

# Encyclopedia of Law & Society: American and Global Perspectives

## Islamic Law

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Book Title: Encyclopedia of Law & Society: American and Global Perspectives

Chapter Title: "Islamic Law"

Pub. Date: 2007

Access Date: December 08, 2014

Publishing Company: Sage Publications, Inc.

City: Thousand Oaks

Print ISBN: 9780761923879

Online ISBN: 9781412952637

DOI: <http://dx.doi.org/10.4135/9781412952637.n373>

Print pages: 828-831

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<http://dx.doi.org/10.4135/9781412952637.n373>

The concept of Islamic law (*shari'ah* or *shari'a*) is an all-encompassing law that governs all aspects of the public, private, economic, religious, social, and political life of every Muslim. Islamic canon law deals with rituals and such matters as property, commercial activities, marriage, divorce, inheritance, personal conduct and hygiene, and diet. It prescribes penalties for crimes, felonies, and offenses.

Most Muslim states today, however, have secular legal and penal codes based on Western legal systems. Only a few countries, such as Saudi Arabia, apply penalties provided for in the Islamic canon law. For instance, judges can punish adultery by stoning to death. Likewise, the punishment for theft, if the accused cannot be qualified as “needy,” is amputation of the hand. Islamic canon law also covers political issues such as war and peace, interstate relations, and treaties between states.

Islamic legal foundations are largely based on the Qur'an and *sunna*, practices laid down by Muhammad (c. 570–632), the prophet. Both these sources established the normative foundation of the Muslim community. The Qur'an (literally translatable as reading or recitation) is considered the revealed word of God and the primary source of Islamic teachings and doctrine. Scholars refer to the codification of the *sunna* as the *hadith* (traditions of the Prophet, including those of certain disciples). Both the Qur'an and the authentic *sunna* are less subject to change than is *hadith*.

There are four sources of law: (1) the text of the Qur'an, (2) the text of the *hadith*, (3) analogical reasoning known as *qiyas*, and (4) the consensus of the *ulama* (body of religious-legal scholars) known as *ijma*. Scholars refer to the process leading to (3) and (4) as *ijtihad* (independent inquiry and judgment in legal matters).

Scholars call Islamic jurisprudence *fiqh*, and various schools of Islamic jurisprudence have developed over the centuries. These are dynamic and based on human interpretations. These schools include, but are not limited to, the Maliki School, Hanafi School, Hanbali School, and Shafi'i School. The Maliki School grew out of the cultural traditions and practices in Mecca and Medina and spread throughout north and west Africa, while the Hanafi School, in contrast, spread within the Ottoman Empire. These differences represented less doctrinal or factional differences than interpretational divisions.

# Law, Morality, and Government

For Muslims, the shari'ah is the source of both legal and moral standards; it emanates from a pure law of God, and it differs substantially from Roman law. First, it is based on revelation and is not human-made law. Second, its divine origin renders it virtually immutable. Finally, it is a blend of the spiritual and temporal dimensions of human life, public and private life, and faith and law. Islamic law encompasses all human behavior, including intentions; it does not strictly draw a distinction between law and morality.

Jurists have selectively interpreted its general moral propositions as recommendations rather than commands expressed in concrete legislation. For example, classical Muslim jurists have granted legal force to polygamy (up to four wives) on the condition that the husband treats the cowives equally. If he cannot, then he must marry only one. Jurists regard this as a recommendation to the husband's conscience to do justice.

In relation to governance, *shura*, Islamic government through consultation, and *bay'a*, a binding agreement that holds rulers to certain standards and regulates relations between rulers and the ruled, guarantees democratic participation and the accountability of leaders in society under Islamic law. The Qur'an puts the onus of governance on the shoulders of the community (*ummah*) and not on a single individual or class. The *ummah* (or its representatives) must decide matters by mutual consultation. The Qur'an describes the Muslim *ummah* as "justly balanced." The rules of Islamic jurisprudence do in fact foster interpretations of the shari'ah that enhance the benevolent nature of [p. 828 ↓ ] Islam, especially when the reasoning for such interpretations is compatible with the imperative of social justice and human well-being.

## Family Law

Increasingly, women's place in society and in the family has become a primary focus of potential change in Muslim societies. Much of the progress made by women has thus far been in the legal and political arenas. Most aspects of family personal status law remain resistant to change. This is so because the family continues to occupy a central place in Muslim societies, both culturally and historically. How to reconcile the

family with the right of women to act against their husbands, particularly in cases of inheritance, marriage, divorce, child support, and women's reproductive choice, remains an unsettling question. With the support of King Mohammed VI, Morocco has recently adopted a new family code, in which women gained the ability to initiate a divorce. It raised the minimum age of marriage for women to eighteen years from fifteen. The law also tightened restrictions on polygamy, now subject to a judge's authorization and with stringent legal obligations to provide similar living conditions for all wives.

Despite conservative resistance, views regarding women's role in Muslim societies underwent a profound change during the twentieth century. Due to educational reforms and increased female literacy rates, Muslim women have become a significant new force with increasing visibility in public life in most Muslim countries. However, many obstacles still stand in the way of Muslim women's struggle for equality, some of which link to the political economy and others to sociocultural contexts and traditional religious practices. John Esposito has pointed to the multitude of barriers that Muslim women's struggles face: "It is a battle that is about gender, class, and political and economic power as often as it is about religious faith and identity" (1998: xxvii).

Some scholars call on human rights advocates in Muslim societies to seek, articulate, and engage Islamic justifications for the rights of women. They maintain that adopting such a method of discourse is indeed integral to, and not just a substitute for, the political struggle for the protection and promotion of women's human rights. Others warn about the use of Islamic rationales as part of an appeal to the laws of nature, laws that, they argue, have discriminated against women by making them different from men. Such a pattern of hypocrisy on women's rights issues, they note, is not unique to Islamic societies; it is an example of the worldwide rhetorical strategy to bypass the principle of women's equality as established in international law and human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women.

## Rights of Minorities

For centuries, the Muslim world displayed as much tolerance and respect for religious minorities as did the Christian West, if not more. For example, the treatment of Jewish minorities in Muslim societies stands as not only fair but also civilized when compared

with the dreadful record of Christian European persecution of Jews over the centuries. Moreover, atrocities committed against Muslims in the early to mid-1990s in Bosnia contrast sharply with the Muslim world's parallel experiences in dealing with non-Muslims.

Jews, Christians, Zoroastrians, and Mandaeans (Sabaeans) under Muslim rule may follow their religions and be governed by their own laws under a contract of protection (*dhimma*), which guarantees their life, property, freedom of movement, and religious practice. In fact, Muslim history is remarkably free from the inquisitions, persecutions, witch hunts, and genocide that have characterized Western and other civilizations. Muslim communities protected their minorities from persecution by others; they protected Jews from Christians and Eastern Orthodox Christians from Roman Catholics. In Spain under the Umayyads and in Baghdad under the Abbasid caliphs, Christians and Jews enjoyed a freedom of religion that they themselves rarely allowed each other or anyone else. Known as the *People of the Book* (*ahl al-kitab*), they enjoyed autonomy in the areas of personal-status law, worship, and education. They also had their own [p. 829 ↓ ] groups with their own discreet religious, legal, social, educational, and charitable institutions. This autonomy was intended to compensate for the absence of full equal status and the denial of some political rights. Non-Muslims were also required to pay a special poll tax (*jizya*) but were exempt from the *zakat*, or alms tax levied on Muslims.

Today, non-Muslims politically integrate into Muslim communities as active partners in the conduct of their states, despite contradictory evidence at times. Muslims and non-Muslims are equals before criminal law. Under civil law jurisdiction, the *shari'ah* provides for some degree of *dhimmi* (people living under *dhimma*) judicial autonomy. *Dhimmi*s may resort to their own canon law although they retain the right to resort to Muslim courts.

In certain cases, judges recognize *dhimmi* exceptions to the civil and criminal law. They adopt religious tolerance, as non-Muslims have the right to choose and practice the religion of their choice. Islamic law provides *dhimmi*s with economic rights equal to those of Muslim citizens. However, as with any legal system or legal theory, one should not necessarily equate Islamic law with Muslim practice. Tolerance of non-Muslims in practice depends on the interpretation and application of the law. The impact of

government policies as such on Islamic observances of non-Muslims' human rights should not be underestimated.

Dhimmis are not required to pay any special taxes. The state in general treats them like other citizens, and most written constitutions in Muslim countries now guarantee the principle of equality for minorities. In Iran, Jordan, and Lebanon, non-Muslims possess a fixed share of seats in parliaments. This, however, does not apply to the Baha'i minority group in Iran. Although they are the largest non-Muslim minority (350,000) in Iran, they are not ahl al-kitab—that is, people of the book. The evidence in many Muslim countries points to a continued chasm between constitutional reforms and traditional precepts. Traditional religious institutions (*madrasas*) and scholars still teach and preach in favor of restrictions on minority groups, for example.

In some parts of the Muslim world, both the state and the people have shown intolerance toward religious minorities. In others, persecution of religious minorities has been sporadic and less marked. Ahmadiyas in Pakistan, Baha'is in Iran and Tunisia, Berbers in Algeria, Christians in the Sudan, and some forcibly converted Jews are the most notable examples of mistreated religious minorities. Since 1984, Pakistan's blasphemy laws have placed additional legal restrictions on the Ahmadiya community.

The status and conditions of minorities, in contrast, are relatively better in North African countries because, in large part, North African states traditionally practice a greater degree of religious tolerance. Egypt's Coptic Christians and Morocco's Jewish communities are well respected and regarded as influential religious minorities.

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<http://dx.doi.org/10.4135/9781412952637.n373>

See also

- [Family Relationships, Islamic Law of](#)
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- [Hindu Law](#)
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- [Inheritance and Succession, Islamic Law of](#)
- [Polygamy](#)

- [Race and Ethnicity](#)
- [Religious Minorities](#)
- [Talmudic Law](#)

### Further Readings

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