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A brief explanation of Sharī'a law

Sharī'a is an Arabic word which means the 'way' or 'path'. It is often described as an Islamic legal code, but what is it and how does it work?

1 What is Sharī'a law?

Sharī'a is the legal and social code by which Muslims live their lives. It does not provide a fixed, written body of statutory law, and there are differing interpretations about how it should be applied. Islam makes no distinction between religion and life, so for some Muslims Sharī'a is regarded simply as a set of rules to live by which is separate and unrelated to the laws of the state within which they reside. For others, Sharī'a is regarded as being the correct basis for criminal and civil law to be applied by the courts.

Within Sharī'a, there are five different categories of human action, as follows¹:

- *Fard* or *wajib* (acts which are obligatory and must be done, such as the five pillars of Islam);
- *Mustahabb* or *mandub* (recommended but not compulsory, such as performing extra voluntary prayers);

¹ Waris Maqsood, R. 2010. *Teach Yourself Islam: An Introduction*. London: Hodder Education: p270.

- *Mubah* (permitted, including neutral actions for which there is no clear guidance, which are left to individual liberty, and which must be decided by conscience, such as choice of occupation, residence etc);
- *Makruh* (actions which are not forbidden but discouraged, such as divorce);
- *Haram* (things which are forbidden and must never be done, such as adultery or eating pork).

Actions which are either obligatory (the first category) or forbidden (the last category) are stated as such in the Qu'ran, and are not regarded as being open to interpretation. However, the majority of Islamic law belongs to one of the other three categories, especially *Mubah*. For these matters, Sharī'a relies not just on statements made within the Qu'ran, but also on a body of teachings and reported practices about the Prophet Mohammed (known as the Sunna) written in the first five centuries after his death. In order to define Islamic law, these texts are interpreted by Muslim scholars (known collectively as the *ulama*) through a process of legal jurisprudence, called *fiqh*. The nature of the role played by *fiqh* within Islamic law has been described as follows,

...Shari'ah in Muslim belief is sacred, eternal and universal, whereas fiqh, consisting of the vast literature produced by Muslim jurists, is like any other system of jurisprudence: human, mundane, not eternal, and local².

Because *fiqh* relies on human interpretation, the ways in which some aspects of Sharī'a are applied in different parts of the world varies, with much debate among Muslims about how this is done. Once a judgement is made by a Muslim scholar (or a set of scholars), a *fatwa* (a legal opinion or judgement) is issued. Depending on the Islamic traditions followed, the popular consensus of the community (or *ijma'*) can also play a role in informing Islamic jurisprudence.

For new areas of law, such as narcotics, which were not mentioned in the Qu'ran or the Sunna, legal analogy (or *qiyas*) can be used. For example, through such analogy, narcotics are prohibited on the basis that although the Qu'ran does not mention narcotics specifically, it is stated that alcohol is prohibited: the common underlying effective cause for both prescriptions is that intoxication is harmful, therefore both should be prohibited³.

2 Is Sharī'a law the same for all Muslims?

The *principles* of Sharī'a are essentially the same for all Muslims. However, interpretation and application varies in practice. For example, within Sunni Islam, there are four main schools of thought, Shafi'i, Hanbali, Hanafi and Maliki. Each of these have their own interpretations and approaches to Sharī'a. There are also different

² Mir-Hosseini, Z. 2009. 'Towards Gender Equality: Muslim Family Laws and the Shari'a', in Z Anwar (ed), *Wanted: Equality and Justice in the Muslim Family*. Musawah.

³ BBC. 'Religion: Sharia': http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml Page visited 4.6.14.

approaches taken within the other main Islamic sect, Shi'ism, such as the Ja'fari, Zaydi, Ibadi and Thahiri schools.

Wahhabism, a derivation from the Hanbali school of Sunni Islam which is followed in Saudi Arabia and some of the Gulf States, takes a fundamentalist approach to Sharī'a. Fundamentalists often believe that the large body of Islamic jurisprudence built up over many centuries is a burden to the pious believer. So within Wahhabism, the role played by *ijma* (or community consensus) is limited *only* to the time of the Prophet Mohammed and his immediate followers – in other words, the consensus of *contemporary* communities, and more recent Islamic jurisprudence, has no role in legal interpretation.

The form of Shi'ism followed in Iran allows for reasoning to be applied by Islamic scholars in the formation of new rules and laws. It also uses a wider set of considerations than the sayings and traditions of the Prophet Mohammed alone in the formation of its jurisprudence, allowing the teachings of previous Imams to be used alongside this earlier literature⁴.

3 How is Sharī'a law applied in different countries?

Across the world, Sharī'a law is treated and applied in different ways. In some states, Sharī'a courts operate for specific civil matters such as marriage, divorce, births, deaths and inheritance, while in all other areas state law is essentially secular. In Egypt, for example, Sharī'a courts are run and licensed by the Egyptian Ministry of Justice. A non-religious Supreme Court operates above the Sharī'a personal status courts and the secular criminal courts.

Examples of countries where Sharī'a law forms the basis for most or all of state law include Saudi Arabia and Iran. In Saudi Arabia, the *ulama* (the body of religious and legal scholars) has a direct role in government⁵. In line with the Wahhabist approach no system of judicial precedent is used, with judges referring only to the Qu'ran and the Sunna and making no reference to previous legal decisions in making their judgements. It has been argued that this can make the outcome of criminal trials in Saudi Arabia somewhat unpredictable⁶.

In Iran, following the revolution of 1979, it was established in the country's constitution that the judiciary is responsible for 'enacting the penalties and provisions of the Islamic penal code'⁷. While the previously existing legal system was not entirely replaced,

⁴ Glassé, C (ed). 2001. *The Concise Encyclopaedia of Islam*. London: Stacey International: p419.

⁵ Goldstein, N & Brown-Foster, W. 2010. *Religion and the State*. New York: Facts On File: p118.

⁶ Otto, JM. 2010. *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Amsterdam & Leiden University Press.

⁷ *Constitution of the Islamic Republic of Iran*. 1979. 'The Judiciary: Article 156': <http://www.iranonline.com/iran/iran-info/government/constitution.html>

judges in Iran are generally educated within Islamic seminaries and features of Sharī'a law are codified within state law, such as the principle of retribution⁸.

While the majority of legal judgements made concern relatively mundane matters, some cases and sentences applied under the concept of Sharī'a law in both Saudi Arabia and Iran have received a high degree of media coverage. However, some Islamic organisations and commentators, including many within the UK, have sought to deny that such apparently extreme judgements are truly Sharī'a, and have expressed concern that they harm the reputation of Islam and of Sharī'a law in particular.

Islamic law is sometimes abused or applied fiercely instead of mercifully by people with a variety of motives, including a tyrannical zeal for an extremist form of Islam which is not Sunnah⁹.

In the UK, the legal system has incorporated some aspects of Sharī'a. For example, food regulations allow meat to be slaughtered according to Islamic practices¹⁰. The Treasury has approved Sharī'a-compliant financial products such as mortgages and investments as Islam forbids interest payments on the grounds that they are considered money unjustly earned¹¹.

Organisations such as the Islamic Sharī'a Council exist in the UK to guide Muslims in matters relating to family issues. Sharī'a courts exist to apply Islamic judgements in situations such as divorce and inheritance where both sides in a legal dispute have freely chosen to use such an institution, rather than taking a matter before the state judicial system¹².

4 Further sources of information

- Abou El Fadl, K. 'The nature of law and morality': <http://www.plainislam.com/in-depth/the-nature-of-law-and-morality.aspx> Page accessed 5.6.14.
- BBC website. 'Religion: Sharia': http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml
- BBC website. 'Q&A: Sharia law explained': <http://news.bbc.co.uk/1/hi/uk/7234870.stm>
- Islamic Society of Britain. 'Sharia': <http://www.isb.org.uk/sharia/>
- Waris Maqsood, R. 2010. *Teach Yourself Islam: An Introduction*. London: Hodder Education. (Copy available in the Assembly Library).

⁸ Abrahamian, E. 2008. *History of Modern Iran*. Cambridge University Press: p177.

⁹ Waris Maqsood, R. 2010. *Teach Yourself Islam: An Introduction*. London: Hodder Education: p285.

¹⁰ Department for Environment, Food and Rural Affairs. 'Slaughter of livestock: Welfare regulations': <https://www.gov.uk/farm-animal-welfare-at-slaughter>; in Northern Ireland: Welfare of Animals (Slaughter or Killing) Regulations (Northern Ireland) 1996: <http://www.legislation.gov.uk/nisr/1996/558/contents/made>

¹¹ HM Treasury. 2008. *The Development of Islamic Finance in the UK: The Government's Perspective*. London: HM Treasury.

¹² Waris Maqsood, R. 2010. *Teach Yourself Islam: An Introduction*. London: Hodder Education: p303.