

# SHARIA

## UNDERSTANDING SHARIA – FAQs

### What is *Sharia*?

The term, *Sharia*, comes from an Arabic word meaning “path” or “path to water.” *Sharia* is often translated to mean “Islamic law,” which is technically correct, but incomplete. *Sharia* is more properly understood as divine guidance for the purpose of helping humanity worship, come closer to God and live with love, kindness, and justice toward His Creation.

*Sharia* is divided into two broad areas that provide:

1. Guidance in worship (*ibadat*), which is the central focus of Islam.
2. Guidance in worldly matters (*mu’amalat*) such as visiting the sick, taking care of parents, marriage, inheritance, investments and business affairs, issues of civil and criminal justice, etc.<sup>1</sup>

As such, *Sharia* is a system of moral guidance, which Muslims believe was revealed to the Prophet Muhammad by God. It is a set of values, basic norms, and prescriptions for ritual, family and business life, comparable to Christian Doctrine for Catholics or *Halakhah* for Jews.

### Where does *Sharia* come from?

*Sharia* is drawn from the Qur’an and Sunnah. The Qur’an is the main religious text of Islam, regarded as the word of God (Allah) as revealed to the Prophet Muhammad over a period of approximately twenty-three years. Sunnah refers to the teachings and practices of the Prophet Muhammad, whose words and deeds set an example to be emulated.

Qualified scholars of Islam use an interpretative process to derive *Sharia* from the Qur’an and Sunnah. This process includes reasoning by analogy (*qiyas*), debate and consensus (*ijma*), as well as precedent. Islamic law itself is called “*fiqh*” in Arabic (which means “deep understanding”). Like *Halakhah* (Jewish law), Islamic law represents an ongoing effort and process that takes into consideration the particularities of time and place.

### What does *Sharia* address?

*Sharia* provides guidance for living, and includes recommended and prohibited actions on such matters as: religious practices, ritual purity, diet, clothing and modesty, general relations between the sexes, marriage, divorce, inheritance, charitable giving, investments, business contracts, criminal law, and war and peace. Most of it is not meant to be government-enforced, because *Sharia* is largely a matter of conscience and personal practice.

## What are Sharia's objectives?

Sharia has five main objectives: to protect life, property, lineage, religion, and intellect. The overarching objective is to establish social justice, fairness, mercy and security in societies. As such, Sharia addresses both civil and criminal issues, and its principles provide guidance for both personal and moral aspects of life. For the most part, Sharia is overwhelmingly concerned with personal religious observance such as prayer and fasting.

Because much of Sharia is interpretative, it has a degree of flexibility and functions differently in diverse societies and cultures.

## How is Sharia practiced in the U.S.?

Given religious freedom clauses in the First Amendment of the U.S. Constitution, Muslims who practice Sharia in this country do so on a voluntary, private basis just as many Jews in the U.S. abide by the dictates of *Halakhah*, and many Catholics observe Apostolic Tradition. Essential dictates of Sharia involve, for example, practices such as daily prayers, fasting during the month of Ramadan, the use of marriage contracts, and rules for giving charity and making investments. If all parties in a business transaction agree, Sharia may be used in a contract. These religious mandates do not impinge on the rights of others to practice their beliefs.

## How is Sharia practiced in other countries?

Over the centuries and across the globe, Islam has been interpreted and practiced in a variety of ways, though Sharia was always based on the sacred text. Historically, Sharia functioned as a flexible system across diverse communities. Until more modern times, the system of Sharia and the laws of the state were generally kept separate. This was because the community – rather than the state – protected the independence of the scholars charged with interpreting Sharia in the context of their times and therefore provided them with financial support. This is not always the situation in the 21<sup>st</sup> century and there are countries, like Saudi Arabia, where the religious scholars are supported by the state and aligned with the rulers.

Another way to analyze Sharia is through the lens of different legal systems across the globe. At their most basic and oversimplified level, they include:

- common law (a system derived from the English, which includes reliance on case law and precedent);
- civil law (a system derived from the French, which relies on statutes rather than precedent);
- customary law which reflects widely accepted practices that grow from the ground up, and which people and nations feel obliged to follow; and
- religious legal systems (which may include practices noted above such as reliance on precedent) including canon law, Sharia and Halakhah.

The systems used in different countries vary and have been classified as primarily monosystems that reflect one of the above or mixed systems that blend two or more systems. Sharia itself operated similarly to common law during the pre-modern era, with scholars looking to the Prophet Muhammad, his companions, and other scholars for precedent. Today, Sharia operates primarily as a:

- **Monosystem** (Examples: Saudi Arabia)
- **Mixed System of Sharia and Civil Law** (Examples: Iran, Iraq and Morocco)
- **Mixed System of Sharia and Customary Law** (Example: United Arab Emirates)
- **Mixed System of Sharia and Common Law** (Examples: Pakistan, Sudan)

- **Mixed System of Sharia, Civil Law and Customary Law** (Examples: Jordan, Kuwait)
- **Mixed System of Sharia, Common Law and Customary Law** (Examples: India, Kenya)
- **Mixed System of Sharia, Common Law, Civil Law and Customary Law** (Examples: Qatar, Somalia)
- **Mixed System of Civil Law, Common Law, Jewish Law and Sharia** (Example: Israel)<sup>ii</sup>

### What are Sharia's criminal punishments?

*Hudud* laws are centuries-old punishments specified within the system of Sharia for major crimes such as killing, adultery or theft. Some people mistakenly equate Sharia with *hudud* laws, but these criminal laws and punishments represent only one small part of Sharia.

Today, *hudud* is applied in only a handful of nations such as Iran and Saudi Arabia. In most nations with mixed systems of Sharia and other forms of law, *hudud* laws are not applied. Many Muslims consider the way *hudud* is practiced in, for example, Saudi Arabia, not to be in compliance with the true meaning of Sharia. They reach this conclusion first, because these laws are not uniformly applied to everyone; and secondly, because *hudud* is properly applied only in a state that adheres to all Islamic principles—including the mandate from the sacred text that Sharia must be “just, merciful and a means for furthering the common good.”<sup>iii</sup> In addition to the role of the state, the concept of mercy can also be invoked; in all *hudud* crimes, the perpetrator can avoid punishment if the victim or the victim's family agrees.

### Who are Sharia adherents?

As in many religious traditions, Muslims practice in a range of ways, which can vary from nation to nation, culture to culture, community to community, individual to individual. People may seek to live up to all or some of the Sharia dictates as they understand their obligations. Accordingly, most observant Muslims consider themselves to be Sharia compliant even when they are not practicing every aspect addressed within the scope of Sharia.

### How does Sharia compare with the sacred laws of other religions?

Many religions include some kind of sacred dictates or law such as the Ten Commandments, natural law, Christian Doctrine, *Halakhah* and *dharma*. Each of these include essential or “core” prescriptions that govern daily life (worship, family life, lifestyle practices, charity and ethical business dealings). Many religions also have traditions sometimes framed as “political theology” (often deemed to include religious rules for war and peace, responding to crimes, etc.).

For example, *de fide* pronouncements are binding for Catholics in a way that is similar to *Halakhah* (Jewish sacred law) for Jews and Sharia for Muslims. The primary sources of the teaching authority of the Catholic Church (the *Magisterium*) are Sacred Scripture and Apostolic Tradition, which bear some resemblance but not equivalency to the Qur'an and Sunnah. Sharia and Christian Doctrine both highly value the family and the connection between sex and reproduction.

In the U.S., one can follow the essential or core parts of a sacred law (e.g., ritual, marriage, etc.) and still be within the parameters of the U.S. legal system. Sharia and *Halakhah* are similar across a range of subjects, methodology, content, and even specific rulings (not eating pork, modesty in clothing, circumcision, etc.). Therefore, some Jewish rabbis and groups have voiced concern that laws that would ban Sharia would also endanger their right to follow *Halakhah*, and have opposed efforts to ban the practice of Sharia within the United States.<sup>iv</sup>

## **What do people mean when they talk about a “Sharia scare” – also characterized as “creeping Sharia”?**

“Creeping Sharia” refers to an idea that has emerged in some parts of popular culture, social and other media that American Muslims are trying to impose Islamic law as the governing law within America. Based on this idea, “anti-Sharia bills” have been introduced in all but 7 states across the nation. Arizona attorney David Yerushalmi, General Counsel to the Washington, D.C.-based Center for Security Policy,<sup>v</sup> developed a template for what has become an anti-Sharia legislation movement entitled “American Laws for American Courts.”<sup>vi</sup> The template was adopted by the American Public Policy Alliance, which takes the position that “one of the greatest threats to American values and liberties today” comes from “foreign laws and foreign legal doctrines,” including “Islamic Shari’ah law,” that have been “infiltrating our court system.” Depending on one’s understanding of what constitutes foreign laws and legal doctrines, this position and corollary anti-Sharia bills could also apply to the Jewish practice of *Halakhah* and adherence to Catholic Magisterial pronouncements.

Sharia has become a subject of political focus in the U.S. Politicians who have voiced opposition to Sharia include Mike Huckabee, Newt Gingrich, Peter King, John Bennet, Sebastian Gorka, and Sarah Palin.<sup>vii</sup>

## **When people express concern that Sharia poses a threat in the U.S., what are they usually talking about?**

People who express concern that Sharia poses a threat in the U.S. are often talking about two, sometimes related, ideas: that the threat involves the imposition of a strictly imposed religious law/doctrine in the U.S.; and that it would impose a totalitarian Islamic government.

Those concerned with the strict religious law often reference an extreme type of scripturalism (i.e., literal adherence to the scriptures in which one selectively cites verses from a sacred text and takes the position that true believers behave only according to the selected verses)<sup>ix</sup>. Small groups of Muslims practice this extreme scripturalism in contrast to the many who understand and interpret the verses and text over time and within the context of the other verses within the scriptures.

It is noteworthy that within other religious communities, extreme interpretations of text also exist, and are not followed by mainstream practitioners. As noted by Ali and Duss, Jewish adherents today are not known for stoning disobedient sons to death (Deut. 21:18- 21), and Christians are not known for promoting the slaying of all non-Christians (Luke 19:27).

Muslim scholars historically agree on certain core values of Sharia, which are theological and ethical, not political. Thus, Sharia is essentially a personal religious law that provides moral guidance for the vast majority of Muslims, including those in the U.S.

With respect to a concern about a religious totalitarian government, it is accurate that there are Muslim-majority nations that are and have recently been ruled by authoritarian leaders, where democracy is not being practiced, and a form of Sharia is a partial or complete basis for the legal system. It is also accurate that in some of these nations, there have been violations of human rights, including the rights of women, by the Taliban and others. Sometimes, these groups state that their acts are religiously justified, as when the Taliban says it follows the “true Islam” and Sharia.

Such beliefs and practices are in contrast with other Muslim majority countries where women have exercised broad rights and have assumed leadership positions – practices that are also recognized as religiously acceptable. For example, there have been eight Muslim majority nations that have had female heads of state (Indonesia, Pakistan, Bangladesh, Turkey, Kosovo, Senegal, Mali, and Kyrgyzstan).<sup>viii</sup>

## **How does the concern and conversation in popular culture about what is called the “Sharia threat” affect Muslims in the U.S.?**

When Sharia is equated with extreme scripturalism that presents a “totalitarian threat,” the resulting inference is that all followers of Sharia pose a threat to the very foundation of American values and life as we know it. These views have been voiced widely across various media, often without being explained or put into context. The result is that many people are suspicious of observant Muslims and, often, of anyone who self-identifies as Muslim. This affects the way many people view their Muslim neighbors, schoolmates, and co-workers.

Some believe that concerns about the “Sharia threat” led to support for the Congressional hearings conducted by Representative Peter King on domestic terrorism and Muslim radicalization on March 10, 2011, which focused solely on these issues within the Muslim community and not across the full breadth of the U.S.<sup>ix</sup> In contrast, Senator Dick Durbin led hearings on the civil rights of American Muslims. Both received criticism for their hearings, but there was far more extensive media coverage, both positive and negative, of the King Hearings than the Durbin Hearings. On June 10, 2017, an organization known as ACT for America organized the “March Against Sharia.”<sup>x</sup> About two dozen rallies occurred across 20 states, and the size of these rallies varied from 30 to nearly 200 people.<sup>xi</sup> These rallies also elicited counter-protests of similar size.<sup>xii</sup>

## **What is *taqiyya* and how is it related to the issue of the “Sharia threat”?**

Many of the people who express concern about a “Sharia threat” take the position that people will lie to cover their pursuit of extreme scripturalism. In explaining this belief, they reference an Arabic word, *taqiyya*, which refers to concealing one's faith when one fears death (some interpret this word to mean religiously justified lying). However, the concept of *taqiyya* is primarily applicable in the context of a war where one's life is threatened.

The concept of *taqiyya* moved into U.S. consciousness during the 2010 debate over Park51 (“Ground Zero Mosque”). When Imam Feisal Abdul Rauf stated that the proposed Park51 Islamic Center in New York would be a venue for interfaith dialogue, The Center for Security Policy's Frank Gaffney wrote in *The Washington Times*: “To be sure, Imam Rauf is a skilled practitioner of the Sharia tradition of *taqiyya*, deception for the faith.”<sup>xiii</sup> Others from many different traditions, who knew and had worked with Imam Rauf for many years, disagreed that there was any deception whatsoever.

As with the misinterpretation of Sharia as solely extreme scripturalism, the characterization of *taqiyya* as a routine practice utilized to protect extreme interpretations of Islam, can stimulate fear and the suspicion that self-identified and observant Muslims are or are prepared to be liars, simply because of their faith.

## **Has Sharia been banned in the U.S. or in any state? Is banning Sharia being considered in any state?**

Federal law protects freedom of religion. The First Amendment prohibits Congress from making any law that prevents the free exercise of any religion. In addition, Title VII of the Civil Rights Act of 1964 prevents employers with more than 15 employees from discriminating on the basis of religion. On a national level, Sharia, as a religious practice, is not banned.

Since 2010, 43 states have introduced 201 bills that, among other things, ban Sharia to varying degrees.<sup>xiv</sup> As of this writing, 10 states have legislation that addresses “foreign” law, which is generally understood as encompassing Sharia (but presumably, as well, other, comparable laws).<sup>xv</sup> In addition, Oregon has a law that specifically prohibits its courts from enforcing Sharia.<sup>xvi</sup>

Defenders of these measures argue that these laws are necessary to defend an individual's constitutional rights.<sup>xvii</sup> Critics argue that these laws are intended to curtail the religious freedom of Muslims,<sup>xviii</sup> and that they may have unintended consequences given the role that foreign and religious laws can play in business, divorce, and marriages of both Muslims and non-Muslims alike.<sup>xix</sup>

### **What is mainstream Islam's position on loyalty to one's country?**

The Amman Message, initiated by H.M. King Abdullah II of Jordan, was issued in July 2005 following an international conference of 200 Islamic scholars from 50 countries. Participating scholars agreed that Islam prohibits terrorism and that Muslims must abide by international law.<sup>xx</sup> The Amman Message states:

Islam rejects extremism, radicalism and fanaticism—just as all noble, heavenly religions reject them—considering them as recalcitrant ways and forms of injustice. Furthermore, it is not a trait that characterizes a particular nation; it is an aberration that has been experienced by all nations, races, and religions. They are not particular to one people; truly they are a phenomenon that every people, every race and every religion has known.<sup>xxi</sup>

Similarly, the Islamic Society of North America issued a statement in 2005 saying that:

It is a well-established Islamic principle that citizens of a nation, regardless of its religious makeup, are required not only to uphold the laws of that country, but also to safeguard and protect the security and wellbeing of the country and its people.<sup>xxii</sup>

### **Can Muslims be true to America and to their religion at the same time?**

Yes. Islam makes a distinction between *dīn* (religion) and *dawla* (civil government). *Dawla* (civil government) protects basic secular matters, such as life, property and freedom. According to Islamic teachings, anyone living under the protection of a civil government owes obedience to that government. It does not matter the type of government, or whether one is living in a Muslim majority country. Muslim minorities living in secular societies or where another religion is dominant implicitly enter into a social contract with that government. Islam requires them to respect and uphold that society's form of government.

Because the Constitution is the supreme “law of the land,” in the U.S., Islamic teachings forbid American Muslims from trying to establish any other kind of government. Under the current system of government, American Muslims enjoy the same benefits as other Americans: America's natural beauty, our dynamic culture, freedom, opportunity and the American dream.

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*The content of this Fact Sheet is adapted by Tanenbaum, and Tanenbaum is responsible for its contents. It is drawn from a number of sources including a Webinar on Sharia produced by the Islamic Networks Group (ING). ING is a non-profit, educational organization that promotes religious literacy and mutual respect through on-site presentations, cultural competency seminars and interfaith dialogues. Founded in 1993, ING and its affiliates serve communities of all faiths or none throughout the United States. The ING materials are used with the organization's permission. Other important sources include a Backgrounder from the Council on Foreign Relations by Toni Johnson and Lauren Vriens, “Islam: Governing Under Shari’a.” Tanenbaum expresses its appreciation to ING, to Ingrid Mattson, formerly Professor, and Director, Duncan Black Macdonald Center for the Study of Islam and Christian-Muslim Relations, Hartford Seminary, and also to Hussein Rashid, Adjunct Professor at Barnard College, for their review and assistance in the preparation of the first edition of this Fact Sheet.*

- <sup>i</sup> With respect to marriage, scholars may differ over the exact boundaries between ibadat vs. mu'amalat, which is similar to Catholicism, where the Catechism covers ritual and marriage and other social issues.
- <sup>ii</sup> "Muslim Law Systems and Mixed Systems With A Muslim Law Tradition," JuriGlobe, University of Ottawa, <<http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-musulman.php>>.
- <sup>iii</sup> Ingrid Mattson, Personal Interview, 8-12 July 2011.
- <sup>iv</sup> Ron Kampeas, "Anti-Sharia Laws Stir Concerns that Halachah Could Be Next," *Jewish Week*, 1 May 2011 <[http://www.thejewishweek.com/news/national/anti\\_sharia\\_laws\\_stir\\_concerns\\_halachah\\_could\\_be\\_next](http://www.thejewishweek.com/news/national/anti_sharia_laws_stir_concerns_halachah_could_be_next)>.
- <sup>v</sup> Tim Murphy, "Meet the White Supremacist Leading the GOP's Anti-Sharia Crusade," *Mother Jones*, 1 March 2011 <<http://motherjones.com/politics/2011/02/david-syerushalmi-sharia-ban-tennessee>>.
- <sup>vi</sup> Jill Schachner Chanen, "Anti-Sharia Bills Under Review," *ABA Journal*, 1 May 2011 <[http://www.abajournal.com/magazine/article/the\\_law\\_of\\_the\\_land/](http://www.abajournal.com/magazine/article/the_law_of_the_land/)>.
- Andrea Elliott, "The Man Behind the Anti-Shariah Movement," *The New York Times*, 30 July 2011 <[http://www.nytimes.com/2011/07/31/us/31shariah.html?\\_r=1&emc=eta1](http://www.nytimes.com/2011/07/31/us/31shariah.html?_r=1&emc=eta1)>.
- <sup>vii</sup> Ben Smith, "2012 Candidates Stake Out Positions on Sharia," *Politico.com*, 11 April 2011 <[http://www.politico.com/blogs/bensmith/0411/2012\\_candidates\\_stake\\_out\\_positions\\_on\\_sharia.html](http://www.politico.com/blogs/bensmith/0411/2012_candidates_stake_out_positions_on_sharia.html)>.
- Andrea Elliott, "The Man Behind the Anti-Shariah Movement," *The New York Times*, 30 July 2011 <[http://www.nytimes.com/2011/07/31/us/31shariah.html?\\_r=1&emc=eta1](http://www.nytimes.com/2011/07/31/us/31shariah.html?_r=1&emc=eta1)>.;
- Amy B Wang, "Muslim students tried to meet with a lawmaker. They were first asked: 'Do you beat your wife?'" *Washington Post*, 5 March, 2017. [https://www.washingtonpost.com/news/morning-mix/wp/2017/03/05/muslim-students-tried-to-meet-with-a-lawmaker-they-were-first-asked-do-you-beat-your-wife/?utm\\_term=.7d5a55161162](https://www.washingtonpost.com/news/morning-mix/wp/2017/03/05/muslim-students-tried-to-meet-with-a-lawmaker-they-were-first-asked-do-you-beat-your-wife/?utm_term=.7d5a55161162);
- Benjamin Hart, "Report: Sebastian Gorka Delivered 'Tirade' on Islam to Army Students," *New York Magazine*, 22 September, 2017. <http://nymag.com/daily/intelligencer/2017/09/report-gorka-delivered-tirade-on-islam-to-army-students.html>.
- <sup>viii</sup> Dalia G, "Meet The Nine Muslim Women Who Have Ruled Nations," *Egyptian Streets*, 9 June, 2015. <https://egyptianstreets.com/2015/06/09/meet-the-nine-muslim-women-who-have-ruled-nations/>;
- ITC Staff, "Cissé Mariam Kaïdama Sidibé, Mali's new prime minister, is the first woman to be appointed to this position in the country's history," <http://alumni.itcilo.org/en/participants-gallery/la-sra.-cisse-mariam-kaidama-sidibe-fue-nombrada-recentemente-primera-ministra-de-mali-y-es-la-primera-mujer-que-ocupa-dicho-cargo-en-la-historia-del-pais>.
- <sup>ix</sup> Sarah Posner, "Sharia threat bandwagon just keeps rolling on," *Guardian.co.uk*, 16 March 2011 <<http://www.guardian.co.uk/commentisfree/belief/2011/mar/16/sharia-threat-bandwagon-king-hearing>>.
- <sup>x</sup> James Doubek, "'Anti-Sharia' Marchers Met With Counter-Protests Around The Country," *NPR*, 11 June, 2017. <https://www.npr.org/sections/thetwo-way/2017/06/11/532454216/anti-sharia-marchers-met-with-counter-protests-around-the-country>.
- <sup>xi</sup> Ibid.
- <sup>xii</sup> Ibid.
- <sup>xiii</sup> Frank J. Gaffney Jr., "A Shrine to Sharia," *The Washington Times*, 28 June 2010 <<http://www.washingtontimes.com/news/2010/jun/28/a-shrine-to-sharia/>>.
- <sup>xiv</sup> Hatewatch Staff, "Anti-Sharia law bills in the United States," *Southern Poverty Law Center*, 5 February, 2018. <https://www.splcenter.org/hatewatch/2018/02/05/anti-sharia-law-bills-united-states>.
- <sup>xv</sup> Faiza Patel, Matthew Duss, and Amos Toh, "Foreign Law Bans: Legal Uncertainties and Practical Problems," *Brennan Center for Justice*, May, 2013. <https://www.brennancenter.org/sites/default/files/publications/ForeignLawBans.pdf>.
- <sup>xvi</sup> Jonathan Griffin, "2017 Legislation Regarding the Application of Foreign Law by State Courts," *National Conference of State Legislatures*, 17 August, 2017. <http://www.ncsl.org/research/civil-and-criminal-justice/2017-legislation-regarding-the-application-of-foreign-law-by-state-courts.aspx>.
- <sup>xvii</sup> Janet Loehrke and Kimberly Railey, "More States Move to Ban Foreign Law in Courts," *USA Today*, 4 August, 2013.
- <sup>xviii</sup> Hatewatch Staff, "Anti-Sharia law bills in the United States," *Southern Poverty Law Center*, 5 February, 2018. <https://www.splcenter.org/hatewatch/2018/02/05/anti-sharia-law-bills-united-states>.
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- <sup>xxi</sup> "The Amman Message," 1 March 2007 <[http://ammanmessage.com/index.php?option=com\\_content&task=view&id=16&Itemid=30&limit=1&limitstart=1](http://ammanmessage.com/index.php?option=com_content&task=view&id=16&Itemid=30&limit=1&limitstart=1)>, Compare, Thomas Hegghammer, "The Rise of the Macro-Nationalists," *The New York Times*, 30 July 2011 <<http://www.nytimes.com/2011/07/31/opinion/sunday/the-rise-of-the-macro-nationalists.html?ref=norway>>.
- <sup>xxii</sup> "ISNA Position: Against Terrorism and Religious Extremism: Muslim Position and Responsibilities," 2005 <<http://www.isna.net/assets/documents/isnapositionagainstterrorismmandreligiousextremism.pdf>>.