



Progressive Islam in Practice

SHARI'A & ISLAMIC FAMILY LAW PT 2

By Professor Abdullahi Ahmed An-Nai'm

Adapted for MPV by Tynan Power



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WAS SHARI'A LAW USED AS A LEGAL SYSTEM AT THE TIME OF PROPHET MUHAMMAD(PBUH)?

No. During the life of the Prophet Muhammad (PBUH) and for 150 years after he died, *Shari'a* law did not exist the way it exists today. In the early days, people did not treat it as a system of laws, but rather as best practices.



WERE EARLY ISLAMIC SOCIETIES GOVERNED BY ISLAMIC LAW?

No. Early Islamic societies were ruled by caliphs (from Arabic "*khalifa*") and later by kings and emperors. These rulers mixed Islamic ideas with secular rules that were already in place or that had been the common practice at the time. These early Muslim empires did not have what we now call "law", or the creation of rules that applied to everyone and the uniform enforcement of these rules across the empire.



WERE EARLY ISLAMIC SOCIETIES GOVERNED BY ISLAMIC LAW? II

Instead of a national system, Muslim communities applied *Shari'a* in their own informal ways. But over time, the political systems changed. Some new rulers tried to establish laws that resembled Islamic Laws, as the specific ruler understood it at the time. This understanding might have differed from how previous rulers understood it. Others introduced new secular laws based on culture or on their political goals.



DO ISLAMIC COUNTRIES TODAY USE ISLAMIC LAW?

Yes & no. Many Islamic countries believe they are following *Shari'a* in family law matters, but again, ***Shari'a* is not a legal system**. Some countries use their version of Islamic Law (based on interpretations of *Shari'a*, which again, are human interpretations of the Qur'an, and Hadith) in family matters, and in all other matters, use a European-style law left over from colonization (such as criminalization of homosexuality, apostasy and blasphemy laws).



DID LAWS IN ISLAMIC COUNTRIES CHANGE WHEN THEY WERE COLONIZED?

Yes. Almost all Muslim countries were controlled by European non-Muslim colonizers. As these countries absorbed Muslim states & empires, they brought their own laws & practices, implementing them in the Muslim societies they now controlled. Before colonization, *Shari'a* law was informally observed by Muslims, but it was not enforced by any government or leader. Colonization changed that. Informal application of *Shari'a* law by individual communities were replaced by European-style laws so the colonial government could enforce them.



DID LAWS IN ISLAMIC COUNTRIES CHANGE WHEN THEY WERE COLONIZED? II

This implementation of state laws had a significant impact on the informal legal system of different countries and communities. For example, before colonization, the parties in a legal case would select the *madhab* (school of thought) they wanted to apply to their case. They would select a *qadi* (judge) who was an expert in that *madhab* and then go before them to present their case. In doing so, both parties gave the *qadi* the authority to make a decision. They knew the judgment was consistent with their own beliefs and they could accept that the decision of the *qadi* was valid.



DID LAWS IN ISLAMIC COUNTRIES CHANGE WHEN THEY WERE COLONIZED? III

During colonial rule, that traditional choice was no longer possible. European legal codes were created and applied by the government in a uniform manner, which included the appointment of judges and a singular type of legal system implemented uniformly across the country. The implementation of a uniform legal system happened in all fields of law, but it happened differently in the field of family law. Informal interpretation of *Shari'a* law at a community level was supposed to continue to apply to family law.



DID LAWS IN ISLAMIC COUNTRIES CHANGE WHEN THEY WERE COLONIZED? IV

However, even in family law, government officials selected particular principles of *Shari'a* law to be turned into enforceable laws. Sometimes the officials mixed views from different scholars, turning them into a singular interpretation that no scholars would accept as valid. After independence, Muslim rulers continued trying to apply *Shari'a* law as enforceable law based on the system they were used to—the colonial system. The result was an Islamic Family Law that is very similar to the European laws. To make these laws more acceptable, Islamic governments declared the family laws were “Islamic.”



WHAT IS ISLAMIC FAMILY LAW?

Islamic Family Law (IFL) is a type of law that covers topics like marriage, divorce, custody of children, and the status of women. It also may be called Muslim Personal Status Law. The idea of IFL was introduced by European colonial powers. Colonial governments separated the field of family law from the rest of *Shari'a* law, then enforced IFL as national law, according to European models of government. All other fields of law came under secular European-style laws.

