

In desirable, whereas  
in other cases one



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In Islam, therefore, 'law' means the direction of God for regulating all the human conducts, spiritual, moral or secular. Some of the directions are obligatory, some are only desirable, whereas in other cases one may or may not follow them.

God has laid down the path to be followed by the human beings. These directions of God to men constitute the Shariat. Literal meaning of Shariat is "the path to be followed" by the human beings.

In Islam it is believed that a thing or an action may be either Good (husn) i. e., morally beautiful or Evil (Kubh) i. e., morally ugly. "What is morally beautiful, that must be done, and what is morally ugly must not be done. That is law or Shariat and nothing else can be law". The question is, how to know what is good and what is evil? The answer is that this may be ascertained with the help of the words of God and the traditions of the Prophet Muhammad who was messenger of God.

Therefore, it may be said that the Shariat which is of divine origin, is the Islamic code of conduct for all the aspects of human life.

**Fiqh:**

Fiqh signifies 'law' in the modern sense. According to Muslim jurists, in the absence of any direction for human actions in the words of God or traditions of the Prophet, the human reasoning or the exercise of human knowledge in deciding a point of law is necessary. Human intelligence or the knowledge of law is technically called Fiqh. Fiqh means the knowledge of one's rights and obligations deduced from the words of God and His messenger. The Fiqh is, therefore, a part of the secular law or the law proper which the authorities

enforce for regulating human conduct. The Shariat, on the other hand, is the spiritual or moral code of conduct.

What has been laid down by God as a code of conduct is Shariat, and the code of conduct established by 'human reasoning' is the Fiqh or positive law. In other words, " the path of Shariat is laid down by God and His Prophet, the edifice of Fiqh is, erected by human endeavour". As discussed earlier, the Shariat is wider because it includes all the human actions, spiritual, moral and the secular. But, the scope of positive law (Fiqh) is narrower.

It includes only the secular rights and obligations. Explaining the distinction between shariat and fiqh, Fyzee observes thus: " In Islam, law is not distinct from religion. The two streams flow in a single channel and are indistinguishable. They are known as Shariat and Fiqh, the two aspects of the religious aspect of Islam. Shariat is a wider circle, it embraces in its orbit all human actions; Fiqh is narrower one, and deals with what are commonly understood as legal acts... The path of Shariat is laid down by God and his prophet; the edifice of Fiqh is created by human Endeavour Fiqh is the term used for the law as science; and Shariat, for the law as the divinely-ordained path of rectitude." In the eyes of Fiqh, a human act may be either lawful or unlawful. If the act is unlawful, punishment is to be given by the appropriate authority of the State. On the other hand, according to Shariat, besides an act being lawful or unlawful, it may also be such which is advised not is done.

For example, in the Shariat a Muslim is directed not to eat certain kinds of fish or to offer prayers (namaz) regularly. Such acts or omissions are not

punishable by the authorities of State. But, if a Muslim abstains from doing what is prohibited, and does what is so directed in the Shariat, he gets spiritual benefit. If his activities are against such directions, he is deprived of spiritual benefits. Fiqh is, therefore, concerned only with legal acts whereas the Shariat covers also the moral and religious acts. Accordingly, it may be said that Fiqh is that 'law' which, originating from Shariat, has been interpreted, modified and adopted by the authority of the State. A significant feature of Fiqh in the Muslim jurisprudence is that it stands for all the branches of positive law. It includes (i) the fundamental principles of positive law such as sources and the rules of interpretation, and also (ii) the actual law as applied by the courts e.

g. law of marriage, or dower etc. However, Muslim jurists have frequently used the term Shariat as equivalent to law proper or the positive law. This is obvious, because in a system of law which is of divine origin, it is difficult to separate a secular rule from a religious one. In the words of Justice Mahmood, "Hindu and Muhammadan Laws are so intimately connected with the religion .

that they cannot readily be severed from it. As long as the religions last, the laws founded on them last". It is interesting to note that within certain limits, the distinction between Shariat and Fiqh is almost the same as it is between Dharma and Vidhi under the Hindu jurisprudence. The term Dharma {which may be treated as equivalent to Shariat} signifies the whole body of religious duties. On the other hand, Vidhi or the Vyavhar law, (comparable to Fiqh) is that 'law' the breach of which results in a judicial proceeding. Fyzee

too says that “ the Sharia is the analogue of the Torah among the Jews and Dharma among the Hindus.

” However, it is submitted that for practical purposes a separation of ‘ law’ from religion is always necessary. From this point of view, it may conveniently be said that Fiqh includes only those rules of the Shariat the violation of which results in a punishment (or, some loss) by the authority of the State.