

# Islamic legal system




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# Plan:


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3. Structure of Islamic law and its legal sources.
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# 1. History of Islamic law development

- ▶ Before Islam, the nomadic tribes inhabiting the Arabian peninsula worshiped idols. These tribes frequently fought with one another. Each tribe had its own customs governing marriage, hospitality, and revenge. Crimes against persons were answered with personal retribution or were sometimes resolved by an arbitrator. Prophet Muhammad introduced a new religion into this chaotic Arab world. Islam affirmed only one true God. It demanded that believers obey God's will and laws.
- ▶ The Quran sets down basic standards of human conduct, but does not provide a detailed law code. Only a few verses deal with legal matters. During his lifetime, prophet Muhammad helped clarify the law by interpreting provisions in the Koran and acting as a judge in legal cases. Thus, Islamic law, the Sharia, became an integral part of the Muslim religion.

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- ▶ Following Prophet Muhammad's death in A.D. 632, companions of Muhammad ruled Arabia for about 30 years. These political-religious rulers, called caliphs continued to develop Islamic law with their own pronouncements and decisions. The caliphs conquered territories outside Arabia including Iraq, Syria, Palestine, Persia, and Egypt. As a result, elements of Jewish, Greek, Roman, Persian, and Christian church law also influenced the development of the Sharia.
  - ▶ Islamic law grew along with the expanding Muslim Empire. The Umayyad dynasty caliphs, who took control of the empire in 661, extended Islam into India, Northwest Africa, and Spain. The Umayyad's appointed Islamic judges,, to decide cases involving Muslims. (Non-Muslims kept their own legal system.) Knowledgeable about the Koran and the teachings of Muhammad.



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- ▶ Following a period of revolts and civil war, the Umayyad's were overthrown in 750 and replaced by the Abbasid dynasty. During the 500-year rule of the Abbasids, the Sharia reached its full development.
  - ▶ The Abbasids encouraged legal scholars to debate the Sharia vigorously. One group held that only the divinely inspired Koran and teachings of the Prophet Muhammad should make up the Sharia. A rival group, however, argued that the Sharia should also include the reasoned opinions of qualified legal scholars. Different legal systems began to develop in different provinces.
  - ▶ By around the year 900, the classic Sharia had taken shape. Islamic specialists in the law assembled handbooks for judges to use in making their decisions.

## 2. Countries belonging to Islamic law

- ▶ 1. Muslim countries where Islam is the official religion and Sharia law has been

declared to be a source, or even the only source, of the law, practice a “classical

Sharia” system, creating a sort of “government under God.” The fifteen (15) countries that implement this form of Sharia law include: Afghanistan, Egypt, Iran, Iraq, certain regions in Indonesia, the Maldives, Malaysia, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Sudan, United Arab Emirates, and Yemen.<sup>15</sup> In these countries, Sharia law has a high degree of influence on the entire legal system, including the areas of family and criminal law.<sup>16</sup> In Pakistan,

Iran, and Iraq, it is also forbidden to enact any legislation that is antithetical to Islam.

- ▶ 2. A “dual legal system” in which the government applies secular law, however

practicing Muslims may still opt to bring any familial and financial disputes to the

Sharia courts for resolution. While this method is practiced in the majority of

Muslim countries, the exact reach of the jurisdiction of the Sharia courts varies

from country to country. Typically however, the law covered usually includes

marriage, divorce, inheritance, and guardianship. The approximately thirty-two

(32) countries that practice this form include Algeria, Comoros, Djibouti, Gambia



### 3. Structure of Islamic law and its legal sources

- ▶ The two primary and transmitted sources of Islamic Law are the Quran and the Sunna (Prophetic traditions and practices). The combination between these two sources has resulted in the emergence of Islamic Law. The Quran is considered the most sacred and important source of Islamic Law, which contains verses related to god, human beliefs and how a particular believer should live in this worldly life. The human conduct that should govern the believers' life, which is clearly stated in the Quran, is indeed the domain of Islamic Law.
- ▶ The second primary and transmitted source of Islamic Law is the Sunna, which represents the Prophet Mohammad's (peace be upon him) deeds and sayings, It also comprises a number of legal provisions that must be applied by all believers of Islam.






In addition to the primary sources (Quran and Sunna) there are secondary sources of Islamic legal system.

The secondary sources are:

- ▶ Tafsir ( Interpretation of Quran)
- ▶ Fiqh (Islamic Jurisprudence)
- ▶ Madhhabs (Schools of Fiqh)



Tafsir: Tafsir (interpretation of Quran) is the science of interpreting and rendering commentary on the Quran, its exegesis. The sources of commentary on Islam are: the Quran itself because a verse of the Quran is often used to explain another verse the Hadith. Many of the collections listed above have sections devoted to tafsir, accounts of companions of the Prophet Muhammad, accounts of Taibun, the generation that had direct contact with the companions. There many examples of tafsir .

- ▶ Tafsir ibn Kathir (~1370)
- ▶ Tafsir al-Tabari (~922)
- ▶ Tafsir al-Jalalayn (1460-1505).
- ▶ Tafsir Ibn Arabi. Ibn al-`Arabi, (1165-1240)

▶ Fiqh: Fiqh is the process of deducing and applying Shariah principles. Fiqh is also the collective body of laws deduced from Shariah. Ijtihad (literally striving or exertion) is the process of making a legal decision by independent or original interpretation of the legal sources, the Quran and the Sunnah. Ijtihad is embodied in the works of jurists of various schools of thought. Fiqh and ijtihad are not to be equated with divine revelation and, therefore, they are considered secondary to Quran and Sunnah. There are several methodologies of fiqh, listed below, recognized by Islamic jurists and ijtihad occurs in a variety of forms. A subject search in a library catalog for fiqh, Islamic jurisprudence, Islamic law will yield many general collections. More specific sources discussing the methodologies below can be found by searching these terms: ijma, qiyas, istihsan, istihab, Urf

- ▶ Ijma (general consensus of opinion from among the companions of Muhammad or the learned scholars)
- ▶ Qiyas (analogical reasoning/deduction)
- ▶ Istihsan (juristic preference to ensure equity/public interest)
- ▶ Istihab (presumption of continuity)
- ▶ Urf (local custom)



## Madhhabs (Schools of Fiqh)

The nineteen schools of fiqh madhhabs that developed during the first four centuries of Islam has condensed to five of which four are Sunni and one Shia.

The Sunni schools are: Hanafi, Maliki, Shafi'i, Hanbali and the Shia school is Jafri.

## 4. Conclusion about key characteristics of Islamic legal system

- ▶ After a lot of researches concerning Islamic law, the scholars of Islam had found a number of characteristics features including: First, it based on divine sources because the Islamic law, its principles, its methods are derived from Glorious Quran and Sunna of the prophet Muhammad (peace be upon him). Second, it is comprehensive in terms of its ruling, methods, and ethics. therefore It covers all aspects of life. Third, It is universal in a way that is not only limited to a specific human race, certain places, or color. rather. it is guidance for all humanity. Forth, It is moderate and balanced in terms of its view of man with its two essential components, namely the spiritual and the physical aspects of his nature. Fifth, it is rational and realistic because it deals with tangible facts, not illusions and superstitions. Finally, this is our wonderful religion which was named Islam, so do not think that Islam is only a system of belief, but it is comprehensive way of life for all human being.

## 5. Legal system of Lebanon

The Lebanese legal system is based on and inspired by the French legal system. Just like France, which occupied Lebanon until 1943, Lebanon is considered to be a civil law country and possesses its own set of codes. The most notable code is the “Code of Obligations and Contracts” promulgated in 1932 during the French Mandate. The COC, as it is known among law students, is the equivalent of the French Civil Code except for matters related to personal status (heritage, marriage, divorce, etc.), which are governed by a separate set of laws designed for the different sectarian communities. For instance, the Islamic personal status laws are inspired by the Islamic Sharia’a, some of which were promulgated during the Ottoman rule (ending in 1918).



Although a civil law system, the courts in Lebanon are not reluctant to follow established precedents, which are usually set in place through landmark rulings by the Court of Cassation. In addition to this, one can find many court rulings that are based on precedent established in France or in Egypt, the two most influential legal systems in Lebanon.

