



Sharia Law: A Critical Study

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Abstract: *Sharia law embraces many principles of Western law traditions such as the right of women to own property, the prohibition of illegal drugs, the right to privacy, the presumption of innocence, and that precedential value of legal decisions. This paper discusses about Sharia Law. This study aim to describe the conceptualization and interpretation of sharia in and its relation to the principles of human rights. This article considers the challenges and potential results of evaluating Muslim family law practices.*

The Muslim population of the UK now numbers almost 3 million people. In this context, with empirical research estimating that 30% of Muslim marriages are not legally valid, there is a clear lacuna between the law and practice. Sharia became a factor of political change. New-breed politicians tapped into history and Islamic political culture of their states as political strategies and for security of tenure. In search of political base and legitimacy, Islamic political culture and traditions served as a precondition for the enthronement of Sharia. The new Sharia differs remarkably from the one that had existed from the colonial period.

Key Words: *Sharia, Islam, Law, Divorce, Conflict, legal pluralism; Sharia law; Western Thrace; religious exemptions; minority; religious equality; non-discrimination.*

Diversity across the Muslim world is in part due to Islam's adaptability to the culture, time and place in which it is located. The role of Islam in public life was not debated for twelve centuries. During this era, starting with the revelation of Islam in the sixth century A.D., Islam dominated not only the religious, but also the political, economic, social, and legal aspects of life. In our current unofficial system, if a group of Islamic scholars or sole Imams hold themselves out as having legal authority to determine issues of marriage, divorce, custody and inheritance for Muslims, such protections can be missing.

Sharia law regulates public life, namely interactions between individuals. These interactions can be categorized into three domains: Islamic political governance of the state, the Islamic legal system, and the economic system. These three categories have been the subject of extensive debate since the late nineteenth century, when western influence sparked transformations in Egypt and across the Arab world.

The normative figure in Western feminism remains the liberal autonomous individual of modernity. Other women are those who have their freedom to choose restricted. Typically, other women are those burdened by culture and hindered by their communities from entering modernity.

In this respect, the possibility for members of the minority to choose Sharia law could be recognized by the state not because there is a corresponding obligation stemming from international human rights provisions but as a positive measure within the margin of appreciation of the state to protect the rights of the members of the minority and the minority itself as a community. Within Islamic discourse, *sharīah* refers to **religious regulations governing the lives of Muslims**. For many Muslims, the word means simply "justice," and they will consider any law that promotes justice and social welfare to conform to Sharia.

Many Islamic countries are governed by Sharia law (Islamic law), but many Muslims who do not live in those countries still desire to comply with Sharia law, including their commercial transactions. It explains how the 'Muslims



in Western Thrace' came to be identified as a particular legal minority, why Sharia continued to be applied to them and only to them, and examines their contemporary legal and human rights status.

The unusual response of former President Olusegun Obasanjo (of Nigeria) to the adoption of shariah law in northern Nigeria that it "will soon fizzle out" was as intriguing and philosophical as the formal adoption of shariah law itself. This is against the backdrop of his antecedence in handling burning national matters. The critical issues bordered on whether the adoption of sharia was political or religious since it was through the parliament rather than the mosque.

As the world's Muslim population grows, international legal institutions must adapt to provide workable solutions for commercial transactions that facilitate the application of Islamic law. Sharia law is often viewed negatively in the West because Sharia's criminal laws are seen as draconian; however, Sharia's criminal laws can be applied separately from its financial and other civil laws.

Politics and systems of government in Islamic theory were actively debated early in the nineteenth century. The vast majority of Islamic scholars believed Islam to be a religion and a state, meaning that Islam should regulate government and public life, while also serving as a religion. However, some voices began to argue that Islam serves only as a religion and should not be involved in governing; such ideas were unprecedented in Islamic history.

In a society where men are free to treat women however they please, women are left helpless. Many women living under Sharia law find themselves facing oppression from men who do so through an exploitation of fear and an abuse of power. It can be argued that because men justify their usage of power through Sharia law, Islam inherently contributes to this oppression. Rehaab Rifdi and M. Melnyk write in "Sharia law - The unjustified justification":

The religion of Islam does not condone the oppression or mistreatment of any human being, specifically women, but rather spreads a message of peace and equality in its teachings. The patriarchal history of the region, the misinterpretations of the Qur'an, and an exploitation of fear through an abuse of power all proves that the oppression of women living under Sharia law is brought forth by radical men and is not justified in Islam. Although many women in many parts of the Middle East experience a great deal of oppression while living under Sharia law, the religion itself cannot be blamed as the implementations of the Sharia come from men who dictate what is right and what is wrong. Islam is a religion of peace, mercy, compassion, and equality. Any man who uses religion as a means of justification to violate a woman's right to live safely and peacefully cannot claim he is carrying out the message of God. (19)

The understanding of sharia is always sociologically and epistemologically contingent, because it is mediated through a complex and variable array of religious authorities, popular ethical imaginaries, and media of preservation and transmission. Sharia Law is religious by nature and considered to flow from the guidance found within a divine Sharia. The practice of Sharia law is causing more harm than good to citizens and it is essential that this issue is resolved in a timely fashion to avoid a civil or religious war in the country. The religion of peace and equality is seen as the religion that oppresses its women through violence, objectification, and incredible amounts of discrimination at the hands of Sharia Law.

Next, it is helpful to consider the process of negotiating and solemnizing marriages when a secular law-based society asks of an insular, clerically-dictated system respect for individual rights to bargaining, contracting, dividing property, and sharing custody of children. Many women who fall victim to rape in certain regions that are governed under Sharia Law often fall victim to unjustified punishments as well. In the eyes of the Middle Eastern justice system, it is often argued that the women who get raped do something that provokes men to rape them. Rehaab Rifdi and M. Melnyk write in "Sharia law - The unjustified justification":

As a result of this, women who report rape, are also simultaneously convicting themselves as well. Women are then oppressed as they fear for speaking out about this injustice, which would likely send them to prison. It can be argued that there is oppression directed towards women because countries governed under Sharia law criminalize women in many rape cases instead of focusing solely on the rapists themselves. Under the Sharia law that is practiced in certain countries, women in rape cases are often perceived to be as guilty as the rapists themselves. However, this oppression is brought forth through an abuse of fear in the rape culture that shows



that Islam cannot be to blame for the oppression that many women face. It is commonly argued that women lead men to rape them, and because of this they are equally as guilty. (17)

It is important to understand the general origins and scope of Islamic law—what is commonly called Sharia law. Yussef Auf notes in “Islam and Sharia Law: Historical, Constitutional and Political Context in Egypt”, “Sharia law is the body of Islamic rules and teachings that governs Muslims’ relationships with their families, society, and nation. Sharia law derives from eleven Islamic references, primarily the Holy Quran, the holy Muslim scripture revealed to the Prophet Mohamed, and the prophetic tradition, i.e., the recorded words and actions of Prophet Muhammad that mainly illustrate and explain the Quran”(2).

Sharia aims to protect the five basic principles underlying the implementation of the law in Islamic society. Sharia Law is religious by nature and considered to flow from the guidance found within a divine Sharia. Sharia is a law derived from the Islamic holy book, the Qur’an, and from Islamic scholars’ interpretation of the tradition left by the Prophet Mohammed. Therefore, all laws in the Qur’an were revealed in order to protect the five essential elements of human life which are:

- To protect human life
- To protect an individual’s religion/faith
- To protect offspring or human lineage
- To protect property rights
- To safeguard an individual’s intellect

A persistent political, social, and legal debate regarding the role of Islam in public life arose in the mid-nineteenth century. Major socio-political transformations in Egyptian society, as well as most Arab societies, triggered this debate. The Western colonization of Arab countries introduced drastic changes to the cultural and social features of authentically Arab and Islamic societies, with political, social, and economic theories that were new to the Arab-Islamic reality.

The freedom to practice or not to practice as a Muslim is a hallmark of secular societies. If a parallel family law system for Muslims was introduced, it may be perceived as or held out to be obligatory for Muslims, thereby negatively affecting their freedom of choice. Abdur Rahman says in “The Scope of the Death Penalty Under the Sharia Law”:

For a better understanding of the Islamic concept and implementation of the death penalty under the “Sharia law”, it would be pertinent to have a basic understanding of the different concepts that constitute Sharia. It is believed that Sharia covers every aspect of a Muslim's life. For Muslims, the "divine trend" includes, among other things, moral law and Islamic law. Sharia rules many aspects of Muslim “behaviour, including crime, politics, taxation, inheritance, marriage, divorce, hygiene, diet, prayer, fasting and pilgrimage”. This can be described as a system which guides the way how Muslims should behave in a society and how should be their relations with those who belong to the Islamic religion and who do not believe in Islam. (6)

The consequence of the intervention of the concept of non-marriage, and the application of this concept to those Islamic marriage ceremonies which do not also incorporate a civil ceremony, is that Muslim communities have become increasingly reliant on an unregulated third body (Sharia Councils) to assist with divorce and financial (and often also child) arrangements as the civil courts are not able to afford the vulnerable party an adequate remedy. Karen Lugo writes in “Sharia Law in American Courts American Family Law and Sharia-Compliant Marriages”:

Islamic law differs from a secular legal system that recognizes consensual government based upon self-rule. Islamic law derives its legitimacy from Allah, not agreement among citizens to be ruled by laws as enforced by accountable state police power. Thus, power is concentrated in the religious adjudicators of the doctrine. This consolidation of power can invite arbitrariness, especially when violations of the law are not merely an infringement of the social order, but transgressions against God that are often punished in both the current life and afterlife. (80)

The recent introduction of the full Sharia, the Islamic legal system, by some Northern states in Nigeria raises a number of constitutional questions and impacts the supremacy of the Nigerian Constitution. The adoption of Sharia law



and its harsh penalties have raised some concerns about its violation of human rights of citizens. Sharia law has consigned women to an inferior group in the affected northern states and embraced the belief that women are a substandard class and they should respect and treat their men as their superiors. Sharia regulates the legal relationships many Australian Muslims enter into and out of, including marriage, divorce, custody and inheritance, as well as contractual and commercial dealings. Among Australian Muslims, there exists a strong preference to have legal questions answered and disputes settled by persons with Islamic credentials.

In various regions throughout the Middle East, Sharia Law, commonly referred to as the Islamic Law, is the legal system in place that governs the day-to-day aspects of life including marriage, politics, business, social issues, and sexuality. A civilization's social and cultural priorities are reflected in the laws that give structure to families. These laws regarding the organization of families are usually designed to reflect the family's role as the most important purveyor of core cultural values. United States Supreme Court Justice Robert Jackson, also chief United States prosecutor at the Nuremberg Trials, wrote this about Islamic law:

In its source, its scope and its sanctions, the law [i.e., Islamic Law, Sharia] of the Middle East is the antithesis of Western Law Islamic law . . . finds its chief source in the will of Allah as revealed to the Prophet Muhammad. It contemplates one community of the faithful, though they may be of various tribes and in widely separated locations. Religion, not nationalism or geography, is the proper cohesive force. The state itself is subordinate to the Qur'an, which leaves little room for additional legislation, none for criticism or dissent. . . . It is not possible to separate political or juristic theories from the teachings of the Prophet, which establish rules of conduct concerning religious, domestic, social, and political life. This results in a law of duties, rather than rights2

As states enact family law according to constitutional health, safety, and welfare prerogatives, this study demonstrates that it would be useful for legislators to consider providing basic requirements for the licensing of marriages, registration of officiants, and prenuptial agreements.

In Islam, marriage is a sign of honesty, extramarital affairs, and impurity. According to the Sharia, forced marriage is not allowed. According to the Sharia, those who marry are required to be in Islam, that is, only those who belong to Islam can marry each other. A man who believed in Islam had no right to marry a woman who believed in another religion or did not belong to any religion at all.

At present, most Islamic marriage ceremonies in England which are not accompanied by a civil registration are considered a 'non-marriage' resulting in the parties often deferring to community elders or Sharia Councils for resolving disputes regarding divorce and financial arrangements (and also arrangements for children) after the breakdown of the relationship.

Nikah Nama/Muta—Marriage: The marriage, or nikah, is usually negotiated for the bride by her parents, or a relative as representative, called a wali. The marriage contract is often arranged once the woman is considered to have reached puberty. While practices vary by region, some girls as young as nine have been considered eligible for marital commitment. It should be noted that the main purpose of the Sharia was to establish a healthy, honest marriage. Soliboyev Umidbek notes in "Sharia Law of Marriage and Inheritance":

The next condition for concluding a marriage contract according to the Sharia was to pay the dowry and give the separated dowry. This marriage was considered invalid. Thick, as mentioned above, is a right paid to the bride, her parents, relatives, guardians, along with money, property, or other property. The dowry consisted of a house or a dowry and other property given directly to the bride by the groom. The dowry fell directly into the hands of the bride's father, the bride had no right to the dowry, and the dowry was considered the bride's personal property. (204)

Talaq—Husband's Power to Verbally and Unilaterally Divorce: Divorce is the most hateful action permitted in Islamic law. Talaq is the method utilized by the husband of divorcing his wife by repeating three times "I divorce you." The right to divorce is given to the man. Divorce (Talāq) is among the detested of legal actions permitted by Islam. Moreover, Islam considers divorce as evil. Any means must prevent it, but marital relations become bitter in some situations, and two spouses cannot stay together in an atmosphere of hatred and disaffection. He could ask his wife to annul the marriage only in the following cases:



1. If the husband does not provide for his wife for a period of six months.
2. If the husband is unable to live in the marriage (if he does not have masculine ability).
3. If the marriage was entered into at a young age and the girl declares that she does not agree to live in the marriage after reaching puberty or reaching a certain age.
4. If the husband converts from Islam to another religion

However, towards the end of the nineteenth century, with the introduction of western influence from colonization and the weakening of the Ottoman Empire, questions emerged regarding the role of religion in public life. Such questions spurred an intellectual dilemma that still persists today regarding “Sharia,” or Islamic law. Ann Black writes in *Legal recognition of Sharia law: Is this the right direction for Australian family matters?*:

However, compliance with both systems is more problematic for wives. A wife does not have the same extra-judicial divorce option. If her husband does not agree to pronounce talaq, she is left to find someone with authority to hear her case and hopefully to grant her an Islamic divorce. Islamic law has always provided divorce options for wives, but each requires a third party—usually a judge or a body of legal scholars—to make the determination. In Muslim countries, the role is typically fulfilled by Sharia courts, but in Australia there is no judicial equivalent. As a divorce decree from the Family Court lacks any Islamic currency, it can mean that in the eyes of her community, her husband and herself, she is not really divorced. In the absence of an established Sharia court, tribunal or body, Muslim women have to find a Muslim person or organisation with Islamic credentials to hear her case and make a determination. (65)

The reintroduction of Sharia in northern Nigeria was influenced by the combination of religious, political, and social forces. The reintroduction of Sharia in the twelve states of northern Nigeria between 1999 and 2000 underscores the salience of Islam in the politics and governmentalities of the region. Popular pressure led to the reintroduction of Sharia in Kano, but its trajectory signified usage for administrative convenience and legitimacy prompted by the challenges of democratic change. The reintroduction of Sharia was a convergence of state Islam and popular Islam. Hisbah was established to enforce a distinctive Islamic government. It tackles the problems of community security in a different way, dedicated to the abolition of the business and consumption of beer, the restriction of sex work, the segregation of the sexes in public spaces, and the policing of a moral order based on Sharia. “Diversity across the Muslim world is in part due to Islam’s adaptability to the culture, time and place in which it is located. As large numbers of Muslims now reside in non-Muslim lands, this inherent adaptability remains important. Researchers in Britain are noting the emergence of an *angrezi shariat* (English Sharia), which is a reconstruction of Muslim laws in the English socio-legal context” (Yilmaz, 2005).

The death penalty is one of the core issues which have been widely discussed around the world. As capital punishment has been the part of the Islamic legal system, the Quran and hadith explicitly established the penalties in various serious crimes. A majority of the World’s nations has abolished the death penalties from their constitutions, but most of the Islamic countries firmly believe in this system. Since the death penalty is even now broadly established in Muslim countries, there is also increasing support in several of these states to abolish of the death penalty.

One of the issues that often circulates among newly recruited Sharia lawyers is the lack of the required capability or aptitude to be a Sharia counsel, especially when conducting legal counseling with clients.

Before appreciating how Western societies have approached Sharia Law constitutionally, it is critical to understand some basic points of Islamic Law that could create legal issues in Western institutions. Sharia Law differs significantly from traditional Western law in a number of respects. In the context of family law, marriages are often arranged for women in Islamic society.

Like marriage, the procedure to obtain a divorce is drastically different from Western customs. A divorce proceeding, however, is just one way in which Sharia Law operates to the disadvantage of a woman. Many efforts can be made and programs and modules may be proposed and arranged by referring to the various client counseling training modules conducted in universities abroad. Even though this study has not been conducted more comprehensively and it does not represent the voice of all former Sharia law students, it may still be used as a as evidence of the dire need for client counseling training programs for Sharia law students.



The common law continues to develop and must consider judicial treatment of Islamic ceremonies as valid, void or voidable in accordance with the factual matrix of each case. However, the current reliance on the judicial invention of the concept of 'non-marriage' to Islamic marriage ceremonies where there has been no civil registration continues to cause unfairness and intervention is required by legislation or from the Supreme Court to remedy this unfairness.

While social and political concerns - some of which may be irrational - cloud the prospects of Sharia Law arbitration panels getting their due consideration in Western jurisprudence, carving out a niche for Sharia Law while giving proper oversight ensures constitutional protections for all members of Western society.

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