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# Sharia

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## What is the Truth About American Muslims?

### Sharia

## 19. What is Sharia?

Sharia stands for Islamic or sacred law. It is an Arabic word meaning “the way” or “the path to water.” For centuries, Muslim scholars have given a broad definition of Sharia reflecting the diversity of interpretations on how Muslims have attempted to best understand and practice their faith.

The general definition of Sharia as understood by most American Muslims is as follows:

Sharia represents how practicing Muslims can best lead their daily lives in accordance with God’s divine guidance. It may be generally defined as the Islamic law revealed by God to the Prophet Muhammad. That divine law was then interpreted by Muslim scholars over the centuries. Among the primary aims of the Sharia are the achievement of justice, fairness and mercy.

The five major goals of the Sharia are the protection of sound religious practice, life, sanity, the family, and personal and communal wealth. The acknowledgement of sound local customs throughout the world is one of the five basic maxims of the Sharia according to all Islamic schools of law.

Sharia is overwhelmingly concerned with personal religious observance such as prayer and fasting. Just as many observant Jews follow Halakha, many observant Muslims follow some aspect of Sharia.

Currently, 35 countries incorporate Sharia into their civil, common or customary law. The diverse manner in which these countries apply Sharia to daily life highlights how Sharia is neither static nor rigid but instead a reflection on how different communities interpret it.<sup>5</sup>

## 20. What are the sources for Sharia?

Within Islam, there are four principle sources of Sharia, which are accepted by consensus. They are (1) the Qur’an, Islamic sacred scripture, which Muslims believe God revealed to humanity through the Prophet Muhammad, (2) the Sunna (or Prophetic model of behavior recorded in a literature called the Hadith), (3) the consensus of religious scholars, and (4) analogy. Many regional and local customs are also accepted as a source of the Sharia when they are consistent with the general good. Thus, the Sharia mandates that Muslims follow the good and generally wholesome customs of the lands in which they live.

The revealed and other sources of the Sharia require interpretation for the creation of substantive law. The process of legal interpretation is called “fiqh,” which means understanding. It requires trained scholars and is similar to the roles of religious scholars in working out the details of Rabbinical law in Judaism. Islam has a

number of valid traditional schools of law, each of which constitutes a distinctive methodology in deriving the law from its sources and applying it to concrete situations. Each school offers a vast body of rulings and opinions. Islamic law is one of the richest sources of Islamic civilization through the ages and must be applied appropriately to new times and places.

## **21. Is Sharia open to interpretation?**

Yes. Within Islam, certain interpretations and applications of Sharia have changed over time and continue to change today. There is no one interpretation called “Sharia.” A variety of Muslim communities exist around the world, and each understands Sharia in its own context. No single official document encapsulates Sharia.

Since interpretation is a human process, it has always been pluralistic, prone to error and dependent on human understanding, no matter the religion in question. Interpretation is also subject to conditions and times specific to a particular community of believers. Interpretations may vary significantly from country to country and community to community. This explains the great variety of ways Muslims have practiced their faith all over the world for the past 1400 years.

Any theological or moral system is vulnerable to misuse by extremists to promote violence. For that reason, it is important to be familiar with the history of a religious tradition and understand the widely-shared interpretation of its beliefs and practices.

## **22. Is Sharia compatible with American law and values?**

Many aspects of Sharia or Islamic law are consistent with modern legal rules found in American law. For example, both legal systems allow rights to personal property, mutual consent to contracts, the presumption of innocence in criminal proceedings, and the right of women to initiate divorce proceedings.

If and when religious laws conflict with American law, the Free Exercise and Establishment Clauses of the First Amendment prohibit American government, including the courts, from substituting religious laws for civil law or following religious laws that violate civil law. This prohibition applies to all religions equally.

## **23. Do all Muslim countries adhering to Sharia engage in stoning and amputations as punishment for crimes?**

No. These penalties are not allowed in 52 countries that make up the 57-nation Organization of Islamic Cooperation, encompassing most countries with a Muslim-identified government. Indonesia, the most populous Muslim majority country, along with Egypt, Turkey, and Morocco all use Sharia as a primary source of law and none allow these punishments.

In countries where extreme interpretations of Sharia are applied, like Iran, Saudi Arabia, Sudan, Somalia and 12 states in northern Nigeria, stoning and amputations for adultery and theft are rarely used or enforced.

## **24. How do American Muslims follow Sharia?**

Many American Muslims, like other religious communities who rely on scriptures and religious principles to guide their life, look upon Sharia as a personal system of morality and identity. The vast majority of American Muslims see no conflict between their religious obligations and values and the U.S. legal system.

American Muslims are part of one of the most diverse religious groups in the U.S. in terms of ethnicity, socio-economic status, education levels and political affiliation. For some, adherence to Sharia means keeping some or all of the religious observances, such as prayer, fasting or charitable giving. For others, Sharia also affects religious practices and rituals concerning personal matters, such as marriage, divorce, dress, inheritance, business transactions and property.<sup>6</sup>

## **25. Do American Muslims want to replace the U.S. Constitution with Sharia?**

No. American Muslims overwhelmingly support the U.S. Constitution and do not seek to replace it with Sharia or Islamic law. The vast majority of American Muslims understand Sharia as a personal, religious obligation governing the practice of their faith, not as something American governments should enforce.

## **26. Is taking into account Muslim practices in U.S. courts an example of what some are calling “creeping Sharia” in the American legal system? How do you explain U.S. courts interpreting contracts based on Sharia law?**

Sharia is not creeping into the U.S. court system. There are three types of cases that may require a court to even take notice of Sharia law:

- The first is a case in which a party alleges that some government practice interfered with the ability to practice his or her faith as required by Sharia law. Such a Free Exercise claim is identical to claims that government practice violates Jewish law, canon law or other religious laws. Courts decide only whether the claim is sincere and whether the government action violates the person's rights.
- The second is an arbitration agreement providing for arbitration under Sharia law. These can be enforced by courts if voluntary and not in violation of public policy.
- The third, and least common case, is one in which a foreign country's law governs a dispute (e.g., an accident that occurred abroad) and the country's law includes Sharia law. In general, the same rules apply: American courts will not interpret religious law and will not apply foreign law in violation of basic public policies. The rules are no different for Islamic law than for canon law, Halakha (Jewish law) or other religious laws.

See also answers to questions 3-5.

## **27. How would state laws barring any consideration of Sharia or other religious laws in courts affect American Muslims and other religious groups?**

More than two dozen state legislatures are currently considering or have enacted laws intended to bar state courts from considering foreign and/or religious laws. From statements by advocates of these laws, it would appear that the real target of such legislation is Sharia law, although most are now written to encompass religious law of other faiths, and “foreign” law.

Where enacted, these bills will infringe upon the long-settled and, for faiths other than Islam, non-controversial practices described above of allowing parties to voluntarily submit their disputes to religious tribunals.

Prohibiting courts from considering religious laws would hamstring all religious communities in a variety of ways. Many civil corporate documents, especially for churches, synagogues and other houses of worship, reference canon law, a book of order or discipline, church manual, or other source of law that explains the powers and limitations of administrators. How can a title company know, for example, if a religious leader signing a deed for a congregation has the authority to do so without looking at the rules and bylaws of the corporation (which for religious corporations will be religious rules or laws)? Many religious communities have alternative dispute resolution provisions in their governing documents, which have spared the courts much expense and time in civil litigation. Would these be unenforceable if courts cannot consider religious laws?

There simply is no evidence that Sharia (or other religious law) is being substituted for U.S. law in American courts. The First Amendment clearly bars government imposition of any religious law. At the same time, the First Amendment protects the right of religious groups to observe their laws in matters of faith.

Legislation barring any consideration of “foreign law” or “religious law” in the courts has the effect of potentially marginalizing and discriminating against all religious communities in America who have practiced their religious beliefs and customs peacefully for centuries thanks to the pluralistic and inclusive nature of the U.S. Constitution, which affords such freedoms and rights to all American citizens.

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5 CQ Researcher Sharia Controversy by Sarah Glazer, available at [www.cqpress.com](http://www.cqpress.com)

6 For a discussion of American Muslims and Sharia law, see: “Shari’a Law: Coming to a Courthouse Near You?: How Muslim Americans Understand and Use Shari’a in Marriage and Divorce” by Dr. Julie Macfarlane. See also, “Understanding Sharia in the American Context” by Asifa Quraishi and other publications from the Institute for Social Policy and Understanding ([www.ispu.org](http://www.ispu.org)).

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