

Eurasian History: Islamic Civilization and Sharia Law

Directions and Description: The following is from the Council on Foreign Relations. It describes the origin, nature, and practice of sharia law. Please read the following description of sharia law and answer the questions that follow.

Rationale: Thus far we have looked at the ways in which Mohammed's role as both prophet of Islam and lawgiver to the community of Muslims had influenced the historical development of early Islamic societies. This reading will further your understanding of specific elements of Islamic law and the ways in which they are applied in modern nations.

Source:

Otterman, Sharon. "Islam: Governing Under Sharia." Council on Foreign Relations March 14, 2005 9

November, 2007 <<http://www.cfr.org/publication/8034/#1>>.

What is sharia?

Literally, it means "path," or "path to water," says Clark Lombardi, an expert on Islamic law at the University of Washington's School of Law. In its religious sense, it means God's law, the body of commands that, if followed, will provide the path to salvation. According to Islamic teaching, sharia is revealed in divine signs that must be interpreted by humans. The law is derived from four main sources:

- * the Quran, Islam's holy book, considered the literal word of God;
- * the hadith, or record of the actions and sayings of the Prophet Mohammed, whose life is to be emulated;
- * ijma, the consensus of Islamic scholars; and
- * qiyas, a kind of reasoning that uses analogies to apply precedents established by the holy texts to problems not covered by them, for example, a ban on narcotics based on the Quranic injunction against wine-drinking.

Does sharia apply only to religious matters?

No. Sharia governs all aspects of life, from relations between men and women to ethics in business and banking. Some aspects of sharia have become part of modern legal codes and are enforced by national judicial systems, while others are a matter of personal conscience. Entirely secular law is not an option under a classical interpretation of Islam, experts say. "In Islam, there is no separation between the secular and the sacred. The law is suffused with religion," says David Powers, a professor of Islamic law and history at Cornell University.

Do traditional sharia laws continue to apply in modern countries?

Yes. Most Middle Eastern countries continue to incorporate some traditional sharia into their legal codes, especially in the area of personal-status law, which governs marriage, divorce, and inheritance. In other areas of the law, such as the criminal code, most Islamic nations have attempted to limit the application of traditional sharia, replacing it either with secular legislation or with laws characterized as modern interpretations of sharia. Iran and Saudi Arabia are exceptions--they claim to fully implement sharia in all areas of the law. In general, each nation's

legal code is unique and reflects a variety of historical and cultural influences, experts say. Many Middle Eastern legal codes, for example, have their roots in the Napoleonic law system and the Ottoman Empire, Brown says.

How does sharia become part of the law of modern Islamic states?

Through three main routes:

- * The constitution: Many Islamic countries acknowledge Islamic law in their constitutions by making Islam the official religion of the country or by stating that sharia is a source--or the source--of the nation's laws. For example, Article II of the 1980 Egyptian constitution states that Islam is the religion of the state and "Islamic jurisprudence is the principal source of legislation." Iraq's interim constitution, passed under the U.S.-led occupation, makes Islam "a source of legislation" and stipulates that no law may "contradict the universally agreed tenets of Islam." The 1992 Basic Law of Saudi Arabia states that the nation's constitution consists of the Quran and the sunna, the actions and sayings of the prophet as recorded in the hadith. Article IV of the Iranian constitution states that "all civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria." And Article 227(1) of the Pakistani constitution reads, "All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and sunna ... and no law shall be enacted which is repugnant to such injunctions."

- * National law: Sharia has been also incorporated into Islamic national legal codes by decree or legislation. Depending on the country, sharia courts that oversee marriage and other personal law matters are headed either by a secular judge or by an Islamic judge called a qadi. In Saudi Arabia and Iran, supreme religious councils dictate how Islamic law is applied and, to a large extent, have veto power over legislation. In mixed religious-secular systems, such as in Egypt, sharia personal law courts are integrated into a Western-based legal system, and a secular supreme court has the final say, Brown says.

- Sub-national law: Some religiously and ethnically diverse nations that used a federal governmental model--including Indonesia, Malaysia, and Nigeria--allow states or provinces the option of applying aspects of sharia. Because of its adaptability, this federal model for sharia "may well be an important model going forward," Lombardi says.

How have various Muslim countries applied sharia?

Sharia, or Islamic law, influences the legal code in most Islamic countries, but the extent of its impact varies widely. Avowedly secular Turkey is at one extreme. It doesn't base its laws on the Quran, and some government-imposed rules--such as a ban on women's veils--are contrary to practices often understood as Islamic. At the devout end of the spectrum are the Islamic Republic of Iran, where mullahs are the ultimate authority, and Saudi Arabia, a monarchy where the Quran is considered the constitution. In 1959, Iraq modified its sharia-based family law system and became one of the Middle East's least religious states. Whether sharia should be more strictly applied in post-Saddam Hussein Iraq is one of the most divisive issues facing the transitional government

How does sharia influence modern criminal law?

Many Islamic nations--such as Jordan, Kuwait, Pakistan, and Yemen--have certain criminal laws that reflect traditional Islamic practice, banning Muslims, for example, from drinking or selling alcohol. Enforcement of these laws is often spotty, and non-Muslims are generally exempted.

The vast majority of Islamic nations no longer apply the traditional corporal punishments for violations of specific Quranic criminal laws. These punishments include flogging, amputation, and stoning.

For which crimes does the Quran mandate specific punishments?

Five crimes known as the Hadd offenses, Lombardi says. Because these offenses are mentioned in the Quran, committing them is considered an affront to God. They are:

- * Wine-drinking and, by extension, alcohol-drinking, punishable by flogging
- * Unlawful sexual intercourse, punishable by flogging for unmarried offenders and stoning to death for adulterers
- * False accusation of unlawful sexual intercourse, punishable by flogging
- * Theft, punishable by the amputation of a hand
- * Highway robbery, punishable by amputation, or execution if the crime results in a homicide.

Where are these laws applied?

Adopting hadd punishments is considered a symbol of a country's Islamic identity, even if they are rarely carried out, Powers says. Saudi Arabia and Iran have hadd crimes on the books, as do some federal states in Nigeria. However, the most severe punishments--stoning and amputation--are inflicted sparingly, experts say, in part because the Quran insists on strict evidentiary standards. "They aren't applied in cases of doubt," Powers says. States often go beyond the Quranic safeguards to add new ones. Pakistan has hadd punishments on the books, but it has set up a series of procedural roadblocks to insure they can be enforced by the state only rarely, if ever, Lombardi says. Still, vigilante applications of hadd punishments occur in Pakistan and other parts of the Islamic world.

What happens in the case of apostasy?

The traditional punishment for Islamic apostasy--leaving Islam for another religion or otherwise abandoning the Islamic faith--is death. The best-known modern case involved author Salman Rushdie, whose 1988 novel, "The Satanic Verses," offended many devout Muslims. Ayatollah Ruhollah Khomeini, the Supreme Leader of Iran, declared Rushdie an apostate and condemned him to death. In 1993, an Egyptian court ruled that the writings of Nasr Abu Zayd, a professor, were evidence of apostasy. The court ordered that Zayd be divorced from his Muslim wife (Zayd now lives with his wife in the Netherlands). The vast majority of Muslim nations no longer prescribe death for apostates. On the other hand, says Powers, "Many modern Islamic nations say they guarantee freedom of religion. But this does not necessarily include the right to speak openly against Islam and act on those ideas." Conversions from Islam to other religions are generally not permitted in Muslim countries.

How is Islamic personal law implemented today?

Islamic principles still form the foundations of the legal code governing marriage, divorce, and inheritance in most Islamic nations. On the other hand, many nations have changed classical sharia restrictions, often to expand the rights of women. Such changes have become a major human rights and women's rights issue in the Muslim world, pitting reformists--who want to modernize the law and bring it into line with international norms--against Islamists, "who want the restoration of Islamic law lock, stock, and barrel," Powers says.

What are the traditional sharia laws governing personal status issues?

* **Marriage:** Islamic marriage is a contract between a man and a woman. In the broadest of terms, the husband pledges to support his wife in exchange for her obedience, Brown says. Women can demand certain rights by writing them into the marriage contract, but the man is the head of the family, and traditionally, a wife may not act against her husband's wishes. (The Quran permits men to use physical force against disobedient wives in some circumstances, Powers says.) Traditional practices still have significant impact on modern law: in Yemen and other nations, a woman cannot work if her husband expressly forbids it. In Syria, a wife can work without her husband's consent, if she renounces her claim on him for financial support. Under sharia, a Muslim woman cannot be married legally to a non-Muslim man, but a Muslim man can be married to a non-Muslim woman. Marriages can traditionally take place at young ages--in Iran, the age of consent is 13 for females and 15 for males, and younger with a court's permission. In Yemen, the minimum marriage age is 15.

* **Divorce:** Under sharia, the husband has the unilateral right to divorce his wife without cause. He can accomplish this by uttering the phrase "I divorce you" three times over the course of three months. If he does divorce her, he must pay her a sum of money agreed to before the wedding in the marriage contract and permit her to keep her dowry, Powers says. Classical sharia lays out very limited conditions under which a woman can divorce a man--he must be infertile at the time of marriage; insane; or have leprosy or another contagious skin disease. Most Islamic nations, including Egypt and Iran, now allow women to sue for divorce for many other reasons, including the failure to provide financial support.

* **Polygamy:** The Quran gives men the right to have up to four wives. There are some traditional limitations: a man must treat all co-wives equitably, provide them with separate dwellings, and acknowledge in a marriage contract his other spouses, if any. A woman cannot forbid the practice, but can insist on a divorce if her husband takes a second wife. Polygamy remains on the books in most Islamic countries, but some countries limit it through legislation. It is banned in Tunisia and Turkey, though reportedly it is still practiced in some areas of Turkey.

* **Custody:** In a divorce, the children traditionally belong to the father, but the mother has the right to care for them while they are young, Powers says. The age at which a mother loses custody differs from nation to nation. In Iran, the mother's custody ends at seven for boys and girls; in Pakistan, it's seven for boys and puberty for girls. Many nations, however, allow courts to extend the mother's custody if it is deemed in the child's interest.

* **Inheritance:** Mothers, wives, and daughters are guaranteed an inheritance in the case of a man's death. In the seventh century A.D., when the law was developed, this was a major step forward for women, Powers says. However, sharia also dictates that men inherit twice the share of women because, traditionally, men were responsible for women, Powers says.

Are non-Muslims bound by personal status sharia courts?

Generally speaking, no. Minorities in Muslim nations are generally governed under separate personal-status laws reflecting their own traditions, experts say. In Egypt, for example, Coptic Christians marry under Christian law, and foreigners marry under the laws of their countries of origin, Brown says. Criminal law, which is generally no longer based on sharia, applies to both foreigners and citizens

Questions: Please answer the following questions in complete sentences. You may attach additional paper if you need more room for your answers.

1) What are the four sources of sharia law (in order of their importance)?

2) To what aspects of life does sharia law apply?

3) To what extent do modern nations apply sharia law?

4) What makes hadd crimes particularly objectionable to Muslims?

5) How have many countries which employ sharia law sought to limit the punishment for hadd crimes?

6) What is your opinion about the punishment for apostasy? Do you feel it is acceptable or just?

7) What is the status of non-Muslims in countries that are ruled by sharia law?