

THE RIGHTS OF NON-MUSLIMS IN ISLAMIC STATE

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Introduction:

Most Muslim states of the present times are secular and we have no working model on which to base the study of the rights of non-Muslims in Islamic state. Like other aspects of the Islamic system, once it is adopted in practice in our times, a great deal of innovative thinking and creative interpretation and application would be called for. Nevertheless, we can form an idea of the rights and obligations of non-Muslim groups in an Islamic state of the modern age by going back to the Qur'an, Hadith and early history of Islam to discover what rights in principle are granted to those in an Islamic state who do not subscribe to the ideology of the state and what humanistic values an Islamic society is under absolute obligation to uphold.

The Qur'an declares that man is the noblest of all the creation¹. The universe is made for him and is subservient to his purposes. Among all the creation he alone is endowed with moral and rational powers and is charged with the grave and all important responsibility of subduing nature and pressing it in the service of good ends². For the realization of these objective ends first of all umma was established and integrated at Makkah³ and then it was politically organized at Madinah⁴. No doubt the setting up of a state and government was regarded by the Prophet Muhammad (peace be upon him) as a much less important event than the original compact leading to the establishment of umma but using Rousseau's language, state and

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government had to be considered as a necessary means for the development of the moral potentialities of man's original nature.

Following the foundation of the Islamic state at Madinah, the Charter (Mithaq al-Madinah) that Muhammad (peace be upon him) gave to the citizens of the newly founded state was not merely a treaty of alliance but a written constitution⁵ defining the rights and obligations of the citizens and subjects of the new polity. It granted to the citizens and subjects alike the liberty of thought, conscience, equality, equity and fraternity irrespective of their caste, colour, creed or social status. It was a time when the Christians still preached the doctrine that "man is born sinful and that Jesus Christ had sacrificed himself for the atonement of Christians".

In view of the above statements, we have to examine first the concept of dhimma in Islam and the nominal obligation imposed on the non-Muslims. Next we shall proceed to discuss the rights of dhimmis or non-Muslim minorities in the Islamic state.

THE CONCEPT OF DHIMMA AND DHIMMI

Non-Muslim citizens of the Islamic state whose protection is guaranteed by the state as well as individual Muslims are called dhimmis. The term dhimmi or ahl al-dhimma means those Christians, Jews and others who agree to live in Dar al-Islam under the protection of Muslim umma subject to rendering military service or in lieu thereof a nominal obligation, i.e. payment of Jizya⁶. Muslim jurists hold that protection can be given to all in the Dar al-Islam save the idolators of Arab. As Prophet himself gave protection to the Magians (Majus) of Hajr by realizing jizyah from them so they are also treated at par with the men of book (ahl al-kitab) in the writings of Muslim jurists⁷. The acceptance of jizyah from the Magians of Hajr implies that it can be exacted from the polytheists of the state as well.

According to al-Baladhuri, the Prophet exacted it from the Magians of Hahr, ‘Umar took it from the Persians and ‘Uthman from the Berbers of Africa⁸. The non-acceptance of jizyah from the Arab idolators by the Prophet seems to be due to the fact that by that time the revelation regarding jizyah had not been received. “Had any of the idolators remained outside the orbit of Islam after the revelation about jizyah, the Prophet would have accepted it from them too and they would have become the *dimma* of the Islamic state⁹.”

It is noteworthy that the concept of *dhimma* and *dhimmi* emerged only after the conquest of Makkah which took place in the year 8 A.H. Prior to that the agreements entered into between the Prophet and the polytheists were pacts of mutual help and cooperation. Hence they were neither the protected people (*ahl al-dhimma*) nor any law of the Islamic state could be applied to them¹⁰. This is warranted by the fact that the injunctions regarding Jizya¹¹ were received by the Prophet only in the year 9 A.H. that is to say, only after the conquest of Makkah¹².

The imposition of jizyah on non-Muslim subjects of the Islamic state has been differently interpreted by the Muslim jurists. The general view that can fairly be guessed from the writings of the jurists is that jizyah is imposed upon the non-Muslims as a badge of humiliation for their unbelief or by way of mercy for the protection given to them by the Islamic state. Some consider it as a mark of punishment for their unbelief because of their continuous stay in the Dar al-Islam which is a crime. Hence they have no escape from being humiliated through the imposition of tax¹³. Others contend that protection is given to non-Muslims with a view that they may mix up with the Muslim population, adopt their good qualities and ultimately embrace Islam¹⁴. However, there was an economic motive behind the imposition of Jizyah on non-Muslims, they insist.

Commenting upon the various theories of jizyah by the classical jurists, a scholar of the present age says that the Qur'anic verse IX:29 regarding jizyah has been understood in compact literal sense without taking it in its true historical perspective. Perhaps it is due to this misunderstanding, he adds, that jurists and exegetes consider jizyah as a mark of degradation for the non-Muslims in Islam and infer corollaries reflective of their humiliation¹⁵. It appears as if these jurists "in making far-fetched theories about the term saghirun (used in the Qur'an and upon which they constructed their theories) have suggested such provisions as are probably contrary to the facts and certainly opposed to the (very) ethics of Islam¹⁶."

A close study of the early history of jizyah, particularly since its imposition by the Prophet till late in the period of the Khulafa Rashidin will reveal that it was an obligation through the payment of which non-Muslim citizens of the Islamic state were exempted from rendering military service and through which they were expected to pay allegiance to the political authority of Islam. There is nothing to prove that it was imposed just to humiliate the non-Muslims or to make them socially degraded. Had it been so then women, children, monks, unemployed, blind, sick and crippled would never have been exempted from the payment of jizyah¹⁷. The categories of persons mentioned above were not only exempted from jizyah but were also given stipends from the state treasury as and when needy were detected¹⁸. There are living examples of return of jizyah to non-Muslims by the Muslim generals when they found themselves unable to protect them against their enemies because of their engagements in the war.¹⁹

It is to be observed that jizyah has been misunderstood as a discriminatory tax, making an invidious distinction among the citizens of the Islamic state. This charge is perhaps based on ignorance of the Islamic

polity. “If it discriminated at all, it discriminated against Muslim protectors themselves who were compelled to pay higher taxes and also had the duty to fight for the state: there is no compulsory military service for the non-Muslims²⁰. Jizyah was an obligation and non-Muslim citizens agreed to pay it. Its payment entitled them to reap the fruit of almost all the rights and privileges in the state and at par with the Muslim subjects. To put it into other words, non-Muslims owed their loyalty to the state through the payment of this tax or rendering military service and enjoyed the rights and unfolding of themselves which is the other side of that loyalty. With the above preliminary discussion about the concept of dhimma and dhimmi, the nature of jizyah and its payment we shall now discuss the rights and status of non-Muslims in the Islamic state.

RIGHTS OF NON-MUSLIMS IN ISLAMIC STATE

A cursory glance at the verses of the holy Qur’an and Hadith literature reveals the fact that Islam stands for universal peace and prosperity. It aims at the betterment of humanity at large. It strives to create those conditions of social life without which no man can seek, in general, to be himself at his best. Liberty, according to Islam, therefore, means the absence of restraint upon the existence of those conditions which are the essential guarantees of individual happiness both in this world and the world to come. The address of Qur’an is to humanity at large and not to Muslims alone. Hence these conditions of social life are meant not only for the Muslims but for those as well who do not subscribe to the ideology of the Islamic state and live in the Islamic state²¹.

Civil Rights of Non-Muslims

Civil rights of citizens are those recognized claims in the state which enable them to lead a decent and honourable life in the society and which provide them with opportunities to seek happiness and develop their

personality. Again, it is through civil rights that citizens of a state attain the highest goals in civilized society. These rights, beside others, include the right to life and property, freedom of movement and vocation in life, family relations and freedom of conscience and faith. The content of civil rights vary from time to time but it is an admitted fact that civil liberty will be at its greatest if two conditions are established: when the rights of private action are clearly defined in ample terms to cover the widest range of such action and when these rights are so defined, are strictly enforced by definite remedies which can be applied as speedily and effectively as possible.

Islam grants and protects the right to life and honour to every individual regardless of one's creed or colour. According to the holy Qur'an, he who deprives another from his life without lawful authority and just cause is regarded as the one who has killed humanity at large²². Allah does not like injustice or wrong to His creation²³. Islam regards the life of a dhimmi as sacred as that of a Muslim. He cannot be deprived of his right to life save in accordance with the law of the state²⁴. If a non-Muslim suffers the loss of life or property at the hands of a Muslim, the latter will be dealt with in accordance with the law and he will have to make good for that. Just as a Muslim cannot do wrong or injustice to his fellow being, similarly he cannot do wrong to non-Muslims²⁵. A Prophetic Tradition is quoted in this regard:

“He who wrongs a man to whom a covenant has been given or burdens him above his capacity, I shall advocate against him on the Day of Judgement²⁶.”

A Muslim can neither torture a non-Muslim nor can he insult him in any way²⁷. The Prophet is reported to have said:

“He who tortures a dhimmi is like the one who has counteracted him (the Prophet). I shall counteract against him (he who tortures a dhimmi) on the Day of Judgment who has counteracted him²⁸.”

Jurists of different schools of thought agree that it is the responsibility of all the Muslims to protect the civil rights of non-Muslim minorities and to see that none of them is wronged²⁹. The reason is that after coming under the protection of Islam, they now belong to the Dar al-Islam. They shall enjoy the privileges granted by Islam³⁰. In this connection a statement ascribed to “Ali is worth mentioning. He is reported to have once said:

“They (Dhimmis) give jizyah to us generously so that their wealth become like that of ours and their blood like our blood³¹.”

It must be noted here that Muslim jurists not only remained contented with that they theorized about the rights of non-Muslims but when they saw something wrong done to the non-Muslims they warned the rulers reminding them of the obligations Islam had imposed on them in connection with the rights of non-Muslim minorities³².

As said earlier, Muslim generals returned jizyah to their non-Muslim subjects in case they felt that due to military operations against their enemies, they would not be in a position to protect them. Muslim generals and other responsible leaders scrupulously adhered to the injunctions of the Shari’ah regarding the right of non-Muslim minorities in the Dar al-Islam. Even if it is supposed for the time being that some one ill-treated non-Muslims, that cannot be ascribed to Islam. The failings of a person or group of persons, only superficially professing a religion itself.

Islam allows its non-Muslim minorities the freedom of their movement and profession. They can move anywhere they like and settle

anywhere they please subject to certain restrictions. One such restriction is that they cannot enter the sacred places of Muslims³³. They may visit the holy cities of Muslims but cannot settle there permanently³⁴. Such restrictions are made on the authority of certain Traditions from the Prophet³⁵. As non-Muslims do not believe in the ideology of Islam, so naturally they would not go to such places or cities and settle there. On the part of the Islamic state these are precautionary measures only. Such restrictions are also necessary from the law and order point of view because if non-Muslims enter the sanctuaries of Muslims and something unusual happens, it will injure the feelings of one another and jeopardize their cordial relations.

Just as non-Muslims have been given the right to freely move in the country subject to the common law of the land, similarly they are also permitted to visit foreign countries in connection with their business activities subject to certain conditions common for all. Outside the state too they are the dhimma of the Muslims and the Islamic state. They are, however, not allowed to visit a state or states hostile to the Islamic state³⁶. If a dhimmi falls captive at the hands of a foreign state, Islam imposes a duty on the rulers of the Islamic state and the Muslims to leave no stone unturned for the release and safe return of such a non-Muslim to his home. His ransom money may also be paid from the public exchequer if he is not in a position to pay the dues³⁷. Islam does not permit the rulers of the Islamic state to detain or arrest a non-Muslim citizen unless he actually breaks the law of the land³⁸.

Islam grants and protects the right to education and property and profession to its non-Muslim minorities in accordance with their own belief system. Their services may also be utilized in educating the Muslims³⁹. They are allowed to cling to their ancient cultural patterns⁴⁰, and preserve

their native language. Moreover, they may adopt any profession. In Islamic history, in such lucrative occupations as banking, medical profession etc. Non-Muslims have been well represented and firmly established.

Like its Muslim citizens, the Islamic state guarantees to the non-Muslim citizens the right to family and its secrecy. No one can enter their abodes without their permission. This right of dhimmis is based on textual injunctions⁴¹ which are as much valid for the non-Muslims as for the Muslim citizens⁴². Likewise, non-Muslims have been given a choice to get their civil cases decided either according to the Islamic law or according to their own personal laws⁴³. According to Fatawa 'Alamgiri, the dhimmis are not subject to the tashri'i law of Islam. Legal relations among themselves shall be governed by the law of their own religion⁴⁴. History is replete with instances when the non-Muslim brought their disputes for settlement before the early rulers of the Islamic state which they decided according to the personal laws of the non-Muslims. However, in punishing the crimes against humanity, such as adultery, murder, theft, robbery, assault etc, the same law was applicable to all and sundry in the state.

Religious Rights and Liberty to Non-Muslims

Non-Muslims in an Islamic state can freely profess their own belief system. Actually when the Qur'an inculcates the necessity for Jihad it mentions the protection of other religions before the protection of Islam itself. The order in which the protection of the places of worship is mentioned in the Qur'an is worth noticing and is very significant to appreciate the spirit of Islam and its philosophy of war. The Qur'an says:

“Had there not been Allah's repelling some people by others, certainly there would have been pulled down cloisters and churches and synagogues and the mosques in which Allah's name is much remembered⁴⁵.”

In the above verse, the worship place of Muslims (mosques) is mentioned last and not first. This shows how much importance has been attached to the rights of freedom of worship and freedom of conscience, the rights from which so many other civil rights and liberties flow.

Islam does not impose its own way of life or faith on others for, according to the teachings of Qur'an "there is no compulsion in din"⁴⁶. However, this does not mean that Muslims should not preach Islam. Muslims may invite non-Muslims to the fold of Islam but in a decent, cultured and behaving manner⁴⁷. They are, however, forbidden to compel others to embrace Islam. It follows that non-Muslim minorities of the Islamic state can freely and fearlessly perform their religious ceremonies in places of their worship. It is explicitly forbidden in the tashri'i law of Islam to demolish or discreate the places of their worship⁴⁸. The presence of their churches and synagogues in cities of the early Islamic state implies the Ijma' of the Muslim umma to the effect that non-Muslims should have the places of their worship in the Dar al-Islam and that they must be protected from encroachment by others⁴⁹. They are permitted to construct their churches and synagogues in cities other than those constructed by Muslims⁵⁰. They are also permitted to construct places of their worship in cities where they are in majority. In Muslim majority towns, the point of constructing new churches and synagogues is controversial. Some hold that they can construct⁵¹. While others contend that they cannot construct the places of their worship in such towns⁵². There is however, consensus of opinion among the Muslim jurists to the effect that they cannot construct their churches or synagogues in Hijaz or its vicinity⁵³.

Likewise, non-Muslims are allowed to perform their rituals within the places of their worship. In towns where they are in majority, they may also perform their religious functions outside their churches and

synagogues⁵⁴. They have also been given the liberty to beat their trumpets (for religious ends) any time in the day or night. However, during prayer times of Muslims they are not permitted to do so⁵⁵ and of course they must not do so. In fact, in safeguarding the rights of non-Muslims, Islam has given them such liberal concessions as to give them the liberty of maintaining even those practices which are forbidden to Muslims. For example, the consumption of intoxicants is forbidden to Muslims but the non-Muslims have the liberty not only of consumption but also of its manufacture, important sale subject to certain conditions⁵⁶.

Non-Muslims of the Islamic state enjoyed their religious rights and liberties not only in the formative phase of the Islamic state but in later ages as well when liberal concessions seem to have been given to them in this respect. It is important to note here that the Umayyid caliph, ‘Umar bin ‘Abd Al-‘Aziz who himself wondered why so much religious liberties had been given to non-Muslims by his predecessors, once inquired the learned scholar of the day, namely, Hassan al-Basri, about this. The answer of the latter was that the status given to them in the state was in lieu of the jizyah exacted from them and advised the caliph to keep firm to what his predecessors had done in that respect⁵⁷.

Economic Rights and Liberties

Economic rights mean the freedom of earning decent and sufficient economic earnings and also freedom from fear of unemployment or loss of economic income. It also means security and the opportunity to find reasonable significance in the earning of one’s daily bread. Actually economic rights and liberties are pre-conditions of other rights and liberties. None of them can really exist without them. An individual cannot be really free if hunger, starvation and destitution stare at him in the face at every step. People, especially minorities in a state cannot be expected to remain

loyal to the state if they do not have economic rights and liberties. Islam is not ignorant of this reality.

We have already mentioned the securities Islam provides for its non-Muslim minorities in this respect. It may be added here that Islam provides equal opportunities to its non-Muslim citizens in the economic field of their life. They are given the freedom to adopt any profession subject to the common law of the country. However, they cannot practice Riba' (usury) which is prohibited for all and sundry in the Islamic state⁵⁸.

The most important point to be noted here is that if any of the non-Muslims becomes destitute, crippled or sick, he has as much claims on the state treasury as any other Muslim⁵⁹. Muslim generals have not only given such undertakings to the dhimmis at the time of granting them citizenship of the Islamic state⁶⁰ but the early rulers of the Islamic state are also reported to have sanctioned huge sums to the deserving persons from among the non-Muslims from the public treasury (bayt al-mal) of the state.

It must be mentioned here that there is no bar on the trade activities of the non-Muslims in an Islamic state save subject to certain legal restrictions referred to in the preceding section of the present study.

Political Rights and Privileges of Non-Muslims

Political rights are those recognized claims of the citizens by dint of which they are enabled to take active part in the affairs of government and render those services of which they are capable of along with political participation of the citizens, Islam also ensures its citizens the freedom of speech so long as it does not aim at undermining the basic tenets of the Islamic state. Islam does grant political rights to its non-Muslim minorities but certainly not in the sense known to the West or the Westernized. A non-

Muslim citizen of the Islamic state cannot offer his services for any political office for which he is not fit just as a Muslim is in the same state⁶¹. Nor of course, a non-Muslim can be overburdened with such responsibility because political services in the Shari'ah are not rights. They are obligations and burden which are imposed only on those who are capable to shoulder such responsibilities of political nature with skill and ease⁶². Had political services been rights the Prophet would never have refused assignments to those who had asked for them.

Since Islamic state is basically an ideological one, hence only those persons are to be entrusted with its key administrative posts who believe in its ideology and are conversant with its spirit and also have dedicated themselves to the promotion of the objectives of the Islamic state⁶³. Hence non-Muslims in principle can neither be entrusted with the responsibility of the office of the head of the state nor can they take part in his election or selection⁶⁴. The reason is that rule, according to Muslim jurists, is established to defend the faith and administer the day to day business of the state⁶⁵. The religious nature of head of the state alone and nothing else prevents non-Muslims either to hold it or take part in its installation through election or selection. But this does not mean that Islam taboos the utilization of non-Muslims in the service of the state. This only means that while availing of the services of the non-Muslims, due care should be taken that the Islamic character of the state is not compromised and the ideological demands are not sacrificed at the altar of the so-called tolerance. However, in modern times when most of the Muslim states have become secular in nature, there should be no reason to debar a non-Muslim from taking part in the election of the head of the state⁶⁶. But in the classical state that actually existed or the one depicted by the Muslim jurists no such concession can be given in the name of mere tolerance.

Before considering other political rights of non-Muslims, we must pause here to consider the misgivings of some modern writers through their assertion that the theory of Islamic state precludes the idea of full-fledged citizenship of non-Muslim minorities. Indeed, it is true that in the largest interest of the state, its highest executive post should belong to the majority community. There is nothing peculiar about the head of the Islamic state if he is elected from amongst the members of the Muslim community alone. There is no country in the world today that has set up the political precedent of democratically electing the highest executive (with actual powers and not nominal) from among the minority classes in the state. Even in the most civilized country of the world, the United States of America, the Chief Executive must be a natural born citizen of U.S.A and by a political precedent he must belong to the Protestant Faith of Christianity. In the United Kingdom, the head of the State must belong to the Protestant Church. Hence in Islam, the meaning of equality of political rights can hardly be identified with merely the holding of the highest post of the executive who being held as the defender of Muslim faith, has essentially to be staunch Muslim. In light of the position of non-Muslims in Islam, it is amazing to suggest that they are debarred from enjoying equal political rights in the Islamic state. Even if the constitution of the Islamic state does not debar a non-Muslim from being elected to the office of the head of the state, will it be practicable to have a non-Muslim to shoulder the responsibility of the head of the state without the necessary fitness of faith? A secular state like India or former U.S.S.R may only ambiguously say that there is no bar to Muslims who are a minority in these countries to be elected to the highest executive authority (actual and not nominal, a distinction which is made between the two terms in modern parliamentary form or government) only to mean within themselves that a Muslim will never be able to hold that position in fact.

Coming to the sequence, it is to be observed that in the Islamic state a number of material pursuits require no particular ideology other than common morality. Non-Muslims have a vast field of life in which no distinction is made against them. Thus non-Muslims may be appointed as ministers, secretaries etc. in the Islamic state. The well-known Muslim jurist and political thinker, Al-Mawardi holds that a non-Muslim (ahl al-dhimma) may be appointed as wazir thanfidh (minister with delegated authority) but he cannot be appointed as wazir tafwiz (minister independent in the discharge of his official functions)⁶⁷. It is amazing to note that even in modern times too such a distinction is made between the ministers to which the designation of minister and minister of state is applied. The former is independent in the discharge of his executive authority whereas the latter exercises only delegated power.

Beside ministerial and secretarial duties, non-Muslims may also be given representation in the legislative assemblies⁶⁸. Trustworthy persons from among the non-Muslims may also be entrusted with other important responsibilities that involve no matter of belief of the Muslim population⁶⁹. In fact, the most amazing feature of the Abbasid caliphate has been the prepondering number of non-Muslims in the different departments of the state. Even the highest and most important executive posts, viz, vizarate and chief secretary were being held by the non-Muslims. They were only debarred from rendering those services which purely dealt with the religious affairs of Muslims.

What the Islamic state demands of the non-Muslims is loyalty to the state in the matter of its stability and law and order. Their loyalty to the state is like that of the Muslim citizens. Hence their loyalty should not be suspected until otherwise proved⁷⁰. Islamic ideology is so broad, comprehensive and liberal that in actual practice no non-Muslim should feel

cramped or thwarted because of his creed. But if a non-Muslim does not completely identify himself with the ideology of the Islamic state, it would not be just on his part or right on the part of the state, to entrust him with the work of a nature that requires complete identification of outlook.

Conclusion

It has always been felt by political scientists that those who exercise authority cannot legitimately exact obedience save in proportion to the rights that they give and the services they render for the welfare of the people. On the strength of evidence in the foregoing survey, one is apt to say that one of the reasons for the stability of the early Islamic state and the rapid growth and spread of Islam itself was that the early rulers of Islamic state not only served their Muslim citizens but non-Muslim minorities as well. The latter enjoyed all the basic human rights under the Islamic state and none from among the Muslims or others was permitted to obstruct the protected people in the enjoyment of those rights which Islam had undertaken to give them. Modern Muslim states while considering the position of non-Muslims should not forget this spirit of Islam and the early practices of the Muslim rulers including the Prophet himself. They should not be insistent upon juristic exposition of the theory of rights of non-Muslims in an ideal Islamic state.

A close study of the history of mankind would reveal that many social classes lost their power because they ceased to render the services which were the very condition of their political authority. In Muslim history, if non-Muslims remained loyal to the state or if they embraced Islam, it was mainly due to the superiority of the moral conduct of Muslims and the sense of their responsibility towards the non-Muslims which influenced them so much that they could not help joining the fold of Islam or at least remaining

faithfully attached to their new rulers who due to the teachings of Islam were far more superior in every respect than their contemporaries⁷¹.

Modern political thinkers are one in holding the view that mere Declaration of Rights or constitutions of states can not effectively safeguard the rights of citizens unless there are institutions capable of enforcing and applying them and the citizens and government both determined to make those institutions work properly⁷². To this a Muslim would add that equally important is the moral training and sense of the citizens themselves so that they may properly appreciate not only the rights and obligations of the majority community but of the minority as well. Islam, as we have seen above, does not believe in mere declarations. What does it declare, it sees to it that it is practically implemented. What Islam said about the position and rights of its non-Muslim minorities, it practically showed to the world as to how minorities are to be protected and their rights guaranteed. If in Muslim history some individual ruler or general has maltreated non-Muslims, the fault cannot be ascribed to Islam. The failings of a person or persons, only superficially professing a religion, cannot be held at the door of that religion itself.

In the present day circumstances and in view of the interdependence of modern states regardless of the faith professed by their citizens, we have to give serious thought to the question as to what status and rights the minorities would have in the Socio-Political set up of Muslim states because they are as loyal and good citizens of their respective states as others are. They cannot be denied their legitimate fundamental rights merely because they do not subscribe to the generally held view of the Muslims or majority. Any mal-treatment towards them may result in serious repercussions in other countries where the dominant section of their community dwell. The door of Ijtihad has not been closed and we have to fearlessly exercise it in this

respect keeping in view that Islam has always stood for tolerance, justice, equality, equity and fair play.

We may pause here with the hope that enlightened readers would give serious thought to the issue of minority rights in the Islamic as well as secular states in view of the scientific and technological advancements.

End Notes

- 1 Qur' an, XCV:4
- 2 Qur'an XXXIII: 72, 121
- 3 See my paper " The Rise of Muslim Umma at Mecca and Its Integration," Hamdard Islamicus, Karachi, Vol: V, No:3, Autumn 1982, pp.59-74.
- 4 See my paper, "The Foundation of Islamic State at Medina and Its Constitution, Islamic Studies, Islamabad, Vol: XXI, No:3, Autumn 1982, pp.61-88.
- 5 Muhammad Hamidullah, The First Written Constitution in the World, Lahore 1958, pp. 1-20.
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- 7 Abu Bakr al-Jassas, Ahkam al-Qur'an, Istanbul 1355 A.H. Vol:3, Al-Kasani, Bada' i' Al-Sana'i' fi Tartib al-Shara'i' Vol:7, Abu Yusuf, Kitab Al-Kharaj, Cairo 1382 A.H. PP. 63, 128-29. Al-Baladhuri, Futuh Al-Buldan, (Eng. Tr. By P.K. Hitti under the title The Origin of Islamic State), Beirut 1966, P. 121.
- 8 Al-Baladhuri, Futuh al-Buldan, Op. Cit. P. 123
- 9 Abd al-Karim Zaydan, Ahkam al-Dhimmiyin wa'I-Musta' Mini fi' Dar al-Islam, Baghdad (1st. ed. 1963) P. 28.
- 10 Al-Kasani, Bada'I', op. cit. Vol: 7, P. 111.
- 11 Qur'an, IX: 29
- 12 Abu Bakr al-Jassas, Ahkam al-Qur'an, op. cit. Vol:1, P.142 Ibne Kathir, Tafsir, Vol:3, P.347
- 13 Sarakhsi, al-Mabsut, Cairo 1324 A.H. Vol:X, PP. 278-79. Aghanides, Muhammadan Theories of Finance, Lahore 1961, P. 397.
- 14 Al-Mawardi, Ahkam al-Sultaniyah, Cairo 1298 A.H. P.136
- 15 Sarakhsi, Sharah al-Siyar al-Kabir, op. cit. Vol:3, P.254
- 16 Al-Mabsut, op. cit. Vol:X, P. 77
- 17 Al-Kasani, op. cit. Vol:7, P.111
- 18 Ziauddin Ahmad, The Concept of Jizyah in Early Islam, Islamic Studies, Islamabad, Vol:XIV, No.4, Winter 1975, PP.293-305
- 19 Ibid.
- 20 Abu Yusuf, Kitab al-Kharaj, op. cit. PP.122f and 144.
- 21 Ibid, p.122f. Hidayah, Vol:2, P.1040
- 22 Al-Baladhuri, op. cit. p.211, Abu Yusuf, P. 139
- 23 Khalifah Abdul Hakim, Islamic Ideology, Lahore, 1974, P.184
- 24 Sarakhsi, op. cit. Sharah, Vol:I, p.207
- 25 Qur'an, V:32
- 26 Qur'an , II: 190, 193
- 27 Durr al-Mukhtar, Vol:3, P.203
- 28 Al-Ayni, Umdah al-Qari Sharah Sahih al-Bukhari, Vol:IX, P.94
- 29 Yahya bin Adam, Kitab al-Kharaj, P.75 Abud Yusuf, P.125
- 30 Abu Dawud, Sunan, Vol:2, P.255.
- 31 Durr al-Mukhtar, Vol:3, PP.273-74
- 32 Suyuti, Jalal al-Din, Al-Jami al-Saghir min Hadith al-Bashir al-Nadhir, Vol:2, P.433
- 33 Al-Shafi'I, Kitab al-Umm, Vol:4, PP.127-28.
- 34 Al-Tabari, Tarikh, Leiden 1964, P. 2482.
- 35 Sarakhsi, Sharah, op. cit. Vol:I, P.140.

31 Abn Qudamah, Al-Mughni (Egypt, 3rd ed. 1367 A.H.) Vol:8, P.445
 Al-Kasani, Vol:7, P.111
 Al-Tabari, Tarikh, PP.2055, 2405-6

32 When one Abbasid Salih b. Ali b. Abdullah b. Abbas banished some ahl al-
 dhimma from the hill tracts of Lubnan because some of them had indulged
 themselves in subversive activities against the state, Imam Awza'i condemned the
 action of the ruler for his maltreatment of all the dhimmis. For details see al-
 Baladhuri, Futuh al-Buldan, P.222, Abu Ubayaed, Kitab al-Amwal, PP.170-71.
 and Abud Yusuf, Kitab al-Kharaj, PP.124-25.

33 Al-Mawardi, Ahkam al-Sultanaiyah, P.151.

34 Ibn Qudamah, Al-Mughni, Vol:8, P.529. Imam Ahmad, Musnad, VI:275.

35 Ibn Qudamah, op. cit. PP.529-30. Shaukani, Nayl al-Awtar, VIII:65.

36 Ibn 'Abidin, Imam Muhammad Amin, Radd al-Mukhtar ' Ala Durr al-Mukhtar,
Sharah
Tanwir al-Absar, al-Matba, al-Uthmaniyah, 1327 A.H. Vol:3, P.346

37 Abu 'Ubayd, Kitab al-Amwal, op. cit. P.127

38 Qur'an.

39 Those prisoners of war in the battle of Badr, who were not in a position to pay their
 ransome money were asked to educate the children of Muslims and get themselves
 released in lieu thereof. This precedent of the Prophet points to the fact that non-
 Muslims may be employed to impart secular education to Muslims in the Islamic
 state.

40 Al-Baladhuri, Futuh al-Buldan, op. cit. P.215

41 Qur'an, XXIIV: 27-28

42 Shaykh al-Imam Kamaluddin, Fath al-Qadir, Vol:II, p.504

43 Qur'an, V: 42-48

44 Fatawa, Alamgiri, Cairo 1310 A.H. Vol:II, P.357

45 Qur'an XXII: 40

46 Qur'an, II: 256

47 Qur'an, XVI: 125

48 Al-Kasani, op. cit. Vol:7, P.114

49 Al-Mughni, op. cit. Vol:8, P.527

50 Al-Kasani, op. cit. Vol:7, P.114

51 Sarakhsi, Sharah, op. cit. Vol:3, P.253

52 Durr al-Mukhtar, Vol:3, P.374

53 Al-Tabari, Ikhtilaf al-Fuqaha, Leiden 1933, P. 236

54 Srakhsi, Sharah, op. cit. Vol:3, PP. 252-52

Al-Kasani, op. cit. Vol:7, P.113

55 Abu Yusuf, Kitab al-Kharaj, op. cit. P.138

56 Sarakhsi, Sharah, Vol:7, P.113

57 Sarakhsi, Al-Mabsut, op. cit. Vol:V, PP. 38-41

58 Abu Bakr al-Jassas, Ahkam al-Qur'an, Vol:2, P.436

59 Abu Yusuf, Abu Yusuf, Kitab al-Kharaj, op. cit. P.144

60 Al-Baladhuri, Futuh al-Buldan, P.198

61 Abu Yusuf, op. cit. P. 144

62 Abd al-Karim Zaydan, Ahkam al-Dhimmiyin, op. cit. P.77

63 The Foundation of the Islamic State at Medina and Its constitution, op. cit. PP.61-

88

64 Al-Mawardi, op. cit. P.84

65 Abid, P. 5

66 Abd al-Karim Zaydan, op. cit. P.84

67 Al-Mawardi, op. cit. P.27

68 Maududi, Islami Riyasat (Urdu) Lahore 1979, PP. 598-99.

69 Qur'an, III:75

70

Qur'an, XLIX:12

71

When Heraclius massed his troops against the Muslims and the latter heard that they were coming to meet them at Yarmuk, they refunded the Kharaj collected from non-Muslims saying: "*We are too busy to support and protect you. Take care of yourselves.*" The people of Hims however, said:

"We like your rule and justice far better than the state of oppression and tyranny in which we were (before coming under your protection)."

Hence they refused to take back the kharaj and fought on the side of Muslims.

Al-Baladhuri, Futuh al-Buldan, op. cit. P.211.

72

Dorothy M. Pickles, Introduction to Politics, London 1972, PP. 164f.