

# [What is syariah law by meaning philosophy essay](https://assignbuster.com/what-is-syariah-law-by-meaning-philosophy-essay/)

The term Sharia itself derives from the verb sharaa, which according to Abdul Mannan Omars Dictionary of the Holy Quran connects to the idea of spiritual law and “ system ofdivine law; way of belief and practice” (45: 18) in the Quran.

## Definition of Sharia’ law.

Sharia (Arabic: Ø©Ø¹ÙŠØ±Ø´ ; also SharÄ«’ah, Shari’a, Shariahor Syariah) is the Arabic word for Islamic law, also known as the Law of Allah. The word sharia mean “ the right path,” refers to traditional Islamic law. The Sharia comes from the Koran, the sacred book of Islam, which Muslims consider the actual word of God. The Sharia also stems from the Prophet Muhammad’s teachings and interpretations of those teachings by certain Muslim legal scholars. Muslims believe that Allah (God) revealed his true will to Muhammad, who then passed on Allah’s commands to humans in the Koran. Islam classically draws no distinction between religious, and secular life. Hence Sharia covers not only religious rituals, but many aspects ofday-to-day life, politics, economics, banking, business or contract law, social issues and legal rules, is more than legal system, strictly speaking. Islam is al-deen which is the way of life.

## Sources of sharia law.

Basically the primary sources of sharia law are the Quran, Hadiths or Sunnah which is the sayings, practices, and teachings of the Prophet Mohammed. The secondary sources are ijma, qiyas, ijtihad and istihsan.

## School of Sharia law

## No.

## Schools of sharia law

## Explanation

1.

Hanbali

Most conservative school of Shari`a. Used in Saudia Arabia .

2.

Maliki

Based on the practices of the people of Medina during Muhammad’s lifetime.

3.

Shafi’i

Emphasizes on opinions, companions of the Prophet Muhammad

4.

Hanifi

Most liberal school, relatively open to some limited modern ideas.

## WHAT IS HUDUD LAW BY MEANING?

## Etymology.

It means ‘ limits’, or ‘ forbidden’ and also as definition. The root word is derived from the Arabic ‘ hadd’. Literally hudud (Arabic, also transliterated hadud, hudood; singular hadd, Ø­Ø¯, literal meaning “ limit”, or “ restriction”) is the word often used in Islamic literature for the bounds of acceptable behaviour and the punishments for serious crimes.

## Definition of hudud.

In Islamic law or Sharia, hudud usually refers to the class of punishments that are fixed for certain crimes that are considered to be “ claims of God.” They include theft, fornication and adultery (zina), consumption of alcohol or other intoxicants (khamr), and apostasy.

According to Islamic dictionary hudu law is define as muslim law: divine punishments; the category of crimes most egregious and therefore most severely punished. Sharia is an Arabic word meaning “ the right path”.

## Crimes in Islam

Crimes under Islamic Law can be broken down into 3 major categories. Each will be discussed in greater detail with some common law analogies. The three major crime categories in Islamic Law are:

Hadd Crimes [plural Hudud] (most serious), Tazir Crimes (least serious), Qisas Crimes (revenge crimes restitution).

## Hudud crimes.

Hadd crimes are those which are punishable by a pre-established punishment found in the Qur’an. These most serious of all crimes are found by an exact reference in the Qur’an to a specific act and a specific punishment for that act. There is no reducing the punishment for a Hadd crime. Hadd crimes have no minimum or maximum punishments attached to them. The punishment system is comparable to the determinate sentence imposed by some judges in the United States. If you commit a crime, you know what your punishment will be.

No judge can change or reduce the punishment for these serious crimes. The Hadd crimes are:

Murder, Apostasy from Islam (Making war upon Allah and His messengers), Theft, Adultery, Defamation (False accusation of adultery or fornication), Robbery, Alcohol-drinking (any intoxicants)

The first four Hadd crimes have a specific punishment in the Qur’an. The last three crimes are mentioned but no specific punishment is found. Thus the last three crimes, the punishment falls into ta’azir crimes which the punishment is declared by the government.

## Punishments under hudud law.

Hudud punishments are the severe penalities prescribed by shari’a for offenses defined as being against God himself. The punishments for these crimes are seen as divinely ordained and cannot be changed by humans.

## Methods of Execution

## HOW SYARIAH AND HUDUD LAW APPLIED IN MALAYSIA?

According to Islam, a state which use holy quran and prophets tradition as its state constitution and the law that govern the people is an Islamic law is an Islamic state. The rulers also must be elected from muslim members in their community.

Article 3 of the Federal Constitution stated that Islam is the religion of the Federation. But as such stated in Article 11 of the Federal Constitution is that every person have the right to profess and practice their own religion and subject to Clause 4, to propagate it.

Article 3 merely declares that Islam is the official religion of the federation. It does not declare as does Constitution of Pakistan that the federation is an Islamic state.

In Malaysia, although sharia law is applicable to all Muslim, but it only deals with family law and the division of property. Not all chambers of sharia law is applied in Malaysia. Basically for crime, the punishment is laid down in Penal Code.

Recently, the government of Kelantan express their intention to impose hudud law in Malaysia while the other opposition side refuse to, especially DAP which their members all are non-muslim and Parti Keadilan Rakyat. Taking into consideration how you wanted to govern the people which are not muslim and didn’t have faith in it, to follow its rules?

As rational human beings, naturally we understand that in life there is such a thing as limits to whatever we can do or experience in all that takes place upon ourselves or others for the matter. No matter what particular matter or issue that we want to dwell upon or commit, we know that the law of nature always prevails over us or any circumstances.

How much can we eat? How much can we drink? How much can we carry? How fast can we go? How long do we want to live? There are just so many things that we can keep asking each and everyone of you reading this and almost always you will agree with me that there is only a certain amount of things or eventualities that can take place.

History is the best teacher of us all where it concerns matters that mankind are so desperately after? Power, strength, youth, beauty, libido, masculinity, femininity, authority, wealth, all the spoils of this earthly life that one can imagine and crave for?

Reflect back to our coming into being. From a embryo after being conceived by our mother as a result of the physical union of our parents, we develop from stage to stage and eventually become a fully formed human baby in our mother’s womb and at the appropriate time and moment decided by Allah the Almighty, we are born and delivered into this earthly realm.

If we had stayed any longer in our mother’s womb, there might be a danger both to our mother and to us as an infant ready to come out into this world. There is a certain limit to pregnancy. That’s a form of ‘ hadd’ or ‘ limit’.

Coming back to the main gist of this posting, we now have to understand what the Hudud in Islam means? As stated above, the ‘ ulama of Fiqh define ‘ hudud’ to be a Code of Punishments to be implemented by the authorities in an Islamic nation upon criminal acts carried out by the offenders who are proven without a doubt to be guilty of such crimes and upon conviction be punished as decreed by the Almighty. It is tosaid that if hudud law will be enacted in Malaysia, some of the execution must be recheck and change to suit the society now.

As such, there is no provision for any punishments decreed by Allah SWT to be reduced, added on or altered by Mankind. The Hudud is Allah’s Rights upon us Mankind. Criminal punishments upon those found to be guilty according to the Hudud Laws can not be dropped against the criminal or criminals by any individual or society as a whole.

The Hudud Laws are meant to be a safeguard from the Almighty to protect human society from all forms of crime and to preserve peace, social orderliness and to ensure the safety of the general public. Any form of wrongdoing committed by any individual or group is to be judged according to what has been laid down in the Supreme Constitution of Allah SWT in the form of the Holy Al Qur’an Al Karim and as per the Hadith’s of His Greatest and Final Messenger to all Mankind, the Blessed Prophet Muhammad S. W. T.

## Part A ( Chart Research )

## SUGGESTION TO IMPLEMENT THESE LAWS ONTO NON-MUSLIMS.

There is suggestion to implement these laws onto non-muslims, but, question arise whether this is workable? Our group had divided into three categories during our research and analysis on this suggestion where we suggested to divide the opinion to the basic of 3 findings, which consist most general(society Malaysia), less general(MMU student), and specific(lecturer and legal expertise). First category is on the views given by society in Malaysia.

## CHART 1 : MALAYSIAN CITIZENS’ VOTES ( Based on Poll Opinion on Internet )

The second category is according to the societies’ votes in Malaysia included those non-Malaysians who lived in Malaysia.

## Chart 2 : MMU Votes

According the chart above, which derived from the poll, survey and interviews that made by our group. There were 30% of Muslims in Malaysia totally disagreed to implement these laws in Malaysia, and, 10% of them agreed to implement it in Malaysia, 2% of them were neutral positions. While, for the votes given by non-Muslims in Malaysia, there were 35% disagreed and none of them vote for ‘ agree’ or ‘ neutral’. On the other hand, Muslims but not citizens of Malaysian gave 5% agreed and 5% disagreed towards the suggestion but none of them give votes for neutral. Lastly, the non-Muslims for those who are not the citizens of Malaysia, totally disagreed by giving 15% of the votes.

It can be conclude that 85% of the Malaysian citizens totally disagreed on the suggestion to implement these laws onto non-Muslims. Some of them said that there will be no equality and justice to those who has no beliefs in the religions. Not only that, there is also some sayings that the law is too excessive and strict to adapt in current society. There will be difficulties and challenges that government and society will face if they impose the law.

## LECTURER`S VIEW

## CHART 1 : Lecturer view`s and opinion`s

In this chart, we can see that among 9 lecturers that had been interviewed, there were 5 lecturers that totally disagreed of the suggestion to implement these laws onto non-Muslims. One of them is Miss Nur Fazini Asro Binti Ramizi Sulaiman, which in her opinion, she said that “ As for me, the suggestion to implement hudud law to non -Muslims is unreasonable. This is because if it is to be look upon the legal perspectives itself, the Syariah law only has the jurisdiction within the matter of MUSLIMS only. The interpretation in the statute itself has define, who are to be governed within this kind of law. For an example, a non-Muslim cannot become a syariee law, only a Muslim can be a syariee law, same goes to the syariah law (implementation only to Muslim). Thus it may be seem to complicated if arguments, suggesting hudud law are to be implement to non-Muslims.

” Not only that, Dr. Mohamed Ishak Bin Abdul Hamid also stated in his opinion that “ Hudud law , is created only to govern the one who are professing the religion of Islam, and as for non-Muslims , it shall be unfair for them, for hudud law to be impose on them , due to their lack of knowledge, pertaining on Hudud law.

On the other hand, the other 4 lecturers were in ‘ neutral’ opinions. Neither agreed nor disagreed. According to Sir Gary Ng Kit Min, “ If it to be look upon to in this matter, it may be divided into 2 aspect which is, in religion perspectives and the legal system perspectives. If in religion perspectives, the syariah law, should be apply to muslim only, not to non-muslim , but if in legal perspectives, if the parliament passed a law, that which provides that the syariah law shall be the supremacy law in the country, thus the citizens (Muslim and non) cannot do anything except to accept it as the law of the country.”

As for Sir Jeong CP, have a different view pertaining on this matter, “ the religion is not wrong, if the question to be arose, such issues. Every religion have its own way in culturing of the individual who professing the religion itself, It its to be look in more liberal way, the religion is never wrong, it is one who are professing the religion are to be blamed for not giving the detail reason for his or her act. For an example, if it`s to be look in one principle of a car and a driver, the driver drive a car later caught into accident, who`s to be blame? The car or the driver.? The car is never to be blamed, as it had given, its fullest performance, well as for the driver? it may be the driver fault, maybe he was negligence when driving the car .

Same goes to the religion, if there`s any defect, mischief or any mistake occurs to the society due to action done by an individual who professing such religion, it for them ( the individual ) to be blamed, as he or she has been negligence.

The Al-Quran had put such many various way, to protect the maslahah (life in word and hereafter ) of individual, and any action done by an individual must have the sebabasbab ( reason ) . The society have been much liberal nowdays, any action done, must come with justifications and reason. Then the society may somehow be much open minded to receive any law to govern them, to develop a better society.”

## Part B ( Articles and Newspaper Reviews ) ARTICLE’S SUMMARY

## [Hudud Law being applied in Terengganu, Malaysia][1]

As being shown in the article itself, Hudud Bill was being drafted by the Terengganu State Government and it constitutes a gross violation of the principles of justice and equality in Islam. It’s being said that under this Hudud Bill, women who reported to been raped if being unable to provide evidence for the said statement, will be charged for slanderous accusation and 80 lashes; an unmarried woman who gets pregnant is assumed to have committed ‘ zina’,[2]even if she has been raped; also a women cannot be taken as a witness for a case. The question arise here would be, how is this constitutional in the eyes of the law? In Malaysia we have a supreme law which is the Federal Constitution (FC) and under the FC, it provides equality section which made all persons equal before the law and entitle to an equal protection of law. The Hudud however, contradicts with the provision of the FC as it mentioned no discrimination shall occur in favor of any person under Art. 8 of the FC[3].

It is important to note that all criticisms of Islam and its defense mainly rotate around its approach to women rights. There’s many criticism as to why Hudud shouldn’t be applied in Malaysia, but the criticism is primarily focused on the stringent requirements of four reputable witnesses for offences such as adultery and qazaf[4]which according to them makes conviction for the abovecrime almost impossible. The evidence that could support the charge of adultery are the confession of either orboth the accused persons and/or eyewitness testimony made by four males, who are of justifiable and credible character. Anything else is merely circumstantial evidence and not admissible in a hadd prosecution.[5]Going back to the article itself again, question to be asked would be whether it would be unjust for the law to come out with a punishment of flogging 80 lashes if a clear proof of the rape committed couldn’t be shown? The answer itself, lies under Art. 8 of the FC as in the case of PP v DatukHarun bin Haji Idris[6], where

Suffian LP laid down the principle stating “ that if a law itself is discriminatory, one should see whether it falls within the exceptions allowed by the FC and if it’s not, it can’t be said as a good law”. As the situation laid down here, if we insist to apply Hudud into the Malaysian Legal System, even to the non-Muslim, it would definitely be unjust and contradicts with our Constitution as it is not obeying the provisions laid under Art. 8 of the FC, which the equality of all before the law. Tun Dr. Mahathir, our ex-PM commented at the Hudud’s condition on rape offence, “ whereby four witnesses are required to convict a perpetrator, that “ today we have the modern equivalent tool of DNA”. You can collect evidence of rape through collecting DNA samples and compare them with the offender. In Islam, the most important thing is justice. When you judge, you must make sure justice has been served. If you judge knowing clearly that this is unjust, then I think it is un-Islamic,” he said.[7]And not to forget, Art. 11 of the FC is interpreted itself to mean freedom of religion and therefore it is supposed to be a guarantee against prosecution on the basis of choice of religion that’s being propagated.

As for the effect of the Hudud on the gender relations if it’s being applied in Malaysia, there are many provisions in the Hudud discriminate against women. Women will not be accepted as witnesses and women are also most likely to be prosecuted for slander if they are not able to prove rape, which contradicts which our current provision of the Constitution. While in cases of adultery women which becomes pregnant will immediately be charged for the offence while it will be impossible to charge the male partner because of the requirement of four male Muslim witnesses. Evidence for rape is ocular evidence of four adult male witnesses or confession of the accused. The victim’s own statement has no testimonial value. Even if medical examination is taken and a sexual act has been proved to have taken place, the accused can still be acquitted. The woman is then convicted of zina. The onus is upon the victim to prove that she was not a consenting party to her rape. Even minors can be convicted of zina, unlike what is provided in the existing penal code, where consent of a minor is immaterial and statutory rape is applicable. All of these will then be causing gender discrimination in our country and the equality provision under the Constitution will therefore become unreliable under the provision of the Hudud if being applied here, in our country.

## ARTICLE’S SUMMARY

## [Hudud Law being applied in Saudi Arabia]

Traditional Islamic law has become the basis for criminal law systems in Islamic countries. The most notable example of this is Saudi Arabia, where the Qur’an and Sunnah form the basis for the government and the legal system.

## Political Background

Article 1 of the Constitution states that:

“ The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God’s Book and the Sunnah of His Prophet, God’s prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capital”[8]

The legal system is, therefore, based on the divine revelation, rather than judicial decisions or written law. Article 38 of the Saudi Constitution sets forth that :

(i)There shall be no crime or penalty except in accordance with a Shari’ah or organizational law. (ii)There shall be no punishment except for acts committed subsequent to the coming into force of the organizational law.

This indicates that crimes and their penalties must be specifically set forth before punishments may be imposed. The Saudi Constitution also provides that “ the state protects human rights in accordance with the Islamic Shari’ah”[9].

## Legal System

Saudi Arabian courts follow the Hanbali school. A judge in Saudi Arabia is called a qadi and must be trained as a scholar and a “ great follower of Islam[10]. There are three levels of courts. Musta’jalah courts are the local courts and do not have jurisdiction over any case that could result in death. The High Courts of Shari’a Law, or kubra, have jurisdiction over hudud and qisas crimes. Although usually only one qadi sits on each court, the hearing of a crime that would result in execution is heard by a panel of three judges. The three qadi conduct the investigation, examine witnesses, and issue a verdict. A defendant sentenced to death in a kubra court has a right of appeal to the Court of Cassation, and the case is heard by a five-qadi panel. During this review, the court does not examine the law or facts, but merely ensures that “ the judge has paid sufficient attention to the point of objection[11]. The Supreme Judicial Council reviews all death penalty cases. The King has final review. For death penalty cases for hudud crimes, the only review is of guilt; the penalty cannot be changed[12].

## Population

Saudi Arabia is the largest Muslim country of the world. It has an estimated population of 28 million. Saudi Arabia is a Kingdom and about 8 million people are migrants from different countries of the world. Saudi Arabia is the center of Muslims as the mousoleum of Holy Prophet Mohammed (PBUH) is in this country.

According to The Future of the Global Muslim Population by Pew Research Center[13], Saudi Arabia have about 25, 493, 000 estimated number of muslim’s population in 2010, which brings to approximately 97. 1% of it’s citizen is a muslim. That’s about 1. 6% of the muslim population as a whole.

## Educational System

According to Robert Sedgwick[14], education in Saudi Arabia is segregated by sex and divided into three separately administered systems: general education for boys, education for girls and traditional Islamic education (for boys). The religious secondary school curriculum includes the general academic secondary school curriculum but focuses primarily on Islamic and Arabic studies. Where memorization of the Quran, interpretation and understanding of the Quran (Tafsir) are stressed.

## Newspaper review

## ANALYSIS BETWEEN MALAYSIA AND SAUDI ARABIA

Well it come to our understanding, on the paper based on its facts, analysis and others, we might able to implement this kind of law to both in Malaysia. But the question arose, whether when the government tries to implement this kind of law to both, would It be a total satisfaction to all who professing other religions?

Indeed based on the analysis in Saudi Arabia country, it much obvious to see, hudud and syariah law, have well indeed, governed its government and society, whether in education, society, politics and legal system. But it come to much argument though, well if it is to be look upon the society of Saudi Arabia itself, Saudi Arabia is the largest Muslim country of the world. It has an estimated population of 28 millionapproximately 97. 1% of its citizen, is a muslim. That’s about 1. 6% of the muslims population as a whole. Differently in Malaysia which consist a multi-race society, which professing other religion instead of Islam itself. It would be easy to implement to Saudi Arabia, where its citizens, almost 97% professing the religion of Islam, while in Malaysia at least 30% of its citizens, professing the religion of Islam.

Further to be illustrated that, as to be seen in respect of Education matters in Saudi Arabia, the government itself have well emphasized the society with primarily on Islamic and Arabic studies where the government of Saudi Arabia divided the system of education, into three parts which is education for boys, education for girls and traditional Islamic education (for boys), since their childhood. Differently, in Malaysia, it seems that the government itself does not really emphasizes the teaching of Islam (like fardhu ain) to the citizens, where the general education are ought to be champ.

To be concluded, if one argument arose that the hudud law are ought to be implemented in Malaysia, first aspect to be considered is, the government of Malaysia itself may need to take a reconsideration to send a few people of ulama to have an emphasize knowledge of hudud and syariah law in any other Islamic country for example Saudi Arabia. As far to be concern, Malaysia have none who is really have such a perfect detail knowledge of any arguments pertaining to hudud law itself. Differently in Saudi Arabia, it would be easy to implement hududlaw there, as to the reason, there is many ulama who are far concerned, well learned of the syariah and hudud law themselves.

## THE DIFFICULTIES AND CHALLENGES ON THE IMPLEMENTATION OF THE HUDUD LAW IN MALAYSIA.

Crux of ‘ hudud controversy’, is the fact that both sides do not understand democracy and do not respect the democratic right of someone to support or oppose what they feel they want to support or oppose. Being a citizen of a democratic country, every citizen has a democratic right to drea about the Hudud and to support it, also to have nightmares about Hudud and oppose it. The implementation of hudud law (or any law for that matter) in Malaysia remains a possibility under democracy. It is not yet implemented because the majority of Malaysians including the Muslims themselves for some reason do not want it. They are simply practicing their democratic right by not giving it their consent.[15]

Seen from a broader perspective hudud is not actually the real problem. It is just a form of punishment for a number of crimes mentioned in the Qur’an. Only criminals and criminals want-to-be, we might say, should be afraid of it. A proper Muslim would never reject hudud per se because he knows that it is a part of Islamic Law and it is a part of Islam. But a proper Muslim also would not allow people who are incompetent to use hudud as their rhetoric just to get into power because they are going to create bigger disaster. Hudud and Islamic law will not appear good and convincing in the hands of those who do not possess adequate moral and intellectual integrity. Hence, this is a matter of giving the trust to the rightful people. Implementing hudud is a big trust and it should not be given to just anybody. If the ability is not yet there, the real responsibility of the Muslims is to get themselves equipped with what it takes to carry out that responsibility.[16]

So the real problem is the Muslims themselves who are, as a whole, no longer good Muslims in term of their understanding and practice of Islam so that they are not capable of carrying out their duties and responsibilities as it should be.

As such, and as a matter of priority, what they really need today is a proper education that will make them be a good Muslims morally and intellectually. It is true that the criminals among them need to be punished according to Islamic law but that is not going to happen anyway if the majority do not believe in Islamic law or have no confidence in those who want to implement it.

So now, the crux of the matter is actually education, only a properly educated human being will be able to use his democratic right wisely. When we talk about the education, the emphasis is on the individuals, not the society, and what matters most is ethics and morality instead of politics and law. Islamic law and political system cannot be conceived nor practiced outside the framework of Islamic ethics and morality because justice actually begins with the self. Even divine law cannot bring justice to the society if it is left in the hand of incompetent and corrupt individuals. A corrupt government can be brought down through the ballot box but it does not guarantee that the new government will be better that the previous one. True reform must ultimately come from a gradual process of education that is properly conceived and implemented.

Our politicians, unfortunately, are not really interested in education. Perhaps, due to being poorly educated themselves, they do not see anything greater and more important than power. They think only with power and kind of reform can be done, hence their first concern over anything else is to get into power.[17]

Besides that, the Malaysian Bar, stated that the Hudud cannot be implemented within the current constitutional and legislative framework. This is because, the law, as it stands, does not allow for the implementation of hudud by the States.  The Federal Constitution only allows the States to enact laws creating offences by persons professing the religion of Islam, against the precepts of Islam, and the respective punishments for such offences. With respect to the nature of such offences, these offences cannot include matters within the legislative powers of the Federal Government.  Therefore, there can be no replication of any of the offences within any Federal law with a different degree of punishment only for Muslims. Further, these laws, if enacted, must themselves be consistent with fundamental liberties guaranteed to all citizens, including Muslims, under Part II of the Federal Constitution.

As to the scope of the punishments for offences against the precepts of Islam, the extent must be conferred by Federal law. The Syariah Courts (Criminal Jurisdiction) Act 1965 provides that the Syariah Courts in all States shall not exercise jurisdiction “ in respect of any offence punishable with imprisonment for a term exceeding six strokes or with any fine exceeding five thousands ringgit or with whipping exceeding six strokes or with any combination thereof.” Hence, the penalties that Syariah Courts can mete out are clearly circumscribed, and do not inclu