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Protection of Minorities under Islamic Jurisprudence

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Abstract

Islam is the religion of a peace-oriented system that depends upon the duties and rights of its citizens. Any political system that fulfils the basic needs of its system lives longer than those systems that corrupt the rights of its citizens. Moreover, the soundness of any political system depends upon its provisions which govern and fulfil the basic spiritual and biological needs of human beings and its allowance for change. Aside from spiritual and moral aspects of the creed which are permanently established, Islam provides broad principles and frameworks in the area of worldly interactions which makes it possible for the Muslim community to evolve and meet the needs of every period. Its soundness lies in its protection of minorities and providing them with all basic facilities to grow up as sound human beings free from all sorts of discrimination.

Keywords

Islam – Non-Muslims – Divine law (Shari'ah) protection – Minority rights

1 Introduction

Islam is a religion based on the human relationship on a divine pattern where human interference is negligible. The purpose of Islam is to bring under one universal code, to overcome discrimination and to bring peace across the globe.

People who choose a way of life other than Islam are accepted in the domain of Islam and are entitled to Ahl al-Dhimmis. The Dhimmi status is known in the modern perspective as minority status. All aspects of their life are preserved under the divine code of Islam as long as they do not adopt any kind of tumult. A detailed discussion is held in this paper to prove that minorities were safer than contemporary era while searching the primary and secondary sources of Islam.

Methodology: This research comes under the domain of qualitative research method because the whole material is theoretical. A descriptive approach is utilised to analyse the whole material available in the form of manuscripts, books, journals and other secondary sources to prove the claim.

2 Etymology of the Word Dhimmi: Arabic and Quranic

An Arabic term collectively known as Ahl al-dhimmi in English is known as non-Muslim citizens or people of the contract of an Islamic state. They are governed according to the rule of equality and justice. Islamic law makes its rulers bound to follow the regulations without any discrimination. Some Western scholars declare Ahl al-dhimmi a theoretical concept¹ having no applicability, but in reality, it is grounded in the basic law of Islam. The protection of non-Muslims under Islamic/Muslim rule is debated in academic circles from medieval to modern times. In the modern era, a large population of Muslims too are living as minorities in non-Muslim countries. The status of both during Muslim medieval rule and in the modern nation is considered different from each other. Earlier the Arabic word dhimmi was used for minorities and under Islamic/Muslim rule were considered protected people. However, in the modern era, another Arabic word '*Aqalliya*' which is translated as minority is widely in usage. This word is derived from the root Qalla means to be small or to be little, or few. The other words derived from the Arabic word '*Qall*' are '*Qilla*' and '*Qalil*'. The same is translated with nouns like littleness, insufficiency and scarcity. In this regard, the Arabic word '*Qalil*' is considered small, few, and scarce, in adjective form. Scholars of the Islamic literature believe in its Quranic occurrence and view that the word '*Qalil*' is derived from the Quran:

... And you will still observe deceit among them, except a few (*qalilan*) of them.

Al-Quran; 5:13

¹ H. Patrick Glenn (2007), *Legal Tradition of the World*, Oxford University Press, p. 160.

And remember when you were few (*qalilun*) and oppressed in the land ...

8:26

... And few [*qalilun*] of My servants are grateful

36:13.²

3 Development of the Thought

The philosophy and word meaning of minority is explained as “an insignificant group of people who are small in number and are culturally, ethnically, religiously and linguistically different from the majority community or ruling group and are subject to subjugation. Such a group is struggling for the protection of its distinct features and characteristics. In this way numerical subordination is not an adequate feature to be a minority but for minority status non-dominant position in the affairs of a state.”³

Among Muslim Scholars Yusuf al-Qardawi defines a minority as a group that is culturally, ethnically, linguistically, and, numerically different from the majority or ruling group. Such a small of weak group in not in a position to oppose the majority who are numerically and politically dominate and impose their choice and take into account only its particularities.”⁴ Similarly, Abdul Majid al-Naggar argued that the term “minority refers to those small communities of individuals who do not share certain features of their identity with other members of the population to which they belong”.⁵ In the same vein are the thoughts of Sulayman Muhammad Tubuliyak, according to him “a minority consists of a group of people who live within a state, a territory or a region, who differ from the majority of the other inhabitants by their culture, language or religion, and who make every effort to preserve these peculiarities, thus avoiding assimilation attempts made by the majority.”⁶ Taha Jabir Alwani also uphold such thoughts and that “the meaning to be attributed to the term

² The English translation of these verses is taken from The Qur'an—English Meanings.

³ Francesco. 1979. Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities. New York: United Nations, pp.107–108 also in 1992.

⁴ Al-Qaradawi, Yusuf. 2001. *Fi-Fiqh al-Aqalliyyat al-Muslima*. Al-Qahira: Dar al-Suruq, pp.20–24.

⁵ Al-Naggar, 'Abd al-Majid. 2004. “Ma'alat al-af'al wa-ataruha fi fiqh al-Aqalliyyat”. *Al-Majalla al-ilmiyya lil-majlis al-urubi lil-ifta wal-buhut* 4–5: 175–213.

⁶ Tubuliyak, Sulayman Muhammad. 1996. *Al-Ahkam al- Sisysiyya lil Aqalliyat al-Muslimat fi'l fiqh al-Islami* Amman: Dar al-Bayariq, 28.

minority is that offered by international customs". According to him "it is a group or groups of citizens who differ from the majority of the population in their linguistic, religious and racial affiliation."⁷

Some scholars are of the view that non-Muslims residing permanently in a Muslim state as citizens are called *Dhimmis*. They are the tolerant group who accepted the protection of Muslims on the payment of protection tax known as *Jizyah*.⁸ Such status is granted to them under the *aqd al-dhimmi*.⁹ According to these scholars they cannot have access to high public offices and cannot hold positions in the state as per the *aqd al-dhimmi* particularly the responsibility of military offices and their services. Moreover, they are bound to pay *Jizyah* as a protection tax and for relief from the armed facility.¹⁰ But the Islamic state as per its nature and legal inclusion is bound to safeguard the property and life of non-Muslims and any kind of lenience in protecting non-Muslims life and property is punishable in this world as per divine law as well as life hereafter.¹¹

A good number of orientalist like Glean and Lewis etc., consider the *dhimmi* status as theoretical construction and have no legal application. But they overlooked the fact that Muslim society is a law-based society and a divinely responsible society answerable to divinity in all matters of life. Keeping in view the situation, the *Madinah* constitution guarantees equality before the law free from any kind of description. It not only guarantees social rights and religious freedom but also economic rights along with all other basic rights of equality. According to Siddique *Madinah* was a pluralistic society based on different faiths and social grades belonging to Muslims, Jews and Polytheists of *Aw's* and *Khizraj*.¹² As per the provisions of the *Madinah* constitution, all social groups living in *Madinah* are equally responsible for its protection and maintenance of social order. All are governed by the law on equal footing without any discrimination and have equal responsibility duty, rights and freedom. Two articles of the constitution Article 1 and 26 of the charter declare;

Jews and Muslims are equal political partners. The Jews shall be considered as one political community (*Ummat*) along with the believers for

7 Al-Alwani, Taha Jabir. 2004. "Madhal ila fiqh al-aqalliyyat". *Al-Majalla al-'ilmiyya li'l-majlis al-urubi li'l-ifta' wa'l-buht*, 4-5: 45-118.

8 An-Na'im, A. A. (1987) *Islamic Law, International Relations, and Human Rights: Challenge and Response*. Cornell International Law Journal, 20(2), 329.

9 Emon, A. M., Ellis, M., & Glahn, B. (2012). *Islamic Law and International Human Rights Law*. OUP Oxford, 328.

10 An-Naim (1987), 331.

11 A.M. Emon, M. Ellis and Patrick B. Glean. New York: Oxford University Press (2012), 330.

12 Siddique Qureshi (1998), *Foreign Politics of the Prophet*, Delhi: Farid books, p. 97.

the Jews their religion, and for the Muslims, theirs, be one client or patron. He, however, who is guilty of oppression or breach of the treaty, shall suffer the resultant trouble as also his family, but no one besides.¹³

Regarding the Madinian constitution Ali Muhammad As-Sallabi says; "The constitution clearly expressed that the Jewish inhabitants were the citizens of the Muslim State. They have the right to help, and they will not be wronged. As for long a different religious affiliation was not a reason to prevent one from becoming a citizen."¹⁴

The impact of the government depends on the welfare and respect of its citizens. The governing attitude of the authority involves the modus operandi of rules and regulations and their justified implementation. Discrimination of any nature creates dissent among the people living together but justified implementation and welfare attitude of government creates universal brotherhood. Many humans obey God's decrees unconditionally due to innate eagerness and high courtesy. The nature of the Islamic government is divine delights the control and impact of religion and upholds with due respect, the human intellect and so could be considered the most powerful justified government because of its non-human nature. The governments based on human legislation leads to discrimination based on colour, creed, region and linguistic grounds. In this way, the Islamic government has the responsibility of guiding people as well as enforcement of regulations in the social systems determined by God. Such a rule does not need force and pressure for implementation of its provisions because it is not based on empty words, such as national will, national government, and secret budget. Chief among all the flexible aspects of Islam is its constitution.¹⁵ Although the constitutional rights and obligations of the rulers and the ruled are firmly established, the organisation of the government and the procedures for a leadership election in the political process are left open. The Muslim community is indebted to advance the greater possibility of divine change and application of Shari'ah to fulfil the rights of its citizens and to adopt the constitutional provisions to fulfil the desired requirements in all phases of life.

¹³ Hamidullah (1996), *The First Written Constitution of the World*, p. 77.

¹⁴ Sullabi (2005), *The Noble life of the Prophet*, p. 99.

¹⁵ Khallaf, Abdul Wahhab (1956), *Ilmi al-Usul al-Fiqh*. Cairo: Dar al-Itisam; Munifi (1973). *The Islamic Constitutional Theory*. Virginia: University of Virginia, pp. 34-76; Bayati, Munir Hamid (1979). *Dawlah al-Qanuniyyah Wa al-Nizam al-Siyasi al-Islam*. Baghdad: Dar al-„Arabiyyah Li al-Tiba"ah; Diya al-Din, Muhammad. (1969). *Nazariyyah al-Siyasah al-Islamiyyah*. Cairo: Dar al-Ma"arif.

The purpose of the rule in Islam is human welfare¹⁶ in this regard, the Quran and Sunnah provide fundamental principles and guidelines for the smooth functioning of political matters of the Muslim Community and such matter is the protection of non-Muslims within its peripheries.¹⁷ Shari'ah is determined to regulate the affairs of its system to work smoothly and provide solutions for all varying necessities of societal life. Islam provides opportunities, rights and protections to its citizens, and safeguards the interests and rights of other religious societies in a non-discriminative way. In dire circumstances, Shari'ah offers an opportunity to its followers to amend laws as per the prevailing circumstances to fulfil the basic purpose of life.¹⁸

In all ways, Shari'ah upholds the cause of minorities and protects them, up to the utmost level. Minority protection is vital and among the priorities of Islamic rule. God directs its followers to act justly, behave with them most respectably and safeguard their life and property on a priority basis. Any sort of violation on the part of minorities inevitably is considered not only as a violation of the legal precepts of Islam but also a violation of the rights of minorities and a violation of the dignity of all human beings as a whole. The protection of minorities through the process of law establishes and enhances the significance and dignity of the law. On the eve of the establishment of the first Islamic state in Madina, the Madinah constitution legally guaranteed the protection of minority culture and guarded minority rights "is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities, thus enriching the fabric of society as a whole".¹⁹ For greater understanding and peace, it is necessary to work for the respect and protection of minorities protection and respect their cultural traits based on equality. More openness to cultural values gives rise to

16 , Chapra, M. Umer (1999). *Islam and Economic Development: A Discussion within the Framework of Ibn Khaldun's Philosophy of History*, Proceedings of the Second Harvard University Forum on Islamic Finance: Islamic Finance into the 21st Century Cambridge, Massachusetts, Center for Middle Eastern Studies, Harvard University, pp.23–30 (*PDF*) *Islam and Human Development*. Available from: https://www.researchgate.net/publication/275220470_Islam_and_Human_Development [accessed Jun 07 2023]. Maulana Wahiduddin Khan (2021), *Islam and Human Welfare*, (eng.Trans.) Mohd. Muslim Wani Centre for Peace and Spirituality International, pp.12–18.

17 Moten, A. R. (2017). *Al-Siyasah al-Shar'iyah: Good Governance in Islam*. In *Qur'anic Guidance for Good Governance*, Palgrave Macmillan, Cham. (pp. 55–81); Nadwi, A.H.A. (1970): *Religion and Civilization* Academy of Islamic Research, Lucknow.

18 Chandio, A. R., Iqbal Ameen Brohi, S. A., Ali, M., & Gadhi, G. N. (2019). *Administrative ethics with special reference to Islam*. GSJ, 7(7), pp.913–923.

19 Muhammad Hamidullah (1996), *The First Written Constitution of the World*, Delhi: Nassir Books, p. 56.

a more pluralistic and multiculturalist approach. This will enable us to build on good authority and protect us from envy and prejudice instead of enhancing the integrity and autonomy of the State. According to Pejic, “the best way for ensuring and enduring protection of minority rights is an implementation based on the idea of diversity, plurality, tolerance and mutual respect”.²⁰

Islam upholds all justifications are equally supported directly by Islamic principles through its basic sources which are free from any kind of discrimination. For social peace, respect for all social members is necessary and incumbent. To achieve social peace, the holy Quran guides its followers to incline towards peace and in this regard trust Allah. The Quran is the prime foundation for Islamic jurisprudence, stating; that “God calls to the domain of peace”.²¹ The essence of Islam is peace and directs its followers towards the same. The prime objective of Islamic law is to safeguard the legal interests of its citizens without any discrimination based on colour caste and creed. So Mashood A. Baderin is of the view that “the maintenance of peace and security is highly encouraged under Islamic law.”²² In all situations particularly, even at the time of war, the Qur’ān states that “if the enemy inclines to peace, you (Muslims) must also incline to peace.”²³ Just like modern-day wars, in the 7th century, as wars were the decisive factor and legitimate instrument of foreign policy, in such circumstance Muslim community was directed to incline to peace and reconciliation and that “God does not forbid them from dealing kindly and equitably with those who do not fight them or drive them out of their homes.”²⁴

Under the guidance of Quranic commandments, classical Islamic law was framed for both Muslims and non-Muslims to enjoy respectable freedom and protection of their life and property.

Such a situation gave rise to legal pluralism where all communities embraced dignity and respect. The rights of minorities under Islamic law are discussed under two levels, the Individual level and the Community level. At the Individual level, a non-Muslim is called dhimmi while at the community level minorities in a group form are called Millet. According to both levels, minorities are granted “human” rights and “constitutional” rights. Human

20 Jelena Pejic, “Minority Rights in International Law”, *Human Rights Quarterly* 19 (1997): 667.

21 Qur’ān 10:25; Qur’ān 60:7–9.

22 Mashood A. Baderin, *Islamic Law And International Protection Of Minority Rights In Context*, Ash-gate Islamic Law Series, SOAS, University of London, 312.

23 Qur’ān 8:61.

24 Qur’ān 8:61.

rights are universal and therefore do not vary from individual to individual or from community to community.²⁵

The issue of minority rights is a modern one, particularly after the colonial control of the world. But the philosophy behind minority and dhimmi concepts is the same. Both are subjugated and are under subjugated status. In the medieval era, Muslim rulers upheld minorities with great respect, instead in the post-modern era people in general but rulers in particular were not much worried but the security, protection and rights of minorities. They are psychologically tortured and indirectly forced to either hide their identity or adopt the composite culture. In the contemporary era, it has been a vital topic throughout the globe. While observing its significance, the Holy Quran, reveals its significance clearly; "There is no compulsion in religion."²⁶ Almost all Muslim exegetes of the Quran (Mufasssirin), experts of hadith (Muhadithin), historians, and Biographers of Prophet Muhammad ^(SAAS) (Sirah writers) pay significant attention to minority rights in their compendiums. These writers are of the view that nobody has the right to compel a non-Muslim to embrace Islam. All non-Muslims are free to live according to their religious and cultural values in the Islamic State. It is called the breakthrough for the development of a true welfare state where all religious groups are at peace and practising their religious values and identity without any restriction. The Holy Prophet Muhammad ^(SAAS) openly declared; whoever ~~killed~~ (Ahl-Zimmāh) a person having a treaty with the Muslims, shall not smell the fragrance of Paradise whose fragrance is observed from a distance of forty years."²⁷ Moreover, early biographers of Prophet Muhammad made valuable contributions to the rights of minorities in the Medina Charter. Among Mufasssirin Ibn Jarir Tabari and Ibn Kathir and Abu Bakr al-Jasas, concerning minority rights and their protection provide detailed information. Not only they, but also a renowned scholar of Prophetic biography (seerah) was Muhammad bin Abdul Malik bin Hisham, in his masterpiece '*Sirah Ibne Hisham* discussed in detail the status and rights of non-Muslims under Prophetic rule in Madina.²⁸ The well-known classical

25 Recep Senturk, "Minority Rights in Islam: From Dhimmi to Citizen" in Shireen T. Hunter and Huma Malik (eds.) *Islam and Human Rights: Advancing a US-Muslim Dialogue*, Washington, D.C.: Center for International and Strategic Studies (CSIS), Significant Issues Series, 2005, pp. 67–99.

26 Surah al-Baqarah, verse.

27 Muhammad Bin Ismail Bukhārī (2008), *Sahīh Bukhārī*, Lahore: Darussalam, H. no: 3093.

28 Muhammad bin Abdul Malik bin (2000), Hisham, *Sirah Ibn-e Hisham*, Trans. Anas A. Farid, *Al-Falah Foundation of Translation, Publication and Translation, Egypt*, pp. 97–110.

theologian, Ibn-e-Qudamah Al-Muqaddasi explains the status of minorities in an Islamic state, “it is not allowed to force a non-Muslim to embrace Islam”.²⁹ A famous historian Allama Baladhuri, in his book *Fatuh-ul-Buldan*,³⁰ described a unique peace agreement between Muslims and Christians in the Prophet’s era. This guaranteed them the free observance of their religious and cultural practices. A famous Book on the rights and duties of minorities by Allama Ibn al-Qayyim al-Jauzi entitled, *Ahkam Ahl-Dhimmah*,³¹ widely describes minority issues. In this work, the author quoted a large number of Prophetic Ahadith to provide detailed guidelines about the relationship between Muslims and non-Muslims and the protection of their rights in an Islamic state. The essence of Islam is it safeguards the rights of its minorities and respects the position of all non-Moslems and foreigners, particularly the ahl-i-kitab (Followers of The Book), or refugees or idolaters. They all adored the rights, honour and civil liberties under Islamic territory.

A negative thought was promulgated that *Fiqhi* literature exposed “the views of the classical jurists were highly polarised on whether or not kafrin (atheists) and mushrikun (polytheists) were to be considered as protected people under the classical dhimmi rules”³² Friedmann revealed that while “after detailed engagement with relevant jurisprudential authorities on this question concluded that the Hanafi and the Maliki schools, as well as al-Awza’i and some Hanbali’s—and according to some traditions of Ibn Hanbal himself,—recognised all non-Muslims living under Muslim rule as Ahl al-dhimma, even if they were idolaters.”³³

4 Hadith Perspective

The Prophet Muhammad^(SAAS) directed all officials of an Islamic state, regarding the “non-Muslim citizens of an Islamic state, “to be safeguarded from any kind of internal persecution and external belligerence because they were protected as dhimmi under Islamic law.”³⁴ In this regard, a Western historian Jane Smith

29 Ahmad bin Muhammad Ibn-e-Qudamah Muqaddasi (1987), *Al-Mughni Al-Kabir*, Egypt: Maktaba al-Qahira, p. 65.

30 Abu al-Abbas Ahmad bin Jabir Baladhari (1916), *Fatuh-ul-Buldan* (Trans: PK Hitti, *Origins of the Islamic State*), New York: Columbia University, p.8.

31 Muhammad Bin Abi Bakr Ibn Qayyim Al-Jauzi (1997), *Ahkam Ahl Dhimmah*, Dammam: Ramadi Publications and distributes, p. 55.

32 Friedmann, *Tolerance and Coercion in Islam, Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2006). p. 54.

33 Ibid, 86.

34 Sa’id Ramadan, *Islamic Law: Its Scope and Equity*, Macmillan, London, 1961, p.121.

mentions, “Christians and Jews, along with Magians, Samaritans, Sabians, and later Zoroastrians and others, were treated as minorities under the protection of Islam under (dhimmi) status.”³⁵

Various Ahadith pronounce the significance of the protection of dhimmi rights. At one time, the Prophet Muhammad ^(SAAS) talked about the rights and the protection of rights, “On the Day of Resurrection, I shall dispute with anyone who oppresses a person from among the People of the Covenant, or infringes on his right, or burdens him beyond his strength, or takes something from him against his will”³⁶

Moreover, Abu al-Janub al-Asadi, writes, “Once a Muslim killed a non-Muslim being under the treaty of dhimmi status was brought to the court of Hadrath Ali ^(ra) for trial. After the trial Muslim being found guilty and an order was furnished for his was furnished for execution in vengeance for assassinating a non-Muslim. But the victim's brother approached Hadrath Ali to pardon the killer. Hadrath Ali asked, ‘Did the heirs of the killer threaten you in any way?’ The man said neither his heirs threatened me nor his killing would bring my brother back to me. The issue was settled later on by paying blood money to the victim's brother in return. Hadrath Ali said, whosoever is under our guarantee of protection, his blood is like our blood, and the blood money due to him is like the blood money due to us.”³⁷ Similarly, according to Jubayr bin Nufayr, once “A huge tax amount was collected from people of other faiths and brought to Hadrath Umar. In response, Hadrath Umar said, ‘I think such a huge amount was collected from people by using force and they (the tax collectors) said, ‘No, by Allah! We have taken only the surplus to their needs with tenderness and ease He said, all praise is due to Allah, Who did not put such oppression on my hands or during my rule.”³⁸

In the medieval era world observed, that all sections of human society were residing in peaceful conditions under justice, serene coexistence and freedom from any sort of discrimination. Rendering on the pattern of peace and coexistence during the prophetic era, a renowned Western Scholar George Veriyal Constantine, author of the book, *Prophet of Islam* writes, “Before it in human history no founder of religion made such beautiful and peaceful

35 Jane I. Smith, “Islam and Christendom: Historical, Cultural and Religious Interaction from the Seventh to the Fifteenth Centuries” in *The Oxford History of Islam*. Ed. John L. Esposito, Oxford University Press, Oxford, 1999, p.307.

36 Abu Dawood, Sunan Abi Dawud, hadith no. 3054.

37 Al-Shafi'i, al-Musnad, hadith no.344; Abu Yusuf, Kitab al-Kharaj, p.187; Al-Bayhaqi, Sunan al-Kubra, vol.8, p.34, hadith no.15712 (All cited in Muhammad Tahir-ul-Qadri, Muhammad the Merciful, Minhaj-ul-Quran Publications, London, 2013, p.324).

38 Al-Qasim bin Salam al-Harawi, Kitab al-Amwal, al-Maktabah al-Shamilah, vol.3. pp.110–13.

relations with other religious communities as the Prophet Muhammad ^(SAAS) did it. The Prophet of Islam tried his best to manage peaceful coexistence with non-Muslim minorities under Islamic rule. For that purpose, Methaq-e-Madinah, a charter of peace, was signed among Muslims and other different religious communities of Madinah, including Jews, Christians, Sabians, and Polytheists.”³⁹

Non-Muslims under Islamic states attained more privileges than Muslims. They were allowed to keep their own social and religious laws and to decide their case within their own communities. Many times a large number of non-Muslim bureaucrats were praised by Muslim prose and poetry writers. According to Jane Smith,

Dhimmis were allowed to keep their own communal laws, although they could apply to a Muslim judge if they wished Christians occupied high positions in the caliphal courts as physicians, engineers, architects, and translators, and sometimes they were treated as having virtually equal rights with Muslims. Muslim writers and poets sometimes gave great tributes to Christians in their literature.⁴⁰

Jurists across Muslim history propounded that, any sort of criminal procedure adopted by any state official about dhimmis was considered a revolt against the basic teachings of Islam. They uphold that, Muslims have the responsibility to protect non-Muslims (dhimmis) from both internal as well as external coercions. According to Shihab al-Din al-Qarafi, a Maliki Jurist ~~is of the view~~ that;

The covenant of protection imposes upon us certain obligations toward Ahl-i-dhimma. They are our neighbours, under our shelter and protection upon the guarantee of Allah, His Messenger ^(SAAS), and the religion of Islam. Whoever violates these obligations against any of them by an abusive word, by insulting his reputation, or by doing him any injury, has breached the guarantee of Allah, His Messenger ^(SAAS), and the religion of Islam.⁴¹

39 Constantan George Veriyal (2014), Peghabmr-e- Islam, Lahore: Subh-e-Roshan Publishers, p. 77.

40 Jane I. Smith, “Islam and Christendom, p.

41 Al-Qarafi, Al-Furuq, Matha’ah Dar Ihya al-Kutub al-‘Arabiyyah, Cairo, vol.3, p.14.

Moreover, another jurist Ibn Hazm ~~thinks~~ that: "If we are attacked by an enemy nation who is targeting the dhimmi living among us, we must come fully armed and ready to die in battle for them, to protect those people who are protected by the covenant of God and His Messenger. Doing any less and surrendering them will be blameworthy neglect of a sacred promise."⁴²

When 2nd caliph of Islam, Umar bin al-Khattab, signed a treaty with the people of Iliya of Jerusalem, "This is the security given by the slave of God, Umar, the Commander of the Faithful, to the people of Iliya: they are guaranteed the security of their persons, possessions, churches, crucifixes, and everyone within, whether sick or in good health, as well as everyone in their community. Their churches will not be occupied or demolished, nor will anything be taken from them: neither furnishings nor crucifixes or money. They will not be forced away from their religion, or harmed because of it. They will not be occupied by the Jewish settlers in Iliya."⁴³

History has witnessed, all invading forces dehumanise their subjugated people except Muslims. It is a fact after conquests, Muslims secured the life and property of non-Muslims and allowed them to practice their religions as per their wish. The Archbishop of Rafardashir being the leader of all the bishops of Persia, wrote a letter to Simeon. The Nestorian Patriarch Geoff III wrote:

The Arabs, to whom God has given power over the whole world, know how wealthy you are, for they live among you. Despite this, they do not assail the Christian creed. To the contrary, they have sympathy with our religion and venerate our priests and saints of our Lord, and they graciously donate to our churches and monasteries.⁴⁴

In Jerusalem, 'the wailing wall' is the holiest place of worship for Jewish people. Once it came under ruins and was completely buried under the earth. The Muslim Caliph of the Ottoman Empire Sultan Sulayman directed a state official, the governor of Jerusalem, to immediately remove all wreckage and debris and restore the Wailing Wall so that Jews visit there without any obstacle.⁴⁵ A renowned orientalist scholar, Lebon, a versatile historian admits such facts and writes:

42 Yusuf al-Qaradawi, Non-Muslims in Islamic Society, Islam House.com 2013 available on, www.islamreligion.com p.12.

43 Shaykh Abi Jafar Muhammad Bin Jareer At-Tabari, Tarirk al-Tabari, vol 3, p. 159.

44 Arnold, Thomas, 'Invitation To Islam, Maktabah al-nahdha al-Misriya, 2017, p. 102.

45 Hussayn, Abdul-Latif, 'Tasamuh al-Gharb Ma'l-Muslimeen, IslamReligion.com, 2007, p. 67.

The tolerance of Muhammad towards the Jews and Christians was truly grand; the founders of other religions that appeared before him, Judaism and Christianity in particular, did not prescribe such goodwill. His caliphs followed the same policy, and his tolerance has been acknowledged by sceptics and believers alike when they study the history of the Arabs in depth.⁴⁶

Robertson wrote: 'The Muslims alone were able to integrate their zeal for their religion with tolerance for followers of other religions. Even when they bore swords into battle for freedom for their religion to spread, they left those who did not desire it free to adhere to their own religious teachings.'⁴⁷

5 Juristic Approach

Jurists are of the view that a protection contract becomes established through any statement that specifies its aim. Protection and respect for non-Muslims in Islamic countries is the religious duty of Muslims. At the peak of rivalry between Muslims and Makkan Mushriks, Islam guides its followers to respect their non-Muslim parents, relatives and other non-Muslims in their lands.

We have enjoined upon humankind to be good to his parents. His mother carried him in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents, for unto Me is the final destination. If they strive to make you associate with Me that of which you have no knowledge, do not obey them but accompany them kindly in the world.

Qur'an 31:14-15

Gifts were shared with the arch-rivals among the non-Muslims as a token of Islam's forbearance. Muslim rulers and general Muslims are directed by Shari'ah to adopt and bow down to its teachings in Toto. Any sort of discrimination on behalf of a Muslim is considered violence against Shari'ah and will be treated harshly. According to Prophet Muhammad ^(SAAS), any sort kind of discrimination against dhimmis will result in punishment against the Muslims Involved.

⁴⁶ Le Bon, Gustav, Arab Civilization, Tudor Publishing Company, 2008, p. 128.

⁴⁷ Aayed, Saleh Hussain, 'Huquq Ghayr al-Muslimeen fi Bilad il-Islam,' p. 26.

The protection granted by Muslims is one and must be respected by the humblest of them. And he who broke the covenant made by a Muslim, there is a curse of Allah of His angels and people whole people upon him and neither an obligatory act nor a supererogatory act would be accepted from after him as recompense on resurrection day.⁴⁸

In another hadith, the Prophet ^(SAAS) said, "Whoever kills a person protected by a treaty, without a just cause, Allah has forbidden Paradise for him."⁴⁹ Not a single hadith of Prophet Muhammad ^(SAAS), speaks about snatching the rights of protected people but warned his followers of severe punishment. Due to these teachings, non-Muslims under Islamic governments were never treated unjustly and were given due respect and honour. Nobody has the right to discriminate against protected minorities. The basic needs of dhimmi are fulfilled by Islamic rulers and protect their progeny and property. If anyone forcibly takes anything from a person with whom the covenant is made will find Prophet Muhammad ^(SAAS) against him;

Prophet Muhammad ^(SAAS) said, "Whoever wrongs a person protected by a treaty, violates his rights, burdens him with more work than he can do, or takes something from him without his consent, I will be his prosecutor on the Day of Resurrection"⁵⁰

Many Ahadiths of the Prophet Muhammad ^(SAAS) convey a chain of transmission about the protection of minorities. Which is indisputably true. According to Maliki scholar Muhammad ibn Yusuf al-Mawwaq, "Prophetic hadith prohibits all sorts of wrongdoings against the protected people."⁵¹

Islam strictly prohibits any kind of violence against anyone being protected under the law or any free human being who is not granted formally any protection under Islamic law. All sorts of corrupt means are strictly prohibited in Islam and do not need any formal order but moral upgradation. According to Ibn Taymiyah, "the default rule of Islam upholds that human blood is sacrosanct apart from the right of justice".⁵² Ibn Qudamah agrees with other jurists that no human being is allowed to be killed without any due process

48 Sahih Muslim, Book-7, Hadith no-3167.

49 Sunan Abu Daoud, (Sidon, Lebanon: al-Maktabah al-Ashriyah, 1980), 3:83, no. 2760.

50 *Sunan Abu Dawood*, 3:170, no. 3052;

51 Muḥammad ibn Yūsuf al-Mawwāq, *al-Tāj wa-al-iklīl li-mukhtaṣar Khalīl* (Beirut: Dār al-Kutub al-ʿIlmiyah, 1994), 4:601.

52 Taqī al-Dīn ibn Taymiyah, *al-Ṣarīm al-maslūl ʿalā shātim al-Rasūl* (KSA: al-Ḥaras al-Waṭanī al-Saʿūdī, 1983), 1:104.

of law. If such an event happened it is obligatory to provide compensation for such killing, if the killer is a Muslim".⁵³ During the age of ignorance according to Miswar ibn Makhramah Mughairah ibn Shubi while accompanying some non-Muslims killed them and took their belongings and reached Dar-al Islam and accepted Islam there. Prophet Muhammad ^(SAAS), told him as your faith is concerned we accept you as a Muslim but your property is unacceptable because it is achieved through deception and treachery and we do not accept it.⁵⁴ Al-Azimabadi while discussing the philosophy of this hadith, that all sorts of unlawful properties are prohibited in Islam, because of its deceptive and treacherous nature. Islam accepts only 'fa' which is attained from a warrior on the battlefield or achieved in defence or combatant".⁵⁵

There is a great lesson for Muslims being followers of divine law. They cannot hurt or kill any ordinary people on the streets, because all people by default are under the protected status of immunity. Any harm to the protected person is a violation of Islamic law which is a sin and punishable under Islamic law. Al-Buhuti (d. 1051) thinks, whoever curses a Dhimmi by name should be disciplined, as his reputation is inviolable and forbidden (to harm)".⁵⁶ A legal verdict recorded by al-Ḥaṣḥāfi about insulting a non-Muslim is unwarranted and punishable accordingly, "A Muslim who insults a Dhimmi is given discretionary punishment, as he has sinned."⁵⁷

Human is taken with high regard by Al-mighty Allah and the noble Quran gave him a place above all other creatures. He has been given criteria of life and to save every creature from corruption and tumult. Among all criteria, he was commanded to observe justice at his utmost level without any discrimination. In the Quran, all sorts of corrupt practices are banned and oppression is the worst one that is strictly prohibited in Islam. The people who shun their faith and do not agree with the Muslim faith are to be dealt with justly; "O ye who believe! Be steadfast witnesses for Allah in equity, and let not hatred of any people seduce you that ye deal not justly. Deal justly, that is nearer to your duty. Observe your duty to Allah. Lo! Allah is informed of what ye do." [Quran 5: 8]

Al-Qurtabi is of the view, "This verse signifies, disbelief of non-Muslim does not restrict any Muslim or their ruler from acting in a justified way with

53 Muwaffaq al-Dīn ibn Qudāmāh, *al-Mughnī li-Ibn Qudāmāh* (Egypt: Maktabat al-Qāhirah, 1968), 8:513.

54 Abū Dāwūd, *Sunan Abī Dāwūd*, 3:85, no. 2765;

55 Muḥammad Shams al-Ḥaqq al-'Azīmābādī, *'Awn al-Ma'būd: Sharḥ Sunan Abī Dāwūd* (Beirut: Dār al-Kutub al-'Ilmiyah, 2009), 7:318, no. 2765.

56 Maṣṣūr ibn Yūnus al-Buhūtī, *Kashshāf al-qinā' 'an matn al-Iqnā'* (Beirut: Dār al-Kutub al-'Ilmiyah, 1983), 6:125–26.

57 Ibn 'Abidīn, *al-Durr al-mukhtār ḥāshiyat Ibn 'Abidīn*, 4:76.

them.”⁵⁸ The essence of divine law is love for justice and Allah loves those who act in a justified way and deals with them whatever religion they belong to and does not cause them any harm or fight them saying (what means):

Allah forbid you not those who warred not against you on account of religion and drove you not out from your homes, that ye should show them kindness and deal justly with them. Lo! Allah loves the just dealers.

Quran; 60: 8

Prophet Muhammad ^(SAAS) cautioned against any kind of injustice to Ahl-Dhimmah and waning their rights and declared himself as their protector “Beware, if anyone wrongs a contracting man, or diminishes his right, or forces him to work beyond his capacity, or takes from him anything without his consent, I shall plead for him on the Day of Resurrection.”⁵⁹ In Islamic law, justice is core and Prophet Muhammad ^(SAAS) warned against any sort of discrimination and declared “Fear the prayer of the oppressed, even he is a non-Muslim, for between it and Allah there is no barrier.”⁶⁰ Prophet Muhammad ^(SAAS) practically, applied and concluded a treaty with the people of *Najran*. At the time the words Prophet Muhammad ^(SAAS) said are historic: “No right, the authority of them or whatever they used to do shall be changed, as long as they give the right counsel to Muslims and render whatever due on them, provided they are not asked to do anything unjust.”⁶¹

The covenant of Protection is not a mere protection to avoid harm to them but a great responsibility to overcome their hardships and it includes the positive right of welfare. Muhammad al-Ghazali proclaims that “it is a religious duty upon us to help our non-Muslim neighbours in their time of need. We must be gentle and must adopt and behave with them with respectable conduct ... He quotes that al-Hasan saw no harm in feeding Jewish and Christian neighbours from your slaughtered animals.”⁶² The same statement about Hasan al-Basri was quoted by al-Kharaiṭi, the command to adhere to good neighbourliness

58 Al-Qurtubi, Muhammad ibn Ahmad, 1372 A.H., Collection of the Rulings of Quran, 2nd edition, Cairo: House of people, p.1372.

59 Abu Daawood, Sulaymaanibn Al-Ash'ath, without a date, Sunan of Abu Daawood, Cairo: House of Knowledge.

60 Ahmad ibn Hanbal, without a date, Musnad of Ahmad ibn Hanbal, Cairo: Qurtubah Foundation.

61 Ibn Sa'd, Muhammad ibn Sa'd, 1968, Sunanof At-Tirmithi, 1st edition, Beirut: House of Sadr, 1968.

62 Al-Bayhaqi, *al-Sunan al-kubra* (Beirut: Dār al-Kutub al-ʿIlmiyah, 2003), 10:5, no. 19668.

(*husn al-mujawaratihi*).⁶³ To the above statement, the 2nd Caliph of Islam Umar ibn al-Khaṭṭāb exempted a Jew from taxation, who was begging to pay taxes. He used to say, “By Allah, we have not been fair to him that we have eaten ourselves and then abandoned him in old age!”⁶⁴

In the Holy Quran, charity is meant for the poor and needy. In this verse no distinction marked being Muslim or non-Muslim. “Verily, charity is only for the poor and the needy”. (Qur’an 9:60)

The basic purpose of quoting this narration is to highlight the Muslim attitude towards minorities. The empathy and basic compassion shown by ~~non-~~ Muslims towards other communities is remarkable without any consideration of religious beliefs and their practices, because Prophet Muhammad ^(SAAS) commanded Muslims, “Be merciful to those on the earth and the One in the heavens will have mercy upon you”.⁶⁵

It is perceived from the Fiqh literature that a large number of jurists belonging to different schools of thought have an agreement that the protection of minorities (dhimmis) is the collective responsibility of Muslims for protecting their civil rights and remain vigilant so that none of them is wronged.⁶⁶ The basic principle behind this responsibility is that after coming under the protection of Islamic rule, “they shall enjoy the privileges granted by Islam”.⁶⁷ Moreover, Hadrath Ali’s statement in this regard is worth mentioning; “They (Dhimmis) give jizyah to us generously so that their wealth becomes like that of ours and their blood like our blood.”⁶⁸ Any kind of discrimination will lead to ultimate punishment in doomsday.

During the later era of the Muslim medieval era, minorities (Dhimmi) preferred Shari’ah courts instead of their socio-religious courts because they believed they were getting more justice through Shari’ah courts than their own courts allowed to solve their internal disputes. According to Ronald Jennings,⁶⁹ in “*Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination*”

63 Muḥammad ibn Ja’far al-Khara’iṭi, *Makarim al-akhlaq* (Cairo: Dar al-Āfaq al-‘Arabiyah, 1999), 1:87.

64 Ya’qub Abu Yusuf, *Kitab al-kharaj* (Cairo: al-Maktabah al-Azhariyah lil-Turath, 1999), 1:139.

65 Al-Tirmidhi, *Sunan al-Tirmidhi*, 3:388, no. 1924.

66 Al-Shafi’I, *Kitab al-Umm*, Vol:4, PP.127–28; Tabari, *Tarikh*, Leiden 1964, P. 2482.

67 Srakhsi, *Sharah al-Siyar al-Kabir*, Dar al-Ma’arif Hyderabad Deccan, 1355 A.H, Vol.1, p.140.

68 Ibn Qudamah, *Al-Mughni* (Egypt, 3rd ed. 1367 A.H.) Vol:8, P.445; Al-Kasani, *Bada’i Al-Sana’i fi Tartib al-Shara’i*, Vol:7, p.111.

69 Ronald C. Jennings, “Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri”, in *Studies in Ottoman Social History in the Sixteenth and Seventeenth Centuries: Women, Zimmis, and Shari’a Courts in Kayseri, Cyprus and Trabzon* (1999), 369.

by Najwa Al-Qattan, “Dhimmis prefer to resolve their family matters in Muslim courts in the 17th century than their religious courts.”⁷⁰

6 Conclusion

A religion of divinity acts as a source to maintain divine justice, equality, different rights and peace between people of different races, and faiths. Among these religions, Islam considers all humans as God's creation or *Abdullah*. So Islamic consideration, all humans are equal in social and economic rights and even allows them to practice their own religion without any discrimination. Among these minority rights (dhimmis) and their protection is a major concern of Islamic governments. Islam does not consider dhimmitude as subjugation but considers their protection as its prime fascia. Though Sharia law has dominance and is an all-encompassing system covering social, economic, political and family affairs. In Shari'ah governance, the judicial system has a pre-dominant role and above all and guards the rights and duties of citizens without any discrimination. Citizens are not above the Sharia as Shari'ah is a complete scheme of life and nothing is redundant and not a single provision of it is anti-human or anti-minority. Non-Muslim minorities are sometimes getting more rights than their ~~non~~-Muslim citizens in an Islamic State.

⁷⁰ Najwa al-Qattan, “Dhimmis in the Muslim court: legal autonomy and religious discrimination”, *International Journal of Middle Eastern Studies*, 31 (1999), 429–444.

AUTHOR QUERIES

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