, including some Muslims. According to him, *Sharī'ah* is "unavoidable" because it is effective. Islamic courts, Islamic banking, Islamic families, Islamic commerce all speak about religious rules directing the life of people in the UK. The challenge lies in the reality of *Sharī'ah* and in its reach. *Sharī'ah* challenges fundamental rights; and above all, *Sharī'ah* challenges the law of the land.<sup>16</sup>

The Center for Islamic Pluralism (CIP) has issued a major survey of Islamist penetration of five Western European countries - the UK, Germany, the Netherlands, France, and Spain - and of the ideological apparatus, supporting the introduction of *Sharī'ah* law in the West, that is associated with this campaign. The Report, written by believing Muslims, examines the agitation for the adoption of *Sharī'ah* in non-Western societies, and its impact in four areas:

- Family and schooling
- Institutionalization of *Sharī'ah* by non-Muslim governments ("Parallel *Sharī'ah*")
- Criminal aspects
- Approach to Women.<sup>17</sup>

This Rapport analyzes in detail the work of the European Council for *Fatâwâ* and Research and examines the question of "Islamic finance." It concludes with a series of policy recommendations, including repudiation of any effort to establish "parallel *Sharī'ah*" in the West, and a call for Muslim immigrants, especially religious functionaries, to affirm their loyalty to Western countries in which they reside by signature of a sacred oath.

There is another interesting improvement in Canada on the application of Islamic

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<sup>16</sup> H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, (Oxford: Oxford University Press, 2007), pp. 214-17; cf. Rowan Williams, "Civil and Religious Law in England: A Religious Perspective," 10 *Ecclesiastical Law Journal* 262-82 (2008); for the text of his speech see <http://www.archbishopofcanterbury.org/1575> (accessed 6/10/2009).

<sup>17</sup> Irfan Al-Alawi, Stephen Suleyman Schwartz, Kamal Hasani, Veli Sirin, Daut Dauti and Qanta Ahmed, *A Guide to Shariah Law and Islamist Ideology in Western Europe 2007-2009*, (Washington: The Center for Islamic Pluralism, 2009), pp. 67-73.

law. Canadian judges will soon be enforcing Islamic law, or *Sharī'ah*, in disputes between Muslims, possibly paving the way to administering criminal sentences one day. Muslims are required to submit to *Sharī'ah* in Muslim societies but are excused in nations where they live as a minority under a non-Muslim government. Canada, however, is engaged in preparations for its 1 million-strong Muslim minority to be under the authority of a *Sharī'ah* system enforced by the Canadian court system.

Muslim communities elected a 30-member council to establish the Islamic Institute of Civil Justice. The institute is classified in Islamic Law as a *Dar al-Qadhâ*, or judicial tribunal. Cases will be decided by a Muslim arbitrator, but the local secular Canadian court will be the enforcer. One of the obstacles to establishing the system has been the Muslim communities' lack of unity and organizational strength. Muslims in Canada come from many different countries and different schools of Islam. Also, there are few Islamic legal scholars, known as *ulamâ*, in North America, who are essential to adjudicating complex issues. The two main streams of Islam, Sunnî and Shi'ite, were represented at the conference, along with imams and leaders of organizations.<sup>18</sup>

As a summary we could agree with that in a democratic society, citizens retain the freedom – albeit within certain limits – to pursue their own lifestyle and to decide for themselves how they conduct their relationships with each other and with the government. But if their withdrawal from society starts to endanger basic rights and freedoms of others, then they have overstepped the mark and are damaging the democratic legal order. In this light, certain forms of *intolerant* isolationism do represent a particular threat: exclusivism in respect of one's own group and *parallelism*. Exclusivism is expressed through discrimination, incitement and sowing hatred. Parallelism does not recognize the authority of government seeks to impose religious laws before secular ones and tries to create enclaves in which that system rather than government authority prevails.<sup>19</sup>

### 8.3 The Islamic Jurisprudence Encyclopedia

The Science of Islamic Jurisprudence has undeniable significance, since it clarifies the provisions of our actions, including the worship of Allah and dealings with other human beings. It is the law against which Muslims weigh their actions: Is it permitted or forbidden? Correct or corrupt?

Islamic jurisprudence went through various phases, starting with the period of

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<sup>18</sup> [http://www.wnd.com/news/article.asp?ARTICLE\\_ID=35850](http://www.wnd.com/news/article.asp?ARTICLE_ID=35850) (accessed 10/10/2009).

<sup>19</sup> Algemene Inlichtingen- en Veiligheidsdienst – AIVD, *The Radical Dawa in Transition*, (The Netherlands, N.P., 2007).

the Prophet and the Companions of the Prophet, through the period of the Followers and then through the era of the industrious *Imâms*. Then the various diligence periods followed, and, as a result, numerous books on Islamic jurisprudence and its branches were published.

Because of the large quantity of information stored in these books in addition to the variety of ideological diligences on one matter, it became difficult to include all the legislative provisions in one ideology. This led to straying from the various ideologies. Due to this and the nature of the era during which it was written, there was a recapitulation of the ideology diligences that were summarized, needing clarification by providing difficult explanations and discussions that were useless except to those specialized in jurisprudential science. Consequently, calls arose to initiate a scientific project aimed at re-proposing Islamic jurisprudence in a way that coincides with the contemporary period regarding phrasing, publishing and the consideration of modern classification that easily and quickly achieves the obtainment of jurisprudential information in a credible and comprehensive way. So there was a persistent demand to publish a comprehensive encyclopedia on Islamic jurisprudence science that middle-class cultured people could easily understand and that would lead to the return of harmony between Muslims and their jurisprudence.

Aside from what was published in the jurisprudence encyclopedia, the Islamic library has also been enriched by solid research that deeply explores subjects in all their aspects. As a group effort that dealt with ideas and views before proposing them to the people, it is a way to save time for specialists – and others – in their legislative studies, especially in their higher education, judgments and legislation and to revive the jurisprudential heritage and nominate it for comparative international studies (which is the historical goal of the emergence of the encyclopedia idea).

The encyclopedia facilitates the return to Islamic legislation for deriving firm solutions for modern issues, especially with the general acceptance of developed legislations taken from Islamic laws, and it is also a means of inspiration for religious laws and to see what the pioneers extracted from the Holy Book and the *Sunnah* to organize all the affairs of life, which is the best way to please Allah Almighty and live a good life.

By completing the encyclopedia, Islamic jurisprudence is able to continue what science has reached with regards to the development of form and method. It combines guaranteed legitimacy and a rich heritage in order to close the gap that occurred between the rapid development in the world of publications and presenting information in ways that combine facilitation and quick achievement.<sup>20</sup>

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<sup>20</sup> See Mannâ' al-Qattân, *Târikh al-Tashrî' al-Islamî* (Beirut: al-Risâlah), pp. 340-45.

The encyclopedia is defined as the comprehensive publication for all or most of the scientific information presented through well-known titles, arranged in a certain way that does not need expertise or practice, and is written in a simplified way that does not need explanation by a teacher. Rather, it only requires the medium understanding of general culture and knowledge about science, and it is reliable because of its credible resources or its relation to reliable specialists who vowed to write them.

The characteristics of the encyclopedia that make its name well deserved are its comprehensiveness, facilitated order, simplified method, trustworthy resources. This characterization shows that the jurisprudence encyclopedia did not have these characteristics and that the basis of its order is the common terms in jurisprudence (which are the titles of its chapters and famous issues) and which are ordered alphabetically to enable the specialist or anyone else to search it. Its trustworthy quality comes from the evidence provided and authentic references, and it is necessary to coordinate between all its information, which achieves correlation, comprehensiveness and equal presentation.

The publishing of the encyclopedia was an old Islamic hope that revitalized the Muslim community, since many who were interested in Islamic national revolutions were looking forward to it. Most of the calls for completing this scientific project were represented by the calls issued during the first week of the Islamic jurisprudence conference in Paris in the year 1370 Hijrî (1951), in which a group of jurists in the Islamic world participated. Some of the recommendations called for the publication of this encyclopedia, including the Islamic rights according to modern methods and an alphabetized order.

Let us look at some projects relating to the Islamic jurisprudence encyclopedia:

### 8.3.1 *The Project of the Faculty of Sharî'ah at Damascus University*

When the faculty of *Sharî'ah* was established at Damascus University and Dr. Mustafa al-Siba'î was appointed as dean, the attempt at compiling a *jurisprudence encyclopedia* started. 1375 Hijrî (1956) saw the first official attempts to highlight this historical and global decision by a committee selected from the legislation faculty at Damascus University, created by a group that was empowered by the Egyptian Syrian Unit by a republican decision. In the year 1381 Hijrî (1961) samples of the encyclopedia studies were issued, for feedback purposes, written by jurists from two countries; then some initial works were issued, like the jurist dictionary by Ibn Hazm and the search directory for jurist terms. Unfortunately, this initiative was not successful.<sup>21</sup>

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<sup>21</sup> Al-Qattân, *Târîkh al-Tashrî' al-Islâmî*, pp.345-49.

### 8.3.2 *The Project of the Higher Committees' Council for Islamic Affairs in Cairo*

In Egypt the idea of the encyclopedia, which was embraced by the Ministry of Religious Endowments in 1381 Hijrî (1961) among the Higher Committees' Council for Islamic Affairs, resulted in the publication of its first parts (24) in the year 1386 Hijrî. The unity between Egypt and Syria in politics has made this initiative powerful. First eight volumes were published, ending with the word *isqât*. The committee decided to collect the opinions of eight law schools: Hanafîte, Mâlikîte, Shâfi'îte, Hanbalîte, Zâhirîte, Shi'îte Imâmiyyah, Shi'îte Zaidiyyah and Shi'îte Ibâdhiyyah.

The Association for Islamic Affairs in Cairo has attempted to publish an encyclopedia by the same methodology. They have established a committee composed of professors from al-Azhar University, and they have written 1500 pages of the encyclopedia and have started with family law. The first volume was finished in 1965 and was published immediately. But this project has failed as well.<sup>22</sup>

### 8.3.3 *The Project of the Islamic Jurisprudence Encyclopedia in Kuwait*

This is a successful project and has been completed. In the year 1386 Hijrî (1976) – and with the emergence of the need to combine Islamic diligences to ensure the completion of this project in any Islamic region that had the finances and manpower needed – the Ministry of Religious Endowments and Islamic Affairs in Kuwait embraced this project and considered it a duty to present jurisprudence in a way that was modern and made it easy to learn. It called for the need to complete it to receive its rewards and relieve the Arab nation of any liabilities. The government of Kuwait has dedicated enough funds for this project and the academic leader was Mustafa al-Zarqa. They researched eight law schools as well: Hanafîte, Mâlikîte, Shâfi'îte, Hanbalîte, Zâhirîte, Shi'îte Imâmiyyah, Shi'îte Zaidiyyah and Shi'îte Ibâdhiyyah. They published three volumes as examples in 1972, and after that they started again in 1980, publishing the first volume in alphabetical order.<sup>23</sup>

It should be mentioned that the numerous diligences in the name of Islamic jurisprudence are not as such disadvantageous, because of the lack of modern presentation and technical publishing. It has been noted of the encyclopedias that have appeared (in Kuwait and Egypt) that each follows a direction in which it seeks enriching

<sup>22</sup> Al-Qattân, *Târîkh al-Tashrî' al-Islâmî*, pp. 349-52.

<sup>23</sup> Al-Qattân, *Târîkh al-Tashrî' al-Islâmî*, pp. 352-54.

jurisprudence in this field or in a way different from others, and that this variation does not satisfy the different needs or make the material accessible to those who requested it.

The Islamic Jurisprudence Encyclopedia of Kuwait (*al-Mawsû'ah al-Fiqhiyyah* (Encyclopedia of Islamic Jurisprudence) has forty-one volumes (Kuwait: Ministry of Awqaf [Religious Endowments], 1995); it does not include ideology discussions, personal favoritism and the techniques – even if the first two are mentioned in the jurisprudential references and the modern jurisprudential books are sometimes subjected to the latter for the following reasons.

*A) Techniques.* Whether it is positive or legislative, positivism is not considered to be Islamic jurisprudence, and because the legislative relies mostly on modern diligence or interpretations, its resources lie outside the timeframe of the original encyclopedia, apart from the different techniques used by the Islamic countries and its exposure to many modifications, whereas the older ones are less important after their most important quality, i.e. that of commitment, fades away.

This does not apply to pointing out some legal terms that became popular and are useful in distinguishing the jurisprudential terms from the legal or conventional terms the jurists do not want.

*B) Personal Preference.* What is meant by the preference outside the comprehensiveness of the encyclopedia is whatever was not conveyed by jurists during the last thirteen Hijrî centuries, and the personal opinion of the writer is forbidden and not proven unless he needs to show what he has understood from what was conveyed on the basis of the ideology origins.<sup>24</sup>

We could mention some works that seem to belong to the idea of an Islamic jurisprudence encyclopedia:

- Wahbah al-Zuhayli, *al-Fiqh al-Islâmî wa Adillatuh* (Islamic Jurisprudence and its Proofs) (11 volumes) 5665 (Damascus: Dar al-Fikr al-Mu'asser, 1997).
- Abd al-Fattah Kabbarah, *al-Fiqh al-Muqâran* ([Islamic] Comparative Jurisprudence) (Beirut: Dar al-Nafa'is, 1997).
- Bakhtiar, Laleh, *Encyclopedia of Islamic Law: a Compendium of the Views of the Major Schools* (Chicago: Kazi Publications, 1996). Arranged by subject, this volume covers personal, family and social issues as well as civic, economic and religious obligations.

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<sup>24</sup> *Al-Mawsu'ah al-Fiqhiyyah* (Encyclopedia of Islamic Jurisprudence) 41 Volumes (Kuwait: Ministry of Awqaf [Religious Endowments], 1995); [http://www.islam.gov.kw/eng/topics/current/details.php?sdd=48&cat\\_id=5](http://www.islam.gov.kw/eng/topics/current/details.php?sdd=48&cat_id=5) (03 July 2009).

- Bilmen, Ömer Nasuhi, *Hukuk-i İslâmiyye Ve Istılahat-ı Fıkhiyye Kamusu* (A Lexicon of Islamic Jurisprudence and Terminology of Islamic Law), vols. I-VIII (Istanbul: Bilmen Yayınevi, 1985). This is an *Encyclopedia of Islamic Law* with a classification of *fiqh* books.

#### 8.4 Institutions of Islamic Fiqh (*Majma' al-Fiqh al-Islâmî*)

There are currently a few institutions of Islamic *fiqh* (*majma' al-Fiqh al-Islami*) in several Islamic countries in the world. One famous one is Majma' al-Fiqh al-Islâmî in Jeddah (IFA=Islamic *Fiqh* Academy) as a subsidiary organ of the Organization of the Islamic Conference (OIC), an Islamic academy providing courses and teachings in Islam.<sup>25</sup> There are also the *Majma' al-Fiqh al-Islâmî* for Rabitah al-Alam al-Islâmî (*Majma' Fiqh al-Islâmî*, Muslim World League)<sup>26</sup> in Sudan and India.<sup>27</sup> Their functions include producing *Fatâwâ* and answering questions posed by Muslims or non-Muslims. There are also Islamic academic centers that carry out related studies, such as The Center of Islamic Studies in Egypt and The Center of Sunnah Studies in Qatar.<sup>28</sup>

In addition to those, there are other institutions that collect the viewpoints of ancient and modern '*ulamâ*' in various fields produced through publications, video compact discs, the internet and websites, such as Ibn Baz, Shanqiti, Fatwâ Online, Islam Online and *Dâr al-Iftâ'* in South Africa. Individual viewpoints from '*ulamâ*' or institutions like *Dâr al-Iftâ'* and al-Azhar House of Fatwâ can also be accessed directly through the Internet.

However, research centers and individual viewpoints obtained from the Internet regarding the *fatwâ* investigations are not comprehensive. They concentrate only on providing answers according to certain schools or giving responses to certain *fatwâ* questions or public research. There are none on various global factors or global *fatwâ* information as will be done by INFAD (World Fatwâ Management and Research Institute). The formation of INFAD was the brainchild of Tan Sri Dato' Dr. Mohd Yusof Hj Mohd Noor, the Chairman of USIM. The idea was made public during a press conference on 6 August 2002. It was agreed by the university to set up a special committee to prepare a proposal on the formation of this institution during a meeting held on 9 August 2002, chaired by USIM Vice-Chancellor, Prof. Dato Dr Abdul Shukor Husin. USIM Vice-Chancellor appointed this special committee on 27 August 2002. The proposal for the establishment was accepted in the eleventh Senate Meeting on 18 Octo-

<sup>25</sup> <http://www.fiqhacademy.org.sa> (accessed 3/7/2009).

<sup>26</sup> <http://www.islamhouse.com/ip/193005> (accessed 3/7/2009).

<sup>27</sup> <http://ifa-india.org/english/introduction.html> (3/7/2009).

<sup>28</sup> Al-Qattân, *Târîkh al-Tashrî' al-Islâmî*, pp. 339-40.



ber 2002 and approved in the sixth Meeting of the University's Board of Directors on 28 November 2002.

INFAD is also the first institution formed at a higher learning institution in Malaysia and in the world. It is not a body that produces *fatwâ* and does not take over the functions of established *fatwâ* bodies in Malaysia or abroad. INFAD is a research and consultation center for producing input based on research, information and experts that can help strengthen the *fatwâ* institution and to aid certain parties in making decisions and explaining certain policies needed or to provide or to be a source of authoritative information to other research institutions.

In Islamic countries the issuance of *fatwâ* is carried out by institutions or individual organizations like *Pertubuhan Muhammadiyah dan Nahdatul 'Ulamâ'* in Indonesia, or formal government institutions as in Malaysia. In this country, the function of issuing *fatwâ* is included within the jurisdiction of Islamic Law or Law of Syarak, whose power is given by the federal constitution to all the states in Malaysia, including Wilayah Persekutuan Kuala Lumpur, Labuan and Putrajaya. The responsibility to produce *fatwâ* is given to the *mufti* who is assisted by the *fatwâ* committee. Research will be carried out before a certain *fatwâ* is issued.

At the federal level, the National Fatwâ Committee was formed in 1970, under the National Council for the Malaysian Islamic Affairs. It was later transferred to the Islamic Affairs Division at the Prime Minister's Department in 1984 and eventually the Jabatan Kemajuan Islam Malaysia (JAKIM), the Prime Minister Department in 1997. The function of the National Fatwâ Committee is to discuss and coordinate issues regarding *fatwâ* at the national level.

INFAD has a more holistic, multidimensional and global scope, different from other foreign *fatwâ* organizations and state *fatwâ* committees and centers in Malaysia.<sup>29</sup>

We should mention the Presidency of the Higher Committee of Religious Affairs (*Dîn İşleri Yüksek Kurulu*) in Turkey. It is an advisory committee for the Presidency of Religious Affairs. Its elected members are made up of distinguished religious scholars and its main duty is to complete research on the religious issues debated among the people, share their results with them, and provide full information to the people's questions in relation to religious issues in a complete scientific and open manner.<sup>30</sup>

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<sup>29</sup> <http://www.usim.edu.my/infad/uniqueness.htm> (accessed 3/7/2009).

<sup>30</sup> <http://www.diyonet.gov.tr/english/default.asp> (accessed 3/7/2009).

## 8.5 European Council for Fatwâ and Research

The European Council for Fatwâ and Research (ECFR) is a Dublin-based private foundation, founded in London on 29 - 30 March 1997 on the initiative of the Federation of Islamic Organizations in Europe. The European Council for Fatwâ and Research ('ECFR') is a largely self-selected body, composed of Islamic clerics and scholars, presided by Yusuf al-Qaradawi.

The ECFR aims "to present to the Muslim World and the Muslim minorities in the West particularly" its interpretation of "the manifestation of Allah's infinite mercy, knowledge and wisdom." For the ECFR, *Sharî'ah* clearly embodies the superior rules for life. *Sharî'ah* should therefore be respected as superior to civil law and to democracy: "the Sharî'ah cannot be amended to conform to changing human values and standards, rather, it is the absolute norm to which all human values and conduct must conform; it is the frame to which they must be referred; it is the scale on which they must be weighed."

The ECFR is one of the main channels for the publications of *fatwâs* by Yusuf al-Qaradawi, a Muslim scholar affiliated with the Muslim Brotherhood, and his main English-language channel. Among other things, it wants to promote and control the local education of native *Imâms* for the Muslim minorities in European countries. It participates in such initiatives in France (in cooperation with the European Institute for Humanitarian and Islamic Studies and the United Kingdom. It is also striving to become an approved religious authority for local governments and private establishments in all countries where Muslims are a minority.

Its *fatwâs* often rely on the four classical Islamic law schools (four schools of *fiqh*), as well as the knowledge from all other schools of Islamic Law (*fiqh*), although it does exclude modernist Islamic scholars in Europe like the French former great *Imâm* from Marseille, Soheib Bencheikh and Zaki Badawi, president of the London-based Muslim College and a keen promoter of interfaith dialogue (who, among other things, regularly publishes material together with the Archbishop of York and the British Chief Rabbi). The *fatwâs* of the ECFR also insist on a strong priority for religious law over secular law.<sup>31</sup>

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<sup>31</sup> [www.e-cfr.org](http://www.e-cfr.org); ECFR, *al-Majlis al-Urobbi li al-Iftâ wa al-Buhûth*, (Cairo: Maktabah al-Iman, 1999), pp. 11-21.

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## INDEX

### A

- A Digest of Mohummudan Law*, 46, 267  
*A History of Islamic Law*, 79  
*A Manual of Muhammadan Law According to the School of Shâfi'î*, 52  
*A Study on the Theory of Islamic Law*, 55, 59  
 'Abbasid Caliph Abu Ja'far al-Mansûr, 178  
 'Abbasid caliphate, 184  
 'Abbasid Revolution, 302  
 'Abd al-'Azîz ibn Sâlih al-Halwânî, 221  
 'Abd al-Azîz al-Sa'ud, 289  
 'Abd al-Razzaq al-Sanhuri, 305, 306, 328, 330, 347  
 'Abd al-Wahhâb al-Khallâf, 328  
 'Abd-al-'Azîz ibn Ahmed al-Bukhârî, 56  
 'Abdallah ibn 'Awf, 151  
 'Abdallah ibn Abû Quhâfah, 125  
 'Abdallah ibn Maimun, 195  
 'Abdallah ibn Qa'nab, 156  
 'Abdul 'Azîz ibn Su'ûd, 200  
 'Abdullah 'Umar al-Dabbusi, 155  
 'Abdullah ibn 'Umar, 124  
 'Abdullah ibn al-Kawwa, 187  
 'Abdullah ibn 'Amr ibn al-'Âs, 122  
 'Abdullah ibn Ibâdh, 149, 174, 207  
 'Abdullah ibn Mas'ud, 138, 151  
 'Abdullahi Ahmed An-Na'im, 110, 255  
 'Abdur Rahman ibn 'Awf, 129  
 'Abdurrahman ibn al-Qâsim,, 44, 158  
 abode, 343  
 abode of treaty, 344  
 abode of war, 344  
 Abrahamic religions, 334  
*Abridgments*, 58  
 abrogated, 42, 115, 204, 256, 283  
 abrogated verses, 204  
 abrogating, 115  
 absolute absence of similarity, 212  
 Absolute Imitation, 226  
 absolutism, 334  
*abstract /casuistic*, 248  
 abstract method, 10, 334, 335  
 Abstract Method in Law, 334  
 Abu 'Ali Juba'î, 184  
 Abu 'Abdullah al-Qurtubi, 66  
 Abu al-Hasan al-Mawardi, 54  
*Abu al'Alâ Mawdudi*, 271  
 Abu al-Hasan al-Ash'arî, 185, 210, 211  
*Abu al-Laith al-Samarqandi*, 153, 222  
 Abu al-Su'ûd Effendi, 69, 97, 237  
 Abu Bakr, 31, 41, 42, 58, 62, 67, 72, 121, 122, 123, 125, 131, 133, 136, 140, 155, 165, 167, 173, 179, 187, 188, 189, 210, 359, 367  
 Abu Bakr al-Baqillani, 210  
 Abu Bakr ibn Abdurrahman, 137  
 Abu Bakr Jassas al-Râzî, 65  
 Abu Dhabi, 315, 316  
 Abu Hafs al-Bukhârî, 153  
 Abu Hafs al-Kabîr, 225  
 Abu Hanîfa, 21, 40, 43, 48, 50, 86, 124, 133, 138, 142, 143, 145, 149, 150, 151, 152, 153, 154, 155, 156, 160, 161, 162, 170, 172, 173, 208, 228, 231, 326, 359  
 Abu Hanîfa al-Thâni, 50  
 Abu Hurayra, 135  
 Abu Ja'far al-Mansûr, 140  
 Abu Ja far Muhammad ibn Jarir al-Tabarî, 64, 77  
 Abu Mansur al- Mâturidî, 216  
 Abu Musa al-Ash'arî, 124, 187, 210  
 Abu Said al-Khudari, 342  
 Abu Sulaymân al-Jurjâni, 153  
 Abu Thawr, 149, 160, 167  
 Abu Zaid Dabbusi, 47, 222  
 Aceh, 283  
 Achaemenid, 304  
 acquisition, 29, 212  
 Actions, 214  
 Acts of God, 29  
*âdâb*, 119  
*Adab al-Qâdhî*, 41  
*'âdah*, 9, 42, 43, 51, 52, 55, 57, 58, 60, 65, 73, 74, 77, 98, 109, 151, 152, 154, 155, 157, 159, 161, 162, 163, 166, 180, 184, 221, 222, 223, 225, 228, 229, 230, 374  
*'adâlah*, 186, 342  
*adat*, 70, 277, 278, 279, 282, 283, 284, 285, 286  
 additional *sûrahs*, 129  
 ademption, 30  
 Aden, 316  
*adhân*, 118  
*Al-Adillah al-Shar'iyyah*, 257  
 adjudicator, 29  
*'Adl Wal Insâf Fi Hal Mushkilât al-Awqâf*, 327  
*administrative court system*, 302  
 administrative law, 6, 233, 257, 259, 320, 321

- administrative regulation, 261, 262  
 adultery, 232, 233, 253, 254, 259, 291  
*Āfât Samâwiyah*, 29  
 affliction, 194  
 Afghanistan, 155, 220, 253, 255  
*Afrasyab*, 221  
 Aga Khan, 205, 206, 207  
 Age of Felicity, 109  
 Age of Imitation, 223, 226  
*Age of Legal Interpretation*, 121  
*age of light*, 121  
 Age of Principalities, 232  
 Age of the Codification of *Fiqh*, 144, 323  
*age of truth*, 121  
 Agreements, 122  
*Ahâdîth*, 122, 140  
*Al-ahâdîth al-qudsiyyah*, 114  
*Ahkâm al-Ahkâm*, 67  
*Al-Ahkâm al-Sultâniyyah*, 45  
 Ahkâm al-Ahwâl al-Shakhsiyyah Lil-Muslimîn fi'l-Gharb, 88  
 Ahkâm al-Dhimmîyyîn wal Must'manîn, 88  
*Al-Ahkâm al-Ja'ariyya fil-Ahwâl al-Shakhsiyyah*, 108  
*Al-Ahkâm al-Mufassalah*, 259  
*Al-Ahkâm al-Mujmalah*, 258  
*Ahkâm al-Qur'an*, 65, 66  
*Ahkâm al-Qur'an al-Karîm*, 65  
*Ahkâm al-Qur'an*, 65, 66, 67, 68  
*Al-Ahkâm al-Shar'iyyah Fi al-Ahwâl al-Shakhsiyyah*, 327  
*Al-Ahkâm al-Shar'iyyah fil-Ahwâl al-Shakhsiyyah*, 108  
*Al-Ahkâm al-Sultâniyyah*, 43, 320, 321  
 Ahkâm al-Zimmiyyîn wa al-Musta'manîn, 87  
*ahklâqiyyât*, 21, 22  
*ahl al-'adl wal istiqâmah*, 188  
*ahl al-athar*, 139, 156  
 ahl al-bayt, 114, 189  
*ahl al-bid'ah*, 180  
*Ahl al-Bid'ah* schools, 10, 147  
 Ahl al-Bid'ah Theological Sects, 183  
*Ahl al-Hadîth*, 141, 167, 176, 140, 209  
*ahl al-Iraq*, 178  
*ahl al-Kitâb*, 173  
*ahl al-ra'y*, 73, 141  
*Ahl al-Sunnah*, 133, 199, 211, 212, 163, 180, 183, 198, 208, 213  
*Ahl al-sunnah wal-jamâ'ah* schools, 9, 147  
*Ahl al-Tawhid*, 209  
*Ahl al-Tawhid wa al'Adl*, 184  
 Ahmad ibn 'Abdullah ibn Muhammad ibn Bashir Khan, 328  
 Ahmad ibn Hanbal, 137, 143, 149, 160, 161, 162, 163, 166, 210, 359  
 Ahmad Jawdat Pasha, 107, 329  
 Ahmadî *fiqh*, 204  
 Ahmadîs, 202, 203, 204, 205, 270, 349  
 Ahmadiyyah, 201, 202, 203, 204, 205  
 Ahmadiyyah Muslim Community, 203, 205  
*Ahmadiyyah Muslim Jamâ'at*, 202  
 Ahmed ibn Hanbel, 143  
 Ahmed Jawdat Pasha, 107, 249, 250, 360  
*Al-Ahwâl al-Shakhsiyyah*, 86, 241  
*akcha*, 95  
*Akhhârî*, 170, 171  
*ahklâqiyyât*, 19  
 Akkadian, 304  
*A'lâm Qamus li ashhar al-Rijâl wa al-Nisâ*, 73  
*Alamgiriyyah*, 98  
 Ala'uddawlah Beg, 232  
 Ala'uddîn al-Khaskafî, 229  
 Alawi, 300, 303  
 Albania, 155, 249  
 alcoholic beverages, 115  
*alcoholic drinks*, 115  
 Aleppo, 86, 257, 303, 329  
 Alfred von Kremer, 33  
 Algeria, 90, 158, 207, 313, 314, 315, 329, 347, 362  
 Ali Chelebi Qinalizâdah, 221  
 Ali Haydar, 30, 107, 320, 322, 329, 330, 360  
 Ali ibn Abu Tâlib, 123, 125, 129, 138, 151, 170, 171, 186, 190, 191, 210  
 Ali ibn Ahmad al-Wâhidi, 122  
 Ali Muhammad al-Pazdawi, 155  
 Âlim, 100, 175, 230, 360  
 Âlim ibn 'Alâ al-Hanafî, 230  
 alimony, 253, 283, 295, 320  
 alms, 22, 198, 320  
*alqâb*, 70, 73  
 Alqamah, 138, 151  
 Altinordu, 230  
 'amal, 185, 187  
*'Amal Ahl al-Madina*, 138, 157  
*Amâli*, 191, 153  
 'amaliyyah, 10, 21, 147  
 'amaliyyât, 19, 21, 22  
 America, 349, 374  
 Âmid, 233  
*amîr al-mu'minîn*, 37  
 amputation, 253, 288, 291  
 analogy, 3, 28, 48, 51, 123, 141, 152, 167, 170, 257  
 Anas ibn Mâlik, 135, 142, 151, 174  
 Anatolian peninsula, 317  
 Anatolian Seljukids, 105, 224, 324  
*Anglo-Chinese*, 278, 280  
*Anglo-Hindu*, 278, 280  
*Anglo-Muhammadan*, 266, 280  
 Anglo-Muhammadan Law, 80, 264, 265, 266, 268, 276, 329  
*Anglo-Muslim law*, 278, 280  
*anjuman*, 203  
*Anjuman Ishâ'at-e-Islam*, 202  
 Annotations, 228



- announcer, 29, 112  
*ansâb*, 73  
*Ansâb*, 209  
*Ansâr*, 123, 130, 131  
*Anwâr al-Qur'an fl Ahkâm al-Qur'an*, 65  
 apostasy, 4, 253, 288, 343  
 appeal, 29, 138, 197, 198, 283, 291, 297, 299, 303, 315, 317  
 appeals court, 283  
 application of Islamic law, 115, 282, 283, 286, 287, 349  
 application of Ja'farî law, 302  
 application of the *Shari'ah*, 149, 255  
 applications of *fiqh*, 149, 154  
 Applied Islamic Law, 39, 221, 222  
 Applied References, 94  
*Aqîdah*, 174, 210, 216  
*'aql*, 170, 173, 184  
 Aqqoyunids, 231, 233  
*Aqrab al-Masâlik li Madhhab al-Imâm Mâlik*, 53  
*aqwâl*, 43  
 Arab League, 347  
 Arab Revolt, 304  
 Arab states, 346  
 Arabian Desert, 304  
 Arabian Gulf, 289  
 Arabian Peninsula, 109, 289, 316  
 Arabic language, 143, 154, 161, 166  
 Arabic poetry, 159  
*'aradh*, 214  
 arbitrary will of the ruler, 252  
 arbitration, 186, 187, 188, 263, 269  
 arbitrator, 210  
 Archbishop of Canterbury, 350  
 Archival Documents, 102  
 Area Court, 299  
 artificial insemination, 297  
 Arya Samaj, 202  
 Asad ibn al-Furât, 44, 158  
*Asadiyyah*, 44, 158  
*asâmi*, 73  
*Asbâb al-Nuzûl*, 122  
*Ashâb*, 98, 167, 168, 199, 257  
*Ashâb al-Kirâm*, 257  
*ashâb al-ra'y*, 167  
*Ashâb al-Suffa*, 135  
*ashâb al-Zâhir*, 168  
*ashâ'irah*, 210  
 Ash'arî School, 192, 210  
 Ash'arî theology, 216  
 Ash'arîs, 185, 216  
 Ash'arîte school, 211  
 Ash'arîte School, 210, 220  
 Ash'arîtes, 210, 212, 213, 214, 215  
 Ash'ath ibn Qais, 186  
*Al-Ashbâh wa'l-Nazâ'ir*, 84  
*'âshir*, 239  
*'Ashûra*, 192  
*aslah*, 211, 219  
*asmâ'*, 74  
*Asnâ al-Matâlib*, 52  
*Asr al-Sa'âdah*, 109  
*Asr al-Taqlid*, 223  
*asr tawâ'if al-mulûk*, 232  
 Assyrian, 304  
 Aswad, 138, 151, 177  
 Atâ'î, 73  
*Atabekliks*, 224  
*Atharî* creed, 210  
 Atlantic Ocean, 145, 297  
 Attributes of Allah, 196, 211  
 attributes of God, 196  
 attributes of Islamic Law, 27  
 Austria, 343  
*Aval*, 30  
*Avallo*, 30  
*Avan-project de code du droit Musûlman Algerien*, 314  
 Averroes, 45, 215  
*awqâf*, 293  
*Awwal*, 155  
 Awza'î, 46, 149, 157, 208  
 Awza'î School, 176  
*Awza'îyya*, 148  
*A'yân al-Shi'a*, 74  
 Âyât al-Ahkâm, 65, 66, 67, 68  
 Ayatollah Sayyid Muhammad Hussein Tabataba'î, 65  
*'Ayniyyah*, 198  
 Ayyubids, 96, 234  
*Azâriqah*, 188  
 Azerbaijan, 128, 138, 188, 190, 192  
 Azhar House of Fatwâ, 356  
 Azhar University, 60, 192, 210, 328, 354  
*Azraqîs*, 188
- B**
- Ba'albek, 176  
*bâb*, 151  
 Babur State, 230  
 Babylonian, 304  
*Badâyi' al-Sanâyi' Fi Tartîb al-Sharâyi'*, 40, 41, 234  
*Badi' al-Nizâm*, 59  
 badness, 213, 214  
 Badr al-Dîn Muhammad al-Zarkashî, 58  
 Baghdad, 19, 42, 72, 87, 108, 114, 138, 139, 140, 143, 150, 154, 155, 159, 160, 162, 163, 164, 166, 167, 179, 199, 210, 221, 224, 226, 259, 304, 320, 345, 375  
 Baghdad (Kufic) School of Fiqh, 136, 138  
*Bahr al-Muhîr fi Usûl al-Fiqh*, 58

- Bahr al-Râiq*, 50  
 Bahrain, 162, 171, 188, 190, 192, 196, 295  
 Al-Bâ'ith al-Hathîth Sharh Ihktisâr 'Ulûm al-Hadîth, 63  
 Bangladesh, 220, 253, 264, 275  
 Banu Hâshim, 173  
*Baqliyyah*, 195  
*barâ'ah*, 207  
*Bashâ'ir al-Darajât fi Ulûm al-i Muhammad wamâ Khassahum bihi*, 171  
 basics of faith, 147  
 basis of knowledge, 218  
*Basît*, 43, 225  
 Basra, 128, 137, 139, 143, 148, 175, 176, 183, 188, 196, 199, 210, 306  
*bâtil*, 10, 148  
*bâtin*, 194  
 Bâtinites, 182  
 Bâtiniyyah, 194, 195  
 Battle of Badr, 118  
 battle of Khandaq, 122  
 Battle of the Camel, 189  
 Battle of Yamama, 121  
*Bay'ah*, 172  
 Bayânites, 182  
*Bayt al-mâl*, 125  
 beglerbegi, 199, 200  
*belief*, 19, 21, 22, 35, 76, 110, 147, 170, 181, 182, 183, 186, 194, 196, 197, 203, 204, 208, 211, 212, 216, 219, 224, 226, 268, 283, 374  
 Berber, 315  
 Bibliographical Sources, 74  
*bid'ah*, 119, 131, 182  
*bida'*, 175  
*Bidâyah al-Mujtahid wa Nihâyah al-Muqtasid*, 77  
*Bidâyat al-Mubtadî*, 42  
*Bihâr al-Anwâr*, 64  
 Biographical Sources, 71  
 biography, 116, 119  
 Bishr al-Marrisi, 163  
*Bismillah*, 127  
 blasphemy, 349  
 blood money, 109, 291  
 Blossoming Age of *Fiqh*, 144, 323  
 Bohras, 206  
 Bombay, 34, 80, 206  
 Books and Works by Non-Muslim Scholars, 78, 81, 82  
 Books by Muslim Scholars in Western Languages, 82  
 Books of *Fatâwâ*, 97, 229  
 Books of *Fiqh*, 39  
 Books of *Hadîth* on Legal Rules, 62  
 Books of Hanafite, 155  
 Books of *Nizâmât*, 103  
 Books of *Tabaqât*, 71  
 Books of Tafsîr, 64  
 Books of *Usûl al-Fiqh*, 55  
 Books of *Usûl al-Fiqh* according to the Method of Theologians, 57  
 Books on Ahkâm al-Qur'an, 65  
 Books on Differences among Islamic Law Schools, 76  
 Books on Hadîths, 60  
 Books on Legal Maxims of Islamic Law, 84  
 Books on Muslim Minorities, 88  
 Books on Religious and Philosophical Sects, 77  
 Books on the Science of Qur'an Interpretation, 68  
 Books on the Science of Tradition, 63  
 Books on *Usûl al-Fiqh* according to the Hanafî (*Manhaj al-Fuqahâ*) Method, 55  
 Books on *Usûl al-Fiqh* That Combine Both Methods, 59  
 Bosnia, 155, 249  
*Bozoq Codification*, 233  
 British colonial courts, 265  
 British colonial government, 273  
*British Colonial Law*, 278  
 British colonial rule, 285  
 British Malaya, 277, 280, 285  
 Brockelmann, 78, 84  
 Brunei Darussalam, 276  
 Buddhists, 269  
 Bughra Khan, 221  
 Bukhâra, 221, 222, 223, 225  
*Bulûgh al-Marâm min Adillah al-Ahkâm*, 62  
*burhân*, 181  
*Burhân*, 57, 225  
*Al-Burhân fi 'Ulûm al-Qur'ân*, 68  
 burial of the dead, 112  
 Burma, 276  
*Burmese-Buddhism*, 280
- C**
- Cairo, 6, 19, 21, 27, 31, 33, 34, 39, 41, 79, 83, 86, 87, 88, 108, 117, 120, 123, 154, 155, 159, 162, 166, 169, 174, 177, 183, 184, 185, 192, 196, 210, 223, 226, 234, 238, 320, 328, 342, 354, 358, 359, 360, 361, 362, 363, 366, 368, 370, 371, 373  
 Caliph 'Umar, 30, 121, 123  
 Caliph 'Uthman, 128  
 Caliph Abu Bakr, 121, 192  
 Caliph al-Ma'mun, 163, 166  
 Caliph Harun-al-Rashid, 41  
 Caliphate of Abu Bakr, 130  
 Caliphate of Cordoba. Caliph Mu'âwiya, 134  
 call to prayer, 118, 260  
 Cambodia, 276  
 Canadian court, 351  
 capital punishment, 291

- Capital punishment, 349  
 Carmathians, 195  
 case law, 10, 201, 335  
 case of necessity, 337  
 Cassation Court, 291, 302  
 Casuist Method, 331  
 Casuistry, 331  
 causation, 30  
 Center of Sunnah Studies, 356  
 Central Asia, 79, 104, 216, 220, 318  
 Ceylon, 162  
 Chagatai Khans, 230  
 chain of transmission, 113, 156  
 Characteristics of Islamic Law, 25  
 charitable trusts, 278  
 Charities, 321  
 chastity, 233, 243  
 Chief *Shari'ah* Judge, 287  
 child care, 321  
 child marriage, 261, 278  
 Child Marriage Restraint Act, 273  
 China, 145, 220, 285  
 Christian minority, 296  
 Christianity, 3, 4, 24, 33, 204, 295, 302  
 Christians, 24, 168, 204, 269, 300, 302, 303  
 Circassian Mamlukids, 234  
 civil and criminal appeals, 272  
 civil and criminal jurisdiction, 272  
*Civil cases*, 291  
 Civil Code, 23, 248, 263, 274, 295, 303, 304, 305, 306, 307, 309, 315, 328, 332  
 Civil Code of the Ottoman State, 23, 246  
 civil courts, 246, 269, 287, 316  
 civil law, 26, 30, 245, 247, 248, 249, 265, 282, 283, 287, 294, 295, 301, 315, 327, 341, 347, 358  
 Civil Law, 319, 320, 328, 331, 366  
 Civil Procedure Act 1983, 309  
*Civil Procedure Code*, 305  
*civil servants*, 69, 97, 223, 248, 249, 342  
 Civil Transactions Act 1983, 309  
 classical legal texts, 227  
 classification of Islamic rules, 341  
 Classification of *Shari'ah* Injunctions, 256  
*Code Civile*, 248  
*Code Napoleon*, 248  
 Code of Civil Procedure, 303  
 Code of Civil Status, 303  
*Code of Mohammedan Personal Law*, 108  
 Code of Muslim personal law of the Philippines, 253  
 Code of Personal Status, 298, 299, 303, 306  
 Codes of Law, 106  
 codification, 10, 39, 48, 62, 82, 104, 105, 107, 108, 114, 145, 231, 232, 233, 237, 238, 244, 247, 248, 249, 267, 286, 293, 306, 314, 323, 324, 325, 326, 327, 328, 329, 330, 336, 337, 338, 367  
 Codification in Islamic Law, 323, 330  
 Codification of Islamic Law, 2, 336  
 codified law, 346  
 Codifying *Hadiths*, 135  
 colonial administration, 267, 268, 279  
 colonial masters, 341  
 colonial powers, 254  
*Colonial Reformulation of Islamic Law*, 277  
 colonization, 313, 341, 345  
 commentaries, 43, 47, 48, 49, 50, 52, 54, 56, 59, 61, 64, 154, 161, 228, 267, 290  
 Commentaries on the Qur'an, 64  
 commercial law, 244, 257, 271, 306, 320, 327, 332  
 committees of *al-Ahwâl al-Shakhsiyyah* and *Wâjibat*, 245  
 common law, 28, 29, 268, 271, 285, 299, 307, 329, 341  
 Companions, 9, 36, 72, 117, 118, 120, 121, 122, 123, 124, 125, 126, 131, 132, 133, 134, 135, 136, 137, 139, 143, 147, 151, 152, 156, 157, 160, 164, 167, 174, 175, 180, 186, 199, 208, 209, 252, 257, 351  
 Companions of the Prophet Muhammad, 120  
 Comparative and Contemporary Books by Muslim Scholars, 85  
 Comparative and Contemporary Books on *Fiqh*, 85  
 Comparative and Contemporary Books on Shi'a, 88  
 Comparative and Contemporary Books on Usûl al-*Fiqh*, 88  
 Comparative Inter-*Madhhab* Law, 222  
 comparative law, 77, 225, 254, 330, 347  
 compendia of *hadiths*, 135  
 compendium, 43, 49, 50, 51, 53, 54, 55, 56, 57, 59  
 compendiums, 42, 47, 153  
 compilation of *hadith*, 144  
*Compilation of Islamic Law*, 281, 283, 284  
 Comprehensive (*Ma'qûl al-Ma'nâ*) Injunctions, 260  
 Comprehensive Principles of Law, 258  
 compulsion, 192, 219  
 compulsory, 119, 198, 271, 286  
 compurgation, 109  
 conduct, 19, 21, 22, 31, 35, 119, 128, 343, 358  
 Conflicts among the Companions, 132  
 consensus, 3, 34, 130, 131, 143, 152, 157, 167, 170, 175, 209, 257, 282, 308, 338, 346  
 consequentialism, 334  
 Constitution of Medina, 110  
 Constitutional Council, 301  
 Constitutional Court, 308, 348  
 constitutional law, 6, 25, 27, 29, 102, 257, 259, 292, 304, 315  
 Constitutional Status of Islamic Law, 297  
 constitutionalism, 110, 347  
 contemporary law, 321  
 Contemporary Practice of *Shari'ah* Law, 251  
 contract of giving Tamim Ad-Dari, 122  
 contracts, 19, 29, 31, 95, 224, 321

contractual agreement, 344  
 corporal punishment, 291  
*corpus juris*, 97, 154  
 Corpus Juris Civilis, 33  
 Council of Religion and Malay Custom, 287  
 Court of Cassation, 293, 294, 303, 315  
*court system*, 27, 269, 281, 282, 294, 301, 306, 308  
 courts of appeal, 297, 298, 301, 302, 315  
 Courts of Appeal, 283, 300, 317  
*Courts of Personal Status*, 305  
 creation of deeds for human beings by God, 198  
 creation of the Qur'an, 163, 198  
*Criminal cases*, 291  
 Criminal Court, 315  
 criminal law, 47, 96, 232, 244, 254, 257, 265, 288  
*Criminal Law of the Muhammadus*, 265  
 Criminal Procedure Act 1983, 309  
 Criterion of Good and Evil, 212  
 criterion of truth, 218  
 Crusades, 28, 30, 31  
*Culturgeschichte des Orients under den Chalifen*,  
 33, 78, 375  
 Çüngüş, 233  
 custody, 270, 273, 275, 287, 295  
 custom, 23, 112, 267, 268, 275, 277, 278, 281, 286,  
 290, 292, 295, 296, 304, 307, 308, 317, 332  
 customary, 105, 109, 119, 236, 268, 282, 286, 298,  
 299, 300, 343  
 Customary Courts of Appeal, 300  
 customary law, 109, 236, 238, 267, 269, 276  
 Customary law, 232, 267  
 Cyprus, 249

## D

Dabbus, 40, 222  
*Dafâtir-i Muhimmah*, 102  
*Dafâtir-i Tapu and Tahrîr*, 103  
 Dagistan, 162  
*Dajjâl*, 204  
*Dala'il al-Maram fi Tafsi'r Âyât al-Ahkâm*, 67  
*dalîl*, 10, 168, 335  
*al-dalîl al-kullî*, 10, 335  
*Dâmâd*, 47, 50, 237, 363  
 Damascus, 35, 39, 51, 69, 74, 85, 88, 104, 109, 114,  
 128, 133, 137, 139, 140, 143, 148, 165, 188,  
 189, 224, 245, 264, 303, 330, 353, 355, 366, 375  
 Damascus University, 85, 353  
*dâr al-'Ahd*, 344  
*Dâr al-Amân*, 341  
*Dâr al-Iftâ'*, 356  
*dâr al-Islam*, 344  
*Dâr al-Kufr*, 188, 344  
*Darul-Qadhâ*, 351  
 David, 80, 90, 92, 93, 204  
 Davud-u Zâhirî, 143

Dâwud ibn 'Ali, 149  
 Day of Resurrection, 212  
 deanthropomorphism, 212  
 Decisions of Pardoning, 122  
 Decrees of Timur, 104  
 deduction, 21, 49, 124, 140, 152, 164, 165, 225  
 deductive, 346  
 defamation, 259  
 defense of necessity, 30  
 democracy, 284, 345, 358  
 Denmark, 343  
 Detailed Injunctions, 259  
 Development of Muslim Theology, Jurisprudence  
 and Constitutional Theory, 79  
 Devotions, 319, 320  
*dha'if*, 165  
*Dhakhîra al-Riwâyah*, 221  
*Dhakhîrah*, 45, 99, 100  
*Dhakhîrah al-Fatâwâ*, 99  
*Dhakhîrah al-Burhâniyyah*, 99  
 Dhakhîrah for Ahmad ibn Idris Shihabudîn as-  
 Sanhaji al-Qarafi al-Mâlikî, 45  
*dhalâl*, 180  
*dhimmî*, 132, 241  
 Dhulqâdirids, 231, 232, 233  
 Al-Dibaj al-Mudhahhab fi Ma'rifat A'yân Ulamâ'  
 al-Madhhab, 74  
*difficulty*, 4, 114, 121, 259, 269, 279  
*Digest of Criminal Law*, 265  
*Digest of Muhammadan Law*, 265  
*Digests of Muhammadan law*, 265  
 diplomats, 31  
 Dirârites, 183  
*dirham*, 127  
 Dissolution of Muslim Marriages Act, 262, 273  
 District Courts, 283, 300  
 Divine Acts, 212  
 Divine amnesty, 216  
 Divine Attributes, 211  
 Divine command, 214, 260  
 divine essence, 197  
 Divine Legislator, 322  
 divine omnipotence, 185, 217  
 divine power, 193  
 divine reformer, 201  
 divine revelation, 25, 112, 117, 119, 182, 184, 204,  
 216, 218, 260, 262, 264, 333, 349  
 divine text, 164  
*divine unity*, 7, 342  
 Divine Unity, 184, 261  
 Divine Will, 211  
 divine wisdom, 218  
 divinely-ordained, 260  
 divorce, 36, 156, 254, 255, 261, 262, 263, 269, 271,  
 277, 279, 281, 282, 283, 284, 286, 287, 292,  
 295, 297, 302, 305, 314, 315, 320, 321  
*dîwân*, 37, 132

*Dîwân al-Humayûn*, 102, 237  
*Dîwân al-Inshâ*, 75  
*Dîwân Jâbir ibn Ziyâd*, 174  
*Dîwân-i Ahkâm-i Adliyyah*, 249  
*diyâh*, 109  
*diyânât*, 185  
*diyânatan*, 26  
 Diyarbekir, 233  
*diyât*, 309  
 doctrinal legal schools, 27  
 Doctrine of Necessity, 348  
 Dowry and Bridal Gifts, 274  
 drinks, 133, 321  
 drug smuggling, 291  
 Druze, 194, 300, 302, 303, 365  
 Druze courts, 302  
 dual legal system, 297  
 dual system, 253, 297  
 Dubai, 315  
 Dublin, 357  
*Durar al-Hukkâm Sharh Majallat al-Ahkâm*, 107, 30, 50, 320, 322  
 duress, 29  
*Durr al-Mukhtâr*, 51, 229  
*Dustûr*, 106  
 Dutch, 34, 78, 277, 279, 281, 282, 283, 284, 286  
*Dutch Colonial Law*, 278  
 Dutch colonial system, 279  
 Dutch East Indies, 279, 282  
 Dutch law, 278, 281  
 duties of a *Qâdhî*, 41

## E

Earnest Money, 244  
 East Africa, 52, 206, 207  
 East Indies, 52, 276, 277, 279, 282  
 ECFR, 357, 358, 363  
 Egypt, 10, 23, 33, 43, 75, 78, 93, 100, 104, 107, 128, 134, 136, 139, 143, 159, 160, 162, 168, 177, 178, 200, 201, 205, 209, 234, 249, 253, 261, 293, 294, 295, 296, 327, 328, 335, 336, 337, 354, 356, 362, 367, 368, 370, 371  
 Egyptian civil code, 347  
 Egyptian jurists, 347  
 Egyptian law, 261, 294, 295  
 eighty lashes, 132, 133  
 elected legislator, 348  
 emanationism, 194  
*emîn*, 96  
 Emîr Kâtib al-Itqâni, 228  
 Emîr of Najd, 198, 199  
 Emîr Timur, 104  
 Emirate of Sicily, 28, 31  
*Encyclopedia of Islam*, 37, 79, 363  
*Encyclopedia of Islamic Jurisprudence*, 355, 362

*Encyclopedia of Islamic Law*, 83, 89, 355  
 Endowments, 69, 321, 327, 355  
 Enforcement of *Hudûd*, 274  
 Enforcement of *Shari'ah*, 274  
 enforcer, 29, 351  
 English common law, 28  
 Eritrea, 220, 312  
 Eschaton, 201  
 esoterism, 194  
 Essence, 186, 211  
 eternal attributes, 186, 198  
 eternal happiness, 124  
 Ethiopia, 33, 312  
 Euphrates, 304  
 European commenda, 30  
 European Council for Fatwâ and Research, 357  
 European Court of Human Rights, 253  
 European law, 327  
 European legal imperialism, 277  
 European legal system, 318  
 Europeans, 277, 278, 282, 292  
 Evidence Act 1983, 309  
 evil, 26, 113, 183, 185, 186, 211, 213, 214, 215, 216, 217, 219, 342  
 Exegeses, 228  
 exhaustive investigation, 123  
 experimental method, 55  
 external submission, 181  
 extinct schools of *fiqh*, 175  
 Extinct Schools of Law, 175  
*extraterritorial jurisdiction*, 343  
*extraterritorial theory*, 343

## F

Faculty of *Shari'ah*, 353  
 Fahrudîn Qâdhîhan, 229  
*faith*, 10, 64, 110, 112, 117, 118, 120, 148, 152, 159, 181, 185, 187, 190, 193, 194, 195, 197, 198, 202, 206, 213, 216, 221, 254, 264, 274, 277, 290, 333  
 Fakhr al-Dîn Razi, 215  
 Fakhr al-Islam 'Ali Pazdawi, 223  
 Fakhr-al-Dîn Muhammad ibn Umar al-Râzi, 58  
*Falsafat al-Tashrî' fil-Islam*, 87  
 Family Courts, 270, 272, 273, 275  
 family law, 6, 47, 109, 113, 253, 254, 255, 256, 257, 264, 268, 270, 271, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284, 286, 287, 288, 289, 290, 292, 293, 295, 298, 302, 304, 305, 306, 307, 308, 309, 310, 312, 313, 314, 315, 316, 317, 320, 354, 359  
 Family Law, 80, 90, 92, 94, 110, 245, 251, 264, 265, 266, 269, 273, 294, 296, 297, 298, 299, 300, 302, 304, 326, 342, 359, 361, 365, 376  
*faqih*, 20, 21, 32, 39, 46, 181

- fardh*, 119  
*fâsiq*, 212  
*fasl*, 151  
 fast of Ramadan, 182  
*fatâwâ*, 9, 41, 89, 97, 98, 100, 139, 140, 157, 158, 160, 222, 229, 246, 248, 287, 288, 329  
*Fatâwâ 'Abd-al-rahim*, 101  
*Fatâwâ Abu al-Su'ûd*, 100  
*Fatâwâ Ahl Samarqand*, 98  
*Fatâwâ al-'Âlemgiriyyah*, 101, 230, 265, 268  
*Fatâwâ al-Anqarawi*, 100  
*Al-Fatâwâ al-Bazzâziyyah*, 100  
*Fatâwâ al-Fawdhîyyah*, 97  
*Al-Fatâwâ al-Hâmidiyyah*, 100  
*Al-Fatâwâ al-Hindiyyah*, 97, 98, 231, 362  
*Fatâwâ 'Ali Effendi*, 100  
*Al-Fatâwâ al-Jhangiriyyah*, 231  
*Al-Fatâwâ al-Kubrâ al-Haythamiyyah al-Fiqhiyyah*, 101  
*Fatâwâ al-Qâdhî han*, 229  
*Al-Fatâwâ al-Tatarkhâniyyah*, 98, 100, 104, 230, 324, 360  
*Al-Fatâwâ al-Walwâlîjiyyah*, 99  
*Fatâwâ al-Zâhiriyyah*, 99  
*Fatâwâ al-Zarkashi*, 101  
*Fatâwâ* books, 237  
*Fatâwâ Faydhîyyah*, 101  
*Fatâwâ Hindiyyah*, 105, 324  
*Fatâwâ ibn al-Salâh*, 101  
*Fatâwâ Ibn Taymiyyah*, 165  
*Fatâwâ Mu'âsirah*, 88  
*Fatâwâ Zayniyyah*, 100  
*Fatâwâ-e-Alamgiri*, 105, 324  
*Fatâwây-i Qâdhikhan*, 99  
 fate, 51, 183  
 Fath al-'Ali al-Mâlik fi-'l-Fatwâ 'ala Madhhab al-Imâm Mâlik, 101  
*Fath al-'Azîz 'ala Kitâb al-Wajîz*, 43  
*Fath al-Bârî*, 61  
*Fath al-Mu'în*, 52  
*Fath al-Qadîr*, 42, 174, 228  
 Fath al-Qarîb al-Mujîb ila Sharh Alfâz al-Taqrîb, 51  
*Fath al-Wahhâb*, 52  
 Fâtima, 189, 190  
 Fatimid Empire, 191  
 Fatimids, 205  
*fatwâ*, 86, 97, 98, 101, 156, 157, 170, 192, 266, 267, 339, 356, 357, 358  
*Fatwâ* Collections of Hanafî school, 98  
*Fatwâ* Collections of the Mâlikî School, 101  
*Fatwâ* Collections of the Shâfi'î School, 101  
*fatwâ* committee, 357  
*fatwâ* committees, 288  
*fatwâ* institution, 357  
*Fatwâ* Online, 356  
*Fatwâ-i Sharîfah*, 98  
 Federal Sharî'ah Court, 271, 272, 300, 348  
 Federation of Islamic Organisations in Europe,, 357  
 female imâms, 188  
 fief, 106  
*Fihrist al-'Ulûm*, 74  
*Fihrist Kutub al-Shi'a*, 75  
*finality of {Muhammad's} prophethood*, 203  
 financial law, 6, 96, 102, 103, 257, 321  
 Financial transactions, 321  
 fines, 233  
 Finland, 343  
*fiqh*, 5, 9, 10, 19, 20, 21, 22, 23, 25, 26, 35, 40, 41, 43, 44, 45, 46, 47, 55, 57, 58, 62, 65, 66, 68, 70, 71, 72, 76, 78, 85, 87, 88, 98, 101, 134, 137, 140, 142, 145, 147, 148, 149, 151, 155, 156, 158, 160, 161, 162, 167, 168, 170, 173, 174, 178, 180, 183, 221, 236, 237, 244, 246, 247, 248, 254, 257, 275, 288, 289, 296, 304, 307, 319, 321, 322, 323, 324, 325, 326, 328, 329, 330, 333, 336, 338, 355, 356, 367  
*Fiqh alâ al-Madhâb al-Khamsah*, 89  
*Fiqh al-Akbar*, 40, 152  
*Fiqh al-Aqalliyât*, 85, 88  
*Fiqh al-Aqalliyât al-Muslimah*, 88  
*Fiqh al-Imâmiyyah*, 46  
*Fiqh al-Islâmî 'ala Madhhab al-Mâlikî*, 85  
*Fiqh al-Islâmî wa Adilatuhu*, 85  
*Fiqh al-Islâmî wa Adillatuh*, 355  
*Fiqh al-Ja'farî*, 46  
*Al-Fiqh al-Muqâran*, 355  
*fiqh al-Qur'an*, 65, 66, 68  
*Fiqh al-Qur'an fi Âyât al-Ahkâm*, 67  
*Fiqh al-Zakâh*, 86  
*fiqh* books, 26, 35, 40, 62, 71, 72, 151, 155, 237, 326, 356  
*Fiqh lil-Mughtaribîn*, 88  
*fiqh madhhabs*, 149  
*Fiqh School*, 149  
*Fiqh Schools*, 10, 142, 148, 149  
*fiqhî madhhabs*, 336  
*fiqhî* mentality, 336  
*Firman*, 96, 98, 102, 243  
 fiscal law, 273  
*fişq*, 180  
*Fitnah*, 131  
 Fitzgerald, 34  
 flogging, 254  
 followed (*matbû'ah*) schools, 149  
 Followers, 72, 81, 133, 137, 157, 174, 207, 351  
 followers of Ali, 190  
 followers of the Companions, 252  
 followers of the *tâbi'in*, 252  
 Foods, 321  
 Footnotes, 229, 244  
**formal jurisprudence**, 334  
 forms of evidence, 321  
 fornication, 254, 259, 343

France, 6, 28, 30, 248, 293, 327, 343, 358, 365  
 free will, 183, 193, 211, 217  
 freedom of contract, 29  
 freedom of thought, 144  
 French Civil Law, 249  
 French law, 301, 347  
 French legal tradition, 297  
 French mandate, 301  
 French Mandate, 300, 301, 303  
 frustration of purpose, 29  
 Fuad Pasha, 249  
 Fujayrah, 315, 316  
 Fulani *Jihād*, 299  
 full *mujtahid*, 149, 176  
*fundamental aims of the Qur'an*, 7, 342  
 Fundamental Rights, 275  
 funeral of the Prophet, 132  
 Funūn al-Hadīth, 63  
*fuqahā*, 8, 21, 41, 59, 70, 72, 73, 98, 100, 344  
*al-fuqahā al-sab'ah*, 137  
*Furū'*, 39, 54, 63, 76, 167, 180, 222  
*Furū' al-Fiqh*, 39, 55, 185, 222  
 Fustat, 137, 177  
*Fusūl al-Ustrushani*, 99  
*Fusūl al-Badāyi'*, 60  
*Fusūl al-Imādiyyah*, 99  
*Fusūl fi'l-Usūl*, 56  
 Future of Islamic Law, 345, 349

## G

*Galata*, 242, 258, 364  
*gambling*, 113, 115  
 games of chance, 113, 115  
*Gāyah al-Bayān*, 42  
 Gāyah al-Ikhtisār, 51  
 Gaza, 159  
 General *Tabaqāt*, 72  
 General Zia-ul-Haq, 347, 348  
*Geschichte der arabischen Litteratur*, 78  
*Ghair al-Mudallal* (Not Supported with Arguments)  
 Books of Islamic Law, 47  
*Gharīb al-Fiqh*, 70  
 Ghatfān, 122  
*Ghāyah al-Muntahā*, 54  
*Ghāyah al-Bayān*, 228  
 Ghilan ibn Abu Ghilan al-Qadari, 197  
 Ghilan ibn Muslim al-Dimashqi, 193  
 Ghilan ibn Umayya, 36  
 Ghulam Ahmad, 201, 202, 203, 204  
 glosses, 47, 52, 53, 57  
 God will, 212, 216  
 God's attributes, 204, 217  
 God's Word, 197  
 Golden Age of Islamic Law, 144, 323  
 Goldziher, 5, 33, 34, 35, 78, 364

good, 23, 54, 83, 113, 115, 116, 133, 150, 159, 176,  
 184, 185, 186, 211, 213, 214, 215, 216, 217,  
 227, 229, 237, 247, 257, 258, 259, 260, 269,  
 277, 278, 334, 345, 352  
 goodness, 213, 214  
 Grace, 211  
 gradual process over time, 115  
*Grand Majmū'*, 173  
 Grand *Qādhi*, 300  
 Grand Vizier 'Ali Pasha, 248  
 Great Moghuls of India, 155  
 Great Seljukids, 223, 224  
 Greece, 327, 343  
 Guardians and Wards Act, 273  
 guardianship, 191, 269, 270, 273, 275, 287, 298,  
 320  
*Gulkhane Khatt-i Humayūnu*, 243  
*Gurar al-Ahkām*, 50

## H

Habbab Ibnu al-Mundhir, 131  
*Had*, 244  
*had* penalties, 309  
*hadd*, 133, 259, 286, 297, 309  
*hadd al-baghy*, 241  
*hadd al-qadhif*, 241  
*hadd al-shirb*, 132, 241  
*hadd al-sirqa*, 241  
*hadd al-zinā*, 241  
*hadd* penalties, 317  
*hadīth* folk, 156, 160  
 Hadramut, 162  
*hāfiz*, 179  
*Hāfiz*, 176, 177  
 Hāitites, 182  
 Haji Khalifah, 9, 40, 41, 42, 43, 44, 45, 46, 49, 50,  
 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63,  
 64, 65, 66, 68, 70, 71, 72, 73, 74, 75, 77, 78, 84,  
 98, 99, 100, 101, 367  
*hajj*, 200, 206, 321  
 Al-Hākim al-Shahīd, 41, 49, 221, 223  
 Hākim Marwazi, 228  
*halāl*, 173  
*Al-Halāl Wa'l-Harām fi al-Islām*, 86  
*halqa*, 151  
 Halwānī, 48, 222, 223  
 Hamdan Qarmat, 205  
 Hammād ibn Sulayman, 151  
 Hammām ibn Munabbih, 135  
*Hanafi* Books without Arguments about the  
 Application of *Fiqh*, 48  
 Hanafi civil law, 327  
 Hanafi *fiqh*, 85, 155, 229, 268, 308, 315  
 Hanafi jurists, 30, 72, 160, 221, 222, 225, 234  
 Hanafi law, 261, 262, 327

- Hanafi madhhab*, 39, 148, 169, 209, 223, 224, 226, 230, 234, 236, 245, 305, 325, 326, 327, 336, 338  
 Hanafi majority, 303  
 Hanafi school, 31, 62, 81, 97, 145, 150, 152, 153, 155, 160, 216, 220, 221, 223, 228, 231, 244, 264, 265, 301, 303, 304, 319, 325, 335, 348  
 Hanafi Works on Fiqh al-Qur'an, 65  
 Hanafite Books with Arguments on the Application of Fiqh, 40  
 Hanafite law, 51, 107, 158  
 Hanafite Tabaqât, 73  
 Hanafites, 56, 57, 73, 220  
 Hanbali Books with Arguments on the Application of Fiqh, 45  
 Hanbali Books without Arguments on the Application of Fiqh, 54  
 Hanbali fiqh, 290  
 Hanbali Madhhab, 60, 328  
 Hanbali school, 162, 165, 289, 319  
 Hanbalite School, 167, 198  
 Hanbalite Tabaqât, 74  
 haqq, 10, 148  
 Haqq al-Milkiyyah, 86  
 harâm, 21  
 Harawra, 187  
 Hârûn al-Rashid, 154  
 Hârûniyyât, 153  
 hasan, 165  
 Hasan al-Basri, 143, 177, 183, 193  
 Hasan al-Turabi, 308  
 Hasan ibn Ziyâd, 153, 155  
 Hasan li Ghairihi, 164  
 Hasankeyf, 233  
 Hashawiyah, 196  
 Hashimi family, 159  
 Hashiyahs, 47, 229  
 hashr, 7, 342  
 Al-Hâsil min al-Mahsûl, 58  
 Havâshî, 229  
 Hawâlah, 30  
 hearts need to be reconciled, 130  
 Henry II, 28  
 hereditary succession, 134  
 heresy, 157, 180, 182, 197  
 Hidâyah, 30, 40, 42, 50, 100, 227, 228, 229, 254, 265, 266, 268, 329  
 hierarchy of norms, 346  
 Higher Committees' Council for Islamic Affairs, 354  
 Hijaz School of Fiqh, 136, 137  
 Hijrah, 110, 129, 135, 150, 193  
 hikmah, 218  
 Hilâl ibn Umayyah, 113  
 Hilyah al-Awliyâ wa Tabaqât al-Asfiyâ, 72  
 Himârites, 182  
 Hindu minority, 275  
 Hindus, 265, 269  
 hirâbah, 241  
 Histories of Institutions, 75  
 History Books, 75  
 holistic evidence, 10, 335  
 honorary names, 70, 73  
 host state, 349  
 hostages, 31  
 hudûd, 343  
 Hudûd, 265, 348  
 Hudûd Ordinances, 348  
 Hugo Grotius, 31  
 hujjah, 95, 179  
 hujjah akchasi, 95  
 Hukuk-i Islâmiyye Ve Istilahat-ı Fikhiyye Kamusu, 47, 355  
 Hululites, 182, 183  
 human circumstances, 6, 37  
 human freedom, 193, 217  
 human intellect, 184, 185, 217, 260  
 human mind, 216  
 human reason, 217  
 human rights, 110, 111, 254, 259, 290, 345  
 hunting, 321  
 huqûq al-'ibâd, 22  
 huqûq allah, 22  
 Hurqus ibn Zuhair, 186, 187  
 hurriyah al-ra'y, 144  
 Husayn ibn Muhammad al-Najjâr, 198  
 husn, 211, 214
- I
- i'ânât al-Tâlibîn*, 52  
 Ibâdah, 321  
 Ibâdât, 21, 89, 319, 320  
 Ibâdhî, 174, 175, 207, 313, 314  
 Ibâdhî minority, 313  
 Ibâdhî School, 174  
 Ibâdhîs, 174, 175, 207  
 Ibâdhiyyah, 207, 362  
 Ibânah, 210  
 ibn al-'Âbidin, 229, 238  
 ibn al-Haytham, 215  
 ibn al-Humâm, 42, 48, 59, 229, 234  
 ibn al-Kamal, 69, 225, 228  
 ibn al-Nadim, 167  
 ibn al-Qâdhî Simawanah, 99  
 ibn al-Qayyim, 30, 46, 114, 116, 121, 122, 125, 127, 139, 153, 163, 165, 199, 209, 257, 366  
 ibn Battuta, 196  
 ibn Hajar al-'Asqalânî, 62  
 ibn Hazm, 46, 77, 86, 126, 168, 353, 365, 366  
 ibn Jarîr al-Tabarî School, 178  
 ibn Khaldun, 21, 44, 45, 53, 59, 75, 125, 139, 140, 168, 215, 366  
 ibn Khallikan, 72, 151  
 ibn Qudamah, 45, 54



- ibn Qudâmah al-Maqdisî, 58  
 ibn Rushd, 44, 45, 77, 215, 366  
 ibn Shihâb al-Zuhri, 177  
 Ibn Taymiyyah, 69, 86, 165, 199, 209, 366  
 Ibrahim al-Halabi, 47, 100  
 Ibrahim al-Nakha'i, 151  
*Iddah*, 244  
 ideal law, 26  
 idols, 24, 115  
 IFA, 356  
*Ifâdah*, 58  
*Ihkâm al-Ahkâm*, 58  
*Ihkâm fi Usûl al-Ahkâm*, 168  
 Ihtilâf al-Madhâhib, 76  
*Ihâqâq-i haq*, 341  
*Ihyâ 'Ulûm al-Dîn*, 215  
*ijâzat at-tadrîs wa'l-iftâ*, 32  
*ijbâr*, 185  
*ijmâ'*, 21, 22, 122, 130, 149, 160, 161, 167, 170, 173, 257, 338  
*ijmâ' ahl al-Madina*, 157  
*ijmâ' al-Sahâbah*, 122, 175  
*ijmâli*, 22  
*Ijtihâd*, 34, 55, 83, 90, 116, 117, 118, 119, 120, 123, 125, 137, 138, 148, 152, 169, 170, 171, 173, 174, 178, 191, 201, 215, 223, 225, 237, 266, 290, 321, 322, 324, 332, 336, 362  
 Ijtihâd of the Companions, 152  
 Ijtihâd of the Imâms, 152  
*Ijtihâdî* rules, 20  
*Ikhtilâf al-Fuqahâ*, 77, 178, 369  
*ikhtiyâr*, 193, 219  
*ikrâh*, 29  
*iktisâb*, 219  
*I'lâ' al-Sunan*, 62  
*i'lâm*, 96  
*I'lâm al-Muwaqqi'în 'an Rabb al-'Âlamîn*, 60, 166  
*ilhâm*, 218  
 Ilkhanate, 226  
 Ilkhanids, 230, 231  
*'illah*, 130  
*'Ilm al-Fara'idh*, 241  
*'Ilm al-Fatâwâ*, 97  
*'ilm al-hadîth*, 61  
*'ilm al-kalâm*, 69, 193  
*'Ilm al-Khilâf*, 222  
*'Ilm Usûl al-Fiqh*, 88  
*Il-Yaziji*, 103  
 Imâm Abu Hanîfa, 152  
 Imâm Abu Yusuf, 144, 151  
 Imâm Ahmed ibn Hanbal, 159  
 Imâm al-Ghazzâlî, 216, 225  
 Imâm al-Haramain, 57, 210, 225  
 Imâm al-Laith, 178  
 Imâm A'zam, 39, 150, 151, 154, 155  
*Imâm Dâr al-Hijrah*, 157  
 Imâm Dawud ibn 'Ali al-Zâhirî, 166  
 Imâm Hussein, 172  
 Imâm Ibn Taymiyyah, 45  
 Imâm Ja'far al-Sâdiq, 133, 149, 151, 169, 206  
 Imâm Mâlik, 86, 133, 144, 149, 152, 156, 157, 158, 159, 160, 162, 170, 172, 208, 359  
 Imâm Muhammad, 39, 41, 151, 155, 159, 206, 221, 225, 330  
*Imâm Muhammad ibn al-Hasan al-Shaybânî*, 154  
 Imâm Muhammad ibn Isma'il al-San'ânî, 173, 174  
 Imâm Nafi', 156  
 Imâm Shâfi'î, 39, 55, 57, 133, 150, 157, 160, 162, 163  
 Imâm Shawkânî, 173, 174  
 Imâm Zaid, 171, 172, 173, 174, 359  
 Imâm Zaid ibn 'Ali, 171  
 Imâm Zuhri, 136, 156  
 Imâm-al-Haramain, 43  
*Imâmây*, 155  
 Imâmites, 182  
 Imâmiyyah, 46, 206  
*Imâms of hadîth*, 176  
*îmân*, 181, 182, 185, 187, 197, 208, 216, 342, 362  
 Immanuel Kant, 334  
 Imperial Council, 102, 237  
 imperial decree, 243, 249  
 Imperial Records, 103  
 impiety, 180, 187  
 implementation of Islamic Law, 10, 253, 342, 343  
 Implementation of Islamic Law, 341  
 implementation of the *Shari'ah*, 341  
 Incoherence of the Philosophers, 215  
 Incomprehensible (*Ta'abbudî*) Injunctions, 260  
 indemnities, 233  
 independence, 42, 50, 57, 60, 223, 273, 274, 275, 280, 281, 284, 285, 286, 290, 294, 296, 298, 299, 301, 302, 303, 304, 307, 314, 315, 316, 324, 326, 330, 341, 347  
 independent interpretation, 117, 263  
 independent view, 48  
 India, 5, 24, 34, 42, 51, 80, 101, 104, 105, 138, 162, 171, 194, 202, 205, 206, 207, 216, 220, 231, 253, 254, 264, 265, 266, 267, 268, 269, 270, 271, 274, 275, 280, 281, 306, 349, 356, 360, 368, 371, 375  
 Indian constitution, 269  
 Indian Courts, 24  
 Indian subcontinent, 262, 348  
 individual mind, 218  
 individualism, 29  
 Indochina, 276  
 Indo-Muslim law, 10, 264, 268  
 Indonesia, 10, 78, 79, 81, 89, 253, 270, 276, 277, 278, 280, 282, 283, 284, 286, 341, 357, 364, 372  
*Indonesian legal system*, 281, 283  
 inductive, 55, 346  
 industrialization, 346  
 INFAD, 356, 357

- infallibility of the Imâms*, 190  
 infallible, 169, 170, 173, 206  
 infallible Imâms, 170, 206  
 inheritance, 23, 28, 36, 112, 123, 169, 247, 248,  
 253, 254, 257, 258, 266, 271, 279, 281, 282,  
 283, 284, 295, 301, 314, 317, 320, 321, 329, 349  
*injunctions in Islamic Law*, 35  
 injunctions of Islam, 271, 272  
 injustice if God, 219  
 innovation, 119, 131, 157, 175, 179  
 innovations, 136  
 inspiration, 112, 218, 295, 352  
*Institutes*, 104, 108, 324, 359, 363, 367  
 Institutions of Islamic Fiqh, 356  
 Intercession, 212  
 internal submission, 181  
 international law, 6, 7, 30, 31, 102, 110, 320, 342,  
 343, 362  
 international private law, 257  
 interpretation of the attributes, 193  
 Interpretation of the Holy Qur'an, 64  
 interpreter, 111, 112, 116, 206, 259  
 intoxicants, 112  
 intoxication, 254  
 invalidity, 25  
*Iqâlah*, 29  
 Iqnâ fi Hall Alfâz Abu Shujâ , 51  
*iqâtâ* , 226  
*i râb*, 64  
 Iran, 65, 79, 89, 90, 91, 92, 93, 171, 177, 188, 189,  
 190, 191, 192, 196, 205, 206, 253, 255, 292,  
 293, 331, 363, 368  
 Iraq, 23, 49, 123, 128, 136, 137, 140, 141, 142,  
 148, 155, 160, 171, 172, 183, 186, 188, 189,  
 190, 192, 194, 196, 199, 205, 210, 224, 249,  
 295, 304, 305, 306, 328, 330, 347, 373  
 Iraq al-'Ajam, 138  
 Iraq al-'Arab, 138  
*Iraqi Law of Personal Status 1959*, 304  
*'irdh*, 233  
*irjâ'*, 197  
 irreligious Muslims, 181  
*Irshâd al-Fuhûl*, 60, 373  
*Irshâd al-Sâri li Sharh Sahîh al-Bukhâri*, 61  
*Isâbah fi Tamyiz al-Sahâbah*, 72  
*'Ishâ*, 191  
 Ishak ibn Râhuveyh, 143  
*Ishârât ila ma Waqa'a fi Kutub al-Fiqh min al-Asmâ  
 wa'l-Amâkin wa'l-Lugât*, 71  
*Islam Hukukunda ve Osmanli Tatbikatinda Vakif  
 Muessesesi*, 28, 87  
 Islam Online, 356  
 Islamabad, 39, 272, 328, 368, 370  
 Islamic Administrative Law, 343  
 Islamic civil law, 325  
 Islamic codification, 329  
 Islamic economic jurisprudence, 31  
 Islamic family law, 256  
 Islamic feminism, 253  
 Islamic Fiqh Academy, 356  
 Islamic Golden Age, 31  
 Islamic Ideology Council, 272  
 Islamic Institute of Civil Justice, 351  
 Islamic international law, 31, 343  
 Islamic jurisprudence, 6, 10, 30, 35, 37, 39, 54, 55,  
 76, 85, 86, 105, 119, 143, 148, 159, 162, 176,  
 223, 231, 233, 236, 237, 246, 247, 248, 257,  
 294, 303, 307, 321, 322, 323, 324, 332, 351,  
 352, 353, 354, 355  
 Islamic Jurisprudence Encyclopedia, 351, 354, 355  
 Islamic *Laffif*, 28  
 Islamic Law Digest, 97  
 Islamic Law in Algeria, 313  
 Islamic Law in Egypt, 293  
 Islamic Law in Ethiopia, 312  
 Islamic Law in India, 268  
 Islamic Law in Indonesia, 280  
 Islamic Law in Iran, 292  
 Islamic Law in Iraq, 304  
 Islamic Law in Jordan, 305  
 Islamic Law in Kenya, 310  
 Islamic Law in Kuwait, 306  
 Islamic Law in Lebanon, 300  
 Islamic Law in Malaysia, 284  
 Islamic Law in Morocco, 297  
 Islamic Law in Saudi Arabia, 289  
 Islamic Law in Somalia, 309  
 Islamic Law in Sudan, 307  
 Islamic Law in Syria, 302  
 Islamic Law in Tunisia, 315  
 Islamic Law in Turkey, 317, 318  
 Islamic Law in United Arab Emirates, 315  
 Islamic Law in Yemen, 316  
 Islamic legal administration, 28  
 Islamic legal corpus, 227  
 Islamic legal history, 332  
 Islamic legal system, 259, 320, 335, 348  
 Islamic legal theory, 85, 88, 134, 252  
 Islamic legislation, 223, 229, 292, 325, 352  
 Islamic military jurisprudence, 31  
 Islamic Penal Codes, 320  
 Islamic penal law, 86, 343  
 Islamic personal law, 300, 349  
 Islamic property law, 29  
 Islamic provisions, 253, 272  
 Islamic Renaissance, 346  
 Islamic Research Academy, 336  
 Islamic Sharî'ah law, 350  
 Islamic *Shari'ah*, 32, 34, 252, 290, 295, 304, 307,  
 317, 323, 324, 329, 330, 331, 338, 348  
 Islamic System, 273  
 Islamization, 92, 272, 274, 308, 309, 328, 347, 348,  
 369  
 Islamolog, 5, 73, 78

Ismâ'îl ibn Ja'far, 206  
 Ismâ'îlî doctrine, 206  
 Ismâ'îlî Imâmate, 191  
 Ismâ'îlîs, 194, 205, 206, 207, 264  
 Ismâ'îliyyah, 195, 205, 206  
 isnâd, 113  
 Istanbul, 2, 7, 23, 26, 28, 36, 37, 39, 47, 87, 94, 95,  
 96, 98, 102, 103, 104, 106, 112, 120, 121, 148,  
 150, 154, 182, 186, 200, 218, 222, 224, 226,  
 230, 232, 234, 235, 238, 244, 248, 249, 255,  
 256, 258, 259, 301, 320, 324, 331, 342, 355,  
 360, 361, 362, 363, 364, 365, 366, 367, 368,  
 369, 370, 371, 374, 375  
 Istibsâr, 46, 64  
*Istibsâr fi ma ukhtulif fihi min al-akhbâr*, 64  
*istihâlah al-tanfidh*, 29  
*Istihân*, 152, 153, 157, 160, 173, 257, 326, 332  
*istinbât*, 64  
*istiqrâ*, 55  
*istishâb*, 100, 157, 160, 332  
*istislâh*, 157, 257  
*Istisnâ'*, 326  
*istitâ'ah qabl al-fi'l*, 212  
 Italia-Turkish War, 296  
 Ithâf Zawil-Basâir, 58  
*ithnâ' Ashariyya*, 190  
*i'tiqâdiyyât*, 19, 21, 22  
*'itiqnâme*, 95  
*Itqân fi 'Ulûm al-Qur'an*, 68

## J

Ja'farî *fiqh*, 302  
 Jâbir ibn Zaid al-Azdi, 207  
*jabr*, 192, 193  
*Jabriyyah*, 192, 193  
*jadîd*, 43, 160  
 Ja'far ibn Rabi'ah, 151, 177  
*Ja'farî fiqh*, 169, 170  
 Ja'farî school, 55, 152, 169, 170, 171, 289  
 Ja'farî Shî'a, 190, 306  
 Ja'farî Shî'a minority, 306  
 Ja'fariyyah, 10, 148  
*Jâhil*, 175  
 Jahmites, 182  
*Jahmiyyah*, 192, 197  
 Jakarta, 280, 282  
 Jalal-al-Dîn 'Abdurrahman ibn Abu Bakr al-Suyûti,  
 63  
 Jalâl-al-Dîn al-Suyûti, 68  
*Jam' al-Jawâmi'*, 59, 62  
*Jamâ'at-i-Islami*, 271  
 Jamal al-Dîn al-Afghani, 210  
*Jâmi' al-Bayân fi Ta'wil Ây al-Qur'an*, 64  
*Jâmi' al-Fusûlayn*, 99  
*Jâmi' al-Kabîr*, 45, 49, 153, 228

*Jâmi' al-Rumûz*, 49  
*Jâmi' al-Saghîr*, 42, 48, 62, 153, 228, 229  
*Jâmi' al-Sahîh*, 19, 61, 62  
*Jâmi' al-Wajîz or Fatâwâ al-Kardari*, 100  
*Jâmi' Li Ahkâm al-Qur'an*, 66  
*Jâmi' al-bayân fi Ta'wil al-Qur'an*, 178  
*Jâmi' al-Sahîh*, 175  
 Janâhites, 182  
*Jarîdah al-Adâlah*, 106  
*Jarîdah al-Ilmiyyah*, 106  
*Jarîdah al-Mahâkim*, 106  
*Jarîrî*, 179  
*Jawâhir al-Kalâm*, 171  
*Jawâhir al-Mudhi'ah*, 73  
*jazâ al-siyâsah*, 241  
*jazâ al-siyâsah al-Shar'îyyah*, 241  
*jazâ al-ta'zîr*, 241  
 Jazâ'ir, 313  
 Jeremiah, 204  
 Jesus Christ, 204  
 Jewish personal law, 299  
*Jibrîl*, 260  
*jihâd*, 22, 110, 112, 176, 202, 299, 339, 341, 363  
*Jihâd*, 49, 80, 93, 204  
*jihâd of the word*, 341  
*Jinâyah*, 265  
 Jordan, 10, 295, 305, 306, 328, 347  
 Joseph Schacht, 5, 34, 35, 338  
 Journal of Justice, 106  
 Journal of Science, 106  
 judicial circulars, 308  
*judicial court system*, 302  
 Judicial Decrees, 104  
 judicial interpretation, 29  
 judicial matters, 117, 265  
 Judicial Matters, 118  
*judicial system*, 294, 300, 301, 306, 330  
 Judiciary Act 1983, 309  
 jurisprudence encyclopedia, 352, 353  
 jurisprudential, 176, 257, 324, 335, 352, 355  
 jurist's law, 346  
 juristic consultant, 342  
 juristic preference, 326, 332  
*Jurjâniyyât*, 153  
*Jurnal Hukum*, 289  
 jury trial, 28  
*jus gentium*, 257  
*jus obligationum*, 257  
 Justinian, 3, 33, 266

## K

*kabîrah*, 185  
*kadhâan*, 26  
*Kâfi*, 41, 46, 50, 153, 221, 223  
*Kâfi fi Furû' al-Hanafiyyah*, 49, 228

- Kâfi fi 'ilm al-Dîn*, 63  
*kâfir*, 181, 149, 212, 187, 207  
*Kâfiyah fil-Intisâr lil-Firqah al-Nâjiyah*, 166  
 Kahire, 198  
*kalâm*, 87, 193, 211, 213  
*kalâm al-nafsî*, 212  
*Kanz*, 50, 155, 228  
*Kanz al-'Irfan fi Fiqh al-Qur'an*, 67  
*Kanz al-Daqâ'iq*, 50, 155, 228  
*Kanz al-'Ummâl fi Sunan al-Aqwâl wa al-Af'âl*, 62  
 Karbalâ, 171, 189, 192  
 Karîm al-Hussainî, 207  
 Karmathians, 195  
*Karrâmiyyah*, 196, 197  
 Kash, 223  
*Kashf al-Asrâr*, 56, 141, 217, 220, 359  
*Kashf al-Zunûn 'an Asâmi al-Kutub wa'l-Funûn*, 75  
*Kashshâf al-Qinâ' an Matn al-Iknâ'*, 290  
*Kashshâf Istilâhât al-Funûn*, 71  
*katb-i sijillât ve sukûk*, 95  
 Kâtib Chelebi, 75  
 Kawâ'id ibn Rajab, 84  
 Kenya, 310, 311, 312  
*Khalîfah*, 122, 131, 140, 156, 171, 172, 173, 202, 203  
 Khalîfah Abdul Malik, 172  
 Khalîfah al-Mansur, 173  
*Khalîfah al-Masih*, 203  
*khalk al-af'âl*, 186, 198  
*Khâniyyah*, 99, 100  
*Kharâdj*, 100  
 Khârijite groups, 188, 207  
 Khârijites, 182, 186, 187, 188, 207  
*khâtam al-anbiyâ'*, 111  
 Khatib ibn Abu Balta'a, 130  
 Khattâbites, 182  
*Khawârij*, 133, 185, 186, 207, 212  
 Khayraddîn al-Zirikli, 73  
*Khazâin al-Asrâr wa Badâyi' al-Afkâr*, 51  
*Khilâfah*, 126, 127, 129, 140, 142, 365  
*Khizânah al-Fatâwâ*, 100  
*Khizânah al-Muftiyyîn*, 99  
*khul'*, 296  
 Khulafâ al-Rashidûn, 120, 121, 147  
*Khulâsah al-Fatâwâ*, 99  
 Khurasan, 136  
*Khutbah al-Wadâ'*, 122  
 Kifâyah al-Muntahî, 229  
*Kifâyah fi 'Ilm al-Riwâyah*, 63  
 King Fahd, 290  
 King Faisal, 304  
*Kisâniyyat*, 153  
*Kitâb al-Asl*, 228  
*Kitâb al-Bayân Wa'l-Tahsil Wa'l-Sharh we 'l-Tawjîh wa'l-Ta'îl fa Masâ'il al-Mustakhrajah*, 44  
*Kitâb al-Buyû'*, 249  
*Kitâb al-Fihrist*, 74  
*Kitâb al-Fiqh 'ala al-Madhâhib al-Arba'a*, 87  
*Kitâb al-Fisal fi al-Milal wa'l-Nihal*, 77  
*Kitâb al-Furûq: Anwâr al-burûq fi anwa' al-furûq*, 84  
*Kitâb al-Hujjah*, 43  
*Kitâb al-Ibâna 'an Usûl al-Diyânah*, 211  
*Kitâb al-'Ibar we Dîwân al-Mubtadâ we al-Khabar fi Ayyâm al-'Arab we al-'Ajam we al-Barbar*, 75  
*Kitâb al-'Ilal wa Ma'rifah al-Rijâl*, 165  
*Kitâb al-Irshâd li-Ma'rifah Hadîth Khayr al-'Ibâd*, 63  
*Kitâb al-Kharâj*, 41, 76, 144, 154  
*Kitâb al-Luma'*, 211  
*Kitâb al-Milal Wa'l-Nihal*, 78  
*Kitâb al-Muhallâ*, 168  
*Kitâb al-Nâwazil*, 222  
*Kitâb al-Qadhâ*, 249  
*Kitâb al-Tabâqât al-Kabîr*, 120  
*Kitâb al-Tawhîd*, 216  
*Kitâb al-Umm*, 42, 160, 161  
*Kitâb al-Usûl*, 56  
*Kitâb Bayân Awhâm al-Mu'tazila*, 216  
*Kitâb Majalla al-Ahkâm al-Shar'iyyah 'ala Madhhab al-Imâm Ahmad ibn Hanbal*, 85  
*Kitâb Majmû' al-Nawâzil wa'l-Wâqi'ât*, 153  
*kitâbah*, 71  
 knowledge of God, 145, 198, 217, 219  
*Kompilasi*, 281, 282, 284  
 Kuala Lumpur, 77, 83, 284, 287, 357, 369  
 Kufa, 128, 137, 138, 141, 148, 150, 152, 166, 172, 176, 187, 196  
*Kuffâr*, 188  
*kuffâr an-ni'mah*, 207  
 Kufic School, 137, 138  
 Kufic schools of fiqh, 152  
*kufri*, 181, 187  
*Kulliyât al-Qawânin*, 103  
*kunyah*, 70  
*Kutub al-Ahkâm*, 62  
 Kutub al-arba'ah, 113  
*Kutub Zâhir al-Riwâyah*, 48, 153, 155, 324  
 Kuwait, 6, 7, 21, 33, 55, 58, 86, 249, 295, 306, 307, 328, 343, 347, 354, 355, 362, 368, 369, 375  
 Kuwaiti courts, 307

## L

- Lafif* trial, 28  
 Lahore Ahmadiyyah Movement, 202, 203, 205  
 Lahori Ahmadis, 203  
 Lahoriyyah, 201, 203  
 Laith ibn Sa'ad, 149  
 Laith ibn Sa'd School, 177  
*Landraad*, 279  
 Laos, 276  
 last lawbearing prophet, 203, 205

- latâif al-fiqh*, 49  
 law of commodities, 257  
 Law of Criminal Procedures, 245  
 Law of Evidence, 274  
 law of evidence and procedure, 27  
 Law of Family Rights 1917, 302  
 Law of Family Rights, 327  
 law of procedures, 244, 257  
 Law of *Shar'î* Procedure, 306  
 law reports of records, 289  
 Lawmaker, 105, 106, 324  
 Ibn Rushd, 45  
 Lebanon, 65, 88, 171, 176, 188, 192, 199, 249, 300, 301, 302, 330, 373  
 legal answers, 112, 237  
 Legal Arrangements, 104  
 legal authority, 7, 256, 342  
 legal codes, 9, 10, 23, 87, 103, 104, 105, 106, 230, 254, 259, 324, 329, 87, 95, 96, 103,  
 legal deductions, 64  
*legal education*, 32, 254  
 legal instructions, 112  
 legal methodology, 27  
 legal reform, 210, 262, 264  
 legal scholar, 342  
 legal texts, 47, 106, 139, 141, 227, 228, 237, 266  
 legislative activity, 114  
 legislator, 114, 245, 331, 346  
 Lexicological Sources, 70  
 Libya, 207, 253, 295, 296, 347  
 limits of the legislative power, 244  
 lineage, 190, 320  
 literal meaning, 166, 195  
 literalism, 29  
 litigant, 30, 269, 292  
 local law, 288, 304, 349  
*lutf*, 211
- M**
- mâ'nawî jihâd*, 341  
*Ma'rudhât*, 248, 249, 250  
*ma'sumiyyah*, 190  
 Ma'âjim, 70  
 Ma'bad al-Juhani, 193  
*Mabâhith fi 'Ulûm al-Qur'ân*, 68  
*Mabsût*, 41, 48, 153, 154, 223, 228  
 Macedonian, 304  
 Madârik al-Ahkâm and Anwâr al-Qur'an, 65  
*Madârik al-Ahkâm*, 46  
*madhâhib*, 9, 147, 160, 287, 317  
*madhâhib al-'amaliyyah-fiqhiyyah*, 147  
*madhâhib al-'îtiqâdiyyah*, 147  
*madhhab*, 85, 147, 148, 155, 170, 173, 174, 179, 198, 200, 209, 210, 225, 230, 269, 270, 274, 289, 292, 296, 306, 307, 313, 315, 326, 329, 336, 338, 9, 32, 42, 51, 53, 57, 58, 60, 62, 71, 74, 85, 101, 147, 162, 173, 222, 223, 224, 225, 245, 327, 365  
*Madhhab al-Bâtîl*, 10, 147  
*madhhab al-Dawudî*, 166  
*Madhhab al-Haq*, 9, 147  
*madhhab al-Zâhiri*, 166  
 Madinite School, 137, 151, 152  
 Madinite schools of fiqh, 152  
*Madkhal al-Fiqhi al-Âm Ila al-Fiqh al-Islâmî*, 86  
*madrasah*, 32, 47, 60, 222, 225, 234, 236, 254, 32, 50, 56, 81  
*Madrasah of Azhar*, 234  
*Madrasah of Halwânî*, 222  
*Mafâtîh al-Ghayb*, 64  
*Mafâtîh al-'Ulûm*, 71  
 Maghreb, 53, 61, 140, 158, 176, 188, 191, 297  
 magister, 32  
 Magistrates Courts, 275  
*Mahdî*, 176, 177, 178, 202, 307  
*Mahdî*, 202, 203, 204, 206  
*Mahkama Agung*, 281, 283  
*Mahkama Islam Tinggi*, 283  
*Mahkama-i Nizâmiyyah*, 246  
 Mahomedan, 23, 83, 264  
 Mahometan, 23, 264  
 Mahommedan, 23, 24, 82, 264, 265, 369  
*Mahsûl*, 58, 59  
 Main Doctrines of al-Ash'arî, 211  
*Majâlis al-Mu'minin*, 74  
*Majalla*, 21, 23, 27, 30, 57, 69, 81, 84, 85, 107, 222, 235, 236, 238, 244, 245, 246, 247, 248, 249, 302, 320, 322, 325, 326, 327, 328, 329, 330, 332, 335, 336, 360, 363, 368  
*Majalla al-Ahkâm al-'Adliyyah*, 325, 326, 329, 330, 336  
*Majalla al-Ahkâm Ash-Shar'iyyah 'Alâ al-Madhhab al-Hanbalî*, 328  
*Majalla-i Ahkâm-i 'Adliyyah*, 85, 107, 238, 246  
*Majâmi' al-Haqâ'iq*, 56  
 Majdî, 73  
*Majlis 'Âli-i Tanzîmât*, 103  
*Majlis al-Mab'ûsân*, 245  
*Majlis al-Shûrâ*, 290, 302  
*Majlis Shûrâ al-Dawla*, 302  
*Majlis-i-Shûrâ*, 272  
*Majma'*, 47, 50, 155, 228, 236, 356  
*Majma' al-Anhur*, 47, 50, 236  
*Majma' al-Bahrain*, 155, 228  
*Majma' al-Bahrain and Matla' al-Bahrain*, 68  
*Majma' al-Bahrain wa Multaqâ al-Nahrain*, 50  
*Majma' al-Fiqh al-Islâmî*, 356  
*Majma' al-Nawâzil wa'l-Wâqî'ât*, 98  
*Majmû' al-Akbar*, 173  
*Majmû' al-Fatâwâ al-Kubrâ*, 45  
*Majmû' al-Fiqh*, 54, 173  
*Majmû' al-Hadîth*, 173

- Majmū' sharh al-Muhadhdhab*, 43  
*Majmū' ,*, 173  
*Majmū'ah al-Fatāwā*, 222  
*Majmū'ah al-Fatāwā al-Shar'iyyah*, 86  
*Majmū'ah al-Muqarrarāt al-Tamyīziyyah*, 106  
*Majmū'ah al-Qawānīn al-Misriyya al-Mukhtāra*  
 min al-Fiqh al-Islāmī, 87  
*Majmū'ah al-Rasā'il wa al-Masā'il*, 69  
*Majmū'ah Rasā'il al-Ghazzālī*, 69  
*Majmū'ah Rasā'il al-Hamawī*, 69  
*Majmū'ah Rasā'il ibn 'Abidīn*, 70  
*makrūh*, 21, 26  
 Maktabah al-Zāhiriyyah, 39  
 Mal Wa al-Hukm Fi al-Islam, 86  
 Malabar, 162  
 Malatya, 232  
 Malay Archipelago, 276  
 Malay Peninsula, 276  
*Malay-Adat laws*, 278, 280  
 Malayan law text, 277  
 Malayan Peninsula, 162  
 Malaysia, 93, 276, 277, 278, 284, 285, 286, 287,  
 288, 357  
 Maldives, 264  
*Malfūzāt*, 104, 324  
*Malik al-Ulamā*, 41  
 Mālik ibn Anas, 44, 61, 137, 140, 143, 156, 158  
*Mālikī* Books with Arguments on the Application of  
*Fiqh*, 44  
 Mālikī fiqh, 45, 298, 329  
 Mālikī jurisprudence, 28  
*Mālikī law*, 53, 89, 261  
 Mālikī *madhhab*, 148  
 Mālikī school, 160, 176, 178, 299  
 Mālikī School, 82, 156, 306, 307, 313, 315, 319,  
 335  
 Mālikī Works on Fiqh al-Qur'an, 66  
 Mālikīte school, 53  
 Mālikīte *Tabaqāt*, 74  
 Malikshah, 104, 224, 324  
 Mamlukids, 75, 96, 234  
*Man lā Yahduruhu al-Faqīh*, 46, 63  
*Manafī' al-Daqā'iq*, 56  
 Manāhil al-'Irfan fi 'Ulūm al-Qur'ān, 68  
*Manār al-Anwār*, 56  
*mandūb*, 21, 26  
*Manhaj al-Mutakallimīn*, 57  
*manhaj al-Shāfi'i*, 57  
*Manhaj al-Tullāb*, 52  
*manshūrat*, 308  
*mansūkh*, 115  
 Mansurites, 182  
*manzilah bayna al-manzilatayn*, 212, 183, 186  
*Manzumah of al-Nasafi*, 50  
*Maqālat al-Islāmiyyīn*, 211  
*Maqāsid al-Shar'ah al-Islāmiyya*, 87  
 Marash, 232  
 Marcel Morand, 314  
 Mardin, 233, 249, 369  
*ma'rifah*, 197  
 Market Officers, 128  
 marks of Islam, 120  
 Maronite Christian, 301  
 marriage, 95, 112, 169, 173, 183, 198, 253, 254,  
 255, 261, 263, 269, 270, 271, 273, 275, 276,  
 277, 279, 281, 282, 283, 284, 286, 287, 295,  
 297, 298, 299, 301, 302, 305, 314, 320, 322, 82,  
 89, 91, 92, 243, 262, 271, 282, 286, 287, 294,  
 296, 299, 314, 319, 320, 321, 360, 362  
 Marriage Ordinance, 314  
*mas'alah*, 10, 335  
*masā'il*, 98  
*Masā'il al-Mālikshahiyyah Fil-Qawā'id al-*  
*Shar'iyyah*, 224  
*Masābih*, 62  
*Masādir al-Haqq Fil-Fiqh al-Islāmī*, 87  
*Masādir al-Tashri' al-Islāmī fimā lā Nass fih*, 87  
*Masā'il al-Mālikshāhiyyah Fil-Qawā'id al-Shar'iyyah*,  
 104, 324  
*Masākīn*, 132  
*Masālih al-Mursalah*, 338  
*Masālik al-Afhām*, 46  
*mashāyikh*, 98  
*Masjid*, 125, 127, 157, 162, 172, 179  
*Masjid al-Nabawi*, 125, 127, 157  
*maslahah*, 173, 296, 298  
*maslahah al-mursalah*, 157, 337, 27  
*maslak al-kitmān*, 175  
 Masrūq, 151  
 master of law, 32  
*Matālib Uli al-Nuhā*, 54  
*matn*, 47, 50  
 matters of war, 117  
 Māturidī Theology, 216  
 Māturidīs, 216  
 Māturidītes, 220  
*Māturidiyyah*, 217, 220, 221, 224  
 Mawarā' al-Nahr, 222  
*Mawāziyyah*, 158  
*mawdhū'*, 175  
*mawlawi*, 266  
*Mawsū'ah al-Fiqhiyyah*, 86, 355  
 Max Weber, 333  
 Maymunites, 182, 183  
 Mecca, 22, 52, 109, 112, 128, 134, 137, 139, 140,  
 143, 159, 160, 174, 177, 179, 181, 188, 195,  
 199, 200, 255, 289, 290, 321  
 Meccan period, 109, 115, 175  
 Meccan *sharīfs*, 200  
 Meccan *sūrahs*, 110  
 Medina, 110, 115, 118, 127, 128, 129, 134, 137,  
 138, 139, 140, 143, 148, 156, 157, 158, 159,  
 160, 169, 171, 172, 177, 179, 189, 200, 208, 289  
 Medinan period, 109

- Medinan *sûrahs*, 110  
 Mediterranean Sea, 297, 300, 313  
 members of the household of the Prophet, 114  
*Memoirs*, 76, 104, 105, 324, 374  
 Mesopotamia, 304  
 Messiah, 202, 203, 204  
 methodology of Islamic law, 144  
 Middle East, 4, 28, 30, 34, 90, 104, 253, 279, 292, 294, 318, 335, 362, 363, 368, 371, 372  
 middle ground, 185  
*Miftâh al-Karâmah Sharh Qawâ'id al-Allâmah*, 171  
*Miftâh al-Sa'âdah wa Misbâh al-Siyâdah*, 75  
*military court system*, 302  
 military law, 33, 257  
*millah al-Islâm*, 181  
*Minhâc al-Sâlihîn*, 89  
 Minhâj al-Hidâyah fi Tafsîr Âyât al-Ahkâm, 67  
*Minhâj al-Tâlibîn*, 30, 51, 82, 254  
*Minhâj al-Wusûl ila 'Ilm al-Usûl*, 58  
*Minhâj fi Sharh Muslim ibn al-Hajjâj*, 61  
 Ministry of Awqaf, 174, 175, 208, 355, 362, 370  
 Ministry of Religious Endowments, 354  
 minor crimes, 303  
 minority rights, 269, 275  
 miraculously, 218  
*Mi'râj al-Dirâyah*, 42  
*Mir'ât al-Usûl*, 60  
*Mirqât al-Wusûl fi 'Ilm al-Usûl*, 60  
 Mirza Bashîr al-Dîn Mahmud Ahmad, 202  
 Mirza Ghulam Ahmad, 201, 202, 203, 204  
 Miscellaneous English Sources in Islamic Law, 89  
*Mishkât al-Masâbih*, 62  
 mixed method, 59, 248, 332, 335  
*Mi'yâr al-Adâlah*, 241  
*Mi'yâr al-Mughrib wa'l-Jâmi' al-Mu'rib 'an Fatâwî A'lâm Ifriqiyah wa'l-Andalus wa'l-Maghrib*, 101  
*Mizân al-Kubrâ*, 77  
*Mizân fi Tafsîri'l-Qur'an*, 65  
 moderator, 29  
 modern nation-states, 254  
 Mohammedan, 23, 39, 264, 286, 373  
 Molla Fanari, 60  
 Molla Khusraw, 47, 50, 60, 186, 229, 236, 257, 332, 369  
 Mongol Invasion, 226  
 Mongols, 226, 230, 345  
 Monographic Works, 69  
 Monotheism, 216  
 Moohummu, 24  
 Morocco, 10, 82, 92, 158, 200, 297, 298, 299, 314  
 Moslem, 23, 264  
 Mu'adh ibn Jabal, 120  
*mu'âmalât*, 321, 319, 320  
 Mu'âwiya ibn Abu Sufian, 134, 186, 187, 188  
*mu'min*, 212  
*mua'allafah al-qulûb*, 130  
*mu'âmalât*, 21, 241, 89, 173, 244  
*Mu'âmalât of fiqh*, 99  
 Muammar al-Qaddafi, 296  
*mubâh*, 21  
*mubham*, 219  
*mubîn*, 168  
*Mudallal* (Supported with Arguments) Books of Islamic Law, 40  
*Mudallal* book, 223  
*Mudallal* exegesis, 228  
*Mudârabah*, 242  
*Mudawwanah*, 44, 45, 52, 53, 158, 165, 298  
*Mufassal*, 103, 258  
*Mufradât Alfâz al-Qur'an*, 70  
*muftî*, 32, 51, 157, 159, 177, 201, 335, 342, 357  
*muftî* of Mecca, 159  
 Muftî's Office, 96, 98, 230, 360  
 Mugaddamât al-Mumahhadât li Bayân ma Aqtadathu Rusûm al-Mudawwanah min al-Ahkâm al-Shar'iyât wa'l-Tahsilât al-Muhkamât li Ummahât Masâ'iliha al-Mushkilât, 45  
 Mughal dynasty, 104  
 Mughal Empire, 105, 265, 324, 372  
*Mughnî*, 45, 54, 290  
*Mughrib fi Tartîb al-Mu'rib*, 71  
 Mugirites, 182  
 Mugnî al-Mukhtâj ila Ma'rifat Ma'âni Alfâz al-Minhâj, 52  
*Mugnî al-Mustaftî 'an Su'âl al-Muftî*, 100  
*Muhâdarât fi al-Waqf*, 86  
*muhaddith*, 179  
*Muhadhhab*, 42, 43, 51, 225  
*Muhâjirîn*, 130  
*Muhakkimah*, 187  
*Muhallâ*, 46, 168  
 Muhammad 'Abduh, 201, 210, 254, 328, 330  
 Muhammad Abu Zahra, 86, 88, 155, 159, 162, 166, 169, 174  
 Muhammad al-Bâqir, 172  
 Muhammad al-Mahdi, 191  
 Muhammad 'Amer, 327  
 Muhammad Amin ibn 'Abidîn, 51  
 Muhammad ibn Abd al-Wahhâb, 198, 199, 209  
 Muhammad ibn al-Hasan, 41, 48, 49, 75, 153, 154  
 Muhammad ibn 'Ali ibn Muhammad al-Shawkani, 60  
 Muhammad ibn Ishâq, 140  
 Muhammad ibn Karrâm al-Sidjistani, 196  
 Muhammad ibn Sa'd, 120  
 Muhammad ibn Samâ'ah, 153  
 Muhammad ibn Su'ûd, 198  
 Muhammad II. Tughlak, 230  
 Muhammad Mâturidî, 221  
 Muhammad Qadri Pasha, 107, 327  
 Muhammad the Conqueror, 47, 232, 236, 238  
 Muhammad Zia-ul-Haq, 273  
 Muhammad's interpretation, 111  
 Muhammadan, 2, 5, 9, 10, 23, 24, 25, 34, 35, 42,

- 43, 62, 78, 80, 81, 82, 83, 84, 89, 97, 101, 105, 255, 264, 265, 266, 267, 268, 276, 278, 329, 339, 361, 375
- Muhammadanische Studien*, 34, 78
- Muhaqqiq al-Hilli, 171, 254
- Muharrar*, 45, 51, 52
- Muharrir*, 103
- Muhimmah* books, 102
- Muhit*, 21, 41, 55, 375
- Muhit al-Burhâni fi al-Fiqh al-Nu'mâni*, 41, 41, 99, 100
- Muhit al-Radawi*, 41
- Muhit al-Sarakhsi*, 41
- muhkam*, 219
- muhtasib*, 96
- Mujabbirah*, 192
- Mujaddid*, 201, 202
- Mu'jam al-Buldân*, 70
- Mu'jam al-Mu'allifin*, 73
- Mujassimah*, 196, 197
- Mujassimites, 183
- Mujmal*, 103, 258
- mujtahid*, 10, 21, 22, 99, 143, 144, 146, 148, 153, 170, 171, 173, 174, 175, 178, 179, 223, 293, 335
- Mujtahid*, 55, 170, 199, 223, 226, 234
- Mujtahid al-Mutlaq*, 199
- Mujtahid* Imâms, 223, 226
- Mukayeseli Islam ve Osmanli Hukuku Kulliyâti*, 87
- Mukhtalifah*, 44, 52, 53, 158
- Mukhtâr*, 50, 171, 228, 238
- Mukhtasar*, 30, 42, 45, 48, 49, 50, 51, 53, 54, 59, 161, 165, 225, 229, 329, 335
- Mukhtasar Abu Shujâ'*, 51
- Mukhtasar Ahkâm al-Qur'an*, 65
- Mukhtasar al-Khiraqi*, 54
- Mukhtasar al-Muntahâ*, 58
- Mukhtasar al-Quduri*, 42, 49, 50
- Mukhtasar al-Wiqâyah*, 49
- Mukhtasar* by al-Muzani, 42
- Mukhtasar fi al-Fiqh*, 49
- Mukhtasar ibn al-Hâjib*, 58
- Mukhtasar of Khalil*, 48, 54
- Mukhtasar of Rabi'*, 161
- Mukhtasar of Sidi Khalil*, 53
- mukhtasars*, 47
- Mukhtasars al-Muzani*, 49, 161
- Mukthirûn*, 135
- Mulakkkhas al-Ahkâm Ash-Shar'iyah 'Ala al-Mu'tamad Min Madhhab Mâlik*, 327
- Multaqâ al-Abhur*, 47, 50, 236, 237, 329, 335, 365
- Mumbai, 162, 206
- Mumbai State, 162
- Munâkahât*, 319, 320
- mungati'*, 61
- Munkar*, 342
- Muntahâ al-Sûl wa'l-Amal fi 'Ilmay al-Usûl wa'l-Jadal*, 58
- Muntakhab al-Husâmi*, 56
- Muntakhab fi Usûl-al-Madhab*, 56
- Muntaqâ*, 153
- Muqaddimah ibn al-Salâh, 63
- Muqillân*, 135
- Muqni'*, 54
- murâsala*, 95
- murder, 216, 259, 291
- Mu'rib*, 71
- Murji'ah*, 197
- mursal*, 61, 164
- mursal hadith*, 164
- Murshid al-Hayrân ila Ma'rifat Ahwâl al-Insân fil-Mu'âmalât al-Shar'iyah*, 108, 327
- Murshid al-Mughtaribîn*, 88
- Musailamah, 121
- Musailamah al-Kazzâb, 198, 199
- musallam*, 239
- musannaf*, 61, 136, 145
- Mushabbihah*, 196, 197
- Mushaf*, 260
- mushrik*, 198
- mushtabah*, 219
- Mushtabih fi Asmâ' al-Rijâl*, 70
- Muslim arbitrator, 351
- Muslim Brotherhood, 358
- Muslim community, 64, 124, 175, 181, 182, 183, 187, 215, 251, 349, 353
- Muslim countries, 5, 6, 20, 23, 104, 251, 252, 253, 254, 264, 298, 325, 329, 343, 349
- Muslim Family Law Ordinance, 273
- Muslim Family Laws Ordinance, 263, 270, 271, 276
- Muslim Fulani Usman dan Fodio, 299
- Muslim heritage, 328
- Muslim ibn Khalid al-Nanji, 159
- Muslim individual, 7, 254, 341, 342
- Muslim jurists, 3, 8, 71, 230, 244, 332
- Muslim minorities, 85, 285, 292, 349, 358, 275, 351
- Muslim personal law, 253, 265, 268, 269, 270, 273, 274, 275, 308, 361
- Muslim population, 192, 270, 279, 253, 349
- Muslim reformers, 254
- Muslim scholars, 3, 5, 10, 24, 72, 73, 78, 87, 95, 109, 117, 120, 122, 125, 144, 147, 195, 254, 323, 338, 339, 347
- Muslim Studies*, 78
- Muslim territories, 251
- Muslim ummah, 349
- Muslim world, 30, 136, 155, 168, 177, 188, 190, 251, 254, 255, 262, 326, 345
- musnad*, 61, 136
- Musnad*, 152, 163, 165, 175
- Musnad al-Imâm Ahmad*, 61
- musnad* collections, 136
- Mussalman, 24, 83, 108, 359
- Must'alias, 206



Mustadrak al-Wasâ'il wa Mustanbat al-Masâ'il, 64  
 Mustafa al-Siba'î, 353  
 Mustafa al-Zarqa, 354  
 Mustafa Kemal, 318  
*Mustahrajah min al-Asmi'ah al-Masmû'ah*, 44, 158  
*mustanbatah*, 21  
*Mustasfâ*, 57, 58, 225  
*mut'ah*, 169, 191, 298  
*mutakallim*, 58  
*Mu'tamad*, 57, 58, 327  
*mutaqaddimûn*, 208  
*mutasawwif*, 176  
*mutawallî*, 28  
*mutawâtir* reports, 185  
*Mu'tazila*, 169, 183, 184, 185, 193, 198, 211, 212  
*Mu'tazilî*, 10, 148, 163, 173, 183, 185, 216  
*Mu'tazilî school*, 184, 173  
*Mu'tazilîte*, 57, 173, 183, 195, 212, 219, 185, 213, 214, 219  
*Mutûn*, 155, 227  
*Mutûn al-Arba'ah al-Mu'tabarah*, 155, 228  
*mutûn al-dirâyât*, 49  
*mutûn mu'tabarah*, 50  
*Muwâfaqât fi Usûl al-Shari'ah*, 60  
*Muwahhidûn*, 209  
*Muwatta'*, 61, 144, 156, 157, 158, 159  
 mysticism, 78, 215

## N

Nâfi' ibn ul-Azraq, 188  
*nâfilah*, 119  
 Nahdatul 'Ulamâ', 357  
*nâib*, 95  
 Najd, 109, 199  
*nâjî*, 181  
 Najid, 198  
 Najjârites, 182  
*Najjâriyyah*, 198  
 Napoleonic code, 254, 301  
 narrator, 178, 185  
*Nasb al-Râyah li Ahâdith al-Hidâyah*, 62  
*nâsikh*, 115  
*nâsikh wal-mansûkh*, 115  
*naskh*, 42, 115, 115  
*nass*, 48, 51  
*Natâ'yij al-Wuqu'ât*, 75  
 National Fatwâ Committee, 357  
 nationality theory, 343  
 Natural Philosophers, 195  
*naw*, 63  
*Nawâdir*, 41, 44, 153  
*Nawâzil*, 98, 153  
*Nayl al-Awtâr*, 62, 174  
*Nayl al-Murâd min Tafsîr Âyât al-Ahkâm*, 65

Al-Nazariyya al-'Âmma lil-Mûjabât wal-'Uqûd fi al-Shari'ah al-Islamiyya, 87  
 neorevivalism, 328  
 Nepal, 264  
 Netherlands, 7, 342, 344, 362  
 Nigeria, 80, 253, 299, 349  
*Nihâyah al-Matlab fi Dirâyât al-Madhab*, 43  
*Nihâyah al-Mukhtâj ila Sharh al-Minhâj*, 52  
*Nihâyah fi Gharîb al-Hadîth wa'l-Athâr*, 70  
*Nikâh Mut'ah*, 191  
*Niqâyah*, 49  
 Nisâbur, 143  
 Nizâm al-Mulk, 76, 104, 224, 324  
*Nizâm-e-Mustafa*, 273  
 Nizâmiyyah courts, 246  
*Nizâmiyyah Madrasah*, 222, 224  
 Nizârî Muslims, 206  
 nomadism, 37, 150  
 non-combatant civilians, 31  
 non-Muslim believers, 181  
 non-Muslim country, 254, 343  
 Norman law, 28  
 Normans, 28  
 North Africa, 28, 78, 128, 162, 188, 194, 205, 253, 297, 313, 314, 315  
 North America, 351  
 North Kurasan, 196  
*nubuwwah*, 7, 342  
 Nukhbah al-Fikar fi Istilâh Ahl al-Athar, 63  
 nullity, 26, 270  
*Nûrayn*, 129  
 Nusairi, 300, 194  
*Nusairiyyah*, 194

## O

*obeying contract*, 172  
 obligations, 186, 206, 207, 259, 297, 320, 322, 355  
 obsession, 185  
 Offence of *Qadhf*, 274  
 Offence of *Zinâ*, 274  
 Official Gazette, 106  
 Ômer Nasuhî Bilmen, 47  
 oneness of God, 185  
 Opinions of the Companions, 130  
 Opponents of *Qadar*, 183  
 Organization of *Shari'ah* Courts, 306  
 orientalist, 5, 35, 73, 78  
 origin of Islamic law, 25  
*Origins of Muhammadan Jurisprudence*, 35, 79, 373  
 orphans, 132  
*Osmanli Qânûnnâmeleri*, 23, 87, 95, 96, 97, 103, 360  
 Ottoman Civil Code, 246, 302, 327  
 Ottoman documents, 104

Ottoman Empire, 73, 79, 232, 294, 296, 301, 305, 306, 315, 317, 326, 329, 361  
 Ottoman Law of Family Rights, 301, 303, 304, 305  
 Ottoman Legal Codices, 240  
 Ottoman Majalla, 305, 329  
 Ottoman Mount Lebanon, 300  
 Ottoman Qânûnname, 103  
 Ottoman State, 10, 23, 39, 42, 47, 50, 51, 56, 59, 60, 69, 75, 81, 87, 94, 96, 97, 102, 103, 105, 106, 107, 198, 199, 200, 224, 226, 227, 228, 229, 231, 233, 234, 235, 236, 237, 243, 247, 248, 249, 251, 257, 259, 316, 318, 324, 325, 329, 335, 345

## P

pacta sunt servanda, 30  
*Padishah*, 105, 233, 237  
 Pahlavi dynasty, 292  
 Pakistan, 5, 10, 83, 85, 92, 94, 138, 155, 167, 171, 192, 205, 206, 216, 220, 253, 263, 264, 268, 270, 271, 272, 273, 274, 275, 336, 345, 346, 347, 348, 369, 375  
 Pakistani Family Courts, 273, 275  
 Pakistani law, 347  
 Pakistani parliament, 205, 347  
 Palestine, 30, 90, 94, 122, 196, 249  
*Pancasila*, 283, 284  
*par excellence* of the *hadiths*, 160  
*paradigm of Shari'ah*, 20  
 Paris, 250  
 Parliament, 245, 272, 308, 348  
 Parthian, 304  
 peace, 22, 31, 114, 131, 204, 274, 303, 321, 341, 344  
 penal law, 6, 109, 113, 257, 259, 317, 84, 120, 319, 320, 341, 360, 372  
 Penal punishments, 321  
*Pengadilan Agama*, 281, 283  
 people of opinion, 141  
 people of the literal sense, 168  
 Period of *Mujtahidin*, 142  
 Period of the Companions, 120, 121  
 period of the Prophet, 9, 111, 116, 351  
 Period of the Righteously Guided Caliphs, 120, 121  
 Period of the *Tâbi'in*, 133  
 Personal Names, 70  
 personal status law, 265, 306, 316, 326, 327, 329  
*Pey Akcha*, 244  
 Philippines, 253, 276, 277  
 philosophers, 65, 169, 211, 212, 215  
 piety, 156, 176, 216, 259  
 Pilgrimage, 321  
*pirate coast*, 315  
 Place Names, 70  
 pluralism, 279, 345  
 poisoned weapons, 31  
 political conflicts, 134  
 political legislator, 346, 348  
 polygamy, 253, 258, 262, 263, 271, 282, 292, 297, 298  
 Polygamy, 36, 262  
 poor tax, 320  
 positive action, 341  
 Possibility of the beatific vision, 212  
 power of the intellect, 184  
 prayers, 22, 26, 111, 113, 115, 117, 118, 131, 181, 186, 191, 194, 199, 204, 206, 214, 260, 321  
 predestination, 186, 193, 211  
 pre-eternal, 212  
 pre-eternity of the Qur'an, 212  
*preserver of the Shar'iyyah records*, 96  
 presidential instructions, 281, 283  
 presumption of continuity, 332  
 Primary sources, 257  
*primary sources of legislation*, 253  
 Prime Ministerial Ottoman Archives, 98, 102, 103, 232, 233, 257, 371  
 principle of *tadrîj*, 115  
*Principles and Precedents of Muhammadan Law*, 265, 267  
 Principles of Islamic Jurisprudence, 5, 55, 83, 91, 265  
 principles of legal interpretation, 348  
 principles of the *Shari'ah*, 348  
 prisoners of war, 31  
 Private Council, 24  
 private international law, 31  
 private law, 10, 96, 104, 224, 235, 257, 320, 321, 324  
 probate, 269  
 Problem of Reason and Revelation, 212  
 prohibition, 115, 183, 214, 260  
 prohibition of alcohol, 115  
 Promised Messiah, 204  
 pronouncement of divorce three times, 133  
 property law, 29, 320  
 Prophet's *Ijtihâds*, 117  
 Prophetic *Sunnah*, 115  
 Proponents of Predetermination, 192  
 prostrations, 260  
 protection of women, 31, 275  
 provincial high court, 347, 348  
*provisional constitution*, 305  
 public international law, 31  
 public law, 76, 96, 154, 180, 224, 236, 238, 257, 259, 277, 320, 321, 6, 75, 321, 345  
 Public Laws of Prussian States, 331  
 public order, 269, 275, 277, 341  
 Punishment for Drinking Alcohol, 132  
 punishments, 25, 105, 201, 253, 259, 291, 297, 322  
 Punjab Laws Act, 267  
 Putrajaya, 284, 357

## Q

*qadar*, 183  
 Qadarites, 182, 183  
*Qadariyyah*, 183, 192, 193  
*Qadâyâ Fiqhiyyah Mu'âsirah*, 88  
*qadhîf*, 259, 297  
*Qâdhî*, 28, 42, 44, 45, 57, 58, 60, 74, 95, 105, 138, 144, 151, 153, 154, 158, 184, 229, 231, 234, 236, 266, 303, 305, 306, 308, 329, 333  
*Qâdhî Ahmad ibn Abu Dawud*, 184  
*Qâdhî al-Qudhât*, 30, 57, 144, 154, 305, 308  
*Qâdhî 'askar*, 200, 236  
*Qâdhî justice*, 333, 335  
*Qâdhî Sahnun*, 44, 158  
*Qâdhî Shûrâyh*, 138, 151  
*Qâdhikhân*, 49, 153  
*Qâdhis' Courts*, 309  
*Qâdhiyaniyyah*, 201, 202, 203  
*qadîm*, 43, 160, 212  
*Qadri Pasha*, 108, 302, 303, 326, 336  
*Qamus al-A'lâm*, 73  
*Qansu Ghawri*, 234  
*Qânun*, 22  
*Qânûn al-'Uthmani*, 105  
*Qânûn al-'Adl wal-Insâf lil-Kadâ' 'ala Mushkilât al-Awkaf*, 108  
*Qânûn al-Ahwâl al-Shakhsiyyah*, 303  
*qânûn of Aurangzeb*, 105  
*Qânûn Umumî*, 104  
*Qânûn-e-Shahadat*, 274  
*Qânûnnâme*, 23, 95, 105, 232, 233, 237, 257, 324, 371  
*Qânûnnâme-i Rusûm*, 95  
 Qarahanids, 221, 223, 225  
*Qarâmita*, 195, 196, 368, 373  
 Qarmathians, 194, 195  
*Qarmatî*, 216  
 Qarmatian communities, 196  
 Qarmatian party, 195  
 Qarmatids, 221  
*qasâmah*, 109  
*Qâsim ibn Muhammad*, 137  
*qat' al-yad*, 130, 232  
*qat' al-tariq*, 241  
 Qatar, 295, 347, 356  
*Al-Qawâ'id al-Fiqhiyyah*, 248  
*Qawâ'id al-Kulliyah al-Fiqhiyyah*, 84  
*Qawâ'id al-Tahdîth min Funûn Mustalah al-Hadîth*, 63  
*Qawâ'id al-Wusûl ila Ma'rifah al-Usûl*, 56  
*Qawânîn*, 104, 105, 324, 327, 373  
*Qawânîn al-Mulkiyyah li al-Dawlah al-'Aliyyah*, 246  
*qawl*, 45, 48, 51  
*Qawl al-Mukhtâr fi Sharh Gâyah al-Ikhtisâr*, 51  
*qawl mukharraj*, 48, 51  
*Qirâd*, 30

*qisâs*, 232, 259, 309, 244  
 Qisâs and Diyât Ordinance, 274  
*qiyâs*, 3, 22, 28, 123, 141, 147, 151, 152, 153, 156, 157, 160, 161, 163, 164, 165, 166, 167, 170, 173, 123, 136, 152, 167, 257  
*qubh*, 185, 211, 214  
*qunût*, 207  
*Qunyah al-Munyah*, 99  
 Qur'anic Fiqh, 65  
 Qur'anic injunction, 342  
 Qur'anic exegesis, 122  
 Quraysh, 159  
*Qurrah al-'Ayn*, 52, 57  
*qurû'*, 122  
*Quyûd al-Khâqâniyyah*, 103

## R

Ra's al-Khaymah, 315, 316  
*Ra'y-i Madhmûm*, 123  
*ra'y-i memdûh*, 123  
*ra'âyâ*, 106  
*Rabi'ah al-Ra'y*, 156, 157  
*Radd ala Siyar al-Awza'î*, 176  
*Radd al-Muhtâr*, 22, 51, 100, 229, 365  
*Radd al-Tahdhîb fi al-Jadal*, 216  
*Radd al-Wâfir*, 165  
*Rafidhî*, 172  
 Râfidites, 182  
*rafidiyya ghlûlât*, 196  
*Rahmat al-Ummah fa Ikhtilâf al-A'immah*, 77  
*rajaz*, 53  
*rajm*, 232, 273  
*Ramz al-Haqâiq*, 50  
 ransoms, 31, 233  
 rape, 291  
*Raqiyyat*, 153  
*Rasâ'il*, 69, 100  
*Rasâ'il ibn al-Nujaym*, 69  
*Rasâ'il Shurunbilali*, 70  
*Rasâ'il al-Zayniyyah fi Fiqh al-Hanafiyah*, 69  
*Rasâ'il Shaikh al-Islam Abu al-Su'ûd Effendi*, 69  
*Rashîd Ridhâ*, 210, 254, 328  
*Rashidûn*, 125, 126, 128  
*Râshidûn caliphs*, 190  
*rasm al-qismah*, 242  
*rasm-i qismah*, 95  
*rasm-i sijil*, 95  
*Rawâyi' al-Bayân Tafsîr Âyât al-Ahkâm min al-Qur'an*, 65  
*Rawd al-Tâlib*, 52  
*Rawdhah al-Nadhir Sharh Majmû' al-Fiqh al-Kabîr*, 43, 173  
*Rawdhah al-Nâzir wa Jannah al-Manâzir fi Usûl al-Fiqh alâ Madhhab al-Imâm Ahmad ibn Hanbal*, 58

real estate, 224, 244  
 reason, 5, 7, 22, 24, 33, 78, 97, 121, 122, 123, 128,  
 130, 134, 141, 145, 148, 161, 169, 179, 183,  
 184, 185, 186, 193, 195, 197, 208, 211, 212,  
 213, 215, 216, 217, 219, 223, 225, 236, 246,  
 256, 259, 260, 277, 291, 318, 321, 332, 342  
 Reason, Knowledge and Law, 217  
 recession, 29  
*Record Clear*, 218  
 References for Islamic Law, 39  
 Reformers, 252, 256  
 Refrain from Paying *Zakâh*, 131  
 refugees, 31  
 registration of marriage, 286, 314  
 reinterpretation of Islamic law, 348  
 Religion of the Federation, 285  
*Religious Court system*, 284, 302  
 religious courts, 253, 279, 281, 283, 284, 288, 289,  
 294, 301, 306, 283, 285  
 Religious Opinions and Answers, 97  
 religious ordinances, 255  
 religious rituals, 112  
 religious rules, 22, 130, 268, 341  
 religious texts, 195  
 Renovation of *Shari'ah* Law, 256  
 repudiation, 262, 263  
*res judicata*, 29, 30  
*revealed laws preceding the Shari'ah of Islam*, 32  
 revelation, 25, 35, 36, 109, 112, 116, 117, 119,  
 120, 122, 138, 164, 184, 185, 186, 194, 195,  
 196, 203, 212, 213, 215, 216, 217, 218, 219,  
 260, 265, 276, 4, 34, 112, 185, 213  
 Revolution, 191, 292, 293, 297, 307  
 Revolutionary Command Council, 296, 308  
 Revolutionary Courts, 293  
 right of asylum, 31  
 righteous predecessors, 210  
 righteously guided Caliphs, 125  
 rights, 22, 28, 29, 110, 120, 231, 252, 270, 273,  
 275, 277, 284, 290, 292, 293, 297, 317, 334,  
 345, 353  
*ringgit*, 287  
*Risâlah*, 19, 25, 53, 55, 57, 65, 88, 109, 151, 160,  
 161, 352, 359, 372, 373  
*Risâlah al-Tanbih ala Ghalat al-Jâhil wa al-Nabih*,  
 69  
*Risâlah fi Talab al-Yamin ba'da Hukm al-Mâlikî*, 70  
*Risâlah fi Waqf al-Nuqûd*, 69  
 Ritual Purification, 321  
 rituals, 111, 117, 251, 118  
 robbery, 30, 291  
 Roman jurisprudence, 33  
 Roman law, 10, 33, 34, 35, 248  
*Rum Seljukids*, 224  
 Russia, 155, 224, 318  
 Russian government, 329

## S

Sa'îd ibn al-Musayyab, 137, 140  
 Sabah, 285, 286, 287  
 Sabbâbites, 182  
 Sabuktekin, 226  
 sacred books, 255  
 Sacred laws, 36  
 sacred sayings, 114  
 Sa'd ibn Abu Waqqas, 129  
 Sa'd ibn Mu'az, 118  
*Sadad* courts, 299  
 Sa'd al-Din Mas'ud ibn 'Umar al-Taftâzani, 59  
 Sâdiq al-Mahdi, 308  
*Safâratnâmah*, 76  
*Sahâbah*, 120, 121, 122, 123, 125, 130, 131, 132,  
 133, 138, 139, 140, 141, 142, 147, 151, 208  
*Sahâbi*, 120  
*Sahâbiyyah*, 120  
*Sâhib al-Takhrîj*, 225  
*Sâhibayn*, 155  
*sahîfah*, 135  
*Sahîh al-Bukhârî*, 61  
*Sahîhain*, 122  
*salaf*, 201, 208, 209, 174, 208, 209  
*Salaf al-sâlih*, 208, 210  
*salaf al-Sâlihîn*, 210, 208  
*Salafi*, 209, 210  
*salaf-i sâlih*, 201  
 Salafis, 209, 252  
*salafism*, 201, 208, 376, 198, 200, 201, 208, 209  
*Salafiyya*, 210, 201  
*Salafiyyah*, 198  
*salâh*, 22, 26, 183, 191, 321  
 Salâh al-Âlam bi Iftâ' al-Âlim and Jawâb an al-  
 Afyon, 69  
*saltanah*, 134  
 Şam, 198  
*sanjaq*, 106  
 Sanskrit, 284  
 Santillana David, 326  
 Sanusiyya, 296  
*saqîfah*, 130  
 Sarakhsi, 41, 56, 154, 155, 222, 223, 228, 373  
 Sarawak, 285, 286, 287  
*Sasanî*, 37  
 Sasani Empire, 37  
 Sassanid, 304  
 Saudi Arabia, 94, 192, 253, 255, 289, 290, 292,  
 328, 334, 374, 375  
 Saudi law, 290  
 Sava Pasha, 34, 35, 59, 226, 373  
*sawâd al-Iraq*, 123  
*sawm*, 22, 321  
 Sayf-al-Din al-Âmidî, 58  
 sayings of the Companions, 161  
 sayings of the Prophet, 113, 170, 195

- Sayyed Qutb, 227  
scholar of *hadīths*, 179  
School of Ahl al-Athar, 139  
School of Ahl al-Ra'y, 139  
school of *ra'y*, 151  
School of the People of *Hadīth*, 139  
School of the People of Opinion, 141  
schools of Islamic law, 114  
schools of law, 9, 37, 146, 147, 150, 290, 293, 322, 343, 346, 92, 137, 141, 147, 148, 155, 158, 162, 165, 169, 178  
Schools of thought, 147  
science of *Fiqh*, 137, 55  
science of legal opinions, 97  
seal of prophets, 111  
Second Coming of Christ, 202  
second marriage, 262  
secondary matters, 6, 36, 255  
secular, 4, 24, 85, 239, 243, 251, 253, 254, 269, 279, 280, 283, 284, 288, 289, 292, 293, 294, 295, 297, 298, 318, 319, 333, 341, 351, 358  
secular courts, 253, 283, 288, 289, 297  
secular legal system, 341  
*secular system*, 298  
secularism, 110, 274, 345  
**Secularists**, 251, 256  
Seljukids, 96, 223, 224, 225  
Semerqand, 223  
Serakhs, 223  
Serkiz Karakoç, 103, 105, 232  
Sevensers, 205  
*sha'ā'ir*, 120, 260  
*shafā'ah*, 212  
*Shāfi'ī* Books with Arguments on the Application of *Fiqh*, 42  
*Shāfi'ī* Books without Arguments on the Application of *Fiqh*, 51  
*Shāfi'ī* jurists, 225, 234  
*Shāfi'ī Madhhab*, 162, 225, 226  
*Shāfi'ī* School, 43, 78, 81, 159  
*Shāfi'ī* Works on *Fiqh* al-Qur'an, 66  
*Shāfi'īte* School, 52  
*Shāfi'īte Tabaqāt*, 73  
Shah Waliyyullah, 266  
*Shaikh al-Islam*, 69, 97, 98, 249  
Shaikh al-Islam Abdurrahman (Dāmād) Effendi, 237  
Shaikh of Dar 'iyyah, 198  
Shaikh of Najd, 198, 199  
*Shams al-A'immah*, 221, 222  
Shaqā'iq al-Nu'maniyyah fi 'Ulamā al-Dawlah al-'Uthmaniyyah, 71, 73  
*shar'*, 19, 321  
*Shar' al-Sharīf*, 233, 321  
*shar'ī* principles, 296  
*Shar'ī* evidence, 123  
*Shar'-i Sharīf*, 19, 240, 241, 243, 257, 258  
*Shar'iyyah* court, 327  
*Shar'iyyah Records*, 240, 241, 242, 243, 257  
Sharafuddīn Yahya al-San'āni, 173  
*Sharāyi' al-Islam*, 46, 171, 254  
*Sharāyi' u Man Qablanā*, 33  
*sharh*, 43, 47, 67  
*Sharh al-Kabīr*, 54  
*Sharh al-Manār*, 56  
*Sharh al-Talqīn for Qādhī Abdulwahhab al-Baghdadi*, 45  
*Sharh Āyāt al-Ahkām*, 68  
*Sharh Muntahā al-Irādāt*, 290  
Sharhu Ma'āni al-Āthār, 77  
*Shar'ī* Advocates, 306  
*Shar'ī* transactions, 325  
*Sharī'ah Law*, 243, 362  
*Sharī'ah* Politics, 320  
*Sharī'ah Records*, 96, 97  
*Sharī'ah* rules, 239, 240, 241, 242, 260  
*Sharī'ah* system, 351  
*Shar'iyyah Sijilleri*, 257  
*Sharī'ah*, 4, 6, 7, 9, 19, 20, 21, 22, 23, 25, 26, 27, 32, 34, 35, 49, 55, 59, 86, 87, 91, 93, 100, 105, 110, 114, 116, 117, 120, 123, 129, 131, 134, 136, 138, 141, 142, 144, 146, 149, 150, 152, 154, 155, 156, 158, 159, 160, 162, 164, 166, 169, 171, 174, 176, 177, 178, 179, 193, 199, 206, 211, 226, 232, 236, 237, 244, 245, 246, 247, 251, 253, 254, 256, 257, 258, 260, 261, 263, 265, 266, 267, 268, 271, 272, 273, 282, 283, 284, 286, 287, 288, 289, 290, 291, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 315, 317, 318, 320, 321, 324, 325, 329, 330, 336, 337, 338, 341, 342, 343, 347, 348, 353, 358, 368, 371, 372, 375  
*Sharī'ah* Appeal Court, 287  
*Sharī'ah* Appellate Bench, 272  
*Sharī'ah* Bench, 273, 347  
*Sharī'ah* Benches, 273  
*Sharī'ah* court, 303, 347  
*Sharī'ah* Court of Appeal, 297, 299, 306  
*Sharī'ah courts*, 253, 261, 282, 283, 286, 287, 291, 294, 296, 298, 302, 303, 304, 305, 306, 308, 315  
*Sharī'ah* Courts of Appeal, 300  
*Sharī'ah* Criminal Code, 286  
*Sharī'ah decrees*, 55, 237, 244, 246, 247, 257, 321  
*Sharī'ah* High Court, 287  
*Sharī'ah* injunctions, 256  
*Sharī'ah* law, 105, 256, 257, 263, 290, 305, 321, 329  
*Sharī'ah* policies, 257  
*Sharī'ah* principles, 23, 105, 257, 308  
*Sharī'ah* Subordinate Courts, 287  
*Sharī'ah* values, 21  
*Sharī'ah* verdict, 131  
Sharīf Gālib, 200  
*Shar'iyyah*, 21, 33, 85, 87, 94, 95, 96, 327

- Shar'iyah court, 95, 87, 94, 95  
 Shar'iyah records, 94, 95, 96  
*Shar'iyah Sijilleri*, 87  
 Sharjah, 315, 316  
 Shaykh 'Abdullah al-Salim al-Sabah, 306  
 Shaykh of Islam, 163  
*Shaykhayn*, 155  
 Sheikh Mahmood Shaltût, 191  
 Sheikh Nizâm, 231  
 Shî'a *hadîth*, 191  
 Shî'a *Hadîth* Books, 63  
 Shî'a minority, 316  
 Shî'a movement, 189  
 Shî'a Muslims, 125, 128, 133, 169, 188, 190  
 Shî'a population, 189  
 Shî'a theological beliefs, 190  
 Shî'a theology, 190  
*shî'at 'Alî*, 190  
 Shihâb-al-Dîn Ahmed ibn Idris al-Qarafi, 58  
*Shî'î* Books with Arguments on the Application of *Fiqh*, 46  
*Shî'î* Books without Arguments on the Application of *Fiqh*, 54  
*Shî'î* jurisprudence, 170  
*Shî'î* theology, 170  
*Shî'î* Works on *Fiqh* al-Qur'an, 67  
 Shî'ism, 113  
 Shî'ite Ibâdhiyyah, 354  
 Shî'ite Imâmiyyah, 354  
 Shî'ite Schools, 195  
 Shî'ite *Tabaqât*, 74  
 Shî'ite Zaidiyyah, 354  
 Shirwani-zâdah Rushdu Pasha, 249  
 Shuaibia, 128  
*Shurûh*, 228  
 Sî'ird,, 233  
*sidq*, 185  
*Siete Partidas*, 31  
*sifât*, 186  
 Siffin, 186, 189, 210  
*Sihâh al-Sittah*, 145  
*sijil akchasi*, 95  
*Sijillât-i Shar'iyah*, 94  
 Sikhs, 269  
 Singapore, 82, 276, 280, 286  
*sirah*, 116  
*Sirâjiyyah*, 267  
 Six Authentic Books of *Hadîth*, 145  
 Six Books, 61, 62  
*Siyar*, 31, 33, 92, 320, 373  
*Siyar al-Kabîr*, 153, 228  
*Siyar al-Saghîr*, 153, 228  
*Siyar al-Saghîr wa'l-Kabîr*, 49  
 siyâsah, 262  
*Siyâsah al-Shar'iyah*, 165, 257, 320, 321  
*Siyâsatnâmah*, 76, 104, 224, 324  
 skepticism, 215  
 slaughtering, 321  
 slavery, 36, 258  
 small mistakes, 117  
 social justice, 110, 255, 284  
 socialism, 309  
 Soheib Bencheikh, 358  
 Sokoto, 299  
 Sokoto *Jihâd*, 299  
 Solomon, 204  
 Somali, 309, 310  
 Somalia, 347  
 sophistry, 331  
 sources for Islamic law, 5, 6, 35, 109, 115, 120, 121, 136  
 South Asia, 93, 264, 265, 266, 274, 275  
 Southeast Asia, 10, 91, 276, 277, 278, 280, 284  
 Spain, 32, 44, 72, 158, 169, 176, 194, 343  
 Sri Lanka, 264  
 State Consultative Council, 302  
 State High Courts, 270, 300  
 state legislation, 287, 297, 314  
 statutory legislation, 281  
 stoning, 113, 232, 253, 273  
 study circle, 151  
 Su'udbinEs-Su'ûd, 200  
*subashi*, 96, 235  
*Subh al-A'shâ*, 75  
 Sublime Porte, 301  
*Subul al-Salâm*, 62, 174  
 successor, 31, 122, 125, 128, 169, 190, 202, 203, 205, 265, 286  
 Successors of the Companions, 133  
 Successors to the Successors, 208  
 Sudan, 90, 108, 110, 253, 255, 307, 308, 309, 327, 347, 356, 364  
 Sufian al-Thawrî, 149, 176  
 Sufian ibn 'Uyaynah, 141, 143, 157, 159, 163, 179  
 Sufian ibn 'Uyaynah School, 179  
 Sufism, 114, 209, 373  
 Suharto, 283  
*suhuf*, 135  
 Sulaiman the Lawmaker, 232, 238  
*sulh*, 344  
 Sultan Ala'addîn Tarmashirin, 230  
 Sultan Melikshah, 223, 224  
 Sultan Muhyi-al-Dîn 'Alamgir Ewrengzib, 101, 231  
 Sultan Sulaiman the Lawmaker's Law, 239  
*Sun of Imâms*, 221  
*Sunan Abu Dâwud*, 61  
*sunan al-hudâ*, 119  
*Sunan al-Tirmidhi*, 62, 180  
*Sunan ibn Mâjah*, 62  
*Sunnah*, 3, 6, 8, 20, 22, 25, 31, 55, 76, 111, 114, 115, 116, 119, 120, 122, 124, 130, 131, 135, 136, 137, 139, 140, 141, 145, 150, 152, 157, 159, 160, 161, 164, 166, 170, 173, 174, 176, 190, 208, 209, 213, 256, 257, 258, 259, 262,

263, 271, 272, 290, 295, 320, 338, 346, 352, 356  
*Sunnah* of the Messenger of Allah, 122  
*Sunnah* of the Prophet, 25, 111, 116, 119, 120, 136, 152, 338  
 Sunnî *hadîth*, 129, 191  
 Sunnî Muslim, 10, 125, 147, 183, 215, 301, 316  
*Sunnî Schools Of Law*, 147, 369  
 Sunnî Theological Schools, 208  
 supervisor, 29  
 suprasensible, 213  
 Supreme Court, 106, 237, 263, 270, 272, 275, 281, 283, 293, 297, 298, 300, 302, 307, 308, 314, 316, 317, 333, 347, 348  
 Supreme Court of Appeal, 97  
*Supreme Judicial Council*, 272, 290, 291, 292  
 surnames, 70, 72  
 suspension of the share of the people, 130  
 Sweden, 343  
 Swiss family law, 256  
*syari'ah*, 10, 276, 277, 278, 279, 280, 288  
 Syariah Court system, 279  
*syari'at*, 276  
 Syria, 33, 85, 86, 94, 128, 134, 136, 148, 159, 162, 168, 171, 176, 188, 199, 302, 303, 304, 327, 328, 330, 354, 373  
 Syrian Law of Personal Status, 262, 303  
 system of Islamic Law, 319, 322

## T

ta'addud al-ahkâm, 332  
*Ta'limât al-Saniyyah*, 96  
*ta'zîr*, 257, 321  
*ta'zîr* penalties, 257  
*Ta'sîs al-Nazar*, 77  
*taba' al-tâbi'in*, 252, 125, 133, 209  
*Tabaqât al-Hanafîyyah*, 73  
*Tabaqât al-Hanbaliyyah*, 74  
*Tabaqât al-Mâlikiyyah*, 74  
*Tabaqât 'al-Sahâbah wa'l-Tâbi'in*, 72  
*Tabaqât al-Saniyyah fi Tarâjim al-Hanafîyyah*, 73  
*Tabaqât al-Shâfi'îyyah*, 73  
*Tabaqât ibn Sa'd*, 72  
*Tâbi'i*, 133, 176  
*tâbi'in*, 134, 137, 196, 208, 252, 125, 133, 138, 141, 151, 172, 208, 209  
*Tabsirah al-Hukkâm fi Usûl al-Aqdiyyah wa Manâhij al-Ahkâm*, 53  
*Tabyîn al-Haqâiq*, 50  
*Tadhâkir*, 76, 360  
*Tadhkirah al-Fuqahâ*, 54, 171  
*Tadrîb al-Râwî Sharh Taqrîb al-Nawawi*, 63  
*Tadwîn al-Hadîth*, 135  
*tafrî'*, 58  
*tafsîlî*, 21  
*Tafsîr al-Mizân*, 65

*Tafsîr al-Kabîr*, 64  
 Tafsîr al-Khamsemi'at Âyât al-Ahkâm, 67  
*Tafsîr al-Tabarî*, 178  
*Tafsîr Âyât al-Ahkâm*, 67  
*Tahâfut al-Phalâsiphah*, 215  
*Tahâfut al-Tahâfut*, 215, 366  
*tahâruj*, 241  
*Tahdhîb*, 46, 52, 156, 161  
*Tahdhîb al-Ahkâm*, 46, 64  
*Tahdhîb al-Asmâ wa'l-Lugât*, 72  
*Tahdhîb al-Asmâ wal-Lughât*, 71  
*tahqîq*, 58  
*tahrîr*, 50  
*Tahrîr*, 59, 232, 233, 234, 238, 371  
*Tahsîl*, 58  
*Tâj al-Tarâjim*, 73  
*Tajnis wal-Mazî*, 99  
*Tajrîd*, 225  
*Takfîr*, 187, 188  
*takhayyur*, 254, 296, 298  
*taklîf*, 194, 219  
*talâq*, 262, 263, 271  
*Talâq Thalâthah*, 133  
*talfîq*, 254, 336, 337  
*Talibat al-Talabah*, 71  
*ta'liq*, 47  
*Ta'liqât*, 229  
 Talmudic jurisprudence, 33  
*Talwîh li Kashf Haqâ'iq al-Tanqîh*, 55, 59, 184, 186, 211, 212, 215, 217, 220, 261  
*Tanbîh*, 43, 51  
*Tanqîh al-Fusûl fi al-Usûl*, 58  
*Tanqîh al-Usûl*, 59  
*Tanwîr al-Absâr wa Jâmi' al-Bihâr*, 51, 229  
*tanzîh mutlaq*, 212  
 Tanzîmât, 90, 96, 102, 105, 106, 235, 238, 243, 244, 245, 246, 247, 324, 329  
 Tanzîmât Movement, 238  
 Tanzîmât Period, 243  
*Tapu-Tahrîr Defterleri*, 232  
 taqlîd, 174, 181, 226, 262, 167, 211, 226  
*Taqlîd-i mahdh*, 226  
 Taqrîb fi 'l-Fiqh, 51  
*Taqrîb wa'l-Taysîr ila Ma'rifat Sunan al-Bashîr al-Nadhîr*, 63  
*taqrîr*, 47  
*Taqrîr*, 56  
*Taqrîr wa'l-Tahbîr*, 59  
*taqwâ*, 216  
*Taqwîm al-Adillah*, 56, 222  
*Taqwîm al-Wakâyi'*, 106  
*Tarâwîh*, 191  
*Tarhan*, 226  
*Ta'rifât*, 71  
*Târikh al-Madhâhib al-Islâmiyyah*, 86, 173  
*Târikh al-Rusul wa al-Mulûk*, 178  
*Târikh al-Tabarî*, 178

- Târikh al-Tamaddun al-Islâmî*, 79  
*Târikh al-Tashrî' al-Islâmî*, 87, 226  
*Târikh Baghdâd*, 72  
*Târikh 'Ulamâ al-Andalus*, 72  
*Târikh-i Jawdat*, 75  
*tartîb*, 41, 99  
 Tartîb al-Madârik wa Taqrîb al-Masâlik li Ma'rifat A'lâm Madhhab Mâlik, 74  
*Tartîb al-Musnad*, 175  
*tasdîq*, 197  
*tashbîh*, 196  
*Tashîh al-Furû'*, 54  
 Tashkopruzâdeh, 73  
 tasks of a caliph., 343  
 Tatar, 165  
*Tâtârkhân*, 100  
*Tawdîh li Hall Ghawâmid al-Tanqîh*, 59  
*tawhîd*, 7, 110, 185, 342  
 Tawqî'î Abdurrahman Pasha, 324  
*tawqîfî*, 260  
 tax law, 233  
 ta'zîr, 105, 235, 239, 242, 325  
 ta'zîr penalties, 106  
*Ta'zîrât*, 105  
 temporary marriage, 191  
 Terms of Islamic Law, 70  
 Terms of the Qur'an, 70  
 Terms of the Tradition, 70  
*territorial theory*, 343  
*testimony*, 29, 113, 124  
 texts, 3, 4, 5, 30, 47, 50, 51, 83, 120, 121, 122, 136, 139, 163, 164, 168, 173, 226, 227, 228, 229, 231, 232, 236, 262, 264, 265, 266, 267, 268, 277, 280, 289, 329, 330, 332, 336, 337, 346, 348  
 Thailand, 162, 276  
*Thâlich*, 155  
*Thâni*, 155  
*thawâb*, 148  
 Thawrî, 46, 140, 142, 143, 149, 157, 176, 177  
 Thawrî *madhhab*, 177  
 Thawrî School, 176  
 theft, 30, 130, 233, 253, 254, 259, 297  
 Theological Schools, 2, 180  
 theoretical references, 39  
 Three Divorces, 133  
 Tigris, 304  
 Tihamah, 109  
*timar*, 106  
 time of purity, 122  
 Timurid dynasty, 104  
 title deed registration, 244  
 Title-Deed Registry Books, 103, 233  
 tolerance, 266, 345  
 Tolunids, 234  
 traditional legal schools, 252  
 Traditionalists, 171, 252  
 Traditions of Prophet Muhammad, 60, 321  
 transactions, 21, 85, 112, 167, 173  
 transcendence of God, 193  
 transitional laws, 292  
 Transoxiana, 196  
 treatise, 31, 32, 41, 43, 82, 85, 88, 104, 168, 267, 324, 342, 366, 373  
 trustee, 28  
 truster, 28  
 Tughluk Timur Khan, 230  
*Tuhfah al-Hukkâm fi Nukat al-'Uqud wa'l-Ahkâm*, 53  
 Tuhfat al-Mukhtâj li Sharh al-Minhâj, 52  
 Tunisia, 104, 207, 263, 314, 315  
 Tunisian Code of Personal Status, 298  
 Tunisian Law of Personal Status, 262  
 Tunisian *Majalla Itizâmât*, 326  
 Turk Hukuk Tarihi, 22, 29, 31, 32, 87, 121, 146, 148, 155, 159, 162, 166, 227, 234, 238, 244, 245, 257, 318, 360  
 Turkey, 2, 30, 76, 87, 102, 155, 171, 188, 216, 220, 249, 253, 256, 263, 268, 317, 318, 330, 349, 357, 367, 375  
 Turkistan, 40, 65, 221, 223, 225, 227, 228, 329  
 Türkiye Cumhuriyeti, 317  
 tutelage, 320  
*Tuzukât-i Timur*, 104, 324  
 Twelve Imâms, 174, 190  
 Twelve Tables, 33  
 Twelver Ja'fari school, 292  
 Twelver Shi'as, 206  
 Twelver Shi'a, 169, 170, 171, 190, 191  
 Twelver Shi'ite law, 108  
 Twelver Shi'ites, 206, 254  
 two imâms, 52

## U

- UAE, 315  
*udûl*, 125  
*ulamâ*, 65, 66, 68, 73, 104, 119, 140, 142, 171, 209, 271, 272, 293, 356  
*ulamâs* of Hijaz, 140  
*ulu al-amr*, 258, 231, 233, 236, 237, 244, 245, 246, 247  
 Ulûm al-Hadîth, 63  
*Ulûm al-Hadîth wa Mustalahuhû*, 63  
*Ulûm al-Qur'an*, 68  
*Ulush*, 226  
 Umar, 30, 37, 53, 54, 55, 56, 58, 73, 90, 91, 121, 122, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 135, 137, 138, 139, 140, 142, 155, 156, 165, 173, 174, 178, 184, 186, 187, 188, 189, 211, 212, 215, 217, 220, 238, 261, 308, 329, 363  
 Umar al-Bashir, 308  
 Umar Hilmi, 329



'Umar ibn 'Abdul-'Azîz, 136, 140  
 Umayyad Caliphate, 133  
 Umayyad dynasty, 133  
 Umayyad Caliphate, 147  
*Umdah*, 57, 60, 361  
*Umdah al-Qâri*, 60, 61  
*Umm*, 39, 42, 43, 162, 315, 373  
*ummah*, 124, 180, 277, 131, 164, 172, 203, 324, 337  
 Ummahât, 44, 53, 158  
 Ummayyad dynasty, 190  
 unanimous reports, 119  
 unbelief, 181, 182, 187, 188, 203  
*Undang-Undang Melak*, 277  
*unified judicial system*, 285, 294  
 Uniform Family Code, 274  
 United Arab Emirates, 315  
 United Kingdom, 285, 349, 358  
 universal law, 109  
 universal message, 110  
*Uqûbât*, 319, 320  
*Al-Uqûd al-Durriyyah fi Tanqîh al-Fatâwâ al-Hâmiyyah*, 100  
*Al-Uqûd al-Musammât fi al-Fiqh al-Islâmî*, 86  
*Uqud Rasm al-Muftî*, 70  
*Urbûn*, 244  
*'urf*, 9, 109, 307, 332, 22, 23  
*'urfî huqûq*, 238  
*'Urfî Law*, 259  
 Urwa ibn 'Udaiyya, 187  
*'ushr*, 22  
*usûl*, 4, 6, 10, 22, 58, 60, 76, 147, 149, 153, 168, 176, 180, 267, 322, 335, 21, 33, 48, 55, 57, 63, 80, 83, 85, 88, 91, 109, 117, 153, 166, 167, 180, 182, 183, 184, 185, 186, 188, 190, 194, 195, 222, 251, 259, 326, 332, 359, 361, 365, 367, 368, 369, 370, 375  
*Al-Usûl al-Âmmah Lil-Fiqh al-Muqâran*, 88  
*usûl al-dîn*, 147, 181  
*usûl al-fiqh*, 4, 6, 57, 58, 60, 76, 149, 168, 176, 267, 21, 33, 55, 57, 58, 60, 80, 83, 85, 88, 91, 109, 117, 166, 222, 251, 259, 326, 332, 365, 368, 370, 375  
*Usûl al-Fiqh al-Islâmî*, 88  
*Usûl al-Fuqahâ*, 56  
*Usûl al-Hadîth*, 63  
*Usûl al-Hadîth 'Ulûmuhû wa Mustalahuhû*, 63  
*Usûl al-Pazdawi*, 56  
*Usûl-Arba`ah*, 46  
*Usûfî*, 170, 171  
 usurpation, 30  
 Uthbiyyah, 44, 158  
 Uthman, 29, 101, 122, 126, 127, 128, 129, 132, 140, 173, 185, 188, 189, 235, 359  
 Uthman Beg, 235  
*Uyûn al-Masâil*, 98  
*Uyûn al-Masâil al-Muhimmah*, 101

## V

Al-Vajîz fi Usûl al-Tashrî' al-Islâmî, 88  
 Vasâil al-Shî'a, 46  
*velâyat-i faqîh*, 191  
 Vietnam, 276  
 voluntary, 119, 120

## W

*Al-Wâdihah*, 44, 158  
*Wafayât al-A'yân wa Anbâ'u Abnâ al-Zamân*, 72  
*Al-Wâfi*, 50  
 Wahba Mustafa al-Zuhayli, 85, 355  
 Wahnâbi state, 289  
 Wahnâbism, 198, 209  
 Wahnâbite movement, 200  
 Wahnâbite sect, 199  
*Wahnâbites*, 198, 199, 200  
*wajh*, 43, 48, 51, 64  
*wâjib*, 21  
*Wajîz*, 43, 123, 225, 259, 375  
*Al-Wajîz fi Usûl al-Fiqh*, 88  
*walâyah*, 207  
*Wali al-Amr*, 237  
*Waq' anuwis*, 75  
*Waqf*, 28, 69, 81  
*Wâqî'ât*, 97, 98, 99, 153, 222  
*Al-Wâqî'ât al-Husâmiyyah*, 98  
*wâqif*, 28  
 War Booty, 132  
*Waraqât*, 57  
 Warfare, 32, 321, 359  
 Warren Hastings, 265, 266  
*Wasâ'il al-Shî'a*, 64  
 Wâsil ibn 'Atâ, 172, 183  
*Wasîl*, 43, 225  
*Wasîl al-Muhîb bi Aqtâr al-Basîl*, 43  
*Al-Wathîqah al-Madina*, 110  
 wayfarer, 132  
 weak *hadîth*, 164  
 Weberian perspective, 333  
 Well of Zamzam, 195  
 West Pakistan, 273  
 Western Asia, 300, 304  
 Western Europe, 24, 348  
 Western invaders, 345  
 Westernization, 243, 253  
*Wilâyah*, 129  
 will of God, 25, 198  
*wine*, 113, 115, 123, 133  
*Wiqâyah al-Riwâyah fa Masâil al-Hidâyah*, 49, 50, 155, 228, 229  
*wisdom*, 36, 141, 150, 182, 193, 218, 219, 255, 258, 260, 332, 358  
 witnesses, 29, 113, 138, 259, 321

Working Muslim Mission, 203  
 World Fatwâ Management and Research Institute,  
 356  
 World War I, 301, 304, 305, 318  
 World War II, 253, 296  
 worldly affairs, 117, 118, 119, 214, 218  
 worship, 22, 105, 111, 112, 117, 118, 119, 120,  
 167, 180, 193, 194, 198, 251, 259, 260, 261,  
 298, 321, 322, 351  
 Worship, 118, 194, 320  
 writing down *hadîths*, 135  
*wuqûf*, 207

### Y

Yahya ibn Sharaf al-Nawawi, 43, 51, 61, 63, 72, 101  
 Yamamah, 198  
*Yang di-Pertuan Agong*, 287  
 Yathrib, 112  
*yaya*, 239  
 Yazdgerd III, 127  
 Yazidites, 182, 304  
 Yemen, 120, 128, 136, 137, 139, 173, 174, 192,  
 199, 206, 316, 317, 373  
*Yemeni Law of Personal Status*, 317  
 Yusuf al-Qaradawi, 86, 357, 358

### Z

*Zâd al-Ma'âd*, 46, 166  
*zâhir*, 166, 194  
*Zâhir al-madhhab*, 48, 153  
*Zâhir al-riwâyah*, 98, 50, 153, 155  
 Zâhir Baybars, 234  
*Zâhirî* Books with Arguments on the Application of

*Fiqh*, 46  
 Zâhirî school, 168, 169, 166  
 Zâhirî Works on *Fiqh al-Qur'an*, 68  
 Zâhirîsm, 168, 169  
 Zâhirîte school, 166, 168  
*Zâhiriyyah*, 100, 166  
 Zaid ibn 'Ali, 54, 149, 171, 174  
 Zaid ibn Thâbit, 121, 124, 129  
 Zaidî *fiqh*, 174  
 Zaidî *madhab*, 173  
 Zaidî school, 150, 173, 174, 316  
 Zaidî Works on *Fiqh al-Qur'an*, 68  
 Zaidîtes, 182  
 Zaidiyyah, 10, 148, 173  
 Zaidiyyah School, 171  
*zakâh*, 22, 36, 115, 181, 182, 199, 258, 320, 321,  
 131, 274  
 Zakâh and Ushr Ordinance, 274  
 Zakariyâ al-Ansari, 52  
 Zaki Badawi, 358  
*zallah*, 117  
*Zât*, 186, 194  
*Zawâ'id*, 62  
*Zayl Tabaqât al-Hanbaliyyah*, 74  
*zinâ*, 259  
 Zinâ Ordinance, 274  
 Ziyâdât, 41, 44, 49, 228  
*Ziyâdât al-Ziyâdât*, 49  
 Zoroastrian, 270, 292  
 Zoroastrianism, 221, 292  
 Zoroastrians, 168, 269  
 Zubdah al-Bayân fi sharh Âyât Ahkâm al-Qur'an, 67  
*Zuhr*, 191  
 Zulfikar 'Ali Bhutto, 348