

# Muslim Law: Origin, Sources and Schools

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Muslim Law or Islam Law (or the Law of Allah) is a part of Family Law. It is a personal law and a branch of civil law that is applied by courts in regard to family matters when the parties are Muslims.

## Introduction

- Muslim Law is called Sharia (Shariah or Syariah) in Arabic.
- Fiqh = understanding of details and refers to the inferences drawn by scholars
- Sharia = Refers to the principles that lie behind the fiqh.
- The word 'Muslim' is derived from the word 'Islam' and signifies a person who adopts the faith of Islam.
- Muslim Law in general draws no distinction between religious life and secular life

## Origin Of Muslim Law

Muslim Law, or Islamic Law, is believed to originate from divine revelation, communicated to Prophet Muhammad and documented in the Quran. Over time, Prophet Muhammad's disciples and Muslim jurists have further refined these principles. The Quran's provisions are extensive, addressing nearly every aspect of human life.

Scholars describe "sharia" as an ancient Arabic term meaning "pathway to be followed" or "path to the water hole," reflecting the critical role of water paths in an arid desert environment.

Shariah, also spelled Sharia, is the fundamental religious concept of Islam, systematically developed during the 2nd and 3rd centuries of the Muslim era (8th–9th centuries). The core tenet of Islam is total submission to the will of Allah (God), making Islamic law the expression of Allah's command for Muslim society. It constitutes a comprehensive system of duties incumbent upon Muslims by virtue of their religious beliefs. Known as the Shari'ah (literally "the path leading to the watering place"), this law represents a divinely ordained path of conduct that guides Muslims toward practicing their faith in this world and achieving divine favor in the hereafter.

## Who is Muslim?

A **Muslim** is a person who follows the religion of Islam. From the point of law, there are two ways in which a person can be regarded a Muslim.

Muslim by Birth –  
**Believes in one God and  
Prophet-hood of Muhammad**

Muslim by Conversion –  
**Converts by profession of Islam.  
Converts by formal ceremony.**

Who are Muslim - Law Monitor

These two points are the minimum and fundamental rules for a person to be called a Muslim.

## Sources Of Muslim Law

The Islamic law is referred to as “Sharia”. Islam has given mankind the most comprehensive legal system. Islam has its own personal, civil, criminal, evidence and international law. There are two types of sources under Muslim law, they are:-

1. Ancient sources
2. Customary sources
3. Modern sources.

### **Ancient Sources (Quran, Sunnah, Ijma, Qiyas)**

#### *I.) The Quran:*

The Quran, regarded as the very word of Almighty God, is undeniably the primary source of Sharia. Critics argue that the Quran does not constitute a code of law for two main reasons.

- First, they claim the Quran serves more as a moral guide for one's way of life.
- Second, out of its 6219 verses, only about 600 specifically address legal matters.

However, it is essential to understand that, unlike Western legal systems, Sharia does not distinguish between religious and civil matters. Sharia codifies God's Law, encompassing every aspect of legal, social, political, and religious life. The value of information lies in its quality, not quantity. The Quran outlines six specific crimes against religion, known as “hadd punishments,” and addresses various other topics such as homicide, marriage, divorce, and inheritance. An authentic hadith of the Prophet states, “He who knows the law of inheritance is possessed of half the knowledge of the world.” Remarkably, the Quran encapsulates the complete outline of inheritance law within just three verses (11, 12, and 176) of Surah Al-Nisa. The principles of Ijma and Qiyas, which detail succession, derive their authority from these verses.

No description can fully capture the Quran's immense importance to Muslims. Objectively, it forms the foundation and framework of Islamic law and stands as its primary material source.

### **II)The Sunna**

The Sunna is the second most important source of Islamic law after the Quran. It comprises the practices and precedents set by Prophet Muhammad.

**1. Authority and Interpretation:**

- The authority of the Sunna is derived from the Quran.
- Understanding the circumstances of each revelation is crucial for correct interpretation, necessitating the collection of traditions about the Prophet's actions.

**2. Clarification of the Quran:**

- The Sunna clarifies ambiguities in the Quran, making implicit injunctions explicit.
- It provides details for religious acts such as prayer, fasting, almsgiving, and pilgrimage.
- Establishes additional rules, e.g., a killer cannot inherit from their victim.

**3. Role in Jurisprudence:**

- Jurists refer to the Sunna for solutions to problems not addressed by the Quran.
- Prophet Muhammad is acknowledged as having both the Book and Wisdom.

**4. Limitations:**

- The Sunna lacks originality, serving as an elaboration of the Quran.
- Quranic words are of divine origin, while Hadith words are reported by people.
- After the Prophet's death, Hadith compilations emerged only after two and a half centuries, leading to potential fabrications.

**5. Authenticity:**

- The Quran is the only book believed to be undistorted and thus the most reliable source.
- Prophet Muhammad emphasized that any tradition contrary to the Quran should be disregarded in favor of the Quran.

### *III.) Ijma*

**Third Source of Islamic Law:** Comparable to delegated legislation. It is defined as the consensus of the jurists of a certain period over a religious matter.

**Prophetic Endorsement:** Considered valid as Prophet Muhammad said, "My community will not agree on an error."

• **Historical Example:**

- After Prophet Muhammad's death, there was no clear guidance on the next political leader.
- The election of Abu Bakr as the first caliph by the people's votes exemplified Ijma.

• **Modern Context:**

- Multiple schools of law within the Muslim community.
- The doctrine of consensus promotes harmony among these schools.

• **Challenges:**

- The formation of different schools made achieving consensus difficult.
- Lack of a representative organization for all jurists.
- Ijma is now often determined retrospectively.

• **Authority:**

- Limited for legal innovation compared to the Quran.
- Ranks lower than the Holy Quran in terms of authority.

## 2. Customary source

In its early stage, Islamic jurisprudence was heavily inspired from prevailing customary law e.g. the practices of the Caliphs, the decisions of the judges and the traditions of the people. But even then, Quran acted as a mentor guiding the people. For instance, Caliph Abu Bakr made alms payment compulsory in the light of the Quran; the Qazis i.e. judges did equity by seeking guidance from Quranic verses; and it was under Verse 3 of **Surah Al-Nisa** that the customary right of unlimited polygamy was curtailed only to a maximum of four wives. Thus, the supremacy of Quran as a primary Islamic source got fully established in that epoch.

## 3. Modern sources

In addition to the above main Sources of Law, we find that the law is occasionally supplemented by other principles also. The following can be summarized.

### a) Isti Hasan - Juristic preference - Equity

- Imam Abu Hanifa adopted Isti Hasan to alleviate dependence on analogical reasoning.
- Isti Hasan means liberal construction or juristic preference, akin to today's law of equity.
- It allows for laying down necessary rules based on special circumstances.
- Criticism: It gives almost unchecked discretion in interpreting the law.

### (b) Isti Salah- Public interest

- Imam Malik introduced Isti Salah over Isti Hasan.
- Isti Salah prioritizes public interest over analogy.
- Analogy remains unless it contradicts general utility.
- Isti Salah is only disregarded if it harms the public.

### (c) Ijtehad - Exercising one's own reasoning to deduce rule of law (Shariat)

- Ijtihad emerges when Quran and Hadis lack precise guidance.
- It entails independent judgment or considered opinions.
- Quran and Hadis are considered, but time and public interest also matter.
- Only great scholars or Mujtahids have the privilege of Ijtihad.
- Mujtahids' authority derives from their knowledge, reputation, and piety.
- After Ibne Hanbal, recognized Mujtahids ceased to exist, leading to the closure of Ijtihad.

(d) Taqlid - Law of Precedents

- Taqlid emerges after the closure of Ijtihad gates.
- It involves following opinions without knowing their authority.
- Taqlid creates a cycle of imitation without independent judgment.

(e) Fatwas - Decisions of Muslim Judges

- Fatwas are opinions of Muslim jurists, sought by kings for legal guidance.
- They gained importance over time, with ordinary Muslims seeking jurists' opinions.
- Example: Aurangazeb appointed Shaykh Nizam Burhanpuri and others to compile Fatwas.

Fatwas are not a source of law.

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