

International Human Rights and Islamic Law

Mashood A. Baderin

New York: Oxford University Press, 2003. 279 pages.

Mashood Baderin's *International Human Rights and Islamic Law* is a monumental contribution to an area that needs more scholarly contributions from intellectuals and scholars of Islamic law. Currently, there is a paucity of perspectives on this issue from the standpoint of the Shari`ah. Besides enlightening readers to the Shari`ah's sources, nuances, intricacies, and dynamism, Baderin demolishes the myth of a clash of perspectives between the West and the Shari`ah. The reader comes away more knowledgeable about the mechanics of Islamic law and is able to glean that Islamic law is far more progressive, humane, and dynamic than the perception constructed by the neo-Orientalists.

This book will be very illuminating for students, administrators, and judicial personnel not only from the western world, but also for those in the Islamic world. Besides being knowledgeable in Islamic law, scripture, and Hadith, Baderin shows a remarkable grasp and understanding of international human rights law. Each chapter is very comprehensive and informative from the secular and religious perspectives. After delineating the discourse, he describes and then defuses the apparent incompatibility between

the concepts of human rights and Islamic law. The discourse commences by examining the general works in this area, such as An-Na'imi's, *Towards an Islamic Reformation* (Syracuse University Press: 1990); Monshipouri's *Islamism, Secularism, and Human Rights in the Middle East* (Lynne Rienner Publishers: 1998); and Ann Elizabeth Mayers' *Islam and Human Rights* (Westview Press: 1997).

An-Na'imi scrutinizes and compares traditional Islamic law to the jurisprudence of human rights, without regard to any jurisprudential justifications by Islamic law. The main proposition is to reform Islamic law from within so that it will conform to international human rights principles via a reverse process of *naskh* (abrogation). This implies abandoning some of the Madinan revelations in favor of the Makkan revelations.

According to Mayer, modern Islamic human rights schemes are dubious, because they borrow their substance from international human rights but use Islamic law to limit human rights applications. She relies mostly on traditional Shari'ah interpretations and the practice based on those traditional interpretations, but disregards other legally valid alternative interpretations. She alludes to the fact that the Islamic heritage offers many philosophical concepts, humanistic values, and moral principles that are well adapted for use in constructing human rights alternatives. However, regarding the crucial task of elaborating a methodologically sound and truly contemporary Islamic human rights teaching, based on the pre-modern Islamic heritage, she is shrewd enough to leave it to Muslims through their internal doctrinal debate.

Monshipouri advocates fusing secular and Islamic principles to promote human dignity effectively. One critique questions this theme by stating that although specific rules of Islamic law are judged for compatibility with respect to secularism, there is no parallel examination of secularist ideals with respect to Islamic principles.

Most of these views are regarded as monological and reflect the presumption that the present interpretations of international human rights law are impeccable. Western interpretations of this law can be questioned as being insensitive to Islamic values.

Baderin's central thesis tries to establish the concept of international human rights from within the theme of Islamic law, rather than as a concept that is alien. The jurisprudential arguments of Islamic jurists on relevant issues are examined with regard to the modern interpretations of human rights law. Using the justificatory principle, Baderin seeks a paradigm shift from the traditional hard-line interpretation of the Shari'ah and

exclusionist interpretations of international human rights law through the Islamic legal doctrine of *maslahah* (welfare). He strikes a balance between public expectations of government and its meaningful identification with Islam, and the European human rights margin of appreciation doctrine, which works as a principle of justification. Two questions are examined: (1) Are international human rights and Islamic law compatible? and (2) Can Muslim states comply with international human rights law while they adhere to Islamic law? Examining traditional arguments, the author responds by synthesizing the two extremes and argues that the existence of some impediments regarding scope and application does not create a general dissonance between international human rights and Islamic law.

Baderin makes a meticulous examination of each relevant article of the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; and the Convention on the Elimination of All Forms of Discrimination against Women. He concludes that it is possible to harmonize the differences between international human rights law and Islamic law via the margin of appreciation doctrine from the perspective of international human rights treaty bodies on the one hand, and the application of the Islamic law doctrines of *maqasid al-Shari`ah* (overall objective of the Shari`ah) and *maslahah* (welfare) by Muslim states while interpreting the application of Islamic law.

The author suggests that Islamic law can serve as a very important conduit for change in the Muslim world, and makes some very valuable recommendations: Set up regional Islamic courts of *mazalim*; call for good faith and the abandonment of prejudice between scholars on both sides; formulate an inclusive, evolutionary, and constructive method of interpretation on both sides; and include highly qualified experts in Islamic jurisprudence and international law as members of international human rights treaty bodies in order to reflect legal and civilizational diversity.

There is a pressing need to shift the intellectual discourse from that of a clash of civilizations to that of a dialogue among cultures. Baderin's work could pave the way to this alternative discourse.

Farrukh B. Hakeem
Associate Professor, Department of Social Sciences
Shaw University
Raleigh, North Carolina