

Islam: Governing Under Sharia

March 14, 2005

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.

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.

Is there only one interpretation of sharia?

No. Five major schools of sharia developed after the death of the Prophet Mohammed and during the Middle Ages--four in the Sunni tradition and one in the Shiite tradition. A school consists of a guild, or group of scholars, that developed specific interpretations of Islamic law; over the centuries, its precedents became legally binding. Muslims in different geographical regions favored different sharia schools, a practice that continues to this day.

What are the five schools?

Middle Eastern countries of the former Ottoman Empire favor Hanafi school doctrine, while North African countries prefer Maliki doctrine; Indonesia and Malaysia favor Shafi'i doctrine; Saudi Arabia adheres to Hanbali doctrine; and Iran follows the Shiite Jaafari school.

How do the rules of each school differ?

They are broadly similar, because they are derived from the same sacred sources, experts say. However, some schools take a more literal approach to the texts; others allow for looser interpretations. And there are also important differences between Sunni and Shiite sharia. For example, Shiites recognize a practice called *muta*, or temporary marriage; Sunnis do not. And Shiite inheritance laws differ from Sunni practices.

Do observant Muslims have to adhere to tenets of one of the five schools?

Not necessarily. Modernist thinkers since the 19th century have argued for new interpretations of Islamic law, and actual practice varies for each individual. "The Islamic sharia is not an easily identifiable set of rules that can be mechanically applied, but a long and quite varied intellectual tradition," says Nathan Brown, an expert on Arab constitutionalism at the Carnegie Endowment for International Peace.

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 is sharia applied to banking and finance laws?

Islamic banking and finance is a rapidly expanding industry that seeks to harmonize modern business practices and traditional religious norms. Classical sharia prohibits *riba*, the charging of interest. It also condemns excessive profits and requires Muslims to invest only in ventures that are consistent with Islamic principles; for example, investing in a brewery or casino is forbidden. The Islamic finance industry, with estimated assets of \$200 billion to \$300 billion, represents a small chunk of the global marketplace, but is "already playing a significant role in the financial systems in the Middle East," said John B. Taylor, U.S. under secretary of the Treasury, in a 2004 address. Some Muslim countries, including Malaysia, are making an effort to issue national bonds that comply with sharia principles. And in 2002, eight Muslim countries--Malaysia, Indonesia, Iran, Saudi Arabia, Pakistan, Sudan, Bahrain, and Kuwait--launched a new organization, the Services Board Islamic Financial, to set common standards for Islamic banking.

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. Undersharia, 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. Classicalsharia 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.

— by Sharon Otterman, associate director, cfr.org