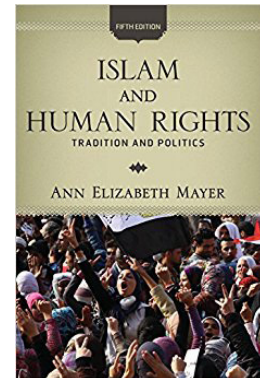


Book Review

Title : Islam and Human Rights, Tradition, and Politics
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Human rights and Islam are two very interesting issues to be discussed since there has been tension for decades. One agrees that Islamic law violates many aspects of human rights, yet other argues that human rights are against Islamic law. Nonetheless, there are also groups who accept that human rights and Islam are not contrary. This book written by Ann Elizabeth Mayer tries to give such objective perspective on the relation between human rights and Islam. With conspicuous title “Human Rights and Islam”, potential readers can assume that this book will discuss all matters in regards to the problematic of Islam and human rights in a whole. Beyond the expectation, this book focuses on the politics and tradition of Islamic countries in several ‘attractive’ areas such as Iran, Saudi Arabia, Afghanistan, Pakistan, and Sudan in interacting with human rights. However, Mayer declares from the very first sentence of the preface that this title is purposed for practical function for those who search for references on Islam and Human Rights and emphasizes that this book is written based on her research in the area of Middle East as her area of interest. Mayer argues that there is no Islamic consensus on a single Islamic human rights philosophy as her main thesis in this book. This claim is based on her research, that even other religions with long and complex traditions, they prone to create conflict in the interpretation between religious doctrine and human rights. Furthermore, she elaborates her research in 10 chapters of the book particularly on how Muslims from North Africa to Pakistan are responding human rights, from total rejection to wholehearted embrace.

The first chapter discusses the issue of assimilating human rights in the Middle East. This book started with the history of legal system particularly in applying human rights in the Middle East from the era of Prophet Muhammad to crusades by the European (particularly British) which somehow influence the implementation of international human rights law within the area. In observing the reaction of Muslims towards international human rights, Mayer tries to analyze the situation by applying cultural relativism theory in human rights. Yet, the idea of cultural relativism is not fully accepted.

Mayer gives readers alternatives insight by quoting opinions from scholars both Muslim and Westerner in regards to the issue. Nonetheless, she offers readers to

consider their own stand by giving description on how actual human rights concern in the Middle East based on her research with strong emphasize on the situation in Arab. The situation was critically assessed by Arab experts working for United Nations Development Programme (UNDP) during conference attended by hundreds Arab intellectuals and politicians proposed democratic reforms.

However in contrary, Saudi foreign minister insisted at the 1993 World Conference on Human Rights in Vienna that in Islamic law, human rights are not mere moral exhortations but “legislative orders” containing “all the legal texts necessary for ensuring their implementation and enforcement”. Moreover, he also stated that Islamic law and Cairo Declaration have given sufficient human rights protection. Yet Mayer reminds the readers particularly the proponents of Islamic human rights that Middle East governments are neglecting respect to the rule of law including to Islamic law. Again, Mayer tries to ask reader to understand that political situation in the Middle East is influencing the protection of human rights. Mayer closes this chapter with positive involvement as well as contribution of Muslims in the UN human rights system.

Mayer portrays the sources of both Islamic human rights law and international human rights law in a joined chapter and lead to more detailed political situation of Middle East countries as well as their tradition which are claimed based on Islamic law, including how they respond human rights. The interesting part from this chapter, Mayer discusses Universal Islamic Declaration on Human Rights (UIDHR) as one of the legal sources of Islamic human rights instruments beside Cairo Declaration which has almost never been discussed or even mentioned by other Western authors. Although Mayer acknowledged that the basic legal sources in Islamic Law are Quran and Sunna, she does not discuss these in this chapter. Instead, she explores the constitution as well as political development (including tradition) of Islamic countries such as Iran, Afghanistan, Pakistan, Sudan, and Saudi Arabia with the issue of ‘Islamization’ which affects the constitution and justice, including human rights. In this chapter, Mayer also describes how those countries are responding to international human rights standards with Islamic law.

On the next chapter concerning Islamic Tradition and Muslim reactions to human rights, Mayer analyzes Muslims scholars’ philosophy to examine Muslims’ reaction to what people describe as ‘western issues’ such as western constitutionalism, democracy, and human rights. Furthermore, she discusses specifically about cultural nationalism to understand how Muslims attitude towards human rights are like. She describes the philosophy of scholars from two main Islamic traditions, Sunni and Shi’i who are living on different countries, which of course have different political situation and tradition that give impacts on how the government as well as its people respond to human rights. It is found that there is indication that Islamic human rights schemes are linked to a broader pattern of resistance to western hegemony and doubtful transformation of Muslims society in the Middle East. While Mayer

actually stands by her examination to a rich and complex Islamic heritage in regards to the human rights issue, the responds might differ.

After examining legal sources, political situations, as well as traditions in the Middle East, Mayer introduces Islamic restriction on human rights with the comparison of permissible qualifications of rights in international law and Islamic formula in limiting rights. Furthermore, Mayer examines restriction based on Iranian constitution, UIDHR, and other Islamic human rights schemes. International law recognizes that limitation of human rights can be applied with legal ground in order to respect others' rights, public order, and protection of public health and moral. This restriction may apply to freedom of expression, freedom of peaceful assembly, freedom of association, and the right to take part in the conduct of public affairs. Those conditions are clearly stated in International Covenant on Civil and Political Rights (ICCPR) as well as International Covenant on Economic, Social, and Cultural Rights (ICESCR) as the legal ground to apply restriction. Yet, in Islamic human rights scheme, there is no clear qualification on what situation and what rights that can be limited. This can lead to vast discretion or even nullifying rights. This is also can be found in African Charter on Human and Peoples' Rights that considered as 'claw back clauses' since it allows state with "almost unbounded discretion" in using domestic legal standards to restrict internationally guaranteed human rights.

In this regards, Mayer points out that in interpreting Sharia (Islamic law) in this pre modern era, there are many doctrines of several sects and many school of law. Moreover, judicial practice and individual scholars nowadays tries to give their own interpretation. Although divergence of opinions among schools is tolerated in the history of Islam, Mayer tries to explain those differences may rise conflicting views of Islamic requirement ; in this regards, in giving restriction to human rights. She believes that consensus is needed to gain exact limitations that can be followed by all sects, school of laws, and traditions. However, Mayer also realizes that this might not that simple, hence this situation can create vagueness in the interpretation of human restrictions. With emphasize to the constitution of Iran, Afghanistan, and Iraq she found similarity that restriction will be stated as return to 'sharia' (Islamic law).

From chapter 5 and on, Mayer gives analysis on several sensitive issues such as discrimination against women and non-Muslim, restriction on the rights of women, religious minorities, sexual minorities, and freedom of religion. Mayer first discusses the equality principle in Islam particularly in examining rules affecting women and non-Muslims. She claims that there are two approaches; first approach agrees that the principle of equality violates Sharia, and the other approach is to pretend to accept equality but still draft discriminatory rules. However, Mayer again ask the readers to be objective that 'equality' may have different connotation for Muslims and people who have grown up with the idea of absolute equality of all human being.

Discrimination in Islam is rather as a nature and not violates the principle of equality. Yet this argument does not satisfy principle of equality based on international human rights scheme which states that discrimination based on sex and religion is not compatible with equality principle. As an example, she takes comparison of women equality in Iran and the United States of America (USA), which the Reviewer supposes is not apple to apple comparison although Mayer also point out comparison with international law. Yet, Mayer put good analysis on how Islamic law modern instruments (UIDHR, Iran constitution, and scholar's book) regulates equality principle for women and non-Muslims. She found that those documents guarantee equality principle by giving protection to all men regardless race, color, social class, weakness and poverty; yet, none of the statement clearly stating how this equality principle applies for women in particular. Another example is the constitution of Afghanistan and Iraq. Their constitution clearly stated that men and women have equal rights and duties before the law, nonetheless the following article stated that no law shall contravene with beliefs and principles of the sacred religion of Islam. This is considered as ambiguity and uncertainty on the definition of equality principle.

Since the issue of equality for women in Islam has been one of the most favorite topics for western scholars, Mayer also discusses this further on the next chapter. She discusses more domestic private rights of women in Islam where she takes Quran as legal source besides UIDHR and doctrine. She also examines other instruments such as Iranian constitution, the Al Azhar Draft Constitution, Cairo Declaration, the Saudi Basic Law, Pakistani Laws, Afghanistan Constitution, Iraq Constitution, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Universal Declaration of Human Rights (UDHR) to analyze the situation and implementation of restriction of rights of women. Mayer delivers many actual cases in those countries and how their governments give protection of women's rights. The influence of sex stereotyping is also discusses at the end of this chapter. On her portray in this chapter, Mayer delivers detailed information on how political situation and tradition develop and influence human rights for women within the area. Comparison of local tradition, national legislations, sharia, Islamic human rights schemes as well as international human rights including Catholic Church in women rights and sex stereotype are also discussed. This issue takes the longest discussion from all chapters in this book.

Another issue arises in the Middle East particularly Iran, Pakistan, and Afghanistan is the religious minority. Muslims are considered cynical to non-Muslims who are minorities, yet this cannot be separated from the historical background that Muslims has been offended by the western as happened in former Yugoslavia and Palestine. Mayer addresses USA political issue in regards to this matter. However, religious minority is not only addressed to western religion, but also to other beliefs existing within the area. Mayer examines all related legal instruments and all comes

to one conclusion that Islam has tolerance to minority, which is even stated clearly in Quran. The details of regulation as written in constitutions of those countries again stated that all shall be in accordance with Islamic Law (Sharia). Nevertheless, in fact some cases regarding mistreatment of those minorities existed, which mean that what is written in law do not always work as it is stated.

Sexual orientation and gender identity in Islamic Human Rights is actually very important issue that should be understood. Sharia strongly prohibits the activity group of lesbian, gay, bisexual, and transgender (LGBT), as these can be categorized as sin. In this chapter, Mayer tries to elaborate the role of Organization of Islamic Cooperation (OIC) in regards to the issue. She notifies that sexual orientation which is understood in the Middle East is rather the homosexual (gay), but neither too much attention is put on lesbian nor transgender. However, those sexual orientations are considered as criminal in most of Islamic countries within the area. Discrimination and persecution happened often, hence the protection from those acts is sought. By tradition and source of law existing within the area, OIC refuses to give special protection for special group (in this regards, the LGBT). Although OIC agrees that human rights are universal in nature and also supports the UN system in promoting and protecting human rights, they cannot agree for giving special circumstances for this group. Mayer analyzes this objection in chapter 8.

Iran and Saudi Arabia are notorious for violation of the right to freedom of religion due to their rules prohibiting and punishing conversion from Islam. Although people who convert are given a chance to return to Islam, legal impact to those people may be serious. For example are a 'civil death' where marriage would not be dissolve or incapable of inheriting, yet no penalty may be applied. Mayer argues that Quran even mentioned that there is no compulsion in religion, however this is implemented differently. She examines cases, doctrines, and legal instruments to analyze this matter. This issue expands to the notorious case of Salman Rushdie and Danish cartoon controversy. Mayer also relates the issue of blasphemy with freedom of religion beside freedom to choose religion or belief.

The last chapter of this book is the assessment of Islamic human rights scheme. Mayer emphasizes that her book is not purposed to justify that Islam is incompatible with human rights, instead she would like to address the phenomenon that religion and culture is used by elites as device to legitimize their opposition to international human rights or weaken it. Mayer admits that Islamic heritage includes rights-friendly principles; yet it is found that Islamic human rights schemes, although invoking Islamic tradition, are actually shaped by their authors' negative reactions to ideas of freedom of democracy and to the scope of rights protections afforded by the international bill of human rights. Mayer concludes that the obstacle in Islamic human rights lies in politics.

To conclude, this book is worth reading particularly in giving broader knowledge and insight how politics and traditions influence the reception of human rights in

several Islamic countries. The reviewer is not fully agree with Mayer since she mostly examines Islamic human rights in the Middle East and most of her examination is based on the Iranian constitution and slight discussion on Afghanistan and Iraq Constitution ;albeit she also discusses situation in Saudi Arabia, Sudan, and Pakistan as her object. If we put attention on her selection of countries, there is a line of similarity that they were either invaded or intervened by the USA during their political struggle history.

In the reviewer's humble opinion, she may take other sample of other Arabs countries if she really focuses in the Middle East. However, As Mayer claims on her preface and her last chapter that she tries to open the horizon of the reader to examine the nexus between international human rights and Islamic law that lays the main problems in politics, as a researcher she may choose any sample based on certain consideration. Henceforth, readers will not find many comparison between Islamic legal sources (Quran and Sunna, which she named as heritage) to international human rights instruments unless for several examples of rights. Yet, readers will find discussion in examining pre-modern Islamic human rights instruments such constitutions of several Islamic countries (as Mayer called as Islamic human rights scheme) and also thinking of Tabandeh (Irani Shii scholar) and Mawdudi (Pakistani Sunni scholar) as comparison although she also named several others Muslim scholars. Mayer does not elaborate comprehensively about the legal sources and history on how Islam rules human rights, nor its development in actual Middle East (Arab) that are commonly followed by most Muslims in the world. Therefore, it can be said that Mayer only examines respond of Muslim in this modern era with the sample of Iran who follows Shii tradition and Pakistan who are Sunni. This may provoke other scholars to contribute in writing more comprehensive views, although what Mayer did is already outstanding.