

develop a "theology of hate" and intolerance and to legitimate unconditional warfare against unbelievers.

During the period of Islamic expansion and conquest, many of the *ulama* (religious scholars), who enjoyed royal patronage, provided a rationale for caliphs to pursue their imperial dreams. They maintained that the "sword verses" abrogated, or overrode, the earlier Quranic verses that limited jihad to defensive war. A further complication has been the tendency to cite verses incompletely and thus distort the full intent of the verse. For example, the full intent of the verse "When the sacred months have passed, slay the idolaters wherever you find them" is missed or distorted when quoted in isolation, for it is followed and qualified by "But if they repent and fulfill their devotional obligations and pay the zakat [the charitable tax on Muslims], then let them go their way, for God is forgiving and kind" (9:5). The same is true of another verse:

Fight those who believe neither in God nor the Last Day, nor hold that forbidden which hath been forbidden by God and His Apostle, nor hold the religion of truth [even if they are] of the People of the Book.

It, too, is often cited without the line that follows, "Until they pay the tax with willing submission, and feel themselves subdued" (9:29). Jihad has been interpreted and misinterpreted throughout Islamic history to justify resistance and liberation struggles, extremism and terrorism, and holy and unholy wars. In addition to historic battles and wars to protect Muslim peoples and lands, rulers, from early caliphs to heads of modern states such as Saddam Hussein, have often used jihad to legitimate campaigns to spread the boundaries of their states or empires and fight their enemies." Extremists, past and present, from the Kharijites, who assassinated the caliph Ali, and the assassins of Egypt's president Anwar Sadat to Osama bin Laden and al-Qaeda and a host of modern extremist movements from Egypt to Indonesia, have justified their acts of violence and terror as a jihad. Their failure to abide by the detailed legal and the ethical regulations of Islamic law led to their rejection by the majority of Muslims as religious extremists and terrorists.

Muslim Family Law

As the Five Pillars are the core of a Muslim's duty to worship God, family law is central to Islam's social laws. Because of the centrality of the community in Islam and the role of the family as the basic unit of Muslim society, family law enjoyed pride of place in the development of Islamic law as well as in its implementation throughout history. Although caliphs and modern Muslim rulers might limit, circumvent, and replace penal

and violent. The meaning of Quranic passages and their use are questions that are not new—Muslims throughout the ages have debated them.

Like all sacred scriptures, Islamic sacred texts must be read within the social and political contexts in which they were revealed. The Quran, like the Hebrew scriptures, or Old Testament, has verses that address fighting and the conduct of war. Tribal raids and cycles of vengeance and vendetta were common in Arabia. The broader Near East, in which Arabia was located, was itself divided between two warring superpowers, the Byzantine (Eastern Roman) and the Sasanian (Persian) empires. The earliest Quranic verses dealing with armed struggle, or "defensive" jihad, were revealed shortly after the *hijra* (emigration) of Muhammad and his followers to Medina in flight from their persecution in Mecca. At a time when Muslims were forced to fight for their lives, Muhammad is told, "Leave is given to those who fight because they were wronged—surely God is able to help them—who were expelled from their homes wrongfully for saying, 'Our Lord is God'" (22:39–40).

The defensive nature of jihad is clearly emphasized in 2:190: "And fight in the way of God with those who fight you, but aggress not: God loves not the aggressors." At critical points throughout the years, Muhammad received revelations from God that provided guidance for the jihad. The Quran provides detailed guidelines and regulations regarding the conduct of war: who is to fight and who is exempted (48:17, 9:9), when hostilities must cease (2:192), and how prisoners should be treated (47:4).

Most important, verses such as 2:294 emphasized that warfare and the response to violence and aggression must be proportional: "Whoever transgresses against you, respond in kind." Permission to fight the enemy is balanced by a strong mandate for making peace: "If your enemy inclines toward peace, then you too should seek peace and put your trust in God" (8:61) and "Had Allah wished, He would have made them dominate you, and so if they leave you alone and do not fight you and offer you peace, then Allah allows you no way against them" (4:90). From the earliest times, it was forbidden to kill noncombatants as well as women and children and monks and rabbis, who were given the promise of immunity unless they took part in the fighting.

The Quran also has a set of verses, referred to as the "sword verses," often cited by critics to demonstrate the inherently violent nature of Islam and its scripture: "When the sacred months have passed, slay the idolaters [the Meccans] wherever you find them, and take them, and confine them, and lie in wait for them at every place of ambush" (9:5). These verses have also been selectively used (or abused) by Muslim rulers to justify their wars of conquest and political expansion and by religious extremists to

or commercial laws, Muslim family law has generally remained in force. Today, as in the past, the subject of women and the family remains an important and extremely sensitive topic in Muslim societies.¹¹

The special status of family law reflects the Quranic concern for the rights of women and the family (the greater part of its legislation concerns these issues) as well as that of the patriarchal society in which the law was elaborated. The traditional family social structure, the roles and responsibilities of its members, and family values may be identified in the law. The Quran introduced substantial reforms affecting the position of women by creating new regulations and modifying customary practice. These reforms and customary practice constitute the substance of classical family law. To understand the significance of Quranic reforms as well as the forces that influenced the development of family law, some appreciation of the social context in pre-Islamic Arabia is necessary.

The extended family had one head or leader, the father or senior male, who controlled and guided the family unit. The family consisted of the father, his wife or wives, unmarried sons and daughters, and married sons with their wives and children, all of whom had specific roles within the family structure. It served as the basic social and economic unit of the tribe within a male-dominated (patriarchal) society. The paramount position of males was reflected in family matters: their unlimited right to marry or divorce at will and an inheritance system that excluded women. A woman was regarded as little more than a possession, first of her father and her family, and subsequently, of her husband and his family.

The status of women and the family in Muslim family law was the product of Arab culture, Quranic reforms, and foreign ideas and values assimilated from conquered peoples. These regulations and practices—organized in Islamic law under the categories of marriage, divorce, and inheritance—have guided Muslim societies and determined attitudes and values throughout the history of Islam.

The centrality of marriage in Islam is captured by the tradition of the Prophet, which says, "There shall be no monkery in Islam." Marriage is incumbent on every Muslim man and woman unless they are financially or physically unable. It is regarded as the norm for all, a safeguard on chastity, and essential to the growth and stability of the family, the basic unit of society. Marriage is regarded as a sacred contract or covenant, but not a sacrament, legalizing intercourse and the procreation of children. It is not simply a legal contract between two individuals but between two families. Thus, in the traditional practice of arranged marriages, the families or guardians, not the prospective bride and groom, are the primary actors. They identify suitable partners and finalize the marriage contract. The official marriage ceremony is quite simple. It consists of an offer and acceptance



As in other world religions, in Islam marriage is solemnized in a religious ceremony. This Baghdad wedding is an occasion for great joy and celebration among the couple's family and friends.

by the parties (the representatives of the bride and groom) at a meeting before two witnesses. This is followed later by a family celebration. The preferred marriage is between two Muslims and within the extended family. Whereas a Muslim man can marry a non-Muslim woman (i.e., a Christian or a Jew, "People of the Book") (5:6), Muslim women are prohibited from marrying non-Muslims (2:221). As in other religions, in Islam marriage is solemnized in a religious ceremony. This Baghdad wedding is an occasion for great joy and celebration among the couple's family and friends.

Islamic law embodies a number of Quranic reforms that significantly enhanced the status of women. Contrary to pre-Islamic Arab customs, the Quran recognized a woman's right to contract her own marriage. In addition, she, not her father or other male relatives as had been the custom, was to receive the dowry from her husband (4:4). She became a party to the contract rather than simply an object for sale. The right to keep and maintain her own dowry was a source of self-esteem and wealth in an otherwise male-dominated society. Women's right to own and manage their own property was further enhanced and acknowledged by the Quranic verses of inheritance (4:7, 11-12, 176), which granted inheritance rights to wives, daughters, sisters, and grandmothers of the deceased in a patriarchal society where all rights were traditionally vested solely in male heirs. Similar legal rights would not occur in the West until the nineteenth century.

Although it is found in many religious and cultural traditions, polygamy (or more precisely, polygyny) is most often identified with Islam in the

minds of Westerners. In fact, the Quran and Islamic law sought to control and regulate the number of wives rather than give free license. In a society where no limitations existed, Muslims were not told to marry four wives but instead to marry no more than four. The Quran permits a man to marry up to four wives, provided he can support and treat them all equally. Muslims regard this Quranic command (4:3) as strengthening the status of women and the family, for it sought to ensure the welfare of single women and widows in a society whose male population was diminished by warfare and to curb unrestricted polygamy: "If you are afraid you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if you shall not be able to deal justly [with them] only one."

Islamic law prescribes that co-wives are to be treated equally in terms of support and affection. This includes separate housing (depending on finances, a room, an apartment, or a house) and maintenance. As we shall see, a subsequent verse of the Quran ("You are never able to be fair and just between women even if that is your ardent desire" [4:129]) has been used in modern times by some Muslims to reject the possibility of equal justice among wives and to therefore argue that the Quran preached a monogamous ideal.

The relationship of a husband and wife is viewed as complementary, reflecting their differing characteristics, capacities, and dispositions and the roles of men and women in the traditional patriarchal family. The primary arena for men is the public sphere; they are to support and protect the family and to deal with the "outside" world, the world beyond the family. Women's primary role is that of wife and mother, managing the household, raising children, supervising their religious and moral training. Although both are equally responsible before God to lead virtuous lives, in family matters and in society women are subordinate to men by virtue of their more sheltered lives, protected status, and the broader responsibilities of men in family affairs. Because men were responsible for the economic well-being of all of the women in the extended family, their portion of inheritance was twice that of women. Similarly, because men had more extensive experience in society, in legal affairs the testimony of two women was regarded as equal to that of one man.

Divorce

Alongside the popular images of polygamy, veiling, and seclusion is that of a man's unilateral right to dismiss his wife simply by declaring, "I divorce you." However, ideally divorce is a last resort, discouraged rather than encouraged in Islam. This attitude is preserved in an often-cited tradition of the Prophet that states that "of all the permitted things, divorce is the most abominable with God."¹¹ The Quran counsels arbitration between

spouses: "If you fear a split between a man and his wife, send for an arbiter from his family and an arbiter from her family. If both want to be reconciled, God will arrange things between them" (4:35). One of the clearest indications of the negative attitude toward divorce, yet reluctant acceptance of it by jurists as a last resort, occurs in the Hedaya, a legal manual, which describes divorce as

a dangerous and disapproved procedure as it dissolves marriage, an institution which involves many circumstances as well of a temporal as a spiritual nature; nor is its propriety at all admitted, but on the ground of urgency of relief from an unsuitable wife.¹²

However, the Islamic ideal was often compromised by social realities.

Faced with a situation in which Arab custom enabled a man to divorce at will and on whim while women had no grounds for divorce, the Quran and Islamic law established guidelines for men and rights for women based on considerations of equity and responsibility, values that exemplified the Quranic admonition to husbands who were separated and contemplating divorce to "either retain them [their wives] honorably or release them honorably" (65:2).

Several methods of divorce were introduced to constrain a man's unbridled right to repudiate his wife and to establish a woman's right to a judicial (court) divorce. The most common form of divorce is a man's repudiation (*talaq*) of his wife. The approved forms were: (1) a husband's single pronouncement of divorce ("I divorce you"), to take effect after a three-month mandatory waiting period had elapsed to make sure the wife was not pregnant (to determine paternity and maintenance) and to allow time for reconsideration and reconciliation; and (2) the pronouncement of the words of divorce three times, once each in three successive months. At any time during the three months, the couple can nullify the divorce by word or action, such as resuming living together. However, at the end of the three months, the second form of divorce becomes final and irrevocable. The couple may not remarry unless there is an intervening marriage—that is, the wife must have remarried, consummated the marriage, and then divorced. The third form of divorce, more common and problematic, is the husband's pronouncement of the words of divorce three times at once. In this case, the divorce takes effect immediately rather than at the end of a three-month waiting period, bypassing the Quranically mandated waiting period for determining paternity and maintenance obligations and the opportunity for reconciliation. Although this form of divorce is regarded as an unapproved innovation or deviation (*talaq al-bida*, a deviant repudiation), and therefore sinful, it is legally valid. The allowance of

this disapproved, although legal, form of divorce is a good example of the extent to which custom was able at times to contradict and circumvent revelation in the development of law:

When you divorce women, divorce them when they have reached their period. Count their periods and fear God your Lord. Do not expel them from their houses . . . Those are limits set by God. (65:1)

The strong influence of custom is also evident in the more limited divorce rights of women. In pre-Islamic times, Arab women had no divorce rights. In contrast, the Quran states, "Women have rights similar to those [men] over them; while men stand a step above them" (2:228). In the elaboration of Islamic law, the *ulama* extended rights to women while retaining the dominant status of men. In contrast to men, women who wished a divorce had to go before a court and had to have grounds for their action. A wife can sue for divorce if her husband has previously delegated a right to divorce in their marriage contract. She may also request a judicial divorce on such grounds as impotence, insanity, desertion, or nonmaintenance. These grounds varied within the law schools; some were more liberal than others in their interpretation.

Historically, divorce rather than polygamy has been the more serious social problem. This situation has been compounded by the fact that many women have been unable to exercise their legal rights because they were unaware of them or because of pressures in a male-dominated society.

Inheritance

Prior to Islam, the rules of inheritance were concerned solely with the strength and solidarity of the male-dominated tribe. Therefore, inheritance was kept within the male line (patrilineal). Women in Arabia, as in many cultures, were excluded from inheritance, which passed in its entirety to the nearest male relative of the deceased, on whom they were totally dependent. However, Quranic reforms in inheritance strengthened the rights of individual family members, especially women. New rules of inheritance were superimposed on existing practices. The Quran gave rights of inheritance to wives, daughters, sisters, and grandmothers of the deceased, all of whom had previously had no rights. These new "Quranic heirs" received a fixed share from the estate before the inheritance passed to the nearest male relative of the deceased. Only after these Quranic claims were satisfied was the residue of the estate awarded to the senior male.

Veiling and Seclusion of Women

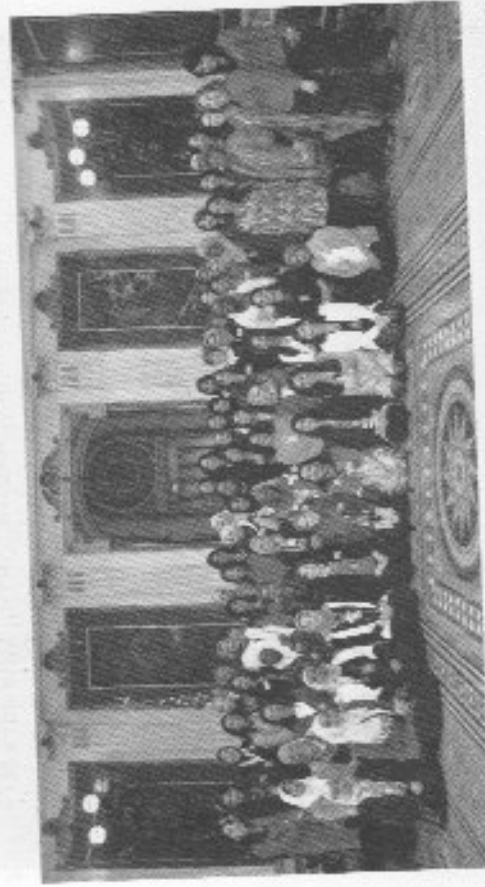
Nothing illustrates more the interaction of Quranic prescription and customary practice than the development of the veiling (**hijab**, **burqa**, or

chador) and seclusion (*pardah*, *harem*) of women in early Islam. Both are customs assimilated from the conquered Persian and Byzantine societies and viewed as appropriate expressions of Quranic norms and values. The Quran does not mandate veiling or seclusion. On the contrary, it tends to emphasize the participation and religious responsibility of both men and women in society. However, the Quran does say that the wives of the Prophet should speak to men from behind a partition (*hijab*) and admonishes women to dress modestly:

And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and charms except what [normally] appears of them; that they should draw their veils over their bosoms and display their beauty only to their husbands, their fathers. (24:31)

Those who argue for veiling cite Prophetic traditions (*hadith*) from which many of the legal stipulations and practices are derived that stress veiling. It should also be noted that the previous verse also enjoins modesty for men as well as women: "Tell the believing men to lower their gaze and be modest" (24:30).

The Quran and Islamic tradition enjoin modesty, and thus everyone is required to wear modest dress. The diversity of attire found across the Muslim world is reflected in this group of young Muslim women in the United States. Although all are dressed modestly, some wear a headscarf (*hijab*) and others do not.



In 2014, the White House held a conference featuring leading American Muslims and aspiring young Muslim women. In this group picture, the women display the wide variety of modes of dress across generations, with and without head covering.

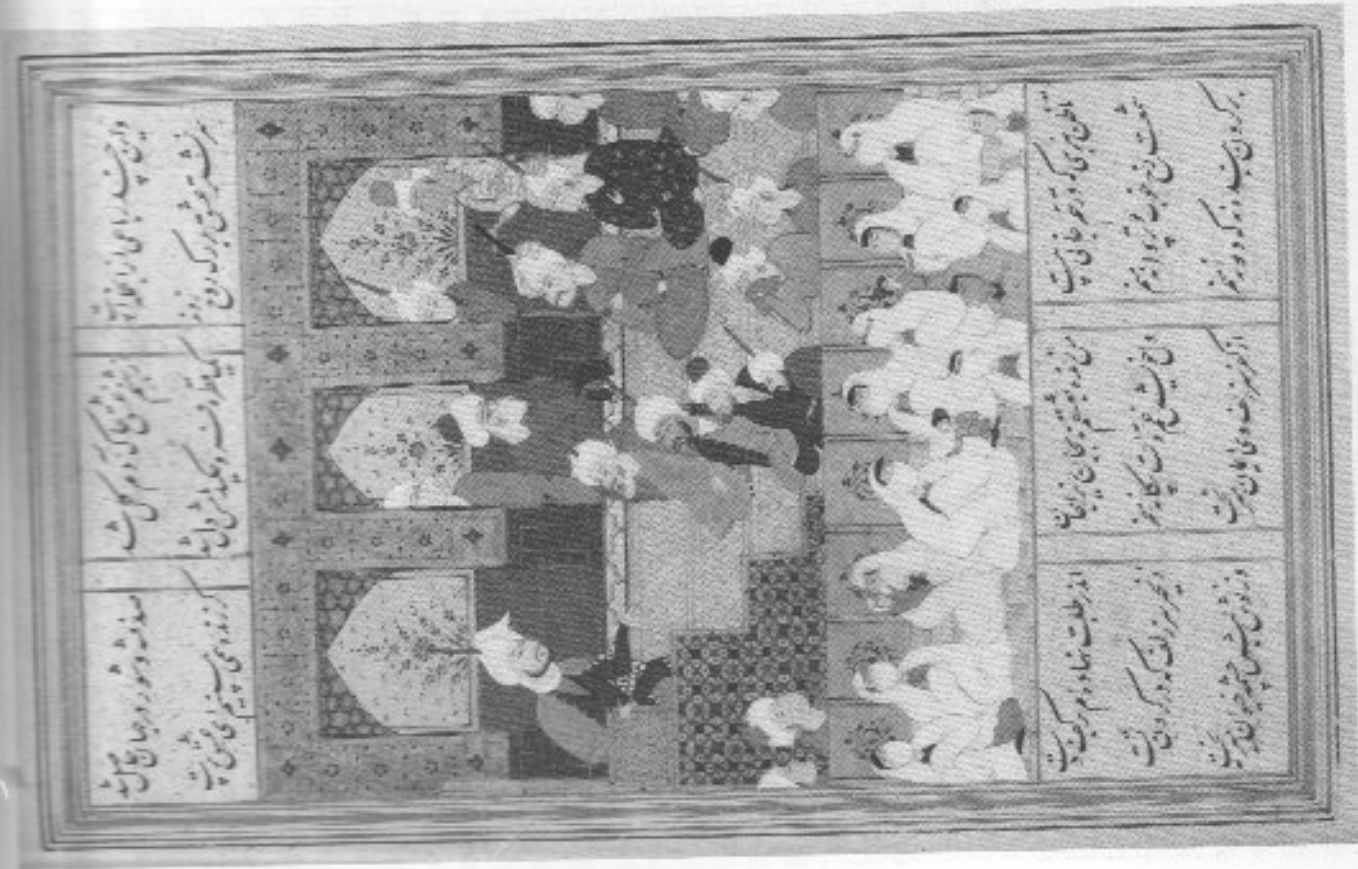
The extent to which foreign practices were adopted and legitimated by Quranic interpretation may be seen in the exegesis of al-Baydawi, a thirteenth-century Persian Muslim and one of the most renowned Quranic scholars, who wrote regarding this verse of the Quran:

Indeed the whole of the body is to be regarded as pudential and no part of her may lawfully be seen by anyone but her husband or close kin, except in case of need, as when she is undergoing medical treatment or giving evidence.¹⁷

Veiling and seclusion had as their original intent the protection, honor, and distinction of women. They were adopted by upper-class urban women, who lived in great palaces and had mobility and opportunity to participate in activities within their environment. Village and rural women were slower to adopt these practices, as they interfered with their ability to work in the fields. Over the centuries, as the segregation of women in the home spread to every stratum of society, it had unforeseen and deleterious effects. Poorer women were confined to small houses with limited social contacts. They were effectively barred from community life. Because the mosque served as the center of community life, to the extent that women ceased to worship publicly in the mosque they were cut off from social and educational activities. The prominent Egyptian religious scholar Muhammad al-Ghazzali (d. 1996) once claimed: "Ninety percent of our women do not pray at all; nor do they know of the other duties of Islam any more than their names."¹⁸

To the extent that tribal customs prevailed in the development of Islamic law and in Muslim practice, both the letter and the spirit of Quranic reforms were weakened or subverted by practices such as the *talaaq al-bida*. Similarly, despite Quranic passages that talk about the rights of women and counsel that they be treated justly and equitably, regulations were enacted such as the "house of obedience," which requires that a woman obtain her husband's permission to leave the house. If she fails to do so, he may ask the police to forcibly return her and may confine her until she becomes more obedient.

The force of custom can also be seen in the ways in which social customs often contradicted the precepts of Islamic law. Despite a woman's Quranic and legal right to contract her marriage and receive the dower, marriage was often simply arranged by the bride's father and the dower functioned as a bride price given to her family. Thus, she remained the object of sale rather than the subject of a contractual agreement. Women's inheritance rights were also often ignored. Given the social structure of the family, awarding married daughters their rightful share in their



This miniature painting from a sixteenth-century Persian manuscript illustrates the visit of a famous teacher to a mosque. Men and boys sat separately from women and children in different parts of the mosque. The painter showed the children playing among the women and the women relaxing with each other. Such scenes are common in mosques today.

THE SUFI PATH

At the heart of Sufism's worldview and spirituality is the belief that one must die to self (ego-centered self) to become aware of and live in the presence of God. For guidance in the way, Sufis relied on a teacher or master (shaykh or pir), one whose authority was based on direct personal religious experience. The master leads his or her disciples through the successive stages of renunciation of the transient: phenomenal world, purification, prayer, and insight. Along the way, God is believed to reward and encourage the disciple through special blessings and religious experiences or states of consciousness.

not totally satisfying. Reacting with disdain and dismay to the worldly seductions of imperial Islam, they were motivated by a desire to return to what they regarded as the purity and simplicity of the Prophet's time and driven by a deep devotional love of God that culminated in a quest for a direct, personal experience of the presence of God in this life. These men and women pursued an ascetic lifestyle that emphasized detachment from the material world, which, they believed, distracted Muslims from God, repentance for sins, fear of God, and the Last Judgment. Many took to wearing simple, coarse woolen garments; their detachment from material concerns earned them the name *faqir* or, in Persian, *darwish* (poor or mendicant). Dedicated to a life of prayer and fasting, they meditated on the words of the Quran, seeking deeper or hidden guidance, and scrupulously gathered and imitated the example of the Prophet, strongly motivated by fear of God and His judgment on the Last Day.

Many of the early Sufis were critics and opponents of the Umayyads. They included early *alim* (*hadith* scholars, jurists, and theologians), who sought to check Umayyad extravagances and refocus the vision and goals of the community. Hasan al-Basri (643–728), an eminent scholar, typifies the ascetic reaction to what they regarded as the decadence of imperial Islam:

The lower (material) world is a house whose inmates labor for loss, and only abstinence from it makes one happy in it. He who befriends it in desire and love for it will be rendered wretched by it, and his portion with God will be laid waste . . . For this world has neither worth nor weight with God, so slight it is.³

The early emphasis on ascetic practices and detachment from worldly pleasures and meditation was complemented by the contribution of Rabia al-Adawiyya (d. 801), who fused asceticism with an undying devotional love of God. Her joining of the ascetic with the ecstatic permanently

father's estate was often regarded as giving wealth to another, her husband's family. Finally, the pressures of a strong patriarchal society often militated against women exercising their legal right to divorce. As a result, in practice, men could still legally divorce at will and for any reason (a wife's sickness, failure to produce a son), free from legal, although not moral, sanction.

Historically, although the Sharia technically was the sole law and a ruler's source of legitimacy, in fact Islamic empires and states had two complementary legal systems—Sharia courts, which were increasingly restricted to family law and the handling of religious endowments, and Grievance courts, which dealt with public law (criminal, land, and commercial regulations). Although the Sharia remained an essential and integral part of Islamic government, it was only part of a legal system in which the ruler was able to exercise his authority and influence through his power to restrict the scope and jurisdiction of Sharia courts, appoint and fire its judges, issue his own ordinances, and guide his courts. The Sharia set out the law to be followed, but it did not provide constitutional or (independent) judicial restraints. Its ideal nature was reflected in a law that presumed a good Muslim ruler. When faced with the question of what to do about a tyrant, the majority (Sunni) position accepted obedience to the ruler rather than the disorder of civil strife, provided the ruler recognized the supremacy of the Sharia. Acknowledgment by the ruler that the Sharia was the state's official law preserved both the unity and the Islamic character or framework of the community. The supremacy of Islamic law as the eternally valid expression of the straight path of Islam for state and society prevailed both as an ideal and in the practice of official government recognition.

Sufism: The Mystic Path of Love and Knowledge of God

Alongside the exterior path of law (*sharia*) is the interior path or way (*tariqa*) of Sufi mysticism, a major popular religious movement within Sunni and Shia Islam. Whereas the Sharia provided the exoteric way of duties and rights to order the life of the individual and community, Sufism offered an esoteric path or spiritual discipline, a method by which the Sufi sought not only to follow but also to know God. Like other mystical movements in Christianity, Judaism, Hinduism, and Buddhism, the Sufi path is a way of purification (*tasawwuf*), a discipline of mind and body with the goal of directly experiencing the ultimate reality. In later generations, Sufism swept across the Islamic world as Sufis became the great missionaries and popular preachers of Islam in Asia and Africa.

While the traditional Islamic way of life was expressed officially and formally in Islamic law, there developed within the Islamic community individuals for whom mere following or obedience to the will of God was