# PROBLEMS IN THE IMPLEMENTATION OF ISLAMIC LAW IN THE CONTEMPORARY ERA

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#### **Abstract**

One of the biggest obstacles to applying Islam as a social system in the modern secular state is the dilemma of codifying the provisions of Islamic Sharia within the mold of the Western legal system. Methods of preparing and promulgating those laws. Islamic Sharia, in its essence, is spiritual and devotional, and its material legislation tends to organize society so that it is possible to establish the orders of religion, achieve its purposes for people, and reform their conditions in this world and the Hereafter. Therefore, Sharia does not know boundaries, geographical boundaries, and the boundaries between this world and the Hereafter. And because the purposes of Western legislation are, in essence, purely materialistic, it seeks to achieve immediate material benefit to society. It does not concern itself with the condition of people in the Hereafter. The invocation of the concept of the Hereafter is a limit. The same when discussing Western legislation may cause ridicule and belittling among its supporters; Therefore, the hegemony of Western legislation with its vocabulary over Islam would result in a significant dilemma. The imams who are followed and accepted by a group of people, or the scholars whom others trust and obey, are human beings who make mistakes and are right. Their rulings are necessarily and inevitably affected by the level of knowledge, intelligence, integrity, whim, error, ignorance, and bias. When applying these rulings, they naturally need authority compelling political and capable of executing and implementing the provisions. And this authority is gained power by predominance and control, or the people elect it. Thus, whoever decides legitimacy is either a dominant political-military authority or an elected politician protected by a social contract upon which all or most of the citizens agree!

Keywords: Application, contemporary Islamic law,

#### 1. Introduction

It is not possible to talk about the issue of the application of Islamic law without touching on an important topic closely related to it, which is: (obstacles to the application of Sharia)[1]. There is no way to reach the truth without overcoming the challenges. In light of the challenges that will be removed and through the preparation presented, the issue of implementing the Sharia will be resolved quickly and will bear fruit among the people. The preceding meaning is not to suspend Sharia arbitration until these obstacles are overcome. Overcoming these obstacles may take months or years; instead, it means that both matters (the application of Sharia and the removal of barriers to its application) must go in the same direction at the same time, as happened regarding the arbitration of man-made laws when the colonizers and secularists put these laws at the end.

In the era of the Ottoman Empire and after that, although the Islamic peoples would not have accepted that at this time voluntarily. The colonizers not only entered the artificial laws of the Islamic countries, but they began to implement a systematic plan to distort the school curricula and

liquidate them from the religious aspects gradually, and this was not in schools. They also set out to establish law schools and colleges according to their curricula to spread their poison and form a generation of Muslims who would take upon themselves the task of deviating the nation from God's law instead of them, either deliberately or out of ignorance. And not only that, but they began to enjoy scholarships in their universities for the elite youth of this nation and the first students in the schools and colleges of the Islamic countries - as happened with the famous professors Abdul Razzaq Al-Sanhouri and Taha Hussein and others - only to return after completing their studies more hostile to Sharia; France, England, America and others are now reaping what they sowed and the efforts they made in order to change the general attitude of the Islamic peoples, and to create a climate towards rejecting the application of Sharia if it is allowed to return. By removing the obstacles and obstacles placed by the Westerners to prevent the application of Sharia.

We conduct the type of literature study: textbook analysis, which is reading several textbooks to be used as references or references. As for what is meant by texts, here refer to books used to learn in the world of education. The type of library that will be used for the literature study process, whether use media in books, media from the internet, journals, or several of them. Then look for the appropriate type. With a qualitative approach, we analyze the results of the study of the sources that we get so that it appears in an article that can be understood as an arrangement of scientific thoughts that can be used as additional information in the field of implementing Islamic Shari'a along with the obstacles faced and solutions. It may be done as a way out.

The greatest calamity that has befallen some Islamic societies and others is the exclusion of Islamic law, negligence in its application, or fraud to dilute its provisions deliberately or under many personal justifications, whether true or false. At this time, the Islamic world suffers from the fascinating phenomenon of what the enemies of Islam have and suffers from the phenomenon of backwardness imposed on them. The lands of Muslims are famous for their fertility. The ignorance of his sons, the maliciousness of his enemies, the solutions of disasters and defeats at the hands of the Jews, Christians, Magi, and atheists, the nations fell upon him as the eaters called upon the bowl, as the Prophet, peace, and blessings are upon him, told that, and a large number of Muslims did not rejoice much after they became scum like the scum of a torrent when they began to drain the east and the West derive Among them are the laws of their livelihood, they implement their misguided ideas, and they govern their man-made constitutions. We can divide the obstacles to the implementation of Sharia into two parts (Rosidah, 2020):

The first; is psychological and intellectual obstacles related to faith and belief, psychological factors, and ways of thinking.

The first: is physical and realistic obstacles imposed by historical events or current circumstances.

Section One: Psychological and Intellectual Obstacles:

First: Ignorance of the reality of Sharia and its ability to keep pace with the requirements of the modern era:

One of the most critical obstacles to applying Islamic law is people's ignorance of the reality of Sharia and its ability to keep pace with the requirements of the modern era. They think that it is incapable of fulfilling these requirements and calamities and that the sources of legislation have been devoid of addressing contemporary and emerging issues.

These speculations are based on ignorance of the reality of Sharia and the sources of Islamic legislation, and they were generated as a result of the preachers' failure to explain the legislation's merits. Its miraculous aspects and its principles, rulings, and sources. We highlight to them the elements of its miraculousness and superiority over other laws and regulations. We present a clear picture of Islam, its rulings, and its ability to deal with non-Muslims with fairness and justice. Because of the large number of its sciences, the multiplicity of its sources, and the diversity of its bases, between total and partial, issues and branches can be downloaded to them - no matter how modern or new - In a way that controls people's lives and their dealings.

Second: The weakness of faith among many Muslims and their feeling of psychological defeat:

Among the obstacles to the Sharia application is the faith weakness among many Muslims, and this weakness is represented in two aspects:

The first: is a lack of confidence in the promises of God - the Highest - with his victory for the Muslims if they adhere to their religion and return to their law, confirming the words of God - the Highest:

Allah has promised those of you who believe and do righteous deeds that He will make them rulers on the earth, as He made those before them reign, and indeed, He will establish a true religion for them. He has satisfied. And He did change their (state of) them, after being in fear into peace. They (still) worship Me by not associating Me with anything. But whoever (remains) disbelievers after that (promise) is wicked.

The second: is a lack of confidence in the provisions of Sharia and its ability to keep pace with development and regulate the conditions of societies. What has happened to them, meet the needs of people and solve their problems and disputes.

The weakness of the faith mentioned above has multiple reasons. Some are psychological and ideological related to the Muslims' distance from their religion and their correct belief. Their influence on secular thought and the idea of separating religion from the state, and the belief that religion is the source of backwardness. Some of them relate to historical and realistic reasons due to the successive defeats that Muslims have suffered in the last period of their history. Their division and dispersal. Their economic and military backwardness with the advancement of

their enemies and the increasing influence of secularists in the media and state institutions. All of these reasons led to the faith weakness of the faith of many Muslims and the penetration of psychological defeat in their depths until they thought that there was no way for them to get out of this setback and rise from this negligence to keep pace with the progress and civilization, except by following the West and separating religion from the state. It is possible to overcome this obstacle through education, guidance, and counseling and to clarify the positive aspects of the provisions of Sharia and its miracles and its ability to keep pace with development, meet people's needs and solve their social problems and judicial disputes.<sup>1</sup>

Third: The lack of trust in the Islamic elite:

The lack of confidence in the Islamists, including thinkers, politicians, and jurists who are entrusted with putting Islamic Sharia in its proper place in the political and legal system of the state, has led to people losing confidence in Islamic legislation. Especially the aspects related to the relationship of Muslims with others, and this happened as a result of two things:

First: Many people comment on Islamic legislation by judging them on preachers and the elite of Islamic thinkers, politicians, and jurists.

The second: Are the erroneous practices of some of these politicians and jurists, which necessarily reflect on their call, policies, and curricula.

Although there are some erroneous practices of some preachers, thinkers, politicians, and legal supporters of the issue of implementing the Sharia, this does not harm the Sharia or impair it; instead, the fault lies in the people and their unfair practices. Therefore a distinction must be made between the approach and the one calling for the process (Māhir & Bišrī, 1439, p. 87).

Fourth: Being influenced by the thought of human rights advocates:

Among the obstacles to the application of Sharia, many people have been influenced by the thinking of some human rights advocates who accuse the Islamic penal system and hudud legislation of cruelty and violation of human rights. This stems from a lack of a correct understanding of the reality of the penal system in Islamic legislation and ignorance of its wisdom and the multiplicity of its purposes and diversity in order to achieve restraint, deterrence, and discipline for the wicked and the corrupt according to the type of offense committed. So his evil was excellent, and his punishment was significant. His sin was easy, his sentence was easy, and his corruption differed according to time and place, so estimating his punishment is left to the ruler. With his wisdom, knowledge, and mercy, God- the Almighty has taken over the assessment of some sentences of these crimes in kind and quantitatively because of the type and amount they contain a fixed evil that does not change. No matter how different the time and place may be, remove from Him - the Almighty - the embarrassment and remove the difference, be praised and grateful to Him (Māhir & Bišrī, 1439, p. 76) (Thalib, 2018).

<sup>&</sup>lt;sup>1</sup> {Citation}

Fifth: Doctrinal and intellectual intolerance among Muslims:

Some Muslims' doctrinal and philosophical fanaticism made them get tough on controversial issues, provoke their opponents, and block the door of ijtihad. This resulted in mistrust of the law and contentment with man-made laws as a substitute for the Sharia (Sawi, 1988, p. 87).

Professor Abd al-Qadir Odeh - may God have mercy on him - says: It is historically proven that European laws were transferred to Egypt during the reign of Khedive Ismail. He would have liked to set up legislative groups for Egypt taken from the Sharia and the various schools of Islamic jurisprudence. He asked Al-Azhar scholars to put together these groups. Still, they refused to answer his request because sectarian fanaticism prevented them from cooperating in displaying the Sharia in its most beautiful form, so they sacrificed all of the Sharia, and each kept his doctrine and fanaticism towards it. They missed an opportunity for the Islamic world as long as they cried for its loss. They have the right to weep for it until it returns."

Dr. Omar Suleiman Al-Ashqar - may God have mercy on him - said: (What made matters worse: the rigidity of the learned muftis, teachers and preachers on the texts of the books of their later followers, without foresight and deliberate action, and a return to the principles of Sharia and the sayings of the predecessors, their ignorance of the requirements of time and construction, and their aversion to everything new without being They weigh it against the balance of Sharia, and their opposition to the innovators without listening to their evidence, their struggle against rational and cosmic sciences, warning people against studying them, and forbidding others to seek guidance from the Book and the Sunnah for claiming that all of this is contrary to religion, due to their ignorance of the reality of faith, because this glorious and tolerant Sharia goes hand in hand with science It is broad and its general rules contain everything new from the requirements of time and civilization, because it is purely mercy and happiness (1959, Julia), p. 87).

Even stranger than this is that these rigid adherents of tradition do not sin from flattery and spying on rulers, and cheating on their feasts that are interspersed with abominations that break the Sharia by prohibiting it and signing decisions derived from man-made laws, administrative conditions, or qualitative approval in order to ensure the salaries that they receive from the government treasury Or, in order to enhance their prestige and status, and they refrain from ijtihad in a calamity that befell the Muslims because it is not expressly stated in the books of the later followers of them. As a result of this arrogance, they abandoned the Sharia and replaced it with laws and the dispersal of Muslims; As chaos struck its folds, each one threw his rope on his neighbor, and the ignorant of the law imagined that it was a formidable obstacle to progress, renewal, and happiness, as it was established in the minds of many of its children that it is not adequate to the requirements of this time, because they did not stand on its broad and comprehensive general rules; Because these rigid people have avoided by intensifying their stagnation, and dulling their slumber between them and those who want to take in its lights and be illuminated by its rays, and pick out its fruits and inhale the scents of its light) (Habiburrahim et al., 2020).

# 2. Physical and Realistic Obstacles:

# First: political and economic colonialism:

What is meant by political colonialism is: the control of the great Western countries in the political systems of Islamic countries in order to control the sovereign and political decisions in the areas of internal security, the legal and legislative strategy, and foreign policy. Economic colonialism means the control by the great powers of the Islamic countries' sources of wealth and their natural resources. The monopoly of raw materials, and the management of the money and gold markets in them, in a way that deprives these countries of exploiting their natural resources and raw materials. They make them among the consumer countries that depend on their economy on Other countries: either for what they export to them of goods and products or for what they grant them in terms of loans and what they provide of financial or in-kind assistance.

And this colonialism is in fact an indirect occupation of the country, which Western countries resorted to after they incurred huge losses in money and lives in their wars and during their colonization of Islamic and African countries; So that it tightens its political and economic control over these countries and prevents them from the self-determination of their free will in a way that does not provoke peoples' revolutions or the condemnation of world public opinion (Firdaus, 2021).

Western countries have several means of achieving this colonization, including: supporting authoritarian and arrogant political regimes, concluding unequal agreements, granting loans and conditional financial aid, providing in-kind grants such as machinery, manufactures, vehicles, and military equipment without their spare parts, providing the necessary facilities to export their products to other countries and placing Obstacles and obstacles to importing the products of these countries, leading experts and specialists, providing conditional technical assistance, contributing to the implementation of long-term economic projects, acquiring land, sea, and military airbases, establishing usurious banks, controlling money markets (stock exchanges) and gold markets, and provoking internal unrest and sectarian divisions. Partisanship, and so on.

Second: The rulers' attitudes and authority:

Most of the rulers in Islamic countries reject the idea of applying Islamic law: either because they adopt a policy of separating religion from states or because they fear that the application of Sharia will lead to their backwardness and backwardness or draw them into internal conflicts and the anger of Western countries, or provoke sectarian strife and Western public opinion before them. Understand between pure secularism and imaginary fears (Al-Hafizh et al., 2021).

Third: Illiteracy of religious curricula:

There is no doubt that the regular educational curricula in many Islamic countries have led to distorting the identity of Islamic and Arab students and scholars, and even disrupting their capabilities, killing their talents, raising the status of players and the corrupt among them, and considering every adherent to his religion as backward and backward, so things were called by other than their names, and were described in the opposite of their descriptions until The righteous denied

themselves, their hearts were broken, and their determination towards reform died(Suratman et al., 2021). And if the application of Sharia has become an urgent matter, developing educational curricula and modernizing religious aspects in it - especially by highlighting the merits of Sharia and its miracles in all fields - is necessary to prepare the atmosphere for the application of Sharia for two reasons:

First: Re-creating society and directing it towards accepting the Sharia as a law judged by it and by it, instead of demanding its application and adherence to its continuity if authorized.

Second: Preparing a generation that can advance the task of implementing Sharia, if it is educated, educated, and prepared in a manner that possesses the elements of ijtihad, to bring this nation back to the era of jurisprudential ijtihad, which we desperately need in the present age to confront calamities and innovations.

Third: This development and modernization must be comprehensive for all educational levels by what is required and necessitated by each stage. Law colleges and judicial studies centers must give the teaching of Islamic law great attention and care to the extent commensurate with being the primary source of legislation.

Fourth: The backwardness of Muslims in applied sciences:

The widespread illiteracy of Muslims is not only related to religious aspects; Rather, it is in the fields of applied and industrial sciences and modern technologies greater and greater, which is what made the Islamic nation regarding these sciences at the bottom of the nations of the earth until the Islamic countries were described as backward, developing, backward, third world countries and so on.

The backwardness of these countries from the non-Islamic eastern and western countries has prompted many people to attribute this to the rigidity of their thinking. The Sharia they embrace. The backwardness of the Muslims, although it has become an indisputable fact, its real cause is the Muslims' distance from their religion and their failure to adhere to their Sharia. Their attempt to imitate the Westerners, despite the different components, principles, and values of the two groups, which necessarily reflects on the ways of life and living and makes them necessarily different; They did not catch up with the lost civilization of Muslims, nor did they catch up with the progress of the West.

Fifth: Secularists control the media:

Secularism is the most severe internal danger facing Muslims at present. The threat of the secularists is not related to their suspicions that they broadcast as much as it is related to their control over the media. They're wearing the dress of science and culture through their prestigious and influential positions in society. Through these two means, they were able to fight the Sharia and spread their resemblances, which are so weak, that they could be easily and costlessly refuted[5]. But what has prevented this is the secular control of the media, So that no one else can respond to them and deny their suspicion except with great difficulty. There is no way, then, to reach the application

of Islamic law and prepare the general atmosphere for its acceptance except by purifying the media - whether visual, audio or read - from those who do not want Sharia to prevail and rule or find alternative countermeasures to push back their pressure and refute their suspicions.

Sixth: The diversity of political parties and the complexity of their orientations:

Political party: It is a means used by those in charge of it as a pretext to seize power in order to implement the policies for which they established it. The seriousness of the issue of (political parties) appears in the event of its multiplicity and weakness (Kamaluddin & Meirison, 2021). The multitude of weak parties necessarily means the diversity of policies and programs and the divergence of their orientations, which often entails the most general difference, rivalry, and rupture. There is hardly a single issue on which several parties agree. If this issue is found, inevitably, these parties will not compromise on its details and aspects related to its treatment in practice. This is reflected in the issue of the application of Sharia; Many political parties have taken this issue as a ride to gather supporters and achieve their political goals by reaching power, sometimes by rejecting it, and sometimes by developing systematic plans to accept it, which ultimately leads - inevitably - to the non-implementation of Sharia (meirison & kasmidin, 2020).

Seventh: The Wrong Call to Apply Sharia Law:

The wrong method practiced by some preachers in calling people to implement the provisions of the Sharia is one of the most important obstacles to the application of Sharia where some preachers reduce the issue of the application of Sharia when presented in the aspect of penalties and the establishment of limits without touching on other civil issues, personal status issues, symbiotic social matters, and political and judicial systems.

This is in addition to the fact that some, when presented with the legal issue of penalties and the limit establishment. They are limited to advocating their application superficially without explaining its wisdom and praise and delving into its causes, causes, purposes, and importance in the lives of individuals, and other detailed aspects related to it that should be highlighted and explained with the origin of the case.

Today, we need to compare divine law and man-made laws in their most perfect and latest forms - and there is no comparison at all - to show people the extent of the majesty, miraculousness, and uniqueness of the Sharia. Professor Abdul Qadir Odeh - may God have mercy on him - says: (When I compare Sharia and man-made laws, I will not follow the law in its early stages by comparison and balance, and I will not compare the law in the seventh century AD with the Sharia that was revealed to Muhammad, peace be upon him, at the beginning of this century.

The law in these eras was not at a level that would allow it to be compared with Islamic law, but when I reach the law in our present age with Sharia, and when we do this, we are comparing a changing and developing direction that is moving steadily towards Perfection until it almost reaches it, as it is said, and a law that was revealed from Thirteen centuries have neither changed nor changed in the past, nor will they change or be altered in the future, a law whose nature refuses to be altered

and changed, because it is from God, and there is no alteration of God's words nor of any of God's creation who perfected everything He created, so what He makes is not in need of Perfection after its creation, so when we compare, we are comparing the latest opinions and theories in law with the oldest ones in Sharia, or we are comparing the mutable hadith and the old one that is intractable to change and alteration, and we will see and feel from this comparison that the fixed old is better than

The changing hadith, and that Sharia is too old to be compared with modern man-made laws, and that man-made laws, despite the opinions that were involved in them and the principles and theories were developed for them, are still at a lower level than the level of Sharia. The truth has become so unfamiliar that most people admire it, but wonder will not prevail over the one who has a mind that thinks, appreciates, compares, balances, and distinguishes the bad from the good) (Audah, 2008, p. 65). These are the natural obstacles to applying Islamic law, which must be removed and overcome so that people can accept the application of Sharia and respond to its provisions. Other illusory obstacles have no basis in reality, which some procrastinators are trying to promote to disrupt the application of Sharia. The most important of these imaginary obstacles are:

# 3. Inability to activate the provisions of Sharia:

Some of them claim that the provisions of Sharia are scattered in the stomachs of the mothers of books and that they are many and complex that are difficult to collect and codify. There is no way to implement Sharia without forming committees, holding conferences and seminars, and developing research, studies, and projects to codify the provisions of jurisprudence in various legal fields, which takes a long time that may reach for several years.

This claim is not intended except to waste time and dilute the issue of implementing Sharia. Projects for legalizing Sharia are already prepared in several areas and according to different schools of thought [7]; Whether organized by (the Islamic Research Academy), committees (of the Egyptian People's Assembly), or committees (the Egyptian Court of Cassation), or even committees (the League of Arab States). If there is a shortage in one of the legal fields, there is nothing to prevent it. They were activating the already prepared projects until other projects were completed and revised the applicable man-made laws. The provisions of Sharia are now being applied in many personal status issues, but not indifferent legal fields.

Referring to Islamic legislation has become an absolute necessity so that there is no gap between the nature of the social reality of individuals and the laws that govern them. Undoubtedly, the law should faithfully reflect society's material and intellectual conditions and fulfill its requirements and hopes. And if the man-made legalizations were rooted in their curricula according to the rules and theories that law commentators used to include in the general section of them, then Islamic jurisprudence has also preceded many of these theories and rules on the basis of the provisions of the Noble Qur'an, the purified Sunnah, or jurisprudence (Sali et al., 2020).

Both in terms of the scope of the legislation and its application in terms of time and place, as well as the elements of crimes and their proof, conditions of criminal responsibility, participation in crime, reasons for permissibility, implementation of penalties, and reasons for stopping them, which is in fact a scientific precedent for Muslim scholars for centuries in the field of legislation (criminal and punitive), and the truth, is that there is no room To compare in any case between what God, the All-Knowing, the Wise, has legislated, and what has codified human beings whose minds are short, limited in their minds, tainted by the dominance of whims and desires, there is no room for comparison between a firm divine, divine law that does not change and does not change, and a conditional human law that is constantly evolving and amending, {And who is better. Judgment is from God for a particular people." [Al-Ma'idah: 50]

This, praise God, and may God's prayers and peace be upon our Prophet, his family, and companions.

### 4. Conclusion

The benefits of applying Islamic law in life The most important benefits of applying Islamic law in life are summarized as follows:

Upgrading and reforming the self and society; Since our era in which we live in a materialistic age, many people do not care about morals except to the extent that it provides for their interests and personal benefits. Therefore, the condition of these societies will not be correct without the application of Islamic law. It was gathering and unifying the Islamic Ummah, Where the difference in regulations between countries leads to a tremendous difference in life systems. Hence, the application of Islamic law in it is the beginning of its unity and a fence that protects its language and religion—achieving the satisfaction of God Almighty as it is the goal of all the sons of the Muslim Ummah. The application of Sharia is an imperative and requirement of the two certificates. This is not a field of choice, so it is not permissible to give preference to any law or legislation other than the heavens over the system of Islamic Sharia. Obstacles that prevent Muslims and the application of Sharia in life The obstacles that prevent Muslims and the application of Islamic Sharia are divided into two parts as follows:

illusory obstacles that express the suspicions spread by the enemies of Islam; To prevent Muslims from implementing the law of their religion, and among the most prominent of these suspicions: is the claim that Islamic Sharia is rigid and incapable of development and innovation. The claim is that some Sharia systems are not suitable for contemporary application, Such as cutting off the hand of the thief and some provisions of penalties. They claim that Islamic law affects the rights of non-Muslims. Real Obstacles Among the most prominent natural obstacles that stand between Muslims and applying Islamic law are the following: Expansion of foreign influence in Muslim countries. The psychological war against Islam in particular and against religions propagates secular thought. Increased interest in legal studies. The most important means of applying Islamic law in life the essential standards of using Islamic law are summarized in the following points:

Dissemination of Islamic Sharia provisions by all possible means; The ways of disseminating it are many, and it may be easy or somewhat complicated for the others; everyone works in what he can do. Coordinate periodic studies for the various spectrums of the people to make them aware of

them. Codifying the Islamic Sharia provisions by formulating its provisions in an article, as this helps to unify the nation's behavior and obligate people to work with the provisions of Sharia and in which the state supervises the integrity of the Shariah application, facilitates the courts to discipline the Sharia provisions and its application.

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