

Sharia

Shari'ah (Arabic: شريعة *ṣarī'ah*, IPA: [ʃa'riːʕa], "way" or "path") is the code of conduct or religious law of Islam. Most Muslims believe Sharia is derived from two primary sources of Islamic law: the precepts set forth in the Qur'an, and the example set by the Islamic Prophet Muhammad in the Sunnah. Fiqh jurisprudence interprets and extends the application of Sharia to questions not directly addressed in the primary sources by including secondary sources. These secondary sources usually include the consensus of the religious scholars embodied in ijma, and analogy from the Qur'an and Sunnah through qiyas. Shia jurists prefer to apply reasoning ('aql) rather than analogy in order to address difficult questions.

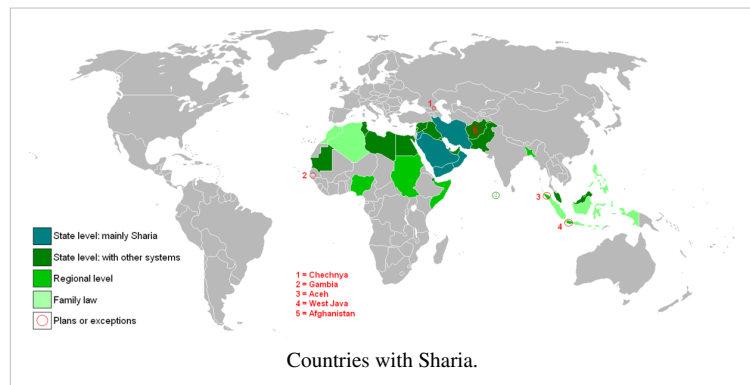
Muslims believe Sharia is God's law, but they differ as to what exactly it entails.^[1] Modernists, traditionalists and fundamentalists all hold different views of Sharia, as do adherents to different schools of Islamic thought and scholarship. Different countries and cultures have varying interpretations of Sharia as well.

Sharia deals with many topics addressed by secular law, including crime, politics and economics, as well as personal matters such as sexuality, hygiene, diet, prayer, and fasting. Where it enjoys official status, Sharia is applied by Islamic judges, or qadis. The imam has varying responsibilities depending on the interpretation of Sharia; while the term is commonly used to refer to the leader of communal prayers, the imam may also be a scholar, religious leader, or political leader.

The reintroduction of Sharia is a longstanding goal for Islamist movements in Muslim countries. Some Muslim minorities in Asia (e.g. in India) have maintained institutional recognition of Sharia to adjudicate their personal and community affairs. In western countries, where Muslim immigration is more recent, Muslim minorities have introduced Sharia family law, for use in their own disputes, with varying degrees of success (e.g. Britain's Muslim Arbitration Tribunal). Attempts to impose Sharia have been accompanied by controversy,^[2] ^[3] ^[4] violence,^[5] ^[6] ^[7] ^[8] ^[9] ^[10] and even warfare (cf. Second Sudanese Civil War).^[11] ^[12] ^[13] ^[14]

Etymology

In *The Spirit of Islamic Law*, Professor Bernard G. Weiss states "In archaic Arabic, the term shari'a means 'path to the water hole.' When we consider the importance of a well-trodden path to a source of water for man and beast in the arid desert environment, we can readily appreciate why this term in Muslim usage should have become a metaphor for a whole way of life ordained by God."^[15]



In *Understanding Islamic Law: From Classical to Contemporary*, Professor Irshad Abdal-Haqq states "Shar'iah, or more properly *Al-Shari'ah*, literally means the *pathway*, *path to be followed*, or *clear way to be followed*, and has come to mean *the path upon which the believer has to tread*. In original usage Shar'iah meant *the road to the watering place or path leading to the water*, i.e., the way to the source of life. The technical application of the term as a reference to the law of Islam is traced directly to the Qur'an, wherein the adherents of Islam, *the believers*, are admonished by Allah (God) to follow the clear and right way, the path of Shari'ah: *Then we put thee on the (right) Way of religion so follow thou that (Way), and follow not the desires of those who know not*^[Qur'an 45:18]."^[16]

According to Abdul Mannan Omar in his *Dictionary of the Holy Quran*, the word at 45:18 (see Abdal-Haqq above) derives from the "Quranic root" shara'a. Derivations include: Shara'a (as prf. 3rd. p.m. sing.), meaning "He ordained", appearing once in the Qur'an at verse 45:13; Shara'u (prf. 3rd. p.m. plu.) "They decreed (a law)" appearing

once at 42:21; Shir'atun (n.) "Spiritual law", used at 5:48; finally, *Shariatun (act. 2nd. pic. f. sing.) "System of divine law, Way of belief and practice" is used at 45:18.*^[17]

Definitions and descriptions

Sharia has been defined as:

- "Muslim or Islamic law, both civil and criminal justice as well as regulating individual conduct both personal and moral. The custom-based body of law based on the Quran and the religion of Islam. Because, by definition, Muslim states are theocracies, religious texts are law, the latter distinguished by Islam and Muslims in their application, as Sharia or Sharia law."^[18]
- "a discussion on the duties of Muslims," —Hamilton Alexander Rosskeen Gibb^[19]
- "a long, diverse, complicated intellectual tradition," rather than a "well-defined set of specific rules and regulations that can be easily applied to life situations," —Hunt Janin and Andre Kahlmeyer^[20]
- "a shared opinion of the [Islamic] community, based on a literature that is extensive, but not necessarily coherent or authorized by any single body," —Knut S. Vikor^[21]

From the 9th century, the power to interpret and refine law in traditional Islamic societies was in the hands of the scholars (ulema). This separation of powers served to limit the range of actions available to the ruler, who could not easily decree or reinterpret law independently and expect the continued support of the community.^[22] Through succeeding centuries and empires, the balance between the ulema and the rulers shifted and reformed, but the balance of power was never decisively changed.^[23] At the beginning of the nineteenth century, the Industrial Revolution and the French Revolution introduced an era of European world hegemony that included the domination of most of the lands of Islam.^{[24] [25]} At the end of the Second World War, the European powers found themselves too weakened to maintain their empires.^[26] The wide variety of forms of government, systems of law, attitudes toward modernity and interpretations of Sharia are a result of the ensuing drives for independence and modernity in the Muslim world.^{[27] [28]}

Traditional perspectives

The majority of Muslims regard themselves as belonging to either the Sunni or Shi'a sect of Islam. Within these sects, there are different schools of religious study and scholarship. The schools within each sect have common characteristics, although each differs in its details.

Sunni

In addition to the "Basic Code" of the Qur'an and Sunnah, traditional Sunni Muslims also add the consensus (*ijma*) of Muhammad's companions (*sahaba*) and Islamic jurists (*ulema*) on certain issues. In situations where no concrete rule exists in the sources, law scholars use *qiyas* — various forms of reasoning, including analogy, to derive law from the essence of divine principles and preceding rulings. The consensus of the community, public interest, and other sources are used as an adjunct to Sharia where the primary and secondary sources allow.^[29] This description can be applied to the major schools of Sunni fiqh, which include the Hanafi, Shafi'i, Maliki and Hanbali.

Salafi

The Salafi movement looks to the actions and sayings of the first three generations of Muslims for guidance, in addition to the Qur'an and Sunnah. Salafis take these exemplary early Muslims as the source of their fiqh. The Salafi movement has attracted followers from many Muslim cultures and schools of fiqh.^[30]

Muslims who subscribe to the teachings of scholar Muhammad ibn Abd-al-Wahhab are considered part of the Salafi movement.^[31]

Shi'a

Shi'a Muslims also extend the "Basic Code" with fiqh, and in some aspects reject analogy. At the same time, they believe Islam was long designed to meet today's innovations and culture. During the period after Prophet's death, Sunni scholars developed, at the same time the Shi'a Imams were alive teaching and spreading the original message of Islam. Since the 12 Imams are descendent of the Prophet's family Shi'a believe they have a greater right on leadership and spreading the message of Islam, as a result Shi'a view them as an extension of the original Sunnah taught by the Prophet himself. A recurring theme in Shi'a jurisprudence is logic (*mantiq*),^[32] something most Shi'a believe they mention, employ and value to a higher degree than most Sunnis do. They do not view logic as a third source for laws, rather a way to see if the derived work is compatible with the Qur'an and Sunnah.

In Imami-Shi'i law, the sources of law (*usul al-fiqh*) are the Qur'an, anecdotes of Muhammad's practices and those of The Twelve Imams, and the intellect (*'aql*). The practices called *Sharia* today, however, also have roots in comparative law^[33] and local customs (*urf*).^[29]

Most Shia Muslims follow the Ja'fari school of thought.^[34]

Modern perspectives

Muslims have responded in a variety of ways to the forces of modernity. These responses cross the lines of tradition, sect and school. They affect the way Sharia is interpreted by individuals in their personal lives, and the extent to which Sharia is implemented in the public sphere by the state. These diverse movements can be referred to collectively as contemporary Sharia(s).^[35]

Spectrum of Muslim legal systems

The legal systems in 21st century Muslim majority states can be classified as follows:

Sharia in the secular Muslim states: Muslim countries such as Mali, Kazakhstan and Turkey have declared themselves to be secular. Here, religious interference in state affairs, law and politics is prohibited.^[36] In these Muslim countries, as well as the secular West, the role of Sharia is limited to personal and family matters. The Nigerian legal system is based on English Common Law and the constitution guarantees freedom of religion and separation of church and State. However eleven northern states have adopted Sharia law for those who practice the Muslim religion.^[37]

Muslim states with blended sources of law: Muslim countries including Pakistan, Indonesia, Afghanistan, Egypt, Sudan, Morocco and Malaysia have legal systems strongly influenced by Sharia, but also cede ultimate authority to their constitutions and the rule of law. These countries conduct democratic elections, although some are also under the influence of authoritarian leaders. In these countries, politicians and jurists make law, rather than religious scholars. Most of these countries have modernized their laws and now have legal systems with significant differences when compared to classical Sharia.^[38]

Muslim states using classical Sharia: Saudi Arabia and some of the Gulf states do not have constitutions or legislatures. Their rulers have limited authority to change laws, since they are based on Sharia as it is interpreted by their religious scholars. Iran shares some of these characteristics, but also has a parliament that legislates in a manner consistent with Sharia.^[39]

Factors influencing the modern role of Sharia

Against the backdrop of differing religious sects, scholarship, classical schools of thought, and governmental implementations, the following forces are at work influencing future developments in Sharia law.

Rapid exchange of cultures and ideas

Around the world, Muslims are becoming more connected by the Internet and modern communications. This is leading to wider exchanges of ideas and cultures. Reactionary and fundamentalist movements are unlikely to halt this trend, as the Sharia itself defends the right to privacy within the home.^[40]

Schools of thought

Legal scholar L. Ali Khan claims that "the concept of Sharia has been thoroughly confused in legal and common literature. For some Muslims, Sharia consists of the Qur'an and Sunnah. For others, it also includes classical fiqh. Most encyclopedias define Sharia as law based upon the Qur'an, the Sunnah, and classical fiqh derived from consensus (ijma) and analogy (qiyas). This definition of Sharia lumps together the revealed with the unrevealed. This blending of sources has created a muddled assumption that scholarly interpretations are as sacred and beyond revision as are the Qur'an and the Sunnah. The Qur'an and the Sunnah constitute the immutable Basic Code, which should be kept separate from ever-evolving interpretive law (fiqh). This analytical separation between the Basic Code and fiqh is necessary to dissipate confusion around the term Sharia."^[41]

Revival of the religion

Simultaneously with liberalizing and modernizing forces, trends towards fundamentalism and movements for Islamic political power are also taking place. There has been a growing religious revival in Islam, beginning in the eighteenth century and continuing today. This movement has expressed itself in various forms ranging from wars to efforts towards improving education.^[42]

A return to traditional views of Sharia: There is a long-running worldwide movement underway by Muslims towards a better understanding and practice of their religion. Encouraged by their scholars and imams, Muslims have moved away from local customs and culture, and towards more universally accepted views of Islam. This movement towards traditional religious values served to help Muslims cope with the effects of European colonization. It also inspired modernist movements and the formation of new governments.^[43]

The Islamist movement: Since the 1970s, the Islamist movements have become prominent; their goals are the establishment of Islamic states and Sharia within their own borders, their means are political in nature. The Islamist power base is the millions of poor, particularly urban poor moving into the cities from the countryside. They are not international in nature (one exception being the Muslim Brotherhood). Their rhetoric opposes western culture and western power.^[44] Political groups wishing to return to more traditional Islamic values are the source of threat to Turkey's secular government.^[44] These movements can be considered neo-Sharism.^[45]

The Fundamentalist movement: Fundamentalists, wishing to return to basic religious values and law, have in some instances imposed harsh Sharia punishments for crimes, curtailed civil rights, and violated human rights. These movements are most active in areas of the world where there was contact with Western colonial powers.^[46]

Extremism: Extremists have used the Qur'an and their own particular version of Sharia^[47] to justify acts of war and terror against Western individuals and governments, and also against other Muslims believed to have Western sympathies.^[48] Friction between the West and Islam, particularly with regard to the Palestinian question, continues to fuel this conflict.^[49]

Immutability of God's will

Although there are many different interpretations of Sharia, and differing perspectives on each interpretation, there is consensus among Muslims that Sharia is a reflection of God's will for humankind. Sharia must therefore be, in its purest sense, perfect and unchanging.^[50] The evolution or refinement of Sharia is an effort to more perfectly reflect God's will.^[51]

Confusion between Sharia and customary law

According to Jan Michiel Otto, Professor of Law and Governance in Developing Countries at Leiden University, "Anthropological research shows that people in local communities often do not distinguish clearly whether and to what extent their norms and practices are based on local tradition, tribal custom, or religion. Those who adhere to a confrontational view of sharia tend to ascribe many undesirable practices to sharia and religion overlooking custom and culture, even if high ranking religious authorities have stated the opposite." Professor Otto's analysis appears in a paper commissioned by the Netherlands Foreign Ministry.^[52]

Characteristics

Origins

According to Muslims, Sharia law is founded on the words of Allah as revealed in the Qur'an, and traditions gathered from the life of the Prophet Muhammad. Muhammad was born ca. 570 CE in Mecca, a trading city in the Arabian desert. In addition to being a center of trade on the caravan routes, Mecca was a place of pilgrimage for Arabs of many beliefs.^[53] The focus of religion in Mecca was the Ka'aba, a stone building believed to have been built by Adam at the beginning of time, and rebuilt by the Prophet Abraham and his son Ishmael.^[54]

Mecca was inhabited by the Quraysh, a mostly pagan tribe with some Jews and Christians among them. Muhammad was orphaned at an early age, and came under the protection of an uncle. He grew up to become a trader and married his employer, a prosperous merchant named Khadija.^[55] It was in middle age that Muhammad began to speak of revelations received from Allah through the angel Gabriel. Muhammad told others of his revelations, and attracted followers who transcribed them onto available materials.^[56] Over the twenty three years from his first revelation until his death, Islam became the dominant force in the Arabian peninsula, and a serious challenge to the Byzantine and Sasanian empires.^[57] After Muhammad's death, the revelations were collected and organized into the Qur'an, and accounts of his life eventually formed the basis for the Sunnah.

In pre-Islamic Arabia, bonds of common ancestry formed the basis for tribal association.^[58] The advent of Islam brought the tribes together under a single religion. As Islam is not just a religion, but also a complete way of life, a new common basis of law and personal behavior (Sharia) began to take shape.^[59]

Sharia continued to undergo fundamental changes, beginning with the reigns of caliphs Abu Bakr (632–34) and Umar (634–44), during which time many questions were brought to the attention of Muhammad's closest comrades for consultation.^[60] During the reign of Muawiya b. Abu Sufyan ibn Harb, ca. 662 CE, Islam undertook an urban transformation, raising questions not originally covered by Islamic law.^[60] Since then, changes in Islamic society have played an ongoing role in developing Sharia, which branches out into Fiqh and Qanun respectively.

Among the Muslims, tribal laws were adapted to conform to Sharia "for they could not form part of the tribal law unless and until they were generally accepted as such."^[58] Additionally, Noel James Coulson, Lecturer in Islamic law of the University of London, states that "to the tribe as a whole belonged the power to determine the standards by which its members should live. But here the tribe is conceived not merely as the group of its present representatives but as a historical entity embracing past, present, and future generations."^[58] So, while "each and every law must be rooted in either the Qur'an or the Sunnah,"^[61] without contradiction, tribal life brought about a sense of participation. Such participation was further reinforced by Muhammad who stated, "My community will

never agree in error".^[61]

Fiqh

Arabic
فقه
Transliteration
Fiqh
Translation
Islamic jurisprudence

The formative period of *fiqh* stretches back to the time of the early Muslim communities. In this period, jurists were more concerned with pragmatic issues of authority and teaching than with theory.^[62] Progress in theory happened with the coming of the early Muslim jurist Muhammad ibn Idris ash-Shafi'i (767-820), who laid down the basic principles of Islamic jurisprudence in his book *Al-Risala*. The book details the four roots of law (Qur'an, Sunnah, *ijma*, and *qiyas*) while specifying that the primary Islamic texts (the Qur'an and the *hadith*) be understood according to objective rules of interpretation derived from careful study of the Arabic language.^[63]

A number of important legal concepts and institutions were developed by Islamic jurists during the classical period of Islam, known as the Islamic Golden Age, dated from the 7th to 13th centuries.^{[64] [65] [66] [64]}

Categories of human behavior

Fiqh classifies behavior into the following types or grades: fard (obligatory), mustahabb (recommended), mubah (neutral), makruh (discouraged), and haraam (forbidden). Every human action belongs in one of these five categories.^[67]

Actions in the fard category are those required of all Muslims. They include the five daily prayers, fasting, articles of faith, obligatory charity, and the hajj pilgrimage to Mecca.^[67]

The mustahabb category includes proper behavior in matters such as marriage, funeral rites and family life. As such, it covers many of the same areas as civil law in the West. Sharia courts attempt to reconcile parties to disputes in this area using the recommended behavior as their guide. A person whose behavior is not mustahabb can be ruled against by the judge.^[68]

All behavior which is neither discouraged nor recommended, neither forbidden nor required is of the Mubah; it is permissible.^[67]

Makruh behavior, while it is not sinful of itself, is considered undesirable among Muslims. It may also make a Muslim liable to criminal penalties under certain circumstances.^[68]

Haraam behavior is explicitly forbidden. It is both sinful and criminal. It includes all actions expressly forbidden in the Qur'an. Certain Muslim dietary and clothing restrictions also fall into this category.^[67]

The recommended, permissible and discouraged categories are drawn largely from accounts of the life of the Islamic Prophet Muhammad. To say a behavior is sunnah is to say it is recommended as an example from the life and sayings of Muhammad. These categories form the basis for proper behavior in matters such as courtesy and manners, interpersonal relations, generosity, personal habits and hygiene.^[67]

Topics of Islamic law

Sharia law can be organized in different ways:

Sharia can be divided into five main branches:

1. ibadah (ritual worship)
2. mu'amalat (transactions and contracts)
3. adab (morals and manners),
4. i'tiqadat (beliefs)
5. 'uqubat (punishments).

"Reliance of the Traveller", an English translation of a fourteenth century CE reference on the Shafi'i school of fiqh written by Ahmad ibn Naqib al-Misri, organizes Sharia law into the following topics:

1. Purification
2. Prayer
3. The Funeral Prayer
4. The Poor Tax
5. Fasting
6. The Pilgrimage
7. Trade
8. Inheritance
9. Marriage
10. Divorce
11. Justice

In some areas, there are substantial differences in the law between different schools of fiqh, countries, cultures and schools of thought.

Purification

In Islam, purification has a spiritual dimension and a physical one. Muslims believe that certain human activities and contact with impure animals and substances cause impurity. Classic Islamic law details how to recognize impurity, and how to remedy it. Muslims use water for purification in most circumstances, although earth can also be used under certain conditions. Before prayer or other religious rituals, Muslims must clean themselves in a prescribed manner. The manner of cleansing, either wudhu or ghusl, depend on the circumstances. Muslims' cleaning of dishes, clothing and homes are all done in accordance with stated laws.^{[69] [70]}

Prayer

Muslims are enjoined to pray five times each day, with certain exceptions. These obligatory prayers, salat, are performed during prescribed periods of the day, and most can be performed either in groups or by oneself. There are also optional prayers which can be performed, as well as special prayers for certain seasons, days and events. Muslims must turn to face the Kaaba in Mecca when they pray, and they must be purified in order for their prayers to be accepted. Personal, informal prayer and invocation is practiced as well. Classic Islamic law details many aspects of the act of prayer, including who can pray, when to pray, how to pray, and where to pray.^{[71] [72]}

Funeral prayer

Muslims are encouraged to visit those among them who are sick and dying. Dying Muslims are reminded of God's mercy, and the value of prayer, by those who visit them. In turn, the visitors are reminded of their mortality, and the transient nature of life. Upon death, the Muslim will be washed and shrouded in clean, white cloth. A special prayer, Janazah, is performed for the deceased, preferably by the assembled Muslim community. The body is taken to a place which has ground set aside for the burial of Muslims. The grave is dug perpendicular to the direction of Mecca,

and the body is lowered into the grave to rest on its side, with the face turned towards Mecca. Classic Islamic law details visitation of the ill, preparation of the dead for burial, the funeral prayer and the manner in which the Muslim is buried.^[73]

Taxes

The Quran states all Muslims, employed or self-employed, must pay taxes to their Government. The Qur'an mentions it in the following verse: **Know that whatever of a thing you acquire, a fifth of it is for Allah, for the Messenger, for the near relative, and the orphans, the needy, and the wayfarer...(8:41)** The word 'Khums' is used, literally means 'one-fifth or 20%.' In Islamic legal terminology, it means 'one-fifth of certain items which a person acquires as wealth, and which must be paid as taxes.' Income tax for individuals is set at 20% and Corporate tax is set at 20% tax on profits.^[74] Tax on goods and services such as Value Added Tax and Sales Tax is forbidden in Islam. Property tax, Council Tax, Inheritance Tax and Capital Gains Tax are permitted.^[75]

Other taxes

All Muslims who live above the subsistence level must pay an annual poor tax, known as *zakat*. In the modern sense, this would be Islam's equivalent to US Social Security or UK National Insurance. This is not charity, but rather an obligation owed by the Muslim to the poor of the community. The amount is calculated based on the wealth of the Muslim paying the tax, not their income. The base rate of taxation is 2.5 percent, but it varies depending on the type of wealth being assessed. Wealth includes savings, jewelry and land. Classic Islamic law details the tax, how it is assessed, its collection, and its distribution.^{[76] [77]}

Fasting

During the Islamic month of Ramadan, Muslims abstain from food, drink, sex, between dawn and sunset. Exceptions to this obligation are made for the young, the infirm, and women during their periods of menstruation. During Ramadan, the daylight hours will often begin and end with a large meal. After dinner, many Muslims participate in special communal prayers held during Ramadan. The end of Ramadan fasting is celebrated with special prayers, gatherings of family and friends, and specially prepared meals. Muslims may also fast on other special days of the year, and to make up for missed days of fasting. Classic Islamic law details the exact definition of the fast, the times of fasting, how a fast may be broken, who must fast, and permitted exceptions to the fast.^{[78] [79]}

Pilgrimage

At least once in each Muslim's lifetime, they must attempt a visit to the Holy Places of Islam located in Mecca, Saudi Arabia. The focus of this journey is the Kaaba, a small rectangular building around which a huge mosque has been built. This pilgrimage, known as the Hajj, begins two months after Ramadan each year. Dressed in symbolically simple clothing, Muslim pilgrims circle the Kaaba seven times, often followed by a drink from a special stream. Next, a symbolic search for water is performed by travelling back and forth between two nearby peaks. On the eighth day of the month, the pilgrims travel to Mina in the desert and spend the night in tents. The following day, over two million Muslims gather on the slopes of Mount Arafat, where the afternoon is spent in prayer. The Feast of Sacrifice, celebrated by Muslims worldwide, is performed by pilgrims in Mina the next day, and includes the slaughter of an animal. Finally, the pilgrims perform a ritual Stoning of the Devil by tossing pebbles at three pillars. Classic Islamic law details the manner in which the pilgrim dresses, behaves, arrives, departs and performs each of these rituals.^[80]
^[81]

Trade

Islamic law recognizes private and community property, as well as overlapping forms of entitlement for charitable purposes, known as waqf or trusts. Under Sharia law, however, ownership of all property ultimately rests with God; while individual property rights are upheld, there is a corresponding obligation to share, particularly with those in need.^[82] The laws of contract and obligation are also formed around this egalitarian Qur'anic requirement, prohibiting unequal exchanges or unfair advantage in trade. On this basis, the charging of interest on loans is prohibited, as are other transactions in which risks are borne disproportionately to the potential returns between parties to a transaction. The limits on personal liability afforded by incorporation are seen as a form of usury in this sense, as is insurance. All these inequities in risk and reward between parties to a transaction, known collectively as *riba*, are prohibited.^[83] For this reason, Islamic banking and financing are partnerships between customers and institutions, where risk and reward are distributed equitably. Partnerships, rather than corporations, are the key concept in collective Islamic business. Financing and investments are accomplished in this manner, as purchases and resales, with equity shifting over time between the institution and the client as payments are made or returns are recognized. Conversely, no individual is shielded from the consequences of poor judgement or bad timing.^[84] The Islamic financial and investment models have taken root in the West and begun to flourish, even as the financial underpinnings of large Western corporations collapse under the weight of unevenly distributed risks.^[85] ^[86] Classic Islamic law details the manner of contracting, the types of transactions, the assignment of liability and reward, and the responsibilities of the parties in Islamic trade.^[87]

Inheritance

The rules of inheritance under Sharia law are intricate, and a female's portion is generally half the amount a male would receive under the same circumstances.^[88] Up to one third of a person's property may be distributed as bequests, or *wasiyya*, upon their death. After debts are settled, the remainder of the estate will be divided among the family of the deceased according to the rules of inheritance, or *irth*.^[89] In Islamic societies, inherited wealth and property do not easily accumulate to, or remain in, certain families. Large concentrations of property will be divided into smaller portions over time among male inheritors. Property will tend to flow to other families as female inheritors take their shares into their marriages.^[90] Classic Islamic law details the division of property, the shares family members are entitled to, adjustments and redistributions in the shares, orders of precedence among inheritors, and substitution among inheritors.^[91]

Marriage

The laws governing Islamic marriage vary substantially between sects, schools, states and cultures. The following outline is general in nature.

There are two types of marriage mentioned in the Qur'an: **nikah** and **nikah mut'ah**. The first is more common; it aims to be permanent, but can be terminated by the husband in the *talaq* process, or by the wife seeking divorce using *khul'*.

In **nikah** the couples inherit from each other. A dowry known as *mahr* is given to the bride, a legal contract is signed when entering the marriage, and the husband must pay for the wife's expenses. For the contract to be valid there must be two witnesses under Sunni jurisprudence. There is no witness requirement for Shia contracts. In Sunni jurisprudence, the contract is void if there is a determined divorce date in the *nikah*, whereas, in Shia jurisprudence, *nikah* contracts with determined divorce dates are transformed into *nikah mut'ah*.

Under Shia jurisprudence, **nikah mut'ah** is the second form of marriage. It is "Haram" in sunni islam according to muslim scholars. it is a fixed-term marriage, which is a marriage with a preset duration, after which the marriage is automatically dissolved. Traditionally the couple does not inherit from each other, the man usually is not responsible for the economic welfare of the woman, and she usually may leave her home at her own discretion. *Nikah mut'ah* does not count towards the maximum of four wives the Quran allows to Muslim men. The woman is still given her

mahr dowry, and the woman must still observe the iddah, a period of five months at the end of the marriage where she is not permitted to remarry in the case she may have become pregnant before the divorce took place. This maintains the proper lineage of children. There is controversy about the Islamic legality of this type of marriage since the Prophet Muhammad is said by Sunnis to have prohibited the practice after having temporarily allowed it.

A third type of marriage contract, known as **misyar**, is emerging in Sunni Islam. This marriage is not for a fixed period of time like nikah mut'ah, but is similar in other respects including lack of inheritance, lack of financial responsibility and freedom of movement on the part of the wife. In misyar marriage, the couple need not cohabit. There is also controversy regarding this form of marriage.

Muslims do, on occasion, marry according to **urf**, or local custom, without following the requirements set forth in Sharia law. This may be done for various reasons, such as an inability of the couple to obtain permission from the bride's guardian. In these cases, they may find their marriage to be unrecognized at a later point, and have difficulty availing themselves of legal remedies under Sharia.

Requirements for Islamic Marriages:

- The man who is not currently a fornicator may marry only a woman who is not currently a fornicatress or a chaste woman from the people of the Book.
- The woman who is not currently a fornicatress may marry only a man who is not currently a fornicator.
- The fornicator may marry only a fornicatress.
- The Muslim woman may marry only a Muslim man.
- Permission for a virgin female to marry must be given by her guardian, usually her father.
- Any Muslim woman may demand her guardian marry her to a Muslim male, provided he is suitable. If the guardian refuses, a judge will effect the marriage.^[92]
- The father, or in some cases the paternal grandfather, may choose a suitable partner for a virgin girl.^[93]
- The guardian may not marry the divorced woman or the widow if she did not ask to be married.
- It is obligatory for a man to give bride wealth (gifts) to the woman he marries – "Do not marry unless you give your wife something that is her right."^[94]

Polygamy

In Sharia law, a Muslim man is permitted up to four wives under the rules for nikah. All wives are entitled to separate living quarters at the behest of the husband and if possible. All should receive equal attention, support, treatment and inheritance. In modern practice, it is uncommon for a Muslim man to have more than one wife; if he does so, it is often due to the infertility of his first wife. The practice of polygamy has been regulated or abolished in some Muslim states.^{[95] [96]}

Historically, Muslim rulers have often remarried the wives of their conquered opponents in order to gain ties of kinship with their new subjects. In these cases, the wives of leaders have sometimes numbered in the tens or even hundreds. In Ottoman Turkey, the practice also filtered down to the aristocracy. This became the basis for the Western image of a powerful, wealthy Muslim with a vast harem.^[97]

Divorce

The laws governing divorce vary substantially between sects, schools, states and cultures. The following outline is general in nature.

A marriage can be terminated by the husband in the **talaq** process, or by the wife seeking divorce through **khul'**. Under **faskh** a marriage may be annulled or terminated by the qadi judge.

Men have the right of unilateral divorce under classical Sharia. A Sunni Muslim divorce is effective when the man tells his wife that he is divorcing her, however a Shia divorce also requires four witnesses.^[98] Upon divorce, the husband must pay the wife any delayed component of the dower. If a man divorces his wife in this manner three times, he may not re-marry her unless she first marries, and is subsequently divorced from, another man. Only then, and only if the divorce from the second husband is not intended as a means to re-marry her first husband, may the first husband and the woman re-marry.^[Qur'an 2:230]

In practice, unilateral divorce is only common in a few areas of the Islamic world. It is much more common for divorces to be accomplished by mutual consent.^[98]

If the wife asks for a divorce and the husband refuses, the wife has a right, under classical Sharia, to divorce by **khul'**. Although this right is not recognized everywhere in Islam, it is becoming more common. In this scenario, the qadi judge will effect the divorce for the wife, and she may be required to return part, or all, of her dowry.^[98]

Under **faskh**, a qadi judge can end or annul a marriage.^[98] Apostasy, on the part of the husband or wife, ends a Muslim marriage in this way. Hardship or suffering on the part of the wife in a marriage may also be remedied in this way. This procedure is also used to annul a marriage in which one of the parties has a serious disability.^[99]

Except in the case of a **khul'** divorce initiated by a woman, the divorced wife generally keeps her dowry from when she was married. A divorced woman is given child support until the age of weaning. The mother is usually granted custody of the child.^[100] If the couple has divorced fewer than three times (meaning it is not a final divorce) the wife also receives spousal support for three menstrual cycles after the divorce, until it can be determined whether she is pregnant. Even in a threefold divorce, a pregnant wife will be supported during the waiting period, and the child will be supported afterwards.^[101]

Child custody

In a divorce, the child will stay with its mother until it is weaned,^[102] or until the age of discernment, when the child may choose whom it lives with. The age of discernment is 7 or 8 years.^[102]

Justice

The concept of justice embodied in Sharia is different from that of secular Western law.^[103] Muslims believe the Sharia law has been revealed by God. In Islam, the laws that govern human affairs are just one facet of a universal set of laws governing nature itself. Violations of Islamic law are offenses against God and nature, including one's own human nature. Crime in Islam is sin. Whatever crime is committed, whatever punishment is prescribed for that crime in this world, one must ultimately answer to God on the Day of Judgement.^[103]

Legal and court proceedings

Sharia judicial proceedings have significant differences with other legal traditions, including those in both common law and civil law. Sharia courts traditionally do not rely on lawyers; plaintiffs and defendants represent themselves. Trials are conducted solely by the judge, and there is no jury system (as is found in civil law in countries such as Russia and France). There is no pre-trial discovery process, and no cross-examination of witnesses. Unlike common law, judges' verdicts do not set binding precedents^{[104] [105] [106]} under the principle of *stare decisis*,^[107] and unlike civil law, Sharia does not utilize formally codified statutes^[108] (these were first introduced only in the late 19th century during the decline of the Ottoman Empire, cf. *mecelle*). Instead of precedents and codes, Sharia relies on jurists' manuals and collections of non-binding legal opinions, or *hadith*, (*ulama*, particularly a *mufti*); these can be

made binding for a particular case at the discretion of a judge.

There are three categories of crimes in Sharia law, *qisas*, *hudud*, and *tazir*. *Qisas* involves personal injury and has several categories: intentional murder (first-degree), quasi-intentional murder (second-degree), unintentional murder (manslaughter), intentional battery, and unintentional battery. A *qisas* offense is treated as a civil case rather than an actual criminal case. If the accused party is found guilty, the victim (or in death, victim's family) determines the punishment, choosing either retribution (*qesas-e-nafs*), which means execution in the case of intentional murder, imprisonment, and in some cases of intentional battery, the amputation of the limb that was lost; or compensation (*diyya*) for the loss of life/limb/injury. The Sharia judge (or in modern Sharia systems like Iran or Iraq, the state) can convict for and legally punish only *qesas* crimes on his own authority. However, the state itself may prosecute for crimes committed alongside the *qisas* offense. If the victim's family pardons the criminal, in addition to the Sharia punishment he would normally receive a *tazir* prison sentence (such as 10–20 years in prison) for crimes such as "intentional loss of life", "tazir assault and battery" "disturbance of the peace", and so forth.

The second category of crimes is *hudud* (or *hadd*). *Hadd* crimes are crimes whose penalties were laid down by the Quran, and are considered to be "claims against God". *Hadd* crimes are: adultery (*zina*): includes adultery, fornication, incest/pedophilia, and rape, pimping; sodomy/lesbianism (or sodomy rape); *hiraba* (uniquely known as *moharebeh/mofsed-e-filarz* in Iran) waging war against God and society: armed robbery, terrorism, armed violence; theft; use of intoxicants (alcohol/drug use); apostasy/blasphemy; and defamation (meaning false accusation of any of these things). These cases not meant as actual punishments, but as deterrents, to simply to set an example to the general public, and to prosecute the most flagrant violations. *Hudud* is meant as a deterrent, not a general punishment. The process is extremely exacting, a minimum of two witnesses are required to corroborate the evidence, and in the case of sex crimes, four witnesses, thus making it in most cases hard, if not impossible, to receive the violent punishments. Circumstantial evidence is not allowed to be part of the testimony. When one does receive them, it usually would occur in a case where the offense was so obvious, obscene or flagrant that it is impossible to not be convicted.

Very often, Westerners mistake *hudud* punishment as punishment regularly given under Sharia law, but that is inaccurate; *hudud* punishments are only meant as a deterrent for rare cases. Most punishments are given under *tazir* rules.

As a result most countries do not prosecute *hudud* offenses (the exceptions being Saudi Arabia and Afghanistan under the Taliban, which regularly managed to prosecute offenses in the *hudud* manner) Almost all other countries, such as Iran, would usually punish the same offense as a *tazir* crime.

The third category of crimes is *tazir*. It covers all other offenses not mentioned already. It is a "claim of the state" and it receives a discretionary sentence. The punishment may not be more severe than the punishment of a *hudud* crime. It can range, depending on the crime or circumstances, from death to imprisonment to even community service. Circumstantial evidence is allowed, and most countries prosecute their crimes as *tazir* crimes, due to the flexibility of the evidence-gathering and sentencing. The punishment is meant to fit the crime. For example, a rapist may not be able to be prosecuted for *zina*, but would still be convicted of *tazir* rape, or in theft, they would be found guilty of *tazir* theft and given prison time rather than amputation. A murderer would still spend time in prison if he had received the forgiveness of the family. The heavy *hudud* penalties of amputation and stoning are not applied (although some countries do use corporal punishment). Most modern countries such as Iran have a fixed penal code that regulate what sentences should be given depending on the crime and circumstances of the case.

Sharia courts' rules of evidence also maintain a distinctive custom of prioritizing oral testimony.^[109] ^[110] A confession, an oath, or the oral testimony of a witness are the main evidence admissible in a *hudud* case, written evidence is only admissible when deemed reliable by the judge, i.e. notaries.^[111] Testimony must be from at least two witnesses, and preferably free Muslim male witnesses, who are not related parties and who are of sound mind and reliable character; testimony to establish the crime of adultery, or *zina* must be from **four** direct witnesses.^[112] Forensic evidence (i.e. fingerprints, ballistics, blood samples, DNA etc.) and other circumstantial evidence is

likewise rejected in hudud cases in favor of eyewitnesses, a practice which can cause severe difficulties for women plaintiffs in rape cases.^[113] Testimony from women is given only half the weight of men, and testimony from non-Muslims may be excluded altogether (if against a Muslim). Non-Muslim minorities, however, could and did use Sharia courts, even amongst themselves.^[114]

Sharia's rules on written evidence necessarily diminish the utility of written contracts to structure economic relations, and Timur Kuran has noted the predominance of a "largely oral contracting culture" in pre-modern Islamic society.^[115]

In lieu of written evidence, oaths are accorded much greater weight; rather than being used simply to guarantee the truth of ensuing testimony, they are themselves used as evidence. Plaintiffs lacking other evidence to support their claims may demand that defendants take an oath swearing their innocence, refusal thereof can result in a verdict for the plaintiff.^[116] Taking an oath for Muslims can be a grave act; one study of courts in Morocco found that lying litigants would often "maintain their testimony 'right up to the moment of oath-taking and then to stop, refuse the oath, and surrender the case."^[117] Accordingly, defendants are not routinely required to swear before testifying, which would risk casually profaning the Qur'an should the defendant commit perjury,^[117] instead oaths are a solemn procedure performed as a final part of the evidence process.

In some countries, sharia courts, with their tradition of *pro se* representation, simple rules of evidence, and absence of appeals courts, prosecutors, cross examination, complex documentary evidence and discovery proceedings, juries and voir dire proceedings, circumstantial evidence, forensics, case law, standardized codes, exclusionary rules, and most of the other infrastructure of civil and common law court systems, have as a result, comparatively informal and streamlined proceedings. This can provide significant increases in speed and efficiency, and can be an advantage in jurisdictions where the general court system is slow or corrupt, and where few litigants can afford lawyers. In Nigeria, where imposition of Sharia was highly controversial, even Nigeria's justice minister was compelled to admit that in Sharia courts, "if a man owes you money, you can get paid in the evening. Whereas in the regular courts, you can sit in court for ten years and get no justice."^[118] Other systems, such as Iran, Iraq, and Pakistan, use a civil Sharia code similar to western countries, and do have defense attorneys, prosecutors, and appeals courts. They also have a Supreme Court, and a definite civil law style penal code, but are still heavily based on the informality and simplicity of a "pure" Sharia court, and trials often still take a matter of hours or sometimes days.

Penalties

The punishment depends on whether the criminal was convicted of qesas, hudud, or tazir.

In a tazir crime, the penalty would be usually a prison sentence, corporal punishment in some countries, or a execution in a more serious case (such as a case that was not prosecuted as hudud, like rape/drug trafficking). Since hudud crimes are extremely hard to punish, this is the usual route that would be taken. Stoning and amputation would certainly not be carried out in a tazir sentence, and the punishment would not be fixed, but discretionary. Most countries have a civil code that regulates the penalties that should be received in a tazir crime, such as a death sentence in the case of drug trafficking, aggravated rape, or prison time in the case of other offenses.

In the rarest of rare case (more common in Saudi Arabia or Afghanistan under Taliban rule) when a person is convicted of a hudud crime, the punishment is much harsher. In accordance with the Qur'an and several hadith, theft is punished by imprisonment or amputation of hands.^[119] Several requirements are in place for the amputation of hands, they are:

- There must have been criminal intent to take private (not common) property.
- The theft must not have been the product of hunger, necessity, or duress.
- The goods stolen must: be over a minimum value, not haraam, and not owned by the thief's family.
- Goods must have been taken from custody (i.e. not in a public place).
- There must be reliable witnesses.

All of these must be met under the scrutiny of judicial authority.^{[Qur'an 5:38][120]}

In accordance with hadith, stoning to death is the penalty for married men and women who commit adultery. In addition, there are several conditions related to the person who commits it that must be met. One of the difficult ones is that the punishment cannot be enforced unless there is a confession of the person, or four male eyewitnesses who each saw the act being committed. All of these must be met under the scrutiny of judicial authority^[121] For unmarried men and women, the punishment prescribed in the Qur'an and hadith is 100 lashes.^[122]

The "four witness" standard comes from the Qur'an itself, a revelation Muhammad announced in response to accusations of adultery leveled at his wife, Aisha: "Why did they not produce four witnesses? Since they produce not witnesses, they verily are liars in the sight of Allah."^[Qur'an 24:13]

Punishments are authorized by other passages in the Qur'an and *hadiths* for certain crimes (e.g., extramarital sex, adultery), and are employed by some as rationale for extra-legal punitive action while others disagree:

"The woman and the man guilty of adultery or fornication—flog each of them with hundred stripes: Let no compassion move you in their case, in a matter prescribed by God, if ye believe in God and the last day."^[Qur'an 24:2]
"Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils)."^[Qur'an 17:32]

Leaving Islam/Apostasy

In most interpretations of Sharia, conversion by Muslims to other religions or becoming non-religious, is strictly forbidden and is termed apostasy. Non-Muslims, however, are allowed to convert into Islam.^[123] Muslim theology equates apostasy to treason, and in most interpretations of Sharia, the penalty for apostasy is death. During the time of Muhammad, treason and apostasy were considered one and the same; nowadays, many scholars differentiate between treason and apostasy, believing that the punishment for apostasy is not death, while the punishment for treason is death.

The accusation of apostasy may be used against non-conventional interpretations of the Qur'an. The severe persecution of the famous expert in Arabic literature, Nasr Abu Zayd, is an example of this.^[124] Similar accusations and persecutions were famously leveled against the author Salman Rushdie.^[125]

Dietary

Islamic law does not present a comprehensive list of pure foods and drinks. However, it prohibits:^[126]

- Swine, blood, the meat of dead animals and animals slaughtered in the name of someone other than God.
- Slaughtering an animal in any other way except the prescribed manner of *tazkiyah* (cleansing) by taking God's name, which involves cutting the throat of the animal and draining the blood. Slaughtering with a blunt blade or physically ripping out the esophagus is strictly forbidden. Modern methods of slaughter like the captive bolt stunning and electrocuting are also prohibited. Causing the animal excessive pain during slaughter is a sin.^[127]
- Intoxicants

The prohibition of dead meat is not applicable to fish and locusts.^{[128] [129] [130]} Also hadith literature prohibits beasts having sharp canine teeth, birds having claws and talons in their feet,^[131] *Jallalah* (animals whose meat carries a stink in it because they feed on filth),^[132] tamed donkeys,^[133] and any piece cut from a living animal.^{[126] [134]}

Liquor and gambling

Liquor and gambling are expressly prohibited in the Qur'an, and Sharia law.

Muhammad is reported to have said: "He who plays with dice is like the one who handles the flesh and blood of swine."

Abd-Allah ibn Amr reported that Muhammad prohibited all games of chance and card playing that caused financial gain or loss.^[135]

Customs and behaviour

Practitioners of Islam are generally taught to follow some specific customs in their daily lives. Most of these customs can be traced back to Abrahamic traditions in Pre-Islamic Arabian society.^[136] Due to Muhammad's sanction or tacit approval of such practices, these customs are considered to be Sunnah (practices of Muhammad as part of the religion) by the Ummah (Muslim nation). It includes customs like:

- Saying "*Bismillah*" (in the name of God) before eating and drinking.^[137]
- Using the right hand for drinking and eating.^[138]
- Saying "*As-Salaam Alaikum*" (peace be upon you) when meeting someone and answering with "*Wa 'alaikumus salam*" (and peace be upon you).^[139]
- Saying "*Alhamdulillah*" (all gratitude is for only God) when sneezing and responding with "*Yarhamukallah*" (God have mercy on you).^[140]
- Saying the "*Adhan*" (prayer call) in the right ear of a newborn and the *Iqama* in its left.
- In the sphere of hygiene, it includes:
 - Clipping the moustache
 - Cutting nails
 - Circumcising the male offspring^{[141] [142]}
 - Cleaning the nostrils, the mouth, and the teeth^[143] and
 - Cleaning the body after urination and defecation^[144]
- Abstention from sexual relations during the menstrual cycle and the puerperal discharge,^[Qur'an 2:222] and ceremonial bath after the menstrual cycle, and *Janabah* (seminal/ovular discharge or sexual intercourse).^{[Qur'an 4:43][Qur'an 5:6]}
- Burial rituals include funeral prayer^[145] of bathed^[146] and enshrouded body in coffin cloth^[147] and burying it in a grave.^[148]

Rituals

There are two festivals that are considered Sunnah.^{[148] [149]}

- Eid ul-Fitr
- Eid al-Adha

Rituals associated with these festivals:^[148]

- Sadaqah (charity) before Eid ul-Fitr prayer.^[150]
- The Prayer and the Sermon on Eid day.
- Takbirs (glorifying God) after every prayer in the days of *Tashriq* (Normally these days are considered to be the ones in which pilgrims stay at Mina once they return from Muzdalifah i.e. 10th, 11th, 12th, and 13th of Dhu al-Hijjah.)
- Sacrifice of unflawed, four legged grazing animal of appropriate age after the prayer of Eid al-Adha in the days of *Tashriq*.^[151]

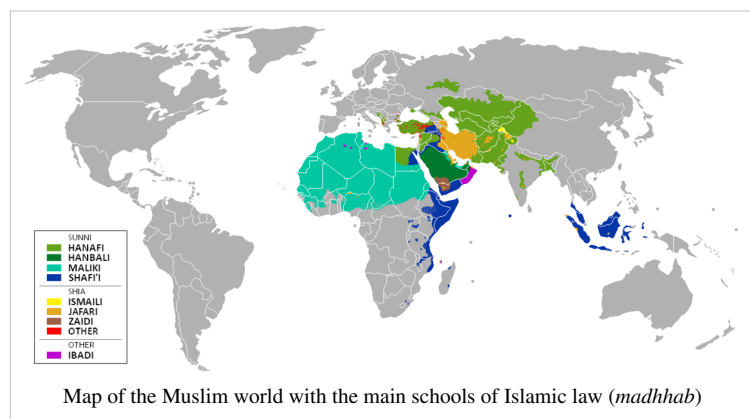
Dress codes

The Qur'an also places a dress code upon its followers. The rule for men has been ordained before the women: "say to the believing men to lower their gaze and preserve their modesty, it will make for greater purity for them and Allah is well aware of all that they do."^[Qur'an 24:30] Allah then says in the Qur'an, "And say to the believing women that they cast down their looks and guard their private parts and do not display their ornaments except what appears thereof, and let them wear their *khumūr* over their bosoms, and not display their ornaments except to their husbands..."^[24:31] All those men in whose presence a woman is not obliged to practise the dress code are known as her *mahrams*. Men have a more relaxed dress code: the body must be covered from knee to waist. However, under Sharia Law, women are required to cover all of their bodies except hands and face.^{[152] [153]} The rationale given for these rules is that men and women are not to be viewed as sexual objects. Men are required to keep their guard up and women to protect themselves. In theory, should either one fail, the other prevents the society from falling into *fitna* (temptation or discord).

There are many different opinions, however, as to whether the veil or headscarf is a real Qur'anic obligation. Some scholars such as Yusuf al-Qaradawi claim it is, while others, such as Mohammed Arkoun, Soheib Bencheikh, Abdoldjavad Falaturi, Jamal al Banna claim it isn't. However, the first group appears dominant:^[152] "*Jamal al Banna has been for a number of years one of the few mainstream Muslim scholars to argue that the Muslim headscarf, or hijab, is not an Islamic obligation.*"^[154]

Historical developments and contemporary issues

During the 19th century, the history of Islamic law took a sharp turn due to new challenges the Muslim world faced: the West had risen to a global power and colonized a large part of the world, including Muslim territories. In the Western world, societies changed from the agricultural to the industrial stage, new social and political ideas emerged, and social models slowly shifted from hierarchical towards egalitarian. The



Ottoman Empire and the rest of the Muslim world were in decline, and calls for reform became louder. In Muslim countries, codified state law started replacing the role of scholarly legal opinion. Western countries sometimes inspired, sometimes pressured, and sometimes forced Muslim states to change their laws. Secularist movements pushed for laws deviating from the opinions of the Islamic legal scholars. Islamic legal scholarship remained the sole authority for guidance in matters of rituals, worship, and spirituality, while they lost authority to the state in other areas. The Muslim community became divided into groups reacting differently to the change. This division persists until the present day (Brown 1996, Hallaq 2001, Ramadan 2005, Aslan 2006, Safi 2003, Nenezich 2006).

- **Secularists** believe that the law of the state should be based on secular principles, not on Islamic legal doctrines.
- **Traditionalists** believe that the law of the state should be based on the traditional legal schools. However, traditional legal views are considered unacceptable by some modern Muslims, especially in areas like women's rights or slavery.^[155]
- **Reformers** believe that new Islamic legal theories can produce modernized Islamic law^[156] and lead to acceptable opinions in areas such as women's rights.^[157] However, traditionalists believe that any departure from the legal teachings of the Qur'an as explained by the Prophet Muhammad and put into practice by him is an alien concept that cannot properly be attributed to "Islam".

Contemporary practice

There is tremendous variety in the interpretation and implementation of Islamic Law in Muslim societies today. Liberal movements within Islam have questioned the relevance and applicability of Sharia from a variety of perspectives; Islamic feminism brings multiple points of view to the discussion. Some of the largest Muslim countries, including Indonesia, Bangladesh and Pakistan, have largely secular constitutions and laws, with only a few Islamic Law provisions in family law. Turkey has a constitution that is officially strongly secular. India and the Philippines are the only countries in the world that have separate Muslim civil laws, wholly based on Sharia. In India, Muslim civil laws are framed by the Muslim Personal Law board while in the Philippines, it is framed by the *Code of Muslim Personal Laws*. However, the criminal laws in both the countries are uniform.

In September 2008, newspapers in the United Kingdom stated the government had "quietly sanctioned" the recognition of Sharia courts. This refers to situations where both sides in a legal dispute freely choose a Sharia court as a binding arbitrator rather than taking a matter before the official courts. The decision did not break new ground: the decisions of similar Jewish beth din court arbitrations have been recognized in England for over 100 years.^[158] Neither party can be forced into arbitration by a Sharia or a Jewish court.

Most countries of the Middle East and North Africa maintain a dual system of secular courts and religious courts, in which the religious courts mainly regulate marriage and inheritance. Saudi Arabia and Iran maintain religious courts for all aspects of jurisprudence, and the Mutaween (religious police) assert social compliance, while Somaliland, and Maldives adopted Sharia in legal aspects but with western style of judiciary system (Common law or civil law). Laws derived from Sharia are also applied in Afghanistan, Libya and Sudan. Sharia law is officially recognised by the justice system in Israel in matters of personal status of Muslims if they choose a Sharia court (e.g. marriage, divorce, guardianship). Judges' salaries are paid by the state.^[159] Lebanon also incorporates Sharia law for Muslims in family matters.^[160] Some states in northern Nigeria have reintroduced Sharia courts.^[161] In practice the new Sharia courts in Nigeria have most often meant the re-introduction of harsh punishments without respecting the much tougher rules of evidence and testimony. The punishments include amputation of one/both hands for theft and stoning for adultery.^[162]

Many, including the European Court of Human Rights, consider the punishments prescribed by Sharia in some countries to be barbaric and cruel. Islamic scholars argue that, if implemented properly, the punishments serve as a deterrent to crime.^[163] In international media, practices by countries applying Islamic law have fallen under considerable criticism at times. This is particularly the case when the sentence carried out is seen to greatly tilt away from established standards of international human rights. This is true for the application of the death penalty for the crimes of adultery, blasphemy, apostasy and homosexuality, amputations for the crime of theft, and flogging for fornication or public intoxication.^[164]

A bill proposed by lawmakers in the Indonesian province of Aceh would implement Sharia law for all non-Muslims, the armed forces and law enforcement officers, a local police official has announced. The news comes two months after the Deutsche Presse-Agentur warned of "Taliban-style Islamic police terrorizing Indonesia's Aceh".^[165] ^[166]
^[167]

Contemporary issues

Democracy

Further information: Islamic ethics, Islam and democracy, Shura, and Ijma

On the one hand, there is much common ground between Sharia and democracy: for example, both value electoral procedure.^[168] On the other hand, official institutions in democratic countries, such as the European Court of Human Rights, argue that Sharia is incompatible with a democratic state.

Legal scholar L. Ali Khan concludes "that constitutional orders founded on the principles of Sharia are fully compatible with democracy, provided that religious minorities are protected and the incumbent Islamic leadership remains committed to the right to recall".^{[169] [170]}

Western courts have criticized Sharia. In 1998 the Constitutional Court of Turkey banned and dissolved Turkey's Refah Party on the grounds that the "rules of sharia", which Refah sought to introduce, "were incompatible with the democratic regime," stating that "Democracy is the antithesis of sharia."

On appeal by Refah the European Court of Human Rights determined that "sharia is incompatible with the fundamental principles of democracy".^{[171] [172] [173]} Refah's Sharia based notion of a "plurality of legal systems, grounded on religion" was ruled to contravene the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was determined that it would "do away with the State's role as the guarantor of individual rights and freedoms" and "infringe the principle of non-discrimination between individuals as regards their enjoyment of public freedoms, which is one of the fundamental principles of democracy".^[174]

Human rights

Cairo Declaration on Human Rights in Islam

Several major, predominantly Muslim countries criticized the Universal Declaration of Human Rights (UDHR) for its perceived failure to take into account the cultural and religious context of non-Western countries. Iran claimed that the UDHR was "a secular understanding of the Judeo-Christian tradition", which could not be implemented by Muslims without trespassing the Islamic law. Therefore in 1990 the Organisation of the Islamic Conference, a group representing all Muslim majority nations, adopted the Cairo Declaration on Human Rights in Islam.

Ann Elizabeth Mayer points to notable absences from the Cairo Declaration: provisions for democratic principles, protection for religious freedom, freedom of association and freedom of the press, as well as equality in rights and equal protection under the law. Article 24 of the Cairo declaration states that "all the rights and freedoms stipulated in this Declaration are subject to the Islamic *shari'a*".^[175]

Professor H. Patrick Glenn asserts that the European concept of human rights developed in reaction to an entrenched hierarchy of class and privilege contrary to, and rejected by, Islam. As implemented in Sharia law, protection for the individual is defined in terms of *mutual obligation* rather than *human rights*. The concept of human rights, as applied in the European framework, is therefore unnecessary and potentially destructive to Islamic societies.^[176]

Many secularist, human rights, and leading organisations have criticized Islamic states' stance on human rights. In 2009, the journal *Free Inquiry* summarized this criticism in an editorial: "We are deeply concerned with the changes to the Universal Declaration of Human Rights by a coalition of Islamic states within the United Nations that wishes to prohibit any criticism of religion and would thus protect Islam's limited view of human rights. In view of the conditions inside the Islamic Republic of Iran, Egypt, Pakistan, Saudi Arabia, the Sudan, Syria, Bangladesh, Iraq, and Afghanistan, we should expect that at the top of their human rights agenda would be to rectify the legal inequality of women, the suppression of political dissent, the curtailment of free expression, the persecution of ethnic minorities and religious dissenters — in short, protecting their citizens from egregious human rights violations. Instead, they are worrying about protecting Islam."^[177]

Freedom of speech

Qadi 'Iyad argues that Sharia does not allow freedom of speech in such matters as criticism of Muhammad. Such criticism is blasphemy and punishable by death.

Slander, gossip, and backbiting, or "ghiba" is regarded as a major sin.^[178]

Homosexuality

Homosexual activity is illegal under Sharia; however, the prescribed penalties differ from one school of jurisprudence to another. For example, these Muslim-majority countries may impose the death penalty for sodomy and homosexual activities: Iran,^[179] Nigeria,^[180] Saudi Arabia,^[181] Somalia.^[182] In contrast, in some Muslim-majority countries such as Indonesia (outside of Aceh province),^[183] Jordan, Egypt and Iraq same-sex sexual acts are illegal but there is no specific penalty.^[184] In Turkey, homosexual acts in private between consenting individuals are legal.

Women

In terms of religious obligations, such as certain elements of prayer, payment of the *zakat* poor-tax, observance of the Ramadan fast, and the *Haji* pilgrimage, women are treated no differently from men. There are, however, some exceptions made in the case of prayers and fasting, as women are relieved from the duty of the five daily prayers or fasting during their menstruation.

There are no priests or clergy needed in order to perform rites and sacraments in Islam. The leader of prayer is known as an imam. Men can lead both men and women in prayer, but women do not traditionally lead men in prayer.^[185] In practice, it is much more common for men to be scholars than women, however in the early days of Islam, female scholars were much more common.^[186] Islam does not prohibit women from working, as it says "Treat your women well and be kind to them for they are your partners and committed helpers."^[187] Married women may seek employment although it is often thought in patriarchal societies that the woman's role as a wife and mother should have first priority.

Islam unequivocally allows both single and married women to own property in their own right.^[188] Islam grants women the right to inherit property from other family members, and these rights are detailed in the Qur'an. A woman's inheritance is different from a man's, both in quantity and attached obligations.^[Qur'an 4:12] For instance, a daughter's inheritance is usually half that of her brothers.^[Qur'an 4:11] Sharia law requires family members females or males to support each other as needed; compare female inheritance in Salic law. Men are fully obliged to financially maintain their household, whereas women are not; it is often said that even if the woman is a millionaire and he is poor, he is still obliged to spend on her. She is not obliged to share her wealth with her husband unless she does so out of kindness.

Islamic jurists have traditionally held that Muslim women may enter into marriage with only Muslim men,^[189] although some contemporary jurists question the basis of this restriction.^{[189] [190] [191]} On the other hand, the Qur'an allows a Muslim man to marry a chaste woman from the People of the Book, a term that includes Jews, Sabians, and Christians.^{[189] [192]} However, fiqh law has held that it is mukrah (reprehensible) for a Muslim man to marry a non-Muslim woman in a non-Muslim country.^[189]

In 2003 a Malaysian court ruled that, under Sharia law, a man may divorce his wife via text messaging as long as the message was clear and unequivocal.^[193]

The divorced wife always keeps her dowry from when she was married, and is given child support until the age of weaning. The mother is usually granted custody of the child.^[100] If the couple has divorced fewer than three times (meaning it is not a final divorce) the wife also receives spousal support for three menstrual cycles after the divorce, until it can be determined whether she is pregnant.^[101]

Women's rights

Status of women under Islamic law prior to the 19th century

Islamic law grants women some legal rights they did not have under Western legal systems until the 19th and 20th centuries.^[194] Noah Feldman, a Harvard University law professor, notes:

As for sexism, the common law long denied married women any property rights or indeed legal personality apart from their husbands. When the British applied their law to Muslims in place of Shariah, as they did in some colonies, the result was to strip married women of the property that Islamic law had always granted them — hardly progress toward equality of the sexes.^[195]

Status of women under Islamic law since the 19th century

Some argue that at this point in history the aforementioned exploration of freedom is no longer true — that is to say that whilst it is arguable that women had more extensive legal rights under Islamic law than they did under Western legal systems in the past, it is no longer true today.^[196]

Slavery and emancipation

The major juristic schools of Islam have traditionally accepted the institution of slavery. However, Islam has prescribed five ways to free slaves, has severely chastised those who enslave free people, and regulated the slave trade. The source of slaves was restricted to war in preference to killing whole tribes en masse, as was the tradition at the time. Slaves also had more rights under Islam as an owner could not mistreat them. Many slaves were freed after a certain period of time, if they accepted to convert to Islam, or if they were ransomed.

Sharia and non-Muslims

Based on Quranic verses and Islamic traditions, classical Sharia distinguishes between Muslims, followers of other Abrahamic monotheistic religions, and pagans or people belonging to other polytheistic religions. As monotheists, Jews and Christians have traditionally been considered "People of The Book," and afforded a special status known as dhimmi derived from a theoretical contract - "dhimma" or "residence in return for taxes". There are parallels for this in Roman and Jewish law.^[197] Hindus were originally considered pagans and given the choice between conversion to Islam and death (or slavery), as pagans are not afforded the rights and protections of the dhimma contract.^[198] By the Middle Ages, the Hindus and Buddhists of India had come to be considered dhimmis by their Muslim rulers.^[199] Eventually, the largest school of Islamic scholarship applied this term to all non-Muslims living in Islamic lands outside the sacred area surrounding Mecca, Saudi Arabia.^[200]

Classical Sharia attributes different legal rights and obligations to different religious groups; in practice, this consisted of curbs on the rights and freedoms of non-Muslims.^[201] However, the classical dhimma contract is no longer enforced. Western influence has been instrumental in eliminating the restrictions and protections of the dhimma contract, thereby contributing to the current state of relations between Muslims and non-Muslims living in Islamic lands.^[202]

According to law professor H. Patrick Glenn of McGill University, "Today it is said that the dhimmi are 'excluded from the specifically Muslim privileges, but on the other hand they are excluded from the specifically Muslim duties' while (and here there are clear parallels with western public and private law treatment of aliens - *Fremdenrecht*, *la condition de étrangers*), [f]or the rest, the Muslim and the dhimmi are equal in practically the whole of the law of property and of contracts and obligations."^[203]



Non-Muslims protesting against Sharia.

Classical Sharia incorporated the religious laws and courts of Christians, Jews and Hindus, as seen in the early Caliphate, Al-Andalus, Indian subcontinent, and the Ottoman Millet system.^{[204] [205]} In medieval Islamic societies, the *qadi* (Islamic judges) usually could not interfere in the matters of non-Muslims unless the parties voluntarily choose to be judged according to Islamic law, thus the *dhimmi* communities living in Islamic states usually had their own laws independent from the Sharia law, such as the Jews who would have their own *Halakha* courts.^[206] These courts did not cover cases involved other religious groups, or capital offences or threats to public order. By the 18th century, however, dhimmis frequently attended the Ottoman Muslim courts, where cases were taken against them by Muslims, or they took cases against Muslims or other dhimmis. Oaths sworn by dhimmis in these courts tailored to their beliefs.^[207]

Non-Muslims were allowed to engage in certain practices (such as the consumption of alcohol and pork) that were usually forbidden by Islamic law. Zoroastrian "self-marriages", that were considered incestuous under Sharia, were also tolerated. Ibn Qayyim (1292–1350) opined that non-Muslims were entitled to such practices since they could not be presented to Sharia courts and the religious minorities in question held it permissible. This ruling was based on the precedent that the prophet Muhammad did not forbid such self-marriages among Zoroastrians despite coming into contact with Zoroastrians and knowing about this practice.^[208] Religious minorities were also free to do whatever they wished in their own homes, provided they did not publicly engage in illicit sexual activity in ways that could threaten public morals.^[209]

Parallels with Western legal systems

Comparisons with common law

Parallels to common law concepts are found in classical Islamic law and jurisprudence including *ratio decidendi* (*illah*). Several fundamental common law institutions may have been adapted from similar legal institutions in Islamic law and jurisprudence, and introduced to England after the Norman conquest of England by the Normans, who conquered and inherited the Islamic legal administration of the Emirate of Sicily, and also by Crusaders during the Crusades. In particular, the "royal English contract protected by the action of debt is identified with the Islamic Aqd, the English assize of novel disseisin is identified with the Islamic Istihqaq, and the English jury is identified with the Islamic Lafif." The English trust and agency institutions in common law were possibly adapted from the Islamic Waqf and Hawala institutions respectively during the Crusades. It is worth noting, however, that transferring property to another for the "use" of another developed largely in response to the requirements of feudal inheritance law. Trust law, in particular, is a creature of equity which derived from the parallel jurisdiction of the Lord Chancellor to decide matters independently to the Royal Courts.

Other English legal institutions such as "the scholastic method, the license to teach," the "law schools known as Inns of Court in England and Madrasas in Islam" and the "European commenda" (Islamic Qirad) may have also originated from Islamic law. The methodology of legal precedent and reasoning by analogy (Qiyas) are also similar in both the Islamic and common law systems. These similarities and influences have led some scholars to suggest that Islamic law may have laid the foundations for "the common law as an integrated whole".^[210]

Comparisons with civil law

One of the institutions developed by classical Islamic jurists that influenced civil law was the *Hawala*, an early informal value transfer system, which is mentioned in texts of Islamic jurisprudence as early as the 8th century. *Hawala* itself later influenced the development of the *Aval* in French civil law and the *Avallo* in Italian law.^[65] The "European *commenda*" limited partnerships (Islamic *Qirad*) used in civil law as well as the civil law conception of *res judicata* may also have origins in Islamic law.^[64]

International law

Islamic law also made "major contributions" to international admiralty law, departing from the previous Roman and Byzantine maritime laws in several ways.^{[211] [212]} These included Muslim sailors being "paid a fixed wage "in advance" with an understanding that they would owe money in the event of desertion or malfeasance, in keeping with Islamic conventions" in which contracts should specify "a known fee for a known duration", in contrast to Roman and Byzantine sailors who were "stakeholders in a maritime venture, in as much as captain and crew, with few exceptions, were paid proportional divisions of a sea venture's profit, with shares allotted by rank, only after a voyage's successful conclusion." Muslim jurists also distinguished between "coastal navigation, or *cabotage*," and voyages on the "high seas", and they also made shippers "liable for freight in most cases except the seizure of both a ship and its cargo." Islamic law also "departed from Justinian's *Digest* and the *Nomos Rhodion Nautikos* in condemning slave jettison", and the Islamic *Qirad* was also a precursor to the European *commenda* limited partnership. The "Islamic influence on the development of an international law of the sea" can thus be discerned alongside that of the Roman influence.^[211]

Legal education

The origins of the Ijazah dates back to the *ijazat attadris wa 'l-ifttd* ("license to teach and issue legal opinions") in the medieval Islamic legal education system, which was equivalent to the Doctor of Laws qualification and was developed during the 9th century after the formation of the *Madh'hab* legal schools. To obtain a doctorate, a student "had to study in a guild school of law, usually four years for the basic undergraduate course" and ten or more years for a post-graduate course. The "doctorate was obtained after an oral examination to determine the originality of the candidate's theses," and to test the student's "ability to defend them against all objections, in disputations set up for the purpose," which were scholarly exercises practiced throughout the student's "career as a graduate student of law." After students completed their post-graduate education, they were awarded doctorates giving them the status of *faqih* (meaning "master of law"), *mufti* (meaning "professor of legal opinions") and *mudarris* (meaning "teacher"), which were later translated into Latin as *magister*, *professor* and *doctor* respectively.^[213]

Role in economic development and corporate law

Sharia classically recognizes only natural persons, and never developed the concept of a legal person, or corporation, i.e. a legal entity that limits the liabilities of its managers, shareholders, and employees; exists beyond the lifetimes of its founders; and that can own assets, sign contracts, and appear in court through representatives.^[214] Thus, Sharia has no native tradition of corporate law. This, combined with egalitarian rules of inheritance for male descendants (compare with primogeniture), hindered the concentration of wealth and the development of larger and more sophisticated enterprises, according to Timur Kuran of Duke University. Prohibitions on interest, or "riba" also disadvantaged Muslims vis-à-vis non-Muslim minorities in accessing banks and insurance when these services were first introduced by Westerners. Interest prohibitions, also imposed secondary costs by discouraging record keeping, and delaying the introduction of modern accounting.^[215] Such factors, according to Kuran, have played a significant role in retarding economic development in the Middle East.^[216] Though, it is argued, the West caught up in the economic crises at the outset of the 21st century when many of the aforementioned economic policies backfired on a global scale and threatened to bankrupt entire countries.

Qanun

After the fall of the Abbasids in 1258, a practice known to the Turks and Mongols transformed itself into Qanun, which gave power to caliphs, governors, and sultans alike to "make their own regulations for activities not addressed by the sharia."^[217] The Qanun began to unfold as early as Umar I (586-644 CE).^[217] Many of the regulations covered by Qanun were based on financial matters or tax systems adapted through the law and regulations of those territories Islam conquered.^[217] Qanun in Arabic means law or rules.

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