

Revisiting the Rights of Non-Muslims in Islamic State

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1. Introduction:

Human dignity as a manifestation of God's favour on mankind finds its recognition in the Holy Qur'an.¹ One of the manifestations of the dignity of human being within the paradigm of Islam is, as Kamali observes, its insistence on the essential equality of each and every individual of the human race.² The essence of Islam, a complete code of life, is essentially mercy to all people, both Muslims and non-Muslims.³ One of the significant aspects constituting an embodiment of this Mercy, as one noted author rightly observes, is the way the canons of Islam deal with people belonging to other faiths.⁴ Moreover, the tolerant attitude of Islam towards non-Muslims, whether they be those residing in their own countries or within the Muslim lands, can be clearly seen through a study of history and the history delineated by both Muslim⁵ and non-Muslim⁶ historian bears this testimony.⁷ The vibes of just relations between Muslims and non-Muslims were not a political stratagem devised by Muslim rulers rather they sprang from the noble teachings of Islam as imbedded in the Qur'an and authentic Sunnah of the Prophet (PBUH).⁸

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¹ Al-Isra 17:70. Allah ordains: Now, indeed, we have conferred dignity on the children of Adam, and borne them over land and sea, and provided for them sustenance out of the good things of life, and favoured them far above most of Our creation. Translation in this article is adapted from Muhammad Asad, *The Message of the Qur'an* (Dar al Andalus, Gibraltar, complete edition, 1980)

² Kamali, Mohammad Hashim, *The Dignity of Man: An Islamic Perspective* (First published by Ilmiyah Publishers, 1999, Revised edition, Islamic Text Society Cambridge, UK, Reprint of the revised edition published by Ilmiyah Publishers 2002) 45.

³ The reiteration of this principle is lucidly illustrated when the Holy Quran proclaims that the Prophet (PBUH) is a mercy for all creatures. See Al Anbiya 21:107. Dr. Saleh al Aayed " The Rights of Non-Muslims in Islam (Part 1-13): An Islamic Basis" , (last modified 16 October, 2011) < <http://www.islamreligion.com/articles/374/>>

⁴ Ibid

⁵ Muslims are those people who complied with the fundamental tenets of Islam as espoused in the Qur'an and authentic Sunnah of the Prophet (PBUH).

⁶ People who do not put faith to the basics of Islam as demanded by the Qur'an and authentic Sunnah of the Prophet (PBUH).

⁷ See above n 3.

⁸ See above n 3.

In this paper, the authors will meticulously explore whether Islam has granted all the necessary rights to the Non-Muslims without making any discrimination on the grounds of religion and at the same time to observe that whether Islamic State in practice, is able to ensure these rights properly.

2. Conceptualizing Islamic State:

Islamic State may be defined as that type of state whose basis is firmly rooted in the Qur'an and the Sunnah of the Prophet (PBUH) and the affairs of this state are conducted in accordance with the Qur'anic injunctions and the Prophetic Sunnah. An Islamic State, as one scholar opines, is in essence, an ideological state⁹ and strives to ensure all types of basic rights to its citizens without any sort of discrimination. Thus, justice and welfare constitute the basic features of an Islamic State.

3. The Classification of Non-Muslim Citizens

Different scholars endeavoured to divide non-Muslims from their own understanding of the Qur'an, Sunnah, practices of rightly guided Caliphs and overall historical analysis. But undeniably their classification is not the last word since their juristic efforts are prompted by their own societal context and subjective understanding.

Sayyid Abul A'la Maududi, typically regarded a traditionalist Islamic Scholar, divides non-Muslim citizens of an Islamic state into three distinct categories, namely

- (a) Those who become the citizens of an Islamic State under some pact or agreement;
- (b) Those who become its subjects after being conquered by the Muslims in an armed confrontation or battle, and
- (c) The third category includes those who reside in the Islamic State in any other way.¹⁰

Another distinguished jurist opines that non-Muslims are classified into four categories as follows:

- a) Warriors
- b) Peace seekers
- c) Peace truce holders
- d) Non-Muslims living or residing in an Islamic governed country.¹¹

On the other hand, Hashim Kamali, a renowned Islamic scholar of contemporary time, observes that Muslim jurists have distinguished between two categories of non-Muslims, namely

⁹ Maududi, Sayyid Abul A'la "The Islamic Law and Constitution"[Khurshid Ahmad trans, Islamic Publications (Pvt.) Limited, Lahore, 11th edition, 1992] 274.

¹⁰ Ibid, 278.

¹¹ Shaikh Mohammad Saleh Alotaimeen < www.arriyadh.com > (Accessed on 9 September 2009)

(i) *Dhimmis* or *al-muwatinun* i.e. permanent residents of Muslim-dominated territory,

(ii) *Musta'min* i.e. non-Muslims granted safe conduct and residence there temporarily for a particular purpose.¹²

Kamali deftly clarifies that *musta'min*, during their stay in Muslim territories, are entitled to safe conduct and the protection of their lives and properties in the same way as the *muwatinun*.¹³

Amidst the different classifications Kamali's classification seems to us very reasonable, relevant and easily conceivable in contemporary global order.

Though jurists differed as to the classification of non-Muslims we would focus on the *dhimmis* or *al-muwatinun*.

4. Rights of the Non-Muslims in Islamic State

Now we will shed light on the rights granted by Islam to the Non-Muslims and Islamic State is under an obligation to ensure these rights to them.

4.1 Protection of Life, Property and Honour:

The foremost obligation of an Islamic state is to ensure, protect and preserve the life, property and dignity of its citizens without subjecting them to any sort of discrimination. Even these rights are equally applicable to visitors both Muslims and non-Muslims. Allah (SWT) ordains:

And if any of those who ascribe divinity to aught beside God seeks thy protection, grant him protection, so that he might [be able to] hear the word of God [from thee]; and thereupon convey him to a place where he can feel secure: this, because they [may be] people who [sin only because they] do not know [the truth].¹⁴

These fundamental rights cannot be taken away by the state except in accordance with law. The life of non-Muslim cannot be taken away until and unless he is guilty of killing someone and allegation is proved beyond reasonable doubt. Allah (SWT) says:

Say: "Come, let me convey unto you what God has [really] forbidden to you: "Do not ascribe divinity, in any way, to aught beside Him; and [do not offend against but, rather,] do good unto your parents; and do not kill your children for fear of poverty - [for] it is We who shall provide sustenance for you as well as for them; and do not commit any shameful deeds, be they open or secret; and do not take any human being's life - [the life] which God has declared to be sacred - otherwise than in [the pursuit of] justice: this has He enjoined upon you so that you might use your reason;¹⁵

The Prophet of Islam (PBUH) upheld the inviolability and sanctity of the life of non-Muslims. He mentions:

¹² Mohammad Hashim Kamali, "Freedom, Equality and Justice in Islam" (Ilmiyah Publishers, 1st edition 1999)78

¹³ Ibid.

¹⁴ At-Tawbah (Repentance) 9:6.

¹⁵ Al-Anaam 6:151

Whoever kills a person, with whom we have a treaty, will not come close enough to Paradise to smell its scent, and its scent can be found as far as forty years of travel [away].¹⁶

Islamic Law prohibits to snatch away the property of the non-Muslims by Muslims and if such illegal act takes place he or she will be prosecuted by the competent court. Prophetic tradition, in this regard, provides:

Indeed God, Mighty and Majestic, has not allowed you to enter the homes of the People of the Book except by their permission, nor has He allowed you to hit their women, nor eat their fruit if they give you what is obligatory upon them [from the jizyah].¹⁷

Islam also enjoins to respect the right of asylum and make the same right inviolable unless necessitated by state authority on justifiable grounds. Prophetic tradition asserts:

The obligation imposed by the covenant is communal, and the nearest Muslim must try hard to fulfill it. Anyone who violates the protection granted by a Muslim will be under the curse of God, the angels, and all people, and on Judgment Day no intercession will be accepted on his behalf.¹⁸

In response to a query regarding granting asylum to Ibn Hubayra by Umm Hani, a female companion, who is at war with her brother, Prophet (PBUH) states:

Anyone you have given asylum to is under the protection of all of us, O Umm Hani.¹⁹

It is also prohibited under Islamic law to defame and tarnish the dignity of non-Muslims.

4.2 Freedom of Speech & Expression:

Within the constitutional and statutory framework of an Islamic state all non-Muslims, like Muslims, will enjoy the freedom of thought, opinion, speech and expression subject to the limitations imposed on the ground of public interest, security etc. Maududi, though a traditionalist and orthodox scholar, vehemently states that they are allowed to criticize the Government, its officials including Head of the State. Furthermore, he continues, to assert that they can criticize Islam as Muslims can avail the right of criticizing their religion. State cannot coerce them to act against their ideologies and conviction.²⁰

¹⁶ *Sahih Bukhari* ahadith no. 3166, 6914. See also *Sunan Ibn Maajah*, vol. 2, Book: 15 Blood Money (Kitab Ad-Diyat), Hadith no. 2686 (this hadith is narrated by Abdullah bin Aa'mar). See also hadith no. 2687 (this hadith is narrated by Abu Hurairah and the distance is 70 years instead of 40 years). Compiled from *Sunan Ibn Maajah*, (Bangla Translation) Translated by the translation and research division of Tawhid Publications, Dhaka, Tahqiq: Nasiruddin Albanee, 1st edition July, 2014, vol. 2. See also *Jami at-Tirmidhi*, hadith no. 1403, *Sunan-i- Nasai*, hadith no. 4750.

¹⁷ Reported by *Sunan-i- Abu Dawud*. For details on *jizya* see note 80.

¹⁸ *Sahih Bukhari*, hadith no. 6755, *Sahih Muslim*, hadith no. 1370, from the hadith of Ali.

¹⁹ *Sahih Bukhari*, hadith no. 357, *Sahih Muslim*, hadith no. 82.

²⁰ Above n 9, 296-297

4.3 Right to Social Security:

Islam pioneers in establishing welfare and social security to all of its citizens irrespective of race, colour, sex, religion or other criteria. Apart from providing financial benefits from *Bait al-Mal* (state treasury) Islam encourages Muslims to pay *sadaqa* (voluntary spontaneous charity) to needy people.²¹ History bears lot of instances where non-Muslims were benefitted from individual charity and especially from state treasury. Caliph Umar and Umar b. Abdul Aziz's policy to make arrangement for pension and special fund for needy non-Muslims of Damascus and Basra respectively are glaring examples.²² Even disable non-Muslims are immune from *Jizya* and other taxes. Some of the early Muslims²³ used to distribute part of their post-Ramadan charity (*zakat ul-fitr*) to Christian monks, based on their understanding of the following verse of the Quran:

As for such [of the unbelievers] as do not fight against you on account of [your] faith, and neither drive you forth from your homelands, God does not forbid you to show them kindness and to behave towards them with full equity: for, verily, God loves those who act equitably. God only forbids you to turn in friendship towards such as fight against you because of [your] faith, and drive you forth from your homelands, or aid [others] in driving you forth: and as for those [from among you] who turn towards them in friendship; it is they, they who are truly wrongdoers!²⁴

4.4 Non-Muslims and the Criminal Laws:

The majority scholars held the notion that the Penal Laws are the same for the *Dhimmi*s and the Muslims and both are to be treated alike in this regard. To them, the *Dhimmi*s will stand in the equal footing with Muslims.²⁵ However, Imam Malik Ibn Anas goes a step further and held that the *Dhimmi*s are exempted from the punishment for adultery. He based his opinion on the decisions of Umar and Ali who lay down that if a *Dhimmi* commits adultery his case should be referred to his co-religionists.²⁶ No punishment can be inflicted for taking foods and drinks declared lawful by their religions but prohibited by Islam. We concur with Imam Malik and express that matters relating to the observance of their own religious rites cannot be incriminated by an Islamic state provided those are accompanied by violence and create turmoil in the state. Since maintaining the public order and establishing peace and tranquillity is one of the sacred responsibilities of a welfare state anyone found committing those activities must undergo punishment in accordance with the penal laws of the land.

²¹ The Qur'an focuses on charity in many places. As for example, see 2: 110, 177, 3: 134, 30: 38, 57: 18, 63: 10, 64: 16, 17.

²² For a detailed discussion see Al Qaradawi, Dr. Yusuf *O-Muslimer Proti Islamer Udarata* (Mahmudul Hasan trans, published by Sarwar Kamal, Chittagong, 1st edition, 1994)28-30. [trans of: *Ghayr al-Muslimeen fil-Mujtama' al-Islami*, Cairo, 1992]

²³ Sarkhasi "Al-Mabsut" vol.2 p.202. See also Jassas"Al-Ahkam ul-Quran vol. 3. p.215

²⁴ Al-Mumtahina 60:8-9.

²⁵ Maududi, above n 9, 305.

²⁶ Ibid.

4.5 Non-Muslims and the Civil Laws:

Absolute equality exists between the Muslim and non-Muslim citizens regarding the protections, security and liberties entailed by the Civil laws of the country. The same parameter regarding enjoying rights and fulfilling duties are maintained between them. However, non-Muslims get special priorities in certain matters namely manufacturing, taking and dealing with wine or other things permitted under their religion, rearing, trading and eating pigs etc. Not only this, non-Muslims shall be recompensed by Muslims if the latter spoil their wine or cause injury to their pigs.²⁷

Professor Dr. Yusuf al Qaradawi opined that the Non-Muslims are entitled to do the above-mentioned activities only within themselves and within their territories. But they are not allowed to extend these activities in the Muslim society or hurt the religious feelings of the Muslims by carrying out these activities.²⁸

4.6 Right to follow their own Personal Law:

Since Qur'an explicitly proscribes to use force in religious matters non-Muslims will naturally be governed by their own personal laws. Rulings peculiar to their own religions, not Islamic Shairah, will regulate their affairs. This is the standard maintained since the genesis of the functioning of Islamic State. 'Umar bin 'Abd al-'Aziz, popularly known in Islamic history as fifth Caliph and second Omar, once asked for a verdict in this respect from Hasan al-Basri²⁹, saying : "How is it that the Caliphs left the *Dhimmi*s free in the matters of marriages regardless of consanguinity and in the matters of drinking wine and eating pork?" Hasan replied:

The *Dhimmi*s accepted to pay *Jizyah* only because they wanted to be free to live in accordance with their own Personal Law. You have only to follow what your predecessors did. You are not to deviate or to innovate.³⁰

However, it is lawful to get the dispute decided in accordance with Islamic Shariah if requested by the non-Muslim disputants. Allah ordains:

if they come to thee [for judgment], thou mayest either judge between them or leave them alone: for, if thou leave them alone, they cannot harm thee in any way. But if thou dost judge, judge between them with equity: verily, God knows those who act equitably.³¹

²⁷ Alauddin, *Durr al-Mukhtar*. It contains authentic collection of the judgments and verdicts of the Hanafi School of thought. It is regarded as one of the reliable books in the field of Islamic Jurisprudence especially by the Hanafis.

²⁸ Qaradawi, Prof. Dr. Yusuf Al, *Adhunik Jug: Islam Kaushal O Karmoshuchi* (Muhammad Sanaullah Akhunji, Notun Safar Prakashani, Dhaka-1219, 2nd edition 2003)154 [trans of: Priorities of Islamic Movement in the Coming Phase (first published, 1992)]

²⁹ Hasan al-Basri: one of the most eminent scholars from the second generation of Muslims known for his asceticism and knowledge. He was born in Medina in 642 CE, the son of a slave captured in Maysan, who was freed by the Prophet's secretary, Zaid bin Thabit. He was brought up in Basra, Iraq. Hasan met many Companions and transmitted many reports of Prophet Muhammad. His mother served Umm Salama, the wife of the Prophet. He died in Basra in 728 CE at the age of 88

³⁰ Maududi, above note 9, 286.

³¹ Al-Maeda, 5:42.

Even non-Muslim western scholar Adam Metz, confesses and testifies in the *Islamic Civilization in the Fourth Century of the Hegira*:

Since the Islamic Law was specifically for Muslims, the Islamic state allowed the people of other religious affiliations to their own courts. What we know about these courts is that they were church courts and prominent spiritual leaders were the chief justices. They wrote a great number of books on canon law, and their rulings were not confined to matters of personal status. They included such problems as inheritance and much of the litigations between Christians that did not involve the state.³²

Gustav LeBon goes to the extent of saying that nations had never known conquerors more tolerant than the Muslims, or a religion more tolerant than Islam.³³

4.7 Right to observe their own Religious Rites:

Non-Muslims are fully guaranteed, in an Islamic state, to perform their religious rites and festivals. It is not unusual, of course for the government, to put certain reasonable restrictions for public purposes and on the ground of security, maintaining communal harmony etc.

4.8 Protection to the Places of Worship:

It is incumbent on the Islamic state to protect the right of non-Muslims towards their religion and other rights ancillary thereto. They should be allowed to build their own places of worship and religious institutions. A group of scholars maintain, as regards building places of worship, between purely Muslim areas and non-Muslim areas. They though allow reconstruction and repair of existing places of worship in purely Muslim areas, decline to grant the right of constructing new places of worship.³⁴ However, in the contemporary pluralistic global order this distinction in many areas will be blurred due to the co-existence of different religious communities. If an area is purely accommodated by a particular religious community and no space is available for others to live in there, the necessity to construct places of worship for them will be in vein and this would certainly weaken the social fabric and demolish communal harmony and mutual respect.

4.10 Freedom of Trade and Profession:

Islamic state, as regards lawful trade and business or other occupation, should ensure equal opportunities and privileges for all of its citizens irrespective of race, colour, religion, sex or any other criteria.³⁵ All scholars unanimously held that interest is unlawful for both Muslims and Non-Muslims. They will not be permitted to deal with wine and pigs in the Muslim society.³⁶ However, in their own residential area, if separate from Muslim locality, they can be allowed to do so.³⁷ Prof. Adam Metz showed that no injunctions of Islamic

³² Adam Metz, 'Islamic Civilization in the Fourth Century of the Hegira' (Prof Muhammad Abdul Hadi trans.) Vol.1, 85.

³³ Bon, G Le, "The World of Islamic Civilization of the Arabs", (Tudor Pub. Co; First Edition, 1974) 605

³⁴ Maududi, above n 9, 309.

³⁵ Ibid 298.

³⁶ See note no. 22, p. 35.

³⁷ See note no. 28.

Shari'ah restrain the non-Muslims to carry out their trade and other professions. Through his research, he established the truth that most of the great money exchangers were Jews and most of the doctors were Christians.³⁸

4.11 Protection from Foreign Aggression:

Islamic Shariah guarantees equal rights for both Muslim and Non-Muslim citizens to be protected from external aggression. By realizing *Jizya* Islamic state affirms that it is under a strict obligation to ensure protection against foreign aggression, defense against foes, and even ready to pay ransom to on their behalf if they are taken captive by an enemy.³⁹ Mawardi, an eminent scholar, has encapsulated the concept of protection of non-Muslim citizens from both internal and external aggression in a lucid manner. He opines:

The payment of the *jizya* entitles the people of the covenant to two rights. First that they be left undisturbed. Second, that they be guarded and protected. In this way, they can be secure in society and protected from outside threats.⁴⁰

Ibn Hazm, renowned Zahiri Scholar, emphatically opines :

If we are attacked by an enemy nation who is targeting the People of the Covenant living among us, it is out duty to 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.⁴¹

Historical evidences namely Abu Ubayda al- Jarrah's order to return *Jizya* for their inability to protect *Dhimmi*s of Syria ⁴²and Ibn Taymiya's insistence to ensure release of Non-Muslims prisoners of war along with the Muslim PoWs from the captivity of Tartar⁴³ suggest the obligation of the authorities in charge of an Islamic state and of course their compliance with the dictates of Islamic Shairah. Islamic Law always stringently emphasizes to protect the people of the covenant. Al-Qarafi, another celebrated classical scholar states:

The covenant is a contract that has conditions that are compulsory for us, for they are under our protection as neighbors, and the covenant of God and His Messenger, and the religion of Islam. If someone harms them with inappropriate speech, defamation, any type of harassment, or is an accomplice to such actions, then he has made light of the covenant of God, His Messenger, and Islam.⁴⁴

Islam taxes rather entitle them to be benefitted from the *Bait al- Mal* (state treasury). Khalid bin Walid, in his illustrious "Covenant of Peace" given to the people of Hirah, provided:

³⁸ Adam Metz, "Islamic Civilization in the Fourth Century of the Hegira" (Prof Muhammad Abdul Hadi trans) Vol.1, 86.

³⁹ See, for details, Qaradawi, above n 33.

⁴⁰ Mawardi, "Al-Ahkam al-Sultaniyya", 143

⁴¹ Qarafi "Al-Furuq" vol.3 p. 14-15

⁴² Imam Abu Yousuf, "Kitab al Kharaj", 149-151

⁴³ Qaradawi, above n 22, 10.

⁴⁴ Qarafi "Al-Furuq" vol.3, 14.

I have stipulated that if any one of them becomes unfit to work on account of old age or some other cause, or if anyone who was formerly rich becomes so poor that his co-religionists have to support him by giving him alms, such persons will be exempt from paying the *Jizyah* and they, together with their dependents, will be helped from the Islamic Treasury (*Bait al-Mal*).⁴⁵

Islamic scholars permit, as a curative measure, simple imprisonment, for the defaulters of *Jizya*.⁴⁶ But, specific context, ability and intention of the *Dhimmi*s and other relevant facts must be reckoned by a competent judicial authority before prescribing such punishment. Islamic Law is so lenient that it prohibits to realize *Jizya* from the property of the deceased *Dhimmi*s or from his legal heirs.⁴⁷

4.13 Right to be Exempted from Military Service

It is incumbent only upon the capable Muslim male to participate in warfare to protect the sovereignty of the state. *Dhimmi*s are absolutely exempted from military service. They are only enjoined to pay *jizyah* as a substitute for exemption from compulsory military service and an Islamic state is under a strict legal obligation to ensure their security. The basic philosophy of this issue is summed up by a renowned scholar in the following words:

Evidently, only those people who believe in the basic ideology of the State sincerely can and should fight for its protection. Again, only the believers in that ideology can be expected to honour the moral principles, which have been prescribed by Islam for warfare. Others can fight for it only as mercenaries and, consequently, they cannot be expected to observe the Islamic ethical code in the heat of the battle. These are the main reasons why the *Dhimmi*s have been exempted from military service and have only been enjoined to pay their monetary share in the defence of the State. *Jizyah* is thus not only a symbol of loyalty to the State but it is also the contributory compensation for exemption from military service, and that is why it is imposed only on males, capable of military service.⁴⁸

In case of failure to ensure protection to the non-Muslims the *Jizyah* and *Kharaj* that might have been realized from them, must have to be returned.⁴⁹ Historical evidence bears the testimony of this principle. During the battle of Yumuk, Abu 'Ubaidah, the Commander-in-Chief ordered his subordinate authorities to pay back *Jizyah* and *Kharaj* while observing their inability to secure the life and property of non-Muslims properly and effectively.⁵⁰ After being refunded *Jizyah* and *Kharaj* the non-Muslim community unequivocally asserted the following statement:

We prefer your Government and its keen sense of justice to the cruelty and injustice of our own co-religionists and we are not going to allow their agents to enter the gates of the city unless we are overpowered by them.⁵¹

⁴⁵ Ibid, 85.

⁴⁶ Ibid, 70.

⁴⁷ Imam Abu Yousuf, *Kitab al-Kharaj*; Al-Mabsut, Vol. X, 81

⁴⁸ Moududi, above n 9, 291-292.

⁴⁹ Moududi above n 9, 292. See also n 22, 48.

⁵⁰ Maududi, above n 9, 313.

⁵¹ Ibid, 292-293. See also note 22, 48.

4.14 Right to hold Government Posts

One eminent author explicitly states that with the exception of few key posts⁵² all other services shall be open to them without subjecting to them any sort of discrimination and prejudice.⁵³ In keeping conformity with the principles of *adl* the govt. should prescribe the same criteria of competence for Muslims and Non-Muslims and the most competent persons will always be selected without any sort of bias and favoritism.⁵⁴ This rule is applicable to both civil and military services.

Dr. Yusuf al Qaradawi held that posts like Imam, Head of the State, Commander-in-Chief, Judge in the Court of Muslims and duty of distributing *sadaqa* cannot be held by the Non-Muslims as these posts are inextricably related with the ideologies of Islam.⁵⁵

Jurist like Mawardi opines that the Non-Muslims can be assigned to perform the duty of propagation department, an important post in the Islamic State. Celebrated western historian Adam Metz mentioned that it was a surprising matter that many Non-Muslims were employed in Islamic State.⁵⁶

4.15 Right to be the Head of the State

A non-Muslim is not entitled to hold the post of the Head of the State as this office is inextricably related with religion and the person holding this office must adhere to the Shariah and administer the State in accordance with the principles of the Sharia especially the Qur'an and Sunnah.

According to Dr. Ghilani, the head of the State of an Islamic State shall be a Muslim and a Mujtahid (the one who has the ability to exert himself). Allama Shatibi wrote in his *Al Istihsan* that there has been a consensus (*Ijma*) on this point that he must be a Mujtahid.⁵⁷ As non-Muslims do not accept Islamic ideology they cannot be the Head of an Islamic State. Dr. Qaradawi also supports this view.⁵⁸

4.16 Capacity to Participate in Election

Scholars differ in this issue. One group opines that there is no historical evidence suggesting that the *Dhimmi* had ever participated in the election process of the Four Guided Caliphs. Even they claim that non-Muslims community never exerted such demand.⁵⁹ Thus, the natural corollary of this opinion is that non-Muslims should be denied

⁵² The author defined key posts as those posts which are inextricably connected with the formulation of fundamental policies and the regulation and control of important departments. In each and every ideological state, only the true holders of that ideology who are of course, skilled in their respective fields are furnished with these duties.

⁵³ Moududi, above n 9, 297.

⁵⁴ Ibid, 319.

⁵⁵ Ibid, 35.

⁵⁶ Above n 32, 105.

⁵⁷ Shatibi was quoted by Dr. Riazul Hasan Ghilani in his *Reconstruction of Legal Thought in Islam*, 235.

⁵⁸ Metz, above n 22, 35.

⁵⁹ A. R. Awang, *The Status of the Dhimmi in Islamic Law* (International Law Book Services, India, 1994) 194-195.

any voting right.⁶⁰ On the other hand, different notion works in the minds of other scholars. Mawdudi being aware of the requirements of modern society adopts a liberal and tolerant approach toward *Dhimmis*.⁶¹ He emphatically expresses:

...In regard to a parliament or a legislature of the modern conception which is considerably different from the advisory *Shura* in its traditional sense, this rule could be relaxed to allow non-Muslims to become its members provided that it has been fully ensured in the constitution that (i) It would be ultra vires of the Parliament or the Legislature to enact any law which is repugnant to the Qur'an and the *Sunnah*. (ii) The Qur'an and the *Sunnah* would be the chief source of the public law of the land. (iii) The head of the state or the assenting authority would necessarily be a Muslim.⁶²

However, he is in favour of restricting their rights to the national problems of the state or to the issues peculiar to their own community. Moreover, they, like Muslims, will be debarred from injuring the basic values of Islam.⁶³ Alternatively, it is possible, he opines, to set up of a distinct and separate representative Assembly for fulfilling their legitimate constitutional demands.⁶⁴

The current authors believe that non-Muslims should be allowed to participate in the election process, to nominate representatives, play a coordinated role in the national affairs of the country.

4.17 Right to Testify

Divergent views exist among the Islamic jurists regarding this issue. Few scholars held that witness must be Muslim and as a corollary of this rule they maintained that Non-Muslims are not entitled to testify against Muslims except in certain cases specially in case of extreme necessity e.g. testimony of a non-Muslim in matters of will during a journey in the absence of any Muslim. All schools of Islamic jurisprudence unanimously held that non-Muslims are admissible as witnesses without any sort of restrictions in relation to other non-Muslims.⁶⁵ Other group of jurists opined that in no circumstances evidence of non-Muslims are accepted.⁶⁶ To me, the most appropriate view is that which is held by few classical and modern scholars. A group of scholars including Ibn Taymiyyah recorded to qualify non-Muslims as witnesses in the discovery of truth both for or against the

⁶⁰ Ibid

⁶¹ Islam, Md. Towhidul, *Non-Muslims' Rights In Islam and its Compatibility with International Human Rights*, 2005 15(1) *Dhaka University Law Journal*, 137.

⁶² Above n 9, 295-296.

⁶³ Ibid, 296.

⁶⁴ Ibid.

⁶⁵ See *Fiqh-al- Islami* vol. 6, p. 563, *Bada'i-al-sanai* vol.6, p.282. They based their arguments on the verse: "The Unbelievers are protectors, one of another." (Al-Anfal 8: 73).

⁶⁶ They ventured to base their argument on the verse: "and take for witness two persons from among you, endued with justice, and establish the evidence (as) before Allah." (At-Talaq 65: 2). See also Al- Baqara 2:282.

Muslims.⁶⁷ Dr. Hashim Kamali has endeavoured to clarify this stance in the following manner:

"Their testimony is...generally admissible in disputes concerning acts and transactions in which they usually participate and interact freely with their partners and clients, Muslim or non-Muslim."⁶⁸

Hashim Kamali also took pain to spell out the areas where the evidence of non-Muslims will not be accepted: "In certain other disputes, such as those concerning marriage and divorce, religious offences and matters of Muslim worship, the testimony of non-Muslims is not admissible in disputes involving Muslims."⁶⁹

The prime reason behind this lies in the very fact that difference of religion serves as a ground of doubt (*subh*).

As justice⁷⁰ is central to Shariah, the main focus of course, in case of rendering evidence will also be on discovery of real truth.

4.18 Right to get Dawah

Each and every non-Muslim is entitled to get *dawah* from the Muslim community. It is evident from the following verse of the Holy Qur'an:

Who is better in speech than one who calls (men) to Allah, works righteousness, and says, "I am of those who bow in Islam?"⁷¹

Further elaboration specifically the verse of sura al baqarah regarding no compulsion in religion and the verse of another chapter udu ila sabily rabbiqa wa hikmah may be considered.

⁶⁷ Kamali, Mohammad Hashim, *Islamic Law in Malaysia: Issues and Developments* (Ilmiah Publishers, Kuala Lumpur, 1st edition, 2000) 182.

⁶⁸ Above note 12, 89.

⁶⁹ Kamali, above n 12, 89. He cited few authorities in support of his statement from Mahmud Shaltut, *Fiqh al-Quran wa'l- Sunnah*, Kuwait, Matabi Dar al-Qalam, 69; Uthman, *al-Fikr al-Qanuni al-Islami: Bayn Usul al-Shariah wa Turath al-Fiqh*, Cairo: Maktabah Wahbah, n.d.; p. 269. He also referred to Zuhayli, *al Fiqh al-Islami*, VII, 856.

⁷⁰ The very word '*adl*' is used to place something in its rightful place; it also means according equal treatment to others or reaching a state of equilibrium in transactions with them (*al-taswiyah fil-muamalah*). '*Adl*' (also '*adalah*') thus signifies moral rectitude and fairness since it means that things should be where they belong. See also, Kamali, above n 11, 103. Kamali in the same book (p. 106) vehemently mentions that justice is treated as a supreme virtue and it is, in all its various manifestations, one of the overriding objectives of Islam to the extent that it stands next in order of priority to belief in the Oneness of Allah (*tawhid*) and the truth of the Prophethood (*risalah*) of Muhammad (PBUH). Allah stressed on justice and fair dealing several times in the Holy Qur'an. As for example, "Allah commands justice, the doing of good" (Al-Nahl, 16:90). "O ye who believe! stand out firmly for Allah, as witnesses to fair dealing" (Al-Maedah 5: 8). "We sent aforetime our messengers with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice" (Al-Hadid 57:25).

⁷¹ Fussilat, 41:33.

4.19 Right to receive Proper Education

Islamic State is under a very strict obligation to impart education⁷² to all of its citizens and persons residing within its territory temporarily. As a component of proper education, Islamic state as an ideological state, would ensure proper arrangement so that non-Muslim community can impart their own religious teachings to the children and other persons of their community. Islamic state, in no way, compels them to study Islam or related courses since this would go against the basic tenets of Islam. In spite of being an orthodox scholar Maududi even goes to such extent to opine that they are entitled to introduce their own religious discourses in the National Universities and Colleges.⁷³

4.20 Right not to be insulted

As per Islamic injunctions are concerned, non-Muslims are protected against any type of word, expression or gesture which would tarnish their dignity in the society and offends their religion. The Holy Qur'an clearly ordains: "Reville not ye those whom they call upon besides Allah, lest they out of spite revile Allah in their ignorance..."⁷⁴

Asad, the renowned exegete, explains this verse in the following way:

This prohibition of reviling anything that other people hold sacred - even in contravention of the principle of God's oneness - is expressed in the plural and is, therefore, addressed to all believers. Thus, while Muslims are expected to argue against the false beliefs of others, they are not allowed to abuse the objects of those beliefs and to hurt thereby the feelings of their erring fellow-men.⁷⁵

4.21 Right not to be disheartened by Public Utterance of Hurtful Speech

None really possesses under the Sharia any authority to hurt the feelings of non-Muslims by any hurtful speech publicly. Allah (SWT) says:

Allah loveth not that evil should be noised abroad in public speech, except where injustice hath been done; for Allah is He who heareth and knoweth all things. Whether ye publish a good deed or conceal it or cover evil with pardon, verily Allah doth blot out (sins) and hath power (in the judgment of values).⁷⁶ Dr. Hashim Kamali maintains that hurtful speech, in this text, comprises that which is addresses both to an individual, to more than one person, or to the community at large.⁷⁷

⁷² Islam lays strong emphasis on seeking knowledge. The Holy Qur'an ordains: Proclaim! (or read!) in the name of thy Lord and Cherisher, Who created- Created man, out of a (mere) clot of congealed blood. Proclaim! And thy Lord is Most Bountiful. He who taught (the use of) the pen, - Taught man that which he knew not. (Al-Alaq 96: 1-5)

⁷³ Moududi, above n 9.

⁷⁴ Al-Anaam 6:108

⁷⁵ Asad, Muhammad, *The Message of the Qur'an* (Dar al Andalus, Gibraltar, complete edition, 1980)188.

⁷⁶ An-Nisa 4:148-149.

⁷⁷ Kamali, above n 12, 167.

The Sunnah of the Prophet (PBUH) instructs us not only to avoid the utterance of hurtful speech but also to preserve fraternity, peace and tranquillity in the society. It is narrated on the authority of Jabir that he heard the (Holy Prophet) say: A Muslim is he from whose hand and tongue the Muslim's are safe.⁷⁸ Kamali vehemently remarks that although the *hadith* refers to Muslims, the message contained in it, however, is not confined to believers alone.⁷⁹

5. Obligations of the Non-Muslims-At a glance

We will not likely to focus on the obligations of the Non-Muslims in this paper elaborately. Nevertheless, for the sake of some clarifications it seems necessary to take an overview of those obligations.

5.1 Paying Jizyah

Jizyah⁸⁰ is an annual tax charged on per capita and every major, sane and capable non-Muslim male are bound to pay it.⁸¹

⁷⁸ *Sahih Muslim*, vol. I, Book 1 The Book of Faith (Kitab-al-Iman), Chapter 14 Concerning the comprehensiveness attributes of Islam Hadith no. 65. See also hadith no. 64 & 66.

⁷⁹ Kamali, above n 12,170.

⁸⁰ As regards the derivation of the word *Jizya* (sometimes spelt as *jizyah*) jurists differ in their opinions. To Monqiz-As-Saqqar, this term is derived from the root word *jaza* meaning compensate. He further adds that "Jizya" is a derived term in the form of "ficta" from "Mujazā" which is the noun "compensation", meaning "a sum of money given in return for protection". On the other hand, Ibn Al-Mutaraz opined that it is derived from "idjzā" or "substitute" or "sufficiency" because it suffices as a substitute for the "dhimmi's embracement of Islam". See Saqqar, Monqiz-As, *Jizya in Islam*, translated from Arabic to English by Elisawy, Hayem retrieved from See http://www.loadislam.com/artical_det.php?artical_id=481§ion=wel_islam&subsection=Misconceptions accessed on December 09, 2010. Yusuf al Qaradawi mentions that the word *jizya* is derived from the *jazaa'*, meaning "reward", "return", or "compensation", and defines it as "a payment by the non-Muslim according to an agreement signed with the Muslim state". See <http://en.wikipedia.org/wiki/Jizya> accessed on December 9, 2010. Qaradawi opines that Jizya is an annual tax charged on per capita and every major, sane and capable non-Muslim male are bound to pay it. See Qaradawi, Dr. Yusuf al "*Ghayr al-Muslimeen fil-Mujtama' al-Islami*", "Generosity Towards Non-Muslims In Islam" originally written in Arabic, translated into Bengali by Hasan Mahmudul as "O-Muslimer Proti Islamer Udarata published by Sarwar Kamal, 1st edition, Chittagong, 1994, p. 44. Women, children, old, insane and the poor persons are exempted from paying jizyah. If the Islamic State is unable to give protection, it will not collect jizyah from the Non-Muslims. If after collecting Jizyah, the State becomes unable to render protection it is bound to return the jizyah to the respective persons. See Ibid, p. 48. The amount of the jizya is fixed by the head of the state with due consideration of the capability of payers. It is noteworthy to mention that if the term jizya is too offensive to non-Muslims it is liable to be changed. Umar bin Khattab, the second Caliph of Islam levied the jizya upon the Christians of Banu Taglibh and named it sadaqah (alms) out of consideration for their feelings. The jizyah was also imposed on Muslim men who could afford to buy their way out of military service. For instance, during the Ottoman Empire Egyptian Muslim peasants exempted from military service was required to pay the jizyah. Conversely, if a Christian group elected to serve in the state's military forces, it was exempted from the jizyah. Historical examples of this abound: the Jarajima, a Christian tribe living near Antioch (now in Turkey), by undertaking to support Muslims and to fight on the battle

5.1.1 Reasons of Paying Jizyah

This tax is imposed on them for their protection and they are exempted from defending the Islamic State.⁸²

5.1.2 Determination of the amount of Jizyah

The amount of this tax is determined by the head of the state on the basis of the capability of persons. Thus, equality is ensured by taking more from the rich, a bit less from the middle class and very small portion from the lower class.⁸³

5.1.3 Exemption from Jizyah

Women, children, old, insane and the poor persons are exempted from paying jizyah. If the Islamic State is unable to give protection, it will not collect jizyah from the Non-Muslims. If after collecting Jizyah, the State becomes unable to render protection it is bound to return the jizyah to the respective persons.⁸⁴

5.2 Paying Kharaj

Like Muslims, the Non-Muslims have to pay Kharaj.⁸⁵ The head of the state has the discretion to determine the amount of Kharaj.⁸⁶

front, did not have to pay the jizyah and were entitled to a share of the captured booty. See http://www.islamonline.net/servlet/Satellite?cid=1119503544994&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskThe_Scholar accessed on December 09, 2010. Quoted from Islam, Mohammad Azharul, *Examining the Relevance and Validity of Sharecropping under Islamic Land Law*, *Dhaka University Law Journal*, vol. 19, No. 2, December, 2008, footnote no. 81, p.205. *Jizya*, in no way, can be construed as a price received from non-Muslims due to their disbelief in Islam. Moreover, *jizya* cannot be regarded as a punishment on the same premise. See Ramadan, Said, *Islamic Law Its Scope and Equity* (P.R. Macmillan Limited, Ludgate House, London, 1st edition)1961.

⁸¹ Qaradawi, above n 22, 44.

⁸² Moududi, above n 9, 207.

⁸³ The underlying philosophy can be substantiated on the basis of one of the verses of the Qur'an. The Qur'an proclaims: ...God does not burden any human being with more than He has given him...(At-Talaq 65:7). See also note 22, pp. 44-45.

⁸⁴ Qaradawi, above n 22, 48

⁸⁵ The very word Kharaj, in literal sense, means the revenue derived from a piece of land or a slave. In technical connotation, it implies the tax imposed on land. Basically, it is a tax levied on the producer of the landed property owned by the non-Muslims in an Islamic State. For details see, Aghnides, Nicolas P. *Mohammedan Theories of Finance with an Introduction to Mohammedan Law and a Bibliography*, published by Sh. Muhammad Khalil B.A., LL.B. for Premier Book House, 4-5 Katchery Road, Lahore, West Pakistan, 2nd Impression, 1961, p.376; Doi, Abdur Rahman, I, *Shariah: The Islamic Law* (Taha Publishers Ltd. London, 1st edition 1984, Reprint 1997)389-390. Quoted from Islam, Mohammad Azharul, *Examining the Relevance and Validity of Sharecropping under Islamic Land Law*, *Dhaka University Law Journal*, vol. 19, No. 2, December, 2008, footnote no. 112, p.205.

⁸⁶ Ibid, 45.

5.3 Trade tax

A state can impose tax both upon Muslim and non-Muslim traders. Juristic opinions differ on the amount of tax payable to the state, the different rate of tax. But underlying cause of such differences is certainly attributable to the exigencies of time and society. As to the different rate of tax between Muslims and non-Muslims the opinion of Maududi is not tenable *in toto* as he refers the factor of participation by Muslims in the defence of the country and non-availability of time and overall protecting them against undue competition.⁸⁷ But the argument placed by Dr. Abdul Karim Zaydan seems comparatively convincing. To him, the reason of taking double amount of trade tax from the non-Muslim is that while Muslims has to pay Zakat for each sort of property specifically defined by the Qur'an and the Sunnah the Non-Muslims only have to pay trade tax and nothing else.⁸⁸ Dr. Yusuf al-Qaradawi supports this view.⁸⁹ But to the authors of the present article, the argument placed by Abdul Karim Zaydan also lacks ingenuity and more specifically is premised on wrong analogy since Zakat is purely a religious obligation payable by Muslims only. It does not have any connection with the trade tax purely determined by the government of a state. Subjecting non-Muslims to double amount of trade tax upsets the basic tenets of Islam specially the principle of *adl* or justice.

5.4 Respecting the Islamic State and Law

Both Muslims and non-Muslims should be respectful towards the Islamic state and its underlying values and ideologies.⁹⁰ Muslims are even proscribed by the Qur'an to abuse the God of other religious communities.⁹¹ Likewise, non-Muslims should not involve in such kind of activity which is concomitant to injure the basic tenets of Islam.⁹²

6. Concluding Remarks

From the above discussion, it obviously appears that Islamic State, as an ideological State, does not discriminate on grounds of religion rather it is under watertight obligation to ensure the enjoyment of those rights, which Islam has granted to Non-Muslims. Some key posts, which are never allotted to them, are purely justified on the basis of religious or ideological grounds. Certain restrictions or prohibitions are ordained for the very purpose of ensuring communal harmony and peaceful co-existence of Muslims and Non-Muslims. However, in certain fields, they are treated more liberally. In comparison with modern secular state, they are more secured, well protected and stand on a better position as regards the enjoyment of rights, privileges and benefits in an Islamic state. The glorious history of Islamic Civilization bears this testimony.

⁸⁷ Moududi, above n 9, 291

⁸⁸ Zaydan, Dr. Abd al-Karim, *Ahkam al-Dhimmiyin wal-Musta'minin*, 186.

⁸⁹ Qaradawi, above n 22, 51

⁹⁰ Moududi, above n 9, 69.

⁹¹ The Qur'an says: But do not revile those [beings] whom they invoke instead of God, lest they revile God out of spite, and in ignorance... (Al-An'am 6:108). See Muhammad Asad, *The Message of the Qur'an* (Dar al Andalus, Gibraltar, complete edition, 1980) 188.

⁹² Maududi, above n 9, 70.