

islam & women (i)

in islamic jurisprudence / law

overview

- terms: shari‘ah & *fiqh*
- ‘roots’: qur’ān, ḥadīth, consensus, *qiyās* (analogical reasoning) & *maṣlaḥa* (public interest)
- 5 rulings: obligatory, recommended, permitted, discouraged & forbidden
- 5 schools: Ḥanafi, Maliki, Shafi‘i, Ḥanbali & Ja‘fari
- islamic laws concerning women

shari'ah

shari'ah refers to god's divine law as contained in the qur'an and the sayings and doings of Muhammad (sunna / hadith).

- literally means the desert path to a stream of water
- a total and all-encompassing way of life (beyond 'law')
- an unchanging revelation, aim is to achieve **salvation**

fiqh (jurisprudence)

fiqh refers to the scholarly efforts of jurists (*fuqaha*) to understand & elaborate the details of shari'ah through investigation and debate.

- literally means 'understanding': after the 2nd/8th & 3rd/9th century *fiqh* came to be applied only to the body of legal knowledge which is a product of human understanding (interpretation) of the divine sources.
- *uṣūl al-fiqh*: the 'roots of jurisprudence' deals with the hermeneutic principles that can be used for deriving rules from the sources (theoretical jurisprudence).
- *furū' al-fiqh*: the 'branches of jurisprudence' which are the rules which form the positive law (practical jurisprudence)

qur'ān

"The Qur'an is the supreme authority in Islam. It is the fundamental and paramount source of the creed, rituals, ethics, and laws of the Islamic religion...This supreme status stems from the belief that the Qur'an is the word of God, revealed to the Prophet Muhammad via the archangel Gabriel, and intended for all times and all places."

Abdel Haleem, 'Introduction.' *The Qur'an, a New Translation*. OUP (2005) p. ix

- **revelation: inspiration, unmediated speech, mediated speech**
- **structure: 114 chapters, not chronological, 6236 verses (?)**
- **content: monotheism, divine attributes, history (?), law**

"Concerning your children, God commands you that a son should have the equivalent share of two daughters. If there are only daughters, two or more should share two-thirds of the inheritance, if one, she should have half. Parents inherit a sixth each if the deceased leaves children; if he leaves no children and his parents are his sole heirs, his mother has a third, unless he has brothers, in which case she has a sixth. [In all cases, the distribution comes] after payment of any bequests or debts. You cannot know which of your parents or your children is more beneficial to you: this is a law from God, and He is all knowing, all wise." (Q. 4:11)

ḥadīth

example for an chain of transmitters (*isnād*) & the text of a prophetic saying (*matn*) in a ḥadīth

Sulaymān ibn Da'ūd al-Mahrī handed down to us: Ibn Wahb has narrated that Sa'īd ibn Abī Ayyūb had told from Sharāḥīl ibn Yazīd al-Mu'āfirī, from Abū 'Alqama, and from Abū Hurayra, who came to know that the Messenger of God — God's blessing be upon him and salvation — said:

'Allah will raise for this community at the end of every hundred years the one who will renovate its religion for it.'

Abū Da'ūd, Kitāb al-Sunan, *kitāb al-malāḥim*, ḥadīth 1 (4291), grade: Sahih (Al-Albani)
(<https://sunnah.com/abudawud/39>)

the six (sunni) collections

1) Muhammad ibn Ismā'īl al-Bukhārī (d. 870 CE)

2) Muslim ibn al-Ḥajāj (d. 875 CE)

3) ibn Māja (d. 887 CE)

4) abū Dāūd (d. 888 CE)

5) al-Tirmidhī (d. 892 CE)

6) al-Nasā'ī (d. 915 CE)

...Umar ibn al-Khattab, told me: One day we were sitting in the company of Allah's Apostle (peace be upon him) when there appeared before us a man dressed in pure white clothes, his hair extraordinarily black. There were no signs of travel on him. None amongst us recognized him. At last he sat with the Apostle (peace be upon him) He knelt before him placed his palms on his thighs and said: Muhammad, inform me about al-Islam. The Messenger of Allah (peace be upon him) said: Al-Islam implies that you testify that there is no god but Allah and that Muhammad is the messenger of Allah, and you establish prayer, pay Zakat, observe the fast of Ramadan, and perform pilgrimage to the (House) if you are solvent enough (to bear the expense of) the journey. He (the inquirer) said: You have told the truth. He (Umar ibn al-Khattab) said: It amazed us that he would put the question and then he would himself verify the truth. He (the inquirer) said: Inform me about *Iman* (faith). He (the Holy Prophet) replied: That you affirm your faith in Allah, in His angels, in His Books, in His Apostles, in the Day of Judgment, and you affirm your faith in the Divine Decree about good and evil. He (the inquirer) said: You have told the truth. He (the inquirer) again said: Inform me about *al-Ihsan* (performance of good deeds). He (the Holy Prophet) said: That you worship Allah as if you are seeing Him, for though you don't see Him, He, verily, sees you. He (the enquirer) again said: Inform me about the hour (of the Doom). He (the Holy Prophet) remarked: One who is asked knows no more than the one who is inquiring (about it). He (the inquirer) said: Tell me some of its indications. He (the Holy Prophet) said: That the slave-girl will give birth to her mistress and master, that you will find barefooted, destitute goat-herds vying with one another in the construction of magnificent buildings. He (the narrator, Umar ibn al-Khattab) said: Then he (the inquirer) went on his way but I stayed with him (the Holy Prophet) for a long while. He then, said to me: Umar, do you know who this inquirer was? I replied: Allah and His Apostle knows best. He (the Holy Prophet) remarked: He was Gabriel (the angel). He came to you in order to instruct you in matters of religion.

the sources (*uṣūl al-fiqh*)

- qur'an: ~ 500 strictly legal verses (economic, dietary, military, etc), some of which are abrogated by others
- sunna / ḥadīth: speech & acts of the prophet (& imams)
- *ijmā'*: consensus
- *qiyās*: analogical reasoning
- *maṣlaḥa*: public interest

five rulings (*aḥkām*)

Islamic moral-legal categories are represented by these *aḥkām*:

- obligatory (*wajib* / *fardh*): Muslim, mature, sound reason
- recommended (*mustaḥab* / *mandūb* / *sunna*)
- permissible / indifferent (*mubāḥ*)
- reprehensible (*makrūh*)
- forbidden (*ḥarām*)

five *fiqh* schools (*madhahib*)

madhhab: 'way of going', over 300 years (out of 19 schools, 5 survived)

- **Hanafi**- Abu Hanifa (d. 767 CE): *shura* and consultation (*ahl al-ra'y*); hadith does not need to be well-known
- **Maliki**- Malik ibn Anas (d. 801 CE): customary practices (living Sunna) of the people of Medina given priority over an 'authentic' hadith, wrote *al-Muwatta'*
- **Shafi'i**- Muhammad Idris al-Shafi'i (d. 820 CE): *al-Risalah* defines principles of jurisprudence (authentic hadith)
- **Hanbali**- Ahmad ibn Hanbal (d. 855 CE): emphasis on hadith (even weak) over *qiyas*
- **Ja'fari**- Ja'far al-Sadiq (d. 765 CE): *akhbar* of imams, then Usulis and Akhbaris (differences: *mut'a* and inheritance)



‘laws’

- **marriage**
- **divorce**
- **sexual relations**
- **fornication / adultery**
- **testimony**
- **compensation for death**
- **inheritance**
- **political positions**