

ISLAMIC LAW

What is the Shari'a?

Literally the "road" – to God

Like a manual for behavior, regulating things like

- 1- *Ibadat* (Prayer, Purification, Pilgrimage, Fasting, Charity)
- 2- *Mu'alamat* (Financial transactions, Endowments, Laws of inheritance, Marriage, divorce, and child care, Foods and drinks (including ritual slaughtering and hunting), Penal punishments, Warfare and peace, Judicial matters (including witnesses and forms of evidence))

What is Fiqh?

Jurisprudence – how to derive laws from sources

Schools of Law:

Generally, the schools have influenced each other and the following system has arisen. It is important to remember that the schools internally disagree on more than they agree.

Abu Hanifa (703-767) Kufa

- 1- Qur'an
- 2- Sunna (Sahih and Mashoor)
- 3- Ijma' of the Sahaba (Consensus of the Companions of the Prophet)
- 4- Individual opinions of the Sahaba
- 5- Qiyas (Analogy, based on identifying 'illa or the effective cause)
- 6- Istihsan (Preference, because one proof over another seems more suitable, even if weaker)
- 7- 'Urf (Local Custom)

Malik Ibn Anas (717-801) Medina

- 1- Qur'an
- 2- Sunna (any Sahih Hadith that did not contradict the practice of the Medinans)
- 3- 'Amal of the Medinans
- 4- Ijma' of the Sahaba
- 5- Individual opinions of the Sahaba
- 6- Qiyas
- 7- Custom of the Medinans
- 8- Istislah ("to deem proper"- it modified "Preference" according to Abu Hanifa)
- 9- 'Urf (Local Custom)

Ash-Shafi'i (769-820) born in the Levant, traveled and is buried in Cairo

- 1- Qur'an
- 2- Sunna (any Sahih Hadith)
- 3- Ijma' (of the community at large)
- 4- Individual opinions of the Sahaba
- 5- Qiyas
- 6- Istishab (Linking, linking later sets of circumstances to earlier ones)

Ahmad Ibn Hanbal (778-855) Baghdad

- 1- Qur'an
- 2- Sunna (any Sahih Hadith)
- 3- Ijma' (of the Sahaba)
- 4- Individual opinions of the Sahaba
- 5- Weak Hadith
- 6- Qiyas

Ja'far as-Sadeq (705-765) Medina (he at one point taught both Malik and Abu Hanifa)

- 1- Qur'an
- 2- Sunna (the Sunna of the Prophet and the Sunna of the Imama, also the Hadith has to be transmitted through an Imam or by a trusted Companion)
- 3- Ijma' (of the 'ulama, religious scholars)
- 4- 'Aql (reason)

Hadith – Silsila

- 1- A transmitter of a hadith has to be known as having been pious
- 2- A witness, too, has to have the same qualifications

How to interpret and read the Qur'an (especially with regards to the nature of God, but also generally) according to al-Ghazali ('Ashari school of theology)

- 1- literally
- 2- sensible (from the context, considering what comes after it)
- 3- imaginative or mental
- 4- analogical or figurative

Principles of Fiqh:

Islamic laws must conform to the following objectives, which it has deemed necessary to preserve – in that order:

- 1- religion
- 2- life
- 3- honor
- 4- mind
- 5- property and progeny

Example (a): Five people and their bags are on a boat that will sink. Since life is worth more than property the bags have to be thrown overboard.
Example (b): Drugs are forbidden in Islam, but in order to preserve life an ill person may require morphine, so in this case the mind (which will be damaged/alterd at least temporarily) will be sacrificed for life.

Thus according to these principles lesser evil is accepted so that greater evil may be avoided.

Categories of Fiqh:

Halal	(rewarded when done, losing merit when not done)
Wajib/Fard	(daily prayers)
Mustahab/Sunna	(extra prayers, fasting on Mondays and Thursdays)
Neutral/Mubah	
Makruh	(smoking cigarettes)
Haram	(alcohol)

Classification of Crimes:

- a) **Hudud** are crimes against God and there are specific prescribed punishments (i.e. blasphemy, apostasy, adultery, drinking wine)
- b) **Qesas** are crimes against a specific victim and these also have prescribed punishments (i.e. battery, murder). Also, in the case of Qesas the victim or the close relative of the victim has the right to demand punishment or compensation (like a settlement) or can choose to simply forgive the felon
- c) **Ta'azir** are crimes against society and there are no prescribed punishments, therefore the judge decides in these cases (i.e. forgery, robbery, rebellion against the government)

Structural System

- a) Judge - Qadi
- b) Faqih – also called Mufti
- c) Fatwa versus actual judgment

Countries with "Sharia based Laws

Egypt – Hanafi, Shafi'i and Maliki mixes

Saudi Arabia – Hanbali school, with Egyptian imports

Iraq – Ja'fari and Hanafi

Iran – Ja'fari, but with Sunni concepts such as *Maslaha* (example: inheritance gives rest to descendant females – from Ja'far ["dust in the mouths of the agnatic kin"], *maslaha* for labour laws)

Modern Debate:

- a) Reform movement: mixing of schools
- b) Radical Reformers: **Taqlid** versus **Ijtihad**
- c) What can be changed? Retaining the Spirit of the Law, retaining God's Laws
- d) Some reformers have even advocated mixing Sunni legal schools with Shi'i legal schools

Legal issues in North America and Europe

a) Private sphere has become the only stronghold of "Shari'ah"

Women as carriers of cultural and moral identity

b) Marriage and Divorce misunderstood:

What constitutes marriage?

- 1- Offer and acceptance
- 2- *Mahr*
- 3- 2 Witnesses (except according to the Ja'faris)
- 4- *Wali*

Islamic banking and the issue of usury

Dietary Laws

no pork, no meat that is not slaughtered the correct way, depending on madhab - certain sea foods, no alcohol