

NON-MUSLIMS' RIGHTS IN ISLAM AND ITS COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS

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1. Introduction

The western concept of religion is based on something, which makes relationship between the believer and God.¹ Islam is not only such a religion making relationship between the believer and God, but also a complete code of life based on the commandments of Allah (*Subhanahu wa Ta'ala*) contained in the Holy Qur'an and the *Sunnah* of the Prophet Muhammad (*Sallallahu Alaihi Wasallam*). Muslims believe that Islam is a religion not confined to matters of personal faith and worship; it is an all-encompassing value system regulating every aspect of human existence, including the political. It is a religion organizing all aspects of life on both individual and national or international levels. It has made mankind aware of the obligations due to each other and to God. With this end in view, mankind is given the guidelines for how to interact with people, as well as how to communicate with God. It has clearly told mankind about spiritual life, intellectual life, personal life, family life, social life, economic life, political life, international life and so on. It has taught a Muslim, as a member of the society that he has no superiority on account of faith, colour, class, origin or wealth. It has taught people to respect others' rights to life, honour or property.²

2. Meaning of the word 'Islam'

The word 'Islam' ordained from Arabic root *Silm* and *Salam*,³ means peace, purity, submission and obedience.⁴ In the religious sense, Islam means complete or unconditional submission to the will of God and obedience to His Law.⁵ The Qur'an defines Islam as 'the readiness of a person to take orders from God and to follow them'.⁶

1. http://www.islam4all.com/islam_and_rationality_6.htm 26/05/2003.

2. <http://www.barghouti.com/islam/lifecode.htm> 26/05/2003.

3. http://islamicity.com/mosque/Intro_Islam.htm 26/05/2003.

4. <http://www.barghouti.com/islam/meaning.htm> 26/05/2003.

5. Mawdudi, S. A. A., *Towards Understanding Islam*, Islamic Publications Ltd., Lahore, available in http://www.wponline.org/vil/books/M_tui/chapter1.html 26/05/2003.

6. Ibid

3. Meaning of the word 'Muslim'

The word 'Muslim' derived from the word Islam, means the person who is ready to take orders from God and to follow them.⁷ Thus the message revealed to the Prophets and to profess the belief in the message is also Islam and the Muslim is meant to be a person who follows the message of Muhammad and all his teachings (*Sunnah*) which contained the teachings of all the previous Prophets and all the Divine commandments and believes in the truthfulness of Muhammad.⁸ In other words, a Muslim is a person who has belief in One God (i.e. there is no deity save Allah and Muhammad is His Messenger⁹), in His Angels, in His Revealed Books (commandments), in His Messengers and Prophets, in the Last Day and Resurrection and in the determination of good and evil by God.¹⁰ When a person professes the belief in the truthfulness of Muhammad and pledges to follow his message, he is virtually stating his readiness to obey the orders of God unconditionally. Though literally the word Muslim means 'one who has submitted, technically it refers to a believer who has submitted to the will of God'¹¹ i.e. submission by way of attestation of the unity of God, services of Worship of God, fasting, alms-giving and pilgrimage.¹² The Qur'an describes Muslims as believers.¹³ It is obligatory for every Muslim to fashion his entire life in accordance with the dictates of the Qur'an and *Sunnah*.¹⁴

4. Meaning of the expression 'Non-Muslim'

Conversely Non-Muslims are those who do not believe in Islam or basic Islamic ideologies i.e. who do not submit to One God and have no belief in His Messenger Muhammad.¹⁵ Submission to One God is so important

7. 'Abraham was not a Jew nor a Christian, but he was an upright (man), a Muslim; and he was not one of the Polytheists.' Qur'an 3:67.

8. <http://www.al-islam.org/inquiries/2.htm> 26/05/2003.

9. <http://www.islamicity.org/dialogue/Q397.HTM> 26/05/2003.

10. Hamidullah, M., *The Muslim Conduct of State*, Lahore, 1st ed. 1953, 2nd ed. 1977, available in http://www.muslim-canada.org/conduct_1.htm 26/05/2003.

11. http://www.atheism.about.com/library/glossary/indexes/blglossary_islam.htm 26/05/2003.

12. Ali, S. M., 'The Gist of Islam', available in http://www.muslim-canada.org/conduct_1.htm 26/05/2003.

13. Qur'an 64:2.

14. I. Doi, A. R., *Shariah: The Islamic Law*, Ta-ha Publishers Ltd., London 1984, Preface.

15. <http://answering-islam.org/NonMuslims/rights.htm> 26/05/2003.

test that differentiates between a Muslim and non-Muslim can be found in the saying of the Prophet that a person who has been a non-believer of One God, declares just before his death that he has submitted to One God, he will be given paradise after the hereafter.¹⁶ Sometimes people may submit themselves in the literal sense of the word submission, but they may lack the true nature of faith in their heart, actions, practices and habits. Though God is the best judge hereafter,¹⁷ in such situation, some jurists opine that an Islamic State is under an obligation to term someone to be non-Muslim.¹⁸ The Qur'an refers to the non-Muslims as unbelievers.¹⁹ Islamic jurists categorised non-Muslims into four divisions such as *Ahl al Dhimmah*, *Musta'min* (non-Muslim coming to an Islamic State for short stay as merchants, visitors etc), *Musta'man* and *Mu'ahid*.²⁰

5. Division of the World in Islam

Although Islamic jurists differ, in practice the world can be divided into two broad categories: i) *Dar al Islam* i.e. Islamic State and ii) *Dar al Harb* i.e. Enemy State.²¹

5.1. *Dar al Islam*

Dar al Islam means a territory where Islamic law is enforced and practised under the Muslim authority throughout all spheres of life.²² Its inhabitants are mostly Muslims and non-Muslims are minority there. In early Islam its territory was acquired by force of arms or without fighting or by treaty with the condition that owners of covenanted land will pay *jizyah* unless they embrace Islam and Muslims and non-Muslims will enjoy full protection as to their lives, property and religious freedom with some restrictions on non-Muslims.²³

16. The Prophet is reported to be saying by Abu Dharr, Bukhari and Muslim.

17. Qur'an 45:30-31; 47:1-3.

18. <http://www.soas.ac.uk/Centres/IslamicLaw/YB1Zaheer-ud-din.htm> 26/05/2003.

19. Qur'an 64:2.

20. Awang, A. R., *The Status of the Dhimmi in Islamic Law*, International Law Book Services, India, 1994, p.16.

21. Ibid, p.1.

22. Ibid.

23. Ibid, pp.1-4.

5. 2. *Dar al Harb*

Dar al Harb is a territory inhabited and dominated mostly by the non-Muslims. It is a land where Islamic law is not enforced. Here the laws of human origin were applicable as per the wish of the majority.²⁴ Mawdudi, a prominent scholar and traditionalist, says: 'An Islamic State is essentially an ideological State, and thus radically different from a national State.'²⁵ According to his view, responsibilities for policy making and administration of such a State should rest primarily with those who believe in the Islamic ideology. In spite of the fact that non-Muslims in such State are entrusted with certain specific rights, beyond these rights they are not permitted to meddle in the affairs of the State, as they do not stick to its ideology.²⁶

6. Treatment of non-Muslims in an Islamic State

The non-Muslims who live in a *Dar al Islam* or an Islamic State and enjoy the equal protection of the rights to life, property and religion like the Muslims as enshrined in the Qur'an and *Sunnah*²⁷ are called *Ahl al Dhimmah* or *Dhimmi*.²⁸ The word *Dhimmi* literally means *al Aman* (peace/safety), *al Ahad* (covenant/pledged), *al-Daman* (guarantee). *Dhimmi* was the name applied by the Arab Muslim conquerors to indigenous non-Muslim population who surrendered by a treaty to a Muslim dominion.²⁹ The non-Muslims are called *Dhimmi* as they are under the covenant or protection of God, the Prophet and the Muslim *Ummah* on the condition that they can enjoy the rights to life, property and religion under the protection of Islam or Muslims and in return they will pay *jizyah*.³⁰ In the legal sense, the *Dhimmi*s are the non-Muslims normally Jews, Christians (developed) and others such as idolaters, pagans, polytheists etc. (primitive),³¹ who have permanent covenant with the Muslim authority.³²

24. Ibid, pp.4-5.

25. Mawdudi, S. A. A., *The Rights of Non-Muslim in Islamic State*, Islamic Publications, Lahore, 1982, available in <http://answering-islam.org/NonMuslims/rights.htm> 26/05/2003.

26. Ibid

27. Op. cit., I. Doi, (1984) p.427.

28. Ibid, p.426.

29. Bat Ye'or, 'The Status of Non-Muslim under Islamic Rule', available in <http://www.dhimmitude.org/> 26/05/2003.

30. Op. cit., Awang, *Supra*, p.16

31. Hamidullah, M., *Introduction to Islam*, published by Sh. Muhammad Ashraf, Lahore, 1974, p.439.

32. Op. cit., Awang, p.16.

They are not outside the jurisdiction as is the case compared by some scholars with *Jus Civile*.³³ To protect life, property and honour of a non-Muslim becomes an integral part of the faith of the Muslims. Unlike the so-called human rights, those rights of *Dhimmis* cannot be curtailed or suspended in any situation as their status is fixed and governed by the Divine Law.³⁴ The status of *Dhimmis* pledged is similar to citizenship by naturalization in the modern times because alike the naturalized citizens, they acquire all rights of the nationals and become liable to some responsibilities.³⁵

7. Obligations of the Non-Muslims (*Dhimmis*)

1. Paying *Jizyah* and other Tax

The *Dhimmis* as residents of an Islamic State are under obligations to perform certain duties such as payment of *jizyah*, *kharaj*, *ushar* and observance of some aspects of Islamic law.³⁶ Though *jizyah* and *Kharaj* appeared to be interchangeable and loosely used by some Muslim historians and jurists, *jizyah* as a tax on *Dhimmi* got recognition through the most celebrated sources of Islamic law i.e. Qur'an and *Sunnah*, whereas *Kharaj* as a tax on land got its acceptance through secondary sources of Islamic law, first *Ijtihad* (consensus) and second, *Qiyas* (analogy).³⁷ Amongst the four duties, the most pertinent is *jizyah* as it concerns the *Dhimmi* specifically. It is a tax prescribed by the Qur'anic injunction.³⁸ This tax is imposed on them for their protection and they are exempted from defending *Dar al Islam*.³⁹ In early Islam, there were constant wars on extensive frontiers of the Islamic territory, military service was very was not an easy means of earning a livelihood, the life and the economic situation of the combatants were at real risk.⁴⁰ The exemption of the non-Muslim subjects from this service was thought to be justifiable for the suspicions in regard to their faithfulness.⁴¹ All non-

33. Op. cit., I. Doi, (1984) p.426.

34. Ibid, p.427.

35. Ibid, p. 426.

36. Ibid, p.19.

37. Ibid, p.19.

38. Qur'an 9:29.

39. Op. cit., Awang, p.207.

40. Op. cit., Hamidullah, M. (1974); see also <http://muslim-canada.org/ch12hamid.htm> 26/05/2003.

41. Ibid.

Muslims who had accepted Muslim domination and did not seek its overthrow in collusion with foreigners welcomed this exemption from military service.⁴² They could thus pursue in tranquillity their avocations and prosper, while the Muslims would be performing military duties with all the attendant risks.⁴³ Even if the State could not protect the *Dhimmi*, the tax will not be collected.⁴⁴ So, the non-Muslims who have reached the age of puberty paid little supplementary tax, the *jizyah* - of which the women, children, old, insane and the poor from among them were exempt - which was neither heavy nor unjust.⁴⁵ In the time of the Prophet, the *jizyah* amounted to ten *dirhams* annually, which represented the expenses of an average family for ten days.⁴⁶ Moreover, if a non-Muslim subject participated in military service during some expedition in a year, he was exempted from the *jizyah* for the year in question.⁴⁷

7. 1. 1. Significance of the Provision of Paying *Jizyah* under the Covenant

7. 1.1.1. *Jizyah* under the Qur'anic Verdict and *Opinio Juris*

The covenant or contract with the provision of paying *jizyah* got support in the Qur'anic verse as follows: 'Fight those who believe not in God nor the Last Day, nor hold that forbidden which hath been forbidden by God and His Apostle, nor acknowledge the religion of truth, (even if they are) of the people of the book, until they pay the *jizyah* with willing submission, and feel themselves subdued.'⁴⁸

The making of this covenant binds the Islamic State not only to tolerate non-Muslims' faith, religious practices and laws but also to offer them protection of their lives and properties although some criticism went on when Abu Hanifa, founder of the Hanafi School,⁴⁹ comments that *Dar al Islam* may lose its *de jure* status as *Dar al Islam* when the laws and regulations of non-Muslims be enforced therein and when a non-Muslim

42. Ibid.

43. Ibid.

44. Op. cit., Awang, p. 207.

45. Ibid.

46. Op. cit., Hamidullah, M. (1953).

47. Op. cit., Awang, p.17.

48. Qur'an 9:29.

49. It is one of the four Islamic Schools of Jurisprudence. The other schools are Malikites, hanbilites, and Shafites. All four schools agree dogmatically on the basic creeds of Islam but differ in their interpretations of Islamic law.

be permitted to live there, in the same security and harmony as the under the earlier Muslim government.⁵⁰ Muhammad al-Shaybani, the father of Muslim Public International Law and one of Abu Hanifa's followers, maintains that on the enforcement of the non-Muslim laws, the country is no longer considered as *Dar al Islam*.⁵¹

There is some controversy as to why such sort of contract was done. Some jurists opine that by this way non-Muslims were given some opportunity to intermingle with Muslims, hear and witness the justice and of beauty of Islam and thus it will enable them to appreciate the teachings of Islam.⁵² Some jurists thought that this type of contract paved the way of a good means of internal revenue, though this interpretation could not stand.⁵³

7. 1.1. 2. *Jizyah* in History

From history it can be maintained that the Muslims did not introduce *jizyah* rather it was imposed by the different sovereigns on their subjects before the arrival of Islam.⁵⁴ Byzantines imposed such tax on the people of coastal regions of Asia Minor in 500 B.C. The Roman Emperor imposed similar tax on the conquered people and that was greater amount than that of Muslims.⁵⁵ Shibli Numani said that the term *jizyah* was Arabicized from the word *Kizyat* meant levy that was imposed by the Persian Emperors.⁵⁶ But the concept of imposing tax on non-believers developed from the Roman-Byzantine Empire practice of taxing colonists and non-Christians.⁵⁷ Later it developed through Sasanid Empire.⁵⁸ In early Islam, this tax did exist neither in Medina nor elsewhere. It was in the year 9 AH i.e. after the conquest of Mecca, the Qur'an ordained it.⁵⁹ *Agin, Jizyah* was a question of expediency, and not a fundamental law in Islam. It is reported (by Ibn Sa'd on the authority of Zuhri) that at the

50. Ibid, pp. 2-3.

51. Ibid, p.3.

52. Op. cit., Awang, p.17.

53. Ibid.

54. Ibid, p.22.

55. Ibid.

56. Ahmad, Z., *The Concept of Jizyah in Early Islam*, Islamic Studies. XIV, 1975, p.294, available in <http://www.wponline.org/vil/articles/26/05/2003>.

57. Op. cit., Awang, p.23.

58. Ibid, p.22.

59. Qur'an 9:29.

moment of the death of his son, Ibrahim, the Prophet Mohammed declared: 'Had he survived, I would have exempted all the Copts from the *jizyah*, as a mark of esteem for Ibrahim's mother (Who was a Coptic girl)'.⁶⁰ The case of Taghlib where they preferred to pay *sadaqah* like Muslims instead of paying *jizyah* and the covenant with Nubians serve as *modus operandi* for the concept. The same treatment would be accorded to any group of non-Muslims having the same traits like Banu Taghlib.⁶¹

7. 1. 2. Whether *Jizyah* is a Poll Tax

Jizyah is neither a poll tax nor a punishment for infidelity as alleged by some scholars. Some Hanafi jurist like Jassas says that *jizyah* is imposed with the intent of punishing the *Dhimmi*s for their continuous nature of infidelity.⁶² Some modern writers say that paying of *jizyah* is a symbol of humiliation and submission because when he pays *jizyah* with the knowledge that they have got defeat and have been compelled to sign a treaty, he does not feel home in his own land, among his own people and with his own government.⁶³ Sheik Najih Ibrahim Ibn Abdulla says, quoting Ibn Qayyim al-Jawziyya, that the *jizyah* is enacted 'to spare the blood (of the *Dhimmi*s), to be a symbol of humiliation of the infidels and as an insult and punishment to them, and as the Shafiites indicate, the *jizyah* is offered in exchange for residing in an Islamic country.'⁶⁴ This view can be shown incompatible with the practice of the Prophet and his Companions.

First, paying of *jizyah* is securing and protecting them from external attacks.

Second, they contradict with the concept of tolerance in Islam where the Qur'an Specifically says that there is no compulsion in religion.⁶⁵

Third, if *jizyah* is retributive it must be imposed on all non-Muslims and there would be no exemption for certain people or group of people like Banu Taghlib.

60. Op. cit., Hamidullah, M. (1953).

61. Op. cit., Awang, p.41.

62. Jassas, *Ahkam al Qur'an*, 3 vols., Beirut, pp. 100,103.

63. Shahid, S., 'Rights of non-Muslim in an Islamic State', available in <http://answering-islam.org/NonMuslims/rights.htm> 26/05/2003.

64. Ibid.

65. Qur'an 2:56.

Fourth, if it is punitive, obligation of paying *jizyah* is not to be lifted if any non-Muslim joins the Muslim army voluntarily.⁶⁶

Some modern writers like Dennett, Becker, Cahen and others have frequently used the term poll tax to describe *jizyah*. They are wrong in making the term *jizyah* equivalent to poll tax for the following reasons:

First, unlike poll tax, *jizyah* is not levied twice a year.

Second, unlike poll tax, *jizyah* is not imposed unilaterally; it is imposed through mutual consent.

Third, Poll tax was imposed on every head, man and woman alike, whereas *jizyah* is imposed on only able-bodied men in lieu of military service and payment of *Zakat*.⁶⁷ Fourth, the poll tax collector has been an object of fear, hatred and execration as there is no justice as said Walker⁶⁸ but collection of *jizyah* was peaceful as it was mutually agreed, sometimes people were exempted or given other alternative as *sadaqah*.

So *jizyah* is not a poll tax rather it was a protection tax or security tax. Its nature, however, according to Majid Khadduri, was more of a collective tribute rather than a poll tax paid by each individual to the Muslim authorities.⁶⁹

7. 2. Observing some Aspects of Islamic Law

In an Islamic State the *Dhimmis* are under obligations to observe some aspects of Islamic law except matters relating to beliefs and personal laws as the maxim says: 'Leave them whatever they believe'.⁷⁰ The *Dhimmis* are free to practice their own social and religious rites at home and in church without interference from the state, even in matters entirely opposed to those of Islam such as drinking wine, rearing pigs, and eating pork, as long as they do not sell them to Muslims or in Muslim areas or in the month of fasting.⁷¹ They are not allowed to commit adultery or any abominable work in any area of an Islamic State.⁷² Though the *Dhimmis* enjoy a social and religious autonomy, their cases of

66. Op. cit., Awang, pp. 28-29.

67. I. Doi, *Non-Muslim under Shariah*, Lahore, 1977, p. 112

68. Walker, D. V., *The Oxford Companion of Law*, Oxford, 1980, p.966.

69. Khadduri, M., *War and Peace in the Law of Islam*, Johns Hopkins Press, Baltimore, 1955, p.189.

70. Op. cit., Awang, p. 67.

71. Hamidullah, M., *Introduction to Islam*, published by Sh. Muhammad Ashraf, Lahore, 1974, p. 438.

72. Op. cit., Awang, p. 121.

religious or social matters, if brought to the Muslim courts, are judged in accordance with Islamic law as the Qur'an says: 'So judge between them by that which God hath revealed, and follow not their desires, but beware of them lest they seduce thee from some part of that which God hath revealed unto thee....'⁷³

7. 3. Enjoyment of Judicial Autonomy

The *Dhimmi* enjoy judicial autonomy in establishing their own tribunals presided by its own judges. Each group should seek to apply its laws to all branches of human affairs. Thus judicial autonomy is intended to encompass not only individual or private matters but also for all the affairs of life: civil, criminal, religious and others.⁷⁴ On personal matters of marriages, divorces, and the *Dhimmi* are allowed to appeal to their own religious courts.⁷⁵ The *Dhimmi* are generally denied the right to appeal to an Islamic court in family matters, marriage, divorce, and inheritance.⁷⁶ However, in the event a Muslim judge agrees to take such a case, the court must apply Islamic law.⁷⁷ The jurists say: 'For them is whatever for us and against them is whatever against us'.⁷⁸ But when it comes to privileges, the *Dhimmi* do not enjoy the same treatment, so for example, the *Dhimmi* are not issued licenses to carry weapons.⁷⁹

7. 4. Some Restrictions in Personal Laws

The *Dhimmi* male is not allowed to marry a Muslim girl⁸⁰ on the ground that the *Dhimmi* male, who does not believe in her Apostle, by nature of his male chauvinism and domination, disregards her and forbids her to adhere to her faith or perform its rites,⁸¹ though a Muslim male can marry a *Dhimmi* girl (developed).⁸² Islam secures for this girl all the marital rights except the right to inherit. In this case neither does she inherit her

73. Qur'an 5:49, 5:47.

74. Op. cit., Hamidullah, (1953), pp. 321, 430.

75. Op. cit., Awang, pp. 67-68.

76. Ibid.

77. Ibid.

78. Ibid, p. 68.

79. Op. cit., Shahid.

80. Malik b. Anas, *al Muwatta*, translated by Aishah and Johnson, Norwich, 1982, p.298.

81. Tabbarah, A.A., 'Tolerance in the Religion of Islam', available in http://www.wponline.org/vil/articles/ibadah/tolerance_in_the_religion_of_islam.html 26/05/2003.

82. Op. cit., Awang, pp. 78-79.

husband nor does her husband inherit her- putting them on equal footing.⁸³ If a *Dhimmi* woman embraces Islam and wants to get married, her *Dhimmi* parent loses authority to give her away to the bridegroom, rather be done by an appointed Muslim guardian.⁸⁴ If one parent is a Muslim, children must be raised as Muslims.⁸⁵ If the father is a *Dhimmi* and the mother converts to Islam, the marriage breaks down and the mother gets the custody of the child.⁸⁶ Moreover, the Qur'an says: '...and give not your daughters in marriage to non-Muslims till they believe in Allah alone verily a believing slave is better than a free non-Muslim.'⁸⁷

7. 5. Respecting the Islamic State and its Ideology

They have to respect the Islamic State and its ideology.⁸⁸ They are not allowed to abuse, God, Islam, the Prophet and the Qur'an while practising their own faiths, as the liberty of the adherents of different faiths residing in an Islamic State, following their own beliefs, personal statutes and practices, are not absolute for the reason that if it is not used properly, it would conflict with the rights of others.⁸⁹ For to commit such act constitutes a breach of the covenant they have had and the undermining of the religion.⁹⁰ So the rights of the *Dhimmis* will be called in question if they fail to respect or undermine the law of the country, vilify its principles, or if they tend to disturb the peace and general security of the State.⁹¹

7. 6. Enjoyment of Religious Freedom with Certain Limitations

Islamic law requires Muslims not to force the *Dhimmis* to embrace Islam. The Qur'an says: 'Call unto the way of thy Lord with wisdom and fair exhortation, and reason with them in the better way. Lo! Thy Lord is best aware of him who strayeth from His path, and He is best aware of those who receive guidance'.⁹² Once a *Dhimmi* person becomes a Muslim, he

83. Op. cit., Tabbarah, A.A., 'Tolerance in the Religion of Islam'.

84. Op. cit., Shahid.

85. Op. cit., Shahid.

86. Op. cit., Awang, p. 140.

87. Qur'an 2:221, also available in <http://www.jannah.org/sisters/intermarriage.html> 26/05/2003.

88. Op. cit., Awang, p. 69.

89. Ibid, p.70.

90. Ibid.

91. Shafuddin, A.M.M., 'Tolerance in Islam', *The voice of Islam*, XX, 1972, pp. 582-583, available in http://www.wponline.org/vil/articles/ibadah/tolerance_in_the_religion_of_islam.html 26/05/2003.

92. Qur'an 16:25, 10:99-100.

cannot recant. If he does or gets involved with the act of apostasy i.e. rejection of the religion of Islam either by action or by the word of the mouth,⁹³ he will be warned first, then he will be given three days to reconsider and repent. 'The act of apostasy, thus, put an end to one's adherence to Islam.'⁹⁴ When one rejects the fundamental creeds of Islam, he rejects the faith, and this is an act of apostasy such an act is a grave sin in Islam.⁹⁵ If his apostasy continues, his wife gets divorced from him, his property is confiscated, and his children are taken away from him. He is not allowed to remarry. Instead, he should be taken to court and sentenced to death. If he repents, he may return to his wife and children or remarry. According to the Hanifites, an apostate female cannot get married.⁹⁶ She must spend time in meditation in order to return to Islam. If she does not repent or recant, she will not be sentenced to death; rather she is to be persecuted, beaten and jailed until she dies. Other schools of *Shariah* demand her death. The above punishment is prescribed in a *Hadith* that the messenger of Allah ... said, whosoever changes his religion (from Islam to any other faith), kill him.⁹⁷ Doi remarks that all the four schools of Islamic jurisprudence has unanimously agreed upon the punishment by death in the case of Apostasy.⁹⁸ A non-Muslim wishing to become a Muslim is encouraged to do so and anyone, even a father or a mother, who attempts to stop him, may be punished. However, anyone who makes an effort to proselytise a Muslim to any other faith may face punishment.⁹⁹ The punishment of the apostate is because of his treasonable and deceptive conduct.¹⁰⁰

7. 7. Capacity to Testify

The *Dhimmis* are not allowed to testify against Muslims except in certain cases i.e. in cases of necessity e.g. testimony of a non-Muslim doctor, while travelling testimony of a non-Muslim in matters of will.¹⁰¹ But the Malikites opine that in no circumstances will the testimony of non-Muslim be accepted, whether it is for or against a Muslim, in travelling

93. Op. cit., I. Doi, (1984) pp. 265-266.

94. Ibid, p.265.

95. Ibid.

96. Op. cit., I. Doi, (1984) p.265-265.

97. Bukhari, reported by Abbas.

98. Op. cit., I. Doi, (1984) pp. 265-266.

99. Op. cit., Shahid.

100. El-Berry, Z., 'Man's Rights In Islam', available in http://www.wponline.org/vil/books/z_b_mri/islam_and_human_rights.htm 15/05/2003.

101. Op. cit., Awang, pp. 162-163.

or otherwise. The Qur'an says: 'and call to witness, from among your men, two witnesses. And if two men be not (at hand) then a man and two women, of such as ye approve as witnesses.'¹⁰² The Qur'an goes further: '...and call to witness two just men among you, and keep your testimony upright for God.'¹⁰³ Therefore the majority holds that these verses have excluded the *Dhimmi*s from being a witness. Muraghi states bluntly that the testimony of a *Dhimmi* is not accepted as Allah, may He be exalted, has said: 'God will not let the infidels (*kafir*) have an upper hand over the believers.'¹⁰⁴ A *Dhimmi*, regarded as an infidel, cannot testify against any Muslim regardless of his moral credibility. If a *Dhimmi* has falsely accused another *Dhimmi* and was once punished, he has his credibility and integrity and hence his testimony is no longer acceptable. One serious implication of this is that if one Muslim has committed a serious offence against another, witnessed by a *Dhimmi* only, the court will have difficulty deciding the case since the testimonies of the *Dhimmi*s are not acceptable.¹⁰⁵ Yet, this same *Dhimmi* whose integrity is blemished, if he converts to Islam, will have his testimony accepted against the *Dhimmi*s and Muslims alike, because according to the *Shariah*, 'By embracing Islam he has gained a new credibility which would enable him to witness...'¹⁰⁶ All he has to do is to utter the Islamic confession of faith before witnesses, and that will elevate him from being an outcast to being a respected Muslim enjoying all the privileges of a devout Muslim.¹⁰⁷ All schools excepting Hanafites have agreed that they cannot testify even for each other except for *Musta'min*.¹⁰⁸

7. 8. Equal Treatment in Crimes

According to Hanafites, both *Dhimmi*s and Muslims must suffer the same Penalty for similar crimes. If a Muslim kills a *Dhimmi* intentionally, he must be killed in return following the principle of retaliation i.e. *Qisas*. The same applies to a Christian who kills a Muslim. The Shafiites and other schools opine that a Muslim who assassinates a *Dhimmi* must not be killed, because it is not reasonable to equate a Muslim with a

102. Qur'an 2:282.

103. Qur'an 65:2.

104. Muraghi, A.M., *Islamic Law Pertaining to Non-Muslims*, Library of Letters, Egypt, 2001-2002.

105. Op. cit., Shahid.

106. Ibid.

107. Ibid.

108. Op. cit., Awang, pp. 165-167.

polytheist i.e. non-Muslim.¹⁰⁹ This majority view is supported by the Qur'anic verses¹¹⁰ and by the Tradition, which says that the Muslim should not be killed for the killing of the non-Muslim.¹¹¹ In such a case, blood price must be paid.¹¹² The majority contention goes further when it is said that the Muslim should not be prosecuted for the murder of a *Musta'min*. Therefore the same condition applies to *Dhimmi*s as the bloods of Muslims are equal. Hence, it is implied that there is no equality between the blood of a Muslim and a non-Muslim for qualifying one of *Qisas* requirements- equality between the two parties. Since there is no equality in this case, the *Qisas* should not be followed.¹¹³

7. 9. Capacity to Head a State

A *Dhimmi*, who does not believe in Islamic ideology, cannot be the head of an ideological Islamic State or a member of the Advisory Council, which assists the head of the State in implementing the Islamic principles and adhering to them, because as a head of the State he has to be bound by the *Shariah* to conduct and administer the State in accordance with the Qur'an and the *Sunnah*.¹¹⁴ Since the Islamic State is based on Islamic ideology, it is expected that State will restrict some other positions for Muslims like Commander of Jihad, Judges, *Zakat* Collectors and some policy-making posts, as they are purely religious in nature. For instances, the leadership of the army in Islam is not civil or secular, rather it is a worship; it is unreasonable for a non-Muslim to deliver judgment following Qur'an and *Sunnah*, in which he does not believe and the same applies to the post of *Zakat* Collectors.¹¹⁵ Again, this sort of requirement is not alien in some States. Say for an example in the USA or the UK to become a head of the State, one needs to believe in Christianity (sometimes Catholic or Protestant).

7. 10. Capacity to Participate in Election

There is no evidence suggesting that the *Dhimmi* had ever participated in the election of the Four Guided Caliphs nor do we encounter the demand any report that the *Dhimmi* had claimed such right.¹¹⁶ So it can

109. Op. cit., Awang, pp. 114-120.

110. See for instance Qur'an 59:20.

111. Op. cit., Awang.

112. Ibid.

113. Ibid.

114. Op. cit., Awang, pp.189-190.

115. Ibid.

116. Ibid, pp.194-195.

be said that the *Dhimmi* does not have any voting right.¹¹⁷ Election though a modern concept, which should be reviewed in Islamic law so far the *Dhimmi* is concerned. Mawdudi, aware of the requirements of modern society, seems to be more tolerant toward *Dhimmis*. He says, 'In regard to a parliament or a legislature of the modern type which is considerably different from the advisory council in its traditional sense, this rule could be relaxed to allow non-Muslims to be members provided that it has been fully ensured in the constitution that no law which is repugnant to the Qur'an and the *Sunnah* should be enacted, that the Qur'an and the *Sunnah* should be the chief source of public law, and that the head of the state should necessarily be a Muslim.'¹¹⁸

Mawdudi though traditionalist, expresses his views in a more liberal way. But his views have failed to receive the approval of most other schools of the *Shariah*, which hold that non-Muslims are not allowed to assume any position, which might bestow on them any authority over any Muslim. According to their view, a position of sovereignty demands the implementation of Islamic ideology. It is believed that a non-Muslim (regardless of his ability, sincerity, and loyalty to his country) cannot and would not work faithfully to achieve the ideological and political goals of Islam.¹¹⁹

7. 11. Capacity to work under/above Muslim Authority

It is not permissible for a Muslim owner (of a company) to confer authority on a Christian over other Muslims¹²⁰ because God Almighty said: 'Allah will not give access to the infidels (i.e. Christians) to have authority over believers (Muslims)'.¹²¹ For Allah has elevated Muslims to the highest rank (over all men) and foreordained to them the might, by virtue of the Qur'anic text in which God the Almighty said: 'Might and strength be to Allah, the Prophet (Muhammad) and the believers (Muslims)'.¹²² The Qur'an says again: 'Thou wilt not find any people who believe in Allah and the Last Day, loving those who resist Allah and His Apostle, even though they were their fathers or their sons, or their brothers, or their kindred.'¹²³

117. Ibid.

118. Op. cit., Shahid.

119. Op. cit., Awang..

120. *Al-Muslim Weekly*, Vol. 8, Issue No. 418, Friday 2, 5, London, 1993.

121. Qur'an 4:141.

122. Qur'an 63:8.

123. Qur'an 63:8 and 22:58.

Thus, these two verses have strictly prohibited the authority of non-Muslim over a Muslim, since the Muslim has to submit to and obey whoever is in charge over him. The Muslim, therefore becomes inferior to him, and this should not be the case with the Muslim.¹²⁴

7. 12. Freedom of Expression

As freedom of expression or opinion is recognised by Islam, hence it is lawful for a *Dhimmi* in an Islamic State to criticise the government, its policies including the Head of the State as long as it does not amount to an attack Islam as a religion and the Prophet under the pretext of freedom of expression.¹²⁵ Mawdudi, who is more lenient than most Muslim scholars, presents a revolutionary opinion when he emphasizes that in an Islamic state 'all non-Muslims will have the freedom of conscience, opinion, expression, and association as the one enjoyed by Muslims themselves, subject to the same limitations as are imposed by law on Muslims.'¹²⁶

Most of the schools of Islamic law do not support Mawdudi's view, especially in regard to freedom of expression like criticism of Islam and the Government. Even in countries like Pakistan, the homeland of Mawdudi, Iran, Saudi Arabia or some other Muslim countries, it is illegal to criticize the government or the head of the State. Through the course of history except in rare cases, not even Muslims have been given freedom to criticize Islam without being persecuted or sentenced to death. It is far less likely the *Dhimmi* to get away with criticizing Islam.¹²⁷ Mawdudi's statement has defined the term 'limitations' in a very obscure way. If it were explicitly defined, it would seem, in the final analysis, that it curbs any type of criticism against the Islamic faith and government.

8. Compatibility of the Treatment

From the earliest period of Islam to the present day the non-Muslims have been enjoying the same rights and carry same responsibilities as the Muslims. When the Prophet says: 'He who hurts a *Dhimmi* hurts me, and he who hurts me annoys Allah'¹²⁸; or 'Whoever hurts a *Dhimmi*, I am his adversary, and I shall be an adversary to Him on the Day of Resurrection'¹²⁹; or 'On the Day of Resurrection I shall dispute with

124. Op. cit., *Al-Muslim Weekly*.

125. Op. cit., Awang, p. 196.

126. Ibid.

127. Op. cit., Shahid.

128. Reported by Al-Tabarani.

129. Reported by Al-Khatib.

anyone who oppresses a person from among the people of the covenant, infringes on his right, or puts a responsibility on him which is beyond his strength, or takes something from him against his will¹³⁰, it is clearly indicated that non-Muslims are given the same honour and dignity as the Muslims enjoy. The successors of the Prophet, the Caliphs safeguarded the rights and sanctions of non-Muslim citizens and the Islamic jurists, in spite of their divergences of opinions regarding many other matters, are unanimous in emphasizing these rights and sanctions. According to some *Ahadith*, severe warning is reported for violating the property or lives of the *Dhimmi*s. 'Whoever unjustly kills a person of the covenant of *Dhimmah*, Allah has prohibited Heaven for him.'¹³¹ The Qur'an says: 'O ye believe! Stand out firmly for justice, as witness to God, even against yourself, or your parents, or your kin, and whether it be (against) rich or poor.'¹³² Under Islamic law, one cannot transgress law, justice and good conscience on the pretext that the other party is non-Muslim; one cannot violate pledge given them on any account; if any non-Muslim seeks asylum, it can on no account be refused and afterwards he is to be conveyed to his place of safety.¹³³ In fact, the entire fabric of Islamic international Law is intended for the non-Muslims.¹³⁴ Thus in an Islamic State, the non-Muslims are given right to life, property and religion, right to equality, right to honour and dignity, freedom of expression or opinion, right to practise own culture, right to pre-emption, right to fair trial etc which are termed as human rights by the traditional Muslim scholars as these rights quite resemble with those inserted in the Universal Declaration of Human Rights Adopted by the United Nations in 1948, the Convention for the Protection of Human Rights and Fundamental

130. Reported by Abu Daud.

131. Reported by Bukhari, Ibn Majah, Ahmad, Tirmidhi and Darimi.

132. Qur'an 4:135.

133. Qur'an 9:6.

134. Op. cit., Hamidullah, (1953) p. 75.

Freedoms 1950,¹³⁵ the Optional Protocol 12¹³⁶ (not yet in force), the International Covenant on Civil and Political Rights 1966,¹³⁷ International Convention on the Elimination of All Forms of Racial Discrimination,

135. Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

136. Article 1

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

137. Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

1969,¹³⁸ the American Convention on Human Rights 1969,¹³⁹ the Universal Islamic Declaration of Human Rights adopted by the Muslim Council of

138. Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- a. The right to equal treatment before the tribunals and all other organs administering justice;
- b. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- c. Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- d. Other civil rights, in particular: [movement, leave and return, nationality, marriage, property, inheritance, thought, conscience, religion, opinion, expression, association and assembly]
- e. Economic, social and cultural rights, in particular: [work, trade union membership, housing, public health & social services, education & training, equal cultural participation]
- f. The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

139. Article 1: Obligation to Respect Rights

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their

Europe in 1981,¹⁴⁰ the African [Banjul] Charter on Human and Peoples' Rights 1981,¹⁴¹ the Cairo Declaration on Human Rights in Islam

jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 20: Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

140. <http://www.iifhr.com/uidhr1.html> 26/05/2003.

141. Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

1990,¹⁴² the Arab Charter on Human Rights 1997,¹⁴³ the Framework

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

142. Article 11

- a. Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.
- b. Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and control over their wealth and natural resources.

Article 19

- a. All individuals are equal before the law, without distinction between the ruler and the ruled.
- b. The right to resort to justice is guaranteed to everyone.
- c. Liability is in essence personal.
- d. There shall be no crime or punishment except as provided for in the *Shariah*.
- e. A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defence.

143. Article 1

- a. All peoples have the right of self-determination and control over their natural wealth and resources and, accordingly, have the right to freely determine the form of their political structure and to freely pursue their economic, social and cultural development.

Convention for the Protection of National Minorities 1998,¹⁴⁴ the European

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- b. Racism, zionism, occupation and foreign domination pose a challenge to human dignity and constitute a fundamental obstacle to the realization of the basic rights of peoples. There is a need to condemn and endeavour to eliminate all such practices.

Article 2

Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its Jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women.

Article 37

Minorities shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions.

(The 22 member States of the League of Arab States are: Jordan, U.A.E., Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Comoros, Kuwait, Lebanon, Libya, Egypt, Morocco, Mauritania, Yemen.)

144. Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights, which are connected to that choice.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Charter for Regional /Minority Languages 1998, the Charter of Fundamental Rights of the European Union 2000.¹⁴⁵

Many western scholars, who have carried numerous investigations on the Muslim formulation of human rights and said that Muslim world has hired the concept from the West, have concluded that these schemes run far short of the protections provided by the international human rights, enshrined in the Universal Declaration of Human Rights.¹⁴⁶ Mawdudi has refused to accept their view and said until the seventeenth century the western world never knew that the Magna Carta contained the human rights and civic rights but the human rights in Islam existed before that point of time and unlike the traditional human rights, the rights in Islam cannot be suspended or withdrawn because of its divine nature and sanctions are followed in the violations.¹⁴⁷

145. Article 21

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22

The Union shall respect cultural, religious and linguistic diversity.

146. Safi, Louay M., 'Human Rights and Islamic Legal Reform', available in <http://www.wponline.org/vil/books/shariah/human3.pdf> 26/05/2003.
147. Mawdudi, *Human Rights in Islam*, available in http://www.wponline.org/vil/books/M_hri/index.htm 15/03/2003.

Ann Elizabeth Mayer, who conducts certain research on Islamic jurisprudence and believes in universalistic approach, contends that contemporary endorsement of international human rights by Muslims is more apparent than real, because all human rights pronouncements by Muslim individuals and groups have been curtailed by qualifications rooted in *Shariah*. The application of *Shariah* law would lead, she concludes, to serious breaches of international human rights. More specifically, the application of *Shariah* law would lead to the attrition of religious freedom and to discrimination against ... non-Muslims.¹⁴⁸

Rhoda Howard, who is very critical about Islamic treatment towards non-Muslims, points out that traditional *Shariah* fails to afford equal protections of the law for ...non-Muslims. She wrote: 'According to traditional interpretations, Islam excludes entire categories of people, most notably women, slaves [sic], and non-Muslims, from equality under the law, although it does set out careful rules for their unequal protection.'¹⁴⁹ Howard, though critical about *Shariah*, takes reasonable care, however, in saying that against any conclusion that would suggest that the classical legal system was unjust, and continues to argue that compared with Europe until barely a century and a half ago, Islamic societies might well be characterized as far more just in the modern sense of protecting human rights. Still, Howard is quick to deny the possibility of developing a modern human rights tradition, rooted in Islamic worldview, insisting that 'Islamic conception of justice is not one of human rights.'¹⁵⁰

Heiner Brelefeldt who argues for reformation in Islamic law for its partisan attitude about the treatment of non-Muslims in an Islamic State, supports the contention made by Mayer regarding historical *Shariah's* capacity to provide for human rights protections, particularly for women and non-Muslims. Examining areas of conflict between *Shariah* and human rights, he notes: 'Due to the timing of its development, it is hardly

148. Mayer, Ann Elizabeth, *Islam and Human Rights: Tradition and Practice*, 2nd Edition, Westview Press, 1995, pp.64-65.

149. Rhoda Howard, *Human Rights and the Search for Community* (Boulder, Co.: Westview Press, 1995), p. 93.

150. *Ibid*, p. 94.

surprising that the classical *Shariah* differs from the modern idea of universal human rights. Although the *Shariah* puts a great deal of emphasis on the equality of all the faithful before God, it traditionally assumes unequal rights between men and women and between Muslims and members of other religious communities'.¹⁵¹

Abdullahi An-Na'im, who was born and brought up in an Islamic environment and speaks in his mother tongue Arabic, is thought to be the leading reformist for his opinion on the point that the world is advancing very fast and the people are getting aware of what is good or bad treatment keeping pace with time, whereas the *Shariah* still keeps it in tact with the primitive attitude. Though he realizes that the possibility and importance of sprouting human rights tradition from within the Islamic normative system, and warns against any external burden, he discusses detailed examples of violation of religious freedom by *Shariah* rules, and cites instances of discrimination against women and non-Muslims in the historical legal system.¹⁵² To make the *Shariah* attuned with the modern concept of human rights, he calls for an Islamic reformation aimed at overcoming contradictions between international human rights and *Shariah* rules, and proposes a methodological approach based on what he calls 'the evolutionary principle' introduced in the seventies by his late Sudanese mentor, Mahmoud Muhammad Taha who was later executed by the Sudanese Government on the charge of blasphemy. According to this principle, An-Na'im urges for the application of reverse *naskh*, i.e. the abrogation of the Madinan Qur'an, which places the solidarity of Muslims above all others having different religious faith and exerts Muslims to coerce the unbelievers to accept Islam, and introduces actions that discriminate against women and against non-Muslims,¹⁵³ whenever contradicts the Makkan Qur'an, which embodies the eternal principles of the Islamic revelation which emphasize

151. Heiner Biefeldt, 'Muslim Voices in the Human Rights Debate', *Human Rights Quarterly*, 17.4 (1995), p. 596.

152. An Na'im, A.A., *Toward an Islamic Reformation*, Syracuse university Press, Cairo, 1990, pp. 52-56.

153. *Ibid*, p. 176.

human solidarity and establish the principle of justice for all, regardless of religion, gender, or race.¹⁵⁴ An-Na'im concludes by making a obsessive plea that succinctly summarizes his approach: 'Unless the basis of modern Islamic law is shifted away from those texts of the Qur'an and *Sunnah* of the Medina stage, which constituted the foundations of the construction of *Shariah*, there is no way of avoiding drastic and serious violation of universal standards of human rights. There is no way to abolish slavery as a legal institution and no way to eliminate all forms and shades of discrimination against women and non-Muslims as long as we remain bound by the framework of *Shariah*'.¹⁵⁵

In spite of An-Na'im's proposal seeming apparently to provide a quick fix to the contradictions between historical *Shariah* and international human rights, the 'evolutionary principle', is not satisfactory, as it can be easily faulted on both theoretical and practical grounds.¹⁵⁶

First, as long as Muslims consider the Qur'an, which An-Na'im himself agrees, as a divine revelation, they must accept the totality of the Qur'anic statements as a single discourse.

Secondly, opposing the Madinan Qur'an would not be tolerable by the Muslims, including those who agree with An-Na'im that there should be a fresh reading of the Islamic sources so as to produce a sweeping legal reform.¹⁵⁷ Those who peruse the Qur'an profoundly cannot deny the fact that the Madinan Qur'an not only comments on family matters and relationships with non-Muslims, but also on issues relating to fundamental Islamic practices, such as the performance of prayer, *zakat*, fasting, and *hajj*.

Thirdly, ignoring one-third of a book which the majority of Muslims believe to be unquestionable is counterproductive, particularly when it can be shown, that the contradictions between the Makkan and Madinan statements on women and non-Muslims are more perceptible than real, resulting from faulty interpretations by classical scholars, as well as the application of an atomistic methodologies of derivation.¹⁵⁸

154. Ibid, p. 49.

155. Ibid, p.180.

156. Op. cit., Safi.

157. Ibid.

158. Ibid.

9. Conclusion

While the traditionalists treat Islamic States' conduct towards non-Muslims as compatible with international human rights and the modernists view that apparent formulation of human rights by the Islamic States towards non-Muslims are not real human rights as it gets circumscribed by qualifications rooted in *Shariah*, it can be concluded with the view that Islam, which means peace is bound to establish peace and dignify the humanity through all the guidance revealed in the Qur'an and *Sunnah* and whose objectives are such, practicing discrimination between Muslims and non-Muslims, men and women whatever is never possible on its part. Given the objectives, what it proposes, has got its justification though seeming sometimes imbalanced apparently. Moreover, certain distorted and isolated incidences are being laminated with Islam, which Islam neither endorses nor presupposes.¹⁵⁹ Since the arrival of Islam, it leaves no stone unturned for the well being of the humanity. Muslims and Islamic civilization must be recognized for their extensive contributions to human progress. So it can be said that Islamic law i.e. *Shariah* has been quite resembling with the human rights doctrine of equality, which has evolved in modern times. But the problem lies with the modernists who have failed to locate human rights tradition in Islam because of their static and ahistoric outlook that isolate the *Shariah* rules developed by classical scholars from the socio political structure of early Muslim society. For a modern human rights tradition to take hold in modern Muslim society, it should be rooted in the moral or religious commitments of the Muslims. The dignity of mankind can be achieved not by making an import of human rights tradition evolved in an alien culture, but by appealing to the conception of human dignity embedded in the Qur'anic texts, and by employing the concept of reciprocity which lies at the core of the Qur'anic notion of justice. Louay M. Safi has rightly commented that human rights tradition capable of ensuring equal protections of the moral autonomy of both individuals and groups is bound to evolve by the application of the Islamic sources through a paradigm that incorporates the principles of human dignity and moral reciprocity into a modern society, characterized by cultural plurality and globalizing technology.¹⁶⁰

159. Eliz Sanasarian, *Religious Minorities in Iran*, Cambridge University Press, Cambridge, 2000, pp.220-228.

160. *The American Journal of Islamic Social Sciences*, Herndon, USA, available in <http://www.wponline.org/vil/books/shariah/human3.pdf> 26/05/2003.