

What is Shari`a

It is through the Shariah, commonly translated as "Islamic Law", that Islam is expressed in Muslim societies ... Shariah had come to signify Islam per se. If Islam is submission to the Will of God, then Shariah is the path by which submission is enacted, the actual route map of religion as a way of life. Hence, for many Muslims, Islam is the Shariah and the Shariah is Islam. (Ziauddin Sardar, Desperately Seeking Paradise, London, Granta Books, 2004, pp. 216-217).

Introduction

In the twenty-first century there are increasing calls for greater *shari`a*-compliance in the West, especially in the UK, and for full *shari`a* to be practised in more Muslim-majority countries.

Shari`a is an Arabic word meaning "path" or "way". Nowadays it is used to mean "Islamic law", the detailed system of religious law developed by Muslim scholars in the first three centuries of Islam. This law expresses the Islamic way of life and – much more than the Qur'an – is the key to understanding Islam.

Shari`a covers all aspects of life and does not separate between the secular sphere from the religious sphere. It provides a framework of dos and don'ts, rituals and rules within which a Muslim leads his or her life.

Most Muslims hold that *shari`a* protects them from sin like a fence or a roadblock. It also serves as an identity marker separating Muslims from non-Muslims. *Shari`a* strongly influences the behaviour and worldview of most Muslims, even in secular states where it forms no part of the law of the land.

The perfect divine norm

Most Muslims believe that *shari`a*, as God's revealed law, perfect and eternal, is binding on individuals, society and state in all its details. They therefore believe that any criticism of *shari`a* is heresy. Most Sunni Muslims believe it to be completely unchangeable, although Shi'as allow for the possibility of interpreting and adapting it to new circumstances.

Muslims who deny the validity of *shari`a* or criticise it in any way are labelled as non-Muslims (infidels or apostates) by traditionalists and Islamists. As such they face the threat of being prosecuted as apostates, a crime that carries the death penalty in *shari`a*.

Development and characteristics of *shari`a*

Shari`a systematises all human acts

Shari`a is a complex legal system derived from the Islamic source texts Qur'an and hadith (traditions recording Muhammad's words and deeds) through interpretation, commentary and case law. It was created in a context in which Muslims held political

power, and thus lacks guidance for Muslims living as a minority under non-Muslims.

Shari`a tries to describe in detail all possible human acts, dividing them into permitted (*halal*) and prohibited (*haram*). It subdivides them into various degrees of good or evil such as obligatory, recommended, neutral, objectionable or forbidden. It is a vast compendium of rules, regulating in detail all matters of devotional life, worship, ritual purity, marriage and inheritance, criminal offences, commerce and personal conduct down to minute details of behaviour. It also regulates the governing of the Islamic state and its relationship to non-Muslims within the state as well as to enemies outside the state.

Schools of law

Four Sunni orthodox schools of law, named after their founders, developed and were codified by the end of the tenth century. These are the Hanafi, Maliki, Shafi'i and Hanbali schools. These schools differ in various details, including the way they arrive at legal decisions, but they accept each other as orthodox. The Shi'a version is very similar to the Sunni schools.

The work of the founders was continued by their disciples, and over the centuries several widely accepted handbooks of law were composed by famous scholars which supposedly laid down all that was needed to be known about the law for all generations.

Legal and scholastic experts interpret and apply *shari`a* by looking at the relevant Qur`an and hadith texts filtered through the long history of legal precedents, handbooks and commentaries. Modern Muslim jurists often differentiate between *shari`a*, the revealed divine law, and *fiqh*, the jurists' interpretation of *shari`a*.

Attempts at reform and the Islamist backlash

Since the nineteenth century there have been efforts at reforming *shari`a* in a liberal direction in order to accommodate it to the modern world. Most reformers saw the return to the sources of Islam as the "golden key" that would cure Muslim societies of their backward state and political weakness. Many downgraded the authority of the four legal schools and of later traditions; this approach enabled jurists to select and mix from the different schools and to make the good of the community (*maslaha*) their ultimate guiding principle. Most such reformers stressed the importance of reason, and differentiated between a core of universal values in *shari`a* (that was unchangeable and eternal) and the larger part dealing with social relations (that was open to change and adaptation to new contexts).

In the contemporary Muslim world, however, it is the traditionalists and especially the Islamists, upholders of the traditional view of *shari`a*, who are dominating Muslim public opinion. This leaves liberal reformers as a small minority surviving mainly in the West. Liberal reformers face heavy pressure from Islamists and traditionalists who brand them apostates and infidels and attack them verbally, legally and physically.

***Shari`a* and modern standards**

Muslims often claim that *shari`a* was quite moderate by the standards of the seventh to tenth centuries when it was created. However it has remained unchanged since then, and is thus extremely harsh compared to modern Western standards. It infringes many modern principles of human rights, religious

freedom and equality of all before the law. *Shari`a* inherently discriminates against women, non-Muslims and "heretical Muslims" as well as against Muslims who choose to convert to another faith.

Five main areas in which *shari`a* is incompatible with human rights

1. *Hudud* punishments

These are the severe punishments prescribed by *shari`a* for some offences defined as being against God himself. The punishments for these crimes are seen as divinely ordained and cannot be changed by humans. These include 100 lashes or stoning to death for adultery; 80 lashes for false accusation of adultery; amputation of limbs for theft; 40 or 80 lashes for drinking alcohol; imprisonment, amputation or death (by crucifixion in serious cases) for highway robbery; and the death penalty for apostasy from Islam.

Many Islamic scholars, academics and popular preachers support the present day application of *hudud* punishments, seeing them as identity markers of true Islamic revival. Well-known Islamic scholars responded negatively to a call in March 2005 by the popular Islamist professor, Tariq Ramadan, for a temporary stop to *hudud* punishments. One claimed any attempt at softening *shari`a* was giving in to Western Christian concepts.

2. Jews, Christians and other non-Muslims

Discrimination on the basis of religion is fundamental to *shari`a*. Islam must be dominant and only Muslims are full citizens, so Muslims are treated as far superior to all others.

Jews and Christians are defined as *dhimmis* (literally "protected" i.e. permitted to live). However this protection is on condition that they do not bear arms, know their lowly place in society, treat Muslims with respect, pay a special poll tax (*jizya*), and do not behave arrogantly. Numerous petty *shari`a* laws used to restrict and humiliate *dhimmis* in their daily lives. They could practise their faith inside their synagogues and churches but not in public places (bells were not allowed to be rung). No new church buildings were allowed, nor were existing churches to be repaired. *Dhimmis* could not testify in a *shari`a* court against a Muslim. They could not share their faith with Muslims. They could not hold any public office that placed them in a position of authority

over Muslims. At best, they could serve their Muslim rulers in administrative capacities.

The general attitude of contempt for non-Muslims created by centuries of applying such laws means that, even in modern secular Muslim states that have constitutionally guaranteed equal rights to all citizens, non-Muslims are discriminated against in numerous ways.

Pagan non-Muslims were, in classical *shari`a*, to be offered the choice of death or conversion to Islam.

3. Muslim heretics and apostates

Muslims who accept teachings considered heretical by orthodox Islam are held by *shari`a* to have reverted to paganism and therefore to deserve the death penalty. The same is true for Muslims converting to another religion (apostates), who are considered as traitors. All schools of *shari`a* agree that adult male apostates from Islam should be killed. Even where the death sentence is not carried out, their marriages may be automatically dissolved and they face severe penalties such as exile, disinheritance, loss of possessions, threats, beatings, torture, and prison.

Many liberal or secularist Muslims find themselves in danger of being classified as apostates for views which the religious establishment or militant Islamist groups hold to be heretical. Muslim "heretical" sects are severely persecuted. This is especially true of the Ahmadiyya sect in Pakistan and of the Bahai religion in Iran.

4. Holy War – *jihad*

Shari`a lays down *jihad* as one of the most basic religious duties, clearly indicating by the regulations listed that *jihad* is understood as physical warfare. Linked to the concept of *jihad* is the division of the world into two opposing domains: the House of Islam (*Dar al-Islam*) and the House of War (*Dar al-Harb*). Muslims are supposed to wage *jihad* to change the House of War (where non-Muslims are politically dominant) into the House of Islam (politically dominated by Muslims). While some modern Muslims reject this aggressive understanding of *jihad*, most Muslims agree that *jihad* includes defending Muslim territory and Muslims from any form of aggression; this leaves the door open to interpreting any conflict involving

Muslims as a case of defensive *jihad*. Islamic terror groups justify their atrocities by references to the *shari`a* rules on *jihad*.

5. Status of women

Shari`a also discriminates on the basis of gender. Men are regarded as superior. Women are treated as deficient in intelligence, morals and religion, and must therefore be protected from their own weaknesses. *Shari`a* rules enforce modesty in dress and behaviour and the segregation of genders. They place women under the legal guardianship of their male relatives. Women are inherently of less value than men in many legal rulings. A man is allowed up to four wives, but women can have only one husband. A man can divorce his wife easily; a woman faces great obstacles should she want to divorce her husband. A daughter inherits half as much as a son, and the testimony of a female witness in court is worth only half that of a male witness. In cases of murder, the compensation for a woman is less than that given for a man.

In many Muslim societies gender segregation in public is imposed or encouraged. *Shari`a* courts often display a clear gender bias. This is seen in the widespread practice of accusing rape victims of illicit sexual relations (*zina*), an offence which carries punishments ranging from imprisonment and flogging to death by stoning. The victim is thus transformed into a culprit. Large numbers of Pakistani rape victims are in prison because of this. In a few countries, for example, Turkey and Tunisia, secular codes have improved the situation for women. Recently Morocco passed a much more liberal version of the *shari`a* family code which gives greater equality to women.

Challenge of *shari`a* in Western countries

Shari`a poses a challenge to Western societies because of the constant pressure in Muslim communities to implement it and expand its area of influence. For many Muslims in the West, secular law lacks legitimacy especially in the realm of family law. A recent survey showed that two-thirds of British Muslims would prefer to follow *shari`a* in cases where UK law conflicts with Islamic law. Many Muslims claim they have the right as a religious minority to follow their own customs and laws, including *shari`a*. There have been calls for partial incorporation of *shari`a* into British civil law.

Some Muslim groups have campaigned for the legal incorporation of Islamic family law into the British legal system. In 1990 the Muslim Institute suggested "the creation of a Muslim legal framework to decide cases that may then be recognised as valid in British law".

Creation of a parallel alternative legal framework

Many Muslims in the West try to live by *shari`a* regulations as far as possible, creating an unofficial enclave in which Islamic religious scholars and lawyers offer their services. This has created an alternative legal structure of *shari`a* courts and councils.

The stronger the parallel network of Islamic institutions becomes, the more pressure is exerted on Muslims to use these in preference to non-Muslim institutions. Once a *shari`a* alternative is available, it becomes obligatory for Muslims to obey *shari`a* in that specific case. A serious question is the amount of social, family and community pressure brought to bear on the most vulnerable members of the Muslim community – mainly women and children – to abide by the verdicts of such courts even when they place them at a disadvantage as compared with verdicts achieved in the official British court system. For those living in insular and tightly knit traditional communities such pressures to conform must be virtually irresistible.

Many Muslim leaders are constantly applying pressure on Western society, institutions and legal systems to adapt as far as possible to Muslim *shari`a* concepts and models, while at the same time constructing their own alternative *shari`a* systems.

Marriage and divorce

Women are undoubtedly the main victims of the *shari`a* system which inherently favours the husband. British law, for instance, recognises Muslim marriages that were performed abroad before the partners entered the UK. However British residents in the UK must contract marriage according to civil law in order for the marriage to be legally recognised. It is very common, even for well-educated Muslims, to think it unnecessary to register their marriages in the civil system. Some wrongly believe that the Islamic wedding ceremony is recognised by British law. In cases of divorce the women are then left with the much lesser legal rights of a "cohabitee". Some

Muslim men knowingly exploit the ignorance of their wives so as not to have to pay maintenance and repay dowry should they divorce them. Widows may find they lack pension rights and rights to their husband's property.

Another problem is that many Muslim women in the UK may get divorced under *shari`a* only, without getting their divorce ratified by a civil court. Some believe they are free to remarry, but under British law they are then committing bigamy (an offence punishable by seven years imprisonment).

Child marriages

In several Muslim countries child marriages are legal. For many traditional Muslims, child marriages are acceptable because Muhammad married his favourite wife Aisha when she was six years old and consummated the marriage when she was nine. This is why, following the 1979 Iranian Revolution, Iran's new rulers lowered the minimum age of marriage for girls to nine.

Recently in India, the All India Muslim Personal Law Board attempted to gain an exemption for Muslims from the legal minimum marriage age of 18 set by Indian law. According to the board, child marriages are part of *shari`a* which is "absolute, final and non-negotiable".

Even in Britain it is possible that child marriages are happening. The Sharia Council of Darul Uloom London gives some rules for divorce on its website, one of which clearly indicates that the council envisages the possibility of divorcing girls below the age of puberty.

Polygamy

Under *shari`a* a man is allowed up to four wives. Polygamy is allowed in many Muslim countries but prohibited in Western countries. This raises problems of Muslim residents in the West who married another wife either before their immigration or while visiting their "home countries".

The Muslim Parliament of Great Britain has complained that many families are being forced to live outside the law because their polygamous marriages are not recognised in the UK. One estimate gives the number of polygamous families in Britain at several hundreds.

Female genital mutilation (FGM)

Female genital mutilation is widespread among some Muslim communities, especially Egypt, East Africa, Yemen and Indonesia. Some Muslim leaders condemn it as un-Islamic but many believe that it is ordained in the *shari`a*. They also believe it is essential for preserving women's chastity on which the all-important family honour largely depends. In 1994 the former Sheik of Al-Azhar, Egypt, Jad Al-Haqq 'Ali Jad Al-Haqq, ruled that circumcision is an Islamic duty for women as well as for men. In the UK it is a criminal offence under the 1985 Prohibition of Female Circumcision Act, but an estimated 7,000 girls in Britain are of an age to be at risk from this procedure at any given time. The law is being evaded by families taking the girls abroad for a holiday and having the procedure carried out there.

Veiling

In *shari`a* there are differences between the various schools of law as to the extent of what a woman may reveal in public. The Hanafi and Maliki schools of law permit face and hands to be revealed in public, thus there is no need for a veil over the face. Among Hanbalis there are two opinions, some permitting the revealing of face and hands, others forbidding it. The Shafi'is demand that a woman's face and hands be covered in public, thus demanding some kind of veil over her face. It would seem that the majority of classical scholars agreed that a woman's face may be displayed, and a minority said the face must be covered. Practice thus differed regionally depending on which school of law was followed in that area.

Both Qur'an and hadith urge modesty in women's dress and command them to cover themselves in public. The problem is a matter of interpretation of the original Arabic words used. One such word, *jilbab*, is obviously an outer garment, but what did it look like? Was it just a mantle-like garment that covered the under clothes, or did it cover head and face and ankles as well? Does another word, *jujub*, mean bosom only, or did it mean head, face, neck and bosom?

Some modern Muslim women in the West are adopting the strictest version as a way of asserting their Muslim identity. It appears that Muslim organisations in the West are manipulating the issue to further the Islamisation of their host societies.

The problem of full veiling of the face for security and anti-terrorist measures is obvious. Yet in the US the

Council on American-Islamic Relations has managed to persuade the states of Kansas, Pennsylvania, Indiana, Montana, and Washington to allow Muslim women to have their driving licence photo taken with their faces veiled showing their eyes only.

Economics

In the last two decades there has been a spectacular growth in Islamic finance and banking around the world, especially in Muslim countries but more recently also in the West.

In the past there was no all-encompassing Islamic body of economic thought, but modern Islamists have transformed the various scattered *shari`a* rules on trade and financial transactions into a comprehensive economic system. However not all Muslims agree with the Islamists that a separate Islamic economic system is needed.

The debate amongst Muslims centres on the meaning of the Qur'anic ban on *riba*. Some Muslims interpret *riba* as "usury" (extortionate interest); therefore they tend to allow interest at moderate rates. However Islamists, who interpret *riba* simply as "interest", hold that any kind of interest is un-Islamic; they therefore believe it is wrong to participate in normal economic systems and demand separate Islamic financial products.

The interpretation that sees all interest as prohibited seems to have won the day. In addition to Western institutions offering *shari`a*-compliant financial products, the American Dow Jones company has produced a special Islamic Market Index (DJIM). As oil profits and other Muslim wealth sources are recycled into Islamic investment products, the Islamic financial market will claim an ever-increasing share of the global market. This will mean that Western institutions may choose to gradually Islamise their own systems, in an attempt to retain their share in this lucrative market. So non-Muslims will have little choice but to use Islamic financial products and systems.

Halal products

According to *shari`a*, certain foods such as pork and alcohol are forbidden to Muslims. The *shari`a* also says that animals must be slaughtered by Muslims in a religious ritual which includes slitting the animal's throat and draining its blood. Stunning

of animals before slaughter is forbidden. Only meat produced by this type of slaughter is *halal* (permitted) for consumption. *Halal* food is provided in many public institutions in the UK such as schools, hospitals and prisons. Sometimes it is served to everyone, irrespective of faith. Likewise, most of the lamb exported from New Zealand is *halal*, whether it is going to a Muslim-majority country or to the West. The Muslim Council of Britain has recommended that the Islamic method of slaughter be adopted universally in Britain for all consumers. This trend can be seen as part of a process of Islamisation, whereby non-Muslims end up living by Islamic rules.

Though the Qur'an specifically prohibits only pork and alcohol, the Islamic Food and Nutrition Council of America has made a list of 36 different categories of food, drinks, and cosmetic products covering 301 products which meet *shari`a* requirement. Such products must not contain any prohibited ingredients and must be processed according to Islamic guidelines. To protect the certification process from fraud, Muslims in New Jersey, Illinois, Minnesota, Michigan, Texas, Virginia and California have successfully persuaded their legislators to adopt a *halal* bill.

***Shari`a* principles used to allow the existence of Muslim minorities in the West**

Under the traditional division of the world into the House of Islam and the House of War, Muslim scholars recommended that Muslims who found themselves under non-Muslim rule should migrate back to Muslim states so that it would be easier for them to live according to *shari`a*. Today, most scholars accept the validity of Muslims living in the West under non-Islamic rule, but grapple with the legal justifications and implications of this situation.

Some Muslim leaders in the West make obedience to the law of the land conditional on such laws not contradicting *shari`a*. According to Imam Muhammad Taher of the Leeds Grand Mosque, whenever the law of the land contradicts *shari`a*, it is invalid for Muslims and must be disobeyed. However some modernist scholars have tried to redefine Western states as belonging to the "House of Islam" but this has been strongly opposed by most Muslims. Others have developed concepts such as defining Western states as "House of Security" (*Dar al-Aman*) or "House of Covenant"

(*Dar al-'Ahd*) to justify Muslims living in Western states and complying with non-*shari`a* norms.

The *shari`a* principle of *darura* is used by many Muslim scholars to justify Muslim minorities living in the West who adapt to Western norms, including complying with Western legal systems and being loyal to Western states. *Darura* states that in emergency circumstances that threaten the life and welfare of Muslims, the unlawful may become lawful (necessity lifts prohibition), thus allowing Muslims in a non-Muslim state to disregard *shari`a* rules that conflict with the law of the land. Sheikh Tantawi of al-Azhar University, Cairo, used this argument to justify Muslims in France obeying the new prohibition on wearing of veils in schools and other public institutions.

Other legal tools employed include the notion of public good (*maslaha*) and the permission to use suitable rulings from any of the schools of law rather than being limited to one's own school of law.

While these are all useful tools for moderate Muslims to justify their living in non-Muslim societies, they are considered merely temporary, applicable only in times of Muslim weakness. The implication is that all good Muslims ought to struggle to change this not-ideal situation into the ideal of Muslim political domination and *shari`a* rule.

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