What is Sharia Law?

June 2011

LL File No. 2011-005053
LRA-D-PUB-000278
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What is Sharia Law?

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This article provides a general overview of Sharia law to those interested in learning about foreign legal systems in general or Sharia law in particular.

Sharia Defined

In its Islamic context, Sharia may be defined as the totality of God’s commands and exhortations, intended to regulate all aspects of human conduct and guide believers on the path of eternal salvation. Muslims generally believe that God at various times in human history chose to send his messengers, the prophets, to reveal the Sharia to the peoples of this world and that the Prophet Mohammed is the last messenger through whom God revealed the most perfect and complete version of Sharia.

The original sources of Sharia are the Koran and the Hadith. The Koran is the collection of the utterances believed by Muslims to be the literal words of God transmitted to the prophet Mohammed through the Angel Gabriel. These utterances, consisting of more than 6,000 verses, were collected shortly after the death of the Prophet Mohammed in 632 A.D. and organized into 114 chapters in a single book, the Koran, which is accepted by all Muslims as the authentic Holy Book of the religion. The Hadith is the collection of the Sunna, or traditions of the Prophet Mohammed, consisting of his deeds and sayings that are believed by Muslims to have been inspired by God and to therefore have the same original value in expressing the divine Will of God as the Koran.[1]

Sharia Law Defined

The law, as we understand the word in the West, meaning the rules that regulate relations among people, is an integral part of Sharia. Rules of law are rules of Sharia, but not all the rules of Sharia are rules of law. However, the words “Sharia” and “law” are often used interchangeably.

After the death of the Prophet Mohammed, Muslim jurists known as fuqaha’ (singular faqih) began studying the Sharia to discern its legal rules, leading to the formation of schools of Islamic legal thought known as mazahib (singular mazhab). The work of these schools initiated a new discipline of Islamic study known as ilm al-fiqh or the science of knowledge.[2]

The Islamic legal theory espoused by these schools compared the law to a tree with few roots and many branches and divided ilm al-fiqh into ilm al-usul, or science of the roots, and ilm al-fourou’, or science of the branches.

Ilm al-usul dealt with the philosophical underpinning of Sharia law and the methodology used to elucidate the legal rules applicable in the various fields of the law, while ilm al-fourou’ dealt with the actual elucidation of these rules. The elucidation process is called ijithad, or exertion of the utmost efforts in seeking to translate God’s commands and exhortations into specific legal rules.
Ilm al-fourou’ is divided into two major components, *ibadat* and *muamalat*. *Ibadat* means “worship” and consists of the rules applicable to religious rituals such as prayer, fasting, and pilgrimage. These rules are mandatory, but their implementation is left to the personal decisions of the believers. *Muamalat*, on the other hand, means “transactional dealings” and consists of the rules applicable to commercial and other types of relations, such as trade, marriage, and partnerships. The rules of *muamalat* constitute a comprehensive legal system whose legal rules can be identified by consulting the writings of the jurists of the relevant school of Islamic legal thought.

*Sharia* law may vary from one school to another on certain issues. For example, according to the Shiite *Jaafari* school, the law of inheritance gives the daughters of the deceased parents the right to inherit all non-reserved parts of the estate in the absence of male siblings, while the Sunni schools (*Hanafi, Shafii, Maliki, and Hanbali*) do not.[3]

**Sharia and Western Laws: Differences and Similarities**

*Sharia* law has both differences from, and similarities to, the laws of western countries. In many western legal systems, for example, solemnized marital relationships with more than one partner at a time are prohibited and entail criminal liability, while non-solemnized sexual relations are not subject to any legal restrictions. Under *Sharia* law, the opposite is true. A husband is permitted to have solemnized sexual relationships with up to four wives at the same time, while any non-solemnized sexual relations would subject him to severe criminal punishment.

Some provisions of *Sharia* law are difficult to reconcile with western concepts of personal freedom and equality between the sexes. A husband, for example, has the right to discipline his wife, prevent her from leaving the house without his permission,[4] and divorce her at will.[5] However, these rights are subject to the implied consent of the wife. If the wife, prior to the conclusion of the marriage contract, wants to alter or limit the rights of the husband or keep the marital relationship monogamous, she has the power to do so by withholding her consent to the marriage contract until her conditions are met and included in the contract. It has been reported that after he made an agreement with his wife to keep the relationship monogamous, the Caliph Al-Mansour wanted to break the agreement and marry another woman. He solicited the advice of the Muslim jurists in his court. The legal advice he received affirmed that he was not permitted to do so under *Sharia* law.[6]

The fact that women under *Sharia* law have the legal capacity to own, manage, and dispose of property; to be involved in trade and commerce; and to negotiate and enter into contracts without any interference by their husbands[7] illustrates the compatibility of *Sharia* law with modern legal concepts.

In summary, *Sharia* law is a mature legal system that, according to the late U.S. Supreme Court Justice Robert Jackson, has something to teach us.[8]

Prepared by Issam M. Saliba
Senior Foreign Law Specialist
June 2011
1. For a more detailed discussion of these two sources, see chs. II and III, NICOLAS P. AGHNIDES, MOHAMMEDAN THEORIES OF FINANCE (1916), available at http://www.archive.org/details/mohammedantheori00aghnuoft. [Back to Text]

2. For a more detailed discussion of the various schools, see id., ch. X. [Back to Text]

3. For an interesting discussion about the development of Sharia law, see IGNAZ GOLDZIHER, INTRODUCTION TO ISLAMIC THEOLOGY AND LAW sec. II (Andras & Ruth Hamori trans., 1981). [Back to Text]


5. Id. § 217. [Back to Text]


7. CODE OF MOHAMMEDAN PERSONAL LAW ACCORDING TO THE HANAFITE SCHOOL, supra note 4, § 206. [Back to Text]