

**APPLICATION OF ISLAMIC LEGAL MAXIMS IN
MUSLIM FAMILY LAW ARBITRATION:
CASE STUDIES IN ENGLAND**

BY

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**A thesis submitted in fulfilment of the requirement for the
degree of Doctor of Philosophy in Islamic Revealed
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ABSTRACT

Muslims living in England live in a real predicament. On the one hand, they have to face the reality that the laws governing the family institution are secular in nature. This poses a threat to their identity and freedom of religion. On the other hand, they are commanded by Islam to settle their disputes according to its laws and principles. However, this is unrealistic, simply since the only recognized legal system in England is the English Law. To circumvent this situation, certain Muslim scholars and communities have established quasi-judicial courts, acting in the capacity of mediators, counsellors, arbitrators, and even judges, to settle marital disputes. These courts, known as Shari'ah councils, provide a modern approach to alternative dispute resolution, whereby Muslim families and individuals can have their disputes resolved amicably. It was also set up as a response by Muslims to adapt to life under the English secular laws in which they live in, that do not afford them the right of having a Shari'ah-based institution. Although the concept of alternative dispute resolution through arbitration dates back to pre-Islamic Arabia, with its advent Islam established a more codified and principled approach to the matter. Therefore, one of the objectives of this thesis was to give readers a deeper insight into the concept and procedures of Islamic judicial system, including arbitration, and its application to the Muslim-minority context in England. Additionally, the researcher has penned down several Islamic legal maxims relating to Muslim family law, which can be used as a template for current Shari'ah council operations and even future set-ups. By employing both theoretical and qualitative methods, the researcher aims at developing a practical and empirical approach to this genre of Islamic studies. Furthermore, the researcher conducted interviews, collected data on arbitrational cases, and analysed them to give a better understanding of the inner workings, structural logic, and operation of several Shari'ah councils. As a result, it was found that all members of the Shari'ah councils interviewed were graduates from Islamic law faculties. It was also observed that none of the Shari'ah councils interviewed adhered to any one particular school of law when adjudicating cases. Interestingly, amid the backlash, criticism, and negative portrayal of Shari'ah councils by the media and politicians, there is an increasing demand for their work and services. The researcher found that on average 94% of arbitrational awards were accepted and enforced by litigants willingly. Last but not least, the researcher critically analysed arbitrational cases by the said Shari'ah councils to determine whether or not Islamic arbitration procedures were followed as well as to determine whether the deliberation was given to meet the highest standards of Islamic adjudication. Given the fact that there is currently no appellate review by any of the said Shari'ah councils, it is hoped that this thesis will also serve as a critical examination and review of their past judgments/decisions.

ملخص البحث

يعيش المسلمون في بريطانيا أزمة حقيقية، فالقوانينُ الأسرية التي يخضعون لها قوانينٌ وضعية علمانية، مما يُمثّل خطرًا على هويتهم وحرمتهم الدينية؛ لأن الإسلام يفرض عليهم الاحتكام إلى شريعته؛ للفصل في خصوماتهم وفق مبادئه وقواعده، وهذا صعبٌ جدًّا، لأن بريطانيا لا تعترف بأي نظام قضائي إلا القضاء البريطاني، ولتفادي هذه الأزمة؛ أنشأ بعض علماء المسلمين محاكمَ إسلامية تقوم على التحكيم والوساطة والمشورة في فضِّ الخصومات الأسرية، وتوفر هذه "المحاكم الشرعية" بديلاً عصريًّا لحل النزاعات الأسرية بين الزوجين بطُرقٍ وُدِّيَّةٍ، وقد أنشئت ليمكن المسلمين من التكيف مع الواقع الذي يعيشونه في بريطانيا في ظلِّ قوانين وضعية علمانية لا تسمح لهم بإنشاء محاكم إسلامية خاصة بهم، ولئن كان التحكيم معروفًا عند العرب قبل الإسلام؛ فإن الإسلام نظَّمه وهذَّبه، وجعل له أسسًا وضوابط شرعية تحكمه، وعليه؛ يهدف هذا البحث إلى تقديم تصوُّر واضح عن مبدأ التحكيم في الإسلام وأساليه وشروطه الشرعية، وكيفية تطبيقه على الأقلية المسلمة في بريطانيا، فقد جمع الباحث بعض القواعد الفقهية المتعلقة بالقانون الأسري؛ تصلح لأن تكون إطار عملٍ ودليلاً للمحاكم الشرعية من أجل التنظيمات المستقبلية، ومن خلال البحث النظري النوعي؛ حاول الباحث تطوير نهج عملي تجريبي في الدراسات الإسلامية، فقد أجرى مقابلات، وجمع بعض قضايا التحكيم؛ لدراستها وتحليلها، ومن ثمَّ؛ فَهَمَّ هيكله المحاكم الشرعية وأساليها في التحكيم، وقد تبَيَّن من خلال ذلك أن جميع من شملتهم المقابلات من خريجي الكليات الشرعية لا يعتمدون على مذهب محدَّد حين البتِّ في القضايا المعروضة عليهم، وأن طَلَبَ الخدمات التي تقدمها المحاكم الشرعية في تنامٍ مستمرٍّ؛ على الرغم مما تتعرَّض له من حملات إعلامية معادية، وقد وجد الباحث أن ٩٤٪ من أفضية تلك المحاكم نفَّذها المتحاكمون طواعيةً، وهكذا؛ درس الباحث القضايا التي عُرضت على المحاكم الشرعية؛ للتأكد من التزامها الإجراءات والمعايير الشرعية للتحكيم الإسلامي؛ إذ لا تتوفَّر إلى اليوم مراجعاتٌ علمية نقدية لعمل هذه المحاكم وقراراتها، وعسى أن يكون هذا البحث إسهامًا تحليليًّا نقديًّا يسد هذا الفراغ العلمي، ولو جزئيًّا.

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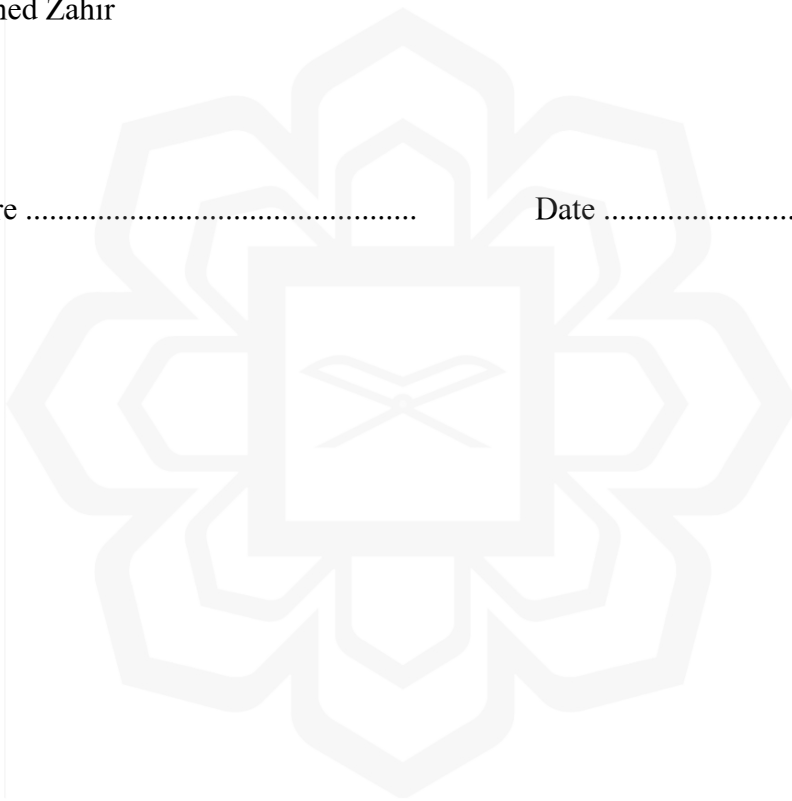
DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Indeed, all praise is due to Allah (swt) and may His peace and blessings be upon the final Messenger Muḥammad. Firstly, it is to Allah that I owe all gratitude for guiding and helping me to complete this work, for “my success cannot be except through Allah” (*Hūd*: 88). Glory be to Him who closes some of the doors we knock on, only to open other doors to much better opportunities.

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Transliteration Table

ء	'	خ	kh	ش	Sh	غ	Gh	ن	N
ب	B	د	D	ص	ṣ	ف	F	هـ	H
ت	T	ذ	dh	ض	ḍ	ق	Q	و	W
ث	Th	ر	r	ط	ṭ	ك	K	ي	Y
ج	J	ز	z	ظ	ẓ	ل	L		
ح	ḥ	س	s	ع	ʿ	م	M		

Short Vowels	
ـَ	a
ـِ	i
ـُ	u

Long Vowels	
ا + ـَ	ā
ي + ـِ	ī
و + ـُ	ū

CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION

Conflicts and disputes are bound to arise among humans at various levels of interaction due to their social nature. Social interactions such as financial transactions, marital relations and the seeking of property acquisition, among other things, will inevitably bring about conflict and dispute. In order to bring an end to such disputes and quarrels, various civilizations have developed different mechanisms of dispute resolution. Such mechanisms of dispute resolution were either based on formal or informal, conventional or tribal, primitive or civilised, and/or judicial or extra-judicial means. When Islam came, it established a method encompassing both formal adjudication and quasi-judicial means for dispute resolution. Islam has legislated the administration of justice, known as *qadā'*, in order that life may go and continue as smooth as possible. The ultimate goal of *qadā'* is the administration and dispensation of justice (*'adl*). The Quran, which is the primary source of legislation in Islamic law, has informed the Prophet Muḥammad (P.B.U.H)¹ that: "Indeed, We have revealed to you, [O Muḥammad], the Book in truth so you may judge between the people by that which Allah has shown you."² The Quran warns the believing Muslims not to be unjust: "O you who believe! Stand out firmly for Allah and be just witnesses and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to

¹ This statement of sending peace upon the Prophet is customary in all the religious texts, both classical and contemporary. However, for the sake of brevity it will not be in written form as it is implied that both the writer and readers of this paper will say this statement within themselves henceforth.

² Surat al-Nisā', 4:105.

piety, and fear Allah."³ Furthermore, it commands them to be just even if that justice requires them to be witnesses, in the court of law, against themselves or loved ones.⁴

The command to judge people with justice was not only given to the Prophet Muhammad but was one that Prophets before him also received. According to Ibn al-Qayyim (d. 1350 C.E./751 A.H.), all the Prophets were sent with various books instructing them to ensure that every human being is dealt with and lives in accordance with the justice of Allah.⁵ In fact, the Quran warns and cautions Prophet Dāwūd not to make a judgement based on desires but according to the laws of Allah.⁶ The Quran clearly states dispensing and maintaining justice as the purpose of all revelation: "Indeed We have sent Our Messengers with clear proofs, and revealed with them the Scripture and the Balance (justice) that mankind may keep up justice".⁷

Muslims believe that Islamic law is divine and sacred and this is because they believe Allah has revealed many verses in the Quran relating to judicial law. And the reason for enumerating these verses is to show how much importance it attaches to the concept of justice. In order for this justice to be dispensed, it must be according to the Sharī'ah, or else it is not considered to be true justice even though it might appear to be so in the sight of man.⁸ That is because the Islamic justice system transcends all temporal and national boundaries and is not restricted to time-space limitations and

³ Surat al-Mā'idah, 5:8.

⁴ Sūrat al-Nisā', 4:135

⁵ Muḥammad ibn Abū Bakr ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah*, (Cairo: Maṭba'ah al Madanī, n.d.), 14.

⁶ Sūrat Ṣād, 38:26.

⁷ Sūrat al-Ḥadīd, 57:25.

⁸ This is the view and belief of every mainstream Sunni school of thought contrary to what is being propagated by some researchers/academicians and then attributing it to be mainstream. Researchers such as Abdullahi Ahmed An-Na'im believe that the *Sharī'ah* is incompatible and inconsistent with prevailing human rights standards. He advocates that it be limited and restricted because it is unable to handle and keep up with the global, social and political challenges. This goes against every Sunni mainstream views and beliefs in that *Sharī'ah* is compatible and suitable for every time and place, able to handle and solve any challenges it faces. Abdullahi Ahmed An-Na'im, "Islamic Law, International Relations, and Human Rights: Challenge and Response", *Cornell International Law Journal*, vol. 20, issue 2, (1987): 317-335.

hence, is capable of resolving disputes among Muslims, wherever they are. Unlike civil or common law, a fundamental feature of Islamic law is its divinity which needs to be implemented in order to regulate society and the action of its members rather than society dictating what laws should be.⁹ It is for this reason that for Muslims Islamic law is such an integral part of their religion that it cannot be conceivable for the two to be isolated.

However, Muslims living in the West have to face the fact that the laws governing the commercial, criminal and family spheres are secular in nature, and the notion of applying the justice of Islamic law becomes dim. This prospect becomes even more grim when Muslims are living as minorities in western countries and want the justice of the Sharī'ah to be applicable to them, if not the rest. It is due to this ambition of Muslims having the justice of Sharī'ah being applied to them that certain academics and researchers have called for the harmonisation of laws, in which the social and domestic lives of Muslims can be governed by the justice of Sharī'ah.¹⁰

Though this proposition is noble and well-thought of, it is neither applicable nor realistic when it comes to Muslims living as minorities in England, at least in the near future. This is due to the fact that the legal system of England is not based on Sharī'ah but on Common law. Therefore, another concept, idea and/or proposition needs to be sought that can bring about the realisation of having the justice of Sharī'ah applied to those who are eager for it, while at the same time having the same enforceability and/or legitimacy according to the Common law in England.

⁹ Syyed Hossein Nasr, *The Heart of Islam, Enduring Values for Humanity*, (San Francisco: Harper, 2000), 117-19.

¹⁰ Abdul Haseeb Ansari and Syed Khalid, *Harmonisation of the Sharī'ah and Civil Laws*, (Malaysia: IIUM Press, 1st ed., 2011), i.

Such a concept does exist which is not only recognised by the Sharī‘ah but is also recognised by the U.K., as well as by the U.N.¹¹ With the *Arbitration Act 1996*, or simply called the 1996 Act, the U.K. introduced arbitration, which effectively provided a modern approach to alternative dispute resolution.¹² The concept of arbitration, or *tahkīm*, dates back to pre-Islamic Arabia.¹³ *Tahkīm* is a process in which the disputants voluntarily refer their case to a third party, usually a Muslim arbitrator (*hakam*), in order to resolve a dispute according to the laws of Islam.¹⁴ With the advent of Islam, the Sharī‘ah established a more codified and civilised approach to *tahkīm* than the pre-Islamic one which was plagued with superstition, soothsaying and personal vengeance.¹⁵ In fact, the verses of the Quran and the *hadith* of the Prophet support the sanctioning and continuance of *tahkīm* and embodied it as the choice of law under Islamic law.¹⁶

Muslim community leaders and scholars living in the West, such as the U.K.¹⁷ and U.S.A.,¹⁸ have introduced arbitration tribunals in their communities for those that wish to have the justice of the Sharī‘ah applied to them. Such 'faith-based' infused

¹¹ Lex Mercatoria, "United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards," United Nations, 10 June, 1958, <<http://www.jus.uio.no/lm/un.arbitration.recognition.and.enforcement.convention.new.york.1958/doc.html>>, (accessed 19 September 2016).

¹² The National Archives, *Arbitration Act 1996*. Official U.K. government website, <<http://www.legislation.gov.uk/ukpga/1996/23/contents>>, (accessed 19 September 2016).

¹³ Majid Khadduri, *Law in the Middle East: Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny (Washington D.C.: The Middle East Institute, 1955), 359, 367-70;

George Sayen, "Arbitration, Conciliation, and the Islamic Legal Tradition in Saudi Arabia," 24 *U. Pa. J. Int'l L.* vol. 24, issue 4, (2003): 905. Via University of Pennsylvania, <<http://scholarship.law.upenn.edu/jil/vol24/iss4/3>>, (accessed 19 September 2016).

¹⁴ ‘Abd al-Majīd Muḥammad al-Sūsawah, "Āthār al-Taḥkīm fī al-Fiqh al-Islāmī", in *Majallah al-Sharī‘ah wa al-Qānūn*, vol. 22, (2005): 101-2;

Al-Zuḥaylī, Wahbah, *al-Fiqh al-Islāmī wa Adillatuhu*, (Damascus: Dār al-Fikr, 1989), vol. 6, 756.

¹⁵ See Nora Abdul Hak, Sa'odah Ahmad and Umar A. Oseni, *Alternative Dispute Resolution (ADR) in Islam*, (Malaysia: IIUM Press, 2nd ed., 2013), 1-2.

¹⁶ Sūrat al-Māidah, 5:49.

¹⁷ Fiqh Council of Birmingham, *The Importance of Tahkim (Arbitration) in Marital Disputes*. Official Website, <<http://www.fiqhcouncilbirmingham.com/page/article/12>>, (accessed 19 September 2016); The Islamic Sharia Council, Official Website, <<http://www.islamic-sharia.org/>>, (accessed 19 September 2016).

¹⁸ Islamic Tribunal, Official Website <<http://www.islamictribunal.org/>>, (accessed 19 September 2016).

arbitration tribunals were set up as a modern response for Western Muslims to adapt to life under the secular laws they live in which do not afford them the right of having a Sharī‘ah-based institution. However, it is not clear which set of guidelines, school of thought or even principles (*uṣūl*) these arbitrational councils follow. Therefore, the researcher sees a need to introduce Islamic legal maxims (*qawā‘id fiqhiyya*) into arbitration in order that these arbitration bodies, famously known as Sharī‘ah councils, may use as a guide when making their rulings. Thus, this thesis will make an effort to: 1.) introduce to the readers the understanding of the nature of Islamic judiciary, 2.) introduce the concept of *taḥkīm* in a Muslim minority context, 3.) introduce important Islamic legal maxims directly/indirectly pertaining to Islamic judiciary and Muslim family law and its application in Islamic arbitration for Muslim minorities living in England, 4.) critical analysis of cases by established Sharī‘ah councils in matters pertaining to divorce, *khul‘* (dissolution of marriage) and *faskh* (annulment of marriage), and 4.) set certain principles and guidelines for an arbitrator to abide by whereby disputants can have their family matters resolved through qualified arbitrating scholars taking into account the context of Muslim minority.

1.2 STATEMENT OF THE PROBLEM

Muslims in England are a minority and thus, do not have the Islamic justice system in place that can dispense the Islamic laws and justice, especially when it comes to marital laws. They have no choice but to resort to secular laws in matters pertaining to marriage, divorce, child custody, inheritance, etc. In most cases, the judgements are not in accordance with the laws/justice of the Sharī‘ah. This poses a grave concern especially when Muslims are explicitly commanded by the Quran to judge

and be judged by Islamic law and not by the ruling of "ignorant (man-made) laws."¹⁹ Scholars, both classical and contemporary, have differing opinions in regards to an individual Muslim referring to secular laws instead of seeking the law(s) of the Sharī‘ah.

Fortunately, there are institutions in which individual community leaders and scholars in England act in advising, mediating, conciliating and arbitrating disputants in regards to domestic family disputes. However, they are all confined to a specific community, acting in the capacity of individual scholars, Imams and/or community leaders in the field of Islamic arbitration. Such challenges may lead to inconsistencies and unaccountability in family law proceedings which may impose undue stress and difficulties on families, in particular women and children. So what role can these scholars and community leaders play in terms of arbitrating disputes that arise amongst Muslims in England so as to protect the rights of the disputants and ensure that the arbitration outcome is one which brings *maṣlahah* in a Muslim minority context? This thesis will make an effort to introduce the necessary *qawā‘id fihiyyah* relating, either directly or indirectly, to arbitration and Islamic family law that will help numerous Sharī‘ah councils to adopt a unified and/or consistent approach in order a to avoid and eliminate aforementioned challenges and problems in England.

1.3 RESEARCH QUESTIONS

Throughout this research, the researcher will make an effort to answer the following questions:

1. What is arbitration? Who is an arbitrator and the qualifications s/he must have in issuing a ruling?

¹⁹ Sūrat al-Māidah, 5:49-50.

2. What is the process of arbitration according to Islam and how is it being implemented by Sharī‘ah councils in England? Is it feasible for the Muslims to refer to Islamic arbitration in England?
3. Which Islamic legal maxims are related to Islamic arbitration and Muslim family law and how they can be explored when dealing with arbitrational cases in England?
4. What are the structural makeup, procedural guidelines, and Islamic legal maxims employed by some of the Sharī‘ah councils in England in their adjudication process and are they being consistent in their application?

1.4 RESEARCH OBJECTIVES

The objective of this research is to achieve the following:

1. To examine and discuss in a clear manner the concept of what is arbitration, the mannerism and the conditions that need to be taken into consideration before issuing an arbitration verdict as well as the pre-requisites and qualifications of one acting in the capacity of an arbitrator.
2. To critically present to the reader in a clear manner the process involved in Islamic arbitration, whether the Sharī‘ah councils have adopted them as part of its process and its feasibility for Muslims living in England.
3. To analytically pen down the Islamic legal maxims that are associated with Islamic arbitration and their methodological application to Islamic family law for Muslims living in England, the Sharī‘ah councils application of the said legal maxims and its consistencies.
4. To critically analyse the structural makeup, procedural guidelines and Islamic legal maxims being adopted by the various Sharī‘ah councils that

were interviewed and to suggest a possible alternative dissenting solution/adjudication.

1.5 SIGNIFICANCE OF THE STUDY

The significance of this study is many-fold, some of which are highlighted for this research:

1. Muslims living in England are faced with the dilemma of defending their family structure from deteriorating and for this reason family law is so significant, both psychological and sociological, that it cannot be discarded easily.²⁰ In fact, family law remains so central to Muslim identity that when Muslim states were colonized by the British, everything of the Islamic law was abolished except for family law, which was retained albeit codified and modified.²¹
2. Muslim minorities living in the West advocate that perhaps the best way to defend their families from 'corrupting' Western influences and impermissible (*harām*) practices (such as prostitution, alcohol and drug use, pornography, child abuse, marital breakdown, extra-marital affairs, illegitimate children, same-sex relationships or neglect of the elderly) is to adhere to Islamic family law. By operating within this system of values, families can be more secure and the Western secular society will not have

²⁰ Sebastian Poulter, "The Claim to a Separate Islamic System of Personal Law for British Muslims" in Chibli Mallat & Jane Connors (eds), *Islamic Family Law*, (London: Graham & Trotman, 1990), 147.

²¹ See Ann Black, "The Stronger Rule of the More Enlightened European: The Consequences of Colonialism on Dispute Resolution in the Sultanate of Brunei", *Legal History*, vol. 13, no. 1, 2009: 93; Noor Aisah Abdul Rahman, "Muslim Personal Law with Singapore Legal System: History, Prospects and Challenges", *Journal of Muslim Minority Affairs*, vol. 29, no. 1, 2009: 109, 112.

to deal with the economic, political and social ramifications of such dysfunctional families.²²

3. Muslims are living in the England with no alternative solution in obtaining justice except through the secular courts. And more often than sometimes, dealing with the secular courts is tedious, financially burdensome and emotionally stressful with the judicial verdict not being in line with the Islamic values, beliefs and laws. There are some who may not even refer their cases to the courts because of the huge financial cost associated with it due to its protracted and adversarial nature.²³ Yet, there are others who refer to it because of some loopholes that they can take advantage of and usurp the right of others without a (Islamic) just cause.²⁴ As for those limited number of individuals who do refer their cases to Sharī'ah councils, they may be reluctant in doing so due to the qualification(s) of the arbitrators, its effectiveness, and/or its objectivity and fairness.
4. The need to codify and professionalise the field of Islamic arbitration in order that Muslim disputants may refer their family matters to. Such an Islamic arbitration tribunal, also known as Alternative Dispute Resolution (ADR), will help Muslims in resolving their disputes in a confidential, less stressful and Islamic compliant manner without the need for litigation in a formal court trial.
5. According to the researcher's preliminary work, no academic work or research has been done in this field that will pave the path to having an

²² Ann Black, Hossein Esmaeili & Nadirsyah Hosen, *Modern Perspectives on Islamic Law*, (UK: Edward Elgar, 2013), 109.

²³ Susan Blake, Julie Browne and Stuart Sime, *A Practical Approach to Alternative Dispute Resolution*, (New York: Oxford University Press, 2011), 14.

²⁴ Fiadjoe, 7-10.

alternative dispute resolution which is comprehensive of *fiqh* and *qawā'id fiqhiyyah* and its application in a Muslim minority context.

1.6 RESEARCH SCOPE

The researcher will concentrate on *qawā'id fiqhiyyah* that are related to *tahkīm* and Muslim family law, directly or indirectly, and its applications which are crucial in bringing about justice, objectivity, and consistency in arbitration. Based upon these *qawā'id fiqhiyyah*, the researcher will bring into light the branches of *fiqh* relating to those *qawā'id* with the opinions of the four major schools of Islamic law. Because the justice system in England is secular in nature and therefore, does not recognize the Sharī'ah when it comes to the implementation of *hudūd* or *qiṣāṣ* (Sharī'ah-mandated punishments for crimes such as murder, adultery, theft, etc.), and due to the fact that *tahkīm* is vast in its application, the researcher will limit the research to only Islamic family law and the opinions of the four major schools of Islamic law, namely the Ḥanafī, Mālikī, Shāfi'ī and Ḥanbalī.

Moreover, this research will focus on four of the Sharī'ah councils presently operating in England. These councils were chosen based on their reputation, feasibility and being well-known by their community and others. Furthermore, these councils consented to sharing their quasi-adjudication data of family disputes with the researcher for analysis to be included in this thesis. Additionally, the researcher will give his preponderant (*rājiḥ*) opinion throughout this research that he deems fit for the Muslims living there. Finally, all of the above will be given while taking the special circumstances of Muslims living as minorities and from a *fiqh al-aqalliyyāt* perspective.

1.7 RESEARCH METHODOLOGY

Due to its multidimensional nature, the subject of the present work has required that a combination of methods be adopted in its treatment, consisting of theoretical, historical and empirical aspects. This multifaceted methodology has been geared in such a way as would enable us to achieve a sound understanding of the conceptual underpinnings and historical development of Islamic arbitration, related legal maxims as well as a fair assessment of the status and workings of currently operating Sharī'ah councils in England. Thus, the theoretical and historical approaches have been extensively applied in Chapters Two to Five; it mainly consists of library research drawing on classical and modern works in Islamic jurisprudence and legal theory, academic journals, internet postages, etc. The empirical method has been applied in Chapters Six and Seven. The whole exercise and purpose of the study is to explore how best to apply the theoretical concepts and juristic maxims pertaining to arbitration in the Islamic framework to specific time-space and cultural contexts of Muslim minority communities. In this connection, special attention has been paid to the recently developed idea of *fiqh al-aqalliyāt* aiming at bringing about greater good (*maṣlahah*) and realizing *maqāṣid al-Sharī'ah* for those communities. Furthermore, this thesis would be inclusive in its research of the main schools of thought so that the arbitrator(s) can choose from the ruling that will suit the time, place and constituent that they are dealing with. Moreover, the researcher will extract relevant Islamic legal maxims pertaining to the field of Islamic arbitration in order for Sharī'ah councils to refer to as a guide during their adjudication process.

Additionally, the researcher will employ a qualitative method, which is well-suited for this type of research since the researcher intends to consult various sources, both legal and jurisprudential, conduct interviews, and collect and analyse arbitration