BOOK REVIEWS


In Algeria, three feminists were arrested and jailed without trial, then kept incommunicado for seven months. Their crime was having discussed with other women the government’s proposal to introduce a new set of laws on the family (Code de la Famille) that severely reduced women’s rights in this field. In India, a Muslim woman filed a petition to the Supreme Court arguing that the application of religious minority law denied her rights otherwise guaranteed to all citizens under the Constitution of India. In Abu Dhabi, for the alleged crime of adultery a pregnant woman was sentenced to be stoned to death two months after giving birth.1

Due to incidences such as the above, there are a plethora of books and articles dealing with the tension that exists between Islam, women and international law. Ekaterina Yahyaoui Krivenko’s Women, Islam and International Law within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women is a rigorous and relevant contribution to this debate. She focuses on Muslim women’s human rights within the context of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Her aim is to engage all the CEDAW role players (women, lawyers, committees and states) to secure women’s human rights in countries with reservations to the CEDAW based on Islam.

The theoretical heart of her thesis is that Islam and Women’s human rights, even if they appear to be irreconcilable, do contain a number of similarities, which provides the foundation to initiate constructive dialogue. She argues that ‘international law in general, and human rights law in particular, if functioning adequately provides a unique space for such open-minded, unbiased encounter and dialogue’.2 Her contribution is unique in that she aptly criticises the ‘working methods and attitudes adopted by international lawyers’ and argues that their contributions within the international law framework are often ‘simply inadequate, sometimes even dangerous for the promotion of this dialogue’.3

The book has four chapters. The first part of chapter one deals with international law and focuses specifically on the rights and status of women. The second part of the chapter is devoted to a discussion on women in Islam and Islamic law. It takes into account the reservation practices to the CEDAW by Muslim states. Krivenko focuses her discussion on ‘the ability of women to enter into marriage without coercion and the right to freely choose a spouse; rights and obligations of spouses during marriage; custody and guardianship of children in particular upon dissolution of marriage and polygamy’.4 She does this through the lens of both the modern and conservative schools of

1 F Shaheed ‘Controlled or Autonomous Identity and the Experience of the Network, Women Living Under Muslim Laws’ (1994) 19 Signs Feminism and the Law 997.
3 Ibid.
4 Ibid 57.
jurisprudential thought. She concludes chapter one by stating quite correctly that:

the real solution for the issue of the status of women in Muslim societies lies not in the compilation of better legislation, but in the reorientation of understanding of the nature of law, whereby the famous expression attributed to Abu Hanifa, the founder of the Hanafi school of Islamic law, should become a constant reminder: ‘I believe that my opinion is right, but possibly wrong, and your opinion is wrong, but possibly right’.5

In Chapter two Krivenko provides a useful study of reservations to international treaties in general. The third chapter is an analysis of the practices developed by Muslim states in the context of reservations to the CEDAW based on Islam. Krivenko, analyses 20 Muslim countries,6 by not only looking at their reservations in terms of the CEDAW, but also their national legislation. This analysis is the book’s greatest strength. It provides an elegant and concise contribution, which will greatly assist the uninformed reader. It is important to note that ‘in order to be effective in the Muslim World, human rights standards must operate within the framework of Islam’.7 Abdullah An-Na’im rightly states:

International standards are meaningless to Muslim women unless they are reflected in the concrete realities of the Muslim environment. Like members of other cultural traditions, Muslims tend to be suspicious and unreceptive towards what they perceive to be an attempt to impose alien standards. To obtain their cooperation in implementing international standards on the rights of women, we need to show the Muslims in general that these standards are not alien at all. They are, in fact, quite compatible with the fundamental values of Islam. In other words, we need to provide Islamic legitimacy for the international standards on the rights of women.

In chapter four, Krivenko’s proposed solution of open constructive dialogue between international treaty bodies, international lawyers and traditional Muslim jurists is persuasive at a theoretical level. It lacks the practical details of how this will operate. She fittingly makes the point that ‘international lawyers in their traditional work are concerned with rules, objectivity, security of law, but much less with justice’.9 She advocates a more ‘process-orientated vision of law’.10 Rules should be used as an orientation, to search for the best solution in each situation, which will lead to the spread of new ideas and developments.11 Specifics on how practically and realistically this will be done is lacking.

Ekaterina Yahyaoui Krivenko uses the method of feminist legal scholarship in the presentation and analysis of her work. This feminist Western bias is the

5 Ibid 73.
6 The countries she examines are the following: Algeria, Bahrain, Bangladesh, Brunei, Egypt, Iran, Jordan, Kuwait, Libya, Malaysia, The Maldives, Morocco, Niger, Oman, Pakistan, Saudi Arabia, Syria, Tunisia and United Arab Emirates.
9 (Note 2 above) 223.
10 Ibid.
11 Ibid 225.
book’s most serious weakness, particularly in the theoretical construction of Muslim women’s human rights within Islamic law. She attempts to establish women’s rights within the Islamic framework by re-interpreting provisions of the Quran. Unfortunately this becomes understandingly problematical because she does this within the Western feminist genre, which lends itself to the clichéd oppressed Muslim women as the ‘other’. In order to initiate the constructive dialogue Krivenko advocates it is important to ‘allow cultures to negotiate their destinies in their own vocabularies’.

In conclusion, notwithstanding my criticisms of some parts of the book, Ekaterina Yahyaoui Krivenko’s *Women, Islam and International Law within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* adds appreciably to the existing literature on Muslim women’s human rights within the context of the CEDAW. It is a superb reference book for scholars, researchers, practitioners and states.

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