
AL FIQH
THE JUDICAL SYSTEM
Articles

ARTICLE 1:

WORKING IN A MAN-MADE JUDICIAL SYSTEM



Working in a Man-Made Judicial System

Introduction

The role of Muslims in non-Muslim judicial systems has been a topic of significant debate among Islamic scholars. This issue addresses the permissibility of Muslims taking up judicial positions, serving as jurors, or participating in any capacity within a non-Islamic legal framework.

Working in a Man-Made Judicial System

Body

The Issue

Muslims living outside the Muslim world often face the dilemma of whether to engage in judicial work in systems that do not adhere to Islamic law. This includes serving as judges or jurors under authorities that judge according to man-made laws rather than God's revelations.

Working in a Man-Made Judicial System

Ruling

The primary ruling is that it is generally forbidden for a Muslim to serve as a judge in a system that does not follow Islamic law. However, exceptions are made in circumstances where such participation is necessary to prevent significant harm to the Muslim community, protect rights, honor, and property, and ensure justice for those who suffer injustice. In these exceptional cases, the individual must be well-versed in Islamic law and strive to make judgments that align with it as closely as possible. The judge should also internally oppose the non-Islamic system, accepting only those provisions that align with Islamic law.

Working in a Man-Made Judicial System

Jury Membership

Muslims are permitted to sit on a jury with the intention of delivering justice to both Muslims and non-Muslims, provided their decisions conform to Islamic principles. This allows Muslims to contribute positively to the judicial process while maintaining their religious integrity.

Community Efforts

Muslim communities are encouraged to resolve their disputes according to Islamic law. They should seek to establish their own tribunals or legal bodies that adhere to Islamic principles, particularly for personal and family law matters. Efforts should be made to persuade local governments to recognize and allow such tribunals.

Working in a Man-Made Judicial System

Evidence

Islamic texts clearly prohibit judgment by any law other than God's. The Qur'an states, "All judgment rests with God alone" (12:40) and "But no, by your Lord! They do not really believe unless they make you judge in all disputes between them and then find in their hearts no bar to an acceptance of your decisions and give themselves up in total submission" (4:65). These rulings are considered exceptions based on necessity and are meant to address situations where no other legitimate alternatives exist.

Working in a Man-Made Judicial System

Conclusion

Muslims working in non-Muslim judicial systems must navigate a complex balance between their religious obligations and the practicalities of living in a diverse society. While generally discouraged, such roles are permitted in circumstances where they are necessary to protect the Muslim community and ensure justice. Muslim communities should strive to establish and advocate for their own legal bodies that adhere to Islamic law.

ARTICLE 2:

PUTTING DISPUTES TO NON-ISLAMIC COURTS





Putting Disputes to Non-Islamic Courts

Introduction

The practice of taking legal disputes to non-Islamic courts is a common concern for Muslims living in non-Muslim countries. This article explores the rulings and guidelines provided by Islamic jurisprudence regarding this issue.

Putting Disputes to Non-Islamic Courts

Body

The Issue

Muslims living in non-Muslim countries often face the challenge of resolving disputes in legal systems that do not implement Islamic law. These disputes can involve both Muslims and non-Muslims and are typically adjudicated according to man-made laws.

Putting Disputes to Non-Islamic Courts

Ruling

The fundamental principle is that disputes among Muslims should be resolved within a legal framework that adheres to Islamic law. Seeking judgment from non-Islamic courts is generally unlawful unless there is no Islamic legal alternative available to remove injustice and grant rightful claims. When resorting to non-Islamic courts is necessary, Muslims must recognize these courts as non-Islamic and refrain from accepting any unjust gains awarded by them.

Putting Disputes to Non-Islamic Courts

Community Obligations

Muslim communities are encouraged to establish their own legal bodies to handle disputes according to Islamic law. Efforts should be made to persuade local authorities to recognize these bodies, especially for personal and family law matters.

Putting Disputes to Non-Islamic Courts

Evidence

The Qur'an emphasizes the importance of judging disputes according to Islamic law: "But no, by your Lord! They do not really believe unless they make you judge in all disputes between them, and then find in their hearts no bar to an acceptance of your decisions and give themselves up in total submission" (4:65). The necessity to use non-Islamic courts is acknowledged only when no Islamic alternatives are available, and it should be limited to cases of genuine need.

Putting Disputes to Non-Islamic Courts

Conclusion

Muslims living in non-Muslim countries should endeavor to resolve their disputes according to Islamic law. While resorting to non-Islamic courts is permissible under necessity, it should be approached with caution and an awareness of its limitations. The establishment of Islamic legal bodies within the community can provide a viable alternative and ensure adherence to Islamic principles.

ARTICLE 3:

WORKING AS A LAWYER IN NON-MUSLIM COUNTRIES



Working as a Lawyer in Non-Muslim Countries

Introduction

For Muslims living in non-Muslim countries, the profession of law presents unique challenges and opportunities. This article examines the permissibility and conditions under which Muslims can work as lawyers or legal representatives in non-Islamic legal systems.

Working as a Lawyer in Non-Muslim Countries

Body

The Issue

Muslims in non-Muslim countries often find themselves working within legal systems that do not align with Islamic law. This raises questions about the permissibility of representing clients and participating in legal proceedings governed by man-made laws.

Working as a Lawyer in Non-Muslim Countries

Ruling

Working as a lawyer is permissible for Muslims, even in non-Muslim countries, provided the lawyer believes the case they are undertaking is just and legitimate. The Assembly of Muslim Jurists of America and other Islamic authorities have endorsed this view, stating that such work can be a form of helping others in righteousness and piety, provided it does not involve furthering evil and aggression.

Working as a Lawyer in Non-Muslim Countries

Conditions for Permissibility

To ensure the permissibility of their work, Muslim lawyers must:

1. Be convinced of the justness and legitimacy of the cases they undertake.
2. Aim to establish rights, prevent false claims, and support those who suffer injustice.
3. Avoid involvement in cases that promote wrongdoing or injustice.

Working as a Lawyer in Non-Muslim Countries

Evidence

The Qur'an encourages helping one another in righteousness and piety: "Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression" (5:2). This principle supports the permissibility of working as a lawyer to promote justice and prevent harm.

Community Guidance

Muslim lawyers should seek guidance from knowledgeable scholars and Islamic legal bodies to navigate complex legal scenarios. They should also advocate for the establishment of Islamic legal bodies within their communities to handle disputes according to Islamic principles.

Working as a Lawyer in Non-Muslim Countries

Conclusion

Muslims can work as lawyers in non-Muslim countries, provided they adhere to Islamic principles and ensure the justness of their cases. This profession offers an opportunity to support justice and protect rights within diverse legal systems. By seeking guidance and maintaining their ethical standards, Muslim lawyers can contribute positively to their communities and uphold Islamic values.

ARTICLE 4:

STUDYING AND TEACHING MAN-MADE LAWS





Studying and Teaching Man-Made Laws

Introduction

The study and teaching of man-made laws, especially those that conflict with Islamic principles, pose significant questions for Muslims. This article explores the conditions under which Muslims can engage in these activities.

Studying and Teaching Man-Made Laws

Body

The Issue

Muslims living outside the Muslim world often study or teach man-made laws that differ from Islamic law. This raises concerns about whether such activities are permissible, particularly when these laws are taught or applied in professional settings.

Studying and Teaching Man-Made Laws

Ruling

Studying and teaching man-made laws is permissible under specific conditions:

1. The individual must have sufficient knowledge of Islamic law to avoid being influenced by non-Islamic principles.
2. The purpose should be to understand these laws, highlight the superiority of Islamic law, and support justice.

Studying and Teaching Man-Made Laws

Conditions for Permissibility

To ensure their engagement is permissible, Muslims must:

1. Maintain a strong Islamic foundation and be able to distinguish between truth and falsehood.
2. Use their knowledge to demonstrate the superiority of Islamic law and help others understand its benefits.
3. Avoid promoting or implementing laws that contradict Islamic principles unless it is necessary to prevent greater harm.

Studying and Teaching Man-Made Laws

Evidence

The Qur'an encourages Muslims to seek knowledge and use it for good: "Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression" (5:2). Studying man-made laws with the intention of supporting justice and promoting Islamic principles aligns with this guidance.

Community Guidance

Muslims studying or teaching man-made laws should seek guidance from scholars and Islamic legal bodies. They should also advocate for the inclusion of Islamic law in academic and professional settings to ensure a balanced understanding of legal principles.

Studying and Teaching Man-Made Laws

Conclusion

Muslims can study and teach man-made laws, provided they maintain a strong foundation in Islamic principles and use their knowledge to support justice and promote the superiority of Islamic law. By seeking guidance and upholding ethical standards, they can navigate the complexities of non-Islamic legal systems and contribute positively to their communities.

ARTICLE 5:

ARBITRATION IN DISPUTES FOR MUSLIM MINORITIES



Arbitration in Disputes for Muslim Minorities

Introduction

Arbitration presents a viable alternative for Muslims living in non-Muslim countries to resolve disputes according to Islamic law. This article explores the principles and practices of arbitration in such contexts.

Arbitration in Disputes for Muslim Minorities

Body

The Issue

Muslims in non-Muslim countries often face the challenge of resolving disputes in legal systems that do not adhere to Islamic law. Arbitration offers a way to settle disagreements according to Islamic principles, avoiding the need to resort to non-Islamic courts.

Arbitration in Disputes for Muslim Minorities

Ruling

Muslims are encouraged to resolve their disputes through arbitration, particularly in matters related to family and financial dealings. Arbitration should be conducted by individuals who are knowledgeable in both Islamic and local laws, ensuring fair and just outcomes.

Arbitration in Disputes for Muslim Minorities

Conditions for Arbitration

To ensure the effectiveness of arbitration, the following conditions must be met:

1. Establishment of arbitration committees with members of integrity and legal expertise.
2. Clear stipulations in contracts that disputes will be referred to arbitration.
3. Binding decisions from arbitration committees that all parties must honor.

Arbitration in Disputes for Muslim Minorities

Evidence

Islamic law supports arbitration as a means to enforce rights and remove injustice. The Qur'an states: "If you are in dispute over anything, refer it to God and the Messenger if you truly believe in God and the Last Day. This is the best [for you], and most suitable for final determination" (4:59). Arbitration aligns with this guidance by providing a structured way to resolve disputes according to Islamic principles.

Arbitration in Disputes for Muslim Minorities

Community Guidance

Muslim communities should establish and support arbitration committees, ensuring they are equipped with the necessary resources and expertise. Efforts should be made to gain legal recognition for these committees to enforce their decisions effectively.

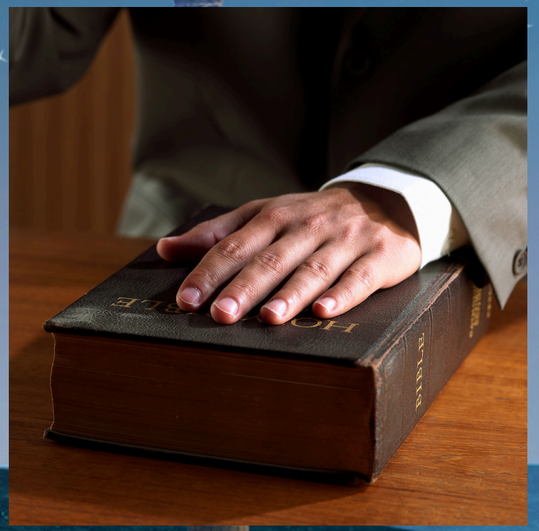
Arbitration in Disputes for Muslim Minorities

Conclusion

Arbitration provides a practical and Islamic-compliant method for resolving disputes within Muslim communities in non-Muslim countries. By establishing and supporting arbitration committees, Muslims can ensure their disputes are settled justly and in accordance with Islamic law.

ARTICLE 6:

PLACING ONE'S HAND ON THE TORAH OR THE GOSPEL TO TESTIFY UNDER OATH



Placing One's Hand on the Torah or the Gospel to Testify Under Oath

Introduction

Taking oaths is a solemn act in many judicial systems, often requiring witnesses to swear on religious texts. This article examines the permissibility and guidelines for Muslims who may be asked to swear on the Torah or the Gospel in non-Muslim countries.

Placing One's Hand on the Torah or the Gospel to Testify Under Oath

Body

The Issue

Muslims in non-Muslim countries may be required to place their hand on the Torah, the Gospel, or the Bible to testify under oath. This raises questions about the permissibility of such acts within Islamic jurisprudence.

Placing One's Hand on the Torah or the Gospel to Testify Under Oath

Ruling

In principle, it is not permissible for a Muslim to place their hand on the Torah or the Gospel, as these texts have been altered and do not represent the original revelations. However, if the judicial system mandates this practice and refuses the request to swear on the Qur'an, a Muslim may comply out of necessity, without intending to glorify these texts.

Placing One's Hand on the Torah or the Gospel to Testify Under Oath

Conditions for Compliance

When faced with the requirement to swear on the Torah or the Gospel, Muslims should:

1. Request to place their hand on the Qur'an.
2. If the request is denied, comply without the intention of glorifying the texts.
3. Understand that this compliance is due to compulsion and necessity.

Placing One's Hand on the Torah or the Gospel to Testify Under Oath

Evidence

The Qur'an emphasizes that judgment should be according to God's law: "All judgment rests with God alone" (12:40). The permissibility of swearing on other texts is allowed only under compulsion, highlighting the necessity to uphold the integrity of Islamic principles even in non-Islamic contexts.

Placing One's Hand on the Torah or the Gospel to Testify Under Oath

Community Guidance

Muslim communities should advocate for the recognition of the Qur'an in judicial oaths and educate their members on how to handle such situations. Legal representation can also help in navigating these requirements effectively.

Placing One's Hand on the Torah or the Gospel to Testify Under Oath

Conclusion

While it is generally impermissible for Muslims to swear on altered religious texts, necessity and compulsion provide exceptions. By understanding these guidelines and advocating for the recognition of the Qur'an, Muslims can uphold their faith in judicial settings.

ARTICLE 7:

SWEARING BY THE GOSPEL



Swearing by the Gospel

Introduction

Swearing by the Gospel or other altered religious texts is a common practice in non-Muslim countries. This article explores the Islamic perspective on such practices and provides guidance for Muslims who may encounter these situations.

Swearing by the Gospel

Body

The Issue

Muslims living in non-Muslim countries may be required to swear by the Gospel in legal or official settings, such as courts of law or during naturalization processes. This practice raises concerns about its permissibility in Islam.

Swearing by the Gospel

Ruling

It is forbidden for Muslims to swear by the Gospel or any other text that has been altered or distorted. The Permanent Committee for Research and Fatwa and the Islamic Fiqh Council of the Muslim World League have both ruled against this practice.

Swearing by the Gospel

Conditions for Compliance

Muslims should avoid swearing by the Gospel. If required to do so by the judicial system, they should:

1. Request to swear by the Qur'an.
2. Refuse to swear by the Gospel, citing religious reasons.
3. Seek alternative methods to affirm their testimony without compromising their faith.

Swearing by the Gospel

Evidence

The Qur'an and Islamic jurisprudence emphasize the importance of adhering to God's revelations. Distorted texts do not hold the same sanctity, making it impermissible to swear by them. This is supported by the principle: "Help one another in furthering righteousness and piety and do not help one another in furthering evil and aggression" (5:2).

Swearing by the Gospel

Community Guidance

Muslim communities should educate their members on the importance of swearing by the Qur'an and provide guidance on how to handle situations requiring oaths on altered texts. Legal advocacy can also help in promoting the recognition of Islamic practices.

Swearing by the Gospel

Conclusion

Swearing by the Gospel is impermissible for Muslims due to its altered nature. By understanding and adhering to Islamic principles, Muslims can navigate legal and official requirements while maintaining their faith and integrity.

ARTICLE 8:

SEEKING A NON-MUSLIM WITNESS AND TESTIFYING FOR A NON-MUSLIM



Seeking a Non-Muslim Witness and Testifying for a Non-Muslim

Introduction

The interaction between Muslims and non-Muslims in legal contexts often involves seeking or providing testimony. This article explores the permissibility and guidelines for Muslims in these situations.

Seeking a Non-Muslim Witness and Testifying for a Non-Muslim

Body

The Issue

Muslims living in non-Muslim countries may need to ask non-Muslims to testify for them in court or may be called upon to testify for non-Muslims. This raises questions about the permissibility of such actions within Islamic jurisprudence.

Seeking a Non-Muslim Witness and Testifying for a Non-Muslim

Ruling

It is permissible for Muslims to request non-Muslims to testify for them and for Muslims to testify for non-Muslims, provided the testimony is truthful. The principle of justice and truthfulness in testimony applies universally, regardless of the religious affiliation of the parties involved.

Seeking a Non-Muslim Witness and Testifying for a Non-Muslim

Conditions for Testimony

To ensure the permissibility of their testimony, Muslims must:

1. Ensure their testimony is truthful and just.
2. Avoid accepting any unjust benefits awarded by the testimony.
3. Recognize the importance of upholding Islamic principles in all legal interactions.

Seeking a Non-Muslim Witness and Testifying for a Non-Muslim

Evidence

The Qur'an and Hadith emphasize the importance of truthfulness in testimony: "Witnesses must not refuse when they are called in" (2:282). The universality of this principle allows Muslims to engage in legal testimony for non-Muslims while maintaining their integrity and commitment to justice.

Seeking a Non-Muslim Witness and Testifying for a Non-Muslim

Community Guidance

Muslim communities should educate their members on the importance of truthful testimony and provide guidance on how to navigate legal interactions with non-Muslims. Legal support and advocacy can also help in ensuring fair and just outcomes.

Seeking a Non-Muslim Witness and Testifying for a Non-Muslim

Conclusion

Muslims can seek and provide testimony involving non-Muslims, provided they uphold the principles of truthfulness and justice. By understanding and adhering to these guidelines, Muslims can navigate legal interactions with integrity and fairness.

ARTICLE 9:

ENFORCING MANDATORY PUNISHMENTS IN NON-MUSLIM COUNTRIES



Enforcing Mandatory Punishments in Non-Muslim Countries

Introduction

The enforcement of Islamic punishments in non-Muslim countries presents a complex issue for Muslims living in such contexts. This article explores the guidelines and principles surrounding this matter.

Enforcing Mandatory Punishments in Non-Muslim Countries

Body

The Issue

Muslims living in non-Muslim countries may commit sins that carry mandatory Islamic punishments. This raises questions about whether these punishments should be self-enforced or requested from authorities.

Enforcing Mandatory Punishments in Non-Muslim Countries

Ruling

Muslims who commit sins requiring mandatory punishments should repent and seek God's forgiveness rather than enforcing the punishment themselves. Public confession and enforcement of such punishments are not feasible in non-Muslim countries, and repentance is considered the best course of action.

Enforcing Mandatory Punishments in Non-Muslim Countries

Conditions for Repentance

Muslims must:

1. Repent sincerely and seek God's forgiveness.
2. Perform good deeds to compensate for their sins.
3. Keep their sins private and not insist on public punishment.

Enforcing Mandatory Punishments in Non-Muslim Countries

Evidence

The Islamic approach to sin emphasizes repentance and private confession. The Prophet Muhammad (PBUH) said, "Whoever commits anything of this and God keeps it as his secret, the matter is up to God: He may forgive or punish him" (Bukhari). This principle supports the idea that private repentance is preferable to public punishment.

Enforcing Mandatory Punishments in Non-Muslim Countries

Community Guidance

Muslim communities should educate their members on the importance of repentance and provide support for those seeking forgiveness. Legal and religious guidance can help individuals navigate their sins in a manner consistent with Islamic principles.

Enforcing Mandatory Punishments in Non-Muslim Countries

Conclusion

Muslims in non-Muslim countries should prioritize repentance and seek God's forgiveness for sins requiring mandatory punishments. By understanding and adhering to Islamic principles, they can navigate these challenges with integrity and faith.


ARTICLE 10:
SMELLING WINES IN
PUBLIC SPACES

Smelling Wines in Public Spaces

Introduction

Muslims living in non-Muslim countries often encounter situations where they are exposed to the smell of wine in public spaces. This article explores the Islamic perspective on such exposure and provides guidance for Muslims.

Smelling Wines in Public Spaces

Body

The Issue

In non-Muslim countries, public transport and crowded spaces can expose Muslims to the smell of wine from others who have been drinking. This raises concerns about the permissibility and impact of such exposure within Islamic jurisprudence.

Smelling Wines in Public Spaces

Ruling

Exposure to the smell of wine in public spaces is not considered drinking and does not intoxicate. Therefore, it is not prohibited. However, if possible, Muslims should avoid such environments to minimize discomfort and potential harm.

Conditions for Permissibility

Muslims must:

1. Recognize that the smell alone does not constitute drinking.
2. Avoid environments with heavy exposure to alcohol if possible.
3. Understand that necessity may compel them to be in such environments.

Smelling Wines in Public Spaces

Evidence

The prohibition of drinking in Islam is to prevent intoxication and clouding of the mind. The mere smell of wine does not lead to intoxication and is therefore not considered a violation. The principle of necessity allows Muslims to navigate such situations without compromising their faith.

Smelling Wines in Public Spaces

Community Guidance

Muslim communities should provide support and guidance for members exposed to alcohol in public spaces. Educational programs can help Muslims understand the principles of necessity and how to apply them in daily life.

Smelling Wines in Public Spaces

Conclusion

While exposure to the smell of wine in public spaces is not considered a violation of Islamic principles, Muslims should minimize such exposure where possible. By understanding the guidelines and principles of necessity, they can navigate public environments with confidence and faith.


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