INTRODUCTION

Developing an approach to a religious interpretation that can integrate legal traditions with universal human rights principles is a priority for the international community. This research undertakes a comparative study of the legislation and legal practices of Muslim states, in order to discern ways that the official application of specific areas of Muslim legal traditions may relate to the particular norms articulated in the Universal Declaration of Human Rights (UDHR),¹ and in subsequent human rights instruments.

Islam, with an age of fourteen centuries, and with more than one billion followers throughout the world, is, like all of the great religions, a diverse body of essential principles, moral values and worship, with spiritual, agnostic, ethical, theological and philosophical aspects running parallel to human elements, including history, civilization, culture, politics, law and related customs and traditions of different communities. Among the many different components of Islam, this study addresses only some specific parts of Muslim legal traditions relating to the three specific areas of apostasy (irtidad), protection of religious minorities (Dhimmah), and rights of the child.

Many theoretical visions of Islam and human rights presume both sides are rigid and fixed entities. This study, by contrast, provides a practical perspective on the flexibility of both, wherein Muslim legal traditions have been subject to different practices and modifications, while on the other side, “perspectives on human rights likewise change over times”².

This approach is more readily subject to localization of universal human rights principles within Muslim communities. It explores the elements presented historically in religious principles and traditions for the enrichment of human rights standards; as Lindholm states: “When the two normative systems,

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traditional Shariah and internationally codified human rights, do address the same subject matters we find significant areas of agreement.”

For the purpose of this study, Muslim legal traditions are divided into two categories. One category deals with personal law issues, including such matters as marriage, inheritance and custody of children. The other concerns public law issues, notably freedom of religion and expression, and penal law. This distinction is in line with the historical varying level of application of personal and public aspects of religious legal traditions by Muslims, or as Schacht states: “In terms of subject matter the hold of Shariah was and is strongest in the area of personal status (marriage, divorce, maintenance, matters of minors such as custody and guardianship, and inheritance), and weakest or non-existent in areas such as penal law, taxation, and constitutional law.”

Bielfeldt has a similar view:

While traditional Shariah norms continue to mark family structures all over the Islamic world, the Shariah criminal law is applied only in a few Islamic countries today…. The emphasis of the Shariah has always been much more on family matters than on criminal law. The portrayal of the Shariah as primarily consisting of a set of cruel punishments, as it is sometimes presented in Western media, therefore, is at least one-sided.

Consistent with the historical trend of abandonment of public Muslim legal traditions, the study argues that this category of traditions, in comparison with personal Muslim legal traditions, is more capable of being ignored in practice when facing conflicting modern human rights standards.

This study is devoted to an analysis of the three above mentioned areas of Muslim legal traditions, i.e. irtidad, Dhimmah, and rights of the child, which will be studied separately in three parts of the book, A, B and C. In each part the relevant personal and public rules of Muslim legal traditions along with their connected human rights issues will be introduced first. Then the effects of religious legal traditions on legislation and legal practices of states in each

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