

What is Shari`ah?

Realities and Misconceptions

Muslim Educational Trust

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OUTLINE

Introduction

- 1. **What** is Shari`ah?
- 2. **Fiqh** [jurisprudence]
- 3. **Sources** of Shari`ah
- 4. Its supreme **objectives**; *Maqasid*
- 5. Its main **characteristics**
- 6. Common **misconceptions**

Conclusions

Introduction

- Fear of Shari`ah: Part of **Islamophobia**
- Asking Muslims to “denounce Shari`ah” is like asking Christians to denounce Christianity” to be elected
- Essence of “Shari`ah” is the same as the “Shari`ah” of Abraham, Isaac, Jacob and all prophets

1. What is Shari`ah?

- Literally: **Way**, explanation/clarification
- Legally: What Allah **prescribed** for Muslims
- Shari`ah: Core teaching of **prophets** [42:13]
- Focus on ethical orientation, **values** and **broad principles**. Few detailed rulings.
- Less than **8%** of the Qur'an is on "rulings"

2. What is *Fiqh* [Jurisprudence]?

- Literally: **Understanding**
- Legally: Interpretation of **practical rulings** by examining their **detailed evidences**
- *Shari`ah* is infallible and stable while **Fiqh is fallible, changeable** and subject to development and rejuvenation
- *Fiqh* is **guided** by *Shari`ah* which exists within the totality of the **body of Fiqh**

3. Sources of *Shari`ah*

A. **Primary** Revealed Sources

- The **Qur'an**: Preserved Word of Allah
- Sound **Sunnah**: Prophet's words, actions & approvals Its **authority** is rooted in the Qur'an

B. **Widely Accepted** "Derived" Sources

- Scholarly **consensus** [*Ijma`*] and **Analogy** [*Qiyas*]

C. Other **Debatable** Sources

- E.g. public interest, jurist preference...

4. Its supreme objectives [Maqasid] - Classification

- **Necessities** [*Dharooraat*] to protect
 - ❖ Deen, life, mind, family and wealth
- **Needs** [*Hajiyat*]: to remove hardship
- **Luxuries** [*Tahseenat*]: more comfort
- Focus on necessities [next]

4. Its supreme objectives

A. Protecting Faith

- Belief in the One **Universal God** of all [1:1]
- Freedom of **faith and worship** [2:256]
- Protection of all **places of worship** [22:39-40]
- Respectful religious **dialogue** to discover common beliefs and platforms [3:64, 29:46]
- Independent “personal laws” for **religious minorities**

4. Its supreme objectives

B. Protecting Life

- **Sanctity** of human life [5:32, 17:33]
- Provide **life's necessities** [food, shelter, clothing, medication and security] as a collective public and social responsibility
- Deter and **punish murder**.
- Stringent **rules of evidence**
 - ❖ Victim's family **may forgive** the murderer
 - ❖ Outlaws' **rehabilitation** [5:33-34]

4. Its supreme objectives

C. Protecting the Mind

- **Seeking knowledge** is a religious duty
 - ❖ Immense contribution to civilization
- Encouraging **freedom of research** and demanding proofs, including “the experimental method” where relevant
- Prohibiting anything that **beclouds** or damages the mind [e.g. narcotics]

4. Its supreme objectives

D. Protect the Family

- Family: **cornerstone** of a healthy society
- Gender equity: spiritual, human and moral **equality** and equitable **complimentary** social and economic role differentiation
- Peace, love and kindness in **marital relations [30:21]**. Steps and options to resolve marital disputes without breaking up the family
- **Child protection** and moral upbringing

4. Its supreme objectives

E. Protecting Property Rights

- Right to **work and earn** a living, lawfully
- Right to **acquire wealth** and dispose of it, lawfully and **morally**
- Prohibition of all forms of **cheating, exploitation & injustice**
- **Punishing theft** and embezzlement of private and/or public funds
- Fulfilling **basic needs before punishment**

5. Its main characteristics

➤ Divine Origin

- ❖ Rooted in Allah's ultimate **authority, perfect knowledge**, wisdom, justice and impartiality
- ❖ Greater believers' **commitment** to follow it

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➤ Moral Anchor

- ❖ **Moral correctness** above political correctness
- ❖ Prophet sent **to perfect noble moral character**

5. Its main characteristics-2

- Focus on **comprehensive well being**
 - ❖ Essence of Shari`ah is to **secure benefits and remove harms**
 - ❖ **Practical** not utopian
 - ❖ **Balanced & equitable** to all
 - ❖ Built-in **flexibility** and applicability

6. Common misconceptions

A. Shari`ah = Penal Law

- Shari`ah is **comprehensive** & includes worship, moral, social, economic, political aspects of Islamic living
- Deals with **personal**, family, penal and international law
- **Spiritual transformation** the legal reforms
- **Remove causes** of crime before punishing

6. Common misconceptions

B. Shari`ah is Old & Obsolete

- Is every “old” thing [like **water**] bad?
- Is every “new” thing [like **aids**] good?
- Author of Shari`ah is **All-Knowing**
- Built-in method to **deal with change**

6. Common Misconceptions

C. Shari`ah is Against Human Rights

- Shari`ah is about **duties** and rights
- All basic rights are **included** in the *“Maqaasid”* or objectives of Shari`ah
- **Protection** of each objective **requires penalties** for transgression
- Defining **rights** includes Islamic spiritual and ethical dimensions
- **Must Allah abide by human resolutions!**

6. Common Misconceptions

D. Shari`ah's Penal Law is Harsh

- Are we more compassionate than Allah?
- Who defines harshness [e.g. execution]?
- Is a long jail term kinder?
- How about the human rights of the victim?
- Deterrence and narrowing the scope of the major penalties

6. Common Misconceptions

D. No Clemency in Shari`ah

- **Discretionary** penalties, *Ta`zeer* are flexible
- **Forgiveness** in *Qisas* is encouraged
- Mercy even in **mandatory** [*hadd*] penalties
 - ❖ **No eagerness** to report personal failings
 - ❖ Rulers should **not** “**witch hunt**” or be eager to prosecute even when “**sin**” is reported
 - ❖ Do **not pursue unspecified** confessions
 - ❖ **Going back** on confession is accepted

CONCLUSIONS

- Shari`ah is **holistic not totalitarian**. It is inseparable from basic religious rights
- Most **criticism** of Shari`ah relates to **interpretations [fiqh]**, unfair **application** outright **violations** or other historical issues
- There is a **built-in mechanism** and rules to respond to changing circumstances
- Shari`ah is **all justice and all mercy**

For Further Information

- OnIslam.net
- Islamicity.com [mostly audio material]
- [Youtube](https://www.youtube.com): Search under “Jamal Badawi”
- Jannah.org [Gender Equity in Islam]
- Several sites esp. onIslam.net, titles like:
 - ✓ Muslim and Non-Muslim **Relations**
 - ✓ Muslim Contribution to **Civilization**
 - ✓ **Apostasy**: Is It a Capital Crime?
- **Email: JamalBadawi@hotmail.com**

Shari`ah: Source of Mercy not Fear



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