Universality Reconsidered: Cultural Relativism, Treaty Reservations, and International Human Rights

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Abstract

The universality of international human rights is one of the most contested foundations of contemporary international law, particularly when confronted with claims of cultural relativism rooted in religion, tradition, and cultural values. Although international human rights law seeks to establish minimum standards applicable to all human beings, its authority is frequently challenged by arguments that moral values and legal obligations are culturally contingent. This tension is especially visible in debates involving non-Western and Islamic legal traditions, where human rights are often portrayed as externally imposed norms reflecting Western dominance rather than genuinely universal principles.

The central problem addressed in this article is the perception of international human rights as a Western construct incompatible with non-Western cultures, and the consequent reliance on cultural and religious relativism to justify resistance, selective compliance, or extensive reservations to human rights treaties. This perception is reinforced by historical misrepresentations that obscure the plural origins of human rights norms and by the structural flexibility of the human rights system itself, which permits limitations, contextual interpretation, and reservations. In practice, such flexibility has enabled states, particularly those invoking religious and cultural justifications, to dilute treaty obligations through broad and often object-defeating reservations, thereby undermining universality of human rights.

This article argues that the tension between universality and cultural relativism is neither inevitable nor irreconcilable. Through an examination of the historical development of international human rights, the adaptable nature of human rights standards, and comparative state practice in Shariah-influenced legal systems, it demonstrates that reconciliation is possible without sacrificing core principles. Drawing on experiences from Egypt, Tunisia, and Morocco, the article highlights internal legal tools such as the principle of conduciveness, takhayyur,

and purposive interpretation of religious norms as mechanisms for narrowing or withdrawing reservations, preserving universality through principled engagement with cultural diversity.

Keywords: universality, cultural relativism, reservations, western construct, CEDAW

Introduction

It cannot be underestimated that culture contributes greatly to the formation of an individual's worldview, because culture gives both the individual and the society the values and objectives to be pursued and the legitimate means and methods of doing so. Cultural relativism according to Hatch is the judgment of the right or wrong via application of certain principles and standards of a specific culture. Human judgement of right and wrong is always based on experience and experience is construed by every individual in terms of his/her own enculturation. The concept of right or wrong may vary from one culture to another, as these are relative concepts.[1] Thus, there is no universal value for morality as the history of the world is always the plurality of the cultures. The content and the philosophy of human rights is not the same in all the cultures of the world, different cultures treat equality and human rights differently.

Further, the notion of cultural relativism denotes the recognition of the diversity of different cultures and people. The attempts of assertion of universality of one culture as criterion for morality will amount to the attempt of assertion of one culture imperialism.[2] When the notion of cultural relativism is faced with the concept of the universality of human rights standards, the two pose strong opposition to each other. Form above discussion, we can deduce the following four important suppositions relating to human rights from the cultural relativist perspective:

- Human rights relate to moral conditions;
- moral conditions are determined by the cultural commitments; thus
- these commitments differ from culture to culture; consequently,
- the interpretation of the human rights standards will also differ from culture to culture.[3]

I.The misconception of Human Rights as a western construct

Generally, it is perceived that the concept of contemporary human rights came from western world. This assumption is however not entirely true. History is evident that the concept of human rights (the principle of non-discrimination specifically) as binding international rule was first proposed in 20th century by Japan, an Asian country, to be added to article 21 of the Covenant of League of Nations. The text of the proposed amendment was as following:

The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible,

to all alien nationals as states members of the League, equal and just treatment in every respect, making no distinction, either in law or in fact, of account of their race and nationality.'[4]

The proposed amendment was motivated by Japan's frustration due to the domination, humiliation, and discrimination of western states within their colonies and specially within the neighbourhood of Japan. The concepts of equality, non-discrimination proposed by Japan was fervently contested and opposed by today's human rights champion states, Britain, United States, Australia, Greece and Poland. This proposal of non-discrimination further from mere declaration to practical realization was unacceptable for the West. The reaction of British Foreign Secretary, Lord Balfour, was evident of west's attitude towards the concept of human rights:

The notion that all men were created equal was an interesting one, he found, but he did not believe it. You could scarcely say that a man in Central Africa was equal to a European.[5]

Same were the attitudes of Australian and New Zealand's representatives. In the face of such opposition, a refined version of the clause was proposed by Japan, which met with the same opposition and could not succeed to be adopted.[6]

It cannot be denied that western thinkers, Jean-Jacques Rousseau, John Stuart Mills played a decisive role in the promotion of human rights ideology, however, the Western states have not always been overly receptive to the human rights as legally binding on states as it is in contravention to the sovereignty of the states. Human rights as legally binding on states requires the limitation of states' sovereignty and requires the states to give up their absolute sovereignty which evolved in the 15th century. The tradition of absolute sovereignty was introduced and exported to the rest of the world within the process of Colonization and Marxism. Absolute sovereignty does not accept any limitations imposed by various sets of moral and human rights systems. This concern for the state sovereignty was evident within the comments of British delegate to the League of Nations, Lord Robert Cecil:

> "[It would mean] encroaching upon the sovereignty of states members of the League... [opening] the door to serious controversy and to interference in the domestic affairs of states..."[7]

The refusal of the Japanese proposal by the western countries demonstrates the attitude of the west towards international human rights after the first world war, as it contravenes the most important concept developed by the west, state sovereignty. The binding status of human rights lands above states' sovereignty thus unacceptable to a number of western states. The western idea of sovereignty at that time was felt at risk from outsider moral imperatives. This attitude still exists in some western states. For example, the reluctance of the United States to the creation of the Permanent International Criminal Court. According to the United States, this

development will cut down on its sovereignty, by bringing American citizens under the jurisdiction of foreign legal forums.

It was after the Second World War that the human rights international standards got momentum against state sovereignty, when most states, including the European ones, found common moral grounds in the shape of international human rights. The international community at this juncture realized that one major reason for the WW II was blatant contempt and violations of international human rights standards, therefore, human rights standards should be part of the international legal system to prevent such atrocities in future. It was realized and started to believe that sovereignty must not come at odds with human rights and that states must not have absolute sovereignty to treat their population the way they want. For that, actions at the international scene were required by the international community and an international code of conduct was required which could ensure minimal guarantees of human rights for every human being.

The Universal Declaration of Human Rights 1948 was thus the first international inspirational document. In total, 58 states participated in the creation and adoption of the Universal Declaration. Apart from the European world, out of those 58 states, 20 states were Latin American, 4 states were African, and 14 of the participating states were Asian. This signifies the worldwide input to the creation and adoption of the first human rights inspirational document, which paved the way for future legally binding international treaty regimes. The principle of non-discrimination and equality which to many is a western construct was included within the Declaration on the advocacy and efforts of socialist and non-western countries, including Asian states and specially China. Alongside equality, the rights related to economic and social spheres were added to the declaration following the efforts of socialist and non-western states. Western states were mainly interested and concerned about the civil and political tights with individualistic conception. It was the hostility and pressure from socialist state which ensured the economic, social, and cultural rights making its way to be part of the Universal Declaration. The Universal Declaration is thus a child born of confrontations and compromises between varying cultural, moral practices and traditions from around the world.

Such rights, if not alien, were the least priority to the western states.[8] The Declaration contains a number of shortcomings and loopholes which is not due to the unwillingness of Asian or Islamic states, but rather due the constant confrontation of the western states. This attitude of the West was evident with respect to the right to self-determination, and rights related to various aspects of minorities. More importantly, the Universal Declaration aspiratory in nature instead of binding international legal document was due to the stern resistance from the West as well. Therefore, associating human rights to the cultural superiority of the west is based on misunderstanding. It is considered that the western countries will have fewer human rights

problems in comparison to non-western, and that the opposition to the international human rights system must come from non-western countries.[9]

II. The inherent flexibility of human rights standards

In Asian and Muslim states, the challenge to the relation of states with international human rights system is based on the cultural relativism instead of universality of human rights. If the Human Rights standards aims at retaining and maintain universal status, then the understanding that human rights standards vary from culture to culture needs to be revisited. Because for the universal recognition, the human rights standards must maintain its uniform posture. The international human rights standards therefore shall stand and operate independent of local cultures and traditions.

The human rights system itself, however, gives heed to states' understanding of human rights based on culture and society and do not altogether reject the factor of cultural relativism. Human rights' core principle of non-discrimination can be taken as an example here. The principle of non-discrimination is required to remain the same all over the world. There can be no major changes within the core ingredients of this principles from one to another state. Discrimination perpetrated against a person in Islamic states cannot be justified on the ground of traditions that are centuries old and revered greatly. In the same fashion, torture cannot be justified under the guise of tradition or culture in any state. However, not all kinds of differential treatments would amount to discrimination.[10]

While deciding if a situation qualify as discrimination or not, all the relevant and prevailing factors and circumstances must be considered, these factors can be economic, social, religious and cultural. The most important factor which is ignored most of the time is that international law does not obligate for a completely similar outcome and impact within conditions, cultures and economies that are different from others. Obligating the state for similar impacts and outcomes as exists within Europe, which is mostly expected or demanded, amounts to shaping the international human rights legal system in compliance to western standards instead of universal. In varying cultures and traditions, the application of principle of non-discrimination, while keeping in view the factors of public morality, health and order, will come up with different outcomes.

It should be considered, moreover, that not all human rights are absolute. Limitations can be placed on some of the human rights on the basis of particular needs of the states, such as public security, health and morals, whereas the religious and cultural factors in some cases can be considered.

III. Reservations at the face of cultural relativism: fitting escape from human rights obligations

Permissibility of reservations to human rights treaties

The success of an international treaty regime can be measured by the level or participation to that international treaty regime. In this framework,

reservations may facilitate the widespread and universal participation within international human rights treaty regimes, providing states with the opportunity to become a party of a specific treaty even if they do not accept all the provisions included therein.

Article 19 of Vienna Convention on the Law of Treaties (VCLT) provides that a State may, when signing, ratifying, accepting, approving, or acceding to a treaty, formulate a reservation unless:

a) the reservation is prohibited by the treaty;
b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.[11]

Article 20 (2) VCLT provides further conditionality for the admissibility of the reservation by adding that the existing state parties to the treaty regime in question must accept such reservation:

When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

Whereas para 3 and 4 of the same article provide for the following:

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those states;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a state's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.[12]

Article 28 of CEDAW provides for the possibility of reservations to the Convention. However, it maintains that the reservation must not be against the very purpose and object of the convention. In the case concerning the Genocide Convention, ICJ held that the reservation to the international law treaty must not undermine the very object and purpose of the treaty in question for the purpose of preserving the integrity of the treaty.[13] The reservation compatibility rule determines the permissibility of the

reservation to the Convention. The reservation thus, must be compatible to the object and purpose of the treaty.

The CEDAW Committee urges the state parties to gradually discourage, prohibit and eliminate the discrimination against women that persist on any ground, such as religion and culture through appropriate measures required. Subsequently such measures will lead to the state party's ability and willingness to withdraw their reservation to the CEDAW. With respect to article 16 of CEDAW, the Committee specifically maintains that:

Neither traditional, religious, or cultural practice nor incompatible domestic laws and policies can justify violations of the CEDAW. The Committee also remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the CEDAW and therefore impermissible and should be reviewed and modified or withdrawn.[14]

IV. Islamic reservations and the Shariah legal system

Islam is the most widespread official state religion of the world.[15] According to Yadh Ben Achour, there exist fault lines between international human rights treaty regimes and the domestic legislations of Islamic countries. These fault lines result in reservations to international human rights treaty regimes. The Special Rapporteur on Freedom of Religion and Belief, while tackling the complexities of state and religion maintains that "there is no consensus as to either how the relationships between state and religion should be classified, or on the terminology for characterizing their nature".[16] Muslim states can be divided into four categories: the 'States of Religion', 'Islamic Republics', 'State Religion States' and 'Secular Systems.'

The states which consider Shariah law as the law of the land can be termed as "States of Religion." For instance, Saudi Arabia and Iran possess systems that recognise the full implementation of Islamic Shariah legal system. These states consider the Quran and Sunnah as its constitution and disregards any other form of law.

'Islamic republics' espouses republican form of governance including elections, democratic institutions such as legislature, executive and judiciary. Islamic republics declare themselves "Islamic" within their constitutions. For instance, the constitutions of Pakistan, Afghanistan and Mauritania declare their names as Islamic republics. At the face of Islamic foundations and nature, these states have little to do with republican form of governance despite claiming to be.

Pakistan can be placed within the category of Islamic republic as article 2 of the constitution 1973's Pakistani constitution declares Islam as the state religion. "The Objective Resolution" which was passed and adopted on March 12, 1949, forms an integral part of the constitution. Objective resolution contains a number of principles based on Islamic law. It provides

for divine sovereignty over the entire universe which has been delegated to humans by God as his chosen representatives elected by people. It provides for the implementation of principles of democracy, equality, freedom, tolerance and social justice in accordance with the spirit of Shariah. It further provides that the Muslims of Pakistan shall be enabled to organize their individual as well as collective life "in accordance with eh teachings of Qur'an and the Sunnah". In the light of these objective principles, Pakistan has adopted domestic legislation relating to evidence, family law, and criminal legislation that firmly adhere to the Shariah legal system.

The states which declare Islam as the state religion can be classified as 'state religion' states. These countries include Algeria, Bangladesh, Jordan, and Egypt. Due to the ambiguous and general nature, the concept of state religion is prone to numerous interpretations. Consequently, the impact of 'state religion' varies from country to country. Some Muslim majority state due to number of reasons declare themselves "secular" states through their constitutions. These are Turkey, Azerbaijan, Turkmenistan, Kazakhstan, and Kyrgyzstan.

This classification on the basis of how the constitution of the state treats religion should be considered with great amount of care. The 'Islamity' of a state cannot be evaluated only by taking into account the constitutional structure and provisions of the constitution only. For instance, Turkey may constitutionally proclaim itself a secular state, however, for the last couple decades Turkish state's re-bent towards religion is enormous if not unprecedented.

International human rights law is overwhelmed with reservations by the state parties, CEDAW is no exception to this behavior and practice despite the fact that CEDAW can be claimed to be the International Bill of Women Rights. Out of all the international human rights instruments CEDAW possesses the highest number of reservations and declarations. Mostly based on religious and cultural incompatibilities, states have used arguments for the preservation of religious and cultural norms to justify their reservations to particular articles of CEDAW upon ratification. This highest number of reservations and declarations demonstrate the level of state parties' commitment and seriousness for abiding by the international human rights law obligations. In this respect, marriage and divorce are issues at the very heart of controversy between contemporary international human rights standards and domestic laws based on religion and cultural practices.

The commonest form of reservation is that made by Islamic states to exclude the application in their respect of a particular article of the CEDAW unless it conforms to the requirements of Islamic law. Some Islamic states have entered reservations against Articles 2 and 16 of the CEDAW, which is its most important and substantial clauses, dealing with recognition of the equality of men and women and the outlawing of discrimination against

women including the taking of measures to 'modify or abolish' customs and practices that discriminate against women.[17]

Though the possibility of reservations to international human rights law treaty regimes facilitated the participation to the international human rights regimes at the face of cultural relativism, it proved to be a huge challenge to achieve the universality of international human rights standards. Such reservations according to CEDAW Committee can have double effects on the rights of women. With the placement of reservation, the state implies that she is not willing to that specific norm of international human rights and that the human rights violation existing within national laws policies and practices will remain entrenched. The promise made within the convention is thus undermined at the very outset.[18]

In fact, the fatality of the damage caused by reservations is such serious that reservations can be termed as the negation of the universality of international human rights standards. The reservations to the international human rights treaties can be based on financial, political, social, cultural, and religious factors. The reservations based on religious, social and cultural values are more prevailing, more rigid, as well as more opposed and more controversial within the international community. Capacity, political will, security, welfare of people; religious and cultural systems are the determinative factors of the supremacy of either the national or international human rights laws over the other.

From the perspective of place and authority of Shariah moral conditions within politics, within the Islamic states, the Islamic imperative plays a very important role. The state parties, alongside being parties to the international human rights treaty regimes, also want to protect the place of religion as an element of national interest. Invoking the Islamic religious law against the international human rights standards poses serious implications to the claim of the universality of human rights standards.[19] These reservations often are very general in nature, loosely formulated and mostly there is no specification of the provisions of the human rights treaties that has been subjected to the reservation by the Shariah legal system prevailing states at the time of ratification. The structural and philosophical reasons that lead to the placement of reservation by the Shariah law prevailing state parties to the international human rights law regimes are the following:

The first reason has to do with the equal application of the international human rights laws to both the public and private aspects of national laws. International human rights law requires that there must be separation between public and private aspects of laws and that the international human rights law shall be applied and observed equally within both the private and public spheres of the legal systems. Public domains are the constitutional orders and criminal justice systems. While the private spheres of the legal system are the laws that regulate and govern the religious and personal aspects of human life. However, with respect to the uniform

application of the international human rights laws within Shariah law prevailing systems, the challenge is that there exists no clear distinction between the private and public legal spheres. At the face of such non-distinction between the private and public legal spheres, the application of the international human rights law is very challenging to the private spheres in comparison to public spheres, because especially within the personal status spheres, the Shariah legal system prevailing states follow the immutable and unchangeable Shariah laws.

Shariah law is derived from four principal sources namely the Quran, Sunnah, Qiyas, and Ijma, with the latter two collectively forming Ijtihad (juristic reasoning). The Quran and Sunnah are regarded as divine sources, the former being the word of God and the latter the sayings and practices of the Prophet Muhammad. Although the Quran contains over 6,000 verses, only a limited number deal with legal injunctions, primarily focusing on inheritance, succession, and family law. Islamic law aimed to reform pre-Islamic Arabian practices, particularly by regulating marriage and inheritance. For example, while polygamy is conditionally permitted, Quranic principles emphasizing justice between spouses suggest a strong discouragement of the practice. [20]

Similarly, Shariah introduced progressive inheritance rules by granting women legally defined shares, a significant departure from pre-Islamic norms.

Beyond the divine sources, Shariah historically relied on human reasoning to address new social challenges. Qiyas (analogy) allows jurists to extend Quranic and Sunnah principles to new situations, while Ijma represents the consensus of jurists on specific legal questions and is traditionally viewed as infallible. This dynamic process of Ijtihad enabled adaptability during early Islamic history but is widely considered closed in contemporary practice, giving way to Taqleed (adherence to established interpretations), which has limited legal development.

Very relevant to our discussion are the schools of thought within Shariah legal system. The main schools within the Shariah law are four. Maliki, Hanafi, Hanbali and Sha'afi treats different legal matters differently. For instance, in comparison to the Hanafi law (which is practiced in Pakistan), Hanbali school of Shariah system (which is practiced in Tunisia and Egypt) is more pro-women in the matters relating to marriage as it provides more rights and freedoms to the women within the matters of marriage. Similarly, the Maliki School in comparison to Hanafi school of thought provides for more liberties and rights to women within legal matters relating to divorce. Here, it is important to keep in mind that, within the Islamic legal system it is also permissible to switch between the schools relating to legal matters.

International human rights law recommends the state parties to take into consideration the experience of withdrawal of the reservation of the

other state parties from similar legal setup, and that they shall benefit from their experience. As the CEDAW's committee maintains that the state parties in the process of reservations withdrawal, should take "into consideration the experiences of countries with similar religious backgrounds and legal systems that have successfully accommodated domestic legislation to commitments emanating from international legally binding instruments, with a view to" withdrawing reservations.[21] For the purpose of our current study, we may take into consideration the examples of the Shariah legal system following/prevailing countries that are state parties to the international human rights treaty regimes.

a) The participation of Egypt to CEDAW:

Within the community of the Shariah law prevailing states, Egypt is one of the prominent and leading states. Egypt firstly ratified CEDAW in 1980 and presently, Egypt had narrowed down the reservations to articles 2, 16 and 29 of CEDAW. The text of the Egyptian reservation to Article 16 states, in part, that provisions of Article 16 that mandate equal rights for women in the realms of marriage and family relations;

> [.....] be without prejudice to the Islamic Sharia provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sanctity deriving from firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementarity which guarantees true equality between the spouses and not quasi-equality that renders the marriage a burden on the wife. This is because the provisions of the Islamic Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully out of his own funds and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.[22]

The reservation placed by Egypt is greatly detailed and formulated very clearly in comparison to the other Islamic states. In placing this reservation, Egypt applied the principle of conduciveness.[23] Article 23 of CEDAW provides that where the provisions of domestic laws of the state parties are more conducive than that of protection and rights given by the provisions of the CEDAW, then the protection and rights given by domestic laws must be extended to the women in the light of the object and purpose of the CEDAW.[24]

The logic and doctrine employed by Egypt for the justification of the reservations to article 16 of the same convention relating to marriage and family matters is the same, where the marriage and family matters of Egypt

are administered by the domestic law. The women have been given the right to dower in the matters of marriage for giving up on her right to divorce at the same footing as that of husband.[25] Egypt claims that in the matters of marriage and family, the domestic laws of Egypt which are based on the Shariah Law, are more conducive and pro-women in comparison to the CEDAW provisions and protections. This is the indirect invocation of the article 23 of CEDAW by ascertaining equivalency and complementarity of the rights guaranteed within domestic laws.

As we have discussed in the earlier part of this work, the present Shariah legal system is mainly based on the practice of taqleed. The most influential and notable Egyptian scholar in this respect was Rifah Badavi Al Tahtanvi, who emphasized on the interpretation of Islamic rules in accordance with the contemporary and changing needs of the present day Islamic society. Badavi introduced the doctrine of the Takhayyur within the fabric of the Shariah legal system. Through the principle of Takhayyur, a Muslim can interpret the Shairah rules in most favourable way by borrowing the principles of other Sunni school of Shariah legal system applicable within similar circumstances. This doctrine played a decisive role in facilitating the pro-women interpretation of the Islamic laws in the case of Egypt.[26]

b) Tunisia's reservation to CEDAW:

On the subject of polygamy, the argument of Tunisia is relevant for the reservations made on this basis to CEDAW:

The government argued that (1) polygamy, like slavery, was an institution whose past purpose was no longer acceptable to most people; and (2) the ideal of the Quran was monogamy. Here [a reformist position] was espoused, namely, that the Quranic permission to take up to four wives (IV:3) was seriously qualified by verse 129: 'Ye are never able to be fair and just between women even if that were your ardent desire' (IV:129). Thus, while polygamy was permitted, the Quranic ideal is monogamy.

According to Tunisian argument the ideal of the Shariah is monogamy. The example of Tunisia indicates accomplishing as much reforms as possible while remaining Muslim state in the light of the Shariah and Islamic traditions.

c) the participation of Morocco to CEDAW:

Morocco has entered two declarations and one reservation to CEDAW, reflecting constitutional, religious, and legal considerations. Regarding Article 2, Morocco declares its readiness to apply the provision insofar as it does not affect the constitutional rules governing royal succession and does not conflict with Islamic Shariah, noting that certain gender-differentiated rights in the Code of Personal Status derive from Shariah and aim to preserve family cohesion. Concerning Article 15(4), Morocco limits its obligation on women's right to choose residence and

domicile to the extent that it is compatible with Articles 34 and 36 of the Moroccan Code of Personal Status. Additionally, Morocco has entered a reservation to Article 29(1), rejecting compulsory arbitration for inter-state disputes under CEDAW unless all parties expressly consent.[27]

Morocco follows the Maliki school of thought of the Shariah system. As we have stated earlier, the Miliki school of thought provides for more liberal rights and freedoms to women with respect to marriage in comparison to the Hanafi School of thought. However, in the other aspects of women rights, the Maliki school of thought is more conservative than the other school of thoughts of Shariah legal system. For instance, the Maliki school of thought provides that the minimum age for marriage is 15 years.[28] Same way as Egypt and Tunisia, the domestic legal system of Morocco rather than completely prohibiting the practice of polygamy, it gives the wife the right to seek judicial divorce in the cases where the husband contracts second marriage without the approval and consent of the first wife concerned. This principle has been taken from the Hanabli school of thought which recognizes such contractual stipulations.

Morocco is the best example for positively modifying and reforming its domestic laws and practices by borrowing from all the Shariah schools of thoughts that are protective of women rights in one or more areas of their daily lives. However, the application and the realization of these laws yet pose a challenge at the face of its judicial subjectivity in the interpretation of these laws, which impedes the application of these reforms.[29]

The reservation of Pakistan to the Covenant were many and divulge in nature, indicative of inclination to follow the shariah legal system in case of conflict between the two and evocative of the religious and cultural relativist challenge to the universalist conception of human rights. The present reservation of Pakistan to the covenant is…

"The Government of the Islamic Republic of Pakistan reserves its right to attach appropriate reservations, make declarations and state its understanding in respect of various provisions of the Covenant at the time of ratification."[30]

The reservation is vague and general in nature making it hard to assess the level of states' obligations and responsibilities in cases of violations.

The state parties should take into account the progressive experiences of the similar legal setup prevailing state parties.

Progressive lessons for Pakistan

Keeping in view the broad and vague reservations of Pakistan to international human rights treaty regimes, and specially that to CEDAW, in order to withdraw or at least narrow down the reservations to international human rights treaty regimes, the international human rights law recommends that the state parties should take "into consideration the experiences of countries with similar religious backgrounds and legal systems that have successfully accommodated domestic legislation to commitments emanating

from international legally binding instruments, with a view to" withdrawing reservations.[31]

In order for Pakistan to withdraw or narrow down its reservations to international human rights treaty regimes, it must take into consideration the progressive examples of Shariah law prevailing countries, Egypt for example. The principle of conduciveness employed by Egypt can be a guiding tool for Pakistan. The principle of conduciveness can be applied in the cases where the domestic law is more instrumental in achieving the object and purpose of the concerned human rights treaty regime.[32] Indeed there are some aspects of women rights where the domestic laws are more women friendly than the contemporary international human standards. Secondly, through this principle the logic of reservations can be explained which otherwise may look unjustified. This is the tool at the disposal of Pakistan which will be of assistance in narrowing down and explaining its reservations to international human rights treaty regimes.

b) Takhayyur

In the Shariah legal system there are four schools of thought, Hanafi, Hanbali, Maliki, and Shafi' school of thought. Pakistan is following the Hanafi school of thought. Usually, it is wrongly perceived that a Shariah law prevailing state may follow one, out of four school of Islamic thought at one time. However, we can learn from the example of Morocco's participation and its reservation to CEDAW that in order to meet the obligations of the international human rights laws, Islamic states can borrow from all the four schools of Shariah legal system. The legal rules of one school of thought that are more suitable can be borrowed, in comparison to the other school of Shariah legal system, for the indiscriminate realization of international human rights standards.[33]

For instance, one school of Shariah system may give more rights and freedoms to women within matters relating to marriage, while the same school in other areas of rights may not be as pro-women in comparison to the other school of Islamic thought. In such a scenario, the state can switch from one to another school of Shariah legal system.[34] This principle is called 'Takhayyur. Talfiq is the other name of Takhayyur given to this procedure under Islamic law. Both the tools, procedurally and substantively, are the same with different names as given by their developers. Talfiq is defined as "combining the doctrines of more than one school or to borrow from other schools," Takhyyur in similar way is a selection.[35] This doctrine played a decisive role in facilitating the pro-women interpretation of the Islamic laws in the case of Egypt.[36]

Alongside the principle of conduciveness, Takhayyur and Talfiq can be a helpful internal tool of the Shariah legal system to adopt and repeal domestic laws as required and to reformulate the reservations of Pakistan to international human rights treaty regimes. In present-day Pakistan only

Hanafi school of thought is followed, through the principle of Takhayyur, Pakistan can interpret the Shairah rules in the most favourable way by borrowing the principles of other Sunni schools of Shariah legal system applicable within similar circumstances.

c) Interpretation of polygamy permissibility as qualified permission: Quranic ideal is monogamy

At the face of strong religious support in favour of polygamy, in Pakistan the prevailing view is that the Quran provides for polygamy. Moreover, there has not been a serious debate on what are the prerequisite requirements of polygamy under Islamic Law. As per the researcher's understanding, the relativist actors have misunderstood the notion of polygamy being permitted under the Quran. According to the Islamic teaching and practices of Prophet Muhammad, this practice is only permissible where the doer is sure that he can maintain justice in the polygamous relations. This requirement of maintaining justice is easier said than actually done, which turns the practice of polygamy to no less than prohibited. In this respect for instance, the example of Prophet Muhammad is always given as a reference and justification, as his followers take him as the perfect human being. Even taken that way, it is easy to deduce that only a perfect man can maintain justice within the polygamous relations (in this case Muhammad), which is not possible for the rest of the human beings. Therefore, the condition for polygamy to maintain both material and emotional justice is humanely impossible to be achieved. As the very notion of polygamy is based on unfairness against the first wife, thus, while polygamy was permitted, the Quranic ideal is monogamy.[37]

This is precisely the view adopted by Tunisia, which prohibited polygamy advancing the following logical argument based on Quranic text: within the meaning of IV: 3 and IV: 129 of Quran "more than one wife is only permissible when equal justice and impartiality was guaranteed." The Quranic permission for polygamy is a seriously qualified permission in nature. As verse 129: 'Ye are never able to be fair and just between women even if that were your ardent desire' (IV:129).

It should also be considered that, as the institution of slavery which is provided for within the Shariah legal system is no longer acceptable to the Muslim states, the same way the practice of polygamy has lost its moral and utilitarian significance. Thus, the practice of polygamy is in contravention to the Quranic ideal as well as human rights standards. Also, the reservations of Pakistan to international human rights treaty regimes which is indirectly based on concept of polygamy under Shariah law are irrelevant.[38] Therefore, the reservation of the Pakistan to international human rights treaty regimes based on the permission of the polygamy should be withdrawn and the practice of polygamy should be prohibited on the basis of above-mentioned impossible conditionality.

V. Conclusion

The debate between the universality of international human rights and claims of cultural relativism continues to influence the legitimacy and effectiveness of the international human rights regime. As this article has shown, portraying human rights as an exclusively Western construct is historically inaccurate and normatively flawed. International human rights law emerged from diverse cultural, political, and ideological contributions, including significant engagement by non-Western and socialist states. The Universal Declaration of Human Rights reflects compromise and shared moral aspirations rather than cultural dominance, undermining arguments that universal human rights are inherently incompatible with non-Western legal traditions.

At the same time, international human rights law is neither rigid nor culturally indifferent. It allows contextual interpretation through limitation clauses and proportionality, recognising social, economic, and cultural diversity. However, this flexibility becomes problematic when exploited through extensive and religion-based reservations that undermine the object and purpose of human rights treaties. The widespread use of such reservations, particularly to core provisions of CEDAW, poses a serious challenge to the universality and credibility of international human rights norms, often entrenching structural discrimination, especially against women, while shielding domestic practices from international scrutiny.

The examination of Shariah-based legal systems demonstrates that resistance to international human rights obligations is not a matter of religious inevitability but of interpretive choice and political will. Comparative experiences from Egypt, Tunisia, and Morocco reveal that Islamic legal principles contain internal mechanisms capable of supporting human rights compliance, including takhayyur, talfiq, and purposive interpretation of religious norms. For Pakistan, these examples offer valuable guidance. By narrowing vague reservations, applying the principle of conduciveness, and reassessing contested practices through a justice-oriented lens, Pakistan can reconcile its international obligations with domestic legal traditions. Ultimately, the universality of human rights does not require cultural uniformity, but a principled commitment to protecting human dignity and equality across diverse legal and cultural contexts.

References:

[1] Elvin Hatch, Culture and Morality: The Relativity of Values in Anthropology (New York: Columbia University Press, 1983) 5.

[2] R.J. Vincent, Human Rights, and International Relations (Cambridge: Cambridge University Press, 1986) 37-38.

[3] Melville J. Herskovits, Cultural Relativism, Perspectives in Cultural Pluralism, (New York: Random House, 1972) 15.

[4] Quoted in Fernandde Varennes, "The fallacies in the "Universalism versus Cultural Relativism" debate in human rights law," Asia-Pacific Journal on Human Rights and the Law (2006) (1) 68.
[5] Ibid, 69.
[6] The vote casted in favour of the Japanese proposal was 11/16. However, Woodrow Wilson, the then US President, who was chairing the session, ruled that this issue needed to be unanimously approved, and since this was not the case, the bill of amendment was not approved.
[7] Ibid, 69; The notion of absolute sovereignty is the construct of western political thought rather than Asian or Islamic. This political thought is the main obstacle to the effective and meaningful implementation of international human rights standards.
[8] Antonio Cassesse, Human Rights in a Changing World (Cambridge: Polity Press, 1990) 29, as quoted in Fernandde Varennes, "The fallacies in the "Universalism versus Cultural Relativism" debate in human rights law," Asia-Pacific Journal on Human Rights and the Law (2006) (1) 72.
[9] Contrary to this assumption, history tells us that some of the most racist societies indulged in sever discriminatory practices were western. Such as the Nazi Germany, the treatment of aborigines in Australia, the crimes of apartheid in South Africa, or the treatment of African-Americans in America. On the other hand, ignoring the contribution of non-western states to the creation of the international human rights system and associating it only with the West will be based on the bias of associating all the good to the west. Throughout human history, many non-western societies acknowledged the vital nature of human dignity, equality, and human freedoms which are the foundations of the contemporary international human rights system. Such as the Quran as well as Buddha advanced the idea that all humans are equal. Similarly, freedom of religion was guaranteed by the king of ancient Persia to the population of newly conquered regions.
[10] Willis v. United Kingdom, ECHR, 36042/97 judgment of I1 June 2002; The European Court of Human Rights maintains the following position on the issue: "A difference of treatment is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aims sought to be realised."
[11] United Nations, Vienna Convention on the Law of Treaties, article 19, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: https://www.refworld.org/docid/3ae6b3a10.html [accessed 25 July 2020].
[12] VCLT, article 20, Acceptance of and objection to reservations.
[13] Advisory Opinion, International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v Serbia and Montenegro, 1951. In this case, ICJ addressed the issue of reservation.
[14] General Recommendation No. 21: Equality in Marriage and Family Relations, para. 44. Also article 7, 8 and CEDAW Committee, General Recommendation No. 35 para. 13.
[15] Islam is the official state religion of 41 countries. Out of these 41 countries, 25 countries follow Sunni Islamic legal system of, which amount to 60 percent of total of Islam as official state religion. Whereas 16 countries follow Shia Islamic system that amounts to 40 percent of the total official state religion of Islam.

[16] Report of Special Rapporteur on Freedom of Religion and Belief, A/HRC/3749, Para 14; qouted in Yadh Ben Achour, The Islamic Question before the United Nations Human Rights Committee (Ferrara: Jovene editore, 2021), 6.
[17] UN Committee on the Elimination of Discrimination Against Women (CEDAW), Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women, 1 March 2010, CEDAW/SP/2010/2.
[18] UN Committee on the Elimination of Discrimination Against Women (CEDAW), Statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women, 14 May 1998, No. 38 (A/53/38/Rev.1), 47–50.
[19] CRC and CEDAW have the highest number of reservations that are based on Shariah, 19/204, and 14/132 respectively.
[20] "Marry women of your choice, two, three or four. But if ye fear that ye shall not be able to deal justly [with them] then only one." Surah An-Nisa (The Women), verse 3, the interpretation given by Mufti Taqi Usmani is as following: "If you fear that you will not do justice to the orphans, then, marry the women you like, in twos, in threes and in fours. But, if you fear that you will not maintain equity, then (keep to) one woman, or bondwomen you own. It will be closer to abstaining from injustice."
[21] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27. Also the General Recommendation No.4 of CEDAW treaty body is specifically related to the reservations placed by the state parties.
[22] Text of the reservation is taken from UN Treaties repository online available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#EndDec.
[23] Anna Jenefsky, "Permissibility of Egypt's reservations to the Convention on the Elimination of Discrimination Against Women", Md. J. of Int'l., 15, 199 (1991).
[24] Article 23 CEDAW: "Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained: (a) In the legislation of a State Party; or (b) In any other international convention, treaty or agreement in force for that State."
[26] For instance, within the matters of the divorce, the Maliki School of law is more pro-women in comparison to the Hanafi school of law, because the Maliki school in this matter gives women more rights and freedoms.
[27] The declarations and reservation of Morocco can be accessed online at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#EndDec.
[28] "no adult woman may be contracted in marriage without her consent unless the court accepts the guardian's application to marry her on the grounds that he is concerned about her moral welfare." This "moral welfare" provision illustrates that, while the possibility that a woman is given in marriage against her will is substantially curtailed, loopholes in the law exist, as there is substantial room for discretion in determining what constitutes "concern about moral welfare." The so-called doctrine of the protection of moral welfare can be and has been misused by the Wali (guardian).

[29] Similarly, with respect to the discriminatory treatment of women in inheritance, the Libyan Government justified its reservation through the following argument. "Women acquire that part of the inheritance without commitments, whereas men had to take over all the concomitant obligations."
[30] Source: https://indicators.ohchr.org/.
[31] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27. Also, the General Recommendation No.4 of the treaty body specifically and specially related to the reservations placed by the state parties.
[32] Article 23 of CEDAW provides that where the provisions of domestic laws of the state parties are more conducive than that of protection and rights given by the provisions of the CEDAW, then the protection and rights given by domestic laws must be extended to the women in the light of the object and purpose of the CEDAW. For instance, it is evident from the experiences of the Shariah prevailing state parties that, in situations where required, to eliminate or at least mitigate the violation of the legal criteria for the reservations to the international human rights regimes, the principles of conduciveness can be applied by the virtue of article 23 CEDAW. This legal principle provides for the application of conducive laws between the international and national laws that are more pro-women in comparison to the other. This principle has been applied by Egypt more effectively, which can be an example for our present case of Pakistan.
[33] The important doctrine of "Takhayyur" developed by Egyptian Jurist Rifah Badavi Al Takhtanvi might be useful, which provides for the progressive interpretation of the Shariah legal system. For instance, this principle implies that the Qur'anic ideal is monogamy and not polygamy. Therefore, it considers the reservation to CEDAW based on polygamy cannot be justified.
[34] Ahamd Ali Sawad "Islamic Reservations' to Human Rights Treaties and Universality of Human Rights within the Cultural Relativists Paradigm" The Journal of Human Rights, 24 (2018) pp.101-154.
[35] Muhammad Khalid Masud, "Modernizing Islamic Law in Pakistan: Reform or Reconstruction?" quoting Schacht, An Introduction to Islamic law, 104.
[36] For instance, within the matters of the divorce, the Maliki School of law is more pro-women in comparison to the Hanafi school of law, because the Maliki school in this matter gives women more rights and freedoms.
[37] "The Egyptian reforms were cloaked under the veil of the "acceptable" reform mechanism of takhayyur." Baharathi Anandhi Venkatraman, Islamic states and the United Nations Convention on the Elimination of all forms of Discrimination Against Women (1991), 1987.
[38] Indirectly in the since that the reservation subjects the application of international human rights standards to the constitution of Pakistan, and the constitution claims the Islam as state religion, no laws against the Quran and Sunnah.