
Islamic View of Women's Rights: An International Lawyer's Perspective

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What is an Islamic view of women's rights? Is there an authentic Islamic interpretation of this issue? The central argument of this article is that there is no unique Islamic view of women's rights and even more, that according to the very nature and spirit of Islamic law itself, there should be no such version. The article starts with an overview of states' international obligations with regard to protection of women's rights. It continues with some examples of implementation of these obligations in several states proclaiming Islam as official religion and source of legislation. This part of the article demonstrates diversity of views existing among such states and insists on the fact that it is not religion itself, but its misuse by patriarchal totalitarian regimes that impedes any development towards improvement of the situation of women in some Muslim states. Finally, the article suggests that international lawyers shall abandon sacralizing religiously framed defences of certain states and be in contrast more attentive and sensitive to difficulties faced by other Muslim states in their effort to reform and reinterpret Islamic law.

Keywords

Islam, women's rights, CEDAW, reservations, Saudi Arabia, marriage, divorce, rights and obligations of spouses, custody of children.

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I. Introduction

In adopting an international lawyer's perspective, one obviously places oneself at the level of international law and has to look for both women's rights and an Islamic view of them in international law. Traditional doctrine of international law recognizing states as principal subjects and lawmakers of international law, although often questioned now, remains largely valid.¹ For this reason the present inquiry will start with an analysis of the major international treaty dealing with women's rights, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).² This international treaty ratified by 185 states³ is the main codification of human rights norms in their specific application to women.⁴

Where does one look for an Islamic view of these rights at the level of international law? From the perspective of traditional international law, only states can express this view. Although strictly speaking states do not have a religion, many states proclaim

¹ For some contemporary debates on the role of states in particular with regard to law-formation, see generally Harlan Grant Cohen, *Finding International Law: Rethinking the Doctrine of Sources*, 93 IOWA L. REV. 152 (2007); Duncan B. Hollis, *Why State Consent Still Matters: Non-State Actors, Treaties, and the Changing Sources of International Law*, 23 BERKELEY J. INT'L L. 1 (2005); Christiana Ochoa, *The Individual and Customary International Law Formation*, 48 VA. J. INT'L L. 119 (2007); Detlev F. Vagts, *International Relations Looks at Customary International Law: A Traditionalist's Defence*, 15 EUR. J. INT'L L. 1031 (2004).

² Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), opened for signature Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR, Supp. No. 46, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 (entered into force on Sept. 3, 1981) [hereinafter CEDAW].

³ This represents the number of states as of February 20, 2009. All other legal materials and references are stated as of this date.

⁴ This is not the only international instrument addressing human rights of women. Other instruments adopted by the U.N. General Assembly include the Convention on the Nationality of Married Women, G.A. Res. 1040 (XD), 309 U.N.T.S. 65, entered into force Aug. 11, 1958; the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 1763 (XVII), 521 U.N.T.S. 231, entered into force Dec. 9, 1964; Convention on the Political Rights of Women, G.A. Res. 640 (VII), 193 U.N.T.S. 135, entered into force July 7, 1954. Moreover, other U.N. agencies also adopted women-specific conventions in their respective areas of activity. For some examples, see the International Labour Organization's (ILO) Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted by the General Conference of the ILO on June 29, 1951, and entered into force on May 23, 1953; the ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation, adopted by the General Conference of the ILO on June 25, 1958, and entered into force on June 15, 1960; and the Convention against Discrimination in Education, adopted by the General Conference of the United Nations Educational Scientific and Cultural Organisation on December 14, 1960, entered into force on May 22, 1962. The CEDAW also does not limit itself to simple repetition of what already existed at the time of its adoption as rights granted to women by international law; it expands not only the areas covered, but also the content of rights already granted by previous instruments, for example, areas such as nationality (art. 9), education (art. 10), and social security (art. 11(e)). For more detail, see e.g., EKATERINA YAHYAOUI KRIVENKO, WOMEN, ISLAM AND INTERNATIONAL LAW WITHIN THE CONTEXT OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 31-39 (2009).