



# Access to Justice and Human Rights: A Comparative Study of Islamic Jurisprudence and Secular Legal Systems

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**Abstract:** This study examines the conceptual frameworks of access to justice within Islamic and Western legal traditions. It provides a comprehensive overview of the evolution of access to justice discourse in both systems, aiming to develop a robust analytical framework for conceptualizing access to justice from an Islamic Law perspective. The central objective is to delineate the correlation between Islamic notions of access to justice and their Western counterparts, highlighting the distinctive features of the Islamic approach and areas of commonality with Western legal traditions. This study explores the complex relationship between access to justice and human rights from the perspective of Islamic jurisprudence. Also, it contends that although Islam is not the only factor in achieving human rights in Muslim states, it is a crucial element that can be effectively utilized to enhance the poor human rights conditions in these countries. The comparative approach is employed for two primary reasons. First, this study focuses on Muslim-majority countries where understanding Islamic legal traditions is essential to comprehend the social and cultural context within which access to justice operates. Second, from a broader comparative perspective, exploring access to justice through diverse cultural traditions and religious legal systems, including Islam, enriches our understanding of this fundamental right. This exploration allows for a more nuanced appreciation of the myriad approaches to ensuring justice for all.

**Keywords:** access to justice; Muslim justice; human rights; Western concepts; comparative justice

**Öz:** Bu makale, İslam ve Batı hukuk gelenekleri içindeki adalete erişimin kavramsal çerçevelerini incelemektedir. Makale, her iki sistemde adalete erişim söyleminin evrimine dair kapsamlı bir genel bakış sunarak, adalete erişimi İslam Hukuku perspektifinden kavramsallaştırmak için sağlam bir analitik çerçeve geliştirmeyi amaçlamaktadır. Merkezi amaç, İslami adalete erişim kavramları ile Batılı muadilleri arasındaki ilişkiyi tasvir etmek, İslami yaklaşımın ayırt edici özelliklerini ve Batı hukuk gelenekleriyle ortak noktaları vurgulamaktır. Bu makale, adalete erişim ile insan hakları arasındaki karmaşık ilişkiyi İslam hukuku perspektifinden incelemektedir. Ayrıca, makale İslam'ın Müslüman devletlerde insan haklarının elde edilmesinde tek faktör olmamasına rağmen, bu ülkelerdeki zayıf insan hakları koşullarını iyileştirmek için etkili bir şekilde kullanılabilecek önemli bir unsur olduğunu ileri sürmektedir. Karşılaştırmalı yaklaşım iki temel nedenden dolayı kullanılmaktadır. İlk olarak, çalışma, adalete erişimin işlediği sosyal ve kültürel bağlamı anlamak için İslami hukuk geleneklerini anlamamanın önemli olduğu Müslüman çoğunluklu ülkelere odaklanmaktadır. İkinci olarak, daha geniş bir karşılaştırmalı bakış açısından, İslam da dahil olmak üzere çeşitli kültürel gelenekler ve dini hukuk sistemleri aracılığıyla adalete erişimi keşfetmek, bu temel hak hakkındaki anlayışımızı zenginleştirir. Bu keşif, herkes için adaleti sağlamaya yönelik sayısız yaklaşımın daha ayrıntılı bir şekilde değerlendirilmesini sağlar.

**Anahtar Kelimeler:** adalete erişim; Müslüman adaleti; insan hakları; batı konsepti; karşılaştırmalı adalet

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## Introduction

The concept of justice is deeply rooted in cultural, religious, and societal influences, shaping diverse interpretations and practices. While justice is a universal endeavour to uphold fairness, equality, and accountability, its manifestations can vary widely across different cultures and societies (Walzer, 2008). In a particular cultural framework, the understanding of justice can be complex, encompassing various dimensions, including restitution, reconciliation, punishment, retribution, distributive justice in the distributing resources and burdens, and procedural justice in the fairness of processes and decision-making mechanisms. These variations reflect the complex interplay between historical, religious, and societal influences on the development of justice systems. Across societies, the unwavering pursuit of justice champions fairness, equality, and accountability for all. Justice concepts will be explored in more detail in the following chapters. Access to justice is often viewed in universal, procedural, and technical terms, but a more profound understanding requires examining the historical, political, and socio-cultural contexts that shape legal systems (Maranlou, 2014). The significance of indigenous and informal justice systems, emphasizing restorative practices and culturally relevant dispute resolution, is especially critical to marginalized populations (Merry, 1990).

The intersection of justice, human rights, and Islamic jurisprudence presents a rich and complex field of study, demanding careful navigation through theological, legal, and sociological lenses. The study of access to justice is often confined to the context of Western legal systems and institutions. However, diverse conceptions of access to justice exist within non-Western societies, each rooted in their own unique cultural and philosophical frameworks. This is particularly important because access to justice is intrinsically linked to the realization of human rights. Within Islam, the concept of justice (*al-adl*), far from being a mere legal or social construct, is deeply embedded within the divine order. It is considered an attribute of Allah, a fundamental pillar of the faith, and a cornerstone of a righteous society. This understanding profoundly shapes the Islamic perspective on human rights, which are perceived not as privileges granted by states or societies but as God-given entitlements intrinsically linked to human dignity.

This introductory exploration embarks on a journey to unravel the intricate tapestry of access to justice and human rights within an Islamic paradigm. We will delve into the foundational sources of Islamic law, including the Qur'an, *sunnah* (Prophetic traditions), and scholarly interpretations, to illuminate the inherent interconnectedness between these two concepts. By analyzing specific verses and Prophetic examples, we will uncover the core principles that underpin the Islamic

approach to justice and human rights, such as equality, fairness, compassion, and the sanctity of life.

Furthermore, this inquiry will extend beyond theoretical ideals to address the complexities of their practical application. We examine how these principles have been interpreted and implemented across diverse Muslim contexts throughout history and in the contemporary world. This involves understanding how religious ideals interact with socio-political contexts and how historical, cultural, and political factors shape justice and human rights in Muslim societies.

Finally, this exploration candidly addresses the challenges and debates regarding the application of Islamic principles to modern human rights discourse. By engaging with diverse perspectives and critical scholarship, we aim to foster a nuanced understanding of this multifaceted subject, contributing to a more informed and constructive dialogue on the intersection of Islam, justice, and human rights.

### **Analysis of Access to Justice**

Contemporary perspectives frequently perceive justice as the actualization of human rights (Sen, 2009). However, it is notable that this interpretation is rooted in well-established societal beliefs regarding fundamental human values and moral virtues, such as dignity, equality, and basic entitlements, predating human rights' inception. Although different, most arguments (Miler, 2023) for justice seek to ensure that all people have equal access and the opportunity to exercise their rights (Curran & Noone, 2008). For example, John Rawls's concept of justice, which emerged in the 20th century and still has an impact today, requires not only the provision of equal fundamental rights and freedoms but also the fulfilment of the requirements of social justice through the principles of difference and the value of liberty that it brings (Rawls, 1999). Rawls has also shown the importance of the structure of society by bringing principles of justice to the primary institutions of society (Rawls, 1999). However, Rawls's principles are sufficient to address the injustice in the basic structure or to demonstrate this injustice, a problem pointed out by Iris Marion Young (Özdemir, 2020). Unequal hegemonic power relations within the structure lead to the constant reproduction of injustice. Ignoring such unequal relations in the structure, such as those based on social gender, and acting as if these relations are equal ultimately deepens inequalities (Sen, 2009). Therefore, it is necessary to consider the justice requirements within the structural injustice framework. In this context, one can find an approach to Nancy Fraser's views. According to Fraser, for justice, work needs to be done in three dimensions regarding distribution issues related to social and economic inequalities, recognition issues (such as social gender, race,

class, social or cultural marginalization, and discrediting), and participation issues in decision-making processes (related to preventing participation in the political process through means, such as marginalization or exclusion) (Mayo et al., 2014). Fraser's framework provides a comprehensive approach to justice considering the complex and interconnected nature of social and economic inequalities.

The various viewpoints underscore the complex and ever-changing essence of the notion of justice. Contemporary discussions frequently associate justice with the achievement of human rights. This perspective is rooted in a deep philosophical and legal heritage, emphasizing core concepts like human dignity, equality, and rights. Rawls' influential theory supports the focus on fair and equal access to rights and opportunities (Rawls, 1999). Nevertheless, as Young and Fraser elucidate, attaining genuine justice requires going beyond formal rights and procedures (Mayo et al., 2014). Their work necessitates that we scrutinize the role of power disparities, systemic marginalization, and political exclusion as fundamental factors that sustain injustice (Mayo et al., 2014). Thus, guaranteeing substantive justice necessitates a comprehensive strategy for addressing systemic disparities and fostering a fair society where everyone has equal access to exercise their rights and fully engage in social and political activities.

Justice encompasses both formal (procedural) and substantive (outcome) justice. Formal justice refers to the ability of individuals to access the court system and exercise their legal rights. In contrast, substantive justice refers to legal proceedings' fair and just outcomes (Guttermann, 2022). Formal justice establishes the structural basis for equitable legal proceedings, while substantive justice guarantees that the results are based on the values and objectives of society (Guttermann, 2022). To achieve substantive justice, it is imperative to guarantee access to formal justice (Bakırcı, 2023). Formal justice is an essential component of the concept of access to justice, as it requires the existence of a standardized set of procedural rules to be applied uniformly (Bello, 2012). The right to access formal justice is one of the most important fundamental rights and freedoms since exercising all other fundamental rights and freedoms is only possible with the right to access justice (Bakırcı, 2023). The right to access formal justice protects and strengthens human rights, including the right to exercise civil, social, economic, and cultural rights, seek protection in case of a violation, seek redress, hold violators and decision-makers accountable, and be represented and defended in judicial proceedings (Bakırcı, 2023). The principle of "innocent until proven guilty" in criminal law is an example of formal justice (Guttermann, 2022). However, getting justice might mean fixing problems with convicted wrongfully, where the final verdicts are seen as unfair although they followed fair procedures (Guttermann, 2022).

In the literature, “access to justice” has been perceived differently over the years, depending on the location. According to some critics (Macdonald, 2005; Galanter, 2021; Pearson, 2021), the framework in question is overly restrictive. They argue that access to justice should be defined as the most efficient and cost-effective means of securing one’s legal rights, with a focus on empowering individuals to understand and exercise those rights (OECD, 2019). This approach emphasizes the importance of informing people about their rights, even if they are not currently aware of them, and providing them with the necessary resources to exercise those rights in the most expedient and affordable manner possible. In this article<sup>1</sup>, the concept of access to justice is adopted in its broad scope, and the definition put forward by the United Nations Development Programme (UNDP) is accepted. According to UNDP’s definition, access to justice is the ability of individuals in society to access the legal remedies they need through traditional means (Özkan, 2014).

Access to justice is derived from the civic characteristics of citizenship, which are essentially “the rights required for individual freedom” (Marshall, 1950). Marshall defined ‘access to justice’ as “the right to protect and assert all one’s rights based on equality with others and via due process of law” (Marshall, 1950). Other academics, such as Moorhead and Pleasence (2003), have recognized the link between access to justice and “the rule of law and equity.” Similarly, Sommerlad (2004) asserts that access to justice is essential to “social engagement” and “personhood.” As a consequence, access to justice safeguards and upholds a wide range of legal rights and obligations. Bedner and Vel’s (2010) definition of access to justice addresses all aspects of a long-term process. Access to Justice refers to the ability of individuals, regardless of their background or circumstances, to have their legal rights and needs recognized and addressed through fair, efficient, and affordable mechanisms, be it through state law, religious law, customary law, or other recognized legal frameworks, and under the rule of law (Bedner & Vel, 2010).

Access to justice is generally understood as access only to the proceedings or courts. However, in a broader sense, it is defined as the fulfilment of other requirements of equity and justice, starting with the conditions for ensuring that a voice is heard in the proceedings. The most common notions of access to justice centre on the idea that individuals should be given the ability to exercise their legal rights. As

1 Hereafter, any mention of “access to justice” pertains specifically to the ability to obtain legal justice as defined in this article. This encompasses a legal framework that results in equitable and impartial resolutions, efficient redress for injustices and the actualization of entitlements. Additionally, it signifies that every individual in society possesses equitable entry to this system and the authentic ability to utilize its potential fully.

defined by customary international law, access to justice includes an individual's right to seek a legal remedy before an impartial court or tribunal.<sup>2</sup> The concept of access to justice in academic studies encompasses evaluating whether the theoretical framework of a just legal system, as prescribed by laws, is consistently equitable in practice (Aydın, 2015). Accordingly, it is acknowledged that the issue of access to justice goes beyond the provision of essential legal services, such as access to courts, legal representation, and due process (Macdonald, 2005). Consequently, the notion of access to justice extends beyond the mere existence of laws to encompass the fairness of their implementation and outcomes.

Contemporary debates continue to recognize the decisive role played by classical approaches in emphasizing the significance of access to justice, particularly in relation to the principles of the welfare state and the inherent connection between justice and law (Rubinson, 2005). This conventional view, exemplified by the rise of early legal aid programs, addressed the immediate barrier of financial resources but failed to account for the broader systemic obstacles that could impede an individual's ability to achieve fair treatment (Rhode, 2004). However, more contemporary approaches have recognized the limitations of solely addressing financial barriers and have instead shifted focus toward comprehensive strategies that address systemic inequities. Programs encompassing community-based solutions, alternative dispute resolution mechanisms, and proactive legal education initiatives demonstrate a deeper engagement with structural inequalities and seek to empower individuals from a holistic perspective (Cappelletti, 1978). Traditional access to justice focused on overcoming barriers within the existing justice system, often characterized by complexity, cost, and systemic issues (Cappelletti, 1978). These traditional methods emphasized formal legal institutions and procedures, while contemporary approaches have expanded to include alternative dispute resolution, participatory roles for affected parties, and solution-oriented, holistic justice measures (Sandefur, 2019). Access to justice is currently characterized by several significant concerns, including the provision of legal aid, the financial implications, duration, and efficiency of the judicial process, the clarity and accessibility of court language, and the utilization of alternative dispute resolution methods (Özbek, 2013).

The concept of access to justice encompasses various dimensions. Legal systems are complex and citizens often lack knowledge, necessitating professional legal assistance through publicly funded legal aid to ensure access to justice for those

2 In the United States, access to justice is associated with access to courts. See *Developments in the Law Access to Courts* (2008) 122 HLR 1153.

unable to afford private representation (Özbek, 2013). It is stated that access to justice is used in a narrower sense in relation to access to legal aid. Francioni (2007) refers to “legal aid provided to those in need and which, in their absence, makes legal remedies available only to those who can afford exorbitant legal and court costs.” Efforts to remove obstacles to access to justice are also seen as part of the process of access to justice: “It refers to the elimination of obstacles arising from economic (...) and social (...) injustice and structural obstacles, such as (...) difficult access to courts (...), the complexity of the legal process and procedures, the cumbersomeness of the legal system, ineffective enforcement mechanisms, and (...) the right of everyone to equal access to justice without discrimination for any reason” (Ayata, 2009).

However, access to justice is a process, not a goal, and its most important aim is to ensure material justice rather than access to this process. This justice is not only justice in accordance with the law and the outcome envisaged by the existing normative structure but also social justice<sup>3</sup> (Clark et al., 2015) in a broad sense. Access to justice is the possibility for severely poor and disadvantaged individuals, especially, to have their complaints heard and to be treated by their grievances before state or non-state institutions, based on state law, religious law, or customary law, and under the rule of law, to redress these injustices when they are victims of injustice (Aydin, 2015).

## **Access to Justice and Human Rights**

Access to justice is discussed in different but interrelated fields, such as human rights, legal theory, and political theory as a fundamental constitutional right and a requirement of the rule of law and in relation to social justice (Lima & Gomez, 2021). The term “human rights” encompasses various conceptualizations. As understood within law, human rights encompass the fundamental freedoms acknowledged and protected by legal statutes commencing with international conventions. From an ethical standpoint, the concept of human rights traditionally emphasizes human dignity, autonomy, and freedom. Diverse philosophical frameworks including those focused on equality, social justice, utilitarianism, and deontological ethics also contribute significantly to their justification. One instance of such delineation can be found in Ioanna Kuçuradi’s conceptualization of human rights, which is grounded in the principle of human dignity. Kuçuradi asserts that human rights can be understood as assertions about advancing human structural capacities, elucidating the concept of human dignity within this framework (Kuçuradi, 2013).

3 Social justice refers to the concept of ensuring a just and equitable distribution of wealth, opportunities, and privileges within a society while also upholding and safeguarding the rights of individuals.



According to Kuçuradi (2013), access to justice is a fundamental requirement for safeguarding human rights. In this context, the concept of access to justice necessitates the establishment of social and political relationships that are founded upon the principles of human rights. The right to access justice holds significant importance in the realm of international law as it serves as a fundamental human right that facilitates the safeguarding and fulfilment of various other human rights, such as the right to equality and non-discrimination. In this conceptual framework, the notion of the right to access justice is inherently linked with the safeguarding of fundamental human rights (Kuçuradi, 2013). The acknowledgement of access to justice as a fundamental entitlement is intricately linked to the enforcement and realization of human rights. Within the context of this particular relationship, scholarly literature highlights the distinction between access to justice as a fundamental right and other rights. Access to justice is interconnected to the notion that the protection and realization of human rights can be achieved by means of a proficient judiciary (Francioni, 2007).

The United Nations Development Programme (UNDP, 2018) defines access to justice as the provision of formal or informal avenues for individuals to engage with justice institutions in alignment with established human rights principles. The definition of access to justice in post-United Nations human rights standards has been condensed to the essential elements of the fair trial provision, which primarily emphasizes the right to equal treatment before the tribunal, reflecting a basic comprehension of equal administration of justice (Maranlou, 2014). Furthermore, it is noteworthy that both the Universal Declaration of Human Rights<sup>4</sup> and the European Convention on Human Rights<sup>5</sup> encompass the inclusion of the right to an effective remedy as a safeguard for the rights enshrined within these aforementioned texts.

As previously explained, access to justice should be understood in relation to the protection of human rights. For instance, this framework highlights the potential harms individuals can experience within the legal process, including psychological trauma from adversarial proceedings, the stress of navigating complex legal systems, and the financial burden of representation (Francioni, 2007). Therefore, ensuring the right to access to justice becomes essential in upholding the principle of equality before the law, alongside other fundamental social rights, such as the right to education and the right to work (Mayo, 2014).

4 For the full text see <https://dspace.ceid.org.tr/xmlui/handle/1/612>

5 For the full text <https://dspace.ceid.org.tr/xmlui/handle/1/614>



## Muslim Justice

Access to justice in Islamic law encompasses the provision of legal assistance, legal aid, and legal literacy, reflecting its recognition of the fundamental importance of ensuring fair and equitable access to the legal system for all individuals. While the idea of access to justice, particularly in its contemporary register, was not part of previous Islamic understandings, it is implicit in the Islamic emphasis on justice and may be seen as one part of an Islamic ethic of justice (Jamal, 2022). The Islamic perspective on access to justice differs significantly from the Western one, which is state-centred and places emphasis on institutions of access, due to the essentially religious character of Islamic justice and its emphasis on individuals (Maranlou, 2014). The definition of justice in classical Islamic thought is essential to comprehending how modern Muslim societies conceptualize accessibility to it.

Access to justice, as the capacity for individuals or groups to reach justice-providing venues, is implicit in the Islamic emphasis on justice and can be seen as part of an Islamic ethic of justice. The emphasis on justice as a reflection of the divine justice also suggests a concern with fairness, not being biased or prejudiced (Jamal, 2022).

Access to justice holds a prominent position in Islamic ideology, serving as a focal point of discussion across the course of Islamic civilization. The Islamic conception of justice is explored in various contexts, including political, theological, philosophical, ethical, legal, social, and international justice (Maranlou, 2014).

The Arabic term for justice is “*al-ʿAdalah*” or “*al-ʿAdl*,” which denotes the evaluation of something as being equivalent to something of virtuous, righteous, or truthful nature. The Islamic understanding of access to justice starts with the fundamental entitlement to justice (Maranlou, 2014). According to Islam, a fundamental goal of the universe’s creation was to establish justice and eradicate evil and cruelty, which places a clear emphasis on the supremacy of justice. The Islamic conception of justice is rooted in God’s Divine nature, and the Qur’an (6:152) states, “Verily, God does not do even an atom’s weight of injustice”. For Muslims, justice is an inherent part of the universe. The Qur’an (55:7) states, “God raised up the heavens and established the Scales of balance,” a phrase, which commentators take to mean: “He established justice (*athbata al-ʿadl*)” (Wildan & Nasution, 2022). The Islamic definition of justice revolves around the notion of balance, wherein it involves the fulfilment of the rights (*huqūq*) owed to others, or the act of giving what is rightfully owed to each individual (Wildan & Nasution, 2022). The Quran (2:218) also establishes justice as a fundamental principle for reaching a compromise: “And if two factions among the believers should fight, then make settlement between the two... then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly.” The

emphasis on justice being done, that is, justice as something to be acted out and applied, is one of the notable senses of justice in the Qur'anic text (Jamal, 2022).

The concept of justice and the practice of acting in a just manner are also evident in the *sunnah*, which refers to the compilation of traditions of the Prophet Muhammad. The *sunnah* emphasizes the importance of treating others with fairness and equity, and it provides guidance on how to uphold justice in various aspects of life.

Behold! The Dispensers of justice will be seated on the pulpits of light beside God, on the right side of the Merciful, Exalted and Glorious. Either side of the Being is the right side both being equally meritorious. [The Dispensers of justice are] those who do justice in their rules, in matters relating to their families and in all that they undertake to do. (Sahih Muslim, 33/21)

Islam promotes justice in all situations that impact individuals, without any bias, by ensuring that each person receives what is rightfully theirs and refraining from causing them harm (Al Jaza'iri, 2000). The Islamic concept of justice is based on the principle that society's virtues and well-being should take precedence over personal gain. The correct measure of fairness requires that, on the one hand, compensation for good deeds should never fall short of what an individual has worked for, and, on the other, punishment for wrongdoing should never be more severe than the wrongdoing itself (Attahiru, 2018). Adhering to these principles would benefit the administration of justice.

According to Ibn Al-Qayyam (2007), the goal of Sharia, is to create justice and fairness among the people, as Allah (SWT) has expressed it clearly in His laws. Therefore, any path that aligns with justice is an integral component of Islam and cannot conflict with it. Khadduri (1984) argues that the concept of justice varies significantly across different societies, with each society establishing its own standards and principles. Despite the variations in differences, all of them exhibit shared characteristics that can be classified into two distinct categories.

The first category pertains to a society that believes it has the authority to formulate and enforce its own laws through the consensus. This form of justice is acknowledged to be inadequate as society consistently seeks to enhance and perfect it through an ongoing process of social evolution. The second category pertains to a society that believes human beings are fundamentally feeble and cannot adequately establish their legal systems. In this society, a divine authority is invoked to establish the fundamental principles of public order and establish a standard of justice. The term used to describe this form of justice is Islamic justice, which is considered to be of divine origin (Khadduri, 1984).

Access to justice is a crucial aspect of Islamic law, ensuring that all individuals have the opportunity to seek fairness and equality in the resolution of their disputes. In Islamic law, courts and other forums play a crucial role in providing access to justice.<sup>6</sup> These institutions are responsible for resolving disputes and ensuring that the rights and interests of all parties are protected. Hallaq provides a detailed explanation of the specific procedures employed in *qadi* courts<sup>7</sup> and emphasizes the crucial importance of equity (Hallaq, 2009).

The resolution of disputes was not limited to Sharia courts, however; other forums were also available (Jamal, 2022). In fact, mediation and arbitration have been integral parts of Islamic legal systems for centuries. Mediation and arbitration also play a crucial role in upholding the principles of justice and fairness in Islamic law, as they provide opportunities for parties to come to mutually agreements with the help of impartial third parties. This multifaceted approach recognizes the importance of peaceful conflict resolution and fosters social harmony (Coulson, 2011). Furthermore, by providing options other than litigation, Islamic law shows sensitivity to individual requirements and situations, guaranteeing that justice is attainable for everyone (Hallaq, 2009). The Qur'an acknowledges the utilization of amicable settlement through mediation (*sulh*) as well as the utilization of arbitration (*tahkim*).

And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves, and making peace [*sulh*] is better. (The Qur'an 2:128)

The believers are nothing else than brothers [in the Islamic religion]. So make reconciliation [*sulh*] between your brothers, and fear Allah, that you may receive mercy. (The Qur'an 49:10)

*Sulh*, or reconciliation, is deeply rooted in Islamic tradition and is considered to be a noble and virtuous way of resolving conflicts. According to Ann Black and others, *sulh* is not only considered a valid method of resolving conflicts within the Islamic justice system, but for some, it is seen as the morally and religiously superior way of settling disputes (Black et al., 2013). Mediation, conciliation, and arbitration have

6 The Qur'an 4:58 - "Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice."

7 The qadi courts were an integral part of the Islamic legal system, responsible for resolving disputes and administering justice based on Islamic law. The courts were administered by qadis, individuals who possessed extensive knowledge in Islamic jurisprudence and were designated by the governing powers. The qadi courts played a crucial role in maintaining social order and upholding the principles of justice within the Islamic community.

always been integral components of pre-Islamic and Islamic systems for resolving disputes and ensuring access to justice (Jamal, 2022).

As discussed above, Islamic concepts of access to justice are intertwined with social, political and procedural justice and how these concepts can be realized for individuals as their rights (*haqq*) on the path to justice. From an Islamic perspective, alternative dispute resolution emphasizes social justice and avoids the delay and cost of formal litigation. Thus, access to justice in Islamic law, as in other legal systems, requires individuals to be informed about their rights, to have the capacity to participate meaningfully in legal processes, and to be provided with the social and institutional support necessary to pursue justice effectively.

### Comparative Analysis of Islamic and Western Concepts of Justice

The concept of justice in Islamic thought differs from Western theories by being rooted in the Qur'an and highlighting the connection between individual rights and societal well-being. Western justice theories have developed over extensive philosophical traditions. Plato, Aristotle, Locke, Mill, and Rawls present various viewpoints on individual rights, societal well-being, and the state's responsibility in promoting justice (Sandel, 2010). Islamic justice is deeply rooted in the ontological basis of truth as something established and fixed, emphasizing the manifestation of clarity and the preservation of harmony (Smirnov, 1996). Islamic justice is grounded in the principles of mercy and compassion, aiming to restore equilibrium and rectify injustices in a manner that embodies the divine qualities of forgiveness and comprehension (Rosen, 2008). This holistic approach to justice aims to uphold the rights of individuals while also considering the broader societal impact, ultimately striving for a harmonious and equitable resolution to conflicts and disputes (Smirnov, 1996). Also, the concept of justice in classical Islamic thought combines the notions of truth, mediation, and rights and obligations as a fixed assemblage of power-and-rule linkage structures (Smirnov, 1996). This type of justice is not a method of equalizing the chances of each atom of society but rather a mode of existence that is concordant and harmonious. The *'adala* (justice) is reduced to maintaining harmony, which persists as long as we do not violate it through incorrect deeds ('Ashmāwī, 1984).

In contrast, Western justice often revolves around receiving an "equipollent recompense" ('Ashmāwī, 1984), focusing on the principles of fairness, equality, and rational calculation. Compensation is a procedure based on calculation, and it is often seen only as an ideal rather than a reality. The essence of the Western view of justice is the "utmost" and "ultimate" for which human beings should strive, regardless of whether they see it as reachable (Smirnov, 1996). This idea is strengthened by the

fact that this ideal can be rationally calculated, whether according to Aristotelian definitions or social Utopia (Smirnov, 1996). Islamic law guarantees the personal security of the individual. A legal framework rooted in a contemporary understanding of Islam could ensure fair trials and individual justice in accordance with international human rights standards. However, interpretations of cruel and unusual punishment may vary from traditional views or those in other legal systems (Bassiouni, 1982). The Western secular model privileges a rational, irrational mind-set in the pursuit of individual and collective fulfilment. In other words, the Western approach promotes an individualistic ethos, where personal success often supersedes communal welfare, leading to a landscape marked by competitiveness and a continuing quest for material gain. In contrast, the Islamic model emphasises justice and traditions based on a legitimate community (Smirnov, 1996).

The section emphasizes that Islamic conceptions of access to justice extend beyond legal and judicial mechanisms, encompassing social, political, and procedural justice. These concepts can be realized as individuals' rights (*haqq*) in their path to justice. Another significant aspect of Islamic conceptions of access to justice is access to alternative dispute resolution, which emphasizes social justice and avoids the delay and cost of formal litigation. The argument is based on Western model notions, and the following section presents human rights from the Islamic perspective.

### **Islam's Contribution to Human Rights Discourse**

The Universal Islamic Declaration of Human Rights (UIDHR) is a fundamental document in Islamic law that outlines the rights and protections for individuals (Maranlou, 2014). It affirms the right to a fair trial, ensuring that all individuals are equal before the law, regardless of their social or political status (Eslami, 2012). The UIDHR also guarantees the right to seek justice, emphasizing individual accountability and preventing unjust punishment (Eslami, 2012). Article 20 of the UIDHR addresses the prohibition of arbitrary and unjust treatment, prohibiting arrest, restriction of freedom, exile, or punishment without legitimate reason (Organization of Islamic Cooperation, 1990). It also prohibits torture, humiliation, cruelty, or indignity and forbids subjecting individuals to medical or scientific experimentation without their consent. The prohibition of emergency laws further strengthens the protection of individual rights. The principles enshrined in the UIDHR align with Islamic jurisprudence and international human rights standards, highlighting the universality of these norms (Oleyami et al., 2015). Islamic legal schools recognize key principles essential for access to justice, such as the prohibition of crime or punishment without a pre-existing law and the presumption of innocence (Eslami, 2012).

It stipulates that no crime or punishment shall be recognized except as provided for in Sharia, aligning legal procedures with Islamic principles (Olayemi, 2015). This requirement seeks to harmonize legal procedures with Islamic principles, ensuring that the administration of justice complies with Islamic teachings' moral and ethical standards (Olayemi, 2015). Some modern Muslim authors assert that Sharia is entirely consistent with and has consistently safeguarded human rights. Ali A. Wafi (1967) argues that fundamental human rights can be categorized into five key rights, each corresponding to a type of liberty: religious liberty, freedom of opinion and expression, the right to work, the right to education and culture, and civil liberty. Wafi (1967) references general Islamic sources to support each liberty, concluding that Islam endorses them.

However, its effectiveness and prevalence are still topics of continuous scholarly discussion and examination. Some interpretations may contradict international human rights standards, especially in terms of gender equality and freedom of expression. Critics argue that the practical application of Sharia in some contexts may lead to discriminatory practices, despite the UIDHR's efforts to align Islamic law with human rights principles (Mayer, 1996). For example, the testimony of women and non-Muslims in specific legal situations may not be considered as significant as that of Muslim men, which could weaken the idea of equal justice access (Mayer, 1996). Furthermore, punishments dictated by Sharia law, such as amputation for theft or stoning for adultery, have faced significant criticism for being cruel and breaching fundamental human rights norms (Eslami, 2012). This has sparked worries about the alignment of specific elements of Sharia with the principles of the Universal Declaration of Human Rights. Despite these challenges, the UIDHR is still crucial for comprehending Islamic access to justice. It represents an attempt to incorporate universal human rights principles into an Islamic legal structure, highlighting the significance of justice, accountability, and moral integrity (Jamal, 2022).

Beyond these inherent tensions, the CIDHR's efficacy has been further hampered by its marginalization within the OIC itself. While initially endorsed, the declaration has been progressively downplayed in the 21st century, potentially reflecting resistance within the organization toward aligning Islamic law with secular human rights frameworks (Ahmad, 2016). This reluctance is compounded by critiques from Western scholars who argue that the CIDHR falls short of guaranteeing liberal freedoms, including freedom of religion, expression, and full equality for women (Donnelly, 2003). Despite these challenges, the CIDHR remains a significant document for understanding the complexities of navigating human rights within an Islamic legal context, highlighting the ongoing efforts to reconcile universal principles with religious traditions (Jamal, 2022).

## **Access to Justice in Muslim States: Challenges and Opportunities within the Human Rights Framework**

Access to justice is an essential human right and a prerequisite for enforcing all other rights, providing individuals with a means to seek redress for violations and hold institutions accountable (Lima & Gomez, 2021). In Muslim-majority states, the concept of justice is deeply rooted in Islamic principles that emphasize fairness, equity, and the inherent dignity of individuals (Lima & Gomez, 2021). However, these principles often intersect with legal pluralism, socio-political constraints, and varying interpretations of Islamic law, creating challenges for the consistent application of human rights frameworks. This discourse examines various aspects of access to justice in Muslim-majority countries, focusing on legal frameworks, judicial independence, human rights issues, and the influence of international standards.

The Muslim world has engaged in extensive discussions on human rights and Islam. The discourse is both theoretically important for the universalization of human rights and practically significant for their realization in the Muslim world (Baderin, 2003). This reflects the significant and on-going influence of Islam on the social, cultural, political, and legal affairs of many predominantly Muslim states and societies (Baderin, 2007). Most Muslim countries rely on adhering to Islamic law and traditions for legitimacy. Enforcing international norms without considering Islamic law and traditions can lead to tension and reactions against the secular nature of international norms (Sajoo, 1990). While Islam's political and legal philosophy may differ from the secular international order, this does not necessarily mean discord with the international human rights regime (Sajoo, 1990). Diversity is not synonymous with incompatibility. The Islamic heritage provides philosophical concepts, moral principles, and humanistic values that can be used to construct human rights principles (Tibi, 1994). These values and principles are abundant in pre-modern Islamic intellectual heritage. They should be revived for the realization of international human rights within the application of Islamic law in Muslim states.

Many member states of the United Nations are Muslim states that apply Islamic law, impacting the way of life of over a billion Muslims globally (Bielefeldt, 1995). While many Muslim states participate in the U.N.'s human rights objectives, they often register reservations and declarations based on Sharia when ratifying international human rights treaties (Bielefeldt, 1995). There are differing perspectives on human rights and Islamic law. Some Westerners believe that Islamic law is incompatible with human rights and cannot be obtained through its auspices (Baderin, 2003). Conversely, there is pessimism in the Muslim world regarding the state of human rights principles and the United Nations' objectives. Human rights are best protected



by states within their domestic laws and cultures, making the relevance of Islamic law in the effective application of international human rights law in the Muslim world significant (Baderin, 2003). Previous studies have emphasized traditional interpretations of Islamic law and an exclusionist version of international human rights law, leading to the theory of incompatibility between international human rights law and Islamic law. Mayer's work (1999), for instance, argues that modern Islamic human rights schemes are questionable due to their reliance on traditional interpretations of the Sharia and the practice in some Muslim countries.

Also, Baderin (2003) challenges the argument that observing international human rights law is impossible within an Islamic legal framework. Muslim states argue against interpretations of international human rights law that do not take Islamic values into account rather than arguing against the law itself. The main question is to what extent Islamic law can be interpreted in light of international human rights law and how far Islamic law can account for international human rights law (Baderin, 2003). Baderin (2003) suggests a synthesis between two extremes and offers an alternative perspective to the relationship between Islamic law and international human rights law. He proposes a dialogical approach that requires a culture of persuasion and tolerance rather than rivalry, parochialism, and violence (Baderin, 2003). This approach requires listening, accommodation, respect, and exchange.

The debates on the compatibility of Islamic law with international human rights law, alongside the practical challenges faced by the judiciary in Muslim-majority states, greatly influence the realization of human rights in these countries. Judicial independence is a critical factor affecting access to justice in Muslim-majority states. In some countries, the judiciary operates with relative independence and successfully upholds human rights, as in the case of *Asia Bibi* in Pakistan (Malik, 2018). Her acquittal by the Supreme Court in 2018, following years of imprisonment under blasphemy charges, demonstrated the judiciary's capacity to act as a safeguard against injustice. However, systemic issues, such as corruption, political interference, and inefficiency often undermine judicial integrity in many Muslim-majority states, disproportionately affecting marginalized groups (Malik, 2018).

Gender equality presents another significant challenge in ensuring access to justice. Women in many Muslim-majority countries face structural and legal barriers that impede their ability to claim equal rights, particularly in family law, inheritance, and protection against domestic violence (Charrad, 2001). Traditional interpretations of Quranic verses, such as those governing inheritance (*Quran* 4:11), have historically allocated daughters half the share of sons. Reformists argue that these interpretations were context-specific and can be revisited to align with

contemporary norms of equality. Tunisia's 2017 inheritance reforms, which aimed to equalize inheritance rights, reflect a progressive approach to aligning Islamic jurisprudence with international human rights standards (Zemni, 2017). Similarly, Pakistan's Protection of Women Act (2006) addressed discriminatory provisions in the Hudood Ordinances, providing greater protections for women in cases of sexual violence and separating rape from accusations of adultery (Kamali, 2008).

Minority rights remain a pressing issue in Muslim-majority countries, where religious and ethnic minorities often face systemic discrimination. In Pakistan, blasphemy laws have disproportionately targeted non-Muslim minorities, leading to injustices that are difficult to rectify due to societal pressures and legal biases (Malik, 2018). The Asia Bibi case illustrated the misuse of these laws while also emphasizing the potential for judicial reform to rectify such injustices (Malik, 2018). In contrast, Indonesia's pluralistic legal system integrates Sharia with customary law (*adat*) and national statutes, providing a more inclusive framework for minority rights (Bowen, 2003). While this model is not without challenges, it offers a pathway for balancing local traditions with broader legal protections.

The tension between international human rights standards and local practices is particularly evident in the reservations Muslim-majority countries often attach to human rights treaties. Many states are signatories to instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (UN Women, 1979) but cite Sharia as a basis for excluding provisions they view as incompatible. These reservations highlight the need for culturally sensitive approaches to implementing international human rights norms. Scholars like Baderin (2003) argue that rather than imposing external standards, efforts should focus on demonstrating the compatibility of Islamic principles with universal human rights. Concepts like *ijtihad* (independent reasoning) and *maslahah* (public welfare) offer mechanisms for bridging these frameworks.

Recent developments in some Muslim-majority countries signal progress in aligning Sharia with international human rights standards. Tunisia's post-Arab Spring legal reforms have strengthened constitutional protections for gender equality and minority rights, positioning the country as a leader in progressive Islamic jurisprudence (Charrad, 2001). Sudan's abolition of apostasy laws in 2020 marked a significant shift toward greater religious freedom, reflecting the influence of transitional governance committed to human rights reforms. These examples illustrate the potential for Muslim-majority countries to harmonize Islamic values with global legal standards through thoughtful engagement and reform (Zemni, 2017; Baderin, 2007).

Education and public awareness are critical to fostering societal acceptance of reforms. Public education campaigns that emphasize the alignment of Islamic values with human rights have proven effective in countries like Malaysia and Indonesia (Bowen, 2003). These initiatives challenge misconceptions about Sharia and highlight its adaptability to contemporary contexts. Moreover, international collaboration and judicial capacity building can further enhance access to justice. Training programs for judges and legal practitioners, focusing on the intersections of Sharia and human rights, have successfully promoted a more holistic understanding of justice in several Muslim-majority states (Kaldırım, 2022).

Access to justice in Muslim-majority countries is a dynamic and multifaceted issue, reflecting the interplay between Islamic jurisprudence, socio-political factors, and international legal frameworks. While challenges persist—particularly in areas like gender equality, minority rights, and judicial independence—the potential for reform is significant. By leveraging Islamic principles, such as *ijtihad* and *maslahah*, Muslim-majority countries can reconcile traditional values with modern human rights norms, creating inclusive legal systems that uphold justice and equity. The experiences of Morocco, Tunisia, Sudan, and Indonesia demonstrate that reform is not only possible but also essential for advancing access to justice in a manner that respects cultural and religious identities while embracing universal principles of human rights.

## Conclusion

Access to justice is the process of determining and achieving justice for the poor and disadvantaged, encompassing procedures and outcomes for resolving legal problems. It is not just about access to the legal system, where every person should receive just and fair treatment, but also about access to substantive justice, a just social and political context allowing for simultaneous legal redress. This concept is vital in ensuring equal and fair treatment for all individuals and human rights.

Western legal positivism and legal realism have developed concepts of justice to represent how a just rule can be realized for average people affected by the law. Access to justice is often associated with obtaining legal redress for legal problems, while Islamic conceptions focus on establishing justice rather than maximizing its accessibility by the state. Western welfare state plans for access to justice are state-centred, emphasizing strengthening judicial institutions. The nature of justice and the meaning of access differ, with Western models often focusing on physical dimensions like delay, cost, and legal representation, while Islamic perspectives emphasize the role of individuals as their right to access justice. This comparative

approach highlights the importance of understanding the differences between Western and Islamic conceptions of access to justice.

The analysis of access to justice aims to bridge the gap between Western and Islamic discourses by understanding the concept of justice and the context in which it must exist for it to be accessible. Multiple approaches from Islamic Law perspectives can be incorporated into contextualizing various conceptions of access to justice. Legal pluralism, based on corporations among different subgroups, challenges mainstream legal discourse and is a response to European legal positivist philosophy. Law should be seen in the context of society and culture, where it exists in the form of customs and rules that induce compliance. While legal pluralism offers valuable insights into understanding diverse legal systems, its implications extend beyond theoretical frameworks to the practical realization of human rights in specific cultural contexts. Just as access to justice must be understood within its cultural and societal framework, the promotion of human rights must also be approached with sensitivity to the specific context of Muslim states.

The promotion and protection of human rights are crucial for their effective realization, as acknowledged under international human rights law and many treaties. This article aims to provide a pragmatic and constructive approach to promoting human rights in Muslim States, focusing on positive engagement, moral persuasion, positive political will, and due process of law. However, it acknowledges that this approach may be slow and indulging, especially in the face of urgent human rights violations, such as women's rights and minority rights in many Muslim States. The World Rights Report (WRR) has noted that Islamic reforms toward international human rights standards may have a better chance of taking root than large or Western-imposed steps. Permanent improvements can't be imposed and sometimes take a long time.

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