

# WOMEN AND SHARIAH LAW

## What is Shari'ah, or Islamic law?

Shari'ah is the "centre piece and backbone of the religion of Islam." It is based on the Qur'an, which Muslims believe is the revealed book of God given to Muhammad over 23 years, ending in 632 CE, and the Sunnah, or example of the Prophet Muhammad, whom Muslims believe was divinely guided. The Hadith, which are sayings of Muhammad and provide information about the Sunnah, were recorded in the two centuries after Muhammad's death in authenticated hadith collections. Islamic law prescribes Muslim behaviour in every aspect of life from private matters between the individual and God to relationships with others from the family or the widest community. The Shari'ah contains categories and subjects of Islamic law called the branches of *fiqh* (literally, "understanding"). They include Islamic worship, Family relations, Inheritance, Commerce, Property law, Civil (tort) law, Criminal law, Administration, Taxation, Constitution, International Relations, War and Ethics, and other categories.

## What are a Muslim jurist's qualifications and authority?

Muslim jurists have been known by different titles. *Fuqaha* are the class of Muslim scholars who dealt in theoretical Islamic law, or *fiqh*. As for practicing or implementing the law, a judge (*qadi*) serves in a court, while a *mufti* gives legal responses (*fatwa*) to people's questions.

The basis for respecting a judgment in Islamic law is the jurist's ability to carefully apply knowledge to theory and practice. In order to be qualified to interpret the sources of law, a jurist had to master many branches of knowledge. A Muslim jurist had to know the Qur'an and the hadith, and how to interpret these sources. This required a thorough knowledge of the Arabic language and its grammar. Other disciplines such as logic, history and general knowledge as well as specialized areas like commerce or international relations might be important in deciding specific cases. Knowing the history of the law and the schools of law, their differences and legal precedents (decisions of other jurists in the past) are just a few of the many areas that a jurist had to know about.

Muslim jurists were scholars with specialized professional training, but their authority was very limited. There is no clergy or priesthood in Islam, and no central authority hands out final judgments. The source of a Muslim jurist's authority comes only from their recognized knowledge—not from the government, not from a central religious authority, and certainly not from a claim to divine right. Any Muslim consulting a jurist on some matter is responsible for following his or her own conscience in deciding on a course of action based on the jurist's advice. The jurist is also responsible to his own conscience and bears a large responsibility because people respect his knowledge. Of course, a Muslim judge appointed to a position in an official court of law does bear the authority of office. Such a judge makes legally binding decisions, which might be appealed to higher courts. Such judges' rulings, however, are not the foundation of Islamic law, but only its application to specific cases.

## How does a jurist reach a decision?

An Islamic legal decision is called a *hukm*, or ruling, such as a judge would make. A jurist's response to a question from an individual or group is called a *fatwa* (legal opinion). In order to reach a decision, the jurist goes through a careful process of reasoning. The decision places a given course of action on a spectrum ranging from forbidden to obligatory, as shown in the chart below.

JUDGMENT	forbidden	discouraged	permitted	encouraged	obligatory
EXAMPLE	murder	wasting resources	surfing the internet	giving charity	praying five times daily

Figure 1: Spectrum for judging actions in Islamic law

**Sources of law.** A branch of religious knowledge called *fiqh*, or understanding, is the theoretical foundation of Shari'ah. *Usul al-fiqh*, or sources of law, define the principles and methods on which it is based. The recognized primary sources of Islamic law are the Qur'an and Sunnah. In matters that were not clearly spelled out in these sources, Muslim jurists developed other methods of finding a solution to a question. The first is ijma' or unanimous consensus among jurists, and the second is qiyas, or decision by analogy.

Unanimous consensus means that after making public a judgment about a matter of law, jurists found general agreement with it, and no jurist made sound legal arguments against the ruling. Unanimous consensus belonged mainly to the time when jurists and knowledgeable people were known to one another in the growing Muslim territories. The principle of *ijma'* is being debated today. It might apply to longstanding agreement of scholars over time, or take on new importance with the possibilities offered by mass communication.

Analogy means using logic and reasoning to apply a known law to a new situation not covered in the original law. As an example of analogy, Islam forbids Muslims to drink wine. Jurists have applied this prohibition by making an analogy to other intoxicating beverages like whiskey and beer, as well as drugs such as opium. They stated that the Islamic sources gave as the reason for prohibiting wine that it intoxicates. Thus, other intoxicating substances were also prohibited by analogy.

If the answer cannot be found by making an analogy from a known case, then other categories can be applied to select an acceptable solution or judgment. *Istihsan* means deciding in favour of the public interest in a matter that is not otherwise prohibited. A common example of this is found in many cultures, when the right to use private property as the owner wishes are modified by the need to protect the natural environment.

Another source is 'urf, or custom. Jurists placed a value on preserving what is familiar to people in a certain place, based on established tradition. For example, people in different geographic areas had long-standing customs about sharing irrigation water (some shared based on amount of time allowed to irrigate, while others shared based on amount of water). Arab jurists tried to respect these systems in their judgments rather than imposing the system that was customary in another place and time. Respect for custom became an important source of diversity in the application of Islamic law over time and across geographic space, respecting ways that people did things according to their traditions as long as they did not violate Islamic principles or standards.

**Principles and methods.** This system of logical application of the law based on the sources required the jurist to exercise individual reasoning, called *ijtihad*. Individual reasoning or effort is the basis of the process of analogy, but it is required to reach any judgment in Islamic law. Two important principles guided jurists' use of evidence in making *ijtihad*. One is called *istihab*, meaning continuity. It means that "a situation or thing known to exist continues to exist until its opposite is proven." The most famous example of this is the principle of Islamic law that a person is innocent until proven guilty. Another principle is called *ibahah*, meaning that anything is permitted if it is not expressly prohibited. This is quite different from assuming the reverse, as only a few prohibitions are actually mentioned in the Qur'an. Another principle of evidence called *bay'ina* is that a plaintiff or accuser bears the burden of proof. If one person accused another of owing money, for example, it was up to the plaintiff to prove the debt, instead of the defendant having to prove that he or she did not owe any money. An I.O.U. would be evidence, and a cancelled check or witness statement by the defendant would prove the debt was paid. Such principles are common to many modern systems of law.

[http://www.islamproject.org/education/D01\\_IslamicLaw.htm](http://www.islamproject.org/education/D01_IslamicLaw.htm)

## **Women's Rights in Islam**

The issue of women in Islam is topic of great misunderstanding and distortion due partly to a lack of understanding, but also partly due to misbehaviour of some Muslims which has been taken to represent the teachings of Islam. We speak here about what Islam teaches, and that is that standard according to which Muslims are to be judged. As such, my basis and source is the Quran--the words of Allah, and the sayings of the Prophet, his deeds and his confirmation. Islamic laws are derived from these sources. To

facilitate our discussion we can discuss the position of women from a spiritual, economic, social, and political standpoint.

**From the spiritual aspect, there are seven points to remember:**

According to the Quran, men and women have the same spirit; there is no superiority in the spiritual sense between men and women. [Noble Quran 4:1, 7:189, 42:11]

The Quran makes it clear that all human beings (and the phraseology doesn't apply to men or women alone, but to both) have what you might call a human; He

"Breathed some of My spirit into divine touch. When God created him"(or her in this sense). [Noble Quran 15:29 See also 32:9]

Some of His spirit here means not in the incarnational sense, but the pure, innate spiritual nature that God has endowed her or him with.

The Quran indicates again that one of the most honoured positions of human is that God created the human, and as I referred to Surah 17 earlier, it means both sexes, as His trustee and representative on earth. There are many references in the Quran that reaffirm this.

Nowhere in the Quran do we find any trace of any notion of blaming Eve for the first mistake or for eating from the forbidden tree. Nowhere, even though the Quran speaks about Adam, Eve, and the forbidden tree, but in a totally different spirit. The story is narrated in 7:19-27, and it speaks about both of them doing this, both of them are told that both of them disobeyed, both of them discovered the consequences of their disobedience, both of them seek repentance and both of them are forgiven. Nowhere in the Quran does it say woman is to be blamed for the fall of man. Furthermore, when the Quran speaks about the suffering of women during the period of pregnancy and childbirth, nowhere does it connect it with the concept of original sin, because there is no concept of original sin in Islam. The suffering is presented not as a reason to remind woman of the fall of man, but as a reason to adore and love woman or the mother. In the Quran, especially 31:14, 46:15, it makes it quite clear God has commanded upon mankind to be kind to parents and mentions,

"His mother bore him in difficulty or suffering upon suffering." [Noble Quran 31:14, 46:15]

The Quran makes it clear again to remove any notion of superiority and I refer you again to 49:13. I must caution you that there are some mistaken translations, but if you go to the original Arabic, there is no question of gender being involved.

In terms of moral, spiritual duties, acts of worship, the requirements of men and women are the same, except in some cases when women have certain concessions because of their feminine nature, or their health or the health of their babies.

The Quran explicitly, in more than one verse, 3:195, 4:124, specified that whoever does good deeds, and is a believer and then specifies "male or female" God will give them an abundant reward.

**In the area of economic rights**, we have to remember that in Europe until the 19th century, women did not have the right to own their own property. When they were married, either it would transfer to the husband or she would not be able to dispense of it without permission of her husband. In Britain, perhaps the first country to give women some property rights, laws were passed in the 1860's known as "Married Women Property Act." More than 1300 years earlier, that right was clearly established in Islamic law.

"Whatever men earn, they have a share of that and whatever women earn, they have a share in that." [Noble Quran 4:32]

**Secondly**, there is no restriction in Islamic law that says a woman cannot work or have a profession, that her only place is in the home. In fact, by definition, in a truly Islamic society, there must be women physicians, women nurses, women teachers, because it's preferable also to separate teenagers in the volatile years in high school education. And if she chooses to work, or if she's married with the consent of her husband, she's entitled to equal pay, not for equal work, but for work of equal worth.

**Thirdly**, when it comes to financial security, Islamic law is more tilted in many respects towards women. These are seven examples:

During the period of engagement, a woman is to be on the receiving side of gifts.

At the time of marriage, it is the duty of the husband, not the bride's family. He is supposed to pay for a marital gift. The Quran called it a gift, and it is exclusively the right of the woman. She doesn't have to spend it on the household; she doesn't have to give it to her father or anyone else.

If the woman happened to own any property prior to marriage, she retains that property after marriage. It remains under her control. Also, in most Muslim countries, the woman keeps her own last name, and her own identity.

If the woman has any earnings during her marital life, by way of investments of her property or as a result of work, she doesn't have to spend one penny of that income on the household, it is entirely hers.

The full maintenance and support of a married woman is the entire responsibility of her husband, even though she might be richer than he is. She doesn't have to spend a penny.

At the time of divorce, there are certain guarantees during the waiting period and even beyond for a woman's support.

If the widow or divorcee has children, she's entitled to child support.

In return for these listed securities, it is clear why the Islamic laws pertaining to inheritance give men a higher share. From the social standpoint, as a daughter we find that credit goes to Islam for stopping the barbaric practice of pre-Islamic Arabs of female infanticide. These ignorant people used to bury female daughters alive. The Quran forbade the practice, making it a crime. Surah 81 additionally, the Quran condemned the chauvinistic attitudes of some people who used to greet the birth of a boy with gladness, but sadness in the case of a girl.

The duty, not the right, the duty of education, as the Prophet said, is a duty on every Muslim, male and female.

As far as treatment of daughters is concerned, Prophet Muhammad (peace and blessings be upon him) said, "**Anyone who has two daughters, and did not bury them, did not insult them and brought them up properly, he and I will be like this,**" **holding his two fingers close together.** Another version adds, "**And also did not favour his sons over daughters.**" One time the Prophet (peace and blessings be upon him) was seated. A companion was sitting with him. The companion's son came. He kissed his son and put him on his lap. Then his daughter came, and he just sat her by his side. The Prophet told the man, "**You did not do Justice,**" meaning he should have treated the daughter equally, kissed her and put her in his lap also. Indeed, whenever the Prophet's daughter Fatimah came to him, in front of everyone, he stood up, kissed her and let her sit in his favourite place where he'd been sitting.

From the marital standpoint, the Quran clearly indicates in Surah 30:20 and 42:11 that marriage is not just an inevitable evil; marriage is not somebody getting married to his master or slave, but rather to his partner.

"Among His Signs is this, that he created for you mates from among yourselves, that they may dwell in tranquillity with them, and He has put love and mercy between your (hearts): Verily in that are signs for those who reflect." [Noble Quran 30:21]

There are numerous verses in the Quran to the same effect.

Secondly, the approval and consent of the girl to marriage is a prerequisite for the validity of marriage in Islam. She has the right to say yes or no.

Husbands' and wives' duties are mutual responsibilities. They might not be identical duties, but the totality of rights and responsibilities are balanced. The Quran says:

"Women have the same rights (in relation to their husbands) as are expected in all decency from them, while men stand a step above them." [Noble Quran 2:228]

This only specifies the degree of responsibility, not privilege, in man's role as provider, protector, maintainer, and leader of the family. The same Surah speaks about divorce, about consultation between husband and wife, even in the case of divorce. When there are family disputes, first the Quran appeals to reason and the consideration of positive aspects of one's spouse,

"Dwell with your wives in kindness for even if you hate them, you might be hating someone in whom God has placed so much good." [Noble Quran 4:19]

If that appeal does not succeed, and problems between the husband and wife continue, there are measures that can be applied. Some of these measures are done privately between husband and wife. Some of them might appear harsh, but there are qualifications to restrict excessive or abusive use of these measures. These measures are considered an attempt to save a marriage rather than break a family apart. If the situation does not improve, even with the limitation and prevention of excesses, the next step is a family council. One arbiter from his family and one from her family should sit together with the couple and try to resolve the problems.

If a divorce becomes necessary, there are many detailed procedures in Islamic law that really knock down the common notion that divorce in Islam is very easy and that it is the sole right of man. It is not the sole right of man alone and neither is it true that all you have to say is: "I divorce you three times," and that's it. Islam also has laws regarding custody of children. I was very surprised to see newspapers making the false claim that in all cases custody goes to the father. Custody involves the interest of the child, and laws often favour the mother of young children.

**Polygamy** has become so mythical in the minds of many people that they assume being Muslim means having four wives. This is a false notion, of course. A very renowned anthropologist, Edward Westermarck, in his two-volume work, "History of Human Marriage," notes that there has been polygamy in virtually every culture and religion, including Judaism and Christianity. But the point here is not to say, "Why blame Islam?" Actually, Islam is the only religion even among Abrahamic faiths that specifically limited the practice of polygamy that existed before Islam and established very strict conditions for guidance. The question, "How could any man have two wives? That's terrible!" reflects ethnocentrism. We assume that because we're living in the West and it seems strange, and we assume it must apply to all cultures, all times, under all circumstances. This simply isn't true. Let me give you one current-day example. In the savage attack on Afghanistan, genocide was committed on the Afghani people. It is estimated that 1-1.5 million people lost their lives, a great majority of whom were men of a marriageable age. Now, with a great shortage of men, what will happen to their widows, their orphans and their daughters of marriageable age? Is it better to leave them in a camp, with a handout? Or better a man is willing to take care of his fallen comrade's wife and children?

It is obvious that monogamy is the norm for Muslims. If we assume that having four wives is the norm, then we assume a population of 80% female and 20% male, which is an impossibility on the aggregate level. The only verse in the Quran that speaks about polygamy, speaks about limiting not instituting

polygamy. The verse was revealed after the Battle of Uhud in which many Muslims were martyred, leaving behind wives and children in need of support. This verse shows the spirit and reason of the revelation.

The Quran placed obedience to parents immediately after worship of God.

"We commanded mankind to be kind to his parents" [Noble Quran 31:14]

And then speaks of the mother. In a very succinct statement, Prophet Muhammad (peace and blessings be upon him) said, "**Paradise is at the feet of mothers.**" Once a man came to him and asked, "**O, Messenger, who among mankind is worthy of my kindness and love?**" **The Prophet answered, "Your mother."** "**Who next?**" "**Your mother.**" "**Who next?**" "**Your mother.**" **Only after the third time he said, "And your father."**

As a sister in faith, in blood, we find the Quran speaks about men and women that they should cooperate and collaborate in goodness. Surah 9:71 speaks about men and women as supporters and helpers of each other, ordaining the good and forbidding the evil, establishing prayers and doing charity. Prophet Muhammad (peace and blessings be upon him) echoed what the Quran said, "**I command you to be kind to women.**" In one of his last commands in his farewell pilgrimage before his death, he kept repeating, "I command you to be kind and considerate to women." In another hadith, he said, "**It is only the generous in character who is good to women, and only the evil one who insults them.**"

On the question of attire, the Quran and the sayings of the Prophet did not say women must adopt a particular dress of a particular country. It only gives basic boundaries, and for a committed Muslim woman, she doesn't follow this simply because her father or husband tells her, but because Allah already stated that as a requirement in the Quran, and was explained through revelation given to Prophet Muhammad (peace and blessings be upon him) that this was not to restrict woman, but to provide a virtuous society where sexual attraction is not the main obsession of everyone. This forces everyone to respect the woman for what she is as a human being, as an intellectual and a spiritual being, rather than being diverted to her sexuality.

Finally, a few words about political involvement. The verse quoted earlier, Surah 9:71, which speaks about men and women being supporters and helpers of each other was taken by some jurists to mean that it involves also public life. How could they ordain the good and forbid the evil without women being active in the affairs of their society? According to the Quran, I'm not talking about the practices of Muslims, in Surah 60:12, we read about Muslim women making "bayy'ah" to the Prophet. Bayy'ah as an Islamic term is somewhat analogous, to a degree, to what we would call an election, or oath of allegiance. And that was given in his capacity not only as a Prophet, but as a head of state, as he was already the head of state in Medina.

During the rein of 'Umar, women participated in law making. 'Umar made a proposal of a certain regulation concerning marriage. A woman in the mosque stood up and said, "'Umar, you can't do that." 'Umar did not tell her, "Shut up, you are a woman, you have nothing to do with politics, etc." He asked, "Why?" She made her argument on the basis of Quran. In front of everybody, he stood up and said, "The woman is right and 'Umar is wrong," and he withdrew his proposal. That was the spirit in the early days of Islam.

In the most authentic collection of Hadith, Hadith Bukhari, a section is devoted to the participation of women, not only in public affairs, but in the battlefield, too, and not only as logistical support. Women carried arms, and when there was great danger to the Muslims, they volunteered to participate even in the battlefield.

The problems presented here are not the problems of Islam. They are problems of a lack of commitment, lack of application, or misapplication of Islamic teachings by Muslims themselves. The topics I have tried to cover here represent and exemplify the big gap that exists between the true teachings of Islam as

derived from its original sources and its projected image in the West and the way some Muslims behave in the disregard of those noble teachings.

There's no question that the Western media has played an important role in perpetuating these misconceptions. But in fairness, we should not blame the media alone. Western culture, in writings about other religions, in particular Islam, have distorted images. From books, novels, even in the academic circle, and sermons from the pulpit in places of worship, these kinds of prejudices are perpetuated.

There are fair and honourable people in the media who are receptive to correction of inaccuracies, and who present the facts, when the facts become manifest, as we have seen in the coverage of the barbaric and cruel treatment of the Palestinians in the Occupied Territories. What I would suggest to the media is instead of depending on the distorted information about Islam; they should keep in touch with educated Muslims, and remember, the U.S. has between 5 and 6 million Muslims. Only through correct representation and open communication with Muslims in America can the media give a fair analysis of current events, given the background of those conflicts, and provide a great service to society.

[http://www.islamswomen.com/articles/do\\_muslim\\_women\\_have\\_rights.php](http://www.islamswomen.com/articles/do_muslim_women_have_rights.php)

## **EXAMPLES OF GREAT MUSLIM WOMEN**

Hadhrat A'isha Bint Abu Bakr, Wife of the Holy Prophet (peace be upon him) provided great guidance to the first Muslim community, even to the renowned companions and Caliphs

Hadhrat Ibn Hajar RA names 88 great scholars who learned from her and then says that there were a large number of others.

Hadhrat Umar (RA) – the 2nd Caliph- made a lady, Hadhrat Shafah bint Abdullah RA, the head of the trader's organization. She was given the responsibility of being in charge of the Accountability Court for the area and was also given the duty of Market Administrator. These were political advisory posts similar to being the head of a trade union in modern times and included settling disputes as well as raising concerns of the market traders. What is interesting to note here is a woman was deemed capable enough to be made in charge of a predominantly male dominated profession and her opinions and ideas accepted as equal to that of her male counterparts. (Ibn Hazm)

Hadhrat Umm Kalthoom bint Ali (RA) appointed as ambassador to third Caliph and she went on two diplomatic missions to visit the Queen of Rome representing the Islamic Caliphate. (Tabrani)

Umm Darda was a female scholar who taught at the great Ummayyad mosque in Damascus as well as in Jerusalem; one of her students was Caliph Abdul Malik ibn Marwan himself.

As philanthropists and benefactresses, Muslim women like Queen Zubayda, wife of 9th century Caliph Harun Ar-Rasheed in the Abbasid dynasty, deserves mention because of her huge contributions to public works such as building wells and guest houses on the major routes that pilgrims took to Mecca, as well as building wells and reservoirs. In addition, Queen Zubayda was an intellectual who expressed her political thoughts in public besides supporting poets and writers, regardless of their religion.

On the Western side of the Muslim Arabic world, 9th century's Fatima al Fihriyya in Fez, Morocco founded al-Qarawwiyyin mosque which became one of the oldest Islamic schools and colleges operating until the present time.

Among other women who built schools was Banafshaa' ar-Rumiyya of the 11th century who restored schools, bridges, public housing for homeless women in Baghdad, besides having her own school endowment.

Moreover, Fatima of Cordoba was a 10th century librarian who oversaw 70 public libraries containing 400,000 books

Arwa al-Sulayhi, an 11th century Yemini who ruled for 71 years and was known as the Noble Lady.

Sultana Shajarat al-Durr took control over Egypt after her husband's death in the 13th century.

Sultana Razia, on the other hand, was the only female to sit on India's throne in Delhi for four years in the 13th century.

In central India and closer to our contemporary world, a family of women rulers ruled over the principality of Bhopal from 1819 to 1924, the last of whom was Begum Kaikhursau Jahan. This family was famous for building railways, water works, and a postal system.

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