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Sharia

Sharia (popularly known as Islamic law) is based on the revelation of Koran and the traditions of Muhammad (*sunna and hadith*), but has been complemented by the work of Muslim scholars during the first four centuries of Islam. Sharia prescribes the religious and non-religious duties of Muslims. It also stipulates specific penalties for crimes such as robbery, adultery, incest/pedophilia, fornication, and rape.

Most of the controversy about sharia stems from the ambiguity of what it comprises. It has never been defined or compiled in a systematic manner or in a single body of written work. It is based on a literature that is broad, but not necessarily consistent or approved by any single authority; hence, it is best understood as an uncodified set of stipulations.

The term *sharia* evokes strong reactions; there are those who believe that sharia is the ultimate system of justice, while others have a broader viewpoint. To clarify the matter, it is best to start by distinguishing three levels of meaning of sharia: the linguistic, the legal, and the ideological.

Sharia literally means a watercourse that leads to the main source of water. Analogously, thus, sharia is as necessary to Muslims as water is for the well-being of humans. This definition corresponds to the lingual understanding of sharia, which is to introduce or prescribe; it denotes the path that Muslims should follow to accomplish God's will.

Legally, only a few passages of the Koran and the sayings of Prophet Muhammad (*Sunna*) spelled out principles for legislation; the rest were left open to Muslims to decide according to space, time, and circumstance. Hence, throughout the history of Islam, many schools of thought developed in response to changing conditions in Muslim societies. This flexibility opened the doors for the accumulation of an impressive body of Islamic jurisprudence known as *fiqh*, within which two major schools developed: the Sunnis and the Shiites. The contribution of Muslim jurists to the growing literature of *fiqh* draws our attention to the fact that sharia is neither divine nor immutable, but rather a social construct that evolves to meet the changing situation in which Muslims live.

Referring to sharia as simply “Islamic law” is not entirely correct, because only part of it is derived from the Koran and the *Sunna*; the rest stems from other sources. When Islam emerged in Arabia, it appeared in a community that had its own preestablished laws, customs, and traditions. Some of those were rejected by the new religion, while others were incorporated into the prescribed path. The Prophet Muhammad did not abrogate all older laws in the Arabian Peninsula; only those pre-Islamic norms that were explicitly forbidden by the Koran were labeled un-Islamic. Moreover, during the first phase of the development of Islamic jurisprudence, Muslim jurists did not hesitate to use local legal conceptions prevailing in the concurred land in their reasoning. Therefore, Roman-Byzantine or Jewish laws were smoothly incorporated into Islamic jurisprudence, provided they did not contradict the Koran or the *Sunna*.

In modern times, with the emergence of nation-states, Muslim reformists and state officials worked together to codify the scattered books and rules of different jurisprudential schools into a unified national canon known as the personal status code.

Scholars were allowed to rule on matters concerning family relations and rituals, but it was understood that they would refrain from interfering in constitutional, fiscal, and administrative matters. Thus, sharia was effectively displaced from all fields of law and administration except family relations.

Codification was a complex historical process necessitating integration of often-contradictory frames of reference. It involved strong articulation of state hegemony and particular recognition of the social changes under way at the turn of the 20th century. In premodern times, the state (especially the Ottoman), treated every group of Muslims in accordance with its own Islamic school (*madhab*), but the modern nation-state had to subject all Muslim citizens to the newly unified personal status law. Some measures, such as on inheritance, also became binding on non-Muslim citizens.

Codification also involved acknowledgment and legitimation of certain social customs prevailing in particular Muslim countries, which were defined as *the* Islamic customs while others were rejected as non-Islamic.

In addition, codification reflected a fundamental change in the power balance in Muslim society. Whereas in premodern times, sharia was the exclusive field of Muslim jurists, who developed particular methodologies to arrive at legitimate judgments and established particular schools of thought, codification presupposed that the state is the only decision maker. The state had to consider what the consequences would be of adopting and legalizing certain measures of sharia and debasing others. It was crucial, therefore, to balance the interests of different pressure groups within a particular Muslim society when compounding a specific construction of sharia.

The profound changes that Muslim societies underwent during the 20th century influenced every aspect of life. Processes of modernization, urbanization, and education, and the fundamental shifts in demographic patterns such as decreasing rates of fertility, polygyny, and early marriage led to growing conflict between the codified sharia and the new socioeconomic realities. Those processes led to further modification and reforms, albeit slight.

Two paradoxical phenomena emerged at the beginning of the 1970s. First, the structural changes outlined above fostered a growing visibility of women as both economic and political actors. This was expressed in slogans and activities promoting a more gender-balanced representation in the economy and politics. Second, the changes paved the way for new players to enter the political arena. While socialists and nationalists were increasingly less able to mobilize the public around political and social slogans, Islamist movements succeeded in putting the state and other social actors on the defensive. They called for the Islamicization of society, both politically and socially. The introduction of sharia by the Iranian Revolution and the long-standing sharia system in Saudi Arabia recharged discussion on the substance, scope, and frame of reference of the codified sharia in other Muslim countries.

In the 1990s, the struggle between the proponents of broader application of the sharia and the advocates of women's rights intensified. Sharia, as codified in the personal status law, was no longer strictly a matter of gender, sexuality, or religion; rather, it was a metaphor used to express political and economic interests. In their quest for political power, Islamists used their interpretation of sharia to expand their sphere of influence and thus to further undermine the legitimacy of many Muslim states. Sharia thus became a

powerful political symbol, an ideology almost synonymous with Islam. In many settings, the actual substance of the debate on the place of sharia was drowned in dogmatic, rhetorical confrontation between “Islamic” and “Western” values. This verbal jousting masked a struggle for power and legitimacy far beyond the actual application of sharia.

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See Also: Shia; Sunni.

Further Readings

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