

# Islamic Law

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**Abstract:** The law system of a State represents the body of rules passed or recognized by that State in order to regulate the social relationships, rules that must be freely obeyed by their recipients, otherwise the State intervening with its coercive power. Throughout the development of the society, pedants have been particularly interested in the issue of law systems, each supporting various classifications; the classification that has remained is the one distinguishing between the Anglo-Saxon, the Roman-German, the religious and respectively the communist law systems. The third main international law system is the Muslim one, founded on the Muslim religion – the Islam. The Islam promotes the idea that Allah created the law and therefore it must be preserved and observed as such. Etymologically, the Arabian word “Islam” means “to be wanted, to obey” implying the fact that this law system promotes total and unconditioned submission to Allah. The Islamic law is not built on somebody of laws or leading cases, but has as source. The Islam is meant as a universal religion, the Koran promoting the idea of the unity of mankind; thus, one of the precepts in the Koran asserts that “all men are equal (...), there is no difference between a white man and a black man, between one who is Arabian and one who is not, except for the measure in which they fear God.” The Koran is founded mainly on the Talmud, Hebrew source of inspiration, and only on very few Christian sources. The Islam does not forward ideas which cannot be materialized; on the contrary its ideas are purely practical, easy to be observed by the common man, ideas subordinated to the principle of monotheism. The uncertainties and gaps of the Koran, which have been felt along the years, imposed the need for another set of rules, meant to supplement it – that is Sunna. Sunna represents a body of laws and, consequently, the second source of the Koran. Sunna narrates the life of the prophet Mohamed, the model to be followed by all Muslims. This prophet teaches the Muslims five basic rules they must strictly obey: prayer five times a day, gifts to the poor, faith in Allah, fasting in the month of Ramadan and pilgrimage to Mecca, at least once in a lifetime. The Koran excludes the passage of laws by a legislative body, the divinity being the sole “authority” capable of governing life in all its dimensions. However, on the other side, as it would have been expected due to the old times when it was created, the Koran encouraged a series of injustices and limitations of the human rights, from a contemporary point of view; the Islamic law settled the inferiority of women in relation to men. If in the 7th century the woman’s position in society was rather humble, the voice of the prophet Mohamed improved her condition, the woman becoming her husband’s “partner and close helper”, and the development of the society led to the emancipation of the woman, especially due to external influences. After the beginning of the 19th century, the application area of the Sharia law was reduced at first due to the western influence, but its proponents succeeded in reviving it, phenomenon known as “the Islamic rebirth”. Thus, the penetration of modern education as well as the constitution of national States led to the acceptance of the introduction of the codes specific to the continental system. In some countries, the Islamic law was officially abolished – this is the case of Albany, Turkey and the former USSR. International jurisdictions (Hague International Court), supranational (Strasbourg Court of Human Rights), and even transnational ones (the one from Kosovo) have already been created. In the light of this international trend, legal systems interfere and tend towards external influence and even globalization. Given this context, we must mention the Universal Islamic Declaration of Human Rights (the 19th of September 1981), and the European Union – Islamic Conference Organization bilateral forum held in Ankara, 2002.

**Keywords:** Islamic law, principle of monotheism, Koran

The law system of a State represents the body of rules passed or recognised by that State in order to control social relationships, rules that must be freely obeyed by their recipients, otherwise the State intervening with its coercive power.

Throughout the evolution of the society, pedants have been particularly interested in the issue of law systems, each supporting various classifications; the classification that has remained is the one distinguishing between the Anglo-Saxon, the Roman-German, the religious and respectively the communist law systems.

If the Anglo-Saxon law system (known as “common law” as well) rests upon the leading case, the Roman-German one is based on the law.

The third main international law system is the Muslim one, founded on the Muslim religion – the Islam.

The Islam promotes the idea that Allah created the law and therefore it must be preserved and observed as such.

Etymologically, the Arabian word “Islam” means “to be wanted, to obey” implying the fact that this law system promotes total and unconditioned submission to Allah.

Entirely dependent on the sacred text - the Koran (at least in the past), the Islamic law is subordinated to the religious ritual, therefore law, legal science are subordinated to theology.

The battles between 655 and 661 for the leadership of the caliphate, known as “the great discord” led to the division of Muslims into Shiites, Sunnites and Kharijites. In United States of America there was also a fourth group which included a relatively small number of representatives, known as “subjects” who adopted only the Koran.

The Islamic law is not built on somebody of laws or leading cases, but has the Koran as source, as previously mentioned; if the Roman-German law system is circumscribed to the licit or illicit area, the Islamic one has a larger scope, starting from social conduct rules up to hygiene rules, all considered from a religious perspective.

Moreover, the Islamic act can be allowed, recommended, permissive or, as the case may be, mandatory.

The concept of “Sharia”, promoted by Islamic law, designates the ideal law considered from a general perspective, surpassing the limits of the continental legal system.

The Islam is meant as a universal religion, the Koran promoting the idea of the unity of mankind; thus, one of the precepts in the Koran asserts that “all men are equal (...), there is no difference between a white man and a black man, between one who is Arabian and one who is not, except for the measure in which they fear God.”

The Koran is founded mainly on the Talmud, Hebrew source of inspiration, and only on very few Christian sources.

The Islam does not forward ideas which cannot be materialised; on the contrary its ideas are purely practical, easy to be observed by the common man, ideas subordinated to the principle of monotheism.

Another principle advanced by the Islamic religion supports the thesis according to which the prophets, Allah’s messengers on Earth, teach people the law and intervene in case of law transgression through admonitions or threats.

The Koran includes 114 chapters each known as a sura and 6200 verses, but only a tenth part refers to conduct norms; they regard the scope of social relations in family law, civil law - especially with respect to successions, but establish woman’s condition as well.

The uncertainties and gaps of the Koran, which have been felt along the years, imposed the need for another set of rules, meant to supplement it – that is Sunnah. Sunnah represents a body of laws and, consequently, the second source of the Koran.

Sunnah narrates the life of the prophet Mohammed, the model to be followed by all Muslims. This prophet teaches the Muslims five basic rules they must strictly obey: prayer (al-salat) five times a day (at dawn - subh, at noon - zuhr, in the afternoon - isr, at dusk - maghrib and at nightfall - isa), all prayers being performed facing Mecca, then gifts to the poor (al-zakat), faith in Allah (al-ahahada), fasting in the month of Ramadan (al-savom) and pilgrimage to Mecca (al-hajj), at least once in a lifetime.

The Koran excludes the passage of laws by a legislative body, the divinity being the sole “authority” capable of governing life in all its dimensions.

Unlike the Bible, the Koran has a more realistic approach on the one hand and on the other hand it “guides” the life of a simple man; thus, the Koran speaks neither of the resurrection of the dead, nor of rapture, but does not impose the Christian principle known as “believe and do not seek”.

This is one of the reasons for which the Koran outlived and did not undergo major changes due to the overall evolution of the society.

Moreover, the Koran represents the model of moderate life, for common people, based on common sense and moderation; for instance, one of the 6200 verses recommends: “eat and drink but not to repletion”.

The Koran acknowledges and observes some of the human rights, proclaiming human dignity, honour, freedom, equality, fraternity and rejecting aggression, indifference, race and caste discrimination, oppression and degradation.

However, on the other hand, as it would have been expected due to the old times when it was created, the Koran encouraged a series of injustices and limitations on human rights, from a contemporary point of view; the Islamic law settled the inferiority of women in relation to men. Muslim women did not have the same rights as men; they could not choose their husbands, and with respect to vote and divorce they had fewer rights than men. The woman’s testimony as a witness was half as valuable as that of the man; the woman was deprived of freedom of movement and travel and did not have the right to marry a non-Muslim. Furthermore, women could not be leaders.

Also, the Koran indirectly allowed rape for the victim of a rape could only prove this fact through the testimony of four men - which was practically impossible.

Woman’s inferiority also resulted from the verse which described hell as being populated by women.

However, before Allah woman and man are equal.

As opposed to Christianity, Islam allowed polygamy, restricting to four the number of wives, but with no limitation on the number of concubines.

On the other hand, it was still the Koran that instituted man’s obligation to ensure good living conditions for their wives, that is “food and clothes”.

Slavery was recognised and encouraged by Islam; for instance, each slave, married or not, was obliged to cohabit with her master.

If in the 7th century the woman’s position in society was rather humble, as shown above, the voice of the prophet Mohammed improved her condition, the woman becoming her husband’s “partner and close helper”, and the development of the society led to the emancipation of the woman, especially due to external influences.

The prophet Mohammed improved woman’s statute, underlining her role of mother and wife, the woman acquiring an important position in Islam. However there still are voices in Islam, especially in the West, which refuse to recognise this position, mentality based mostly on ignorance rather than on a good knowledge of Islam.

In Islam, the woman acquired a distinct identity, being recognised the right to property, the right to work, the right to inheritance, the right to choose a husband and to apply for divorce. Moreover, the woman was given the right to honour. The Koran protects the woman through dispositions which on the one hand oblige Muslims to support their wives and on the other hand through the duty to treat them gently.

However, Muslim women do not have only rights, but a series of obligations as well: to be faithful, to pay taxes for their own fortune, to maintain their chastity and not to commit adultery. The Koran imposes on women the obligation to raise and educate their children in the spirit of the Islam, to take care of all family members, managing all problems related to domestic life. Also, women must wear kerchief - named hijab and cannot wear men clothes.

Even if in the Islamic perspective man and woman are not equal, neither of them dominates the other, but they complete each other.

Still, the Koran encourages a series of injustices and limitations on human rights. First of all, a non-Muslim cannot testify against a Muslim. It restricts the freedom of religion, Muslims being forbid from changing their religion, under penalty of death.

In spite of these, there were many Muslims who gave up Islam and converted to Christianity.

Some of the punishments applied in the Middle Ages are still in the Koran: amputation in case of theft (sura 5/38), beating for adultery (sura 24/2) and the advice “do not make friends with Jews or Christians” had anti-Semite nuances.

Islamic law addresses the family rather than the individual. Marriage in Islamic law does not include the Western marriage at the registry office; it becomes valid through the simple statement of the two spouses before two legally capable men.

After the beginning of the 19th century, the application area of the Sharia law was reduced at first due to western influence, but its proponents succeeded in reviving it, phenomenon known as “the Islamic rebirth”.

Thus, the penetration of modern education as well as the constitution of national States led to the acceptance of the introduction of the codes specific to the continental system.

In some countries, the Islamic law was officially abolished – this is the case of Albany, Turkey and the former USSR.

At once with the evolution of the society, tribal traditions merged with the advanced religious doctrine, and with various foreign influences, giving rise to contemporary Islam.

Integration in the European Union, the strengthening of the European institutions are proofs of globalisation. Allard, J. Garapon in his work “Les judes dans la mondalisation” claims that these signs predict the instauration of a new international order, imposed either by the need for universal peace or by a merger of the existing law systems.

International jurisdictions (Hague International Court), supranational (Strasbourg Court of Human Rights), and even transnational ones (the one from Kosovo) have already been created.

In the light of this international trend, legal systems interfere and tend towards external influence and even globalisation. Given this context, we must mention the Universal Islamic Declaration of Human Rights (the 19th of September 1981), and the European Union – Islamic Conference Organisation bilateral forum held in Ankara, 2002.