

Women's Rights under International, American, Islamic, and Egyptian Law:  
An Irresolvable Conflict?

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# Women's Rights under International, American, Islamic, and Egyptian Law: An Irresolvable Conflict?

*A Cross-Cultural Examination of Gender Equality*

*By*

Mohammad Ibrahim



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# Foreword

Dr. Ibrahim's book undoubtedly enriches the scholarship related to women's human rights and generally the status of women in Islam. A well-known, but still indeed very much a cutting-edge theme in international law remains the perceived conflict between the international law of human rights, as it relates to women's human rights, in countries where Islamic Law constitutes the basis of the legal system, resulting in a graspable lack of equality between woman and man. In a balanced and well-documented book, displaying a strong command of the issues involved, of the law in the books and the relevant case law in international and domestic jurisdictions and of the literature on the subject, the author presents the reader with a wealth of information to examine the validity of this perceived conflict. It is also refreshing to read the soundly reasoned and the well-substantiated conclusions that side with those who believe that gender discrimination is not necessarily inherent to Islam, but rather on the religious law's interpretation by patriarchal regimes.

Dr. Ibrahim has laid out a daring scope for his book. He sets out to explore three legal arenas: (a) the global system of human rights protection vis-à-vis women's rights; (b) Islamic Law as a major, and largely dominant, developed legal system; (c) two representative domestic jurisdictions: the United States and Egypt. To make the book manageable, he exemplifies the broad area of women's human rights through three major pertinent rights: (a) a right to abortion (or lack thereof); (b) the right to equality in employment; (c) the right and/or duty of women to wear Islamic religious attire, in various jurisdictions under review. To that end, he organizes his work into three major chapters, and each of them comprises four distinct sections, i.e. analyses of the right under discussion as contained in the regimes of international law, U.S. law, Shari'a law and Egyptian law.

In *Chapter 1*, the author deals with the right to abortion under international law, discussing the right presenting pro-choice arguments and pro-life arguments. His analysis of U.S. law contrasts freedom of choice and the right to privacy as well as their limits under the jurisprudence of the Supreme Court. The discussion of Shari'a law focuses on issues related to the prohibition of murder as well as the scope of a right to, and the prohibition of, abortion. Egyptian law is considered under the captions of a "crime of abortion" and respective arguments for exceptions to this prohibition.

In *Chapter 2*, under international law and U.S. law, the author discusses a woman's right to equality in employment, her right to equal treatment

before the law, her right to equal employment opportunities, equal payment, and issues related to discriminatory practices. Under Islamic law he considers two opposing views: one restricting a woman's right to employment and the other one supporting a woman's right to work. The same issues are discussed under Egyptian law, focusing also on a special restriction for women upon holding important positions in government.

*Chapter 3* deals with a woman's right to wear Islamic clothing. He starts this chapter with the discussion of the perceived duty or free will decision of women under Shari'a law to wear Islamic clothing, to be followed by the law on the books and the law in action in Egypt. Then he discusses this issue from the perspective of the international law of human rights related to the freedom of manifestation of religion, to be followed by U.S. law and its application as it relates to the free exercise clause of the Constitution. The last pages constitute his conclusions.

Right from the start, the author makes clear the intellectual tasks he poses himself through four questions that he poses and sets out to answer in the course of the book, namely:

- 1) Do international human rights law and American law protect and promote women's rights or not? And are these laws in agreement in approaching such rights or not?
- 2) Is Islamic Shari'a law in line with international human rights law and American law in tackling women's rights?
- 3) If the answer to the last question is negative, does Shari'a provide a proper framework of women's rights or not? And could violations of women's rights in Muslim countries be ascribed to Shari'a?
- 4) Do international human rights law and American law succeed in respecting a woman's choice to wear Islamic clothing in order to perform her religious duties?

Indeed, his book clearly succeeds in performing the task undertaken. His conclusions are much in line with his extensive research and critical analysis of the three rights and practices explored. It is appropriate to discuss in more detail each of the topics discussed by the author.

### **A Right to Abortion**

The discussion of a right to abortion is one that falls into the context of a conflict of individual rights, namely the right of a woman to autonomy and privacy, and the right to life of a human being in international law, and, in

this case, the right to life of the unborn. Unquestionably, this is a very difficult topic to dwell upon in international law, for the reason that this body of law does not expressly address this matter. Being a consent-based regime, international law establishes a minimum standard that is acceptable to nation-states. This is the only way that a convention or treaty on human rights might have a chance to have nation-states agree to it and to collect enough instruments of ratification needed for the agreement's entry into force.

The author embarks on an exhausting analysis of the global and regional systems of human rights protections. While he discusses the African System of Human Rights, which would be directly applicable to Egypt, he also examines other regional systems of human rights protection, i.e. the European and the Inter-American systems, to determine any cross-fertilization of the stances of the respective instruments and their monitoring bodies, as well as the similarities of any other practices, including case law regarding the treatment of the rights at issue. The first connection he makes is the consideration of abortion as a necessary measure to protect a woman's right to life if jeopardized by pregnancy. Then he addresses all other situations. The discussion of monitoring bodies' general comments, their concluding observations on specific country reports as well as their views on individual complaints, are an important element of the book, because, most of the time, a proper interpretation of the scope of rights and their limitations, as contained in the various articles of the conventions, may only come to life through such general comments and concluding observations, particularly regarding issues where there is a dearth of case law.

The author articulates with necessary strength the relevancy of each human right under review to support the thesis the author is promulgating. The author discusses cases in detail, making the intellectual point of the reasons why he analyzes these cases, as in the *Open Door* case, or in sub-section (C) *Comparison between Regional Systems*. The author gets to the essence of provisions and cases, respectively for each system and jurisdiction, simultaneously checking and identifying both consistencies in the arguments that the courts or commissions have made, as well as the divergences amongst regions as it relates to the problem—whether they would have to be classified as more pro-life or more pro-choice.

The discussion of U.S. law relating to abortion is thorough and a very good read. In detail, the author traces the history of U.S. Supreme Court jurisprudence regarding abortion, starting with the enunciation of a woman's right to terminate her pregnancy under the federal constitution in *Roe v. Wade* (1973) and ending with its overruling in *Dobbs v. Jackson Women's*

Health Org. (2022). The Supreme Court now leaves the issue of abortion to be regulated by the individual states.

### Women's Right to Equality in Employment

Employment equality is a right that, *de facto*, has been proven to be amongst the hardest to be implemented and is routinely violated by the private and public sector worldwide. Even in most developed countries it is a common truth that women are hired based on their experience and men are hired on the basis of their potential to succeed. Clearly a discriminatory standard, though *de jure* written nowhere. Also, when it comes to employment, both quantitative (how do women fare vis-à-vis men in numbers of employment and unemployment?) and qualitative (what kind of jobs and at what payment rate do women engage in?) data are important to discuss.

In some countries and regions this problem is even more acute and prevalent. It is an important right to discuss, and a wise choice by the author to look into this right in the context of international law, Shari'a law as well as two domestic jurisdictions: the U.S. and Egypt.

The author finds Egyptian law to be in default of its obligations under Shari'a law, which in the author's view, is much more progressive and very much in line with international law standards and even with the practice of countries such as the United States. This is his stance, though I wonder whether this conclusion would be acceptable in the real world. The devil lies in the details: (a) how does the meaning of "haram jobs" translate into real life? I would say this constitutes discrimination; (b) what would be the meaning and the interpretation of "work [...] compatible with her [woman's] physiological, physical, and spiritual nature as a female"? I would assume that a comprehensive study of these attributes "naturally" attached to the "female" would indeed translate into discrimination; also (c) a guardian's permission and (d) a woman's top priority being her "marital duties"—lead, by default, to discrimination against women in employment. While the written government law might talk about equality, its application, if based in Islam, would hinder women's employment. However, this is my Western review of an insider's stance, and thus I am not completely sure that my view is necessarily the correct one.

### Muslim Women's Religious Duty to Wear Islamic Attire (*hijab*)

Women's clothing has been and continues to be a major issue worldwide. In many cultures, there is a certain preset vestiture that binds women, and at times even men. For some it is part of culture, and for others it is part of religion.

For Muslim women certain items of women's clothing are mandated to be worn. The author maintains that verse 31 of chapter 24 of the Qur'an has been the basis for the obligation of women to wear Islamic clothing – though, in his view, also echoing the view of others, the Qur'an has given full power to women to decide what they want to show and what they want to hide under their clothing, maintaining, however, a level of “modesty.” Quoting several times an article by Shaira Nanwani, he notes that it is the woman who commonly chooses to wear the *hijab* or the *niqab*. He describes the various items of clothes such as *sitar*, *burqa*, *niqab* and *hijab*, and focuses on the last two, as the ones mostly worn (the *hijab*) and the one perceived as the most oppressive (the *niqab*).

A discussion follows of the opinions of supporters of *hijab* and those of the more conservative *niqab*, promulgated by the Shafi'a's and the Malikia's scholars. From the heading “*Hijab* is the Mandatory Islamic Clothing,” to the discussion that follows, the author supports the view that indeed *hijab* is mandatory for a Muslim woman to wear, whereas *niqab* is neither mandated nor banned. The author illustrates the requirement of modesty by an example of two women, one wearing a *hijab* but still revealing and the other not wearing a *hijab* but modestly, not revealing. He finds both in some kind of stratified violation: the former violating the Qur'an and the latter violating its interpretation. While it seems that women are free to choose what to wear, what they can display or not, the basic question remains: who chooses for them: the women themselves? The husband? The father? He clarifies the situations when in some countries the government mandates the wearing of full-face veils in public, and then he gives more support for one side or the other.

However, the author goes to great lengths to convince the reader that actually women are the ones who choose what to wear, one way or another. While this could be partially true, a more representative analysis might have been more desirable. It is commonly thought though, even amongst some Muslim communities, that women do not always have a choice in this regard. The author remedies the problem in his conclusion, where he very clearly expresses his view that whenever a woman is forced into wearing an Islamic dress, whether by family or government, there is a violation of

women's human rights and freedoms, and intervention to protect their rights is welcome.

When wearing Islamic clothing is at the will of a woman out of her own consideration of a religious duty, then it is a right to manifest or practice one's religion, within the scope of the right and its corresponding limitations. It must be protected by the law.

I found the discussion of women's Islamic clothing under Egyptian law to be very elaborate, from the constitution to laws to court cases, and it leads into a clearer conclusion that, at least as a matter of law, women are the ones who decide whether they wear a *hijab* or a *niqab*, but it is still mostly a choice amongst the two—there does not seem to be an alternative of choosing to wear none of them. It is still the social environment, in addition to her personal preference, that creates the surrounding conditioning factors for either decision.

The sections related to international law and to U.S. law mirror the line of discussion examined when discussing the right to abortion. I might, however, have to take exception, at least from my perspective, at one conclusion that the author draws, i.e. that the European Court of Human Rights has routinely issued discriminatory judicial decisions as it relates to Muslim women. The court is a judicial body and it only determines the outer limits of a right, by leaving a margin of appreciation to the state. The states implement human rights, and indeed the states have a broad leeway when it comes to the nuanced application of human rights within their territory and under their jurisdiction. The court cannot but take under consideration the margin of appreciation afforded to nation states that are in the best position to assess the magnitude and pace of implementation of women's human rights. Having said that, there are circumstances when the court errs in its analysis, at least as perceived by us – the outsiders to the Court.

### **Dr. Ibrahim's Comparative Findings on Shari'a Law**

Upon the surveying, review and analysis of international law, U.S. law, Shari'a law and Egyptian law related to women's rights to abortion, to equal employment and to wearing Islamic religious attire, the author finds Shari'a law very much in line with what he establishes as an international standard to a perceived right to abortion. He also concludes that Shari'a law is for the most part in conformity with the international standard of equality in

employment. He concludes differently for Egyptian law, finding it to lack compliance with both international law and Shari'a law.

Dr. Ibrahim's conclusion would be highly desirable if it were applied across the board of the schools of Islamic law. However, different from, for instance, the Catholic view on human rights, including women's rights, which are universally applicable, the Islamic view on these issues varies amongst schools, interpretations, and doctrines, hence the author's conclusion is, with much hope, more of a statement *de lege ferenda* as it is necessarily *lex lata* across the schools. It is appreciated that the author espouses the more liberal view as it is to be expected from a young scholar of human rights.

### Conclusion

I find this book to be the product of extensive research and very good analysis. His chosen topic and the respective subject matter have demanded strict inquiry and thorough investigation of various areas of law and legal systems. Dr. Ibrahim has done an excellent job in this regard: thoughtful, well researched, informative and relevant to law, policy and advocacy, the book represents a tremendous benefit in understanding discrimination as it relates to Muslim women and the Shari'a.

Although the author's respect for Islamic law is obvious throughout the book, it is not carried to extremes nor to a partisan position. On the contrary, it is encouraging to see that he sides with the progressive interpretation of Islam and he maturely and critically analyzes and appraises the interpretation and application of Islam in a domestic jurisdiction, Egypt.

The author has an excellent mastery of the subject-matter supported with exceptional research, and this book will be a noteworthy tool for all those who set themselves in the quest to fully understand the true status of women in the countries where Shari'a prevails, and how these countries fare compared to those based on other legal systems.

Dr. Ibrahim's novel and mature analysis of a very difficult and controversial legal issue represents an admirable contribution to the field.

*Prof. Dr. Roza Pati* | St. John Paul II Distinguished Professor of Law  
Founder & Director | John J. Brunetti Human Trafficking Academy  
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