



Progressive Islam in Practice

SHARI'A & ISLAMIC FAMILY LAW PT 3

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WERE THERE SECULAR COURTS IN ISLAMIC COUNTRIES BEFORE COLONIZATION?

Yes. Informal secular courts existed in the Umayyad period (661-750 CE) and the Abassid period (750 CE). These secular courts covered practical issues, while *Shari'a* law judges dealt with things considered "religious matters," including family law. In later times, these two legal systems combined into one system, which would see secular judges consult Islamic scholars, as needed. An Islamic scholar, or *mufti*, could offer a religious ruling, or *fatwa*, based on his interpretation of *Shari'a* law. A secular judge could then use the *fatwa* to make a legal ruling.



DID COLONIZATION CHANGE THE LEGAL SYSTEMS IN ISLAMIC COUNTRIES?

Yes, but not entirely. In the 1800s, colonial powers created formalized secular courts, specifically to deal with civil and criminal cases using colonial laws. In colonized countries, Islamic Law and existing secular laws were often replaced by these new colonial laws. In practice, Islamic Law became more limited, often reduced to the field of family law.



CAN ISLAMIC LAW SYSTEMS TODAY CLAIM TO BE SHARI'A LAW?

No. Islamic countries today apply laws that are based on human interpretation and judgment, even when they are called Islamic Law. Islamic Law is not *Shari'a* for several reasons. First, ***Shari'a* is a moral religious system, not a legal system.** Whenever countries claim to apply Islamic Law, they are actually applying the laws that a specific ruler created based on meshing different interpretations of *Shari'a* and secular norms of the day. Some laws were created because of the ruler's personal preferences or because these rules served their political aspirations.



CAN ISLAMIC LAW SYSTEMS TODAY CLAIM TO BE SHARI'A LAW? II

Such a mixing of interpretations would not be considered **Shari'a** by any *madhab* (school of Islamic thought). Additionally, law requires people to do specific things or risk punishment. The Qur'an though, says there is no compulsion in matters of faith. Islam gives Muslims the freedom to choose among different views, actions, and beliefs, a choice only the individual believer can make, because in Islam, only the individual is responsible for their choices before God.



IS THERE A PROBLEM WITH APPLYING ISLAMIC LAW IN ONLY A FEW AREAS, SUCH AS FAMILY LAW?

Yes. *Shari'a* law enforces religious obligations for Muslims—but in order to abide by the teachings of the Qur'an, these obligations must be observed voluntarily. When the government enforces *Shari'a* law as an aspect of a modern legal system, Muslims lose their freedom to choose from different views, free of compulsion. Since they cannot choose, they also lose the chance to be rewarded by God for making good choices.



IS THERE A PROBLEM WITH APPLYING ISLAMIC LAW IN ONLY A FEW AREAS, SUCH AS FAMILY LAW? II

Enforcement by the government encourages hypocrisy (saying or doing one thing, while believing another) and also takes away freedom of belief, which is a direct contradiction to Quranic teachings. Another issue is that *Shari'a* is a system of principles that covers all areas of life. Trying to apply *Shari'a* as Islamic Law in only some areas of life makes those areas distorted. *Shari'a* takes into account the fact that different areas of life—from work to worship and community to family life—are connected.



IS THERE A PROBLEM WITH APPLYING ISLAMIC LAW IN ONLY A FEW AREAS, SUCH AS FAMILY LAW? III

Trying to apply *Shari'a* law as Islamic Law in only some areas of life distorts the inherent interconnectedness of the areas in which a person lives and also the impact of historical context. For example, *Shari'a* law guidelines about supporting a divorced woman are based on the legal and social relationships at a particular time in history. Laws governing legal and social relationships however have changed over the centuries.



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This means that trying to apply *Shari'a* law guidelines from hundreds of years ago can lead to serious problems that harm women, children, and family units. The result is often in direct contradiction to the fairness and justice that Prophet Muhammad (PBUH) encouraged all Muslims to display. For example, *Shari'a* assumes that men are responsible for supporting the women in their families, including their unmarried or divorced sisters.



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Today's laws, however, don't make brothers legally responsible for supporting their sisters. If divorced women are not supported by their ex-husbands—and, in some places, are not able to work—and at the same time, male family members are not required to support them, the result is unjust and contrary to Islam.

