

Beyond the Veil: A Critical Analysis of Sharia Law in Saudi Arabia and Indonesia

Marie-Alix Depuydt, McGill University

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ABSTRACT

This article critically analyzes the Cairo Declaration of Human Rights in Islam (CDHRI) and its relationship with the widely recognized Universal Declaration of Human Rights (UDHR), which guarantees and protects human rights for all regardless of gender, social and economic situations. Adopted by 45 Islamic states in 1990, the CDHRI is often portrayed as complementing the UDHR but is rooted in Sharia Law, leading to tensions between universal and cultural relativist perspectives on human rights. By using Saudi Arabia and Indonesia as case studies to illustrate the various manners the Sharia Law is implemented, this paper illustrates how the law in these countries amplifies social, physical, and structural violence specifically against gender and religious minorities, namely Shia. This highlights the immense disparities between international human rights norms and state-centric patriarchal norms. Additionally, by analyzing the legal frameworks of these states, specifically the Aceh region in Indonesia and Saudi Arabia as a whole, this article emphasizes the complex interplay between universalistic ideals and cultural relativism, emphasizing the need for a nuanced understanding of human rights in diverse cultural contexts.

The Cairo Declaration of Human Rights in Islam (CDHRI), often disregarded, stands as a critical human rights document, alongside the more well-known Universal Declaration of Human Rights (UDHR) formed in 1949, among citizens of the world. Adopted in 1990 by the 45 Islamic states, it has been advertised as a “complement to the UDHR,” yet it essentially undermines its universal feature since its foundation is rooted in Sharia Law (Akkad 2012). The belief in such a broader legal system “refers to the perfect, immutable values understood only by God,” which many outsiders simplify to understand “as a rigid legal system that can’t evolve to reflect modern, Western values” (Robinson 2021). Associated with the legal frameworks predominantly found in Islamic countries, Sharia Law is a construct derived from the interpretation of “the Quran which is considered the direct word of God, and the hadith” (Robinson 2021). Despite their common elucidation of these religious texts, the interpretation of Sharia Law differs between the two largest Muslim sects – Sunni and Shia – and their subsequent legal schools of thought. Namely, there are variations in Sharia Law between the Shia’s predominant legal school of thought called Ja’fari, and the Sunni’s four jurisprudences which include the Hanbali legal framework commonly used in Saudi Arabia (Yakar 2020, 227). The implementation of Sharia law in specific Sunni states, contributing to social, physical, and structural violence against both gender and religious minorities, has amplified the legal bias. This highlights the disparity between international human rights norms, which aim to promote egalitarian values and regional human

rights on the one hand, and state-centric and patriarchal norms on the other hand.

Saudi Arabia’s Hanbali legal system strictly abides by Sharia law, which has raised international apprehensions for the maintenance of human rights – especially following “concerns about Saudi links to the 9/11 attacks” (Taylor 2015). Indonesia, a country less well-known for its stern implementation of the law despite having the world’s largest Muslim population, operates as a dual system: although it is a secular state, it allows for the strict application of Sharia law in the Aceh region. Thus, the following analysis will shed light on the abuses that stem from the implementation of the Sharia Law, especially its impacts on socially marginalized individuals, considering religious dimensions. This paper will also emphasize and reveal the normalization of exclusion and violence in the legal frameworks of both regions. This continuous cycle of violence, encompassing physical and social forms, as discussed by scholar Faison, has perpetuated the devaluation and state-enforced discipline imposed on religious minorities (Faison 2007).

Firstly, critical elements differentiating internationally recognized human rights laws and Sharia laws, as implemented in Saudi Arabia and Indonesia, will be discussed. Then, Saudi Arabia’s historical and modern implementations of the Hanbali interpretation of the law, its scope, and its impact on the human rights of minorities will be discussed. Following on, Indonesia’s dualistic legal system will bring a compelling basis for analysis and comparison to Saudi’s legal framework.

International Norms versus Sharia Law

International human rights laws, like the UDHR, are universal and applicable to all regardless of gender, race, and religion. The UDHR specifically “recognizes the inherent dignity [...] and] equal and inalienable rights of all” humans (Akkad 2012). Although international law is often seen to have “been shaped by Western legal doctrine,” the UDHR is a fully embracing and non-legally binding document (Powell 2019, 88). However, the “lack of clear framework and a set of [specific] guidelines can be problematic,” particularly when having to hold states or regions accountable for non-adherence, as exemplified in Aceh, despite Indonesia being a signatory to the UDHR (Bloomfield 2016, 29). Western states also see the UDHR, and other international laws, “as providing a legitimate, value-neutral and benevolent framework,” one which Sharia law cannot provide (Powell 2019). Yet, due to its “universalistic pretensions,” the UDHR brings challenges between “national law and international standards, particularly in non-western countries” (Yasar 2022). The failure to consider the “cultural and religious context of non-Western countries” can explain why Saudi Arabia did not adopt and sign the soft law (Akkad 2012). The term ‘soft law’ indicates that the clauses within the legislation are non-binding to signatory states, serving solely as a national objective for states to achieve, with no external obligation to do so. Furthermore, at the UN General Assembly, the Iranian representative has noted that the UDHR solely “represented a secular understanding of the Judeo-Christian tradition, [thus] could not be implemented by

Muslims, and did not accord with the system of values recognized by the Islamic Republic of Iran,” leaving no choice but for the violation of the international accord (Littman 1999). Therefore, Iran, which is of Ja’fari tradition, concluded that both laws – the UDHR and Sharia Law – were incompatible. Scholars have coalesced around this perspective, demonstrating that both clash on “basic rights – freedom of speech, freedom of religion, gender equality, minority rights” – rights recognized and protected by international conventions and not by Sharia law according to some (Russo 2019).

Scholar Huntington formulates this idea through the ‘Clash of Civilizations’: adopting a cultural relativist approach to human rights. Cultural relativism is when “culture is the principal source of the validity of moral rights or rule” (Donnelly 1984, 400). This concept legitimizes Islamic states’ sentiments that the UDHR clauses are “product[s] of the Western political history” (Russo 2019), reflecting attempts by Westerners to extend their values globally, resembling a modern “cultural imperialism” (Mayer 1994, 383). According to Huntington, “the promotion of the universality of human rights by the West is counterproductive,” as it only encourages greater “civilizational clashes and backlash movements in non-Western cultures” (Mayer 1994, 310). Other scholars, like Winter, argue that to Muslims, “the West is biased against Islam” as they resent their “rhetorical endorsement of universality” (Mayer 1994, 313).

Compared to the universal approach in international law, the Sharia law “is [...] the ‘path to be followed’, the ‘law to be obeyed by ev-

ery Muslim” (Russo 2019). Similarly to what can be perceived about the UDHR, Sharia law makes use of a cultural relativist approach: its specification of being ‘Muslim’ foreshadows its long-lasting adverse effects on socially marginalized individuals. The “culturally biased interpretations of the...Sharia law” (Mansour 2014, 8), based on the Quran, “classifies...people as believers or unbelievers...[designating] the latter...[as] ‘unprotected persons’ under...Islamic government” (Khan 2006, 795). Thus, despite all laws prevailing “universally in theory,” they do not always do so “in practice” (Henry 2013, 365). For the many Muslim-majority states that have ratified international-leveled conventions, they have indicated priority for the Sharia law, rejecting “those parts of the Convention” (Russo 2019) contrasting with Islamic law. The prioritization of cultural relativism in Saudi Arabia and Indonesia is reflected in the acceptance and integration of social, structural, and physical violence, revealing a substantial legal bias present in comparison to international human rights standards and norms.

Saudi Arabia

In Saudi Arabia, the Sharia law that is applied arises from “one of the strictest interpretations of Islamic law in the modern age” basing it off “the Hanbali school, Islam’s most conservative and focused on the select text” (Robinson 2021). Their interpretation is the most literal of all and is known as Wahhabism, which “insists that every Muslim must promote Islam” (Brown 2021) and spread its correct practice. To Saudi Sunni Muslims, the Sharia law “sets the standards of rightness or wrongness in hu-

man affairs and provides an all-inclusive scale of religious valuation for conduct” (Souryal 1987, 431). Thus, Sharia Law’s application, which conflicts with internationally recognized principles, leads to severe restrictions for minorities. Specifically for religious minorities like Christians and Shias as well as gender minorities including women and members of the LGBTQ+ community, their human rights are “considered to be (some) of the poorest in the Arab region, especially when it comes to legalized discrimination” (Mansour 2014, 14).

Discrimination refers to a situation where “certain individuals or groups do not enjoy the same rights or privileges as” members of other groups (Irawan 2021, 90). Gendered discrimination segregates women entirely from men: the former are excluded “from the workplace, penned in special ‘family sections’ in restaurants, taught in separate schools and colleges, and forbidden to drive,” stripping them from “a full legal personality” (Mansour 2014). However, as per the Quran, “women have rights similar to those of men equitably” (Quran, 2:228), thus critics of Saudi Arabia’s rule point out that leaving women behind – unable to make a life for themselves – furthers the normalization of exclusion and inequality (Robinson 2021). This normalization is evident when violence has become tolerated socially and legally, as it “is viewed as ‘disciplining’ disobedient women” (Mansour 2014, 17). Punishments are “severe and include, for example, death for apostasy, [and used to include] eighty lashes for public intoxication, [and still includes] hand amputation for *prima facie* theft” (Souryal 1987, 433). Flogging, which “tended to be done with a

wooden cane,” was banned as a punishment, yet it was replaced by further punishment, including “jail time and fines” (Hubbard 2020). Despite the Western critique of these punishments, the justification behind the implementation of corporal retributions is that it ensures “the continuity of a spiritual community” (Souryal 1987, 433). Survey polls have been conducted and show that “33.6%” expressed a desire to valiantly defend the existing system,” while only 23.4% were “in favor of radical change” (Tausch 2021, 364), thus illustrating the general public in Saudi Arabia may not necessarily agree with the Western human rights approach.

Whilst Muslim Sunnis dominate the country, Shiites account for 15% of the population and therefore must tolerate the policies formulated by and for Sunnis, hindering their cultural beliefs and systems. Freedom of religion is severely restricted, with minorities constantly facing government threats and “discrimination based on their faith” (Taylor 2015), resulting in them being afforded fewer human rights than their Sunni Muslim counterparts. In 2014, a decree made atheism punishable for “up to 20 years in prison,” declared non-Islamic religions unacceptable, and restricted Shia religious practices (Freedom House 2023). The Shias specifically are seen and treated “as second-class citizens,” impeding the UDHR article on “equality in religion” (Caruso 2021). Since 2014, the government has constantly discriminated against minorities “including in public education, the justice system, and employment” (Russo 2019). Whilst theoretically permitted to worship in private, religious minorities are fre-

quently disrespected by authorities who disproportionately propagate hate speeches and back “staunchly anti-Shiite beliefs and propaganda” (Human Rights Watch 2008). The “increasingly adopted paternalistic” approach by authorities, directed towards religious minorities, insinuates the extensive control exerted by the state over its citizens (Faison 2007, 14).

The discrimination endorsed by the executive is worsened by judges and courts who do not follow the premise of equality before the law, nor respect judicial impartiality. In the West, judges “while exercising judicial duties (...) engage in unbiased application of law to specific cases,” however in Saudi Arabia, “religion finds expression in some courtrooms” (Powell 2019). Judges must “be devout adherents to the Muslim faith, [and] respect religious values” (Powell 2019), further illustrating the bias present throughout society against religious minorities. The government claims that accepting other religions contradicts their beliefs, as it “threaten[s] the tradition[al] family structure, gender roles, and values” reflected in the Sharia law stemming from Quranic interpretation (Russo 2019). This illustrates the inherent legal discrepancies between interpretations of international human rights and Sharia law, resulting in the societal acceptance of violence based on religion and gender.

Indonesia

With 86% of its population being Muslims, Indonesia operates by balancing “secular and religious elements (...) with dialectical dialogue and conservation” (Hasyim 2020, 111). Unlike Saudi Arabia, its political and legal

systems are neither “theocratic nor secular,” a fact that has made the “State’s discourses... uneasily separated from both identity makers” (Hasyim 2020, 125). The secular aspect of the state is represented by “the administration of state politics,” whereas the religious aspect “is represented by the Constitution of Indonesia” (Hasyim 2020, 125). This balance of forces allows for ambiguity and different interpretations of either side to occur, which may create imbalances in the state’s nature. Whilst it is “unable to stop several attempts of Shariatization promoted by” some Muslim communities (Hasyim 2020, 125), it also, as a non-secular state, allows for the separation of religion and politics. For instance, in Indonesia, Islam, as a religion, “functions rather as a political ornament than as a substantial content of the State” (Hasyim 2020, 112). This enables Indonesia to incorporate religious liberty, despite only recognizing six faiths, as stated in the Constitution. Consequently, “members of religious minorities and atheists have been increasingly subjected to discrimination” (Arman 2022). Christians, the largest minority, and non-Muslim minorities are both “vulnerable to discriminatory laws and official indifference to worsening intolerance by militant Islamists” (Harsono 2017).

In Indonesia, the region of Aceh specifically “is one of Indonesia’s most religiously conservative areas, and is the only part of the archipelago to impose penalties on its residents under Islamic law” (Llewellyn 2019). Since 1999, the region has been allowed to implement the Sharia law as they deem suitable, leading to its strict application. These harsh requirements include women “dress[ing] mod-

estly, alcohol (being) prohibited, and numerous offenses – from adultery to homosexuality to selling alcohol – (being) punishable by public whipping” (Emont 2017). These punishments show a patriarchal society, one dictating what citizens can and cannot do, as found by Faison. This has been locally justified “by the popular attitude that women who don’t obey the rules imposed by men get what they deserve” (Padden 2011). Moreover, Aceh’s interpretation of Sharia law conflicts with Indonesia’s modern “idea of the nation-state” (Salim 2008) and goes against all ideas of international human rights norms. Yet, as a signatory country of the UDHR, Indonesian national law should have prevailing authority over sub-national law, especially ones characterized by heavily customary law bias and social exclusion. As Sharia law has inhibited Aceh, “a creeping Islamic fundamentalism” has gained a foothold, only bringing “strife-torn trouble, and negative publicity” to the region (Kurniawati 2010). Now, Sharia law police, who often abuse their power, “roam the province, raiding everything from hotel rooms to beaches in a hunt for immoral activity” (Emont 2017), whilst the rest of the country has moved towards a more conservative and Western-like system. The usage of Sharia law in Aceh has been noted to “not follow Indonesian national law due to its implementation” of “cruel, inhuman, and degrading” punishments (Nagara 2022, 167). This site of violence and exclusion also “violates international law prohibiting torture and other cruel, inhuman or degrading treatment set out in the International Covenant on Civil and Political Rights” (Llewellyn 2019). The original aim of

Sharia law to “create a collective voice for the Muslim world, with the purpose of safeguarding and protecting the[ir] interests” (Hellmann 2016) underscores that the normalization of social and physical violence as punishment in many of these nations is a result of national or sub-national decisions, rather than being inherent to the adoption of Sharia law.

Unlike in Saudi Arabia, where a single judicial system exists, a dual judicial system operates nationally. Concretely, this means that “an Islamic court system runs parallel to its system of civil courts,” clearly dividing Muslims and ‘others’ (Bown 2010, 1756). As the Islamic courts only hear cases brought by Muslim citizens, “distinct rights [are granted] to its citizens depending on their declared religious confession” (Bown 2010, 249). This insinuates that non-Muslim minorities are faced with deeply integrated legal bias and discrimination daily, an impact likely perpetuating the social marginalization of individuals. The judicial segmentation suggests “that with respect to family law people could be easily separated into two distinct and sealed communities” (Bown 2010, 249), making individuals prioritize their religious identity over national citizenship. Moreover, individuals must select one of the six mainstream religions or else they “are at risk of being labeled ‘godless’ by some clerics and officials” (Arman 2022), facing accusations of blasphemy which is a crime that faces “up to five years in prison” (Harnoso 2022). This pressure forces a religious identity even on those who do not hold such beliefs, demonstrating the paternalistic state approach taken on by Aceh. This importance of religion extends as

far as the educational system, mandating state schools to enforce the “study [of] the religion... [students] have declared” from the six available religions (Harnoso 2022).

Conclusion

To conclude, this paper sheds light on the concealed dimensions of power and exclusion, specifically of religious minorities and women. These perpetuated law biases ingrained within Sharia law states such as Saudi Arabia and Aceh in Indonesia can demonstrate that despite agreeing to the fundamentals of international laws, cultural relativism can be a stronger force in creating and upholding certain human rights. Universalism, shown through the UDHR, can be seen as the forced application of ‘Western-centric’ values and belief systems. However, within this framework of human rights legislation, there is a commitment to ensuring universal and impartial access to all rights, notwithstanding social and economic situations. Thus, although the Sharia law allows states to replace Western perspectives and bias with their own cultural interpretations, this often overlooks and disregards the universal rights of all individuals, thereby causing harm to minorities. The examples of normalized violence showcased in this paper therefore exhibit the uncontested power of the law and its enduring effects on marginalized communities.

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