

## Law in Islam

### *(Shari'a)*

*Shari'a*, in the contemporary common Islamic terminology, means the legal rulings or the Islamic law. The word, linguistically, means the path to water, which infers that following the divine law is vital for the spiritual and moral welfare of humans as water is for their physical welfare.

In the early usage of the word, it meant the divine injunctions whether they pertain to the articles of faith, laws, morality or spirituality. Then, the word became more specific for the laws.

Those laws, however, are not like the secular laws, for they do not only regulate man's interactions with his fellow men, but also his relationship with himself, and most importantly, God. Hence, the books of jurisprudence (*fiqh*) start with the laws pertaining to worship, such as how one may purify himself, pray, fast, pay alms and perform *hajj* (pilgrimage). Following thereafter are the chapters on transactions, customs and family laws followed by the chapters on penal laws. Most often *shari'a* is reduced in the minds of many to a fraction of the last part, which pertains to the corporal punishments prescribed for major crimes such as murder, adultery, theft, and banditry.

Although such rules are part of the *shari'a*, it would be a colossal distortion of the truth to portray them as the entire *shari'a*. It would also be unwise to try to understand or implement them outside the context of the entire *shari'a*.

The objective of the *shari'a* is the attainment of the welfare and well-being of man as an individual as well as the human societies.

Imam Ibn al-Qayem said: "The *shari'a* is founded and based on wisdom and the pursuit of the welfare of all servants (of God) in this life and the one to come. So, everything that deviates from fairness to unfairness, from mercy to its opposite, from benefit to harm or from

wisdom to foolishness is not of the *shari'a* even if it was introduced into it by misinterpretation. For the *shari'a* is the manifestation of Allah's justice between His servants and His mercy for His creations and His expression on His land and His wisdom that leads the people to Him and to the truthfulness of His messenger" (*Ibn al-Qayem, I'lam al-Muwaqqe'een*).

The *shari'a* accomplishes this pursuit of human welfare by responding to the various needs of humans, which are divided into three categories: necessities, needs and comforts/luxuries. The necessities include the protection of the religion, life, intellect, lineage, wealth, and honor. For the preservation of everyone, there are several legislations. The needs are less essential for human life than the aforementioned matters. However, the *shari'a* aims to secure them for the people as well as the luxuries and comforts that are of less priority but would still enjoy the protection of the *shari'a*. This is true as long as their attainment does not take place at the expense of compromising the necessities or the needs and they do not cross into the realm of extravagance and wastefulness.

As for the sources of the law, they are:

### **1. The Quran**

Which is, in the Muslims' belief, The revealed word of God to His last prophet and messenger, Muhammad (peace and blessings be upon him) and God's last testament and communication to mankind.

### **2. The Sunnah**

The way of the Prophet (peace be upon him) established from his statements, actions and tacit approvals.

The Quran and Sunnah are the two original sources that are undebatable, and if their wording were clear, they would provide a decisive uncontested proof.

There are two other derived sources whose authority is agreed upon, which are:

### **3. The consensus of Muslim scholars (*Ijma'*)**

Which is almost always based on the Quran and Sunnah for it is almost impossible for all of them to agree on a matter that has not been mentioned in the original sources, even indirectly.

#### 4. The Analogy

This is to extrapolate from established rulings to cover new events and problems. A good example would be the prohibition of drugs based on their sharing with wine in the quality of intoxication, which is the effective cause (*Illah*) behind the prohibition of wine.

There are other secondary sources for legislation including the fatwa (religious edict) of a companion (disciple of Prophet Muhammad), consideration of public interest (*maslaha mursalah*), consideration of equity (*istihsan*), customs (*'urf*) and blocking the means to evil and opening the means to good (*sadd adh-dhara'e' wa fath adh-dhara'e'*) but the first four are the most important & most agreed upon.

Since Muslims believe that the Quran was the last Divine communication to man and Prophet Muhammad was the final messenger, they believe in the validity of the *shari'a* at all times, with two important guidelines:

1. The sacredness is not conferred on the opinions of scholars –as long as it is not consensus –but rather it is the revelation (Quran and Sunnah) that is sacred. By consensus, Muslims believe that the scholars are not infallible and Sunni Muslims believe the only infallible humans are the prophets, and they were sealed by Prophet Muhammad (peace and blessings be upon him). The scholars, thus, may disagree based on their understanding of the textual implications (*delalat*) and the truth is never tied to one of them, but may be recognized from the evidence.
2. The *shari'a* itself provides flexibility to accommodate the various changes in people's lives from one time to another. This is due to many factors, mainly, that though it provides much detail in the area of worship it only gives essential guidelines in the areas of transactions. An example for that would be in financial transactions. If the contract does not include usury (*riba*), injustice (*ghubn*) or undue risk taking (*gharar*, which is the equivalent of

gambling in business), it would be valid and permissible no matter what form or shape it may take. This allows the *shari'a* to adapt and adjust to the various changes that may take place in people's lives.

The Muslims' desire to implement the *shari'a* is one of the manifestations of their desire to submit to Allah (God) and submission is what the word "Islam" means. It is quintessentially what the religion of Islam is about.