

What is this thing called Shari'ah?

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In the last decade since the '9/11' terrorist attacks in the United States, a large body of literature has been produced in an attempt to make sense of Islam as a global religion and Muslims as a worldwide community of people. Yet, for most people, the cloud of confusion has not been totally lifted and people have been thrown into extreme views of love and hatred. They sense that there are issues and challenges that cannot be readily explained or conveniently overlooked. Three things have been happening in the Muslim world over the last two centuries and because these developments continue, they are not easy to grasp. First, Muslims have been neglected in the main pages of world history for the last 150 years. They want this to change. Second, Muslims have been challenged deeply by European modernity. Although the responses may vary, indifference and indecision have not been acceptable or attractive options. Third, Muslims have faced the mammoth task of relating Islam persuasively to modern life, particularly in the Western world, and to do with a spirit of revival and the hope of renewal. These three tasks, and they are substantial, are complex and controversial. They involve history, politics, culture and, of course, religion in a world that is itself constantly changing. Like all religious communities, Muslims must make sense of the world in which they live even as they strive to remain true to the teachings of their religion by applying them faithfully to every aspect of their lives, including their public life.

One of the key issues that have emerged with respect to Muslims living in Australia is the issue of Shari'ah. Quite frequently, news and articles appear in media depicting how Muslims insist on applying Shari'ah in Australia. Coverage like these gives three implicit messages to its readers. First, Muslims and Islamic law discriminate usually against women. Second, Muslims ignore Australian legal norms, values and conventions and insist on applying Shari'ah in Australia. Third, it takes Western legal system as a higher arbitrator to solve the legal conflict. In the process, talk back radio shock jocks and their listeners passionately discussed how Muslims and Islam do not fit in Australian society. Politicians usually step in at this point. Federal Attorney-General Robert McClelland, for example, said in July 2011, 'There is only one law that's applicable in Australia - that's Australian law based on our common law tradition,' and if there was ever any inconsistency between cultural values and the rule of law 'then Australian law wins out'¹.

Yet, people do not understand what Shari'ah means and how it works. They have no idea how it was implemented in Muslim history and how it influenced the development of other legal systems. They also do not consider the factors that created the gap between traditional application of Shari'ah and some modern concoctions of it. Clearing the cloud of confusion requires us to examine all three aspects. There is also a need to separate cultural practices and Islam.

Definition, scope and sources of Shari'ah

Shari'ah literally means 'a way to a watering hole'. In the Islamic lexicon, *shari'ah* is the divine path and guidance for humanity on earth. In this sense, it is always fair, just and equitable. The collective effort of Muslims to understand (*fiqh*) *shari'ah* is only an attempt to reaching the ideals. 'The purpose of Shari'ah is the welfare of people and the purpose of *fiqh* is to implement Shari'ah.'²

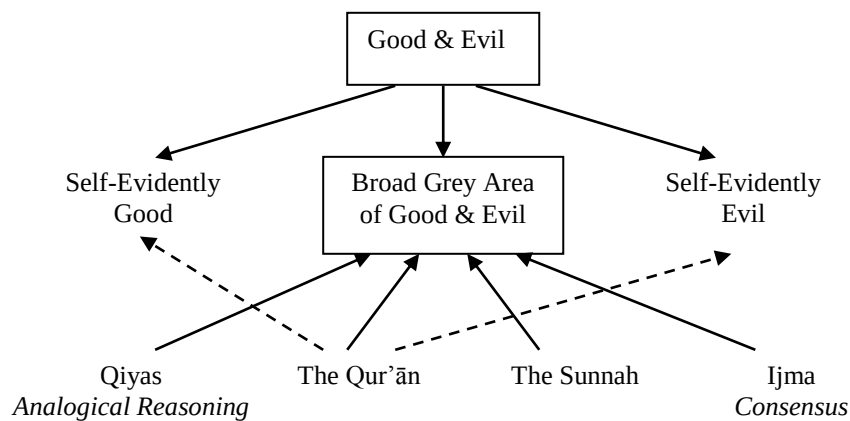
Islamic law was categorised under four broad fields:

- *Aqidah* – creed and beliefs
- *Ibadat* – religious worship and rituals
- *Muamalat* – human relations including ethics and law³
- *Maqasid* – objectives and principles of law⁴

According to the Webster dictionary, ethics is the discipline dealing with what is good and bad and with moral duty and obligation. It is a set of moral principles and a system of moral values. The most important agent in ethics is the human being and his or her actions within an individual and social framework. There are important teachings of Islam with respect to human capacity for goodness. Human being has been 'honoured with goodness' (Qur'ān, 17:70) in that we are created with the innate capability to recognise goodness and virtue. Human being is created on a sound 'natural disposition (*fitrah*) of God upon which He has modelled the humans" (Qur'ān, 30:30). Human being is created in 'the best composition' (Qur'ān, 95:3-6) in that humans have the capacity to excel in our humanity. The Qur'ān says that belief in God and doing good will stop humans corrupting this capacity. Human being is created as a 'steward on earth' (Qur'ān, 2:31-33) charged with the duty of upholding goodness and righteousness and finally has been given 'the trust' (Qur'ān, 33:72), which is self-awareness and freedom of choice that comes with the duty of stewardship.

At the same time human being has embedded in his or her nature a mechanism called *nafs* which is the egotistical soul that acts as the interface between the spirit and the physical body. All human evil is a product of the unpurified *nafs*. Although human reason can be trusted to recognise goodness and human will is capable of striving to uphold what is right, our choices are more often than not negatively influenced by caprice, emotions, desires and the selfish impulses of the *nafs*. Some people will not hesitate to lie or rationalise an action in order to prevent harm or attract a benefit even though that action may be the wrong thing to do. Hence, we cannot always be trusted to do the right thing at all times.

This observation of human nature has implications in what we deem as good and right and what we deem as evil or wrong. Although not too many, there are things that can be categorised either as self-evidently good or self-evidently evil. We don't need to prove that integrity, selflessness, charity, saving lives, for example, are essentially good. Similarly, murder, pedophilia, torture are clearly evil. But many things in life fall into the grey area between clear good and clear evil. In this broad grey area of human action, human *nafs* interferes with our common sense and reason. Therefore, we need independent sources to guide us towards goodness. In Islam, the revealed Word of God, the *Qur'ān*, and the practical implementation of the Qur'ān, the *Sunnah*, are the core legal and ethical sources. There are two other fundamental sources of ethics, *qiyas* and *ijma*, that help Muslims deal with new and emerging issues of law and ethics.



The *Qur'ān* (the Word of God) is the primary source of God's revelation. It is the source book of Islamic principles and Muslim values. About 600 of its 6,238 verses are related to law and only about 80 can be considered legal verses in the strictest sense of the word.

The second source is the *Sunnah* (Prophetic practices). Qur'ānic principles and values are complemented by the *Sunnah* of the Prophet Muhammad^{pbuh}s which is the compendium of narrations (*hadith*) concerning his words, actions and approvals and his companions' descriptions of him. The Qur'ān states, 'if you are to dispute among yourselves about anything, refer it to God and the Messenger' (Qur'ān, 4:59) and 'assuredly you have in God's Messenger an excellent example to follow' (Qur'ān, 33:21).

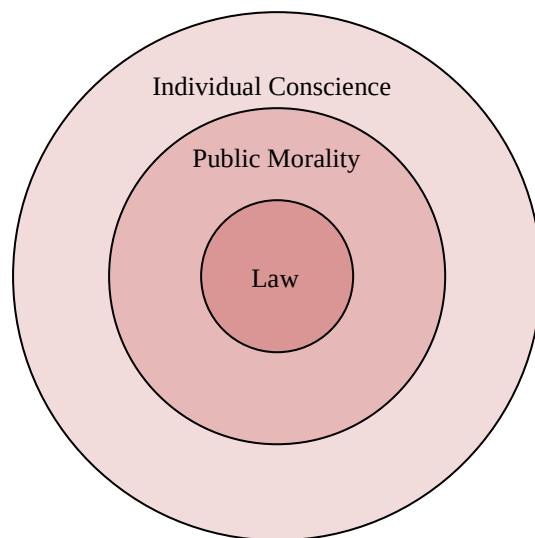
The third source is *qiyas* (analogical reasoning). When faced with an ethical and legal problem not specifically dealt with in the Qur'ān or *Sunnah*, scholars use their reasoning to search for a parallel in these sources. The key method is the discovery of the operative cause (*illah*) – the reason behind the existing ruling. If a similar cause is identified in the new situation, the ruling is extended to resolve the matter. For example, from the specific prohibition of wine is deduced a broad prohibition on alcohol. The operative cause is the mind-altering nature of all alcoholic drinks. When *qiyas* is not possible, jurists may also use their reason based on custom (*urf*), public interest (*maslaha*) and equity (*istihsan*) to come up with a legal deduction.

The fourth source is *ijma* (consensus). When a certain ruling survives the test of time, more and more jurists accept the same legal opinion thus forming a consensus. If all or the majority of scholars agree on an answer to the same question, the likelihood of the answer being right greatly increases. Consensus then becomes binding.

Law, public morality and individual conscience

Drawing a line of demarcation between law and ethics has never been easy. The hallmark of a civil society is a minimal legal zone supported by a strong sense of public morality, widely respected and observed conventions, as well as evidence of active and informed individual conscience. Human actions, hence freedoms, are not absolute and are usually curtailed by law, public scrutiny and the dictates of individual conscience. Islam seeks a balance between these three concentric circles.

In the largest circle, Islam lays responsibility on the individual whose conscience becomes a compass for the right and wrong. The Qur'ān cultivates the development of a sound heart (Qur'ān, 26:89). The Prophet Muhammad^{pbuh} said: 'Actions are judged according to intentions'.⁶ Equipped with a sound heart and good intentions, human beings are much more likely to behave in an upright manner with a more noble inner motivation. Islam's emphasis on belief in the all-knowing God and the spectra of moral questioning in the afterlife gives a Muslim great motivation to do the right thing as good deeds are directly linked to human salvation (Qur'ān, 103:2-3).



While there is *individual responsibility* for one's actions, there is also *collective responsibility* that society bears towards the individual. In Islam, the sick have the right to be visited; the guest has the right to an offering even if it is the most simple food; and, if a person gives greetings, one must return the greeting. The whole community is accountable to God if no-one properly carries out the funeral services of a deceased person.

As the Prophet^{pbuh} made plain, without law and order there would be anarchy and chaos and the whole society would descend into barbarism. At the same time, there is the ever-present risk that law might restrict the rights and freedoms of individuals beyond a reasonable degree. In this respect, the Prophet^{pbuh} again becomes a guiding example for Muslims. The wife of the Prophet^{pbuh}, Aisha, reported that whenever the Prophet^{pbuh} was confronted with an issue he always preferred the option that was easier or better for other people. He also remarked: 'Facilitate (ease) things to people and do not make it hard for them and give them good tidings and do not make them run away.'⁷

Higher objectives and principles of Islamic law

The Islamic legal framework is not, however, yet complete. Even though the Qur'ān and *Sunnah* provide scholars and jurists with principles of law and ethics, the texts are vast and need to be understood and interpreted by human agents. There are three layers of objectives and principles that a jurist must know and apply in order to arrive at a new independent legal opinion (*ijtihad*).

The first layer is the higher objectives of *shari'ah*. According to Ash-Shatibi (d. 1388), the teachings of religion, its commands and prohibitions laid out in the revelation by the divine and put into practice by the *sunnah* serve a higher purpose – ‘to promote good and to benefit human beings and to protect them from evil, from harm and from subsequent suffering’.⁸ Therefore, all juristic opinion must also serve this higher purpose.

The second layer of objectives lies in the protection of five necessities (*dharuriyyat*) or basic human rights.⁹ The first is life. Every person has the right to live in safety and their lives should be protected by law and state. The second right is property. Earning one’s livelihood, owning and preserving personal property is a fundamental right. The third right is intellect. No-one, including a person, society or the state, should coerce or remove the ability to think freely. The fourth is religion. There is no compulsion in religion and every person has the right to preserve and transmit their faith to their progeny. The final right is lineage. Everyone has the right to marry and raise a family.

The third layer comprises methodical principles that jurists must use when addressing legal and ethical problems. There are many such principles at the disposal of the jurist. The following are some of the principles that especially apply to Muslims living in Western countries:¹⁰ everything is fundamentally allowed unless explicitly stated otherwise; under the circumstances when absolute justice cannot be fulfilled, relative justice is applied; something that cannot be completely realised is not completely abandoned; necessities can waive a prohibition only to the degree that necessity is met; and, removal of harm comes before the acquisition of benefit. The *Mejelle*, 19th century Ottoman compendium of Islamic law, has 99 of such principles listed in its preamble. These principles are the backbone of the Islamic legal framework and practice, and provide a solid methodology that is auditable by scholars, jurists and theologians.

Shari’ah in Muslim history

Shari’ah or Islamic law served as the common code of a unified legal system and provided the scales of justice for centuries across lands characterised by demographic, cultural and racial diversity. *Shari’ah*, as a legal system derived from revelation and prophetic example, was regarded as an independent influence that stood above all human authority. This perspective established the ‘rule of law’ concept in theory and practice in the vast Muslim world as early as the seventh century. This was at a time when people in Europe suffered through trial by ordeal. *Shari’ah* ensured safety, justice and guaranteed human rights. Just as the Western world defines itself as the ‘free world’ today, in the past Muslims identified areas ruled by Muslims under *shari’ah* law as the abode of peace (*dar al islam*).

Islam came to societies where tribal customs were the only laws that existed. When the fledgling Muslim community established itself in Medina, Qur’ānic revelation and the Prophet’s practices became the source of social and legal convention for Muslims. For as long as the Prophet^{pbuh} was alive there was no need for systematic law or jurisprudence. Whenever the people of Medina had issues, religious or temporal, they consulted the Prophet^{pbuh} directly. The Prophet^{pbuh} had a school next to the mosque where he personally taught Islam and the Qur’ān to hundreds of his companions. He also stipulated that his governors were to make decisions based on the Qur’ān and his example.

After the death of the Prophet^{pbuh}, his companions spread out across the rapidly expanding Muslim world. Each scholarly companion of the Prophet^{pbuh} became a centre of learning. They taught Islamic practice and gave legal rulings according to the Qur'ān and what they knew from the *Sunnah* of the Prophet^{pbuh}. When they were faced with new situations and could not find an answer in the religious sources, they used their own judgment to find a solution. In doing so, they took into account the principles of equity and public interest as well as the circumstances of the times, customs and culture of the people they were living among, just as the Prophet^{pbuh} had stipulated when he appointed governors.

After the generations of the companions, Islamic law started to develop independent schools of law (*madhab*) mainly due to differences in methodology, geographic separation, variance in the availability of the *hadith* (sayings of the Prophet^{pbuh}) sources and the effect of cultural considerations. Judicious scholars of this time realised the need to standardise religious legal methodology into disciplines based on the primary sources of religion. They started to develop large volumes of deductions from the Qur'ān and the *Sunnah* of the Prophet^{pbuh} covering worship, commercial, criminal and civil law in an attempt to identify clearly the rules and regulations of religion in a comprehensive legal code covering all aspects of life.

From Spain to South East Asia, Shari'ah or Islamic law served as the common code of a unified legal system and provided the scales of justice for centuries. Law was legislated and represented by scholars (*ulama*) who were meticulous in preserving their independence from the rulers. Islamic law introduced 'rule of law' as an important concept of law being above all people including rulers. It also introduced that people are innocent until proven guilty through evidence and reliable witnesses.

Jonathan Lyons in his book *The House of Wisdom: How Arabs Transformed Western Civilisation* says that through Middle Ages when suspects in Europe suffered through trial by ordeal, Shari'ah, Islamic medicine and commerce ensured safety, justice and guaranteed human rights.¹¹ American professor of law, John A. Makdisi published a 100 page paper titled '*Islamic Origins of Common Law*' where he traces the origins of Henry II's legal reforms such as action of debt, assize of novel disseisin and trial by jury to Shari'ah.¹² There is evidence to suggest that Napoleon was influenced by Shari'ah in formulating his Code Napoleon published after his three year stint in Egypt.¹³ These all show that Islamic Law, Shari'ah, was more progressive during middle ages and influenced the development of Western legal system.

The influence of Islam and positive interaction between the Muslim World and Europe was not confined to law. It also included science, philosophy, culture, commerce, art and even religion. Mark Graham in his book *How Islam Created the Modern World* argues that there is a shared history and cultural development between the West and Muslim World closer than many truly appreciate.¹⁴ The symbiotic relationship is such that Richard W. Bulliet in his book *The Case for Islamo-Christian Civilization* states that Western civilization can be better described as Islamo-Christian rather than Judeo-Christian.¹⁵

Factors contributing to the modern stagnation of Islamic law

What went wrong then? Why is there a perception in the Western world that Islamic law is outdated and Muslims are static or monolithic in their approach to law and religion. The assumption is that Islamic law needs to be reformed but Muslims are either not prepared or unable to bring about change. While the manifestations of Islam in the political and social spheres need a fresh outlook to meet the contemporary needs of Muslims around the world, the apparent stagnation of Islamic law does not stem from Islam but from the inertia caused by five internal and external factors.

The first is the discouragement of new interpretation since the eleventh century. Some contemporary scholars argue that a moratorium on legal interpretation, the so-called 'closure of the gates of *ijtihad*', has frozen Islamic legislation in time. This freeze was proposed and enacted at a time when it was necessary to curtail the proliferation of new schools of law rather than stopping the practice of legal interpretation entirely.¹⁶ Nevertheless, there is an observable slowing of legal interpretation after the eleventh century. By then Islamic law was fully developed and applied. Society was not changing fast enough to generate new issues to address nor were new interpretations warranted. There were also the major social and political challenges associated with the Crusades, the Mongol invasion and the Black Plague. These events not surprisingly distracted jurists and theologians and resulted in the stagnation of legal development. After a hiatus of three centuries, legal development resumed and was especially pronounced in the Ottoman Empire. Sultan Mehmet the Conqueror (d. 1481) and Suleyman the Magnificent (d. 1566) produced extensive *shari'ah*-based laws during their reign. In the nineteenth century, a major project was initiated to codify the *shari'ah* in the format of contemporary legislation that would meet pressing immediate needs. As a result, sixteen volumes of new legal codes called *Mejelle* were published in 1876. *Mejelle* remained in use in much of the Middle East until after World War II.

The second major factor that impeded the development of Islamic law was the destructive impact of the European colonisation of the Muslim world. With their political, civil, cultural and religious institutions collapsing around them, Muslims were obliged to struggle for their freedom, independence and the survival of their religion, and had no time to develop Islamic law to address the needs of modernising Muslim societies. This accounted for another century of inactivity in the development of Islamic law. This gap continues to widen.

The third factor has even greater consequences. When the colonial powers eventually had to leave Muslim territories, the liberating leaders were either dictators or military generals turned politicians who established coercive secular regimes and relied upon oppressing the largely conservative public in order to perpetuate their rule. Religious scholars were especially targeted as part of efforts to curb dissent and opposition. Islamic law was replaced by concoctions of Western legal codes and judicial system. Islamic scholarship was usually relegated to a small faculty in a university with limited career opportunities for the small number of students who could not gain entry into other more prestigious faculties.¹⁷ When Islamic law is not applied, it has no chance to develop. When the most talented students do not study Islamic law, expertise and ability to solve problems dwindle, thereby creating space for self-imposed reformers and self-declared saviours to fill the religious authority gap. This saga continues today.

Fifth, when all these forces and factors were having a deleterious effect on Muslim nations, neither culture nor society stayed the same. The world has changed dramatically over last 100 years. Globalisation, mass media and ease of travel accelerated the exposure of Muslims to alternative belief systems, competing cultures and contested social norms. Although Muslims were not against change, the speed of change was daunting and in some places overwhelming. Many scholars felt there were more pressing issues to address rather than devoting time and energy searching for solutions to new legal problems. Even if various scholars devised answers to new questions, they did not have the authority to implement them. As a result, most contemporary Islamic legal books are theoretical or limited to the practice of individuals.

Finally, there is the important factor of hasty and wrong application of Islamic law in our time by Muslim politicians (in Iran, Afghanistan and Sudan for example) who want to establish an Islamic state in their campaign for power and change in Muslim societies. When they find themselves in power they feel they need to give the impression that Islamic state has been established. So they implement certain punishments that exist in Shari'ah first and foremost rather than setting the ground for a just legal system. In doing so they implement law books written centuries ago rather than harmonising those laws with modern times or preparing the society first before implementation of certain laws. As a result injustice and harshness emerges rather than justice and mercy as it should be with the higher objectives of Shari'ah.

Contemporary developments in *shari'ah*

Although Muslims are obliged to live under these restrictions, *shari'ah* and its application continues to evolve in theory but also in practice. At the very least, it is possible for individuals and communities to practice many aspects of *shari'ah* as a personal and collective choice.

When it comes to the social sphere, Muslim scholars and thinkers hold various views about the place of *shari'ah* in modern societies. Some think that *shari'ah* can no longer be applied in modern societies. They believe that these laws were more suited to medieval times and societies. Given that most societies have changed dramatically, *shari'ah* is no longer applicable. Other Muslims hold a completely opposite view and regard the former view as heretical. They insist that *shari'ah* is complete and perfect in the way scholars have previously explained and articulated the laws and regulations and that not much needs to change. Societies have to conform to *shari'ah* already defined and not the other way around. There is also a mid-way approach: *shari'ah* is applicable at all times as *shari'ah* is timeless. The key is to know how to apply it correctly given changes in time and place.

The third position has given rise to three nuanced approaches. First, identify new issues and apply existing methods of *shari'ah* to these issues. At the same time, increase the quality of religious scholarship and bring it up to date with times. Second, identify timeless principles and practices of older applications of *shari'ah* rulings and then apply these principles to only new problems and issues. Third, completely review the classic methodology of *shari'ah* with an intention to improve and expand it so that it can address issues more effectively. Rather than delegating the work to individual scholars, new issues should be addressed by committees of scholars of Islamic law and experts in humanities and scientific disciplines.¹⁸

The first decade of the present century has witnessed a number of important developments. In 2003, the World Council of Muslim Ulama was established under the leadership of the world renowned Muslim jurist Sheikh Yusuf Qaradawi. In 2004, under the tutelage of King Abdullah of Jordan, over 500 Muslim scholars and thinkers from around the world debated, agreed and signed the *Amman Message*, an extraordinary document that outlines a collective response to three key questions – who is a Muslim; who has the authority to excommunicate (*takfir*) Muslims; and, what are the principles and preconditions to valid religious edicts (*fatwa*).¹⁹ Importantly, the *Message* gives an inclusive definition of Islam, prohibits excommunication and provides specific criteria to be used when identifying illegitimate and unqualified religious edicts. In 2007, 138 Muslim scholars from around the world produced *A Common Word between Us and You* – a declaration of dialogue with Christians.²⁰ These developments give hope for the future and demonstrate the capacity of Muslim scholars and Islamic law to arrive at a workable consensus over issues of great importance.

Good culture, bad culture

The issue around Shari'ah, Islam and the modern world is made more complex by cultural overtones. There are many examples of good and bad culture throughout the Muslim world. If you travel to a village in rural Turkey, for example, knock on the door of a house and say you are the 'guest of God', the occupants will welcome you, give you the best room of the house to sleep in and offer you the best food they have available. Hospitality has become a characteristic feature of not only Anatolian Turkish culture but all Muslim cultures. Few people know that this tradition was developed over time as the outworking of the Prophet Muhammad's saying that 'Being hosted as a guest one day and night is the right of a Muslim.'²¹

In addition to hospitality to guests, some other good cultural practices include respect shown to elders; love and compassion shown to the young; maintaining close family ties; recognising the rights of neighbours and showing them respect; visiting the sick and those whose loved ones have died; being charitable and compassionate; and, establishing philanthropic services that benefit everyone in a society - not just those of one's own ethnic or religious community. These actions and attitudes are all based on teachings that come from Qur'ānic verses and prophetic narrations.

There are also cultural practices encountered within some Muslim societies that are wrongly associated with Islam or mistakenly attributed to its teachings. Some of these practices include forced marriages, child marriages, honour killings, preference for a male child and female circumcision. Space prevents me to look at all these important issues in great detail. I will, nevertheless, briefly touch on them.

Forced marriages are un-Islamic. From an Islamic legal perspective, the consent of the woman is an essential aspect of marriage and the responsibility lies with the parents to ensure their daughter is not being compelled into marriage against her will. In a prophetic narration (*hadith*), Ibn Burayda notes: a young girl came to the Prophet and complained, 'My father married me with his brother's son to remove his poor condition.' The Prophet left the consent (whether to opt out of the marriage or to continue in it) with the girl. The girl said: 'I accept what my father has done but I wanted to show to women that their fathers do not have a right

to force their daughters.’²² This narration is very clear about consent. Nevertheless, in some contemporary societies forced marriages still occur notwithstanding this teaching. This happens mainly because of poverty or other family pressures. In some cases, parents may think that the prospective husband is the best option for their daughter. Whatever the reason, Islam does not condone forced marriages.

Similar economic, social and cultural motives are also associated with child marriages. This is also a cultural practice among some Muslims mostly living in third world countries. In Senegal, young women in low status households are almost four times as likely as those in high status households to be married early. The prevalence of early marriage is very low in predominantly Muslim countries in the Middle East, Central Asia and South-east Asia. The prevalence of child marriage is heavily influenced by educational attainment, socio economic status, urban/rural settlement and ethnicity.²³

Honour killings are also utterly un-Islamic. Murder in general is not condoned by Islamic teaching despite the claims of perpetrators that they were motivated to take another person's life by what they read in the Qur’ān. Honour killings are always and everywhere contrary to Islam. Why do they happen? If a girl runs away from home with a man, the family usually feels dishonoured in the eyes of the community. They feel ashamed and want to 'cleanse' their honour by killing the girl to show their repudiation of their actions. This retributive desire is hard to understand for someone who comes from a Western background. In countries where honour killings persist, there have been educational campaigns to stop them from happening with renewed emphasis on the actual teachings of Islam with respect to the sanctity of life.

A preference for male children is a long-standing problem that has affected all societies, Western and Muslim. It was a problem that existed prior to Islam and it still exists in many Islamic and non-Islamic cultures. In the ancient world, when labourers and soldiers were the most important assets, having male children meant fortune and prosperity. In pre-Islamic Arabia, it was considered shameful for one's first child to be a girl. Sadly, a lot of fathers would bury their infant daughters alive. Islam strongly condemned and prohibited this practice:

When any of them is given news of the birth of a girl, his face becomes overcast, and he is suppressed with anger. He hides himself from the people because of the shame of what he has had news of. (He thinks) shall he keep her with dishonor or bury her in earth? Look now! How evil is the judgment they make! (Qur’ān, 16:58-59)

While Islam was able to stop infanticide, evidence of discrimination against girls persists in parts of the Muslim world and takes quite subtle forms. The Prophet Muhammad^{pbuh} specifically spoke about the virtue of raising daughters and the reward God will bestow on their parents in the afterlife.²⁴

Female circumcision – also referred to as female genital mutilation (FGM) – is a practice common among Africans with Christian, Muslim and traditional African religious backgrounds. The practice preceded Christianity and Islam and was widely practiced in ancient Egypt. A Greek papyrus from 163 BC narrates that both boys and girls were subject to circumcision while evidence from mummied human remains indicate various forms of FGM taking place in many ancient societies.²⁵ The practice is mostly seen in Egypt and other African countries. It is not common in other Muslim countries such as Saudi Arabia, Turkey,

Iraq, Iran and other Asian and Pacific Muslim countries.²⁶ The prevalence of FGM largely in non-Muslim countries, and the fact that only a localised practice exists within small Muslim communities, means that FGM ought to be seen as a remnant of an old cultural practice rather than an Islamic requirement. There is no mention, directly or indirectly, in the Qur'ān of female circumcision. There are no known *hadith* (sayings) of the Prophet Muhammad^{pbuh} that encourage female circumcision. This is consistent with Islam's prohibition of any kind of mutilation of the physical body. The beliefs that underpin the practice of FGM flow from a concern to ensure marriageability, maintaining a girl's chastity, rite of passage, the preservation of hygiene, enhancing sexual pleasure for men and protecting fertility.²⁷ In societies where female circumcision is widely practiced, uncircumcised girls are shunned. Because they are labelled unclean and considered undesirable, fear grows among parents that the girl may never marry and remain a burden on their household.²⁸ Tragically, parents who subject their daughters to FGM think that they are serving the girl's best interests. It is apparent, then, that the real reasons and the actual motivations behind FGM are socio-cultural factors rather than being religious requirements or observances.

It is clear that cultural practices are often confused with the teachings of Islam by Muslim and non-Muslim observers. This has served to exacerbate misconceptions and reinforce negative stereotypes. My response is to urge commentators to identify and separate cultural conventions and social habits from the explicit teachings of Islam. There also needs to be strong emphasis on removing bad cultural practices from Muslim societies and rejecting the mistaken beliefs that undergird and sustain them. The good news, from what I can detect, is that this is happening and good progress is being made. As literacy levels increase and Muslims study their religion and examine its sacred texts for themselves, they can discern and discontinue bad cultural practices within their families and the wider community.

Conclusions

There are a number of important conclusions that flow from this discussion for Muslims and non-Muslims. Non-Muslims should appreciate that Shari'ah, Islamic law, is a sophisticated legal system that helped improve law and justice throughout the world for more than a millennia. Western legal system was directly influenced by Shari'ah throughout history. Importantly, the present poor legal and cultural conditions in the Muslims are a direct outcome of the destructive forces of European colonization. This appreciation should have a humbling effect over the apparent superiority complex that exists in Western societies. At the same time, Muslims should remember the higher objectives of Shari'ah and learn more about the complex legal methodology of Islamic law and utilise it in addressing contemporary issues. More importantly, Western governments and legal institutions should cooperate with Muslim experts to find solutions to ethical dilemmas Muslims often find themselves in the modern world.

Shari'ah issue is symptomatic of deeper issues that look at the relationship and historical experience of Muslims and Western societies. Until recently, Muslims do not have an historic experience of living as minorities in largely non-Muslim societies. At the same time, Western societies do not have an historical experience in having large minority populations of different religious communities living amongst them. More discussion on this deeper insight must be held to address the underlying problem.

Endnotes

- ¹ Chris Merritt, 'Sharia law at work in Australia', *The Australian*, 20 July 2011.
- ² Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, Oneworld, Oxford, 2001, p. 32.
- ³ First three cited in Wahba az-Zuhayli, *Islam Fikh Ansiklopedisi*, Feza Yayincilik, Istanbul, 1990, vol. 1, p. 20.
- ⁴ This is added by Tariq Ramadan in *Radical Reform: Islamic Ethics and Liberation*, Oxford University Press, Oxford, 2009, p. 263.
- ⁵ 'Pbuh' is the acronym for 'peace be upon him'. Muslims say this phrase out of respect for the Prophet Muhammad.
- ⁶ Bukhari *Bad'u l-Wahy*, p. 1; Muslim, *Imara*, p. 155; Abu Dawud, *Talaq*, p. 11.
- ⁷ Bukhari, *Ilm*, 12; Muslim, *Jihad*, 6
- ⁸ Cited in Tariq Ramadan, *Radical Reform*, p. 67.
- ⁹ Abou El Fadl, *Speaking in God's Name*, p. 154.
- ¹⁰ Unal Ali, *Din Etrafinda*, Isik Yayinlari, Istanbul, 2007, p. 116
- ¹¹ Jonathan Lyons, *The House of Wisdom: How the Arabs Transformed Western Civilisation*, Blumbsbury Press, New York, 2009, pp. 20-21.
- ¹² John A Makdisi, *Islamic Origins of the Common Law*, North Carolina Law Review, Vol 77, p. 1.
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