

Islamic Law - concepts and application

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Level 8: Principles of Islam

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ISLAM & ETHICS

Define 'ethics':

Noun: "The science of morals, that branch of philosophy which is concerned with human character and conduct: a system of morals, rules of behaviour: a treatise on morals."

CHAMBERS TWENTIETH CENTURY
DICTIONARY

Ethics: (I) how to behave, what is right, good
(II) questions as to answers given in answering (I)
(III) questions re. words used answering I & II.

JOHN MACQUARRIE A DICTIONARY OF CHRISTIAN
ETHICS

Christian-centred definition.
Problematic in context of Islam

Arabic: Aklaq: 'ethics'

kulq, kuluq (pl.) Innate peculiarity, natural disposition, character, temper, nature >> pl.
aklaq: character (of a person); morals; morality

‘ilm al-aklaq: ethics, moral science, morals
kulqi ethic(al), moral

HANS WEHR ARABIC-ENGLISH DICTIONARY

What kinds of issues could be classified as ethical issues in Islam?



Within an 'Islamic' model of society, such ethical issues can be interpreted according to specific principles and precedents.

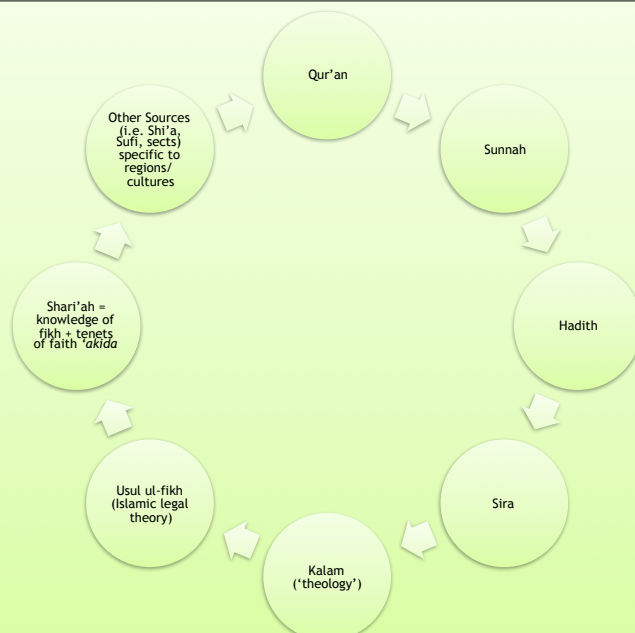
Islam provides a system (or systems) of ethical and moral behaviour, based on the Divine Revelation from God, received by Muhammad via the Angel Gabriel.

Theoretically, all aspects and facets of human life can be interpreted according to an Islamic system. Islam is seen as *din* (a way of life).

Where is this system located?

- Qur'an
- Sunnah
- Hadith
- Sira (biographical sources on the Life of Muhammad)
- Kalam ('theology')
- Usul ul-fikh (Islamic legal theory)
- Shari'ah = knowledge of fikh + tenets of faith '*akida*
- Other Sources (i.e. Shi'a, Sufi, sects) specific to regions/cultures

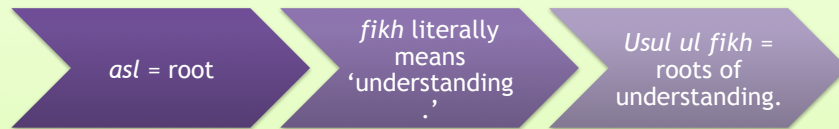
Some knowledge is clear, and easy to understand; other knowledge requires specialist interpretation(s).



Shari'a and Fikh

Usul ul-fikh - 'Islamic legal theory' : primarily **fixed** part of law, derived through Qur'an and Sunnah. Directly, or literally: i.e. through **analogy** (*qiyas*). [e.g. alcohol, intoxication > drug abuse]

Who is qualified to establish *usul ul-fikh* = controversy. Beyond Qur'an and Sunnah? Fuqaha (pl.) = jurist. [sing. Faqih]



‘ilm - knowledge (same meaning as *fikh*)
kalam = theology. *Not separated from fikh* until 2nd century A.H.

Shari’ah knowledge of *fikh* + knowledge of the tenets of faith ‘*akida*

“The real distinction between shari’ah and fikh ... is that shari’ah is the law itself, while fikh is a knowledge of that law - its jurisprudence.”

Knowledge + Rules

Shari’a ahkam: legal rules
rules relating to belief: i.e. shahada. Day of Judgement.

Rules relating to acts: physical acts: prayer
within the heart: intention, hatred.
relating to speech
Forms and Types of Knowledge:
Knowledge affects conduct (i.e. shari’a ahkam).

Shari’a Ahkam
[ahkam = pl. of hukm: rules]

Some knowledge cannot be acquired:
Knowledge of rules held with God
Knowledge of rules granted to Muhammad
Knowledge of rules granted to Jibril.

Mujtahids and other jurists have to interpret this knowledge.
Special training required (according to some!)
Specific sciences to determine analogy. Specialisations.
Consensus (ijma). Various readings of shari'ah.

Specific laws are classified: *wajib* (obligatory), *mandub* (recommended) *mubah* (permissible) *makruh* (disproved) and *haram* (prohibited). [IN]

1. Rights of God (*haqq Allah*)
2. Rights of individual (*haqq al-abd*)
3. 1 + 2
4. Collective community rights

Sunni comes from the word Sunnah - which means a path, a way, a manner of life.

The traditions, actions, and sayings of the Prophet are the Sunnah.

A Sunni is one of the path - a traditionalist.

Some instructions in the Qur'an are very clear: for example the following of the five pillars of Islam - al-arkan al-Islam.

If you look at a copy of the Meaning of the Qur'an, you'll find that the Revelation is quite specific on how Muslims should behave in certain situations.

For example, Surah Al-Nisa' (Women) (Surah 4). This lays down many details on family life, including the relationships between women and men, and the rights of children.

Much of this Revelation was linked to specific social issues of the day, including the consumption of alcohol, the allocation of properties in wills, and the treatment of orphans.

It goes into considerable detail (4:11). Some of the text is quite dense and complicated, whilst other portions are clearer

Expertise was necessary to interpret the intricacies of the Qur'an (including the ambiguous verses)

It also was needed to interpret other sources i.e. Hadith.

The development of expertise led to specific bodies of law and shari'ah developing.

There is no single body of Islamic law, which comes under the general banner of Shariah. There are diverse interpretations, as different techniques were established to try and understand every nuance of the Qur'an and the Sunnah - the roots of Islamic law or *usul al-fiqh*.

Trying to pragmatically understand these roots is known as *ijtihad* (in Sunni contexts).

As Islam developed, four main schools (*madhahib*) of Islamic law emerged.



HANAFI SCHOOL

founder: Abu Hanifa al-Numan (700-767)

حنفي

- based in Kufa
 - interpreted Islam according to the needs of the day,
 - ideals of the community of the Muslims
- unity, sunnah, middle road (avoid extremes)
scriptural rather than rational proofs
- authenticity of tradition
 - Followers in most of Islamic world.
- Grew from Kufa/Basra ancient schools: school went eastwards (Afghanistan, Khurasan): favoured by first Abbasids, well represented in Iraq, Syria: Maghrib, Sicily, Seljuk/Ottoman doctrine.

MALIKI MADHHAB

Founder Malik ibn Anas (c90-97-179 AH
(708-716-796 CE)

MADINAH HIJAZ

- viewed Muhammad and his Companions as the ideal source of understanding. Tradition was of greatest importance (after the Qur'an)
 - He collected rules, opinions and hadith in al-Muwatta.
- Followers: Egypt, Hijaz, North Africa, Andalus, (now: W Africa, W Sudan)
- Centrality of hadith
 - exercises al-masalih al-mursala (public welfare)
 - pragmatic

مالكي

مالكي

Kitab al-Muwatta' earliest surviving Muslim law book - muwatta = a smoothed path: different texts, because Malik did not write a book (different riwayas - recensions)

Kitab al-Muwatta': "...a code of legislation according to a description of law, statute and dogma as practised according to the consensus and the tradition (amal) of Madinah, augmented by personal remarks of Malik."

SHAFI'I MADHHAB

Founder: Muhammad ibn Idris ash-Shafi
(767-820)

- b Palestine, raised Makkah; lived Baghdad > Egypt
- Personal student of Malik, disciple of Abu Hanifa & disciples; authority on Arabic language, clear principles and methods: tradition preferred (WOULDN'T REJECT AUTHENTIC HADITH), wrote **al-Risala** (The Epistle)
- Shafi: Sunna, Quran & Ijma
- consensus over-rules single authority rule
-

شافعي

شافعي

"...TO HIM **IJMA** MEANT THE CONSENSUS OF THE ENTIRE COMMUNITY (ALL CENTRES OF JURISTIC RESEARCH)." [O]

"...first lawyer to define sunna as the model behaviour of the Prophet, in contrast with his predecessors for whom it was not necessarily connected with the Prophet, but represented the traditional, albeit ideal, usage of the community, forming their 'living tradition' on an equal footing with customary or generally agreed practice."*

Shafi'ite: Egypt, Iraq, Syria, East Africa, Sudan, parts of Asia.

حنبلي

HANBALI MADHHAB

founder: Ahmad ibn Hanbal al-Shaybani (780-855?/164/241 AH)

- Qur'an and Sunna only
- compiles *Masail* Questions: anti-codification

Musnad: hadith classified according to guarantor (edited by son Abd Allah):

hierarchical order of sources

- rigid ritually - element of personal judgement
- God's attributes central, renounces kalam: Qur'an - uncreated word of God
- revised by Muhammad ibn Abdul Wahhab (used in Saudi Arabia);
- Baghdad centre: conflict with Shi'i, but acknowledges Ali
- Sunni reconquest = golden age
- Decline until Wahhabism. Ottomans

The principle articulated in these four schools (and others) have influenced generations of Muslim lives.

Their interpretations of Qur'an and Sunnah have been guides for people, who have sought to understand Islam.

They have affected all levels of society. There are a number of different interpretations of Islamic law in different communities today.

The principles have been incorporated into different ideologies, under the banner of 'Islamic law'.