

# Fact of Islamic Law & the Modern World

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## ABSTRACT

Undoubtedly, Islam is a social and all-encompassing religion. Not only are the rules, issues and stories told in the sacred religion of Islam; Rather, He has shown human beings the ways in which the success of both worlds is involved. Naturally, human beings are sometimes afflicted with hardships in addition to happiness. Allah Almighty has commanded man to be patient in times of hardships and difficulties Whoever has the attribute of patience, Allah Almighty praises him with the best attributes in the Arabic language. With this in mind, the topic was interesting to me and also useful to the community, because I chose this topic. To make the subject even more interesting, it must be said that crime is in fact a socially dangerous phenomenon, occurring everywhere and at all times throughout history, both in space and time, and also in the prevailing opinion. Crimes will continue to occur in the future, just as crime and criminals have been created since the creation of man, for example, when God sent Adam (peace be upon him) as a caliph to earth, Iblis and the angels You ordered.

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## 1. Introduction

Islam is the religion of the Muslims. It is a religion that constitutes the total submission of the Muslim to God. During this submission, it brings about peace, serenity, love and above all, justice. Shari'ah is "a line of conduct, a morality laid down by the accounts of the Islamic religion. It is based on the Quran and on the views of the prophet" (Jelloun 100). It is a law that governs the believer's conducts and lifestyle. It regulates the believer on what to do and what not to do. The severity of the law in some Islamic societies, however, has drawn criticism and has made people from other religious sects wary of the religion itself. This is because we now live in a modernized society. Where people believe in liberties and human rights; where the laws of the government in some places have to be reconstructed to the appeal of the people in order to avoid conflict. In such a modern world we now live in, Shari'ah has lost its place and is subjected to oppositions from those who have adopted how laws should be established. In other words, the evolution of the modern world has made the Islamic law to be regarded as a primitive and barbaric legislature.

Hitherto the coming of Islam, the Shari'ah law was not always in existence. In the early years, the first Muslim societies used the Quran revelations as a basis for setting standards of conduct for the people. The communities were under the leadership of Prophet Mohammed during this period in the year 622. The Quran, with some of its verses which dealt strictly with legal matters, as well as the prophet's Sunnah were the sources of the law in the Muslim community. The sunnah were the precedents established by tribal ancestors, accepted as normative, and practiced by the entire community (Encyclopaedia). In this case, before the prophet had come to be known, the people followed the models of their ancestors; burying female infants, idolism and slavery. In the essence, it was the arrival of the prophet that reversed these laws and therefore people emulated his Sunnah.

After his death, the laws were based on the Quran revelations and the compilations of the prophet's sunnah, otherwise known as hadith. However, later developments surfaced; where a judge was not able to find a specific solution to a crime in the Quran and hadith, he would employ certain principles of reasoning as well as the public interests. Afterwards, the results of this kind of judgment were based on a consensus of jurists. As an attempt to define God's law, the jury of individual scholars would result in a tentative conclusion termed zann ("Conjecture"). But where a conclusion became the subject of equal agreement by the qualified scholars, it became a certain (yaqin) and infallible expression of Allah's law (Encyclopaedia). This is, if not a brief, how Shari'ah came into existence and it was by these means, the law was fixed and resistant to change even after the modernization and westernization of other societies and cultures. The Shari'ah law gains criticism in the way it regulates the people. This is due to the fact that the Shari'ah law is not merely a system of law, but it also regulates the code of behavior in both public and private aspects. This is where it differs with the western systems of law. Firstly the Shari'ah law regulates man's relationship not only with his neighbours and the state, but also with God and his conscience. The law is also concerned with ethics as well as legal rules. This means man is entitled to what he is supposed to do and is acceptable by law, and is to refrain from what is not meant to be done by law. Due to this, "westerners tend to think Islamic societies as backward looking, oppressed by religion and inhumanely governed compared to their enlightened secular democracies" (Mazrui 246). Secular in the sense that there is a fine line between religion and the judicial systems; therefore religious dogma does not cloud judgment.

Also why Shari'ah would gain much criticism is its concept of divine will or freedom. In other religious and political sects, human rights are not restricted as they are fixed and limited in

the Shari'ah laws. As a result of this, the law is well known for its rigidity where it does not conform to the changing situations that take place in life as well as the liberties of the people. However, for some countries, Shari'ah is more than morals and codes that define a Muslim; it is a judicial framework, that is, a set of laws that Muslims must apply in their daily life (Jelloun 100). Nonetheless, Shari'ah is not supposed obligatory. It is the imposition of these laws in the governance of some Islamic societies that are causing problems, not only for the concept of what the religion stands for, which is peace and justice, but also for the followers as well.

The Shari'ah laws have changed the way people view the Islamic religion. This is due to the way these laws are executed and are causing an outrage from people of different beliefs including the modernized Muslims. Those who are non-Muslims would be outraged by these executions because some of these crimes are norms in their own society. An example of this is the judgment of a woman in a Shari'ah law state who wore transparent clothing. For her offense, she was flogged a hundred times. The world was outraged by this form of execution and even western headlines in newspapers termed it as inhumane. On the other hand, those who passed the judgment thought otherwise.

Shari'ah laws in these states implementing them are based on the Quran and beliefs in Islam. To these Shari'ah prosecutors, their executions are justifiable. A woman dressing indecently, that is, revealing or fitted clothing showing her curvatures is believed to incite passions or lust in the opposite sex causing them to act irrationally and treat the woman in manners that are objectionable. Moreover, that kind of dressing creates problems not only for the woman doing it, but for other women as well because her dressing is also believed to have left little to the imagination of how a woman should look like when nude. This gives men little effort in conjuring such images thereby causing them to act lewdly. In the west, however, such dressing is considered acceptable in that it is appropriate for certain seasons of the year e.g. summer; and that it is thought fashionable. In Afghanistan where the women dress to cover themselves up entirely, the westerners view this dress sense as dowdy.

As a result of the beliefs which these Shari'ah laws are based upon, Islamic societies remain firm on maintaining these laws despite the protests of people from other religious backgrounds and how the laws are regarded as sexist. These societies remain firm in keeping these laws because they also believe that women given the liberty to dress as they deem fit would bring corruption such as adultery and promiscuity, these two which are acceptable in the western culture, as well as rape. By having such beliefs, they relate morality to dressing, when in truth "morality involves wholesome behavior that embraces all virtuous human values" (The Star Online). Due to this, if a rape victim wore indecent clothing or was perceived to have dressed indecently, she is also punished along with the perpetrator, because she is believed to have caused the crime. Such is the case of a 13-year old theretofore virgin who was gang-raped in Afghanistan. The perpetrators were free under the Shari'ah law as interpreted by the Taliban, but it was not the same for the young girl. No longer "pure" and accused as the cause of the

crime, she was buried to her neck and was stoned to death (Tubbs 2009).

This goes to show how the Shari'ah law is interpreted in different ways by people from different traditional backgrounds even if they are Muslims. In other Islamic states practicing the Shari'ah, the perpetrators would have been punished instead. This case was clearly not a case of Islam, because the religion itself does not condone violence and is all about justice. It was clearly a case of traditional values over the Islamic law. This case stirred so much criticism from other religious sects that they tagged Islam, its laws as well as its followers as violent. They viewed the situation as absurd and atrocious for having the girl at fault for the crime. This case clearly showed that strict dress-codes do not necessarily hinder sex-related crimes in the society such as rape, incest and even child molestation.

Another argument opposing the Shari'ah law is that it does not give room for second chances. In reality, this argument does not cover that Islam itself is also a religion of tolerance. However, those implementing these laws in their judicial system either misunderstand the scriptures of the Quran by taking it too literally or even interpret the context of the Quran in a way that suits their judgment. This is the case of some Islamic states practicing Shari'ah. Just as observed in the case of the Afghanistan girl, some states even go as far as implementing traditional values with these laws and calling them Islamic, when in fact it they are not. Such laws are unbending despite the changing everyday circumstances, and leave little room for the hearing of the offender. As a result, the offender is executed in such a way that he does not repeat it a second time. Even more so, he is executed in a manner that he might not be able to recover from if later found innocent.

These severe executions are related to hadd crimes, whose punishment are fixed: death for treachery, amputation of the hand for highway robbery and theft; death by stoning for extramarital sex relations (Zina) where the offender is the married person and 100 lashes for unmarried offenders; 80 lashes for a false accusation of unchastity (qadf) and for the drinking of any intoxicant (Encyclopedia). Offenses against the person, from murder to assault are punishable by retaliation (qisas), meaning the offenders goes through the exact same ordeal as his victims. This depends on the victim's family not the state, who gives the right of such persecution, and can opt for other means of compensation by accepting blood money (diyah) in place of retaliation. These forms of execution make people from other religious sects wary of Islam, in that they find the laws too extensive because it also deals with one's personal affairs.

Also, there is a flaw in the manner which some of these executions are handled. Take for example, adultery. In this case, four witnesses need to be available to prove against the adulterer. In other words, truth is based on a consensus of people which in reality is not always true. A group of people could falsely accuse a party, and them being the evidence, the person is executed wrongly. Even worse is if a party is wrongfully accused of theft. The supposed thief's hands will be cut off to prevent repetition of the crime, but when found innocent after execution, there is little room for amendment because the damage has been done. Because of the flaw of the system's procedures, the criminal and general law of the Shari'ah has

been abandoned in most Muslim countries and have followed suit the western models of law.

Further opposition of the Shari'ah law is that it gives for little or no human rights. This would be true given that the Shari'ah law also regulates one's personal conducts. In the essence, the law was not made to conform to the people's taste but the people must abide by the law. To those of other religious and political backgrounds, these laws are imposed on people, robbing them off their rights. This is because people such as the westerners believe in liberalism and freedom. In Shari'ah law, being too liberal and free without some restraint makes one lose his moral values. Some of such prohibitions include drinking, gambling, eating pork, a Muslim woman marrying a non-Muslim etc. Drinking is prohibited because it is believed that when a gets drunk, the person acts in a manner that is irresponsible which upsets his neighbours. Pork is prohibited because it is believed pigs are not clean animals and feed on rubbish. A Muslim woman marrying a non-Muslim runs the risk of being lost to Islam, and her children also risk being raised in the father's religion (Jelloun 40-41). Westerners would view these prohibitions as absurd and very primitive.

One of the major condemnations of the Shari'ah laws on human rights is that of the Muslim women in these societies implementing them. In countries such as Afghanistan, women are obliged to wear a long hijab, which is a garment that covers the rest of the body except the face; or the niqab, which is almost like the hijab but covers the lower half of the face with the exception of the eyes. More so, they are made to wear these garments in dull colours because it is believed that colourful garments would attract the opposite sex. If they don't dress this way, they are either punished, sent to jail or are made to pay fines. This is a case women treated unequally by males in such societies in the name of Shari'ah law. In truth, Islam does not force a woman to cover herself entirely but it is believed that women should dress decently. In Sura xxiv, verse 31, God commands that women believers "lower their gaze" and "cover their chest with their veils." In Sura xxxiii, verse 59, God says to the prophet: "Say to your wives and your daughters, and to the wives of the believers, let their outer garment fall low. So that

they will be recognized as believers and will not be molested" (The Holy Quran). In Islam, a woman dressing brings to herself honor and respect.

However, the case of Afghan women being forced to dress the way they do is an example of how the government of these Islamic countries misunderstand the verses of the Quran or interpret them in a way that suits their judgment. Another case that is tarnishing the religion of Islam is the extremists who are also main actors in the government that impose these laws. They twist the verses of the Quran and interpret in ways that will be of benefit to them and impose these false interpretations as laws on people. These fanatics use to the Quran verses to set laws that give women no rights in the society and also enjoin polygamy. Because these fanatics are well versed in the scriptures, their form of judgment is always deemed justifiable to these ill-governed people. Even as they are verses in the scriptures that state women and men as equals, these sexist driven governments use other parts of the scriptures to contradict this fact. These laws force the women into a tight corner, hindering them from expressing their views in the society.

Also, in the case of same-sex relationships, it would not be approved by the Shari'ah law. This is because God in the Quran did not condone the act and therefore, the law disapproves it. However, in some states not applying the Shari'ah law to their judicial laws, there is no ban on same-sex relationships. Although there is no specific punishment for those who practice this act, if such persons are caught in a Shari'ah state, the Quran would be used as the basis of judgment as it does not condone it.

Furthermore, the Shari'ah law is having a messy entanglement with the governance in some countries. In countries such as Nigeria, Shari'ah is practiced in some states while it is not in other states. In Nigeria, states practicing the Shari'ah are mostly in the northern states while the non-practicing states continue south wards.

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