

Understanding Shari'ah*

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Shari'ah - or Islamic law - is not limited to societal laws and a penal system. It includes divine directives regarding every aspect of a Muslim's life. Referring to Shari'ah simply as "Islamic law" is therefore incomplete. Shariah might be better described as a body of divine laws, rules, codes of conduct, and teachings, which are intended to benefit the individual and society.

A. Meaning of Shariah

The Arabic word "*Shari'ah*" refers to a waterway that leads to a main water source. An analogy can be made where just as water is a necessary element of life, so is Shari'ah essential to the well-being of a Muslim.

B. Definition of Shari'ah

We may define Shari'ah as "*The guidance that God has provided His servants regarding belief, worship, daily affairs, manners, ethics, and all areas of life, in order to organize their relationships with Him and each other and achieve happiness in this life and the next*".

The above definition tells us that Shari'ah encompasses more than just law, and touches upon all areas of the Muslim outlook. Shari'ah is connected to three major areas of Islamic Studies: *theology*, *law*, and *ethics*. This is because when we are talking about *Shari'ah*, we are essentially referring to the guidance that God has given people in the Qur'an and the Sunnah (way, tradition, generally means Prophet's teachings). This leads Shari'ah to cover all areas of human life, either directly or indirectly, specifically or generally; therefore *Shari'ah* should be understood as all that which God has ordained for the believers.

C. The Nature of Shariah

Shariah is the framework of the ethical guidance that Muslim scholars have derived from the direct Revelation of God to man (the Holy Qur'an). Although God reveals the pattern of ultimate truth indirectly through the workings of the physical universe, as well as in the observable nature of man, the ultimate source of knowledge about both physical and metaphysical reality - and therefore the ultimate source of the Shari'ah - is the Qur'an (see the sources of Shari'ah). This divine text was revealed directly in human language to the Prophet Muhammad (saws), and is exemplified in the *Sunnah*, which reports the Prophet's understanding of this Final Revelation as shown through his words and deeds.

All Revelations to the Jewish Prophets (pbuh) and to Jesus (pbuh) is binding on Muslims unless specifically abrogated in the Qur'an. The Shari'ah is a specific form of the *shar'* or path, to God, which the Qur'an states was revealed to all the prophets of the Abrahamic succession.

Since the major purpose of Shairah is to guide man's search for truth, Shari'ah touches on both transcendental and material experience. All aspects of every person's spiritual understandings and undertakings, which come under the rubric of purification, or *tazkiyah*, should be consciously subject to the reality-check of Islamic law. The deeply spiritual nature of the Shari'ah provides the perspective for understanding and acting in accordance with the ethical or moral standards that the Creator has provided to guide every person's and community's relations with other humans and with the rest of creation. The Shari'ah therefore provides the ultimate criteria for judgment on every aspect of one's individual and social life.

D. Two Divisions of Shariah

First: Al-ibadat (the acts of worship)

1. Ritual Purification
2. Prayers
3. Fasts
4. Charities
5. Pilgrimage to Mecca
6. Other ritual acts

Second: Al-mu'amalat (Human interaction)

1. Financial transactions (interest issue)
2. Laws of inheritance (miraath)
3. Marriage, divorce, and child care (ahwaal shakhsiyah)
4. Foods and drinks (including ritual slaughtering and hunting)
5. Penal punishments (qisos, rajam, etc.)
6. Warfare and peace (al-huruub as-Silm)
7. Judicial matters (including witnesses and forms of evidence)
8. Other forms of human dealings as time and place determine.

E. Sources of Shariah

The major sources of the Shari'ah are the Qur'ān and the Sunnah which represent the actual Speech of God and the example of how to implement it in life as embodied by the Prophet Muhammad (peace be upon him).

First, Al-Qur'ān

The Qur'ān is the major source for knowing the Shari'ah and it can be defined as:

The speech of Allah, sent down upon the Prophet Muhammad, through the Angel Gabriel, in its precise meaning and precise wording, transmitted to us by numerous persons (tawātur), both verbally and in writing.

It is also important to note that the Qur'ān, because it is an eternal text, has varying approaches in guiding people. Sometimes it is direct and specific, like in the case of inheritance law and prescribed punishments, and sometimes it indicates general principles, as is the case with things such as honesty, integrity, consultation, justice, and human dignity.

Second, the Sunnah

The second major source for understanding the Shari'ah is the Sunnah of the Prophet Muhammad (pbuh).

The Sunnah can be defined as: *'the statements, actions, and silent approvals of the Prophet Muhammad (pbuh).*

From this definition we can see that the Prophet is a major source for understanding the *Shari'ah*. His guidance is generally more specific than the Qur'ān and is considered to be a clarification of the meanings of the Qur'ān. For that reason, his wife 'Āisha is reported to have said, *"His character was the Qur'ān."*

Third, ijma' (consensus)

Ijma is the verbal noun of the Arabic word Ajma'a which has two meanings: to determine and to agree upon something. Ijma is considered the third proof of Shariah after the Quran and the Sunnah. As a proof of Shariah, it is basically a rational proof. An Ijtihad or an Interpretation of one or a few scholars when becomes universal, becomes Ijma.

The classical definition of Ijma, as laid down by scholars, is categorical on the point that the universal consensus of the scholars of the Muslim community as a whole can be regarded as conclusive Ijma. Only such Ijma are considered binding by early scholars. However, universal Ijma are indeed very few. As evidence show, it is extremely difficult to prove Ijma on particular issues, particularly in the case of issues open to ijtihad or ta'wil (interpretation). The only form of Ijma upheld by majority is the Ijma of Sahabis (Prophet Companions) only.

Any agreement of majority (not all scholars) can be a proof but can not be a binding proof. There is no good ground to exclude any scholar of any school of Islam, as long as the school or group itself is not considered outside Islam by the Muslims.

Fourth, qiyas (analogy)

Literally Qiyas means '*measuring or ascertaining*' the length, weight or quality of something. Qiyas also means comparison to establish equality or similarity between two things. In the language of Islamic law, Qiyas is the extension of a Shariah ruling from an original case (Asl) to a new case (Far') because the new case has the same effective cause ('illah) as the original case.

The original case is regulated by a text of the new case. The emphasis of Qiyas is identification of a common cause between the original and new case. Jurists do not consider law derived through Qiyas as a new law. However, for all practical purposes, Qiyas leads to new ruling on a different matter.

Qiyas is a methodology developed by jurists through which rulings in new areas are kept close to the Quran and Sunnah because new rulings are based on the 'illah (cause or reasoning) discovered in the legislation of the Quran and Sunnah. Rulings on new areas could diverge a lot, if Qiyas was not applied. This is a major justification for validity of Qiyas.

Qiyas is a rationalist doctrine (because intellect is largely used to find out the 'illah or reasoning), but in Qiyas personal opinion (ra'y) is kept subservient to divine revelation (in that 'illah is discovered from the text of the Quran and the Sunnah). Qiyas does not change any law of the text (Quran or Sunnah) for expediency. Qiyas as a methodology means that the jurists accept that the rules of Shariah follow certain objectives (Maqasid) which are in harmony with reason.

Qiyas does not give rise to certainty. Qiyas is therefore speculative. Law derived through Qiyas can not be of same authority as that of textual ruling (of Quran or Sunnah). There can be difference of opinion on the law derived through Qiyas, as is the case with almost all scholars of law.

The essential requirement of Qiyas are **Asl** (original case, on which a ruling has been given), **Hukm** (ruling on the original), **Illah** (cause of ruling in the original case) and **Far'** (new case on which ruling is to be given). In the case of prohibition of alcohol drinking if it is to be extended to narcotic drugs, the requirement of analogy would be fulfilled in the following manner.

Fifth, istihsan

Istihsan literally means to deem something preferable. In its juristic sense, Istihsan is a method of exercising personal opinion (ra'y) in order to avoid any rigidity and unfairness that might result from literal application of law. Istihsan as a concept is close to equity in Western law.

Istihsan is not independent of Shariah, it is integral part of Shariah. Istihsan is an important branch of law to the changing needs of society. Istihsan has been validated by Hanafi, Maliki and Hanbali jurists. Imam Shafi, Shii and Zahiri Ulama have rejected it as a method of deduction.

It has been mentioned that decision of Umar Bin Khattab to suspend "**hadd**" penalty (penalty prescribed by the Quran and Sunnah) of amputation of hand during famine is an example of Istihsan. Here positive law of Islam was suspended as an exceptional measure in an exceptional situation.

Hanafi jurist Abul Hasan al Karkhi defines Istihsan as a principle which authorizes departure from an established precedent in favor of a different ruling for a stronger reason. A very famous Hadith: "*La darara wa la dirara fil Islam*" [no harm shall be inflicted or tolerated in Islam] has been quoted in support.

Istihsan is closely related to 'ray' (opinion) and Qiyas (analogical deduction). Both in Qiyas and Istihsan, 'ra'y' (opinion) is an important component, more heavily in case of Istihsan.

Sixth, maslaha (Public interests).

Maslahah literally means '*benefit or interest*'. When qualified as Maslahah it refers to unrestricted public interest. Al Ghazali thinks Maslahah consists of considerations which secure a benefit or prevent a harm and protection of life, religion, intellect, lineage and property.

On the basis of Maslahah, the companions decided to issue currency, to establish prisons and impose Kharaj (agricultural land tax). The scholars are in agreement that maslaha is not a proof in respect of devotional matters (Ibadah) and in respect of specific Shariah injunctions, for example, shares of inheritance.

The Ulama have quoted a number of Hadith in support of maslaha, such as the following :

"No harm shall be inflicted or tolerated in Islam".

"The Prophet (pbuh) only chose the easier of two alternatives so long as it did not amount to a sin".

"Allah loves to see that His concessions (rukksah) are observed, just as He loves to see that His strict laws (azaim) are observed".

All the Khulafa-I-Rashidun acted in pursuance of Maslahah. Abu Bakr (r.a) compiled the Quran. Usman (r.a) distributed the authenticated copy of the Quran and destroyed the copies of variant texts. A new example emerged in the American Muslim community and that is 'reporting suspicious terrorist activities to the authority' is based on 'Maslahah' principle'.

To validate Maslahah the following conditions to be fulfilled:

- a. Maslahah must be genuine,
- b. Maslahah must be general (Kulliyah) - that is it secures public interest.
- c. It must not be in conflict with clear proof (from the Qur'an or the Sunnah)

F. The Importance of Ijtihad

Ijtihad played an important role in the development of Islamic legal theory. The Arabic word *Ijtihad* is derived from the morpheme '*juhud*' which means 'expending of maximum effort in the performance of an act'. In Islamic jurisprudence *Ijtihad* means 'expending of effort in order to extract the *ahkam* (rules) of the Shariah from its sources through research'.

There are numerous types of *Ijtihad* from different points of view, but in general there are three types of *ijtihad*:

First: to extract the rules of the cases which do not have any explicitly proved rules from the text. The objectives of this kind of *Ijtihad* is to understand the evidence of the *Shariah*, to prefer one meaning of the evidence over others of that, if there is a contradiction between two or more evidences, preferring one of those over others or reconciling those.

Second: trying to find out the rules of those cases which do not have rules in the texts or there is no *Ijma* occurred on those cases. This could be done by understanding the indications of *Shariah*, then applying this understanding to those cases. In other words it could be done through the process of *qias*, *istihsan*, etc (as mentioned earlier). This kind of *Ijtihad* is called judgment based *Ijtihad*.

Third: where it is impossible to find out rules through the process of *qiyas* or *istihsan*, trying to find out the rule by making harmony with the proposition of *Shariah* there. This *Ijtihad* is more general and wider than *qias*, because this *Ijtihad* is applicable to the cases which have rule in the text (implicit or explicit) as well as to the cases which are not mentioned directly or indirectly in the text.

The on many new issues, such as cloning, is certainly in need of new *ijtihad*.

G. Purposes of Shari'ah

There are five basic purposes of Shari'ah, namely preservation of religion, life, intellect, lineage, and wealth. These ensure individual and social welfare in this life and the hereafter.

Religion: To ensure the establishment of religion, Allah Most High has made belief and worship obligatory. To ensure its preservation, the rulings relating to the obligation of learning and conveying the religion were legislated.

Life: To ensure the preservation of human life, Allah Most High provided legislation for marriage, healthy eating and living, and forbade the taking of life, laying down punishments for doing so.

Intellect: Allah has permitted that sound intellect and knowledge be promoted, and forbidden that which corrupts or weakens it, such as alcohol and drugs. He has also imposed preventative punishments in order that people stay away from them, because a sound intellect is the basis of the moral responsibility that humans were given.

Lineage: Marriage was legislated for the preservation of lineage, and sex outside marriage is forbidden. Punitive laws were put in place in order to ensure the preservation of lineage and the continuation of human life.

Wealth: Allah has made it obligatory to support oneself and those one is responsible for, and placed laws to regulate the commerce and transactions between people, in order to ensure fair dealing, economic justice, and to prevent oppression or disputes.

H. Other purposes

We may add two more purposes of Shariah, that is to guarantee the following:

Self-determination: This is usually known as ‘huquq’ (the rights). However, this term emphasizes the responsibility of both the ruled and the rulers to establish permanent institutions designed to facilitate broad-based political participation by every member of a polity in its governance so that they can help determine both their own immediate well-being and their long-term destiny.

Dignity: The duty to respect human dignity is at the core of all Islamic law, because the essential purpose of the Shari’ah is to help persons acknowledge and deepen their relationship to God and express this higher level of being, especially in their relationships with each other.

I. Fiqh–Application of Shari’ah in Real Life

The Shari’ah, based primarily on texts from Qur’ān and Sunnah, embodies broad, general rules that are immutable, not unlike today’s modern societal rules: the sanctity of life, security and freedom of expression, and the inviolability of these rights.

However, the adaptation of law according to time and circumstance is necessitated by changes in society, as well as the influx of various cultures and material conditions. Islam first came to one people with one lifestyle. As the religion spread and the borders of Muslim lands expanded, all of the different civilizations, each with their own codes of law, traditions and cultures, had to be incorporated into the Islamic polity. This was not achieved overnight and took great foresight on the part of Muslim jurists, being most elegantly brought out in the development of *fiqh*, Islamic jurisprudence.

In Arabic, *fiqh* means “deep understanding” or “full comprehension.” While the divine laws of Shari’ah are undisputed, scholarly differences in Islamic jurisprudence do exist.

The regulations and directives in Shari’ah:

- *Wajib* or *Fard* (Obligatory, or clearly required)
- *Mandub* (Recommended, but not obligatory)
- *Haram* (Prohibited)
- *Makruh* (Disliked and discouraged, but not prohibited)
- *Mubah* (Permissible, due to lack of injunction or opinion)

J. Welfare of the People

Mercy, justice and compassion are essential in order for true Shari’ah to work for the benefit of the people. The Muslim scholar Ibn al-Qayyim observed:

“*Shari’ah is based on wisdom and achieving people’s welfare in this life and the afterlife. Shari’ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shari’ah, even if it is claimed to be so according to some interpretations.*”

K. Contemporary Practice of Shari’ah Law

There is tremendous variance in the interpretation and implementation of Islamic law in Muslim societies today. More recently, liberal movements within Islam have questioned the relevance and applicability of Shari’ah from a variety of perspectives. As a result, several of the countries with the largest Muslim populations, including Indonesia, Bangladesh and Pakistan, have largely secular constitutions and laws, with only a few Islamic provisions in family law. Turkey has a constitution that is strongly secular.

Likewise, most countries of the Middle East and North Africa maintain a dual system of secular courts alongside religious courts (*qadha*), with the religious courts mainly regulating marriage and inheritance.

Overall the implementation of the Shari’ah law is meant to create a just society where law and people live in harmony.

L. Adaptation to Societal Norms

Muslim jurists in the past were quite aware of the constant need to reconcile contradictions between social and legal norms. They continuously adjusted laws to bring them in line with the customs and norms of the people. The normative basis of the institutions and concepts such as family, property, rights, responsibility, criminality, civil obedience, social order, religiosity, international relations, war, peace, and citizenship, have changed significantly over the last two centuries.

Iman Shāfi’ī, the founder of one of the four schools of thought, was living in Baghdad when he put forth his school of thought as Imām Abū Ḥanīfa and Imām Mālik had done before him. Imām Shāfi’ī came in the 2nd century of Hijri (Islamic lunar Calendar) and established his school of thought in Baghdad 1250 years ago. When he moved from Baghdad to Egypt in the last years of his life, he changed the majority of his opinions.

Shah Waliullah expounded the theory of evolution of society in four stages and found that social norms played a central role in the evolution of laws.

Ibn Abidin is a well-known Syrian Ḥanafī jurist from the late Ottoman period. He wrote a short treatise on *urf* (custom) and its position in Islamic law, explaining the validity of *urf* as a source of Shari’ah laws. He distinguished between two types of texts: Shari’ah, and jurist law (*fiqh*). In case of conflict between a custom or usage and the Shari’ah text, Ibn Abidin rejected only those customs which were absolutely contradictory (for example, alcoholic drink). In case of conflict with a jurist law text, the custom prevailed as a principle (for example, regarding male-female handshakes)

M. Conclusion

We can see from these basic definitions that the term *Shari’ah* is commonly misunderstood and/or twisted for politico-social reasons. It is not only law, and especially not only penal law. Rather, it is the entire framework of moral, ethical, “theological”, and legal teachings of Islam. It includes being nice to one’s parents, being generous to one’s neighbors, fulfilling contractual obligations, praying five times a day, being honest in business transactions, and much more.

However it is important to remember the following:

First, progress never comes without the pain that is caused by new ideas, new interpretations, new constructions, new paradigms, new theories, and new assessments of the situation. Of the tens of hundreds and thousands who participate in intellectual discourse, debate, and creative work, only a very few turn out to have been right, and they too not entirely. But everyone, including even those who get it all wrong, contribute. What is crucial is that even those who turn out to be wrong in retrospect need freedom of speech and publication. To demand that everyone say only the things said before or look at things in accordance with the established opinions and the decisions of the organized groups or the government of the day is to foreclose all possibilities of any conceptual breakthroughs and thereby the enrichment of the conceptual resources of the community.

Second, Like Jewish law and Christian canon law, Islamic law is interpreted differently by different people in different times and places. In the hands of moderates, religious law can be moderate and even liberal. In the hands of post-Enlightenment readers of philosophy, religious law becomes associated mainly with ritual, theology, or history and no longer regulates society or the state.

Third, Sharia is not static. Its interpretations and applications have changed and continue to change over time.

Fourth, there is no one thing called Sharia. A variety of Muslim communities exist, and each understands Sharia in its own way. Islamic law to American Muslims in Boston, or Houston is very different than Islamic law to religious Muslims in Egypt, Saudi Arabia or Gaza Strip. All follow Islamic law, yet their view of the law varies as much as individual Muslims vary.

No official document, such as the Ten Commandments, encapsulates Sharia. It is the ideal law of God as interpreted by Muslim scholars over centuries aimed toward justice, fairness, and mercy.

Fifth, Sharia is overwhelmingly concerned with personal religious observance such as prayer and fasting, and not with national laws.

Any observant Muslim would consider him or herself a Sharia adherent. It is impossible to find a Muslim who practices any ritual and does not believe himself or herself to be complying with Sharia. Defining Sharia as a threat, therefore, is the same thing as saying that all observant Muslims are a threat.

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