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About:

The MJTILP (formerly the Journal of Islamic State Practices in International Law) was founded in 2005. The Journal is independent of any State or institutional affiliation with a truly diverse and global editorial board. It is published twice a year by Electronicpublications.org Ltd; and available both in electronic and printed forms.



Aims of the Journal:

The principal objectives of the Manchester Journal of Transnational Islamic Law & Practice (MJTILP) are to provide a vehicle for the consideration of transnational forms of Islamic law and practice. Transnationalism in Islamic law is taken broadly as communications and interactions linking Islamic thoughts, ideas, people, practices and institutions across nation-States and around the globe. In recent times, research in Islamic law has shaped narratives based on nation-States, demographics, diasporic communities, and ethnic origins instead of developing around a central core. Contemporary issues of Islamic law are increasingly linked to geographical locations and ethnic or parochial forms of religious beliefs and practices. Expressions like American, European, British, Asian and Arab Islam have widely gained acceptance.

Despite the growing importance of dialogue to develop shared understandings of issues facing Islamic law and proposing coordinated solutions, the contemporary research and scholarship has not developed harmoniously and remains piecemeal and sporadic. Researchers and practitioners of Islamic law are drawn from a wide variety of subjects and come from various regions of the world but have insufficient institutional support for sharing information and comparing experiences. Innovation in various strands and paradigms of Islamic law and practice is stifled because there are limited spaces where evolutionary, collaborative and interdisciplinary discourses can take place. This in turn hampers the ability to build on past research and record best practices, negatively impacting a consistent and orderly development of the field. There is a need to constitute a world community of Islamic law scholars based on interactions and aspirations moving across linguistic, ethnic, geographical and political borders.

The MJTILP is inspired by the need to fill these gaps. It provides a platform to legal and interdisciplinary scholars and researchers for critical and constructive commentaries, engagements and interactions on Islamic law and practice that are built upon configurations in contemporary contexts. It welcomes contributions that look comparatively at Islamic law and practice that apprise and inspire knowledge across national boundaries whether enforced by a State or voluntarily practiced by worldwide Muslim communities. We are equally interested in scholarships on encapsulated cultural worlds, diaspora, identity and citizenship that are embedded and circumscribed by religious ties. As it has been the practice of the journal since its establishment in 2005, it also has a specific interest in issues relating to the practice of Muslim States in international law, international law issues that may concern Muslim countries, and all aspects of law and practice affecting Muslims globally.

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Transnational Forms of Islamic Law

We begin this Issue by paying tribute to Dr Amir Ali Majid who assisted in the setting up this journal in 2005, which was then titled as the Journal of Islamic State Practices in International Law. Dr Majid was blind, who sadly passed away in March this year. He was the first blind person to become a Doctor of Civil Law from McGill University (Canada) and second blind person to reach a judicial post in the UK. He also served as a Reader at the Metropolitan University and was a member of the British Higher Education Academy. He sat as a First-tier Immigration Judge in the UK for a number of years. Dr Majid remained a torch bearer for race equality and disability rights throughout his life. In 2003 he received the Sitara-i-Imtiaz (Star of Distinction), the second highest civilian honour in Pakistan. He was also granted the Life Learning Award by the Kashmir and Pakistan Professionals Association on 17 July 2005. His removal from the post as judge was controversial as he was kind in his appeal to immigrants. Dr Majid will be greatly missed. Our thoughts and prayers are with him and his family.

This Issue of MJTILP covers various topics including the *hijab* (veil), economic and financial law, wills, blasphemy, transitional justice, armed conflicts, as well as conceptual articles on Islamic state. In addition, it introduces novel concerns such as weapons of mass destruction, which sovereign states have reportedly claimed ownership of since the second half of the twentieth century. The protection of environment in Islamic law is another challenge that is addressed by this Issue. The variety of topics demonstrates not only the transnationality of Islamic law but also its unavoidable engagement in contemporary challenges such as migration and displacement, religious and cultural absolutism, intolerance, climate change, and armed conflicts. As I am writing these lines, the news of a young woman, who was killed by the police in Tehran because of being “improperly veiled” shocked people both inside and outside of Iran. This incident raises serious questions about police brutality and the unquestionable authority of the state over its citizens in the name of God. Although this is not a novel issue, and it is experienced in different contexts in other parts of the world, the question arises as to how law, and for that matter Islamic law, can deter inequality, absolutism, and intolerance in the name of religion. This is the question that all articles of this issue revolve around. In each article, this concern is addressed in one way or the other.

In the first article, Siddiqui and Ali investigate John Makdisi’s opinion on the Islamic origins of the Canon Law. The next article by Ahmad and others is about the *hijab*. The authors investigate the position of international human rights law in respect of the *hijab* worn by Muslim women to express their religious conviction. The article concludes that there is no justification under international human rights law to prohibit Muslim women from wearing *hijab*. Sungay in his article argues that all South African citizens have the right to religion as contained in the Bill of Rights found within the Constitution of the Republic of South Africa 1996, which extends to the right to testation in accordance with religious beliefs. In another article, Kakar critically analyses the case of Asia Bibi, a Christian woman who was accused of blasphemy and given the death sentence in Pakistan. The author discusses how the legal and *Shari’a* position on blasphemy in general, and in the Asia Bibi case in particular, need to be modified.

In the ‘Conceptualisation of ‘Islamic State’ by Pakistani Scholars: From Idealism to Minimalism’, Cheema has selected three renowned Pakistani scholars, namely, Syed Abul Ala

Maududi (1903-1979), Muhammad Asad (1900-1992), and Javed Ahmad Ghamidi (1951) for analysis of their theories of an 'Islamic state'. In the next article on 'Processivism in the Formation and Interpretation of Contract', Moghadam argues that the Iranian Civil Code does not provide for specific steps for consensus building between contracting parties. The article by Ahmed and Abozaid on 'State Laws and Shari'a Compatibility: Methodological Overview and Application to Financial Laws' is another interesting piece where the authors distinguish between the notions of *Shari'a* compliance and *Shari'a* compatibility of laws. The proposed framework can be used more broadly to assess the *Shari'a* compatibility of state laws and regulations that do not originate from Islamic texts. In another article, Oleghe explores the lack of access to justice for internally displaced persons by Boko Haram in Nigeria. Next article by Aldosari places the existing banking guidelines in the context of conventional and Islamic principles to analyse different ways to establish an integrated mechanism to understand, detect, and prevent default in all its possible forms.

The article on 'Environmental Destruction and Armed Conflict: Protecting the Vulnerable Through Islamic Law' by Devadasan discusses environmental destruction as a common by-product of armed conflicts and examines how the Islamic law of armed conflict can be utilised to protect the environment. This issue also includes 'The Use of Weapons of Mass Destruction: A Comparison of the Restrictions and Justifications in Islamic Law of Armed Conflict and International Humanitarian Law' by Timmermans who discusses the use of weapons of mass destruction (WMDs) by states and the positions held by Islamic scholars on the use of WMDs including the classical Muslim jurists' discussions on the permissibility of certain types of weapons. In a related article titled 'Weapons of Mass Destruction and the Protection of the Environment Under Islamic Law: Why the Irreconcilable Cannot Be Reconciled' Cuypers explores the legality of WMDs. While this is often done through the lens of international law, Cuypers investigates their legality in Islamic law.

In 'The Implication of the Concept of Legal and Beneficial Ownership in Sukuk Structures under the Nigerian Tax Regime' Sa'adu and Zubair investigate the meaning of the concept of ownership as obtained under the common law and Islamic law as well as the implication in *Sukuk* (Islamic bonds) structures under the Nigerian tax regime. In the article on 'Transitional Justice in Bangladesh: Recognition and Enforcement of Rights of the Rape Victims of 1971 War' Modok discusses rape as an instrument of genocide during the 1971 war of independence in Bangladesh and the necessary steps that need to be taken to provide transitional justice to the victims. Next article by Amin compares the minimum wage principle with the principles of *Adal* and *Ihsan* in Islamic law exploring if an Islamic model of minimum wage can be implemented in Pakistan. The final article in this Issue is by Kaur & Singh that explores the emergence, reasons and prevention of mob lynching of religious minorities in India. Additionally, this Issue includes seven reviews of books dealing with different areas of Islamic law and practice.

This Issue of the MJTILP was possible only because of the excellent support from our dedicated team of editors and network of committed reviewers. My sincere gratitude to all of you who gave feedback to authors, proofread accepted papers, and helped reformat this Issue into our house style.

Dr Fatemeh Sadeghi Givi (Deputy Editor-in-Chief)
Tehran: 05 October 2022