

# Islamic and Egyptian legal system

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# Introduction

- Definition of Islamic law
- Islamic Sharia is an Islamic term that refers to the commands and prohibitions that God has legislated for his Muslim servants, the halal and the forbidden, which are the rules, rules and regulations legislated by God for the establishment of a just life and the management of people's interests and security in the beliefs, worship, morals, transactions and systems of life in its various people. One of its definitions is also that Sharia is the religion.

# The Islamic legal system

- Islamic Sharia in the Egyptian Legal System
- Before 1971, Islamic Sharia was a **de facto source of Egyptian law**, especially in matters related to family law for Muslims. Although there was no constitutional requirement, there was a consensus that family law matters are regulated according to Islamic Sharia

## characteristics of Islamic legal system

- Sharia comprises three basic elements: Aqidah concerns all forms of faith and belief in **Allah**, held by a Muslim. Fiqh governs the relationship between man and his Creator (ibadat) and between man and man (muamalat). ... Akhlaq covers all aspects of a Muslim's behavior, attitude, and work ethic.
- In its broad meaning, revelation is divine guidance or inspiration; it is the communication of truth and knowledge from God to His children on earth, suited to their language and understanding. It simply means to uncover something not yet known.

# The structure of islamic law

- The manner of its application in modern times has been a subject of dispute between Muslims and Secularists. Traditional theory of Islamic jurisprudence recognizes four sources of Sharia: **the Quran, sunnah (authentic hadith), qiyas (analogical reasoning), and ijma (juridical consensus).**

# its sources

- Quran, Sunnah, scholarly consensus, ijtiḥad
- The Sunnah of the Prophet has a great place in Islamic legislation, as it is the second origin after the Holy Qur'an, and the practical application of what it came in. Explaining those foundations and subdividing the particles.
- Consensus is one of the sources of Islamic legislation, and it is the third source of legal rulings in general after the Qur'an and Sunnah, and its emergence was due to the new issues that arose after the death of the Prophet, so it became a necessary source of necessity, and because the Prophet warned against disunity and disagreement and urged meeting in many hadiths.

- **“Ijtihad”** is what gives Sharia its fertility and richness, and enables it to lead the reins of life to what God loves and is pleased with, without compromising God’s limits, and without squandering human rights, if it is a valid diligence that fulfills its conditions and is issued by its people in its place.



# History of Islamic legal system

- Muslim jurisprudence in its traditional form provides an extreme example of a legal science divorced from historical considerations. Law, in classical Islamic theory, is the revealed will of God, a divinely ordained system preceding, and not preceded by, the Muslim state controlling, but not controlled by, Muslim society. There can thus be no relativistic notion of the law itself evolving as an historical phenomenon closely tied with the progress of society. The increasing number of nations that are largely Muslim or have a Muslim head of state, emphasizes the growing political importance of the Islamic world, and, as a result, the desirability of extending and expanding the understanding and appreciation of their culture and belief systems. Since history counts for much among Muslims and what happened in 632 or 656 is still a live issue, a journalistic familiarity with present conditions is not enough; there must also be some awareness of how the past has molded the present. This book is designed to give the reader a clear picture. But where there are gaps, obscurities, and differences of opinion, these are also indicated.

## Structure of Egyptian legal system

- The Egyptian legal system is built on the combination of Islamic (Shariah) law and Napoleonic Code, which was first introduced during Napoleon Bonaparte's occupation of Egypt in 1798 and the subsequent education and training of Egyptian jurists in France. The Egyptian legal system, being considered as a civil law system, is based upon a well-established system of codified laws. Egypt's supreme law is its written constitution. With respect to transactions between natural persons or legal entities, the most important legislation is the Egyptian Civil Code of 1948 (the "ECC"), which remains the main source of legal rules applicable to contracts. Much of the ECC is based upon the French Civil Code and, to a lesser extent, upon various other European codes and upon Islamic (Shariah) law, especially in the context of personal status.

## Criminal Code "Penal Code" in Egypt

- Egypt based its criminal codes and court operations primarily on British, Italian, and Napoleonic models. Criminal court procedures had been substantially modified by the heritage of Islamic legal and social patterns and the legacy of numerous kinds of courts that formerly existed. The divergent sources and philosophical origins of these laws and the inapplicability of many borrowed Western legal concepts occasioned difficulties in administering Egyptian law. The criminal code listed three main categories of crime: contraventions (minor offenses), misdemeanors (offenses punishable by imprisonment or fines), and felonies (offenses punishable by penal servitude or death). Lower courts handled the majority of the cases that reached Adjudication and levied fines in about nine out of ten cases. At their discretion, courts could suspend fines imprisonment (when a sentence did not exceed one year). Capital crimes that carried a possible death sentence included murder, manslaughter occurring in the commission of a felony, arson or the use of explosives that caused death, rape, treason, and endangerment of state security. Few convictions for capital crimes, however, resulted in execution.

## The Egyptian Civil Code is the primary source of civil law for Egypt

- The first version of Egyptian Civil Code had been written in 1949 containing 1149 articles. The prime author of the 1949 code was the jurist Abd El-Razzak El-Sanhuri, who received assistance from Dean Eduard Lambert of the University of Lille. Perhaps due to Lambert's influence, the 1949 code followed the French civil law model. The code focuses on the regulation of business and commerce, and does not include any provisions regarding family law. El-Sanhuri purposely left out family law and succession to set it apart from Islamic rules where all marriage rules and all related issues based. Article 1 of the code provides that, "in the absence of any applicable legislation, the judge shall decide according to the custom and failing the custom, according to the principles of Islamic Law. In the absence of these principles, the judge shall have recourse to natural law and the rules of equity." Despite this invocation of Islamic law, one commentator has argued that 1949 code reflected a "hodgepodge of socialist doctrine and sociological jurisprudence.

- The Egyptian Civil Code has been the source of law and inspiration for numerous other Middle Eastern jurisdictions, including pre-dictatorship kingdoms of Libya and Iraq (both drafted by El-Sanhuri himself and a team of native jurists under his guidance), in addition to Jordan (completed in 1976, after his death) Bahrain (2001), as well as Qatar (1971) (these last two merely inspired by his notions), and the commercial code of Kuwait (drafted by El-Sanhuri). When Sudan drafted its own civil code in 1970, it was in large part copied from the Egyptian Civil Code with slight modifications. Today all Arab nations possessing modern civil codes, with the exception of Saudi Arabia and Oman, based fully or partly on the Egyptian Civil Code. The Egyptian judicial system based on European and primarily French legal concepts and methods. The legal code derived largely from the Napoleonic Code. Marriage and personal status primarily based on the religious law of the individual concerned. Thus, there are three forms of family law in Egypt: Islamic, Christian, and secular (based on the French family laws). The judicial branch plays an important role in the political process in Egypt, as the branch given the responsibility to monitor and run the country's parliamentary and presidential elections.



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