

Review

Shaheen Sardar Ali: *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* Kluwer Law International, The Hague, pp. 358 pp, 2000.

By

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The primary objective of this book is “to engage in a conceptual analysis of human rights in Islam and international law, and application of this analytical discourse to explore women’s human rights in the Islamic tradition” (p.3). Shaheen Ali is responding to the question “of whether Islam is opposed to women’s human rights and equality” that has assumed a special significance in the post United Nations (UN) era. This accorded significance to international law and norms is, however, faced with skepticism from many Asian and African UN member states, perceiving the rights language and concepts instruments “as manifestations of cultural imperialism and euro-centrism. In the Islamic context (within Asia and Africa), the situation is further aggravated where some aspects of international human rights law are considered both culturally and religiously alien” (p.1).

More specifically, Ali adds, the adoption of the UN Convention on the Elimination of All Forms of Discrimination Against Women (the Women’s Convention or CEDAW) has evoked particularly strong objections from many Muslim countries “on the basis that some of its substantive provisions contain values and pronouncements contrary to the Shari’a (principles of Islamic law) on the status of women” (p.2). The author argues that “women’s human rights in Islam are not entirely irreconcilable with current formulations of international human rights instruments...”. The basic premise of her argument stems from a “recognition that the Islamic legal tradition is not a monolithic entity... and Islamic law lends itself to a variety of interpretations that have far reaching implications for women’s human rights in Islam” (p.3). She assumes two underpinnings to her thesis: (a) that patriarchy has been silencing the more egalitarian aspects of Islam by adopting a ‘literalist’ as opposed to a ‘progressive’ interpretation of the sources of Islam, and (b) that “contrary to the common perception, the principles of Islamic law, or *Shrii’a*, do not consist of immutable, unchanging set of norms, but have an in-built dynamism that is sensitive and susceptible to changing needs of time” (p. 3-4).

The author raises other factors in support of her study, such as (a) the “disparity between the theoretical perspectives on women’s human rights, and, its application to Muslim jurisdictions determined by elements of cultural practices, socio-economic realities and

political expediencies on the parts of governments” (p.4), and (b) the disillusionment of citizens of many Muslim countries with their respective governments and the increasing demands for an Islamic system of government by revivalists, rejecting most Western and secular human rights norms and values and hence most human rights instruments including the Women’s Convention (p.2). Thus the focus is on developing a framework for understanding Islamic law vis-à-vis international law in order to achieve the goals of the study. To this end the book consists of an introduction and seven chapters in three parts. It also includes extensive bibliography and indices.

Part I of the book is titled “Women’s Human Rights in Islam: Initiating the Discourse.” The author presents in Chapter I a conceptual analysis of human rights in Islam and International law, particularly the debate about the definition of ‘rights’ and ‘human rights.’ In Chapter II, she presents a theoretical framework of women’s human rights in Islam. Part II is titled. “Women’s Human Rights in Islam: Application in Muslim Jurisprudence,” and consists of three chapters. In Chapter II, she discusses the ‘public’ and ‘secular’ under constitutional law and its implications for women’s human rights. Chapter IV addresses “private’ and “Islamic’ while discussing Muslim Personal Law and its implications for women’s human rights. In Chapter V, customary practices and ‘cultural Islam’ are presented to show the emergence of the ‘operative’ Islam law on women’s human rights. Part III is titled “International Discourses on Women’s Human Rights: Impact on Women in the Islamic Tradition.” In Chapter VI, she discusses the development of the international norm on non-discrimination on the basis of sex, and in Chapter VII, she discusses the response of Muslim states to international human rights instruments affecting women in light of reservations to the Women’s Convention.

The book is a very good source of documents on human rights, Pakistan personal law, as well as the different debates and perspectives on the subject of Muslim women’s role and human rights (see Appendices and Bibliography). Although the author failed to site some relevant works (such as *Muslim Women and the Politics of Participation: Beijing Platform*. Edited by Mahnaz Afkhami and Erika Friedl, Syracuse University Press (1997)), I will focus my critique on her conceptual framework and related definitions. The conceptual framework determines the validity of the argument and the understanding of related documents, as well as the credibility and sustainability of the recommendations for the issue under discussion.

The author prides herself on distinguishing her work “my major point of difference with most scholars writing on Islamic law is that I define the *Shari’a* as principles of Islamic law as opposed to Islamic law itself” (p.19, fn.37). Yet, she, like most scholars, confuses the meaning of *Shari’a* with the construct “Islamic law.” Also, she mixes the sources of Islamic *Shari’ah* (the Qur’an and *Sunnah* or *Hadith* Books) with the instruments or measures (*Ijtihad*, *Qiyas*, and *Ijma’a*) of interpreting these sources. Perhaps it is these confusions throughout the centuries that have resulted in both misunderstanding the meaning of *Shari’ah* and misappropriation of its principles. These confusions are particularly prevalent when determining the authority (the binding) of the Qur’an as the primary source of the ideals or the principles with that of the Prophetic *Sunnah* as the primary source of the practice of these principles in time and place. Further complexity is

added when mixing the authority of these two primary sources with Muslims' interpretations (including jurisprudence rulings) during different eras and in different places.

What is known as "Islamic law" neither represents the Qur'anic *Shari'ah* (the collective guidelines of the Qur'an that encompasses an intertwined moral and legal binds, once the individual accepts these guidelines as his/her belief system) nor its principles. "Islamic law" is mainly used by Orientalists in reference to jurisprudence opinions, documented in books of *Fiqh* and supported by some Qur'anic verses and *Hadith* narratives. By giving these opinions the legal character, known in the West as 'law,' Orientalists have confused the Qur'anic *Shari'ah* (guidelines) with other legislations or cannons. The fact that the jurisprudence process relied on individual reasoning (*ijtihad*) of Qur'anic verse(s), using the prophetic Sunnah as an example of interpreting and practicing a particular principle in time and place, does not make that process equal to the legislative process of law.

Furthermore, the jurisprudent opinions were never intended, even by the jurists themselves, to be codified as "cannons of law." That is so because the very nature of Qur'anic guidelines is that they should be re-interpreted again and again in time and place. Thus, by equating the *Fiqh* opinions with 'law' and by giving them the title "Islamic", Muslims and non-Muslims have given more authority to these opinions than what is intended in the Qur'an. Whether the issue is human rights, or women's equality, the intention of the Qur'an (the Arabic word meaning "being read") is to remain open to reading (*Iqra'* or 'read' is the first revealed verse) and re-reading in context. Therefore, if we emphasize the fact that only the *Shair'ah* principles in the Qur'an are binding, and not the collective of interpretations, we will not need to go through the lengthy discussion that Ali used to prove her argument.

I do, however, recommend this book as an important addition to library collections on Muslim women, human rights, and law.