

Rights of Non-Muslims in an Islamic State

By

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FOREWORD

Recently a few books have been written about the rights of non-Muslims who are subjugated to the rule of the Islamic law. Most of these books presented the Islamic view in a favorable fashion, without unveiling the negative facet inherited in these laws.

This brief study attempts to examine these laws as they are stated by the Four Schools of the Fiqh (jurisprudence). It aims at revealing to the reader the negative implications of these laws without ignoring the more tolerant views of modern reformers.

Our ardent hope that this study will reveal to our readers the bare truth in its both positive and negative facets.

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Concept of "Islamic State"

"An Islamic state is essentially an ideological state, and is thus radically different from a national state." This statement made by Mawdudi lays the basic foundation for the political, economical, social, and religious system of all Islamic countries which impose the Islamic law. This ideological system intentionally discriminates between people according to their religious affiliations. Mawdudi, a prominent Pakistani Muslim scholar, summarizes the basic differences between Islamic and secular states as follows:

- 1) An Islamic state is ideological. People who reside in it are divided into Muslims, who believe in its ideology and non-Muslims who do not believe.
- 2) Responsibility for policy and administration of such a state **"should rest primarily with those who believe in the Islamic ideology."** Non-Muslims, therefore, cannot be asked to undertake or be entrusted with the responsibility of policymaking.
- 3) An Islamic state is bound to distinguish (i.e. discriminates) between Muslims and non-Muslims. However the Islamic law "*Shari`a*" guarantees to non-Muslims **"certain specifically stated rights beyond which they are not permitted to meddle in the affairs of the state because they do not subscribe to its ideology."** Once they

embrace the Islamic faith, they "**become equal participants in all matters concerning the state and the government.**"

The above view is the representative of the *Hanifites*, one of the four Islamic schools of jurisprudence. The other three schools are the *Malikites*, the *Hanbilites* (the strictest and the most fundamentalist of all), and the *Shafi`ites*. All four schools agree dogmatically on the basic creeds of Islam but differ in their interpretations of Islamic law which is derived from four sources:

- a) *Qur'an* (read or recite): The sacred book of Muslim community containing direct quotes from Allah as allegedly dictated by Gabriel.
- b) *Hadith* (narrative): The collections of Islamic traditions including sayings and deeds of Muhammad as heard by his contemporaries, first, second, and third hand.
- c) *Al-Qiyas* (analogy or comparison): The legal decision drawn by Islamic Jurists based on precedent cases.
- d) *Ijma'* (consensus): The interpretations of Islamic laws handed down by the consensus of reputed Muslim scholars in a certain country.

Textual laws prescribed in the *Qur'an* are few. The door is left wide open for prominent scholars versed in the *Qur'an*, the *Hadith*, and other Islamic discipline to present their *Fatwa* (legal opinion) as we shall see later.

Classification of Non-Muslims:

In his article, "The Ordinances of the People of the Covenant and the Minorities in an Islamic State," Sheikh Najih Ibrahim Ibn Abdullah remarks that legists classify non-Muslims or infidels into two categories: *Dar-ul-Harb* or the household of War, which refers to non-Muslims who are not bound by a peace treaty, or covenant, and whose blood and property are not protected by the law of vendetta or retaliation; and *Dar-us-Salam* or the household of Peace, which refers to those who fall into three classifications:

- 1) *Zimmis* (those in custody) are non-Muslim subjects who live in Muslim countries and agree to pay the *Jizya* (tribute) in exchange for protection and safety, and to be subject to Islamic law. These enjoy a permanent covenant.
- 2) People of the *Hudna* (truce) are those who sign a peace treaty with Muslims after being defeated in war. They agree to reside in their own land, yet to be subject to the legal jurisprudence of Islam like *Zimmis*, provided they do not wage war against Muslims.
- 3) *Musta'min* (protected one) are persons who come to an Islamic country as messengers, merchants, visitors, or student wanting to learn about Islam. A *Musta'min* should not wage war against Muslims and he is not obliged to pay *Jizya*, but he would be urged to embrace Islam. If a *Musta'min* does not accept Islam, he is allowed to return safely to

his own country. Muslims are forbidden to hurt him in any way. When he is back in his own homeland, he is treated as one who belongs to the Household of War.

This study will focus on the laws pertaining to *Zimmis*.

Islamic Law and Zimmis

Muslim *Muftis* (legal authorities) agree that the contract of the *Zimmis* should be offered primarily to the People of the Book, that is, Christians and Jews, then to the Magis or Zoroastrians. However, they disagree on whether any contract should be signed with other groups such as communists or atheists. The *Hanbalites* and the *Shafi`ites* believe that no contract should be made with the ungodly or those who do not believe in the supreme God. *Hanifites* and *Malikites* affirm that the *Jizya* may be accepted from all infidels regardless of their beliefs and faith in God. Abu Hanifa, however, did not want pagan Arabs to have this option because they are the people of the Prophet. They must be given only two options: accept Islam or be killed.

The Jizya (tribute)

Jizya literally means penalty. It is a protection tax levied on non-Muslims living under Islamic regimes, confirming their legal status. Mawdudi states that **"the acceptance of the *Jizya* establishes the sanctity of their lives and property, and thereafter neither the Islamic state, nor the Muslim public have any right to violate their property, honor or liberty."** Paying the *Jizya* is a symbol of humiliation and submission because *Zimmis* are not regarded as citizens of the Islamic state although they are, in most cases, natives to the country.

Such an attitude alienates the *Zimmis* from being an essential part of the community. How can a *Zimmi* feel at home in his own land, among his own people, and with his own government, when he knows that the *Jizya*, which he pays, is a symbol of humiliation and submission? In his book *The Islamic Law Pertaining to non-Muslims*, Sheikh `Abdulla Mustafa Al-Muraghi indicates that the *Jizya* can only be exempted from the *Zimmi* who becomes a Muslim or dies. The *Shafi`i* reiterates that the *Jizya* is not automatically put aside when the *Zimmi* embraces Islam. Exemption from the *Jizya* has become an incentive to encourage *Zimmis* to relinquish their faith and embrace Islam.

Sheik Najih Ibrahim Ibn Abdulla summarizes the purpose of the *Jizya*. He says, quoting Ibn Qayyim al-Jawziyya, that the *Jizya* is enacted:

"...to spare the blood (of the *Zimmis*), to be a symbol of humiliation of the infidels and as an insult and punishment to them, and as the *Shafi`ites* indicate, the *Jizya* is offered in exchange for residing in an Islamic country." Thus Ibn Qayyim adds, **"Since the entire religion belongs to God, it aims at humiliating ungodliness and its followers, and insulting them. Imposing the *Jizya* on the followers of ungodliness and oppressing them is required by God's religion. The *Qur'anic* text hints at this meaning when it says: `until they give the tribute by force with humiliation.' (Qur'an 9:29). What contradicts this is leaving the infidels to enjoy their might and practice their religion as they wish so that they would have power and authority."**

Zimmis and Religious Practices

Muslims believe that the *Zimmis* are *Mushrikun* (polytheists) for they see the belief in the Trinity as belief in three gods. Islam is the only true religion, they claim. Therefore, to protect Muslims from corruption, especially against the unforgivable sin of *shirk* (polytheism), its practice is forbidden among Muslims, because it is considered the greatest abomination. When Christians practice it publicly, it becomes an enticement and exhortation to apostasy. It is significant here to notice that according to Muraghi, *Zimmis* and infidels are polytheists and therefore, must have the same treatment.

According to Muslim jurists, the following legal ordinances must be enforced on *Zimmis* (Christians and Jews alike) who reside among Muslims:

- 1) *Zimmis* are not allowed to build new churches, temples, or synagogues. They are allowed to renovate old churches or houses of worship provided they do not allow to add any new construction. "Old churches" are those which existed prior to Islamic conquests and are included in a peace accord by Muslims. Construction of any church, temple, or synagogue in the Arab Peninsula (Saudi Arabia) is prohibited. It is the land of the Prophet and only Islam should prevail there. Yet, Muslims, if they wish, are permitted to demolish all non-Muslim houses of worship in any land they conquer.
- 2) *Zimmis* are not allowed to pray or read their sacred books out loud at home or in churches, lest Muslims hear their prayers.
- 3) *Zimmis* are not allowed to print their religious books or sell them in public places and markets. They are allowed to publish and sell them among their own people, in their churches and temples.
- 4) *Zimmis* are not allowed to install the cross on their houses or churches since it is a symbol of infidelity.
- 5) *Zimmis* are not permitted to broadcast or display their ceremonial religious rituals on radio or television or to use the media or to publish any picture of their religious ceremonies in newspaper and magazines.
- 6) *Zimmis* are not allowed to congregate in the streets during their religious festivals; rather, each must quietly make his way to his church or temple.
- 7) *Zimmis* are not allowed to join the army unless there is indispensable need for them in which case they are not allowed to assume leadership positions but are considered mercenaries.

Mawdudi, who is a *Hanifite*, expresses a more generous opinion toward Christians. He said:

"In their own towns and cities they are allowed to do so (practice their religion) with the fullest freedom. In purely Muslim areas, however, an Islamic government has full discretion to put such restrictions on their practices as it deems necessary."

Apostasy in Islam

Apostasy means rejection of the religion of Islam either by action or the word of the mouth. **"The act of apostasy, thus, put an end to one's adherence to Islam."** 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. The Qur'an indicates,

"How shall Allah guide those who reject faith after they accepted it and bore witness that the Apostle was true and the clear sign had come unto them. But Allah guides not the people of unjust of such the reward is that on them rests the curse of Allah, of His angels and of all mankind in that will they dwell; nor will their penalty be lightened, nor respite be their lot, except for those that repent after that and make amends; for verily Allah is Oft-forgiving, Most Merciful (Qur'an 3:86-89).

Officially, Islamic law requires Muslims not to force *Zimmis* to embrace Islam. It is the duty of every Muslim, they hold, to manifest the virtues of Islam so that those who are non-Muslims will convert willingly after discovering its greatness and truth. Once a person becomes a Muslim, he cannot recant. If he does, he will be warned first, then he will be given three days to reconsider and repent. If he persists in his apostasy, his wife is required to divorce 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 is not allowed to get married. 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, but she is to be persecuted, beaten and jailed until she dies. Other schools of *Shari`a* demand her death. The above punishment is prescribed in a *Hadith* recorded by the Bukhari: **"It is reported by `Abaas ... that the messenger of Allah ... said, `Whosoever changes his religion (from Islam to any other faith), kill him."**

In his book *Shari`ah: The Islamic Law*, Doi remarks, **"The punishment by death in the case of Apostasy has been unanimously agreed upon by all the four schools of Islamic jurisprudence."**

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 proselytize a Muslim to any other faith may face punishment.

Civic Laws

Zimmis and Muslims are subject to the same civic laws. They are to be treated alike in matters of honor, theft, adultery, murder, and damaging property. They have to be punished in accordance with the Islamic law regardless of their religious affiliation. *Zimmis* and Muslims alike are subject to Islamic laws in matters of civic business, financial transactions such as sales, leases, firms, establishment of companies, farms, securities, mortgages, and contracts. For instance, theft is punishable by cutting off the thief's hand whether he is a Muslim or a Christian. But when it comes to privileges, the *Zimmis* do not enjoy the same treatment. For instance, *Zimmis* are not issued licenses to carry weapons.

Marriage and Children

A Muslim male can marry a *Zimmi* girl, but a *Zimmi* man is not allowed to marry a Muslim girl. If a woman embraces Islam and wants to get married, her non-Muslim father does not have the authority to give her away to her bridegroom. She must be given away by a Muslim guardian.

If one parent is a Muslim, children must be raised as Muslims. If the father is a *Zimmi* and his wife converts to Islam, she must get a divorce; then she will have the right of custody of her child. Some fundamentalist schools indicate that a Muslim husband has the right to confine his *Zimmi* wife to her home and restrain her from going to her own house of worship.

Capital Punishment

The *Hanifites* believe that both *Zimmis* and Muslims must suffer the same Penalty for similar crimes. If a Muslim kills a *Zimmi* intentionally, he must be killed in return. The same applies to a Christian who kills a Muslim. But other schools of Law have different interpretations of Islamic law. The *Shafi`ites* declare that a Muslim who assassinates a *Zimmi* must not be killed, because it is not reasonable to equate a Muslim with a polytheist (*Mushrik*). In such a case, blood price must be paid. The penalty depends on the school of law adopted by the particular Islamic country where the crime or offense is committed. This illustrates the implication of different interpretations of the Islamic law based on the *Hadith*.

Each school attempts to document its legal opinion by referring to the *Hadith* or to an incident experienced by the Prophet or the "rightly guided" *Caliphs*.

The Witness of *Zimmis*

Zimmis cannot testify against Muslims. They can only testify against other *Zimmis* or *Musta'min*. Their oaths are not considered valid in an Islamic court. According to the *Shari`a*, a *Zimmi* is not even qualified to be under oath. Muraghi states bluntly, "**The testimony of a *Zimmi* is not accepted because Allah - may He be exalted - said: `God will not let the infidels (*kafir*) have an upper hand over the believers`.**" A *Zimmi*, regarded as an infidel, cannot testify against any Muslim regardless of his moral credibility. If a *Zimmi* has falsely accused another *Zimmi* and was once punished, his credibility and integrity is tarnished and his testimony is no longer acceptable. One serious implication of this is that if one Muslim has committed a serious offense against another, witnessed by *Zimmis* only, the court will have difficulty deciding the case since the testimonies of *Zimmis* are not acceptable. Yet, this same *Zimmi* whose integrity is blemished, if he converts to Islam, will have his testimony accepted against the *Zimmis* and Muslims alike, because according to the *Shari`a*, "**By embracing Islam he has gained a new credibility which would enable him to witness...**" 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.

Personal Law

On personal matters of marriages, divorces, and inheritance, *Zimmis* are allowed to appeal to their own religious courts. Each Christian denomination has the right and authority to determine the outcome of each case. *Zimmis* are free to practice their own social and religious rites at home and in church without interference from the state, even in such matters as drinking wine, rearing pigs, and eating pork, as long as they do not sell them to Muslims. *Zimmis* are generally denied the right to appeal to an Islamic court in family matters,

marriage, divorce, and inheritance. However, in the event a Muslim judge agrees to take such a case, the court must apply Islamic law.

Political Rights and Duties

The Islamic state is an ideological state, thus the head of the state inevitably must be a Muslim, because he is bound by the *Shari`a* to conduct and administer the state in accordance with the *Qur'an* and the *Sunna*. The function of his advisory council is to assist him in implementing the Islamic principles and adhering to them. Anyone who does not embrace Islamic ideology cannot be the head of state or a member of the council.

Mawdudi, aware of the requirements of modern society, seems to be more tolerant toward *Zimmis*. 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 *Sunna* should be enacted, that the *Qur'an* and the *Sunna* should be the chief source of public law, and that the head of the state should necessarily be a Muslim."

Under these circumstances, the sphere of influence of non-Muslim minorities would be limited to matters relating to general problems of the country or to the interest of the minorities. Their participation should not damage the fundamental requirement of Islam. Mawdudi adds,

"It is possible to form a separate representative assembly for all non-Muslim groups in the capacity of a central agency. The membership and the voting rights of such an assembly will be confined to non-Muslims and they would be given the fullest freedom within its frame-work."

These views do not receive the approval of most other schools of the *Shari`a* which hold that non-Muslims are not allowed to assume any position which might bestow on them any authority over any Muslim. A position of sovereignty demands the implementation of Islamic ideology. It is alleged 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.

Business World

The political arena and the official public sectors are not the only area in which non-Muslims are not allowed to assume a position of authority. A Muslim employee who works in a company inquires in a letter **"if it is permissible for a Muslim owner (of a company) to confer authority on a Christian over other Muslims? (Al-Muslim Weekly; Vol. 8; issue No. 418; Friday 2, 5, 1993).**

In response to this inquiry three eminent Muslim scholars issued their legal opinions:

Sheikh Manna` K. Al-Qubtan, professor of Higher studies at the School of Islamic Law in Riyadh, indicates that:

Basically, the command of non-Muslims over Muslims is not admissible, because God Almighty said: '*Allah will not give access to the infidels (i.e. Christians) to have authority over believers (Muslims) {Qur'an 4:141}*'. For God - Glory be to Him - 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) {Qur'an 63:8}*'.

Thus, the authority of non-Muslim over a Muslim is incompatible with these two verses, 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.

Dr. Salih Al-Sadlan, professor of Shari`a at the School of Islamic Law, Riyadh, cites the same verses and asserts that it is not permissible for an infidel (in this case is a Christian) to be in charge over Muslims whether in the private or public sector. Such an act:

"entails the humiliation of the Muslim and the exaltation of the infidel (Christian). This infidel may exploit his position to humiliate and insult the Muslims who work under his administration. It is advisable to the company owner to fear God Almighty and to authorize only a Muslim over the Muslims. Also, the injunctions issued by the ruler, provides that an infidel should not be in charge when there is a Muslim available to assume the command. Our advice to the company owner is to remove this infidel and to replace him with a Muslim."

In his response Dr. Fahd Al-`Usaymi, professor of Islamic studies at the Teachers' College in Riyadh, remarks that the Muslim owner of the company should seek a Muslim employee who is better than the Christian (manager), or equal to him or even less qualified but has the ability to be trained to obtain the same skill enjoyed by the Christian. It is not permissible for a Christian to be in charge of Muslims by the virtue of the general evidences which denote the superiority of the Muslim over others. Then he quotes (Qur'an 63:8) and also cites verse 22 of Chapter 58:

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.

`Usaymi claims that being under the authority of a Christian may force Muslims to flatter him and humiliate themselves to this infidel on the hope to obtain some of what he has. This is against the confirmed evidences. Then he alludes to the story of Umar Ibn Al-Khattab the second Caliph, who was displeased with one of his governors who appointed a *Zimmi* as a treasurer, and remarked: **"Have the wombs of women become sterile that they gave birth only to this man?"** Then `Usaymi adds:

Muslims should fear God in their Muslim brothers and train them... for honesty and fear of God are, originally, in the Muslim, contrary to the infidel (the Christian) who, originally, is dishonest and does not fear God.

Does this mean that a Christian who owns a business cannot employ a Muslim to work for him? Even worse, does this mean that a *Zimmi*, regardless of his unequal qualification, cannot be appointed to the right position where he would serve his country the best? This question demands an answer.

Freedom of Expression

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."

Mawdudi's views are not accepted by most Islamic schools of law, especially in regard to freedom of expression like criticism of Islam and the government. Even in a country like Pakistan, the homeland of Mawdudi, it is illegal to criticize the government or the head of state. Many political prisoners are confined to jails in Pakistan and most other Islamic countries. 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 for a *Zimmi* to get away with criticizing Islam.

In Mawdudi's statement, the term "limitations" is vaguely defined. If it were explicitly defined, you would find, in the final analysis, that it curbs any type of criticism against the Islamic faith and government.

Moreover, how can the *Zimmis* express the positive aspects of their religion when they are not allowed to use the media or advertise them on radio or TV? Perhaps Mawdudi meant by his proposals to allow such freedom to *Zimmis* only among themselves. Otherwise, they would be subject to penalty. Yet, Muslims are allowed, according to the *Shari`a* (law) to propagate their faith among all religious sects without any limitations.

Muslims and Zimmis

Relationships between Muslims and *Zimmis* are classified in two categories: what is forbidden and what is allowable.

I. The Forbidden:

A Muslim is not allowed to:

1. emulate the *Zimmis* in their dress or behavior.
2. attend *Zimmi* festivals or support them in any way which may give them any power over Muslims.
3. lease his house or sell his land for the construction of a church, temple, liquor store, or anything that may benefit the *Zimmi's* faith.
4. work for *Zimmis* in any job that might promote their faith such as constructing a church.
5. make any endowment to churches or temples.
6. carry any vessel that contains wine, work in wine production, or transport pigs.
7. address *Zimmis* with any title such as: **"my master"** or **"my lord."**

II. The Allowable

A Muslim is allowed to:

1. financially assist the *Zimmis*, provided the money is not used in violation of Islamic law like buying wine or pork.
2. give the right of pre-emption (priority in buying property) to his *Zimmi* neighbor. The *Hanbilites* disapprove of this.
3. eat food prepared by the People of the Book.
4. console the *Zimmis* in an illness or in the loss of a loved one. It is also permissible for a Muslims to escort a funeral to the cemetery, but he has to walk in front of the coffin, not behind it, and he must depart before the deceased is buried.
5. congratulate the *Zimmis* for a wedding, birth of a child, return from a long trip, or recovery from illness. However, Muslims are warned not to utter any word which may suggest approval of the *Zimmis'* faith, such as: "**May Allah exalt you,**" "**May Allah honor you,**" or "**May Allah give your religion victory.**"

Conclusion

This study shows us that non-Muslims are not regarded as citizens by any Islamic state, even if they are original natives of the land. To say otherwise is to conceal the truth. Justice and equality require that any Christian Pakistani, Melanesian, Turk, or Arab be treated as any other citizen of his own country. He deserves to enjoy the same privileges of citizenship regardless of religious affiliation. To claim that Islam is the true religion and to accuse other religions of infidelity is a social, religious and legal offense against the People of the Book.

Christians believe that their religion is the true religion of God and Islam is not. Does that mean that Great Britain, which is headed by a Queen, the head of the Anglican Church, should treat its Muslim subjects as a second class? Moreover, why do Muslims in the West enjoy all freedoms allotted to all citizens of these lands, while Muslim countries do not allow native Christians the same freedom? Muslims in the West build mosques, schools, and educational centers and have access to the media without any restriction. They publicly advertise their activities and are allowed to distribute their Islamic materials freely, while native Christians of any Islamic country are not allowed to do so. Why are Christians in the West allowed to embrace any religion they wish without persecution while a person who chooses to convert to another religion in any Islamic country, is considered an apostate and must be killed if he persists in his apostasy? These questions and others are left for readers to ponder.

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