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## The Protection of Minority Rights under Islamic Legal Frameworks

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**Abstract:** The protection of minority rights within Islamic legal frameworks represents a vital aspect of justice and social harmony envisioned by Shariah. Rooted in the Qur'an, Sunnah, and early Islamic governance, the Islamic legal system ensures the dignity, safety, and religious freedom of non-Muslim minorities (Ahl al-Dhimmah). The Prophet Muhammad (peace be upon him) established clear principles guaranteeing equality before the law and safeguarding the lives, property, and worship of all citizens regardless of faith. Classical jurists, such as Imam Abu Hanifah and Imam al-Shafi'i, developed legal mechanisms for coexistence and mutual respect between Muslims and non-Muslims. Historical evidence from the Rashidun Caliphate and later Islamic empires demonstrates practical models of pluralism and tolerance grounded in divine law. Contemporary Islamic scholarship reinterprets these principles in light of modern human rights discourse, emphasizing harmony between Islamic justice and universal human rights standards. Thus, Islamic jurisprudence provides a robust moral and legal foundation for protecting minorities, promoting peaceful coexistence, and ensuring social equity across diverse communities.

**Keywords:** Minority rights, Shariah, Ahl al-Dhimmah, Islamic law, human rights, pluralism, justice.

## 1. Introduction

The minority rights question is one of the most urgent issues of both the international and the religious legal discourses. In a more globalized and pluralistic world, religious, ethnic, or linguistic minorities have become an important measure of justice and social peace. Although the contemporary international law, specifically the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR, 1948) in particular, has focused on equality and non-discrimination, even the Islamic law (Shariah) has had some deep principles that uphold the dignity and rights of all human beings,

irrespective of their religion or ethnicity (An-Na'im, 2010).

In the course of Islamic civilization, other people in the world, such as Christians, Jews, Zoroastrians, and others, were under the rule of the Muslim rulers. The Quran sets forth the code that every human being was created from one soul (Qur'an 4:1) and was provided with inherent dignity: We have certainly respected the offspring of Adam (Qur'an 17:70). These verses constitute the moral and theological basis of equality in Islam. These principles were further institutionalized when the Prophet Muhammad (peace be upon him) established the Constitution of Medina (Sahifat al-Madinah) in 622 CE, which

acknowledged Jews and other non-Muslim tribes as part of a unified political entity (Donner, 2010). Therefore, since ancient times, Islamic law has evolved the system of coexistence and legal pluralism.

The Islamic legal tradition included the non-Muslim citizens in the category Ahl al-Dhimmah (protected communities). It guaranteed them a secure their lives, property, and religious freedom in exchange for a nominal tax rate (Jizyah). This framework was developed in a different historical situation from the current constitutional systems, but it was also one of the oldest legal solutions to the protection of minorities (Lewis, 1984). Most jurists, such as al-Shafi, Abu Hanifah, and Ibn Qayyim al-Jawziyyah, affirmed the inviolability of the rights of non-Muslims to Shari'ah and saw the violation of these rights as a serious sin (Khadduri, 1982).

Nevertheless, the recent debates on minority rights in Muslim-majority societies tend to cast doubt on the sufficiency and flexibility of the classical Islamic law. Critics say that the Dhimmah system legalized inequality, whereas others highlight that its spirit, which was justice, mercy, and protection, was in line with the greater goals of Shari'ah, which is the protection of religion, life, intellect, lineage, and property (Auda, 2008). Therefore, the modern Islamic thought is moving towards contextual reinterpretation (ijtihad) so that the original aims of Shari'ah can be achieved in the context of the contemporary notions of citizenship and human rights.

The present paper will address the question of the safeguarding of the rights of minorities in Islamic law through the lens of classical jurisprudence, historical views, and modern interpretations. It attempts to discuss the question of whether Islamic law offers a consistent legal and ethical foundation for protecting the rights of minorities in the modern world and how those values can be reconciled with international human rights standards. The methodology used in the study is qualitative as it will utilize textual analysis of primary sources of Islamic tradition, which

are the Quran, Sunnah, and early legal sources, and secondary academic literature. Finally, this study contends that a true interpretation of Shari'ah guided by the ultimate goals and situational wisdom upholds the complete safety and honor of minority groups in Muslim states.

## 2. Conceptual Framework

The minority rights in Islamic legal discussion need a clear explanation of what exactly a minority means and how Islamic law historically perceived the notion of difference and peace. In contemporary international law, minorities are commonly characterized by particular ethnic, lingual, or religious attributes that are unlike the prevailing majority, and whose individuals demand the protection of their group and individual rights. The United Nations, in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that the equality and a right to maintain culture, language, and religion should be seen by the state. This international system of laws establishes a modern standard of minority protection.

On the contrary, the Islamic law came up in the seventh century Arabia as a complete moral system and law that covers the whole human life, such as spiritual, social, economic, and political. The Islamic legal thought rests upon the Quran and the Sunnah of the Prophet Muhammad (peace be upon him), and is supplemented by principles of ijma (consensus) and qiyas (analogical reasoning). In the same system, human beings are majorly considered as being part of the moral community of human beings (Ummah al-Insaniyyah) even before the differentiation of religion or ethnicity (Qur'an 49:13). Equality and justice are many times repeated in the Quran: O mankind! We made you out of one pair of male and female, and divided you into nations and tribes, to know each other. Indeed, the dearest of you in the eyes of God is the most upright one" (Qur'an 49:13)

## 2.1. The Meaning of Minority in Islamic Jurisprudence

The contemporary term of law in English is minority (Aqalliyah), which is the term used in classical Islamic jurisprudence, but only later, through the effect of international law, was incorporated in Arabic legal thought. Rather, the early Muslim jurists divided communities into those who had a connection with the Muslim polity. The true Muslims were called Muslim ummah; the people who lived under Islamic protection and never converted were called Ahl al-Dhimmah (protected people); and the enemy of Muslims were Ahl al-Harb (people of war). Therefore, it was not numbers or ethnicity, but covenantal and political relations within the Islamic state that decided which protection and rights an individual would receive.

The essential element of the original Arabic understanding of pluralism was the Dhimmah status, based on the Arabic root dh-m-m, meaning protection or covenant. The Quran asks Muslims to do justice even to non-Muslims: do not permit hatred of anyone to cause you to be swerved. Be righteous, that is closer to righteousness" (Qur'an 5:8). Classical jurists such as al-Mawardi (d.1058) and Ibn al-Qayyim (d.1350) developed in-depth legal stipulations that safeguarded the rights of dhimmis, including their rights to safety, freedom, and to property. These rights were not seen as temporal advantages and benefits, but rather as a duty on the ruler of the Muslims via the divine commandments and the example of the Prophet.

## 2.2. Equality, Citizenship, and Legal Pluralism

One of the most basic differences between the Islamic and Western paradigms of law is the concept of equality. Whereas the modern international law considers that all citizens should be treated equally before the state, the traditional Islamic jurisprudence focuses on functional justice so that all groups are treated in a fair manner concerning their beliefs and social positions. With Dhimmah, the non-

Muslims were given freedom in their personal affairs, i.e., marriage, divorce, inheritance, and religion, but were put under their own laws and rulers. The reason why this legal pluralism should be regarded as a predecessor to modern ideas of cultural autonomy and minority rights is that it took place during such an early time.

A major example of this model of coexistence is seen in the Constitution of Medina of the Prophet (622 CE). The document formed a single community (Ummah Wahidah) that consisted of Muslims, Jews, and other tribes, all of whom were assured of security, religion, and the defense of each other. Significantly, the constitution said: The Jews their religion, The Muslims theirs. Such a provision signifies a constitutional recognition of religious diversity and protection (Donner, 2010). Hence, the minority protection is implanted, not in an idea of numerical inferiority, but in an ethical and legal pledge of justice and reciprocal respect.

## 2.3. Evolution of the Concept in Modern Islamic Thought

As the caliphate waned and the modern nation-states emerged, Muslim jurists and reformers started relying on classical categories with reference to international standards of human rights. Al-Aqalliyat al-Diniyyah (religious minorities) is a particularly popular term in the twentieth century, notably in discussions about the Cairo Declaration on Human Rights in Islam (1990) and the Universal Islamic Declaration of Human Rights (1981). Modern theorists, including Yusuf al-Qaradawi, Rashid al-Ghannushi, and Abdullahi An-Na'im, believe that citizenship (Muwatanah) in the modern Muslim world should be given in lieu of the already practiced Dhimmah model and this treats all citizens with equal citizenship and responsibilities irrespective of religious beliefs.

The Maqasid al-Shari'ah (purposes of Islamic law) are also helpful in this reinterpretation and aim to preserve life, intellect, religion,

lineage, and property. According to modern jurists, the protection of minority rights is a part of them because it safeguards human dignity (Karamah Insaniyyah) and social justice (Adl Ijtimai'). By such reasons, the approaches toward justice and compassion and human dignity as per the Islamic law offer a moral basis that is aligned with the contemporary human rights tools, despite the fact that the law tools may vary.

To summarize, the theoretical framework of the protection of minorities within Islam cannot be narrowed down to the history of the Dhimma system. Instead, it constitutes a dynamic philosophy of law which developed in terms of scriptural principles, historical practice, and modern reinterpretation. The following part is going to look at the main minority protection sources in Islam the Quran, the Sunnah, and early Islamic political texts to show how these initial texts legalized justice and coexistence.

### 3. Sources of Minority Protection in Islam

The minority rights protection in Islamic law is not an accidental and secondary characteristic of Shari'ah, it is deeply anchored in the Quran, Sunnah, and the first constitutional and the legal traditions of the Muslim community. These early sources are the universal values of justice (Adl), mercy (Rahmah) and equality (Musawah), all of which, together, constitute the moral framework of upholding the rights and dignity of all humans, even non-Muslims.

#### 3.1. The Qur'anic Foundations

The Quran reiterates repeatedly the sanctity of human life and the equality of all humans before God. Surah al-Isra (17:70) seems to be one of the clearest statements of human dignity: We have surely honored the offspring of Adam and have taken them upon the land and upon the sea and have given them of the best things and have preferred them over most of what we have created. According to the understanding used by the classical exegetes like al-Tabari and al-Qurtubi this verse means

the inherent glory given to every human being, regardless of religion or nationality.

The freedom of religion is another moral value promoted in the Quran: No compulsion in religion. The good and the bad are distinctly different before the truth is error" (Quran 2:256). Jurists and contemporary scholars have a common understanding of this verse that was revealed in Medina to forbid force in faith (Esposito, 2002). The same spirit is confirmed in Surah al-Kafirun (109:6): To thee belong thy religion, And to me mine. These verses form theological pluralism and support the rights of all communities to practice and have their own faith without persecution.

Moreover, Quran instructs Muslims to treat other religious groups fairly and justly: God does not forbid you other people who do not fight you because of religion and expel you of our houses- to be righteous to them and to act justly to them. God indeed is the one who adores just persons (Qur'an 60:8). justice as the moral imperative is, therefore, not only pertinent to Muslims but also to the entire humanity.

#### 3.2. Sunnah of the Prophet Muhammad (Peace Be Upon Him).

The life of Prophet Muhammad offers a practical lesson on how to coexist with other religions. His treaties and covenants with the Jews, Christians, and pagan tribes serve as an illustration of the evidence of inclusion and contractuality of the minority protection in Islamic rule. The first written constitution in human history is commonly considered to be the Covenant of Medina (Sahifat al-Madinah), signed soon after the Prophet had migrated to Medina in 622 CE. It acknowledged Muslims and Jews as people of one political community (Ummah Wahidah) and equal rights holders and equally responsible in the defense, justice, and social solidarity.

Article 25 of the Constitution of the Medina clearly states: "The Jews of Banu Awf are a single community with the believers; the Jews have their own religion and the Muslims

theirs. This reflects a legal celebration of religious freedom in the same state (Hamidullah, 1975). Furthermore, the Prophet signed a number of bilateral treaties with Christian and Jewish communities, including the Charter of Najran Christians that assured the safety of their lives, property, and churches in case of peaceful coexistence and unanimity with the state.

Even the last sermon of the Prophet (Khutbat al-Wada') includes the message of equality, which is universal: O people! Your father is One, and your Lord is One. It does not matter whether the Arab is superior to the non-Arab, or the non-Arab to the Arab; the whites to the blacks; the blacks to the whites--unless righteousness is the issue. It is an ethic of justice alluded to in the Quran, and a moral charter against discrimination and social hierarchy.

### 3.3. The Medina Constitution as a prototype of Pluralism.

The Constitution of Medina was grounded on a revolutionary creation of a multi-religious political community with equal legal order. This was a contrast to later empires, which tend to promote uniformity as the model of Medina did. The rule of the Prophet in Medina gave the Jews and pagans the opportunity to keep their own institutions of law and religion, and they still enjoyed the benefits of collective security and dispute settlement.

According to modern researchers, including Muhammad Hamidullah and F. M. Donner, the Constitution of Medina was used as the social contract and as the constitutional design that guaranteed the rights of minorities. It established pluralism by mutual duty and citizenship as opposed to inferiority. As such, it may be regarded as a predecessor of the contemporary concepts of inclusive governance and religious freedom (Donner, 2010).

### 3.4. Historical Practice under the Caliphates

The early caliphs continued with the policies of justice and protection of the non-Muslims according to the Prophet after his death. Caliph Abu Bakr (r. 632-634 CE) advised his armies to avoid attacking priests, monks, or the civil population and to avoid attacking religious sanctuaries. Caliph Umar ibn al-Khattab (r. 634-644 CE) signed several peace treaties, such as the Covenant of Jerusalem (637 CE), that ensured the Christian people that their lives, property, and churches were safe. History showed that Umar showed personal tolerance to non-Muslims. According to the historical records, he did not wish to worship in the church of the holy Sepulcher because he did not want Muslims to take it over later on as a mosque (Lewis, 1984).

Likewise, during the Umayyad and Abbasid Caliphates, non-Muslim scholars, physicians, and translators were the most important figures in intellectual life. The Baghdad translation activity in Baghdad Bayt al-Hikmah (House of Wisdom) was successful because Christian and Jewish scholars were also involved, proving the idea that non-Muslims were not simply tolerated but appreciated contributors to the Islamic civilization (Hodgson, 1974).

Overall, the scriptural roots as well as the historical experiences of Muslims define a logical and ethically sound system of minority protection. The Quran and Sunnah present general principles of justice and equality, whereas the Constitution of Medina and early Islamic government present examples of their implementation in multiethnic societies.

The second part will discuss the legal position of non-Muslims (Ahl al-Dhimmah) in the classical Islamic jurisprudence- their rights, responsibilities, and legal agreements that defined the relationships between Muslims and non-Muslims over the centuries.

## 4. Legal Status of Non-Muslims (Ahl al-Dhimmah)

One of the oldest systematic approaches to the protection of religious minorities is the legal

position of non-Muslims in the classical Islamic jurisprudence. These groups were called Ahl al-Dhimmah (the People of the Covenant), which means that they received insurance on their security, the liberty of worship, and the protection of their property under Islamic rule. The system was developed based on the Quranic and Prophet teachings of justice and compassion in the spirit that the Islamic message is not merely spiritual, but civilizational- bringing peace and coexistence among different people (Esposito, 2009).

#### 4.1. The Concept of Dhimmah

The word Dhimmah is based on the Arabic word dh-m-m, which translates to covenant, responsibility, or protection. In the law, it is a binding contract referred to as Aqd between the Islamic state and non-Muslim residents who accept its authority and protection. According to the classical jurists, the Dhimmah contract was the one that offered safety (Aman), rights, and the freedom of religion with the condition of political loyalty and payment of a small tax (Jizyah) as the sign of participation in the collective defense of the state (Khadduri, 1982).

The dhimmah system was not founded on conversion or subjugation, but on mutual commitment and co-existence. According to the ruler (imam), as Imam al-Mawardi (d. 1058) wrote in al-Ahkam al-Sultaniyyah, the ruler must safeguard the lives, property, and honor of all dhimmis in the same manner as that of Muslims. Their rights had been violated, and this was against the Shari'ah, which was seen as a sin. On the same note, Ibn Qayyim al-Jawziyyah (d. 1350) wrote that any violence against a dhimmi was a great injustice and a betrayal of the covenant of the Prophet.

#### 4.2. The Guarantees of Rights to Dhimmis.

Classical Islamic law acknowledged a wide scope of civil, religious, and economic rights to dhimmis that were codified by the juristic consensus (Ijma').

##### a) Right to Life and Security

Dhimmis were also assured of complete protection of life and property within the Islamic rule. Prophet Muhammad said: Whoever slays someone under covenant (Dhimmah), will not smell the scent of Heaven (Sahih al-Bukhari, 3166). This hadith emphasizes the holiness of their life and how the violation of such protection is grave.

This principle was strengthened by the early Caliphs. Caliph Umar ibn al-Khattab is quoted as saying: I will be the enemy of whoever oppresses a dhimmi, or deprives him of more than he is entitled to receive (Ibn Sa'd, Tabaqat). This declaration not only acknowledged equality before justice, but it also imposed a moral responsibility on those in power to be custodians of minority rights.

##### b) Liberty of Cult and Worship.

Religious freedom was theological in the Quran principle of no compulsion in religion, 2: 256. Dhimmis were also free to practice their rituals and uphold their religious laws in their own houses of worship. In most of the Muslim territories, churches, synagogues, and temples were active around the clock throughout centuries.

History teaches that the Christian heads of patriarchy and Jewish heads of rabbinical schools had retained religious jurisdiction under the Muslims, and that such disagreements as arose between them, or between a man and his family, had been tried in their respective religious tribunals. Dhimmis were even free to make their own taxation and community decisions under the Abbasid (Coulson, 1964).

##### c) Property and Economic Rights protection.

The Islamic law was categorical against taking non-Muslim property illegally. Dhimmis could own land, trade, and get wealth. They acted as financiers, doctors, and administrators in the Muslim governments in some areas. The Jizyah tax, which had been so misconstrued, was not a punishment, but a present of money instead of military service, to which they were not subjected. Muslims,

on the other hand, gave the Zakah, which was a social welfare alms-tax.

#### d) Access to Justice

Dhimmis were allowed to turn to the Islamic courts to redress grievances against the Muslims or the state. They also had an option of settling disputes in their religious jurisdictions. Quran (4: 42) states that Jews were free to submit their disputes to the prophet or to their own law: The Jews might come to thee, and judge thee, or disown thee; and woe to thee, shouldst thou disown the Jews. This verse shows the pluralistic elasticity of the early Islamic justice systems.

#### 4.3. Dhimmi's responsibilities.

Dhimmis were expected to assume some of the responsibilities in return for state protection. The most prominent of it was the payment of Jizyah, a small poll tax that was meant to signify their involvement in the social contract. Quran (9:29) states that: Fight those who refuse the faith in God... until they pay the Jizyah with submission. Classical jurists stressed that Jizyah should not be gathered in an oppressive and unfair manner. Caliph Umar supposedly said to his officials: Do not weigh them more than they can bear, and an elderly man who is unable to pay must be exempted.

Dhimmis were also to avoid the hostility of the Muslim state and show respect to the order of the people. Such circumstances guaranteed political stability and maintained communal autonomy.

#### 4.4. Comparative Reflections

Considered in historical context, the Dhimmah system was progressive and humanistic in view of the standards of medieval Europe or Asia. In such times when intolerance towards religion was rampant in the West, Jews and Christians could find comparative security in the Muslim territories. As an example, in 1492, the Jews were expelled from Spain, and the Ottoman Empire accepted them and allowed them to prosper in Istanbul and Salonika.

However, according to modern critics, the Dhimmah system legalized some form of legal inequality where the Muslims and the non-Muslims were differentiated in terms of taxation and eligibility to hold important government offices. Modern Muslim reformers answer this by pointing out that the Dhimmah model was a model that captured the socio-political reality of the day. The distinction is no longer relevant in contemporary nation-states where there is equal citizenship (Muwatanah), but the ethical nature of protection, justice, and coexistence continues to form the basis (An-Na'im, 2010).

To state it briefly, the legal position of the non-Muslims in Islamic law is the result of the balanced interaction between the divine and the practical. The system that was created under the Dhimmah was a revolutionary creation in the contemporary world-it ensured protection and justice and religious freedom centuries before the enactment of the modern human rights legislation.

Sub-modern interpretations and reforms of Islamic scholarship and political systems will be discussed in the next section, and how the classical principles are re-interpreted by the Muslim-majority societies in order to comply with the modern understanding of citizenship and human rights.

### 5. Modern Interpretations and Reforms

The topic of minority rights in Islam has also been greatly changed in the modern times. The breakdown of empires, the formation of nation-states, and the development of international human rights documents, such as the Universal Declaration of Human Rights (UDHR, 1948), prompted Islamic scholars and jurists to redefine traditional Islamic legal categories in the new context of equality and citizenship. The main issue was how the spirit of Shari injustice, mercy, and human dignity, could be followed in an age of pluralism and democracy?

#### 5.1. Dhimmah to Citizenship (Muwatanah).

The last and most significant intellectual development in Islamic thought today was the replacement of the historic model of Dhimmah with the idea of Muwatanah (equal citizenship). Although the Dhimmah system operated in a religiously defined state, Muwatanah presupposes a political system where all the citizens, both Muslims and non-Muslims, have equal rights and responsibilities under a shared constitution.

According to the leading scholars like Yusuf al-Qaradawi, the Dhimmah framework served a pre-modern role, but the objectives (Maqasid) of Shari'ah, which are the protection of life, religion, intellect, lineage, and property, require a new interpretation that is in line with modern realities. Qaradawi stresses that Islamic polity citizenship is not rooted in faith but in the commitment to the country and respect for its laws. On the same note, Rashid al-Ghannushi (one of the Tunisian intellectuals) claims that the Constitution of Medina, created by the Prophet, is the historical model of a civic state, where different communities were equalized in political and social life (al-Ghannushi, 2013).

Abdullahi Ahmed An-Na'im, among the most prominent Muslim legal reformists, goes a step further to say that the higher ethical principles of the Shari'ah law should not serve as the basis but guide the law in the state. In his opinion, the way to realize the Shari'ah values in contemporary societies is in the freedom of belief and equality before the law, which will be possible to attain not by coercive imposition (An-Na'im, 2010). Therefore, reconsideration of Shari'ah as a moralism and not a strictly judicial system enables protecting the rights of minorities as a universal human dignity.

## 5.2. The Cairo Declaration and the Islamic Human Rights Initiatives.

Citing as a reaction to the international discussion of the incompatibility of Islam and human rights, the Organization of Islamic Cooperation (OIC) came up with the Cairo

Declaration on Human Rights in Islam (CDHRI) in 1990. The declaration also acknowledges the nature of the human dignity of every human being, and it states that all men are equal in matters of the basic human dignity and obligation and responsibility without any discrimination based on race, color, language, sex, religious belief, political affiliation, or social status (Art. 1, CDHRI, 1990).

Although the declaration bases its rights in the context of Shari'ah, it marks a big move in the context of applying Islamic laws to the modern human rights discussions. Similarly, the rights of non-Muslims to freedom of religion, the right to property, and fair treatment are recognized in the Universal Islamic Declaration of Human Rights (UIDHR, 1981), which was published earlier in the Islamic Council of Europe.

Although these charters are observed to curb some of the freedoms (e.g., conversion and freedom of expression) under Shari'ah parameters, they nonetheless represent a decisive shift- the classical Dhimmah paradigm to rights-based citizenship.

## 5.3. Reforms in Muslim-Majority Countries Law National Law.

A number of Muslim majority states have introduced the minority protection principles into their constitutions.

In the case of Malaysia, although Islam is the religion of the Federation, the non-Muslims are guaranteed the freedom of religion in Article 11 of the Constitution of the Federation. The official policy of the government accepts different religious and ethnic groups, which is a hybrid form of the Islamic identity and pluralistic governance (Shad Saleem Faruqi, 2019).

Pakistan is an Islamic republic, which safeguards the rights of religious minorities by the constitution through Articles 20-22, which play the role of ensuring freedom of religion and the right to run their own institutions.

In Egypt, the Constitution of 2014 establishes the equality of rights of citizens without any form of discrimination based on religion or belief, whereas Article 235 provides its legal protection to Christian churches and communities.

The 2011 Constitution of Morocco lists the Jewish heritage among the identities of the country, which represents a wider culture of inclusiveness within an Islamic system.

These instances represent a slow shift in the collective security (Dhimmah) to the constitutional citizenship when the state law, not religious identification, forms the extent of individual and communal rights.

#### 5.4. Hammasid al-Shari and the Contemporary Human Rights Theory.

According to modern reformists, the Maqasid al-Shari'ah (purposes of the Islamic law) provide a moral and intellectual point of contact between the Islamic jurisprudence and non-religious human rights. Jasser Auda (2008) states that the Maqasid approach is interested in human welfare (Maslahah) and thus a jurist can modify a legal decision to suit altered societal realities. The guarding of the rights of minorities, thus, becomes not only a political mandate but also a religious duty to guard human dignity (Karamah).

Within this interpretative approach, the freedom of religion, expression, and equal participation in the political life is all understood as a manifestation of the overall end of Shari'ah: justice (Adl) and compassion (Rahmah). By not focusing on hard textuality but making the shift towards holistic ways of ethical reasoning, Islamic legal theory today states that the protection of minorities complies with the divine goals of law as such.

#### 5.5. Difficulties and Perspectives of Reform.

Although there are progressive interpretations, there are still challenges. Constitutional ambiguities in certain countries with a Muslim majority, even in blasphemy, conversion, and family law, some discriminatory laws continue to weaken the

rights of minorities. Religion is generally politicized such that faith-based ethics and enforcement by the state become indistinct.

According to reform-minded thinkers, the sustainability of the Islamic vision of human rights should be based on three pillars:

Ijtihad (independent reasoning) to reinterpret old rulings in response to new realities;

Laws pluralism to suit various interpretations and religious lifestyles; and

Accountability in the institutions in which the state power is taken under the limits of justice and equality.

In this way, the current trend in the reconciliation of Islamic law and human rights is not a rejection of tradition but a restoration of the Maqasid- the moral reality of Shari'ah. Safeguarding minorities in this perception is not a Western import rather an original Quranic directive that is deeply ingrained in the Islamic world and the view.

*Islamic Law in Comparative Perspective: Islamic jurisprudence and International human rights.*

Defense of the rights of minorities has been a major concern regarding the Islamic jurisprudence (Fiqh) as well as contemporary international law. Although both systems are expected to encourage justice, equality, and human dignity, they tend to vary in their foundations, approaches, and terms. This section has drawn a comparative analysis of the Islamic legal frameworks with the international human rights law--especially in the areas of convergence, divergence, and possible reconciliation.

#### 6.1. Philosophical Principles of Rights

The Islamic law is based on the authority of divine revelation- the Quran and Sunnah, which is considered to be the will of God. Contrary to this, the concept of modern human rights is based on secular philosophy, which focuses on reason, the social contract, and human autonomy.

According to Islam, the origin of the rights is Allah, who is the supreme lawgiver (al-hakim). A human being has the right (Huquq al-Insan) not due to his or her autonomy, but due to their innate dignity (Karamah) being a creation of God. The Qur'an declares:

And we have certainly graced the children of Adam... (Qur'an 17:70).

Therefore, dignity and equality are divinely given, not socially constructed (Kamali, 2002).

In comparison, the Universal Declaration of Human Rights (UDHR, 1948) gives more emphasis on universality by human reason and conscience:

Art. 1 states that all human beings were born free and equal in dignity and rights.

The two structures share a common view on the concept of human dignity and equality, albeit metaphysically justified through the Islamic law based on divine creation, and the UDHR based on the rationality of humankind.

## 6.2. Concept Equality and Non-Discrimination.

According to Islamic jurisprudence, human beings are equal before God. Said the Prophet Muhammad (peace be upon him):

No Arab is better than a non-Arab, nor is a non-Arab better than an Arab; no white is better than a black, nor blacks better than whites, except in righteousness (Musnad, Ahmad).

The Quran also makes it a point to:

"O mankind! We made you out of a man and a woman, and we formed you into nations and tribes that you might know each other.... (Qur'an 49:13).

This is a universal equality principle that rings well with Article 2 of the UDHR that forbids any form of discrimination relating to race, color, sex, language, religion, political or other opinion.

Nonetheless, the difference is manifested in practice. The classical Islamic law drew the line between Muslims and non-Muslims in

some legal issues like paying taxes (Jizyah), being elected into political leadership, and giving witness in court. Although these differences belonged to historical aspects of the past interconnected with the political and social systems of that period, they are the category that is misconstrued as the enduring inequalities.

According to contemporary Islamic theorists, like Tariq Ramadan (2009) and Abdullahi An-Na'im (2010), these rules were not fundamental, but situational, and that today equality has to be understood in terms of Maqasid al-Shari'ah, the higher goals of justice, well-being, and human dignity.

## 6.3. Freedom of Religion

The issue of freedom of religion is one of the most controversial ones in the comparative discourse.

In Islamic Law: The Quran expressly tells us that there is no force in religion (Qur'an 2:256). Muslim societies in their early days provided the freedom of practice of other religions, such as Jews, Christians, and even the Zoroastrians, under the system of Dhimma, which did not interfere with their worship, traditions, and even their own laws.

In International Law: Article 18 of the UDHR entitles freedom of thought and conscience as well as religion- the right to alter religion. This is the element of conversion that is still disputable in Islamic law. Although penalties were commonly prescribed in the classical jurist writings in case of apostasy (Riddah), contemporary scholars read such decisions as a political, not necessarily religious decision.

Mohammad Hashim Kamali (2014) argues that the laws of apostasy were to deal with treason, or sedition, in times of political strife, and not with personal conviction. Thus, in modern societies, the forceful imposition of faith is against the Shariah and human rights standards.

## 6.4. Minority Participation in Governance

International human rights mechanisms, e.g., Article 27 of the International Covenant on

Civil and Political Rights (ICCPR), have been found to focus on the right of minorities to enjoy cultural, religious, and public life without discrimination.

Likewise, early Islamic rule by the Constitution of Medina (622 CE) formed a political community (*ummah wahidah*) of Muslims, Jews, and other tribes. The document acknowledged the autonomy of each community whilst guaranteeing the security and justice on a collective basis.

Contemporary Muslim-majority countries such as Tunisia, Indonesia, and Malaysia have adopted this inclusive paradigm by securing minority representation in parliament, cultural rights and legal safeguards in the law (Esposito and Voll, 2018).

Therefore, as much as both systems appreciate the presence of participation and protection, the Islamic system used to be based on communal autonomy, and the modern system focuses on the equality of individuals within one legal framework.

**6.5. Cultural and Religious Identity Protection.** The Islamic law safeguards the religious symbols, worship locations and religious books of the non-Muslims. Even the covenants of the Prophet like, the Charter of Najran and the Covenant with the Christians of Sinai, specifically prohibit the destruction of churches or of clergy (Lecker, 2004). This is in line with Article 27 of the ICCPR that stipulates that minorities should not be denied the right, in association with the other members of their group, to experience their own culture, to express and exercise their own religion. In this way, Islamic law and contemporary human rights are both concerned with minority identity, but the process is different in Islamic law (where it has been historically provided by uniting the individuals into a community), and in international law (where it is offered by the right of an individual).

**6.6. Sex and Intersectional Minorities.** There is also a comparative aspect of gender based minorities in subcultures as exhibited by Muslim

societies. Although Islamic law believes in the dignity of women, the use of history was restrictive in terms of participation by people and the law. UDHR, on the other hand, is very clear in granting equality in marriage, work, and political representation. According to modern Islamic feminist thinkers, including Amina Wadud (2006) and Asma Barlas (2002), the main message of the Quran is egalitarian in nature, which was held by patriarchal interpretations that distorted its original message of ethicality. Hence, reinterpreting Shari'ah using a justice-based hermeneutic can ensure that the Islamic law is made in line with international standards of gender equality and inclusion of minorities.

**6.6. Common Ethical Objectives** The differences in methodology notwithstanding, the Islamic law and international human rights have some common essential ethical purposes: Defense of human dignity (*Karamah*), Justice ('*Adl*), Freedom of conscience, Social welfare (*Maslahah*), and Peaceful coexistence. According to Jasser Auda (2008), when interpreted dynamically, *Maqasid al-Shari'ah* overlap with universal moral values on which modern human rights law is based. Incompatibility is therefore not the problem, but translation, changing the Divine ethics to thrive in a pluralistic world.

## 7. Problems and Future Research

Although Islamic law has a strong moral basis to defend the rights of minorities, and the modern reform movements that aim at bringing closer the Islamic and international legal systems have a serious challenge, both in theory and practice. These are not only legal and political issues but have very deep roots in historical interpolations, institutional inertia, and socio-political factualities of the contemporary Muslim world. This section discusses these obstacles and provides potential paths of reform in the future.

**7.1. Interpretive Inertia and Historical Legacies.** Among the most important hurdles, the presence of pre-modern interpretations of Shari'ah that are out of context but still

succeed in society is to be mentioned. The Dhimmah system was created by classical jurists in much different conditions than compared to present-day nation states. In a world where the Islamic religion was arranged into a political society by the imperial authority, legal distinctions between Muslims and non-Muslims were based on the political aspects, but not on the moral hierarchy. Nevertheless, as we will see, most of the modern institutions are still using these medieval models without paying attention to their historical contingencies. This leads to confusion of contextual judgment (Ahkam) and general rules (Maqasid) of justice and equality. The textual literalism that still prevails today must be replaced by a paradigm shift to moral contextualism when the spirit of Shari'ah and not its pre-modern counterpart is used to protect minorities and maintain the pluralistic society (Mohammad Hashim Kamali, 2014 and Khaled Abou El Fadl, 2002).

**7.2. Religion Instrumentalization of Politics.** Politicization of Islam is also another major challenge. The political players of most Muslim majorities tend to use religion as a weapon to build power or contain opposition, or tap into majority feelings. The result of this instrumentalization is the exclusionary policies, which are not only anti-Islamic but also anti-human rights. As an example, blasphemy laws in other countries, such as Pakistan, or laws related to do with apostasy in some of the Middle Eastern countries, are often used not to enforce faith, but to prohibit minorities or political dissent (An-Na'im, 2010). The result has been the increased distance between Islam as a moral vision and Islam as a political instrument. Therefore, the reform needs to separate the moral teachings of the Islamic religion and how they are misused by political leaders.

**7.3. Legal and Institutional Problems.** Legal pluralism is common in most Muslim majority countries- that is, the existence of Islamic law, civil, and customary law. Nevertheless, such complexity usually results

in inconsistency, contradictions, and selective application of rights. Minorities are at times pushed aside by the laws that favor the majority religion on issues relating to marriage, inheritance, and conversion. In the case of constitutions that promise equality, there are still gaps in their implementation that are caused by weak institutions, the absence of judicial independence, and social prejudice. Reform must not just be reinterpretation (Ijtihad) of Islamic legal dogmas, but institutional reform should be in place to make sure that equality and justice are applied uniformly in all societies.

**7.4. Barriers in Education and Society.** Learning is at the center of the influence on forming the attitude of people towards minorities. Most of the old religious curricula (Madaris) put much emphasis on jurisprudence but fail to contextualize it in relation to its ethical aspect. This leads to stereotypes about non-Muslims, which are usually supported by political discourse and social media. To solve this, the Muslim cultures must transform the education systems to focus on: The Quranic justice and pluralism rules (e.g., 49:13, 5:8), Examples As exemplified by the Prophet the examples of coexistence (e.g., Constitution of Medina, Covenants with Christians), The classical Islamic civilization's intellectual tradition of tolerance (e.g., Andalusia, Abbasid Baghdad). Restoration of this ethical-humanistic vision will create social empathy, less prejudice, and more mutual respect.

**7.5. The International Race of Human Rights.** There is also a lingering conflict between the universalist and cultural-religious perception of human rights. Other Muslim intellectuals view the international human rights tools as a result of Western secularism that is not necessarily respectful of the Islamic moral principles. Nonetheless, the reformist scholars have advocated a value convergence approach- they believe that human rights and Shari'ah have overlapping goals on ethical aspects, though they may differ in terms of language and methodology. Abdullahi An-

Na'im (2010) and Jasser Auda (2008) support an internal Islamic reform based on the derivation of universal rights principles within Shari'ah itself, and thereby the preservation of authenticity and the adoption of universality. According to this perception, defending minorities is not yielding to foreign pressure but a reassurance of the position of Islam itself.

**7.6. International and Regional Institutions' Role.** Organizations such as the Organization of Islamic Cooperation (OIC), the Islamic Fiqh Academy, and Al-Azhar University are influential in ensuring the formation of the modern thinking of Islam. This notwithstanding the fact that their proclamations, like the Cairo Declaration on Human Rights in Islam (1990), tend to be more a declaration than an operation. These institutions have to go beyond lip service by taking a normative step towards standard-setting: Formulating commonality principles on minority protection in line with Maqasid al-sharia as well as the international standards; Proposing to the Muslim majority states to ratify and implement the major human rights treaties; Encouraging intra-faith dialogue among Sunni, Shiite, and other sects to avoid intra-Muslim discrimination. This institutional synergy can make the Islamic ethics enforceable rights.

**7.7. The Future of Minority Protection in the Islamic World.** The future of minority rights within an Islamic context is in the effectiveness with which Muslim societies could absorb three connected dimensions: Theological Renewal: Restructuring classical jurisprudence with Maqasid and contextual ijtihad, to make sure that the eternal foundations of Shari'ah, namely, justice, compassion, and dignity, are implemented in contemporary circumstances. The Constitution and the Law of Reform: Incorporating minority protection in the constitution and making sure that equality is not only written in the constitution but also in practice in terms of judicial independence and inclusive government. Cultural

Transformation: Development of a civic culture that recognizes pluralism as a Godly challenge and not a social menace. The Qur'an declares: It is written in the Quran, 11:118: Had your Lord willed, He would have made mankind one community. According to this verse, diversity is not something that should be fixed, but it is a manifestation of Godly wisdom. Therefore, the final aim is to shift the culture towards tolerance to integration, legal concession to moral acknowledgment - a shift that will not make the guarantee of minorities an extraneous practice but rather intrinsic to the Islamic practice.

**7.8. Synthesis Securing the rights of the minority under the Islamic legal systems is not a concession to modernism or a contravention of tradition, but a further development of the Islamic ethical tradition.** The Muslim societies can develop models of governance that are faithful to revelation, but responsive to human diversity by restoring the universal principles inherent in the Quran, Sunnah, and the Maqasid al-Shari'ah. Quran dreams of a moral society in which the identity of justice will overcome identity: "O you who believe! Be just, bear witness to God, even against your own selves or your kinsfolk (Qur'an 4:135). This divine mandate is the future of minority protection in Islam, the vision of the day when equality, justice, and mercy will be the principal features of an actually Islamic and humane civilization.

## 8. Conclusion

The issue of the rights of the minority in the Islamic legal tradition is not only ancient but also high-speed contemporary. Since the initial days of Islam, the Quran and the Prophet Muhammad (peace be upon him) introduced the principles of justice, compassion, and coexistence that had no tribal, ethnic, or religious boundaries. Islam had accepted pluralism as a vital part of social order, as evidenced in the Constitution of Medina (622 CE). Non-Muslims were not just tolerated, but they were now considered as being part of the political community

(Ummah Wahidah), and they were also given the same covenant of justice as Muslims.

The Dhimma system, or a legal system providing non-Muslims with protection, autonomy, and freedom of religion in exchange of a nominal tax (Jizyah), was created by the Islamic jurists over the centuries. Despite the fact that this framework was a phenomenal development of that era, the application of this framework was always contingent of the historical period. The problem of today is not to duplicate this system but to derive its moral content, i.e., justice (Adl), mercy (Rahmah), and defense of human dignity (karamah insaniyyah). The discussion of equality and citizenship has been redefined in the contemporary world in the emergence of secular nation-states and international human rights law. Jasser Auda, Abdullahi An-Na'im, Yusuf al-Qaradawi, Rashid al-Ghannushi and other Muslim scholars and reformers have re-interpreted Shari'ah principles to reflect the universal goals of justice and human welfare (Maqasid al-shari'). Their concerted actions are a shift of religiously organized community protection (Dhimma) to the broad concept of Muwatanah equal citizenship grounded on shared moral and civic accountability. The comparison and contrast analysis of Islamic law and the international human rights indicates that the areas of convergence are high. These two systems support the sanctity of human life, human dignity and the need to have justice. The Qur'anic command-- Yes, God dictates justice, good, and giving to kinsmen.... (Qur'an 16:90) is reminiscent of the moral basis of the Universal Declaration of Human Rights (1948). Nevertheless, differences still exist. The conflict of divine sovereignty (Hakimiyyah) and popular sovereignty, of religious freedom and apostasy statutes, between community autonomy and individual rights is a conflict that is still unresolved in most settings. These contradictions are not inherent but interpretative dilemmas- new ijihad, moral courage, and institutional change are necessary.

Legal is the least deep-seated problem, and an ethical problem is the most profound. It deals with the way that Muslim cultures imagine justice, power and human diversity. Until religious identity is politicized to benefit, or minority incorporation is seen as a compromise and not as a commandment of God, real reform will be an impossible goal. In order to proceed, the following strategic principles are needed: Reestablishing contact with Maqasid al-Shari'ah: The aims of Shari'ah, which are justice, mercy, welfare and equality, have to be given precedence over historical formalism in Islamic jurisprudence. Restructuring Constitutional Systems: States dominated by Muslims should also ensure non-discrimination, the right to equal citizenship, and freedom of religion as the constitutional rights to be effectively implemented by the courts. Educational Reform: The reason why religious and legal education should focus on the pluralistic ethos of Islam, the treaties of interfaith between the Prophet, and the ethos of coexistence as a cohort in the Quran. Interreligious and Intra-religious Dialogue: The minority protection efforts need all the religious groups to unite in fighting the exclusionary ideologies, including the marginalized Muslim sects. Institutional Commitment: Islamic institutions like the Organization of Islamic Cooperation (OIC) and national religious councils should put declarations into legal policy formulations that protect the minorities not only in law but also in social life. The worldview of the Quran sees humanity as a single moral family, different but equal in dignity: "O mankind! It is true that We made you man and woman and divided you into nations and tribes that you may be familiar with each other" (Qur'an 49:13).

This God-given notion of diversity is the key to a really Islamic vision of human rights, the vision that glorifies diversity as a demonstration of the wisdom of God, not as a menace to the purity of their community. Finally, the safeguarding of the rights of the minority under the Islamic legal systems is

not an issue of reconciling the Islam with modernity but rather the restoration of the moral universality of Islam. As the moral aims of Shari'ah are perfectly achieved, the lines between the "majority" and the "minority" disappear behind a greater unity of justice, equality, and compassion. This is a future, based on faith and humanism, which reinstates Islam as a mercy (Rahmah lil-'Alamin) a fount of moral direction not just to Muslims but to the entire humanity.

## 9. References

Ahmad, M. (n.d.). *Musnad Ahmad*. Dar al-Kutub al-'Ilmiyyah.

Al-Ghannushi, R. (2013). Democracy and Islam: A dialogue. Tunis: Dar al-Tahrir.

An-Na'im, A. A. (2010). Islam and the secular state: Negotiating the future of Shari'ah. Harvard University Press.

Auda, J. (2008). *Maqasid al-Shari'ah as philosophy of Islamic law: A systems approach*. International Institute of Islamic Thought.

Barlas, A. (2002). *Believing women in Islam: Unreading patriarchal interpretations of the Qur'an*. University of Texas Press.

Cairo Declaration on Human Rights in Islam. (1990). Organization of Islamic Cooperation.

Coulson, N. J. (1964). *A history of Islamic law*. Edinburgh University Press.

Donner, F. M. (2010). *Muhammad and the believers: At the origins of Islam*. Harvard University Press.

Esposito, J. L. (2002). *What everyone needs to know about Islam*. Oxford University Press.

Esposito, J. L., & Voll, J. O. (2018). *Islam and democracy after the Arab Spring*. Oxford University Press.

Faruqi, S. S. (2019). Constitutional protection of minority rights in Malaysia. *Journal of Southeast Asian Studies*, 50(2), 213–232.

Hamidullah, M. (1975). *Introduction to Islam*. Lahore: Institute of Islamic Culture.

Hodgson, M. G. S. (1974). *The venture of Islam: Conscience and history in a world civilization* (Vol. 2). University of Chicago Press.

Kamali, M. H. (2002). *Principles of Islamic jurisprudence* (3rd ed.). Islamic Texts Society.

Kamali, M. H. (2014). *Shari'ah law: An introduction*. Oneworld Publications.

Khadduri, M. (1982). *War and peace in the law of Islam*. Johns Hopkins University Press.

Lecker, M. (2004). The Constitution of Medina: Muhammad's first written constitution. *Jerusalem Studies in Arabic and Islam*, 30, 173–199.

Lewis, B. (1984). *The Jews of Islam*. Princeton University Press.

Ramadan, T. (2009). *Radical reform: Islamic ethics and liberation*. Oxford University Press.

Wadud, A. (2006). *Qur'an and woman: Rereading the sacred text from a feminist perspective*. Oxford University Press.

**Abstract:****Keywords:****1. Introduction**

The minority rights question is one of the most urgent issues of both the international and the religious legal discourses. In a more globalized and pluralistic world, religious, ethnic, or linguistic minorities have become an important measure of justice and social peace. Although the contemporary international law, specifically the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR, 1948) in particular, has focused on equality and non-discrimination, even the Islamic law (Shariah) has had some deep principles that uphold the dignity and rights of all human beings, irrespective of their religion or ethnicity (An-Na'im, 2010).

In the course of Islamic civilization, other people in the world, such as Christians, Jews, Zoroastrians, and others, were under the rule of the Muslim rulers. The Quran sets forth the code that every human being was created from one soul (Qur'an 4:1) and was provided with inherent dignity: We have certainly respected the offspring of Adam (Qur'an 17:70). These verses constitute the moral and theological basis of equality in Islam. These principles were further institutionalized when the Prophet Muhammad (peace be upon him) established the Constitution of Medina (Sahifat al-Madinah) in 622 CE, which acknowledged Jews and other non-Muslim tribes as part of a unified political entity (Donner, 2010). Therefore, since ancient times, Islamic law has evolved the system of coexistence and legal pluralism.

The Islamic legal tradition included the non-Muslim citizens in the category Ahl al-Dhimmah (protected communities). It guaranteed them a secure their lives, property, and religious freedom in exchange for a nominal tax rate (Jizyah). This framework was developed in a different historical situation from the current constitutional

systems, but it was also one of the oldest legal solutions to the protection of minorities (Lewis, 1984). Most jurists, such as al-Shafi, Abu Hanifah, and Ibn Qayyim al-Jawziyyah, affirmed the inviolability of the rights of non-Muslims to Shari'ah and saw the violation of these rights as a serious sin (Khadduri, 1982).

Nevertheless, the recent debates on minority rights in Muslim-majority societies tend to cast doubt on the sufficiency and flexibility of the classical Islamic law. Critics say that the Dhimmah system legalized inequality, whereas others highlight that its spirit, which was justice, mercy, and protection, was in line with the greater goals of Shari'ah, which is the protection of religion, life, intellect, lineage, and property (Auda, 2008). Therefore, the modern Islamic thought is moving towards contextual reinterpretation (ijtihad) so that the original aims of Shari'ah can be achieved in the context of the contemporary notions of citizenship and human rights.

The present paper will address the question of the safeguarding of the rights of minorities in Islamic law through the lens of classical jurisprudence, historical views, and modern interpretations. It attempts to discuss the question of whether Islamic law offers a consistent legal and ethical foundation for protecting the rights of minorities in the modern world and how those values can be reconciled with international human rights standards. The methodology used in the study is qualitative as it will utilize textual analysis of primary sources of Islamic tradition, which are the Quran, Sunnah, and early legal sources, and secondary academic literature. Finally, this study contends that a true interpretation of Shari'ah guided by the ultimate goals and situational wisdom upholds the complete safety and honor of minority groups in Muslim states.

**2. Conceptual Framework**

The minority rights in Islamic legal discussion need a clear explanation of what exactly a minority means and how Islamic law historically perceived the notion of difference

and peace. In contemporary international law, minorities are commonly characterized by particular ethnic, lingual, or religious attributes that are unlike the prevailing majority, and whose individuals demand the protection of their group and individual rights. The United Nations, in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that the equality and a right to maintain culture, language, and religion should be seen by the state. This international system of laws establishes a modern standard of minority protection.

On the contrary, the Islamic law came up in the seventh century Arabia as a complete moral system and law that covers the whole human life, such as spiritual, social, economic, and political. The Islamic legal thought rests upon the Quran and the Sunnah of the Prophet Muhammad (peace be upon him), and is supplemented by principles of ijma (consensus) and qiyas (analogical reasoning). In the same system, human beings are majorly considered as being part of the moral community of human beings (Ummah al-Insaniyyah) even before the differentiation of religion or ethnicity (Qur'an 49:13). Equality and justice are many times repeated in the Quran: O mankind! We made you out of one pair of male and female, and divided you into nations and tribes, to know each other. Indeed, the dearest of you in the eyes of God is the most upright one" (Qur'an 49:13)

## 2.1. The Meaning of Minority in Islamic Jurisprudence

The contemporary term of law in English is minority (Aqalliyyah), which is the term used in classical Islamic jurisprudence, but only later, through the effect of international law, was incorporated in Arabic legal thought. Rather, the early Muslim jurists divided communities into those who had a connection with the Muslim polity. The true Muslims were called Muslim ummah; the people who lived under Islamic protection and never converted were called Ahl al-Dhimmah (protected people); and the enemy of Muslims

were Ahl al-Harb (people of war). Therefore, it was not numbers or ethnicity, but covenantal and political relations within the Islamic state that decided which protection and rights an individual would receive.

The essential element of the original Arabic understanding of pluralism was the Dhimmah status, based on the Arabic root dh-m-m, meaning protection or covenant. The Quran asks Muslims to do justice even to non-Muslims: do not permit hatred of anyone to cause you to be swerved. Be righteous, that is closer to righteousness" (Qur'an 5:8). Classical jurists such as al-Mawardi (d.1058) and Ibn al-Qayyim (d.1350) developed in-depth legal stipulations that safeguarded the rights of dhimmis, including their rights to safety, freedom, and to property. These rights were not seen as temporal advantages and benefits, but rather as a duty on the ruler of the Muslims via the divine commandments and the example of the Prophet.

## 2.2. Equality, Citizenship, and Legal Pluralism

One of the most basic differences between the Islamic and Western paradigms of law is the concept of equality. Whereas the modern international law considers that all citizens should be treated equally before the state, the traditional Islamic jurisprudence focuses on functional justice so that all groups are treated in a fair manner concerning their beliefs and social positions. With Dhimmah, the non-Muslims were given freedom in their personal affairs, i.e., marriage, divorce, inheritance, and religion, but were put under their own laws and rulers. The reason why this legal pluralism should be regarded as a predecessor to modern ideas of cultural autonomy and minority rights is that it took place during such an early time.

A major example of this model of coexistence is seen in the Constitution of Medina of the Prophet (622 CE). The document formed a single community (Ummah Wahidah) that consisted of Muslims, Jews, and other tribes, all of whom were assured of security, religion,

and the defense of each other. Significantly, the constitution said: The Jews their religion, The Muslims theirs. Such a provision signifies a constitutional recognition of religious diversity and protection (Donner, 2010). Hence, the minority protection is implanted, not in an idea of numerical inferiority, but in an ethical and legal pledge of justice and reciprocal respect.

### 2.3. Evolution of the Concept in Modern Islamic Thought

As the caliphate waned and the modern nation-states emerged, Muslim jurists and reformers started relying on classical categories with reference to international standards of human rights. Al-Aqalliyyat al-Diniyyah (religious minorities) is a particularly popular term in the twentieth century, notably in discussions about the Cairo Declaration on Human Rights in Islam (1990) and the Universal Islamic Declaration of Human Rights (1981). Modern theorists, including Yusuf al-Qaradawi, Rashid al-Ghannushi, and Abdullahi An-Na'im, believe that citizenship (Muwatanah) in the modern Muslim world should be given in lieu of the already practiced Dhimmah model and this treats all citizens with equal citizenship and responsibilities irrespective of religious beliefs.

The Maqasid al-Shari'ah (purposes of Islamic law) are also helpful in this reinterpretation and aim to preserve life, intellect, religion, lineage, and property. According to modern jurists, the protection of minority rights is a part of them because it safeguards human dignity (Karamah Insaniyyah) and social justice (Adl Ijtimai'). By such reasons, the approaches toward justice and compassion and human dignity as per the Islamic law offer a moral basis that is aligned with the contemporary human rights tools, despite the fact that the law tools may vary.

To summarize, the theoretical framework of the protection of minorities within Islam cannot be narrowed down to the history of the Dhimmah system. Instead, it constitutes a

dynamic philosophy of law which developed in terms of scriptural principles, historical practice, and modern reinterpretation. The following part is going to look at the main minority protection sources in Islam the Quran, the Sunnah, and early Islamic political texts to show how these initial texts legalized justice and coexistence.

### 3. Sources of Minority Protection in Islam

The minority rights protection in Islamic law is not an accidental and secondary characteristic of Shari'ah, it is deeply anchored in the Quran, Sunnah, and the first constitutional and the legal traditions of the Muslim community. These early sources are the universal values of justice (Adl), mercy (Rahmah) and equality (Musawah), all of which, together, constitute the moral framework of upholding the rights and dignity of all humans, even non-Muslims.

#### 3.1. The Qur'anic Foundations

The Quran reiterates repeatedly the sanctity of human life and the equality of all humans before God. Surah al-Isra (17:70) seems to be one of the clearest statements of human dignity: We have surely honored the offspring of Adam and have taken them upon the land and upon the sea and have given them of the best things and have preferred them over most of what we have created. According to the understanding used by the classical exegetes like al-Tabari and al-Qurtubi this verse means the inherent glory given to every human being, regardless of religion or nationality.

The freedom of religion is another moral value promoted in the Quran: No compulsion in religion. The good and the bad are distinctly different before the truth is error" (Quran 2:256). Jurists and contemporary scholars have a common understanding of this verse that was revealed in Medina to forbid force in faith (Esposito, 2002). The same spirit is confirmed in Surah al-Kafirun (109:6): To thee belong thy religion, And to me mine. These verses form theological pluralism and support the rights of all communities to

practice and have their own faith without persecution.

Moreover, Quran instructs Muslims to treat other religious groups fairly and justly: God does not forbid you other people who do not fight you because of religion and expel you of our houses- to be righteous to them and to act justly to them. God indeed is the one who adores just persons (Qur'an 60:8). justice as the moral imperative is, therefore, not only pertinent to Muslims but also to the entire humanity.

### 3.2. Sunnah of the Prophet Muhammad (Peace Be Upon Him).

The life of Prophet Muhammad offers a practical lesson on how to coexist with other religions. His treaties and covenants with the Jews, Christians, and pagan tribes serve as an illustration of the evidence of inclusion and contractuality of the minority protection in Islamic rule. The first written constitution in human history is commonly considered to be the Covenant of Medina (Sahifat al-Madinah), signed soon after the Prophet had migrated to Medina in 622 CE. It acknowledged Muslims and Jews as people of one political community (Ummah Wahidah) and equal rights holders and equally responsible in the defense, justice, and social solidarity.

Article 25 of the Constitution of the Medina clearly states: "The Jews of Banu Awf are a single community with the believers; the Jews have their own religion and the Muslims theirs. This reflects a legal celebration of religious freedom in the same state (Hamidullah, 1975). Furthermore, the Prophet signed a number of bilateral treaties with Christian and Jewish communities, including the Charter of Najran Christians that assured the safety of their lives, property, and churches in case of peaceful coexistence and unanimity with the state.

Even the last sermon of the Prophet (Khutbat al-Wada') includes the message of equality, which is universal: O people! Your father is One, and your Lord is One. It does not matter whether the Arab is superior to the non-Arab,

or the non-Arab to the Arab; the whites to the blacks; the blacks to the whites--unless righteousness is the issue. It is an ethic of justice alluded to in the Quran, and a moral charter against discrimination and social hierarchy.

### 3.3. The Medina Constitution as a prototype of Pluralism.

The Constitution of Medina was grounded on a revolutionary creation of a multi-religious political community with equal legal order. This was a contrast to later empires, which tend to promote uniformity as the model of Medina did. The rule of the Prophet in Medina gave the Jews and pagans the opportunity to keep their own institutions of law and religion, and they still enjoyed the benefits of collective security and dispute settlement.

According to modern researchers, including Muhammad Hamidullah and F. M. Donner, the Constitution of Medina was used as the social contract and as the constitutional design that guaranteed the rights of minorities. It established pluralism by mutual duty and citizenship as opposed to inferiority. As such, it may be regarded as a predecessor of the contemporary concepts of inclusive governance and religious freedom (Donner, 2010).

### 3.4. Historical Practice under the Caliphates

The early caliphs continued with the policies of justice and protection of the non-Muslims according to the Prophet after his death. Caliph Abu Bakr (r. 632-634 CE) advised his armies to avoid attacking priests, monks, or the civil population and to avoid attacking religious sanctuaries. Caliph Umar ibn al-Khattab (r. 634-644 CE) signed several peace treaties, such as the Covenant of Jerusalem (637 CE), that ensured the Christian people that their lives, property, and churches were safe. History showed that Umar showed personal tolerance to non-Muslims. According to the historical records, he did not wish to worship in the church of the holy Sepulcher because he did not want Muslims

to take it over later on as a mosque (Lewis, 1984).

Likewise, during the Umayyad and Abbasid Caliphates, non-Muslim scholars, physicians, and translators were the most important figures in intellectual life. The Baghdad translation activity in Baghdad Bayt al-Hikmah (House of Wisdom) was successful because Christian and Jewish scholars were also involved, proving the idea that non-Muslims were not simply tolerated but appreciated contributors to the Islamic civilization (Hodgson, 1974).

Overall, the scriptural roots as well as the historical experiences of Muslims define a logical and ethically sound system of minority protection. The Quran and Sunnah present general principles of justice and equality, whereas the Constitution of Medina and early Islamic government present examples of their implementation in multiethnic societies.

The second part will discuss the legal position of non-Muslims (Ahl al-Dhimmah) in the classical Islamic jurisprudence- their rights, responsibilities, and legal agreements that defined the relationships between Muslims and non-Muslims over the centuries.

#### **4. Legal Status of Non-Muslims (Ahl al-Dhimmah)**

One of the oldest systematic approaches to the protection of religious minorities is the legal position of non-Muslims in the classical Islamic jurisprudence. These groups were called Ahl al-Dhimmah (the People of the Covenant), which means that they received insurance on their security, the liberty of worship, and the protection of their property under Islamic rule. The system was developed based on the Quranic and Prophet teachings of justice and compassion in the spirit that the Islamic message is not merely spiritual, but civilizational- bringing peace and coexistence among different people (Esposito, 2009).

##### **4.1. The Concept of Dhimmah**

The word Dhimmah is based on the Arabic word dh-m-m, which translates to covenant,

responsibility, or protection. In the law, it is a binding contract referred to as Aqd between the Islamic state and non-Muslim residents who accept its authority and protection. According to the classical jurists, the Dhimmah contract was the one that offered safety (Aman), rights, and the freedom of religion with the condition of political loyalty and payment of a small tax (Jizyah) as the sign of participation in the collective defense of the state (Khadduri, 1982).

The dhimmah system was not founded on conversion or subjugation, but on mutual commitment and co-existence. According to the ruler (imam), as Imam al-Mawardi (d. 1058) wrote in al-Ahkam al-Sultaniyyah, the ruler must safeguard the lives, property, and honor of all dhimmis in the same manner as that of Muslims. Their rights had been violated, and this was against the Shari'ah, which was seen as a sin. On the same note, Ibn Qayyim al-Jawziyyah (d. 1350) wrote that any violence against a dhimmi was a great injustice and a betrayal of the covenant of the Prophet.

##### **4.2. The Guarantees of Rights to Dhimmis.**

Classical Islamic law acknowledged a wide scope of civil, religious, and economic rights to dhimmis that were codified by the juristic consensus (Ijma').

###### **a) Right to Life and Security**

Dhimmis were also assured of complete protection of life and property within the Islamic rule. Prophet Muhammad said: Whoever slays someone under covenant (Dhimmi), will not smell the scent of Heaven (Sahih al-Bukhari, 3166). This hadith emphasizes the holiness of their life and how the violation of such protection is grave.

This principle was strengthened by the early Caliphs. Caliph Umar ibn al-Khattab is quoted as saying: I will be the enemy of whoever oppresses a dhimmi, or deprives him of more than he is entitled to receive (Ibn Sa'd, Tabaqat). This declaration not only acknowledged equality before justice, but it

also imposed a moral responsibility on those in power to be custodians of minority rights.

**b) Liberty of Cult and Worship.**

Religious freedom was theological in the Quran principle of no compulsion in religion, 2: 256. Dhimmis were also free to practice their rituals and uphold their religious laws in their own houses of worship. In most of the Muslim territories, churches, synagogues, and temples were active around the clock throughout centuries.

History teaches that the Christian heads of patriarchy and Jewish heads of rabbinical schools had retained religious jurisdiction under the Muslims, and that such disagreements as arose between them, or between a man and his family, had been tried in their respective religious tribunals. Dhimmis were even free to make their own taxation and community decisions under the Abbasid (Coulson, 1964).

**c) Property and Economic Rights protection.**

The Islamic law was categorical against taking non-Muslim property illegally. Dhimmis could own land, trade, and get wealth. They acted as financiers, doctors, and administrators in the Muslim governments in some areas. The Jizyah tax, which had been so misconstrued, was not a punishment, but a present of money instead of military service, to which they were not subjected. Muslims, on the other hand, gave the Zakah, which was a social welfare alms-tax.

**d) Access to Justice**

Dhimmis were allowed to turn to the Islamic courts to redress grievances against the Muslims or the state. They also had an option of settling disputes in their religious jurisdictions. Quran ( 4: 42) states that Jews were free to submit their disputes to the prophet or to their own law: The Jews might come to thee, and judge thee, or disown thee; and woe to thee, shouldst thou disown the Jews. This verse shows the pluralistic elasticity of the early Islamic justice systems.

**4.3. Dhimmi's responsibilities.**

Dhimmis were expected to assume some of the responsibilities in return for state protection. The most prominent of it was the payment of Jizyah, a small poll tax that was meant to signify their involvement in the social contract. Quran (9:29) states that: Fight those who refuse the faith in God... until they pay the Jizyah with submission. Classical jurists stressed that Jizyah should not be gathered in an oppressive and unfair manner. Caliph Umar supposedly said to his officials: Do not weigh them more than they can bear, and an elderly man who is unable to pay must be exempted.

Dhimmis were also to avoid the hostility of the Muslim state and show respect to the order of the people. Such circumstances guaranteed political stability and maintained communal autonomy.

**4.4. Comparative Reflections**

Considered in historical context, the Dhimma system was progressive and humanistic in view of the standards of medieval Europe or Asia. In such times when intolerance towards religion was rampant in the West, Jews and Christians could find comparative security in the Muslim territories. As an example, in 1492, the Jews were expelled from Spain, and the Ottoman Empire accepted them and allowed them to prosper in Istanbul and Salonika.

However, according to modern critics, the Dhimma system legalized some form of legal inequality where the Muslims and the non-Muslims were differentiated in terms of taxation and eligibility to hold important government offices. Modern Muslim reformers answer this by pointing out that the Dhimma model was a model that captured the socio-political reality of the day. The distinction is no longer relevant in contemporary nation-states where there is equal citizenship (Muwatanah), but the ethical nature of protection, justice, and coexistence continues to form the basis (An-Na'im, 2010).

To state it briefly, the legal position of the non-Muslims in Islamic law is the result of

the balanced interaction between the divine and the practical. The system that was created under the Dhimmah was a revolutionary creation in the contemporary world-it ensured protection and justice and religious freedom centuries before the enactment of the modern human rights legislation.

Sub-modern interpretations and reforms of Islamic scholarship and political systems will be discussed in the next section, and how the classical principles are re-interpreted by the Muslim-majority societies in order to comply with the modern understanding of citizenship and human rights.

## 5. Modern Interpretations and Reforms

The topic of minority rights in Islam has also been greatly changed in the modern times. The breakdown of empires, the formation of nation-states, and the development of international human rights documents, such as the Universal Declaration of Human Rights (UDHR, 1948), prompted Islamic scholars and jurists to redefine traditional Islamic legal categories in the new context of equality and citizenship. The main issue was how the spirit of Shari injustice, mercy, and human dignity, could be followed in an age of pluralism and democracy?

### 5.1. Dhimmah to Citizenship (Muwatanah).

The last and most significant intellectual development in Islamic thought today was the replacement of the historic model of Dhimmah with the idea of Muwatanah (equal citizenship). Although the Dhimmah system operated in a religiously defined state, Muwatanah presupposes a political system where all the citizens, both Muslims and non-Muslims, have equal rights and responsibilities under a shared constitution.

According to the leading scholars like Yusuf al-Qaradawi, the Dhimmah framework served a pre-modern role, but the objectives (Maqasid) of Shari'ah, which are the protection of life, religion, intellect, lineage, and property, require a new interpretation that is in line with modern realities. Qaradawi

stresses that Islamic polity citizenship is not rooted in faith but in the commitment to the country and respect for its laws. On the same note, Rashid al-Ghannushi (one of the Tunisian intellectuals) claims that the Constitution of Medina, created by the Prophet, is the historical model of a civic state, where different communities were equalized in political and social life (al-Ghannushi, 2013).

Abdullahi Ahmed An-Na'im, among the most prominent Muslim legal reformists, goes a step further to say that the higher ethical principles of the Shari law should not serve as the basis but guide the law in the state. In his opinion, the way to realize the Shari'ah values in contemporary societies is in the freedom of belief and equality before the law, which will be possible to attain not by coercive imposition (An-Na'im, 2010). Therefore, reconsideration of Shari'ah as a moralism and not a strictly judicial system enables protecting the rights of minorities as a universal human dignity.

### 5.2. The Cairo Declaration and the Islamic Human Rights Initiatives.

Citing as a reaction to the international discussion of the incompatibility of Islam and human rights, the Organization of Islamic Cooperation (OIC) came up with the Cairo Declaration on Human Rights in Islam (CDHRI) in 1990. The declaration also acknowledges the nature of the human dignity of every human being, and it states that all men are equal in matters of the basic human dignity and obligation and responsibility without any discrimination based on race, color, language, sex, religious belief, political affiliation, or social status (Art. 1, CDHRI, 1990).

Although the declaration bases its rights in the context of Shari'ah, it marks a big move in the context of applying Islamic laws to the modern human rights discussions. Similarly, the rights of non-Muslims to freedom of religion, the right to property, and fair treatment are recognized in the Universal

Islamic Declaration of Human Rights (UIDHR, 1981), which was published earlier in the Islamic Council of Europe.

Although these charters are observed to curb some of the freedoms (e.g., conversion and freedom of expression) under Shari'ah parameters, they nonetheless represent a decisive shift- the classical Dhimmah paradigm to rights-based citizenship.

### 5.3. Reforms in Muslim-Majority Countries Law National Law.

A number of Muslim majority states have introduced the minority protection principles into their constitutions.

In the case of Malaysia, although Islam is the religion of the Federation, the non-Muslims are guaranteed the freedom of religion in Article 11 of the Constitution of the Federation. The official policy of the government accepts different religious and ethnic groups, which is a hybrid form of the Islamic identity and pluralistic governance (Shad Saleem Faruqi, 2019).

Pakistan is an Islamic republic, which safeguards the rights of religious minorities by the constitution through Articles 20-22, which play the role of ensuring freedom of religion and the right to run their own institutions.

In Egypt, the Constitution of 2014 establishes the equality of rights of citizens without any form of discrimination based on religion or belief, whereas Article 235 provides its legal protection to Christian churches and communities.

The 2011 Constitution of Morocco lists the Jewish heritage among the identities of the country, which represents a wider culture of inclusiveness within an Islamic system.

These instances represent a slow shift in the collective security (Dhimmah) to the constitutional citizenship when the state law, not religious identification, forms the extent of individual and communal rights.

### 5.4. Hammasid al-Shari and the Contemporary Human Rights Theory.

According to modern reformists, the Maqasid al-Shari'ah (purposes of the Islamic law) provide a moral and intellectual point of contact between the Islamic jurisprudence and non-religious human rights. Jasser Auda (2008) states that the Maqasid approach is interested in human welfare (Maslahah) and thus a jurist can modify a legal decision to suit altered societal realities. The guarding of the rights of minorities, thus, becomes not only a political mandate but also a religious duty to guard human dignity (Karamah).

Within this interpretative approach, the freedom of religion, expression, and equal participation in the political life is all understood as a manifestation of the overall end of Shari'ah: justice (Adl) and compassion (Rahmah). By not focusing on hard textuality but making the shift towards holistic ways of ethical reasoning, Islamic legal theory today states that the protection of minorities complies with the divine goals of law as such.

### 5.5. Difficulties and Perspectives of Reform.

Although there are progressive interpretations, there are still challenges. Constitutional ambiguities in certain countries with a Muslim majority, even in blasphemy, conversion, and family law, some discriminatory laws continue to weaken the rights of minorities. Religion is generally politicized such that faith-based ethics and enforcement by the state become indistinct.

According to reform-minded thinkers, the sustainability of the Islamic vision of human rights should be based on three pillars:

Ijtihad (independent reasoning) to reinterpret old rulings in response to new realities;

Laws pluralism to suit various interpretations and religious lifestyles; and

Accountability in the institutions in which the state power is taken under the limits of justice and equality.

In this way, the current trend in the reconciliation of Islamic law and human rights is not a rejection of tradition but a restoration of the Maqasid- the moral reality of Shari'ah. Safeguarding minorities in this perception is not a Western import rather an original Quranic directive that is deeply ingrained in the Islamic world and the view.

**Islamic Law in Comparative Perspective: Islamic jurisprudence and International human rights.**

Defense of the rights of minorities has been a major concern regarding the Islamic jurisprudence (Fiqh) as well as contemporary international law. Although both systems are expected to encourage justice, equality, and human dignity, they tend to vary in their foundations, approaches, and terms. This section has drawn a comparative analysis of the Islamic legal frameworks with the international human rights law--especially in the areas of convergence, divergence, and possible reconciliation.

### **6.1. Philosophical Principles of Rights**

The Islamic law is based on the authority of divine revelation- the Quran and Sunnah, which is considered to be the will of God. Contrary to this, the concept of modern human rights is based on secular philosophy, which focuses on reason, the social contract, and human autonomy.

According to Islam, the origin of the rights is Allah, who is the supreme lawgiver (al-hakim). A human being has the right (Huquq al-Insan) not due to his or her autonomy, but due to their innate dignity (Karamah) being a creation of God. The Qur'an declares:

And we have certainly graced the children of Adam... (Qur'an 17:70).

Therefore, dignity and equality are divinely given, not socially constructed (Kamali, 2002).

In comparison, the Universal Declaration of Human Rights (UDHR, 1948) gives more emphasis on universality by human reason and conscience:

Art. 1 states that all human beings were born free and equal in dignity and rights.

The two structures share a common view on the concept of human dignity and equality, albeit metaphysically justified through the Islamic law based on divine creation, and the UDHR based on the rationality of humankind.

#### **6.2. Concept Equality and Non-Discrimination.**

According to Islamic jurisprudence, human beings are equal before God. Said the Prophet Muhammad (peace be upon him):

No Arab is better than a non-Arab, nor is a non-Arab better than an Arab; no white is better than a black, nor blacks better than whites, except in righteousness (Musnad, Ahmad).

The Quran also makes it a point to:

"O mankind! We made you out of a man and a woman, and we formed you into nations and tribes that you might know each other.... (Qur'an 49:13).

This is a universal equality principle that rings well with Article 2 of the UDHR that forbids any form of discrimination relating to race, color, sex, language, religion, political or other opinion.

Nonetheless, the difference is manifested in practice. The classical Islamic law drew the line between Muslims and non-Muslims in some legal issues like paying taxes (Jizyah), being elected into political leadership, and giving witness in court. Although these differences belonged to historical aspects of the past interconnected with the political and social systems of that period, they are the category that is misconstrued as the enduring inequalities.

According to contemporary Islamic theorists, like Tariq Ramadan (2009) and Abdullahi An-Na'im (2010), these rules were not fundamental, but situational, and that today equality has to be understood in terms of Maqasid al-Shari'ah, the higher goals of justice, well-being, and human dignity.

### 6.3. Freedom of Religion

The issue of freedom of religion is one of the most controversial ones in the comparative discourse.

**In Islamic Law:** The Quran expressly tells us that there is no force in religion (Qur'an 2:256). Muslim societies in their early days provided the freedom of practice of other religions, such as Jews, Christians, and even the Zoroastrians, under the system of Dhimmah, which did not interfere with their worship, traditions, and even their own laws.

**In International Law:** Article 18 of the UDHR entitles freedom of thought and conscience as well as religion- the right to alter religion. This is the element of conversion that is still disputable in Islamic law. Although penalties were commonly prescribed in the classical jurist writings in case of apostasy (Riddah), contemporary scholars read such decisions as a political, not necessarily religious decision.

Mohammad Hashim Kamali (2014) argues that the laws of apostasy were to deal with treason, or sedition, in times of political strife, and not with personal conviction. Thus, in modern societies, the forceful imposition of faith is against the Shariah and human rights standards.

### 6.4. Minority Participation in Governance

International human rights mechanisms, e.g., Article 27 of the International Covenant on Civil and Political Rights (ICCPR), have been found to focus on the right of minorities to enjoy cultural, religious, and public life without discrimination.

Likewise, early Islamic rule by the Constitution of Medina (622 CE) formed a political community (ummah wahidah) of Muslims, Jews, and other tribes. The document acknowledged the autonomy of each community whilst guaranteeing the security and justice on a collective basis.

Contemporary Muslim-majority countries such as Tunisia, Indonesia, and Malaysia have adopted this inclusive paradigm by securing minority representation in parliament, cultural

rights and legal safeguards in the law (Esposito and Voll, 2018).

Therefore, as much as both systems appreciate the presence of participation and protection, the Islamic system used to be based on communal autonomy, and the modern system focuses on the equality of individuals within one legal framework.

**6.5. Cultural and Religious Identity Protection.** The Islamic law safeguards the religious symbols, worship locations and religious books of the non-Muslims. Even the covenants of the Prophet like, the Charter of Najran and the Covenant with the Christians of Sinai, specifically prohibit the destruction of churches or of clergy (Lecker, 2004). This is in line with Article 27 of the ICCPR that stipulates that minorities should not be denied the right, in association with the other members of their group, to experience their own culture, to express and exercise their own religion. In this way, Islamic law and contemporary human rights are both concerned with minority identity, but the process is different in Islamic law (where it has been historically provided by uniting the individuals into a community), and in international law (where it is offered by the right of an individual).

**6.6. Sex and Intersectional Minorities.** There is also a comparative aspect of gender based minorities in subcultures as exhibited by Muslim societies. Although Islamic law believes in the dignity of women, the use of history was restrictive in terms of participation by people and the law. UDHR, on the other hand, is very clear in granting equality in marriage, work, and political representation. According to modern Islamic feminist thinkers, including Amina Wadud (2006) and Asma Barlas (2002), the main message of the Quran is egalitarian in nature, which was held by patriarchal interpretations that distorted its original message of ethicality. Hence, re-interpreting Shari'ah using a justice-based hermeneutic can ensure that the Islamic law is made in line with international standards of gender equality and inclusion of minorities.

6.6. Common Ethical Objectives The differences in methodology notwithstanding, the Islamic law and international human rights have some common essential ethical purposes: Defense of human dignity (Karamah), Justice ('Adl), Freedom of conscience, Social welfare (Maslahah), and Peaceful coexistence. According to Jasser Auda (2008), when interpreted dynamically, Maqasid al-Shari'ah overlap with universal moral values on which modern human rights law is based. Incompatibility is therefore not the problem, but translation, changing the Divine ethics to thrive in a pluralistic world.

## 7. Problems and Future Research

Although Islamic law has a strong moral basis to defend the rights of minorities, and the modern reform movements that aim at bringing closer the Islamic and international legal systems have a serious challenge, both in theory and practice. These are not only legal and political issues but have very deep roots in historical interpolations, institutional inertia, and socio-political factualities of the contemporary Muslim world. This section discusses these obstacles and provides potential paths of reform in the future.

7.1. Interpretive Inertia and Historical Legacies. Among the most important hurdles, the presence of pre-modern interpretations of Shari'ah that are out of context but still succeed in society is to be mentioned. The Dhimmah system was created by classical jurists in much different conditions than compared to present-day nation states. In a world where the Islamic religion was arranged into a political society by the imperial authority, legal distinctions between Muslims and non-Muslims were based on the political aspects, but not on the moral hierarchy. Nevertheless, as we will see, most of the modern institutions are still using these medieval models without paying attention to their historical contingencies. This leads to confusion of contextual judgment (Ahkam) and general rules (Maqasid) of justice and equality. The textual literalism that still prevails today must be replaced by a

paradigm shift to moral contextualism when the spirit of Shari'ah and not its pre-modern counterpart is used to protect minorities and maintain the pluralistic society (Mohammad Hashim Kamali, 2014 and Khaled Abou El Fadl, 2002).

7.2. Religion Instrumentalization of Politics. Politicization of Islam is also another major challenge. The political players of most Muslim majorities tend to use religion as a weapon to build power or contain opposition, or tap into majority feelings. The result of this instrumentalization is the exclusionary policies, which are not only anti-Islamic but also anti-human rights. As an example, blasphemy laws in other countries, such as Pakistan, or laws related to do with apostasy in some of the Middle Eastern countries, are often used not to enforce faith, but to prohibit minorities or political dissent (An-Na'im, 2010). The result has been the increased distance between Islam as a moral vision and Islam as a political instrument. Therefore, the reform needs to separate the moral teachings of the Islamic religion and how they are misused by political leaders.

7.3. Legal and Institutional Problems. Legal pluralism is common in most Muslim majority countries- that is, the existence of Islamic law, civil, and customary law. Nevertheless, such complexity usually results in inconsistency, contradictions, and selective application of rights. Minorities are at times pushed aside by the laws that favor the majority religion on issues relating to marriage, inheritance, and conversion. In the case of constitutions that promise equality, there are still gaps in their implementation that are caused by weak institutions, the absence of judicial independence, and social prejudice. Reform must not just be reinterpretation (Ijtihad) of Islamic legal dogmas, but institutional reform should be in place to make sure that equality and justice are applied uniformly in all societies.

7.4. Barriers in Education and Society. Learning is at the center of the influence on forming the attitude of people towards

minorities. Most of the old religious curricula (Madaris) put much emphasis on jurisprudence but fail to contextualize it in relation to its ethical aspect. This leads to stereotypes about non-Muslims, which are usually supported by political discourse and social media. To solve this, the Muslim cultures must transform the education systems to focus on: The Quranic justice and pluralism rules (e.g., 49:13, 5:8), Examples As exemplified by the Prophet the examples of coexistence (e.g., Constitution of Medina, Covenants with Christians), The classical Islamic civilization's intellectual tradition of tolerance (e.g., Andalusia, Abbasid Baghdad). Restoration of this ethical-humanistic vision will create social empathy, less prejudice, and more mutual respect.

**7.5. The International Race of Human Rights.** There is also a lingering conflict between the universalist and cultural-religious perception of human rights. Other Muslim intellectuals view the international human rights tools as a result of Western secularism that is not necessarily respectful of the Islamic moral principles. Nonetheless, the reformist scholars have advocated a value convergence approach- they believe that human rights and Shari'ah have overlapping goals on ethical aspects, though they may differ in terms of language and methodology. Abdullahi An-Na'im (2010) and Jasser Auda (2008) support an internal Islamic reform based on the derivation of universal rights principles within Shari'ah itself, and thereby the preservation of authenticity and the adoption of universality. According to this perception, defending minorities is not yielding to foreign pressure but a reassurance of the position of Islam itself.

**7.6. International and Regional Institutions' Role.** Organizations such as the Organization of Islamic Cooperation (OIC), the Islamic Fiqh Academy, and Al-Azhar University are influential in ensuring the formation of the modern thinking of Islam. This notwithstanding the fact that their proclamations, like the Cairo Declaration on

Human Rights in Islam (1990), tend to be more a declaration than an operation. These institutions have to go beyond lip service by taking a normative step towards standard-setting: Formulating commonality principles on minority protection in line with Maqasid al-sharia as well as the international standards; Proposing to the Muslim majority states to ratify and implement the major human rights treaties; Encouraging intra-faith dialogue among Sunni, Shiite, and other sects to avoid intra-Muslim discrimination. This institutional synergy can make the Islamic ethics enforceable rights.

**7.7. The Future of Minority Protection in the Islamic World.** The future of minority rights within an Islamic context is in the effectiveness with which Muslim societies could absorb three connected dimensions: Theological Renewal: Restructuring classical jurisprudence with Maqasid and contextual ijtihad, to make sure that the eternal foundations of Shari'ah, namely, justice, compassion, and dignity, are implemented in contemporary circumstances. The Constitution and the Law of Reform: Incorporating minority protection in the constitution and making sure that equality is not only written in the constitution but also in practice in terms of judicial independence and inclusive government. Cultural Transformation: Development of a civic culture that recognizes pluralism as a Godly challenge and not a social menace. The Qur'an declares: It is written in the Quran, 11:118: Had your Lord willed, He would have made mankind one community. According to this verse, diversity is not something that should be fixed, but it is a manifestation of Godly wisdom. Therefore, the final aim is to shift the culture towards tolerance to integration, legal concession to moral acknowledgment - a shift that will not make the guarantee of minorities an extraneous practice but rather intrinsic to the Islamic practice.

**7.8. Synthesis Securing the rights of the minority under the Islamic legal systems is**

not a concession to modernism or a contravention of tradition, but a further development of the Islamic ethical tradition. The Muslim societies can develop models of governance that are faithful to revelation, but responsive to human diversity by restoring the universal principles inherent in the Quran, Sunnah, and the Maqasid al-Shari'ah. Quran dreams of a moral society in which the identity of justice will overcome identity: "O you who believe! Be just, bear witness to God, even against your own selves or your kinsfolk (Qur'an 4:135). This divine mandate is the future of minority protection in Islam, the vision of the day when equality, justice, and mercy will be the principal features of an actually Islamic and humane civilization.

## 8. Conclusion

The issue of the rights of the minority in the Islamic legal tradition is not only ancient but also high-speed contemporary. Since the initial days of Islam, the Quran and the Prophet Muhammad (peace be upon him) introduced the principles of justice, compassion, and coexistence that had no tribal, ethnic, or religious boundaries. Islam had accepted pluralism as a vital part of social order, as evidenced in the Constitution of Medina (622 CE). Non-Muslims were not just tolerated, but they were now considered as being part of the political community (Ummah Wahidah), and they were also given the same covenant of justice as Muslims.

The Dhimma system, or a legal system providing non-Muslims with protection, autonomy, and freedom of religion in exchange of a nominal tax (Jizyah), was created by the Islamic jurists over the centuries. Despite the fact that this framework was a phenomenal development of that era, the application of this framework was always contingent of the historical period. The problem of today is not to duplicate this system but to derive its moral content, i.e., justice (Adl), mercy (Rahmah), and defense of human dignity (karamah insaniyyah). The discussion of equality and citizenship has been redefined in the contemporary world in

the emergence of secular nation-states and international human rights law. Jasser Auda, Abdullahi An-Na'im, Yusuf al-Qaradawi, Rashid al-Ghannushi and other Muslim scholars and reformers have re-interpreted Shari'ah principles to reflect the universal goals of justice and human welfare (Maqasid al-shari'). Their concerted actions are a shift of religiously organized community protection (Dhimmah) to the broad concept of Muwatanah equal citizenship grounded on shared moral and civic accountability. The comparison and contrast analysis of Islamic law and the international human rights indicates that the areas of convergence are high. These two systems support the sanctity of human life, human dignity and the need to have justice. The Qur'anic command-- Yes, God dictates justice, good, and giving to kinsmen.... (Qur'an 16:90) is reminiscent of the moral basis of the Universal Declaration of Human Rights (1948). Nevertheless, differences still exist. The conflict of divine sovereignty (Hakimiyyah) and popular sovereignty, of religious freedom and apostasy statutes, between community autonomy and individual rights is a conflict that is still unresolved in most settings. These contradictions are not inherent but interpretative dilemmas- new ijtihad, moral courage, and institutional change are necessary.

Legal is the least deep-seated problem, and an ethical problem is the most profound. It deals with the way that Muslim cultures imagine justice, power and human diversity. Until religious identity is politicized to benefit, or minority incorporation is seen as a compromise and not as a commandment of God, real reform will be an impossible goal. In order to proceed, the following strategic principles are needed: Reestablishing contact with Maqasid al-Shari'ah: The aims of Shari'ah, which are justice, mercy, welfare and equality, have to be given precedence over historical formalism in Islamic jurisprudence. Restructuring Constitutional Systems: States dominated by Muslims should also ensure non-discrimination, the

right to equal citizenship, and freedom of religion as the constitutional rights to be effectively implemented by the courts. Educational Reform: The reason why religious and legal education should focus on the pluralistic ethos of Islam, the treaties of interfaith between the Prophet, and the ethos of coexistence as a cohort in the Quran. Interreligious and Intra-religious Dialogue: The minority protection efforts need all the religious groups to unite in fighting the exclusionary ideologies, including the marginalized Muslim sects. Institutional Commitment: Islamic institutions like the Organization of Islamic Cooperation (OIC) and national religious councils should put declarations into legal policy formulations that protect the minorities not only in law but also in social life. The worldview of the Quran sees humanity as a single moral family, different but equal in dignity: "O mankind! It is true that We made you man and woman and divided you into nations and tribes that you may be familiar with each other" (Qur'an 49:13).

This God-given notion of diversity is the key to a really Islamic vision of human rights, the vision that glorifies diversity as a demonstration of the wisdom of God, not as a menace to the purity of their community. Finally, the safeguarding of the rights of the minority under the Islamic legal systems is not an issue of reconciling the Islam with modernity but rather the restoration of the moral universality of Islam. As the moral aims of Shari'ah are perfectly achieved, the lines between the "majority" and the "minority" disappear behind a greater unity of justice, equality, and compassion. This is a future, based on faith and humanism, which reinstates Islam as a mercy (Rahmah lil-'Alamin) a fount of moral direction not just to Muslims but to the entire humanity.

## 9. References

Ahmad, M. (n.d.). *Musnad Ahmad*. Dar al-Kutub al-'Ilmiyyah.

Al-Ghannushi, R. (2013). Democracy and Islam: A dialogue. Tunis: Dar al-Tahrir.

An-Na'im, A. A. (2010). *Islam and the secular state: Negotiating the future of Shari'ah*. Harvard University Press.

Auda, J. (2008). *Maqasid al-Shari'ah as philosophy of Islamic law: A systems approach*. International Institute of Islamic Thought.

Barlas, A. (2002). *Believing women in Islam: Unreading patriarchal interpretations of the Qur'an*. University of Texas Press.

Cairo Declaration on Human Rights in Islam. (1990). Organization of Islamic Cooperation.

Coulson, N. J. (1964). *A history of Islamic law*. Edinburgh University Press.

Donner, F. M. (2010). *Muhammad and the believers: At the origins of Islam*. Harvard University Press.

Esposito, J. L. (2002). *What everyone needs to know about Islam*. Oxford University Press.

Esposito, J. L., & Voll, J. O. (2018). *Islam and democracy after the Arab Spring*. Oxford University Press.

Faruqi, S. S. (2019). Constitutional protection of minority rights in Malaysia. *Journal of Southeast Asian Studies*, 50(2), 213–232.

Hamidullah, M. (1975). *Introduction to Islam*. Lahore: Institute of Islamic Culture.

Hodgson, M. G. S. (1974). *The venture of Islam: Conscience and history in a world civilization* (Vol. 2). University of Chicago Press.

Kamali, M. H. (2002). *Principles of Islamic jurisprudence* (3rd ed.). Islamic Texts Society.

Kamali, M. H. (2014). *Shari'ah law: An introduction*. Oneworld Publications.

Khadduri, M. (1982). *War and peace in the law of Islam*. Johns Hopkins University Press.

Lecker, M. (2004). The Constitution of Medina: Muhammad's first written constitution. *Jerusalem Studies in Arabic and Islam*, 30, 173–199.

Lewis, B. (1984). *The Jews of Islam*. Princeton University Press.

Ramadan, T. (2009). *Radical reform: Islamic ethics and liberation*. Oxford University Press.

Wadud, A. (2006). *Qur'an and woman: Rereading the sacred text from a feminist perspective*. Oxford University Press.