

Panel on Women in Islam

KASC Seminar - February 4th, 2003

John Janzen:

About last year, 8 months ago, the dept of education renewed its grant allocation to National and because of the events of 9/11 there was a great deal of concern over our preparedness to deal with a world out there that was Islamic. They got some extra funds for centers who worked with Islam. We then decided to do a seminar of the kind, and Saadia Malik, who will be the chair this afternoon, was brought on board to help organize this. As things grew up, we came up with comparative examination of countries in Africa that come to terms with Sharia Law.

Omofolabo Ajayi: Professor in Women Studies and Theater

Marilyn Klaus: Lecturer in Religious Studies

Selbee Diouf: Graduate Student in English Literature from Senegal

Saadia Malik: Who is now doctor Saadia Malik, having recently received her doctorate in communication studies.

Saadia Malik:

I'm going to talk in very broad terms about Sharia as a concept and I'll also give a background about the islamization process in Sudan and the implementation of Sharia laws in Sudan. The other presentations will be specific about certain areas in Africa, talking about women rights in Africa.

Sharia is set of Islamic laws that are drawn from Koran, Hadis and Suna.

They are really based on the Medina text. In Islam there are 2 types of texts:

Texts from the prophet Mohammed when he was in Mecca, and texts from the prophet Mohammed while he lived in Medina after migrating.

The source of Sharia is the Medina text, originated in the 7th century. Sharia or the laws in Medina text tended to organize society; they organized relationships between couples concerning divorce, custody, marriage, expenses and heritance. It also organized relationships between Muslims. Recently, when countries want to apply Sharia laws, they apply these laws as they were applied by the prophet Mohammed in the 7th century.

It's very important to mention that Sharia classifies people in terms of their religious beliefs. The Muslims should enjoy all rights as citizen in their own Islamic country, while Christians or Jewish could enjoy security of person and property in exchange of personal tax on dizia (sp?). And these are very important concepts when it comes to understanding Sharia.

Also Sharia influences economical relationships in terms of financial transactions

The most important thing to know about Sharia and Islam is that there is no central structure of Sharia

interpretation in Islam. Islam is different in each country.

I'm sure you'll hear about Senegal, Sudan, Nigeria, etc. There are different interpretations and implementations in terms of civil code, criminal law, for example. Sometimes they don't apply the whole set of Sharia laws, etc.

They apply a concept of rules; you will find different examples of applications.

But also the most important point, despite differences in interpretations, one could argue that the position of women under Sharia law regarding marriage, divorce, custody, heritage, is beyond dispute. In this respect, Sharia law gives women half of what men inheritance.

Women had to submit to men as husbands, fathers and brothers. And this is in accordance to a koranic verse that says "Men are guardians over women because the guard they have over women and they spend on the women their wealth" This is very clear. This verse talks about guardianship." Women should be always guarded by men"

But to put this also in a context, in 7th century, when Medina text was revealed to the prophet Mohammed, the society of that time went far beyond burying girls because they feared disgrace, and worried about how they could feed them in times of drought, famine and so forth. It was Arabia, desert, a place where they were continuously faced by these problems.

So when Sharia came at that time, it really gave women a right to live. So it could be considered as a great leap forward.

Also another point about Sharia and the position of women in the Sharia, Sharia gave the right for men to marry 4 wives. And this is also common in other Muslim societies. But also you can put this in the context of pre-Islamic societies, when men used to marry 10-20 wives and carry their children. So when Sharia was implemented at that time, it really limited them to 4 wives, so it was also a step to honor women in that context.

Men in the Sharia are allowed to divorce his wife at anytime or for any reason.

But if a woman wants to divorce, she should do it through the court. It's not just "I'm not being comfortable with him, I don't want to live with him anymore". This is not enough for a woman to get a divorce. And this is a problem facing so many countries now; Egypt is also among countries that raises this problem. Egyptians feminist groups show it in their scholarly texts. Many of the Egyptian movies discovered this problem as well.

Just to conclude this part, I'm going to say that Sharia law from the Medina text took into account the limited capacities of the Muslim society at that time. But the very important question is: Is Sharia serving the society in the 21st century? Is it really doing any justice for women? This question will be open to our speakers who have many different opinions about the pros and cons of Sharia. And if we still have time, I'd like to speak generally about the Islam and Sudan.

It's very important to talk about Sudan because it was the first Muslim country in Africa.

It was the first state that implemented Sharia in all levels in 1983. Before then, Sharia was only applied at level of family law. The Islamization process of Sudan started at the end of 1970s and it's also part of a series of fundamentalist and Islamic movements that took place in different Muslim societies and could also be considered a post-colonial phenomenon in which people tried to divide Islam in order to face the Western cultural invasion.

In Sudan, in the late 1970s, the islamization process took place and culminated in 1983 with implementation of Sharia laws. It was really implemented in all levels of society.

In 1992 the Khartoum Act was created: Coverage of women's whole body except for face and hands was imposed to women, segregation in public places - back seats for women, front for men. Women not allowed to, even in parties and celebrations, to be in the same place as men. These are the most important features of Sharia in Sudan.

The next presentation by Asma Halim will be more about human rights in Sudan.

Omofolabo Ajayi

I'm talking about Sharia in Nigeria, the title is 'The Politization of Sharia in Nigeria'. Recently, many people are aware of the Miss World debate, which was rushed out of Nigeria just before the actual contest took place. The journalists had written something about 'What would the prophet Mohammed have done? Yes, he would have chosen one of them as his wife'. The Muslim communities in Nigeria were involved in riots, many lives were lost tragically. For the safety of the contestants, the contest was moved to London. One would think that, and just before then, we had many cases of women sentenced to death for adultery, all of them because of the implementation of Sharia.

This started in 1999 and the first implementation happened in the year 2000. Zanfara state was the first state to publicly announce that it would be doing Sharia. One would think that the implementation of the existence of Sharia in Nigeria dated only back to the year 2000, but actually, Sharia has existed in the country for the past 5 centuries. We had the Islamization of the Northern part of the country that long. But in 1900 with colonization, the British and the introduction of the Western penal code, it was only the civil cases and family law that were in place. And this continued till after independence in 1960 till 1999 when Zanfara state decided to implement Sharia. Why does it become a political reason? I'll give 2 reasons: One is the reaction to Westernization. Because of the colonial experience, the constitution, civil law system, everything became Westernized. And Westernization is a code for Christianization. Even though the Northern part of Nigeria had been Islamic for the past 5 centuries and remained Islamic, there's this overlay of Western Christian in education, political system, legal system and aspects of socio-cultural life.

So one can say that this is a kind of reaction to it, whereas in the South the majority is Christian even though there are also Muslims, as well as people who follow Orixas and other indigenous religions. That was a kind of protest to that system. But then after the independence, the countries were observing Islamic holidays,

festivities that were not being observed by the colonial government. Through the various regimes that we have, either civilian or military, had this Sharia in existence. Muslims who chose to go that way allowed to do that, which repudiates completely the civil and secular legal system.

In 1999, Nigeria became a secular government again after a tumultuous period with General _____(?) who was not an elected president. So we had elections and for the first time in the history of the country since independence, we had a southern Christian elected as president. Now the mechanisms of how he became president, I won't go into that, I'll just point out briefly that there are rumors and indications that the Muslims ____ (?) decided that power should be seated to the South. The rumor gained credit before the 1999 election, we had virtually all Muslim northern rulers. The exception was in 1980 something when we had a Christian southerner as ruler but it was a military ruler, not elected, and he came into power by default because the man who was in power was assassinated. And this man was the second in command, so he became president. It's this same man that was not popularly elected in 1999. When the election took place, because of the rumors that this was an agreement, in other words a gracious concession to the South; they expected him to: First, not to demobilize the army, which had been dominated by Northern soldiers, but he went ahead and demobilized the army. So many political observers say that this was the beginning of his end. He did a series of things which some critics said that came from his pact with Muslim powerbrokers. So Zangaria State, one of the 19 states of the country, decided to go Sharia. One of the critics made at the beginning towards the end of 1999, was that when Sharia is instituted it means the complete repudiation of the secular government in power. So many people protested, even women in the North, Christians protested saying that Sharia is only for Muslims, that if two people committed the same crime, Muslims will be charged under Sharia and Christians under the civil code. But what really mattered and concerned many people was the way that laws weighted heavily against women. Many muslim organization drawing attention to the way that this gvmt and each area in a way that is best for its people. And to point out areas in which women could be marginalized, first in the traditional culture of the country which was patriarchal, in the imported colonial culture which was also patriarchal and now in the Sharia on top of these.

So you have these 3 layers of marginalization for women. There were also women groups that protested, Muslim women groups that demonstrated support for Sharia. One of the Muslim women groups that protested in the North was a prostitute organization. Their argument was that they liked Sharia because it is a religious obligation. But then how can you implement a system when you have not fulfilled the conditions that the prophet Mohammed has set for Sharia? That is, to provide adequate system of living for every citizen. The women said 'you have not provided for us, we have no jobs we have no men to protect us because men have refused to carry out their obligations as stated in the Koran and that is why they have to become prostitutes'. They say 'Yeah, we support it. But fulfill your obligation as a government and as men'. Of course in no time, women were accused of adultery, having children out of wedlock and were sentenced to death. The first one was a young girl, who was pregnant, married and when she was tried on the Sharia court, she named 3 names with whom she had had sex. The three men were called up and all they had to do was deny that they had had sex with this woman, and they were free. And this woman was sentenced to 100 lashes to be carried out even

during her pregnancy. She had declared in her defense that she had been raped by these 3 men. When the lashes were about to be executed, lots of letters were written and because of that the punishment was postponed until she had the baby even though the appeal was still on.

I have a quote from the former Muslim president of the country saying that science should be brought up into the service of the Islamic religion. The religion has not paid enough attention to the advances of science. If the men deny having any sexual relationship with women, why can't they use DNA?

Selbee Diouf

My presentation is entitled "Accommodating a Peaceful Islam" and I'm gonna talk about the case of Senegal. I'm going to divide my presentation in 3 parts:

First I'll give a small history of the parts of Islam in Senegal and then I'll talk about a history of the legal system before talking about socio-economic aspects.

Islam was established in West Africa around the 11th century. That's when the first wave of islamization happened. It was restricted to a kind of Islam, to some Marabu.

Basically in that group of people there was a total absence of natives who were following the traditional religion. Around the 17th century we had a separate wave of Islam known as the Holy wars. It had a certain military orientation with increasing of hostility of slave trade and colonization later and traditional aristocracies.

Later in the 19th century a new phase of Islam appeared, with the Sufi brotherhood in Senegal. It was Islam that rejected Holy War and saved the constitution of a solid, stable and productive community. In Senegal this new phase emerged with the ancestry of the brotherhoods hadjir (?), tejanis (?) and the murids (?).

Demographically the hadjir are the smallest of the Great Senegalese brotherhood. The tejani branch is profoundly shaped by an internal crisis caused mostly by political orientation. There are struggles for power in the brotherhood. The murids developed a particular relationship with the colonial administration of that time, serving as an intermediary between the people and the colonial administration.

It has a certain political engagement depending on your leaders specifically under the marabou ____ (?) act, who is the architect of the well-known financial security of this brotherhood. But he's shying away from any political engagement. I would say that the political engagement of the brotherhood depends on the leadership. The major remark is that they try to develop an identity free from ruling class. With this brief introduction to Islam in Senegal, I'm going to talk about the legal system in Senegal.

It's based on French civil law. Prior to the enactment of family law in 1972, by the way, independence in Senegal happened in 1960, prior to family law voted in 1972, family relationships were ruled by Christian, Islamic and customary laws or under the civil code.

Work on the codification of the uniform personal studies lobby began in 1961, with a comprehensive listing

ending with the publication of 68 officially recognized custom regimes.

It was drafted by commission, passed into law and came into force in 1973. It regulates marriage, divorce, succession, with a separate section for Muslim succession law in the family code. As of recently (1993), the government established a working group to adopt a national legislation that conforms with the international instrument rectified by Senegal. There is a separate court system that legislates according to the family code and Sharia law. I'm going to give some notable features of Sharia law:

Minimum age for marriage is 20 years for male and 16 years for female. Each party should give free consent, even minors and parties under 21 require parental consent. For marriage registration, it's obligatory. If marriage is contracted under one of the customary legal regimes recognized in Senegal, courts must inform civil status 1 month prior to marriage. Non-registration can be punishable by fine.

Polygamy is permitted, but the groom must register his opinion for monogamy. There's a limit polygamy of up to 4 wives. The big issue for polygamy is that the woman has the right to divorce if she doesn't accept the fact that her husband has taken a 2nd wife. The law allows that to women. Related to obedience and maintenance has men as identified as head of the household, supposed to provide for the women economically, financially. The woman depends on the father behind getting married, after married, the husband is supposed to provide for the wife and children. After a divorce, according to Sharia law, the woman has to go back to her father's house. If the father is diseased, the brother is in charge of providing financial assistance. So basically, if you take that part and have a parallel with succession law, women are supposed to have half of heritage, but no matter how much money you have, your husband should provide for you financially.

The law for divorce, each party may seek judicial dissolution on following grounds:

If the other party declares absent, sentencing for crime bringing dishonor to family, abandonment of conjugal home, etc, would be cause for divorce.

In case the husband asks for divorce, he's obligated to pay a _____ to the wife.

For the children, they are under mother custody until 7-9 years ago. At that age, the kid decides. These are laws that you will find in the family code, strongly influenced by the Sharia laws, especially in terms of marriage, etc.

I just wanted to mention some spiritual, economic and social aspects of Islam when you think about the issue of women in Islam. According to Sharia, men and women are spiritually equal. Equality cannot be imposed in grounds of gender, race or color. For the economic aspect, I already tackled it. Women have the right to financial support of the male during and after marriage. Also if the woman has a job and is earning a living, she's free to do whatever she wants with her money. One of the social aspect: education for girls is an obligation for all Muslims. Girls have the right according to Sharia law to reject or accept a marriage proposal. And I also mentioned that those are examples of laws implemented by the family code in Senegal.

The union of female teachers in Senegal is trying to have people change the law because some women whose husbands lost their jobs and they are the ones who are providing for the family now are complaining because

they can't benefit from social security family allowances, for example, because they are female.

What they ask for is to change the law and the major support they have is from the brotherhood and those who teach Islam. They tell people that there's nothing in Sharia that would prevent the legislature from implementing that law and adapting it to modern reality in Senegal.

Marilyn Klaus

I'm afraid I'm going to have this to a different direction, even though these are wonderfully informative presentations, to a theoretical standpoint. My task is to talk about Western perceptions of Sharia law. I think it's probably safe to say that if you mention Sharia law in the West, images of a Nigerian woman condemned to death by adultery, images of public amputation, stoning, and so forth come to mind. In light of this more narrow view, I think we in the West need to be reminded that Sharia, as we see it, differs enormously in its various implementations around the Muslim world and within Muslim countries themselves.

For Westerners who are trying to understand the role of Sharia law in Muslim cultures, the vast and conflicting information of Sharia can be quite confusing. I'm glad that the title of this panel is "Western Perceptions of Sharia Law" because I can only talk about what I know and so I thought I would talk a little about my Western perception of Sharia, which came first from almost exclusively Western written texts on Islam followed by Muslim authored texts translated into English and a brief foray in a 3-week Turkish seminar about Sharia. My introduction to Sharia was when I was teaching at the Women Studies Dept at Wichita State University, usually there was a section of the course in women's images in which I dealt with religious teaching about women, women and religious texts talked briefly about the impact of Sharia on Muslim women, so I had the impression at that time that Sharia was like the _____(?) of the _____(?) of Judaism or the canon law of Christianity and so forth. Sharia in my mind was a cultural force but not necessarily a legal force in the life of Muslim women.

I remember that I used to think that I could go to an Islamic library and get a copy of the Sharia to read it for myself. So when I taught my first course in Women and World Religion at Wichita State University more than 10 years ago, I was exposed more to the history of the development of Islamic law, usually more basic information was given but it was more than knowing that Sharia was Islamic law. The basic information included info about the 4 accepted law schools that were in place by the 10th century.

And each of those law schools had 4 sources for law: the Koran, revelations of prophet Mohammed, the Hadif, which contained the Suna, traditions of the prophet Mohammed, and some of the law schools used Itchma, consensus of scholars who were studying the original sources and finally if the primary sources did not speak about a specific case or analogy, so that if it wasn't specific spoken in the Koran, Hadif, etc, religious scholars who were legitimate to be interpreting here could by analogy create law, that would not go against the Koran.

So the 4 schools of Sunni Law, that I required my students to memorize at that point, were Malikis, Hanafis, Shafafis, and the Hambali. At that point, I was taught to understand that these law schools differed somewhat

but not in essential Sharia law. That the Maliki school had an emphasis in tradition, out of them came the first law manual still used today. The Maliki school was predominant in Upper Egypt, North Africa and West Africa. The Hanafi school focused more on juridical opinions, introduced legal reasonings based on analogies or kias. Found chiefly in Turkey, Western Asia, India and Lower Egypt.

The Shafi school founder founded the classical science of Islamic Law on siqh, he was the author of the first scientific treatment of Islamic law that is represented in Syria, Lower Egypt, Indonesia. Finally Sunni Islam, is the smallest and most controversial and conservative school of law. It rejects Itchma, it strictly follows the Koran and traditions. It has adherence of the _____ (?) in Saudi Arabia. Shi'i Islam also has some law schools as well. My perception at this level was that Sharia was something developed by religious scholars, the _____(?), based on their independent interpretation of the Koran. I was aware that some of the laws, but not all of them, came from the Koran itself. The law, or Sharia, covers a variety of things. Among them, human acts that fall into one of the five moral categories: obligatory category, a recommended category, acts of merit, a neutral category, a reprehensible category, which I was told divorce falls under, defined by the prophet Mohammed as being the most reprehensible act, but it is not forbidden, and then the forbidden or haram categories.

The cases of Sharia come before Sharia courts and are heard by a judge or a qadi, appointed by the state. And the qadi decision is enforced by the state. This is the level in which I was before I decided I needed to augment my naïve and simplistic look at Sharia for this presentation today. So this is the understanding of Sharia when I was asked to be a part of this panel. I used Sharia and siqh interchangeably. My impression was that a government in Islamic countries could draw on codified law codes from various schools of Sharia law and incorporate uniquely into their own sets of law codes. My impression was that the influence of Islamic law, chiefly in its values, was not unlike Western nations incorporating Judeo-Christian values into our constitutions and laws. Perhaps with the exceptions that are non-Muslim countries, it was done more intentionally or more directly. So the little bit of homework I did for this panel, I will present here. But I come here with a lot to learn on the subject still. One of the first things I did was look at the difference between Sharia and Siquh, if there was any. In some sources that I read there was a difference between the use of words, in other there wasn't. I did find that Sharia literally means 'the paths to the watering place' which would indicate 'the right path', 'the guide to spiritual fulfillment' or 'the guide for one's life'.