

Understanding Sharia

The Sharia – literally meaning 'path' – is the normative value system of Islam which guides the individual in their interaction with Allah (God) and society. Although the Sharia includes a number of clear precepts, it is not a set of deterministic rules and therefore requires interpretation. This is the subject of Islamic legal studies (fiqh). Recently, reference to the Sharia has become an important component of identity politics both within and outside the Muslim world. It is therefore necessary to understand who interprets the Sharia and on what basis.

Interpreting the Sharia: early Islam

Initially working as private scholars, Islamic jurists (fuqaha) emerged over time as a distinct social group connected to, but usually independent from, the power of the ruler. Their authority was based on the ability to interpret the normative aspects of the Prophet Muhammad's teachings in relation to questions or disputes that might arise in the Muslim community. A legal opinion (fatwa), authored by an Islamic scholar with the necessary expertise (mufti), was in itself neither infallible nor binding, but it often provided the basis for a court ruling. Not only could a judge (cadi), who was appointed by the ruler, ask for a mufti's opinion in order to reach a verdict, but the parties involved could also strengthen their case by submitting a fatwa supportive of their cause. This process was based on persuasiveness, not codified law, and divergent opinions were often considered equally valid. The result was a [fluid, pluralist system](#) which tolerated different legal viewpoints and conclusions, as long as the methodology used was considered legitimate.

Sources, methods, objectives

The most important source from which fuqaha [derive the Sharia](#) is the Koran, complemented by the Sunna (the words and deeds of the Prophet as described in the authentic [hadith](#) collections). The remaining sources are usually scholarly consensus (ijma) and analogical reasoning (qiyas). The practice of deriving legal rulings through independent reasoning (ijtihad) also continues to be important in both main branches of Islam, Sunni and Shia, despite controversy about its historical relevance and differences in opinion concerning what constitutes legitimate ijtihad. The Sharia strives to protect five core necessities (maqasid): life, intellect, reputation (dignity), lineage (family), and property. This concept is also [emphasised](#) by many [contemporary reformists](#). Public interest (maslaha) is also [considered increasingly relevant](#). Based on these aspects, every human act can be allocated to one of the [following categories](#): forbidden, discouraged, allowed (neutral), recommended, or obligatory.

The consolidation of fiqh

Around the 10th century, a process of consolidation in Islamic legal studies took place, resulting in an organisation into [different schools of thought](#) (madhahib), some of which exist to this day. This process was facilitated by the practice of taqlid (adopting the opinion of a legal authority) and the spread of religious-legal schools (madaris – singular: madrasa) throughout the Muslim world.

The Sunni madhahib

Named after the scholars who inspired them, the [madhahib](#) differ in their methodology, emphasising some of the methods (i.e. interpretation of the Koran and Sunna, ijma, qiyas) at the expense of others, but generally accept each other as legitimate ways to conduct fiqh and determine the Sharia. Traditionally, this pluralism was also recognised by rulers, who would allow different jurisdictions effectively to co-exist. Even among fuqaha of the same school, it was not uncommon to find diverging views on the same issue. Today, the importance of the four surviving main schools of Sunni Islam for Muslim individuals has arguably waned, but they continue to represent local variations. Due to its prevalence in the Ottoman Empire, the Hanafi

madhhab is dominant among Muslims in the Balkans, Turkey, Egypt, Central and South Asia, and China; North African Islam is shaped by the Maliki school; the Shafi'i madhhab is influential along the East African coast and in the Muslim countries of south-east Asia; finally, the relevance of the Hanbali school today is closely tied to Saudi Arabia's [Wahhabi](#) interpretation of Islam.

The Twelver Shia

The 'Twelvers', so called for their recognition of 12 descendants of Ali ibn Abi Talib, the Prophet's son-in-law, as infallible Imams, are the largest community within the Shia branch of Islam. They follow the Jafari madhhab. Since the 13th century, the practice of ijtihad has gained in importance among Twelver Shia jurists, and lay persons are expected to [adopt the views](#) of the jurist with the highest standing among his peers. He is referred to as the 'model of emulation' (marja al-taqlid). The Shia ascribes a number of exclusive prerogatives to the Imams, but since communication with the 12th Imam [ceased](#) in 941, jurists have increasingly assumed these prerogatives, culminating in Ayatollah Khomeini's controversial concept of the ['governance of the jurist'](#).

The Sharia and the modern state

European influence has completely transformed legal systems throughout the Muslim world. The creation of states based on European models, which began in the 19th century, required a codification of positive laws. Aspects related to the Sharia [were transplanted](#) into what were otherwise European-type legal systems. This was hardly compatible with the pluralist complexity of traditional fiqh, so consequently it lost much of its prestige and importance. In addition, [reformist thinkers](#) questioned traditional interpretations of the Sharia.

Politicisation and implementation of the Sharia

Beginning in the mid-20th century, opposition to governments in the Muslim world has frequently been expressed via a religious platform. Ignoring the diversity of traditional fiqh and showing a tendency towards [simplification](#), some Islamist movements have aimed to impose their understanding of the Sharia on society. States have usually responded in two ways. First, through repression, the most striking examples being the measures against the Muslim Brotherhood in [Syria](#), in [the Gulf states \(except Qatar\)](#) and, somewhat intermittently, in [Egypt](#); against the [FIS](#) in [Algeria](#); and against [Hizb ut-Tahrir](#) throughout the Muslim world. And, second, by adopting legislation portraying the state as the true protector of Islamic identity. This often takes the form of designating the Sharia as the [main source of legislation](#) and formally adopting the hudud punishments (see below). In many countries, cases relating to family and inheritance law can be brought before Sharia courts, while local customs (known as urf or adat) also remain influential. In this new political environment, the Sharia remains a negotiable concept. [Polls show](#) that in many predominantly Muslim countries majorities are in favour of both democracy and some form of [Sharia-based legislation](#). The latter is seen as a spiritual ['remedy'](#) for problems like corruption and inequality.

The hudud offences

The [implementation of Sharia-oriented laws](#) in a number of Muslim countries has given rise to human rights concerns, and this is particularly true of the hudud offences. The penalties they carry are seen as directly sanctioned by the Koran and the Sunna. While definitions can vary slightly, according to the [Oxford Dictionary of Islam](#) the hudud crimes and their respective punishments are: theft (amputation of the hand), illicit sexual relations (death by stoning, or one hundred lashes), making unproven accusations of illicit sex (eighty lashes), drinking intoxicants (eighty lashes), apostasy (death or banishment), and highway robbery (death). Although they are often presented as a visible symbol of the Sharia as a whole, their implementation has traditionally been [restricted](#) by the [high level of evidence](#) required. Other punishments, known as tazir, are usually based on the judge's discretion and must not match or exceed the hudud penalties. Finally, a third traditional category is retaliation in kind (qisas) and its alternative, the payment of blood money (diyya). The codification and application of hudud punishments varies greatly from one country to another. In [Pakistan](#), for example, they remain one of many [areas of conflict](#) between Islamist activists and parts of the judiciary. Despite a number of revisions, [supporters of the hudud ordinances](#) have so far resisted calls for their abolition. [Saudi Arabia](#), which considers the Koran and the Sunna as its constitution, [regularly administers](#) corporal punishments as well as public executions by decapitation or hanging. In [Iran](#), where [public hangings](#) remain common, the introduction of a purportedly Sharia-based 'Islamic Penal Code' has drawn [considerable criticism](#) from Iranian religious authorities, both on a conceptual basis and because of the harsh corporal punishments it stipulates.