

'Abdur Raḥmān I. Doi

Non-Muslims

**Under
Shari'ah**

(Islamic Law)



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PREFACE

Islam, in the words of Muḥammad Qutb, is the most misunderstood religion¹ in the world and so is the Shariāh, the Islamic Legal System. The Shariāh literally means the path and stipulates the law of Allah and provides guidance for the regulation of life in the best interest of man. Its objective is to show the best way to man and to provide him with the ways and means to fulfil his needs in the most successful and the most beneficial way.² The Shariāh imposes four kinds of rights and obligations for all those who will be governed by it:

1. The Rights of Allah (**Ḥuqūq-Allāh**) which must be fulfilled by all and sundry in the way Allah has commanded in the Holy Qur'ān and explained by the Messenger of Allah in the Ḥadīth and the Sunnah.
2. The right of an individual towards himself (**Ḥuqūq-al-Nafs**). Neither should he take away his life nor torture it nor use it according to his own imagination.
3. The rights of all human beings over him (**Ḥuqūq-al-Ībād**).
4. The rights of putting to proper use all Allah's resources and bounties which Allah has placed in his service, and the powers and various faculties which Allah has given him to be used judiciously for his benefit and for the benefit of his position as **Khalifat Allah 'alal ard** (the Vicegerent of Allah on earth).

There is so much guidance in respect of each one of the above classifications in Islamic scriptures that they would form a subject of voluminous books. But for the purpose of this book, we shall dwell upon numbers three and four to discuss the rights of non-Muslims under the Shariāh, the subject which has generated so much doubts and misgivings in the minds of Muslims and non-Muslims alike.

As Muḥammad Qutb puts it, it has always been said that the attitude of non-Muslim communities towards Islamic rule is a critical and delicate question which many people hesitate to discuss for fear of causing dissension between Muslims and non-Muslims.¹ But one can be objective enough to examine the question thoroughly not in

order to create any dissension between Muslims and non-Muslims but to do away with the fear and hatred between these communities and restore sense of respect for each other by clarifying Islamic position on this issue and showing how Muslims and non-Muslims lived together in peace and harmony during various periods of Islamic history and how was justice meted out to them by punishing the wrong-doer even if he happened to belong to the ruling class.

The Qur'ān and the Sunnah, the holy texts of Islam, enjoin upon all Muslims to treat non-Muslims in a fair manner, with kindness and justice. Apart from the rights and obligations involving worship (*Ibadah*), they are equal to Muslims with respect to all other rights and obligations related to social life and the rights of citizens.

The quick means of communications and transport have brought the entire human world closer. Muslims travel to non-Muslim lands and the non-Muslims visit the Muslim countries and carry out their trade and business with one another. A large number of Muslim students travel to non-Muslim countries for higher education and many Muslims have even chosen some European countries as their permanent homes. The churches, temples and synagogues are being built in Muslim lands and ever increasing number of mosque buildings are being established in non-Muslim countries in recent time. There is a greater reason, therefore, for non-Muslims to know who these Muslims are, what do they believe and what rights the non-Muslims can enjoy in the Muslim lands under their sacred law, the Shariah.

Gone are the days of crusades which engendered a great deal of hatred in the hearts of crusaders against the religion of Islam. The European mothers no longer call out '*Mahomet*' in order to quieten their children. The celebration of the Festival of Islam in London, inaugurated by Her Majesty the Queen of England herself, Defender of the faith of Christianity, marks a new era of Muslim/non-Muslim relationship. I hope this book will serve to strengthen and cement such relationship in the entire world of ours.

I owe a deep debt of gratitude to my colleagues in the Centre for Islamic Legal Studies namely, A.M. Hag-Nour and Mal. Ibrahim Sulaiman with whom I had the opportunity to discuss various issues on which the *Aimmah* (recognized leaders of four schools of Islamic theology) have different views, and who gave me their valuable suggestions. My special thanks go to Mr. Ghulam Sarwar, Director, Muslim Education Trust, London, Dr. Sulaiman Kumo, Director, Institute of Administration, Ahmadu Bello University, Zaria and Mr. Arshad Masood, Reader, Aligarh Muslim University, India; for reading through the manuscript and making valuable suggestions. I

must not forget the members of the Muslim Students' Society of Nigeria who invited me sometime ago to deliver a public lecture on the same topic out of which this book has grown.

With utmost humility to Allah, the Creator of all, I place this work before the Muslims and non-Muslims with an ardent hope that it will help them to understand each other better.

Wa mā tawfiqī illā Billāh.

Ramadan, 1398
August, 1978

A. Rahman I. Doi
Centre for Islamic Legal Studies
Ahmadu Bello University,
Zaria, Nigeria

CHAPTER ONE

THE CHARACTERISTICS OF SHARĪĀH

ALLAH IS THE LAW GIVER

Sharī'ah is an Arabic word meaning the Path to be followed. Literally it means 'the way to a watering place'. It is the path not only leading to Allah, the Most High, but the path believed by all Muslims to be the path shown by Allah, the Creator Himself through His Messenger, Prophet Muḥammad. In Islam, Allah alone is the sovereign and it is He who has the right to ordain a path for the guidance of mankind.¹ Thus it is only Sharī'ah that liberates man from servitude to other than Allah. This is the reason why Muslims are obliged to strive for the implementation of that path, and that of no other path.

«ثم جعلناك على شريعة من الأمر فاتبعها ولا تتبع أهواء الذين لا يعلمون».

"We made for you a law, so follow it, and not the fancies of those who have no knowledge."²

The absolute knowledge which is required to lay down a path for human life is not possessed by any group of people. In the words of Sayyid Qutb, "They are equipped with nothing but fancies and ignorance when they undertake the task which is no concern of theirs and does not properly belong to them. Their claim to one of the properties of divinity is a great sin, and a great evil."³

In the Sharī'ah, there is an explicit emphasis on the fact that Allah is the Lawgiver and the whole *Ummah*, the nation of Islam, is merely His trustee. It is because of this principle that the *Ummah* enjoys a derivative rule-making power and not an absolute law-creating prerogative. The Islamic State, like the whole of what one might call Islamic political psychology, views the *Dār al-Islam* (Abode of Islam)

¹Sayyid Qutb, *Hādihā al-Dīn* (This Religion of Islam) U.S.A. I.I.F.S.O. publication (undated), p. 19.

²Qur'ān, Ch 45 verse 18.

³Sayyid Qutb, op.cit., p. 22.

as one vast homogeneous commonwealth of people who have a common goal and a common destiny and who are guided by a common ideology in all matters both spiritual and temporal. The entire Muslim *Ummah* lives under the Shari'ah to which every member has to submit, with sovereignty belonging to Allah alone.⁴

Every Muslim who is capable and qualified to give a sound opinion on matters of Shari'ah, is entitled to interpret the law of Allah when such interpretation becomes necessary. In this sense Islamic polity is a democracy. But where an explicit command of Allah or his prophet already exists, no Muslim leader or legislator, or any religious scholar can form an independent judgement; not even all the Muslims of the world put together have any right to make the least alteration in it.⁵

The executive function, therefore, under the Shari'ah vests solely in the just ruler or a group of such people who appoints his delegates and is responsible only to the Shari'ah as represented by the council of Jurists ('*Ulamā'* and *Fuqahā'*) in whom the legislative function of deriving laws from the Book of Allah and the Sunnah is vested. New laws according to the needs of the time and circumstances are only made by these men learned in the guiding principles of law, men chosen by the popular assembly from among the multitudes of those learned in the Shari'ah on account of their enlightenment and understanding of the need of the people.⁶

But the fundamental principles on which rests the Islamic legal system is that the laws of Islam are not passed in a heated assembly by men who ardently desire the legislation in their interest, against men who ardently oppose it in their interest. The laws of Islam are firmly based upon the Shari'ah and are, therefore, in the interest of the people as a whole. They are not the work of warring politicians, but of sober jurists.⁷

This is the reason why there is greater degree of stability in the Shariah law mainly due to its Divine Origin as compared to any other man-made secular legislation in the world.

The difference between other legal systems and the Shariah is that under the Shari'ah its fountainhead is the Qur'an and Sunnah, the *Wahy al-Jali* (the revelation per se) and the *Wahy al-Khafi* (the hidden

⁴Kumo, Suleiman, *The Rule of Law and Independence of Judiciary Under the Shari'ah*. C.I.L.S. publication, Zaria, 1978. chapter 2.

⁵Maududi, A.A., *Political Theory of Islam*, a chapter in *Islam — Its Meaning and Message*. edited by Khurshid Ahmad, London, 1976, p. 161.

⁶Cf. Pickthall, Marmaduke Muhammad, *Cultural Sides of Islam*. Lahore, 1976. p. 181

⁷Ibid, p. 181

revelation). The Qur'ān and the *Sunnah* are the gifts given to the entire *Ummah*, Therefore the Ummah as a whole is collectively responsible for the administration of justice. This is the reason why any legislative or consultative assembly in any Muslim land has no power of encroachment on any legal right of the members of the *Ummah* and those who live with them in peaceful co-existence.

The other important point in this regard is that in Shari'ah, justice is administered in the name of Allah, one of Whose attributes is *Al-Adil* (the Just and the Giver of Justice). Any injustice or any tribal or racial consideration is nothing but a grave sin and disobedience to Allah. "To judge justly" is, therefore, a religious duty and a devotional act. Neither a king, nor a caliph or a sultan can ever claim that his words are laws as was done by tyrant rulers from Pharaoh to Louis XIV. They are not the fountainhead of justice even though some wrong-headed muslim rulers might have posed as if they possessed such authority. With this in mind, we shall proceed to examine briefly the sources and the aims of Shariah.

THE SOURCES AND THE AIMS OF SHARIAH

The Shariah, originated from the direct commandment of Allah; but there is the provision or power given to man in order to interpret and expand Divine commandment, by means of analogical deductions and through other processes.⁸ Unlike the Roman law which developed from the *actio* or English Common Law which developed from the *writs*⁹ the very first source of Shariah is the Holy Qur'ān. The second source is the Sunnah or the Practice of Prophet Muhammad (S.A.W.) who has rightly explained:

"I leave two things for you. You will never go astray while holding them firmly. The Book of Allah and the Sunnah of His Prophet". The third source which may be classified as both "Ijmā" consensus of opinion of 'Ulamā,' and "Qiyās" analogical deductions provide detailed understanding derived from the Qur'ān and Sunnah, covering the myriads of problems that arise in the course of man's life.¹⁰ As a matter of fact, the ideal code of conduct or a pure way of life which is the Shari'ah, has much wider scope and purpose than an ordinary legal system in the western sense of the term.¹¹ The Shari'ah through this process aims at regulating the relationship of man with Allah and

⁸Hamidullah, Muhammad, *Muslim Conduct of State*, Lahore, 1973, p. 6.

⁹Coulson, N.J. *A History of Islamic Law*, Edinburgh, . . . p.8.

¹⁰Maududi, *Toward Understanding Islam*, IIFSO Publication, 1970, p. 143.

¹¹Coulson, N.J., *A History of Islamic Law*, op. cit., p.83.

man with man. This is the reason why the Shari'ah law cannot be separated from Islamic ethics. The process of revelation of various injunctions (*Ahkām*) of the Qur'ān shows that the revelation came down when some social, moral or religious necessity arose, or when some Companions consulted the Prophet concerning some significant problems which had wide repercussions on the lives of Muslims.

The Quran, therefore, is the best commentary (*Tafsīr*) of the Qur'ān and the main sources of the Shari'ah.

The scholars of the Qur'ān have enumerated varying numbers of verses of legal injunctions, but the number is approximately considered to be 500.¹² They deal with marriage, polygamy, dower, maintenance, rights and obligations of the spouses, divorce and various modes of dissolution of marriage, the period of retreat after divorce (*Iddah*), fosterage, contracts, loans, deposits, weights and measures, removal of injury, oaths and vows, punishments for crime, wills, inheritance, equity, fraternity, liberty, justice to all, principles of an ideal, state, fundamental human rights, laws of war and peace, judicial administration etc.¹³

The Qur'ānic injunctions, from which is derived the Shari'ah, are further explained and translated into practice by the *Sunnah* of the Prophet. *Sunnah* literally means a way practice, rule of life and refers to the exemplary conduct or the model behavior of the Prophet in what he said, did or approved. Thus it became a very important source of the Shari'ah only second in authority after the Holy Qur'ān.

Besides the Qur'ān and the Sunnah, the consensus of the opinion of the learned men and jurists, known in the Shari'ah terminology as the *Ijmā'*, plays an important role in Islamic law since it provides a broad vehicle of progress and reconstruction. *Qiyās* or analogical deduction is also recognized as the source of Islamic legal system since it gives an instrument to cope with the growing needs and requirements of society. But such analogical deduction is based on very strict, logical and systematic principles and is not to be misconstrued as mere fancies and imaginations of men. Alongside these four sources, the Shari'ah takes into consideration *Istihsān* or juristic preference or equity of a jurist as against *Qiyās* which helps in providing an elasticity

¹²Suyūṭī, Jalāl al-Dīn, *Al-Itqān fī 'ulūm al-Qur'ān*.

¹³Abd al-Wahhāb Ibn Khallāf has tried to classify these verses in the following order: 70 verses on family law, 70 verses on civil law, 30 verses on penal law, 13 verses on jurisdiction and procedures, 10 verses on constitutional law, 25 verses on International law, 20 verses on economic and financial order and 150 verses on sources of law in general. cf. *Usūl al-Fiqh*, Cairo, 1956, pp. 34-35.

and adaptability to the entire Islamic legal system. The concept of *Maṣāliḥ al-Mursalah* (the matters which are in public interest and which are not specifically defined in the Shariāh) was enunciated by Imām Mālik bin Anas (d. 795 A.D.) and has also become a part of the Shariāh system.

JUSTICE AS RESPECT TO PEOPLE IN SHARIAH

The central notion of Justice in the Shariāh is based on mutual respect of one human being by another. The just society in Islam means the society that secures and maintains respect for persons through various social arrangements that are in the common interest of all members. A man as *Khalīfat-Allāh* (vicegerent of Allah) on earth must be treated as an end in himself and never merely as a means since he is the cream of Creation and hence the central theme of the Qur'ān. What is required is the equal integrity of each person in the society and his loyalty to the country concerned which in turn will make it the duty of the society to provide equally for each person's pursuit of happiness. This is the reason why things unlawful (*Harām*) for Muslims but lawful for non-Muslims will not be made forbidden for them in the Muslim country.

Politically, respect for persons was the motivating thought behind the *Kalimah al-shahādah*, the creed of confession of Islam, which negated any other deity other than Allah who created all human beings as equal irrespective of their tribes or clans. It was this teaching which made the Quraishites, Prophet Muḥammad's tribesmen, angry when he helped to liberate the slaves and destitutes like Bilāl, Zaid and many others in the early days of Islam. It is a fact of history that all of Khadijah's wealth was spent on freeing the slaves; and before her death she, along with the Prophet, could hardly get a square meal a day. It was the same principle which guided the first city state of Medina as shown in its charter which guaranteed individual rights irrespective of religious beliefs of the communities living in Medina.

Respect for persons in the Shariāh is rooted in the Divine injunctions of the Qur'ān and the precepts of the Prophet. The Bill of Rights, Suffrage, Civil Rights and the slogans for political equality as we know today are of a very recent origin and seem to be mere reflections of what the Shariāh taught 1400 years ago from now. The treatment accorded by the Shariāh made the aristocracies of birth, race, wealth, language, the features which vary from person to person, all suspect as disrespectful of persons. The criterion of respect was only the *Taqwah*, the fear of Allah.

« ان اكرمكم عند الله اتقاكم » .

“The best among you in the eyes of Allah are those who are stronger in *Taqwah* (fear of Allah)”

The Shariah, it should be noted, gives priority to human welfare over human liberty. Muslims as well as non-Muslims living in a Muslim state are duty bound not to exploit common resources to their own advantage, destroy good producing land, and ruin the potential harvest or encroach upon a neighbor's land. Since a man in Islam is not merely an economic animal, each person's equal right to life, and to a decent level of living, has priority over the so called economic liberty.

Behind every legal, social or political institutions of Islam, there is a divine sanction which every believer is expected to reverence no matter where he lives. He cannot change his own whims into laws. There are the limits of Allah (*Hudud-Allāh*) which are imposed in order to curtail man's ambitions and devices. *Ḥalāl* (lawful) and *Harām* (unlawful) are clearly mentioned and these are the boundaries which every Muslim as well as non-Muslim living with them must respect. If he transgresses any of these limits, he is doing wrong or committing a crime. Even between these two boundaries of 'lawful' and 'unlawful', there exist the things which are doubtful (*Mushtabihāt*), which must be refrained from in order to avoid excesses. The ḥadīth of the Prophet says:

« ان الحلال بين وأن الحرام بين ، وبينها امور مشتبهات لا يعلمهن كثير من الناس - فمن اتقى الشبهات فقد استبرأ لدينه وعرضه - ومن وقع في الشبهات وقع في الحرام . كالراعي يرعى حول الحمى يوشك أن يرتع فيه . الا وإن لكل ملك حمى الا وإن حمى الله محارمه ألا وإن في الجسد مضغة إذا صلحت صلح الجسد كله ، وإذا فسدت فسد الجسد كله ، الا وهي القلب » .

“That which is lawful is plain and that which is unlawful is plain and between the two of them are doubtful matters about which not many people know. Thus he who avoids doubtful

matters clears himself in regard to his religion and his honour, but he who falls into doubtful matters falls into that which is unlawful, like the shepherd who pastures around a sanctuary, all but grazing therein. Truly every king has a sanctuary, and truly Allah's sanctuary is His prohibitions. Truly, in the body there is a morsel of flesh which, if it be whole, all the body is whole and which, if it be diseased, all of it is diseased. Truly, it is the heart."¹⁴

In reality, these limits provide safeguards of the rights of men and nations and give men sense of responsibility to Allah and hence to the entire mankind. These limits stop him from being inhuman, and make him respect the blood and property of another man, and give equality of treatment to all individuals, male and female before law. In commercial dealings, these limits provide for respect for contractual dealings and pledged words and the prohibition of usury and gambling. In the case of individual conduct, these limits provide for the prohibition of intoxicants and not to do injustice to servants and give charity to poor relations and provide for the strict law governing inheritance. In the dealings with nations, these limits provide for respect for treaties, and give strict code of conduct for one's dealings with the fellowmen by not destroying even the enemies' means of sustenance, and show mercy to the surrendered enemy and show respect for non-combatants. In short, in every action of a man's dealings with fellow men there are limits (*Hudūd*) imposed by Allah which are nothings but the sanctions of the Divine Shari'ah.

Judicial power, according to Shari'ah, must always operate in conformity with equity, even to the benefit of an enemy and to the detriment of a relative. Shari'ah does not allow the slightest modification in the rule of perfect justice, or any form of arbitrary procedure to replace it. It firmly establishes the rule of law, eliminating all differences between the high and the low.

Quran asserts that all mankind, born of the same father and mother, forms one single family, that the God of men is Unique, that the Creator has ordered men according to nations and tribes so that they may know, and assist one another, for the good of all.

In the administration of justice, therefore, a Judge must be upright, sober, calm and cool. Nothing should ruffle his mind from the path of rectitude. If he does wrong, he is not only responsible to the people but also to God. The noble Prophet (S.A. W.) advised: "No judge shall pass a judgement between two men while he is angry".¹⁵ He must not

¹⁴Related by Al-Bukhārī and Muslim.

¹⁵*Muhkal al-Majabib* 26:55

feel kindness in executing the ordained sentences for the prescribed crimes. The Qurān says: "Let not pity detain you in the matter of obedience to Allah if you believe in Allah and the Last Day and let a party of the believers witness their sentences."¹⁶ He must decide disputes with as much speed and promptness as possible, for delayed justice produces no appreciable good. He must not accept any present or bribery from the parties concerned. He must exert hard to arrive at a just conclusion. The Prophet said: "Verily Allah is with a judge so long as he is not unjust. When he is (willingly) unjust, He goes off from him and the devil keeps attached to him."¹⁷ To a judge, all are equal in the eye of law. As God dispenses justice among His subjects, so a judge should judge without any distinction whatsoever. The Prophet said: The previous nations were destroyed, because they let off persons of high rank and punished the poor and the helpless. In the Shariah, a judge is a judge for every matter-civil, criminal and military. There is no separate Judiciary for separate civil, criminal and military departments.

CRIMINAL LAW **(TASHRĪĀL-JANĀĪ) IN SHARĪĀH AND COMMON LAW**

It is unfortunate that the Common Law system used in many Muslim countries has made such a great impact on the minds of even Muslim lawyers and Scholars that, they too criticize Shari'ah as a 'harsh and brutal' legal system. **It will take** a long time to remove this impression from the minds of **Western** educated Muslim scholars. The non Muslims, on their part, **have** not been given an opportunity to understand the Islamic Legal System. The result is the vicious campaign against Shariah. The most forceful part of the criticism is the West's denunciation of the harshness of the *Hadd* punishments provided by the Shariah. **Obviously** this stems from their self-styled conception of human **dignity** which evokes unnecessary sympathy for criminals too. For a moment, the Western sociologist forgets the heinous deeds of the criminals, their impact on the society and prescribes lighter punishments with all politeness. Contrary to it, Islam imposes a rigid code of punishment for the microscopic minority of criminals and ensures an atmosphere of peace and security for the rest of the society. If this basic difference is kept in mind while striking a comparison between the two, the whole matter can be understood easily.

Crimes and punishments have their own long history behind them. From inhuman punishments of the monarchical past to the soft policy

¹⁶Qur'ān, ch. 24:2

¹⁷Mishkāt al-Maṣābiḥ 26:61

of the present-day democratic age, the punishments have been showing an upward trend. This is how the so-called humanizing process has yielded results. The spurt in crimes following the economic boom in the West has brought its own strange interpretation from the Western sociologists, who, till only a few days back were ascribing unsatisfactory economic and social conditions to the increasing criminal mentality. The very sociologist, now harps a different tune. He unabashedly calls the criminal mentality an essential element of human nature. This clear succumbing to the situation has come as a result of West's failure to dam the advancing wave of crimes. More sorrowfully the West has committed the folly of taking a few retrograde steps, so to say, to improve the situation merely on the paper. This has been done in order to cut down the burden on national exchequer, which has been claiming an increasingly bigger slice of the financial cake for the maintenance of Police, Jails, and Courts. This foolish tampering with the situation has been affected mindless of the future repercussions by delisting a few crimes. For example, Norway and Sweden have stolen the march by legalising homosexuality and lesbianism. West Germany and almost all the Scandinavian countries have respectively lifted the ban on import and circulation of pornographic literature. England and Italy have allowed abortions (either for a mother or spinster). The fresh blow to the existing ethical values has come from Spain where, according to an approved bill of cabinet, adultery will no longer be a crime. In sharp contrast to this situation, the Islamic world presents a peaceful and much cleaner society. When we cast a glance at the Muslim countries where Shariah is applied, crime rate has become negligible to the extent that Saudi Arabia reported just one murder in one year. This can wholly be attributed to the deterrent punishments of Islam. Turning a blind eye to these facts, the West is solely guided in its criticism by the superficial understanding of Islamic code.

Primarily, the emphasis of Islamic code is on preventing the crimes by prescribing harsh punishments while contemporary code deals with a criminal individually. The treatment thus meted out does not consider the impact of the crime and its aftermath but simply suggests a punishment to be awarded to criminal.

The detailed study of the Shariah penal system reveals a few more salient features of it which are unique in their character and kind. One can find blessings of the Shariah while glancing through the pages of history. A few basic qualities of Islamic system shows the marked difference from the European legal system.

In order to avoid any discrimination between rich and poor, Shariah enjoins similar treatment to all in the event of crimes of social and moral nature. Islam does not prescribe monetary fines or penalties. Had this been the case, the wealthy people would have easily got rid of punishments after paying the required sum as fine. It could have promoted criminal mentality among wealthy sections of the society. This equality before the law in Islam has deterred even the rich people to indulge in crimes.

Western society today suffers from the same deficiency. The provisions of their legal system have given the rich society a license for crimes.

Another disapproved form of punishment is imprisonment. It isolates the offender from the society and does not arouse in him a feeling of shame or repentance. Contrary to this, the modern prisons have served as a rendezvous for all sorts of criminals. After their release an offender is found to be far more skilled in his art.

Punishments like amputation of hand, whipping, stoning to death and beheading have the dual impact of preventing the individual from committing the same crime in future and serving a stern warning to others.

Treatment meted out to an ex-convict plays the greatest role in rehabilitating him. West's scornful attitude towards an ex-convict has resisted his return towards a dignified life. One's conviction in life should not become a stigma to his name. He should be allowed to lead a normal life. Constitutions of the modern democracies contain clauses which disqualify an ex-convict from contesting for seats in legislature, holding key positions in administration, and public offices.

Islamic Penal Code sternly prohibits this dual disability for an ex-convict. Once the official punishment ends, the convict is a dignified citizen of the state enjoying civil rights in its totality. He need not carry any appendage of conviction with his name. No hurdles would be placed in his economic or social progress on the basis of his conviction. A return to the normal life is thus facilitated by the whole society and state under Shariah. The Prophet strictly admonished his friends from giving any bad names to Ma'izz Bin Aslamī and Ghāmidīya, two sahabis who, out of fear of punishments in the life hereafter, self-confessed the sin of adultery and were stoned to death. The Prophet called their confession as the most courageous and noblest act. This is how Islam refines the society. If you assure the criminals of a respectful place in society, there is no reason for them to hesitate from turning a new leaf in their lives. In most cases, it is fear of contemptuous treatment by society that deters the convict

from becoming a normal citizen. Shariah adopts a realistic and practical attitude towards life. In life, one cannot depend too much on the moral and spiritual qualities of good individuals. If all men were equally spiritual, and if all could fear Allah, then there would be no need of law. But most men are not afraid of Allah so much as they are afraid of their society, public opinion and the punishment for evil-doing which they receive from the court of law. Therefore, the fear of Allah is and will remain confined to a few persons. Most men will continue to avoid committing any crime not from the fear of Allah and the Day of Judgment but from the fear of men and the fear of punishment by the authority. Since the Shariah seeks to build a society and a political community, it has to take account of all kinds of men, good or bad, virtuous or vicious. For men fearing Allah, it inculcates love and charity and holds out the promise of reward in the hereafter, but for the greater number of people in whom the fear of Allah is not very strong, it prescribes laws and lays down punishments. Thus it makes use of both moral and legal sanctions because it realises that both morality and law are necessary for political and social life.

It is merely an allegation that harsh Islamic laws would convert the society into a den of crippled and indolent persons. It is mainly due to the partial understanding of the Islamic system. Islam solves the social and economic problems of a man on a priority basis so that one should not be stimulated to commit crimes due to social and economic injustices. Secondly, the Islamic punitive measures are implemented through a gradual process. With the advent of the Prophet and his party at Medina, the Islamic Penal Code was not suddenly clamped over the city. Had it been the case the results would have been the same what critics allege. The Prophet enforced the Islamic order in 10 years of time after due training and education of masses. The Qur'-an itself imposed total prohibition in three phases.

Crime detection has also its own effect on criminal psychology. Islam has a distinctive advance here too over its Western counterparts. Mere suspicion is no ground for punishing a criminal until crime is reported through a reliable source by the prescribed number of witnesses. In the event of a person being apprehended on inadequate evidence and, later, on the charges having been proved false the integrity of that individual would be impaired. The present codes do not guarantee such safeguards. An individual may be acquitted after a lengthy process of humiliations. This generates an atmosphere of suspicion where every individual lives as a suspect. Similarly, Islam prohibits crime-digging.

These are a few virtues of Islamic Penal Code. In the light of these, the Prophet said that *a time* would come when one will traverse the distance between Yemen and Hadramaut, without any danger to his life and property. This came out true in the later years when Islam conquered the whole area. Its impact may still be seen in countries where Islamic law is even partially in force. In the so called highly advanced' countries like the United States of America, it is dangerous even to move out of one's residence after it is dark.

The high rate of crimes in Western countries can be imagined from the following figures. There were 9.6 murder cases for one hundred thousand people in United States, 4.8 in West Germany, 2.3 in Britain, and 1.9 in Japan in recent years. In case of robberies, the US has 218.2, West Germany 33.4, Britain 23.0 and Japan 2.1. As for rape, it was 26.3 for the U.S., 11.1 for West Germany, 2.1 for Britain and 3.3 for Japan. Finally, there were 3,274.2 theft cases in the U.S., 3,0881.1 in W. Germany, 2,483.0 in Britain and 927.3 in Japan (all figures for each one 100,000 people).

More interesting is the way the criminologists attribute reasons of spurt in crimes and suggest measures to check the rate. A study of recent crime report from France will reveal the approach the Westerners now adopt to tackle the grim situation prevailing in western countries.

A ten-member committee headed by the Minister of Justice, M. Alain Peyrefitte indicated that according to 80% of the French people the violence has been mounting. The committee came out with more disturbing statistics. Between 1967 and 1976 armed robberies against other institutions—called hold-ups—increased twenty folds.

Translated into absolute figures, in France armed robberies increased from 685 to 3,806 annually during the last decade, while hold-ups went up from 63 to 1,359. The murder rate in France remained below one per cent per 100,000 inhabitants compared with approximately 10 in one hundred thousand in the United States.

The report attributes the growth of criminal acts to urbanization. It says 60 per cent of violent crimes occur in Paris and five other large urban centers and calls for a return to smaller, more cohesive communities. The conclusion is reached that cities must not be allowed to surpass a population of 200,000 if they have yet not attained it.

The committee says, it had formed a link between rising crimes and the height of apartment buildings and notes that housing projects with 1,000 units of six storey have one third fewer criminal incidents than a 1,000 unit project that was higher than six stories. The report

also contends that the long distance between homes and places of employment foments a sense of alienation that contributes to crimes.

Punishment and Legal Penalties:

Legal penalties are specified in the Quranic Text for: (a) Murder, (b) Theft, (c) Adultery, (d) Cluminous accusation of adultery, and (e) Offence against public security. No apology is needed for death being the Islamic penalty for premeditated murder; its very severity makes the punishment a deterrent, especially if one considers how simple and expeditious judicial machinery is in Islam and how rapid the procedure and how beneficial its effects for social tranquility and the protection of human lives.

Theft, except for the doubtful cases, for example, stealing prompted by starvation, its punishment is amputation of the hand. Stealing is too frequently perpetrated by force and often entails murder of the victim. One wonders whether, in such cases, it is better to have more pity on the hand of the thief than on the life of the victim.

Punishment for Adultery:

The penalty for adultery for a married person, is stoning to death—to be witnessed by a crowd of people—but there are very strict injunctions regarding the proof. The offence must be testified to by four witnesses of unimpeachable veracity. And, if a person levels a charge of adultery against someone and is unable to bring four such witnesses, he is liable to be punished with eighty strokes of the whip.

By enjoining such punishment, Islam has prevented dislocation of the family, and confusion with regard to paternity. More important it establishes the basis for a peaceful life in human society. Peace at this price is not at all costly compared to modern measures introduced and expenses incurred for a peaceful life but it is nowhere to be found because the murderers, the thieves, the fornicators and others get away too easily. They are a constant source of fear and disturbance because of the potential threat to life and property. The Shariah provision nips the evil in the bud with a firm hand and puts down its foot strongly to stop mischief and to ensure peace to the society. Islamic punishments are, therefore, the most suited to bring about peace and peaceful conditions. Islam deals with the culprit rather heavily in the interest of his would-be victims.

AL-SIYAR (INTERNATIONAL LAW) IN SHARIAH AND COMMON LAW

The Shariah has enshrined in itself the principles of Islamic International Law right from its inception and as early as 150 years

after the Hijrah, it regulated the conduct and behavior of the Muslim state in war, peace and neutrality. The general concepts of international law restricts its jurisdictional application to nations only but the concepts of Islamic international law in the Shariah regulated not only the conduct of the Muslim state with other states, but also the relationship of non-Muslim states and non-Muslim individuals living in the Muslim state. The object was to enlarge the concepts of Islamic international law to encompass all public functions conducted by the state or its citizens in any intercourse not necessarily subject to private regulations in the performance of the public needs or functions. As Dr. Hamidullah puts it, "when Islam came and founded a state of its own, the earliest name given by Muslim writers to the special branch of law dealing with war, peace and neutrality seems to have been *Siyar* the plural form of *Sirat* meaning conduct and behaviour."¹⁸

The word *Sirat*, when it is used without adjectives, meant the conduct of the Prophet more especially in his wars,¹⁹ and later it came to be used for the conduct of Muslim rulers in international affairs.²⁰ The Science of *Al-Siyar* with the works of European Jurists of the Middle Ages like Grotius, Puffendorf and others one notices that they intentionally excluded the Muslims from all community of interest from the Christian nations of Europe. Their law originated in the necessity of regulating the relations of the new sovereign states which arose because of the urgent need of temporal unity of Christendom. The later European Jurists, out of necessity, thought that their international law was limited to Christendom only, and then enunciated broad principles to include others as well. Some Muslim Scholars think that "these European principles were just echoes of the time. Moreover, their human modifications for civilization came only after they intensively borrowed Islamic principles by the impact of Muslim Spain, the Crusades and earlier Ottomans."²¹

The fundamental human rights of man in Shariah rest on the premise that man is the *Khalifa* of Allah on earth and hence the center of the universe.

The fundamental difference between human rights in Islam and those of the famous Declaration of Human Rights adopted by the United Nations General Assembly is that the former are binding on

¹⁸Hamidullah, Muhammad, *Muslim conduct of state*, Lahore, 1973, p. 10.

¹⁹Al-Sarakhsi, *Al-Muhit*, vol. 1, fol. 567 a, b (Mss. Waliud Din, Istanbul, No. 1356).

²⁰Hamidullah, op cit., p. 21.

²¹Qadri, Anwar Ahmad, *Islamic Jurisprudence in the Modern World*, Lahore, 1973, pp. 277-278

every Muslim State while the later are mere declaration binding on no state or country. One of the purposes of the United Nations, according to Article 1 of its Charter, is to *provide and encourage* respect for human rights. Later the General Assembly adopted two agreements²² or rather, the texts of two agreements²² which are known as the "Covenant on Civil and Political Rights" and the "Covenant on Economic, Social and Cultural Rights." The former covenant includes the following rights:

- a. The right of life and liberty and security of person
- b. The right of privacy
- c. The right to marry and found a family
- d. The right to education
- e. Freedom of thought, conscience and belief
- f. Freedom of expression of opinion
- g. Freedom of movement
- h. Right to a peaceful assembly and association
- i. The right to fair trial and equality before law
- j. The right to be free from arbitrary arrest and detention.

Unfortunately, the above rights and freedoms granted by the covenant are not binding on any state. The states which voluntarily sign the covenant would be legally obliged to abide by its provisions. In recent times, we have seen some states which have signed the covenant but have not implemented all of them. As far as these rights are concerned, they are taught to every Muslim through the Divine scriptures which provide necessary guidance to the believers to develop all his faculties in a manner that will benefit him for his great task as the vicegerent of Allah on earth. We shall discuss all the fundamental human rights in Islam granted to Muslims and non-Muslims alike in the following chapters.

Since we have discussed the characteristics of Shariah, we should bear in mind that individual freedom is sacred within the ethical limits imposed by the Shariah, but it will be considered sacred only as long as it does not conflict with the larger social interest or as long as the individual does not transgress the rights of others.

DECLINE OF MUSLIMS AND ABROGATION OF SHARIAH

As long as the Muslim states remained powerful and governed their subjects with the strict sense of justice provided under Shari'ah, they

²²See critical analysis given on this topic by Anwer Beg, *Civil and Political Rights in Islam*, No. 1-2, vol. 14. *Al-Itihad*, January-April 1977, p. 41.

were praised for their justice by Muslims and non-Muslims alike. The sense of Justice of some of the Mughal Emperors in India has been praised by Hindu historians even today. Jehangir, the famous Moghul Emperor, is well known for what is known as "*Adl-i-Jehāngiri*" —the Jehangiri Justice. A long chain attached to a bell was hanging from his private chamber in his palace and any one, high or low, who sought Justice from the noble Emperor used to come out any time in the night or the day to pull the chain to draw the attention of the Emperor that somebody needed him to do Justice. There are many stories incirculation about his proverbial justice including that of an old animal who was deserted by his master who had gained a great benefit from it for many years. The Emperor demanded that the animal must be looked after by its owner for whom it had worked when it was strong.

With the coming of the European colonialists, they thrust their own legal system on Muslims in the colonies which they ruled and great tragedy befell the Shari'ah. Some selfish Muslim rulers who became puppets in the hands of the colonial masters helped in eradicating Shari'ah which was replaced by European legal systems which were Christian in origin.

The first country where the practical abrogation of Shari'ah started was India. It was in 1791 when the systematic suppression of Shari'ah began and by the middle of 19th century. The entire Shari'ah had been destroyed by the British colonisers. From this tragedy in India, other Muslim states were also affected. In 1884 "Code Napoleon" took over from Shari'ah in Egypt. European system of "Capitulations"²³ a law by which initially the Western powers ensured that their citizens resident in colonised country must be governed by their (European) law - extended to those europeanised natives and ultimately replaced the Islamic and all other native systems of law.

They first introduced "*Tanzimat*" the so called reforms, between 1839 - 76 and then promulgated "the commercial code" and introduced *ribā* (interest) in 1850. The French colonisers abolished Shari'ah penalties in 1858. Secular Courts, nicknamed as Nizāmiyya Courts, were established to apply the new code.²⁴ Turkey and Albania spearheaded the declaration of secular states on the pattern of other European countries. Albania enforced monogamy while Turkey changed the Muslim personal law of divorce and inheritance.

In Nigeria, during the days of the British protectorate in 1912, Alkali and Mazālim Courts of Emirs were allowed to treat both civil and

²³Coulson, N.J. op. cit., p. 150.

²⁴Ibid, p. 153.

criminal cases in Northern Nigeria. Of course, the supremacy and effectiveness of Shari'ah was recognized and consolidated. The colonial master met superior courts because, in those days, only the true learned jurists were appointed as judges. The judges were the sincere Muslims and almost the entire population were educated and they knew the Shari'ah of Allah as distinct from man-made law. Except the penalty of amputation of the hand for theft, or the "hadd" which Lord Lugard destroyed with his "natural justice and humanity", the Shari'ah was in practice till the eve of self-government. The British masters quickly called for the so called "reform" when the "Code of Criminal Procedure" was introduced in 1960. The Code was based on the Sudanese Criminal Code which traced its descent from the Indian Penal Code, which was drafted by Lord Macaulay in 1837.²⁵

Re-introduction of Shari'ah:

The role of Shari'ah in the modern Muslim World needs to be assessed afresh. Since the Shari'ah is one of the great, mature and dynamic legal systems prevalent in the modern world, it is applicable to about seven hundred and fifty million people around the world. It is so very widespread and worldwide that it is divinely incumbent on every fourth person of the human race to follow it. It is also noteworthy that out of nearly one hundred and forty five member-states are predominantly Muslim including nearly twenty member-states which constitutionally recognise Islam as state religion. This international Islamic Society, therefore, accounts for the tremendous power it exerts in world affairs and the problems of the kernel of Islam itself. In my opinion, no understanding of any Muslim Society is ever possible without the knowledge and correct appreciation of the Shari'ah. The obedience to Shari'ah, in short, is wholly for the good of mankind and for our fulfillment of our spiritual destiny. We have been commanded to it by Allah so that we thereby strengthen our awareness of living continuously in His presence and make ourselves worthy, of His special Grace. Our disobedience of Shari'ah is not going to harm our Creator but ourselves. The Prophet (S.A.W.) has said:

"If all men and all things, first and last, were to become pious and religious in extreme, it would not advance the Magnificence of Allah by a mere atom, and if all of them were to become the worst sinners and offenders, it would not detract from His Resplendent Majesty and Greatness even by the slightest degree imaginable."

²⁵Coulson, N.J., op. cit., p. 159.

The Shariah, as we have seen, is divine in its origin, human in its subject-matter and application, ideal in its principles, scientific in its methods, democratic in its spirit, comprehensive in its scope and dynamic in its nature. These unique and characteristic features of Shariah well demonstrate that it is a living force and vital system and an ever-growing organism among the contemporary legal systems, if properly studied and implemented.

The Shariah, operating through the principles of *Ijtihād* and *Istih̄sān*, is adaptive, dynamic and progressive to meet the challenges of the changing conditions and current demands of life and society of our present time, and caters for the social needs and the genuine requirements of the people.

Ibn al-Qayyim, an eminent Jurist belonging to the Hanbalite School has defined the Shariah in the following words:

“The foundation of the Shari-ah is wisdom and the safeguarding of the people’s interests in this world and the next world. In its entirety, it is justice, mercy and wisdom. Every rule which sacrifices justice to tyranny, mercy to its opposite, the good to the evil, and wisdom to triviality does not belong to the Shari’ah.....the Shari’ah is God’s justice and blessing among His People....

Every good that exists is derived from it and every deficiency in being results from its loss and dissipation— for the Shari’ah, which Allah entrusted His Prophet to transmit, is the pillar of the world and key to success and happiness in this world and the next.”²⁶

The basic principles of Shari’ah, therefore, can be summed up in the following opinions of the Jurists:

(a) The larger interest of society takes precedence over the interest of the individual.

(b) Although ‘relieving hardship’ and ‘promoting benefit’ are both among the prime objectives of the Shariah, the former takes precedence over the latter.

(c) A bigger loss cannot be inflicted to relieve a smaller loss or a bigger benefit cannot be sacrificed for a smaller one. Conversely, a smaller harm can be inflicted to avoid a bigger harm or a smaller benefit can be sacrificed for a larger benefit.

²⁶Ibn al-Qayyim *Ilām al-Muwaqqin an Rabbil ‘Ālimin*, vol. III, p. 1.

²⁷Cf. Dawālibī, *Al-Madkhal ilā ‘ilm Usūl al-Fiqh*, Beirut, 1965, pp. 447-449

CHAPTER TWO

THE STATUS OF NON-MUSLIMS IN SHARĪ'AH

NON-MUSLIMS AND THE SHARĪ'AH

Non-Muslims and 'Islamic Nationality':

The non-Muslims who live in an Islamic state and enjoy all their human rights which are enshrined in the Shariah are called *Ahla Dhimmah* or *Dhimmi*, the covenanted people. *The Dhimmi* living in an Islamic state are guaranteed the protection of their life, property and their honour exactly like that of a Muslim. The rights given to a *Dhimmi* are of an irrevocable nature. It becomes every Muslim's religious duty to protect life, property and honour of a non-Muslim since it forms a part and parcel of his faith (*Iman*).

The word Dhimmah literally means pledge (*al-'Ahd*), guarantee (*al-Damān*) safety (*al-Amān*).¹ The non-Muslims are called *Dhimmi* because they are under the pledge of Allah, the pledge of the Messenger of Allah, and the pledge of the Muslim community so that they can live under the protection of Islam. In other words, they are under the protection of Muslims and their guarantee. The pledge of security and guarantee given to the non-Muslims is like the political 'nationality'² given in the modern times on the basis of which people acquire all their rights as the nationals of certain country and become liable to responsibilities. The *Dhimmi* from this point of view are "the people of the abode of Islam" (*ahl Dār al-Islām*)³ and hence the possessors of 'Islamic Nationality' (*al-Jinsiyyah al-Islāmiyyah*).⁴

¹Cf. Al-Qardāwī Yūsuf, *Ghayr al-Muslimin fi Mujtama' al-Islāmi*, Cairo 1977, p.7.

²*Ibid.*

³*Al-Sarakhsī, sharh al-Siyar al-Kabīr*, vol. 1, p. 140; Ibn Qudāmah, *Al-Mughni*, vol. 5, p. 516; Al-Nasani, *Al-Badā'ī wal Šanai'*, vol. 5, p. 281.

⁴Audah, 'Abd al-Qādir, *Al-Tašhīr al-Janai al-Islām*, Vol. 1, p. 307; Also Zaidān, 'Abd alKarīm, *Ahkām al-Dhimmiyyin wal Musta'minin fi Dār al-Islām*, pp. 63-66.

NON-MUSLIMS UNDER THE JURISDICTION OF A MUSLIM STATE

The Muslim Jurists have classified the non-Muslim citizens under different categories.⁵ The most prevalent view is that there are the first three kinds of non-Muslims who may be found in any Islamic State:

1. *The Dhimmis*: These are the *Ahl al-Dhimma* or those who accept the hegemony of a Muslim State whose matters are to be decided with the terms of the appropriate treaty. Muslim State is duty bound to abide by all the terms of such treaty.

2. *The 'Conquered People'*: These non-Muslim are those who fought against Muslims until they were defeated and they were overpowered. They automatically become the *Dhimmah* or responsibility of Muslim State. They will pay a fixed amount of *Jizyah* —tax and their lives, property honour and places of worship will be protected in lieu thereof.

3. Those non-Muslims who clearly happen to be residing in the Muslim State as its citizens.

4. Non-Muslims residing temporarily in a Muslim country e.g. tourists or temporary sojourners.

5. Resident aliens who have opted voluntarily to live in a Muslim State.

It is essential to remove some misconceptions about these distinction in the Shari'ah between Muslims, Dhimmis, and non-Muslims. Some scholars tend to give the misleading analogy of this distinction and compare it with the Roman concept of Jurisdiction in the Jus Civile or the Roman Pax Romana. It should be remembered that non-Muslims are not outside the Jurisdiction as is the case with Jus Civile. Likewise, Muslims are not supposed to consider themselves as the "Lords of the population of the globe" as they are not *arbīs Romanus* but merely "servants of Allah" (*'Ibād-Allah*) and even as rulers, they are merely the custodians of Allah's property and not the absolute owner because everything existing in the heavens and the earth belong to Allah. Muslims and non-Muslims, therefore, are equal before the law in every aspect. The distinction in the terms 'Muslims' and 'non-Muslims' merely remains one of political administration and not of human rights.

⁵Maulānā Abul 'Alā Maudūdī has given the first three in the above list as the categories of Non-Muslim (see *Rights of Non-Muslims in Islamic State*, Lahore 1976, p.6). The categories 4 and 5 also come under the jurisdiction of a Muslim State. cf. Hamidallah, *M. Muslim Conduct of State*, Lahore 1973, p. 112.

Since the Dhimmis are under *Dhimmat-Allah*, they enjoy complete religious, administrative and political freedom, a right guaranteed to them in return for their loyalty and the payment of a reasonable tax called *Jizyah* which will be utilized in the **defense and** administration of the state ⁶

MUSLIMS AND NON-MUSLIMS: GUIDELINES FROM THE QUR'AN

It is wrong presumption that since an Islamic state is based on a definite ideology, the state will annihilate the non-Islamic elements **within** its fold. There are guidelines in the Qur'ān and the Sunnah which speak of strengthening and cementing relationship between Muslim and non-Muslim citizens. The basic foundation of this relationship is referred to in the Qur'ān in the following words:

ولا ينهاكم الله عن الذين لم يقاتلوكم في الدين ولم يخرجوكم من دياركم ان تبروهم وتقسطوا اليهم ان الله يحب المقسطين - انما ينهاكم الله عن الذين قاتلوكم في الدين واخرجوكم من دياركم وظهروا على اخراجكم ان تولوهم ومن يتولهم فلانك هم الظالمون،

“Allah forbids you not, with regard to those who fight you not for your Faith nor drive you out of your homes, from dealing kindly and justly with them: For Allah loves those who are just. Allah only forbids you, with regard to those who fight you for your Faith and drive you out of your homes and support others in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong.”⁷

According to the above verses of *Sūrah al-Mumtaḥanah*, Muslims are asked to deal with unbelievers kindly and justly unless they are rampant and out to destroy Muslims and their Faith as was shown by

⁶Abū Zahrah, Muḥammad, *Al-Jarimah Wal' Uqūbah fil-Fiqh al-Islām*, Dār al-Fikr alArabi, undated, p. 189 (footnote).

⁷Qur'ān, ch. 60: 8-9.

the example of Prophet Muhammad in the treaties of Hudaibiyah and Medina.

The best example of such treatment can be seen in the life time of the Prophet. In the early days of Islam, Muslims had to migrate from their place of birth because of the persecution at the hands of non-Muslim pagan Meccans. Qutailah bint 'Abd al-'Uzza, the mother of Asma' bin Abubaker and the wife of Abubakr, who later became the second Caliph, did not migrate from Mecca to Medina in 622 A.D. nor did she accept the religion of Islam. After the treaty of Hudaibiyah, when Meccans visited Medina, Qutailah came to Medinah to see her daughter. 'Abdallah bin Zubair, the illustrious son of Asmā' narrates that Asma' first refused to see her non-Muslim mother. When she asked the Prophet whether or not she could see her non-Muslim mother, the Prophet asked her to see her and treat her well.⁸

From the above incident, the jurists have deduced that it is essential for every Muslim to treat with respect one's parents, brothers and sisters and other relatives no matter what their faith is. They should also try to help them in the hour of need, provided they do not profess to be the open enemies of Islam!⁹

As far as the people of the Book, that is Jews and Christians, are concerned, they have been given a special position in the Qur'an since their religions originally were based on the Heavenly Books like *Torait* and *Injil*. The Qur'an says in respect of *Ahl al-Kitāb*:

«ولا تجادلوا اهل الكتاب الا بالتي هي احسن الا الذين ظلموا منهم وقولوا امنا بالذي انزل
الينا وانزل اليكم والنا والهكم واحد ونحن له مسلمون».

“And dispute you not with the People of the Book, except with means better (than mere disputation), unless it be with those of them who inflict wrong (and injury): but say: “We believe in the Revelation which has come down to us and in that which come down to you; our God and your God is One and it is to Him we bow (in Islam).”¹⁰

In order to achieve their purpose as standard bearer of Allah, Muslims are required to find true common grounds of belief, as stated

⁸This incident is recorded in *Musnad Ahmad*, *Bukhārī* and *Muslim*. Also see the details in *Maudūdī's Tāhīm al-Qur'ān* (urdu), Delhi 1975. pp. 433-434.

⁹Al Jassās *Ahkām al-Qur'ān*; also *Ruḥ al-Mu'ānī*.

¹⁰*Qur'ān*, ch. 29:46.

in the latter part of the above verse, and also to show by their kindness, sincerity, truth and genuine anxiety for the good of others, that they are not cranks or merely seeking selfish or questionable aims. But those who are deliberately trying to wrong or injure others will have to be treated firmly, as we are guardians of each other. With them there is little question of finding common ground or expecting patience, until the injury is prevented or stopped.

FUNDAMENTAL RIGHTS OF NON-MUSLIMS

The fundamental rights of non-Muslims in an Islamic state are of two kinds:

1. Their protection from all external threats
2. Their protection from all internal tyranny and persecution

The first kind of protection is the same as in the case of Muslims. The head of state and those in authority are bound to look after the interest of all the citizens using all the force at their command. The famous Mālikite Scholar Imam al-Qurafi¹¹ quotes the statement of Ibn Ḥazm from his book *Marātib al-Ijm'ā'*:

“If enemies at war come to our country aiming at certain *Dhimmi*, it is essential for us that we come out to fight them with all our might and weapons since he is under the protection of Allah and His Messenger. If we did anything less than this, it means we have failed in our agreement for protection.”¹²

This principle of the Shari'ah was amply demonstrated by the famous Shaikh Ibn Taimiyyah when the Tartars had invaded Syria. The Shaikh went to see Qatlushah to spare the sufferings of people. He agreed to do so with the Muslims but refused to treat non-Muslims in the same way as Muslims. The Shaikh said that it would not please them since the Jewish and Christian families were under their protection.”¹³

The most important protection to be accorded to non-Muslim citizens is from internal high handedness, persecution, tyranny and injustice. The Muslim citizens are duty bound to spare their hands and tongues from hurting the non-Muslim citizens.¹⁴ They must not keep any enmity or hatred against them. Since Allah does not like tyrants but gives them a quick punishment in

¹¹*Imām al-Qarafi Shahāb al-Dīn/Abū 'Abbās Aḥmad bin Ibrīs al-Mālikī, Al-Furūq, Cairo 1346, vol. 3, pp. 14-15.*

¹³*Al-Qardāwī, Yūsuf, Ghayr al-Muslimīn fil Mujtama' al-Islāmī, Cairo, 1977, p. 10.*

¹⁴*Ibid.*

this world or gives them greater punishment in the next world.¹⁵ There are a number of verses of the Holy Qur'ān warning wrong-doers, and the following sayings (*Aḥādith*) of the Prophet (s.a.w.) warn Muslims against any high handedness towards the non-Muslim citizens:

«من ظلم معاهداً أو انتقصه حقاً أو كلفه فوق طاقته أو أخذ منه شيئاً بغير طيب نفس منه . فأنا حجيجه يوم القيامة» .

“Whosoever persecuted a *Dhimmi* or usurped right or took work from him beyond his capacity, or took something from him with evil intentions. I shall be a complainant against him on the Day of Resurrection.¹⁶

«من اذى ذمياً فأنا خصمه . ومن كنت خصمه حجته يوم القيامة» .

The Prophet also said:

“Whosoever hurts a *Dhimmi*, I shall be his complainant, and for whosoever I am a complaint, I shall ask for his right on the Day of Resurrection.

The Prophet also said:

«من اذى ذمياً فأنا خصمه . ومن كنت خصمه حجته يوم القيامة» .

“One who hurts a *Dhimmi*, he hurts me; and one who hurts me, hurts Allah¹⁷

Some Muslim jurists like Ibn-Abdin (d. 1836 A.D.) have argued that since Muslims are given a responsibility to protect the blood and property of non-Muslims and since the persecution of weak persons at the hands of the strong is considered as one of greatest crimes, the persecution of non-Muslims in an Islamic state will be considered to be a greater crime than the persecution of Muslims by non-Muslims.¹⁸

¹⁵Ibid.

¹⁶Abū Daūd and Baihaqī. See *Al-Sunan al-Kubrā*, vol. 5, p. 205. Narrated by *al-Khatib* with authentic *Isnad*.

¹⁷Al-Tibrānī.

¹⁸Ibn 'Abdīn, Muḥammad Amin, *Radd al-Mukhtār 'alā Durral-Mukhtār*, Cairo 1327 A.H., quoted by Al-Qardāwī, op. cit., p. 12.

SHARĪ'AH AND THE TREATY RELATIONS WITH NON-MUSLIMS

The importance of observing the terms of treaties, pledges and pacts with non-Muslims under the Shari'ah is sanctified in Islam and stands above all other considerations. As for example, non-Muslims are entitled to *Diyah* (blood-money) if they happen to be in treaty relations with Muslims, while there is no provision of *Diyah* to the relatives of a Muslim who belong to a people with no treaty relations with the Muslims. The best example of this can be seen in Hudaibiyah when the Holy Prophet Muhammad entered into a treaty relation with non-Muslims even though the terms of the treaty were unfavourable to Muslim Suhail was negotiating the terms of the treaty with the Prophet on behalf of the Qurayshites while his son, Abu Jandal, had accepted Islam and hence was persecuted by the Qurashites for having done so and had managed to escape the grasp of the enemies. It was verbally agreed between Suhail and the Prophet (and not yet written down or sealed) that a Muslim should not aid another Muslim against a non-Muslim who enjoyed the protection of a pledge even for a religious cause. The Qur'an says:

« وان استنصروكم في الدين فعليكم النصر إلا على قوم بينكم وبينهم ميثاق .»

“But if they see your aid in religion, it is your duty to help them, except against a people with whom you have a treaty.”¹⁹

While still the treaty was in the process of negotiation, and the Prophet had agreed on the above, Abū Jandal fled the non-Muslim Meccans and came for refuge to the Muslims. The moment Suhail saw his son, he declared: “O Muhammad, the matter between you and myself has already been settled.” To this the Prophet replied: “you speak the truth.” When Abū Jandal heard this, he shouted: “O Muslims, am I to be returned to the idolaters to be deprived of my religion?” Abū Jandal was returned to the non-Muslims according to the terms of the treaty although many *Ṣaḥābah* (companions of the Prophet) raised their objection. The practice of dealing with the non-Muslims continued during the period of Muslim rule in most countries and any case of injustice should be considered as a deviation and a sign of weakness on the part of the individual ruler. Imam Abu Yusuf, an eminent jurist and the famous disciple of Imām Abu Hanifah says about the treaty rights of the non-Muslims: “We

¹⁹Qur an, ch. 8, verse 72.

shall take from them only what was mutually fixed at the time of peace-making. All terms of the treaty shall be strictly adhered to and no additions would be permitted."²⁰

TREATY RELATIONS IN SHARĪAH

The Prophet was the greatest politician and did not forget to respect the treaties and pledges, but he laid on the contrary a great importance to the strict observance of the terms of treaties entered into by Muslims. Sometimes in observing the terms of treaties, he had to forgo the advantages of his Commonwealth of Islam which functioned on the Principles of Sharī'ah.

Once Hudhaifa-bin-Yaman could not migrate to Medina with the Prophet. He entered into a contract with the Quraish that he would not fight against them, and in consideration thereof, he remained free from molestations at Mecca. Subsequently, at the Battle of Badr, he joined the Prophet to fight against the Quraish. The Prophet was informed of the solemn contract between Ḥuzaifah and the Quraish. The Holy Prophet consequently ordered him to refrain from attacking the Quraish in fulfillment of his contract.

Once the Quraish sent Abū Rafī as their ambassador to the Prophet. When he came to Prophet, he was greatly influenced by the intrinsic force of Islam and expressed his willingness to accept it. The Prophet could not accept his declaration at that time, as the detaining of an ambassador on any ground whatsoever is breach of international law.

In the treaty of Ḥudaibiyah, one of the terms was that if a Muslim were to fall to the hands of the Quraish, the latter would not return him, but if an unbeliever were to fall to the hands of the Muslims, the latter would return him to the former. Once a Muslim named Abu Jandal fell to the hands of the Quraish, but being persecuted he fled to the Prophet at Medina. The Prophet ordered him to return to the Quraish in spite of the prayers of the persecuted man and his companions.

When one reads the Qur'an and Hadith, the holy texts of the religion of Islam, one realises that Muslims are enjoined to treat non-Muslims with fair-play and justice, and with dignity and honour. Apart from the rights and obligations involving worship, they are equal to Muslims with respect to all other rights and obligations related to social life and the rights of citizens. There are a number of passages in the Qur'an and the *Aḥādīth* of the Prophet which speak of

²⁰Abū Yūsuf, *Kitāb al-Kharāj*, Cairo, p. 35.

strengthening the lines encouraging the Muslims to visit non-Muslims and eat their food as long as it is lawful (*Ḥa'āl*).

MUSLIM-NON-MUSLIM RELATIONSHIP IN THE TIME OF THE PROPHET (S.A.W.)

When Muḥammad (S.A.W.) started to preach openly about *Tauḥīd*, i.e. monotheism—that is to believe that there is only one Lord for the whole universe, and that is Allah, and that none has the right to be worshiped, but Allah—the pagan aristocracy of Mecca turned against him and his followers. Members of the pagan aristocracy were so deeply sunk in the depth of ignorance that they could not accept any supremacy over their imaginary idols of wood and stone of which *laāt*, *manāt*, *ʿuzza* and *hubal* were their source of happiness and sorrow, reward and punishment.

But a good number of eminent Quraish rallied round the Holy Prophet (S.A.W.), and they inveterate enemies of *Tauḥīd* started inflicting torture and injuries upon the Holy Prophet Muḥammad and his followers so that others would not dare to join them in their righteous mission. But the number of the Holy Prophet's followers grew frequent which was an indication of a serious revolutionary movement against their mode of worship, unjust ways of life and their very existence as the custodians of the Ka'aba.

To save their own institution from destruction, the Qur'aish started persecuting Muslims; it was then that the Holy Prophet advised his followers to seek refuge in the nearby Christian Kingdom of Habasha (Ethiopia).

He told his followers: "If you go to Abyssinia (Ethiopia) you will find a king under whom none is persecuted. It is a land of righteousness where Allah Almighty will give you relief from what you are suffering."²¹

Consequently in A.D. 615, a small group of eleven men and four ladies, including 'Uthmān bin 'Affān and his wife Ruqayya (daughter of the Holy Prophet), 'Abd al-Rahman bin 'Auf, and Zubair bin 'Awwām, crossed the Red Sea and reached the hospitable shores of Ethiopia. It was followed by another batch of eighty-three men and eighteen ladies under the leadership of Ja'far bin Abū Ṭālib (cousin of the Holy Prophet and brother of Syedina 'Ali). This emigration is referred to as the first *hijrah* in the history of Islam.

The news that these Muslims were kindly received and lived under the protection of the king of Habasha filled the Qur'aish with dismay

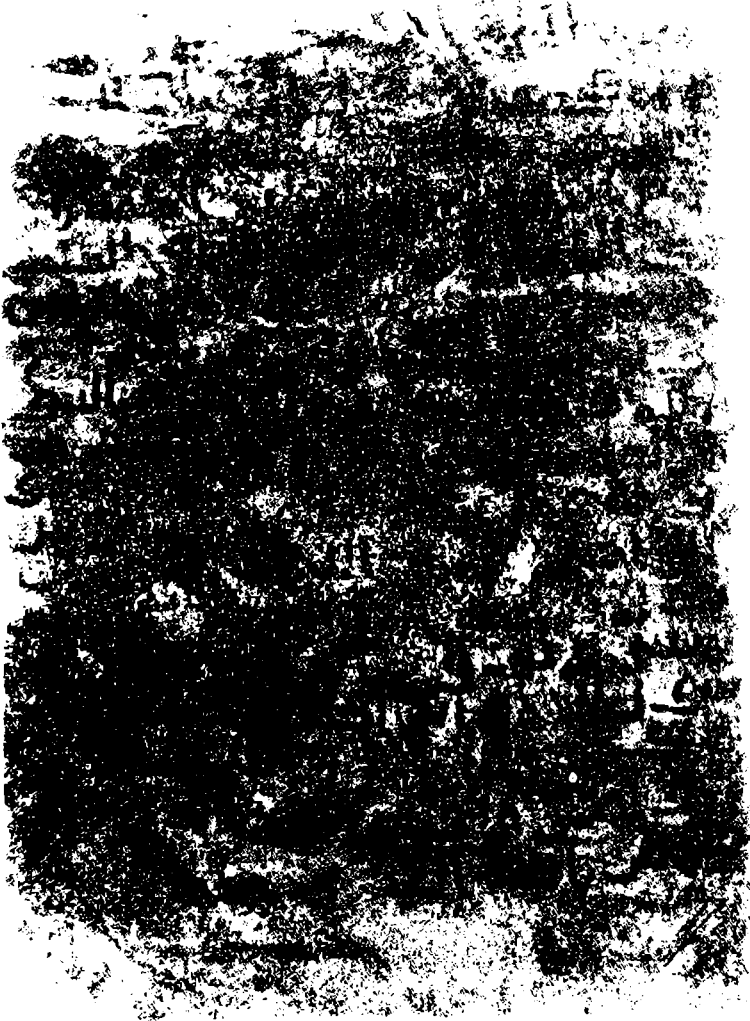
²¹Ibn Hishām, *Sīra*, Cairo, 1937, p. 343.

Letter Sent by the Prophet (S.A.W.) to Non-Muslim Rulers



A Letter Sent to Kisra Parviz the Emperor of Persia.

Letter Sent by the Prophet (S.A.W.) to Non-Muslim Rulers



A Letter Sent to Negus of Abyssinia

and subsequently they deputed Abdallāh bin Rabī and Umrū bin Āas with precious gifts to the king to request that the fugitives might be returned. The Qur'aish were well-acquainted with Abyssinia through trading relations.

The king of Abyssinia granted an audience to the deputed Qur'aish and told them he would himself examine the refugees. The Qur'aish expected their prospects for the morrow to be excellent. The king summoned the refugees in the presence of the Christian bishops and asked: "What is the religion for which you have abandoned your people and yet have neither adopted mine or any other known religion?"

Ja'far Bin Abū Tālib answered in words that reflect the Arab life before the birth of the Holy Prophet Muhammad (S.A.W.) and the early message of Islam:

"O King; we were a barbarous nation, worshipping idols, eating carrion, disregarding every feeling of humanity, committing shameful deeds, killing our blood relations, forgetting our duty towards our neighbours, the strong among us devouring the weak, we knew no law save that of the jungle. Such was our state until Allah sent us an Apostle, from amongst ourselves, with whose lineage, integrity, trustworthiness, excellence of character and purity of life we were fully aware.

He summoned us to Allah, to believe in His unity, to worship Him and abandon the stones and idols which we and our fathers worshipped in His stead. He commended us to speak the truth, to be faithful in our trusts, to observe our duties to our kinsfolk and neighbours, to refrain from forbidden things and bloodshed, from committing immoralities and deceptions, from consuming the property of orphans and from slandering virtuous women. He ordered us to worship God and associate no other with Him, to offer prayer, give alms, and observe fast. So we trusted in his word and followed the teaching he brought us from Allah. (This is our fault), and, for this reason our countrymen turned against us and persecuted us to try and seduce us from our faith, that we might abandon the worship of our God and return to the worship of idols."²²

The king asked Ja'far bin Abū Talib what did Prophet Muḥammad say about Jesus Christ. Ja'far quoted the texts from the Qur'ān, Sūrah "Maryam", verses 16 to 35. (This Sūrah was revealed before the first Muslim hijrah to Ethiopia).²³

²²Ibn Hishām, *Sīra*, Cairo, 1937, p. 385.

²³Qur'ān, ch. 19, verses 16-35.

Being satisfied to his enquiries, the king saw no reason to listen to the demands of the Qur'aish, and returned their gifts saying, "if you were to offer me a mountain of gold I would not give up these people who have taken refuge with me".

The Qur'aish ambassadors returned empty-handed, and the Holy Prophet held the Habessinians (Abyssinians) in considerable affection. He blessed the king and his progeny. He is reported to have said, "Leave the Habessinians in peace so long as they do not take the offensive".²⁴

Afterwards, Muhammad (S.A.W.) wrote a letter to the king about his mission, which was the Holy Prophet's first letter about Islam to any non-Muslim king. That letter was brought to Ethiopia by Umrū Ibn Ummayya. The king received the letter with reverence and "the Najashi declared his belief in the Prophet's mission".²⁵

The Muslims who had taken refuge in Ethiopia lived in peace under the protection of the king. Some of the emigrants returned to Mecca when conditions improved at home for a great number of the Qur'aish had joined the Holy Prophet in his righteous mission.

"Friends and foes, Muslims and non-Muslims, were all alike to him and to his laws. He followed the Qur'ānic injunction—"Let not the hatred of a people incite you to act unjustly, that is nearer to piety".²⁶ "Verily Allah enjoins to do justice and kindness—O you who believe, be upholders of justice, bearers of witness for Allah's sake, though it be against yourselves—or parents or near relations." The Qur'ān again says: "When you speak, then be just though it be against a relation."²⁷

Once in a trial between a Muslim and a Jew, he gave decision in favour of the Jew who at once exclaimed: By Allah, you have decided with truth. He did not fear that by this act he would alienate the sympathy of the clan to which the Muslim belonged.

Once a respectable lady of the Makhzūm tribe committed a theft. She was brought before the Prophet under arrest. When the companions saw her and considered her respectability, they requested the Prophet to let her off. The Prophet abhorred at the idea of distinction and passed order for cutting off her hand. Then the Prophet said: "Had she been Fātima, I would have certainly cut off her hand."

²⁴Abū Dāūd, 2-133.

²⁵Tabarī; Tarīkh al-Tabarī, vol. 1, p. 1569.

²⁶Qur'ān, ch. 5:8.

²⁷Qur'ān, ch. 6:153.

Once a ruffian of Banu Tha 'alaba tribe killed an Ansārī all of a sudden. The heirs of the murdered Ansārī demanded surrender of his son and revenge of murder. The Prophet prohibited it and said: "A son is not guilty for the crime of his father."

When the whole Arabia except Khaiber came under the sway of the Prophet, the Khaiber Jews one day murdered a companion unjustly at Khaiber. The Prophet could not find out the culprit. Consequently, he paid compensation of one hundred camels to the heirs of the murdered person from the State Wealth.

The Holy Prophet used to do justice according to the law to which the complainant belonged. Once a Christian of the Banū Quraizah tribe was killed by a Christian of the Banū Nazīr tribe. In a complaint before the Prophet, he enforced the law of the Torah — Life for life.

In disputes between the Jews, Muslims and other tribes, the Prophet was the final Court of Appeal. Before his death, the Prophet announced publicly: "If I owe anything to anybody, he may claim it. If I offended anybody, he may take revenge." In response, a man named Sarf claimed some dirhams. That was at once paid to him.

Sakhar was a Muslim who accepted Islam after Tayif was conquered. He was the chief of his tribe. Once the infidel Muḡīrah complained to the Prophet that Sakhar had kept his aunt detained with him. The Prophet at once ordered Sakhar to hand over Muḡīrah's aunt to him."

PROPHET'S ADVICE TO HIS SUCCESSORS ABOUT NON-MUSLIMS

The non-Muslim must be treated with leniency and must not be oppressed by any ruler and must not be taxed beyond their capacity and nothing should be taken from them except for a duty encumbering them.²⁸ The Prophetic tradition emphasizes on this point: "Whoever oppresses a non-Muslim subject or taxes him beyond his capacity, then I shall be the opposite party to him in the litigation."²⁹ The second caliph of Islam, Sayyidnā 'Umar bin al-Khattāb is reported to have said the following in the last moments of his life:

"I exhort my successor regarding the treatment to be meted out to the covenanted people by the messenger of Allah. They should receive the fullest execution of their covenant, and their life and property should be defended even if it requires to go to

²⁸Cf. Imām Abū Yūsuf, Yaḡūb bin Ibrāhīm, *Kitāb al-Kharāj*, pp. 69-72.

²⁹Ibid.

war (with oppressors), and they should not be taxed beyond their capacity.”³⁰

The Khulafā al-Rāshidūn (the Rāshidūn Caliphs) used to enquire about non-Muslims whenever people came to see them from the neighbouring countries or provinces. Whenever any complaint came from non-Muslims, they used to give their urgent attention to it in order to ensure that Justice was done to them. It is narrated by Al-Tabarī in his famous historical work that Caliph ‘Umar used to question the delegates concerning the condition of non-Muslims and used to ask if any Muslim had hurt the feelings of non-Muslims in their countries. Once he asked some delegates to narrate the treatment of non-Muslims at the hands of Muslims in their home-towns. They replied:

« ما نعلم إلا وفاء »

“We do not know except fair treatment by fulfilling their pledge”.³¹

The religion of Islam and the Shariah has emphasized a great deal on the rights of the non-Muslims so much so that any Muslim who violates any of their rights is deemed to have committed a grave sin. Many atrocities have been committed in the name of religion in many parts of the world. In Hinduism, for example, if a non-Hindu, whether a Muslim or a Christian, eats in a plate, the plate becomes ‘unholy’ and needs to be washed. Similarly, the blood of a Brahmin is considered superior to the blood of a low-caste Hindu (*Shudra*) who is born to serve the Brahmin.

The world has also seen the differentiation between man and man on the basis of geographical area. In Roman law, if a man belonging to one city-state entered into another city-state, he was captured and treated as a slave. The same is also true if the basis was the colour of skin, is the case in apartheid South Africa today, that only a white man can enjoy certain rights and privileges and a black man cannot even sit and eat with a white man. In all these cases, the basis is merely “an accident of nature and belongs more to the animal instinct than to the nationality of man”.³²

Islam rejects all these man-made distinctions even if they are given religious colouring. The only unifying factor in Islam is the identity of

³⁰Ibid.

³¹Al-Tabarī, *Tarīkh al-Tabarī*, vol. 4, p. 218.

³²Hamīdullah, Muḥammad, *Introduction to Islam*, Kuwait, 1970, p. 169.

ideas which solely depends on the choice of man and not upon the accidents and hazards of birth, race, colour and geographical location. All men are equal in Islam, and even if one does not choose to follow the religion of Islam, he has every right to live in peace and tranquility in a Muslim state or Muslim majority areas as an honoured citizen with all rights and privileges. Neither the religion of Islam nor the Shari'ah can be forced on any one against his will according to the teachings of the Qur'an and the Sunnah of the Prophet.

The main emphasis of the Shari'ah is on the sanctity of a legal due process concept to guarantee life, liberty, property and honour of every human being. Therefore, Muslim law is the fair regulation of the conduct of the faithful in this world and in the world hereafter. *Mutantis Mutandis*, Muslim international law aims at the fair regulation of the Muslim state in its foreign relations. As Dr. Bassouni puts it, 'it is directed also to the individual Muslim state and any non-Muslim state'.³³ The Shari'ah is the unified source of moral precepts and it prevents a duality of moral standards in national versus international affairs because in Islam what sanctions the individual's private conduct also sanctions the individuals' public conduct.

According to the Shari'ah, the entire mankind is one nation and Muslims should think of the rights of all human beings. All the human rights granted by the Shari'ah are meant for the welfare of the world. The human rights under Shari'ah were promulgated 1400 years ago. When one looks at the Articles 1-30 of the Universal Declaration of Human Rights, it seems as if they are the interpretations of the aims and objectives of the Shari'ah. All the rights like right to an honorable life, right to practice any religion of one's choice, right to any employment and choice of work, right to decent wage and giving of the wage even before the perspiration of the worker dries up, right to own property, right to social security, right to obtain basic necessities like food, clothing and shelter are all guaranteed by Shari'ah.

The individual is viewed by Islam both as a single and unique unit and also as a part and parcel of a composite unit, i.e. mankind. It is this sublime concept which is reflected in the way Shari'ah deals with non-Muslims in general and non-Muslims minority in particular. iculr. Freedom of religious Practice, Personal Status matters, citizenship

³³Bassouni, M.C., *Islam: Concept, Law and World Habeas Corpus, Al-Ittihad*, vol. 9, no. 2, spring 1972, p. 20.

and protection of life, liberty and property are only some examples of specific guarantees that have to be afforded to the non-Muslims and the 'minorities' who live under the protective covenant of Islamic state. We shall endeavour to discuss these aspects in the next chapters.

CHAPTER THREE

EQUALITY BEFORE LAW OF MUSLIMS AND NON-MUSLIMS

Security and Equal Justice under Shari'ah:

Every non-Muslim enjoys security and equal justice under Shari'ah. This can only be disturbed when a non-Muslim violates the terms of his pledge. If a Muslim violates the dictates of Shari'ah, he will be punished, like-wise a non-Muslim who violates the terms of his pact or agreement will also be punished.

The protection, rights and security of non-Muslims granted by the Shari'ah stem from the principles of human brotherhood, the sanctity of human blood, honour and dignity of man taught in the Qur'an:

«يا أيها الذين آمنوا كونوا قوامين لله شهداء بالقسط ولا يجرمنكم شنآن قوم على ألا تعدلوا .
اعدلوا هو اقرب للتقوى - واتقوا الله ان الله خبير بما تعملون» .

“O you who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred for others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well acquainted with all that you do”.¹

According to this verse of *Sûrah al-Mā'idah*, to do justice and act righteously in a favourable or neutral state is meritorious enough, but the real test comes when you have to do justice to people who hate you or to whom you have an aversion. But no less is required from you by the higher moral law of the Shari'ah.

About human brotherhood, the Qur'ān says:

¹Qur'an, ch. 5, verse 9.

«يأيتها الناس اتقوا ربكم الذي خلقكم من نفس واحدة وخلق منها زوجها وبث منها رجالا كثيرا ونساء فاتقوا الله الذي تساءلون به والارحام - ان الله كان عليكم رقيبا.»

“O mankind! Be careful of your duty to your Lord who created you from a single soul and from it created its mate and from them twain has spread countless men and women. Be careful of your duties towards Allah in whom you claim (your rights) or one another and the wombs that bore you: for Allah ever watches over you.”²

In the Shari‘ah, no distinction of race, religion, citizenship, economic status or personal capabilities can even obliterate the human rights of a non-Muslim. If any Muslim tries to do so, the Shari‘ah will prescribe redress and the Muslim, if found guilty, will be punished. **Sayyidna ‘Uthman, the third Caliph sent a message to the** **functionaries of his caliphate in the following words:**

“Truly Allah has created creation in right; he accepts nothing but right. Take right and give right, and dwell upon your trust (*amanah*). Do not be the first to violate it and become accomplices of your successors---fulfill your vows and do not oppress the orphan or the ally in treaty relations. Allah is the opponent of him who oppresses them.”

One distinctive feature of the Shari‘ah from any other legal system in the world is that human rights in Shari‘ah have been granted by Allah and not by any legislative assembly or any king or emperor. The rights of non-Muslims granted in the Shari‘ah, therefore, cannot be withdrawn, simply because they are not given by man. No one in the world has the right to abrogate them or withdraw them.³ Any amount of war, hatred or enmity with any nation or community with whom the non-Muslims have racial or linguistic affinity, but once they live among Muslims and are loyal to the Muslim state, the Shari‘ah demands that there must not be even the slightest usurpation of their rights. The warning is sounded by the Holy Qur‘ān to those who do not judge according to what Allah has asked them to judge in the following words of the Qur‘ān:

²Qur‘ān, ch. 4, verse 1

³Cf. Maudūdī, A.A. *Human Rights in Islam*, London, 1976, p. 14.

«ومن لم يحكم بما انزل الله فأولئك هم الكافرون» .

“Those who do not judge by what Allah has sent down are the disbelievers.”⁴

In the following verses, such wrongdoers who do not do justice and change the law of Allah to satisfy their imaginations and passions, including the fair and equitable treatment of the non-Muslims are referred to as ‘the law breakers’ (*Fāsiqūn*)⁵ and ‘those who work against the truth’ (*Zālimūn*).⁶

A Ḥadīth by Imām Mālik shows how a Jew and a Muslim brought a case to Caliph ‘Umar and the Caliph decided in favour of the Jew. But when the Jew declared in delight that it was the ‘just verdict’, ‘Umar was not happy and wanted to find out as to why he said so:

“Sa‘īd bin Musayyib said that a Muslim and a Jew brought a dispute before ‘Umar, and as he considered the Jew to be in the right he pronounced judgement in his favour; but when the Jew said: “I swear by God that you have pronounced a just judgement”, he touched him with the whip and asked him what caused him to know that. The Jew replied “I swear by God that we find in the Torah that no judge judges rightly without having an angel on his right and an angel on his left who direct him and dispose him to what is right; but when abandons the right, they aseend and leave him”.”⁷

Islam has forbidden party spirit, nepotism and favouring one’s tribesman or even a fellow-Muslim when he is doing wrong. The Prophetic Ḥadīth says:

عن وائلة بن أسقع قال : « قلت يا رسول الله ما العصية؟ » قال : « ان تعين قومك على الظلم » .

Wathilah bin al-Asqa reported that he asked the Messenger of Allah what the party-spirit was and he replied: “that you help your people in wrong-doing.”⁸ If a Muslim helps a member

⁴Qur’ān, ch. 5, verse 47.

⁵Ibid, verse 50.

⁶Ibid, verse 48.

⁷Ghāzī, Aḥmad, *Sayings of Muḥammad*, Lahore, 1970, pp. 35-36.

⁸Ḥadīth: Abū Dāūd.

belonging to his community who is oppressing any non-Muslim, he is committing a grave sin according to the above Hadith.

As the Qur'an says, there exists the best model for every Muslim to follow in the life-style of the Prophet (S.A.W.)⁹ In the early days of Islam, a non-Muslim woman used to throw dirt on the Prophet whenever he used to pass by her house. Once she was taken ill and the Prophet did not see her throwing the dirt. He went to her house to enquire as to what had happened to her. In a Hadith reported by Hudhaifah, the Prophet has said:

عن حذيفة قال : قال رسول الله صلى الله عليه وسلم « لا تكونوا امة تقولون ان احسن الناس احسنا وان ظلموا ظلمنا . ولكن وطنوا انفسكم ان احسن الناس تحسنوا وان اساءوا فلا تظلمون » .

“Do not be people without a will of your own saying: If others treat you well, you will also treat well, and if they do wrong, we will also do wrong; But accustom yourselves to do good if people do good and not to do wrong if people do evil”.¹⁰

With this preliminary remark, we shall proceed to examine the treatment of non-Muslims in criminal and civil procedures.

EQUALITY OF TREATMENT IN CRIMINAL PROCEDURE

Muslims and non-Muslims are to be treated as equal before the law. ‘The king can do no wrong’ has no room in Shari’ah. This procedure is followed irrespective of caste and creed. The laws of major crimes are known as *Hudūd*, and those of minor crimes as *Ta’zīr*. The sentences of the major crimes have been prescribed by the Qur’an, itself, while those of the minor crimes have been left entirely to the discretion of the rulers and judges. The major crimes are: (1) Murder, (2) Deceit and Rebellion, (3) Adultery, (4) Theft, (5) Accusation of disproved adultery. The laws of crimes are only concerned with the violation of the principal and fundamental rights of men.

The general principle of punishment is *Qaṣāṣ* or equitable retaliation, but there is the reservation of forgiveness. An individual

⁹Qur’an, ch. 33: 21.

¹⁰Hadith: Tirmidhi.

whose rights have been encroached upon can waive his right of equitable retaliation but the State or its officers cannot do so. In the English law, the right of mercy and pardon goes to the head of a government, but it is quite contrary in Shari'ah. Only the person wronged or oppressed can forgive as Allah Himself delegates the power of forgiveness to the oppressed. Hence all modern governments may emulate this noble example by not interfering with the rights of the oppressed people. The Qur'an says: "And the punishment of evil is the punishment proportionate thereto; but whoso forgives and amends, he will have his reward from Allah."¹¹ Here forgiveness is not neglected, nor practised in such a manner as to make it impracticable. There is in Islam neither the one extreme of tooth for tooth, nor the opposite one of turning the left cheek when the right is slapped or the giving away the cloak to one who has already taken wrongfully the coat of his brother. It is the golden and the beautiful mean that forgiveness may be exercised if it mends the matter and does good to the wrong-doer himself. "It is better to acquit through mistake ten guilty persons than to convict an innocent man."¹²

(a) MURDER (AL-QATL)

Murder is the greatest crime since it violates the rights of fellow-beings. Hence the extreme penalty of law has been prescribed. In other words, there is the sentence of death in the case of culpable homicide. There is one speciality in Islam about this sentence. The heirs of the murdered person may take a sufficient indemnity or blood-money and remit the death penalty of the murdered. The Qur'an says: "O you who believe! Retaliation is prescribed for you in the matter of the murdered person, but if remission is made by anyone of his brother, than blood money shall be paid according to usage, and payment should be made to him in good manner-"There is life for you in the law of retaliation, O men of understanding, that you guard yourselves."¹³ With regard to unintentional murder, there is no capital punishment but only blood wit: "Whosoever kills a believer by mistake, he should free a believer slave and blood money should be paid to his people unless they remit it as alms."¹⁴ If there is doubt in finding out the real culprit, blood-money may be ordered to be paid from the State. Murder of any man irrespective of caste and

¹¹Qur'an, ch. 42:40.

¹²*Mishkāt al-Maṣābiḥ*, ch. 25: Hadith 104.

¹³Qur'an, ch. 2:178.

¹⁴Qur'an, ch. 4:92.

creed in normal times is strictly prohibited. "Whosoever kills anyone, unless it be for man-slaughter or mischief in the land, it is as if were he slew all men."¹⁵

The Prophet said about non-Muslims: "Their property is like our property and their blood is like our blood"¹⁶-Sayyidinā 'Alī said: "The blood of a *Dhimmi* (protected non-Muslim) is like the blood of a Muslim, his goods and chattels are like those of the Muslims." The Prophet said: "Whoso kills a covenanted man shall not receive the odour of Paradise."¹⁷ Whosoever kills intentionally, he will be handed over to the relations of the killed. If they like, they may kill him and if they like, they may take blood-wit. The Prophet said: "Had the inmates of heaven and earth shared in the murder of a believer, Allah would have thrown them all unto the fire".¹⁸

In the following cases, however, murder is lawful:- (1) Murder of a person who had killed another person without any just cause. (2) Murder of a rebel or a rebellious dacoit. (3) Murder of a married person who committed adultery with a woman, or of a married woman with a man. Suicide is a great crime. The Prophet says: "Whoso hurls himself down from a mountain and then commits suicide will be in Hell hurling himself down therein, residing forever. Whoso takes poison and then commits suicide, his poison will remain in his hand, and he will be tasting it in Hell, always residing therein and being accommodated therein forever."¹⁸ The Almighty Allah will say: "My servant has hastened himself to Me and so I made Paradise unlawful for him."²⁰

The following acts, though criminal in appearance, are not liable for compensation - (1) Death, wound or damage caused by quadruped animals. (2) Death, wound or damage sustained during work in mines or under a voluntary labour in wells and other risky places. (3) Death or wound caused by any person in defence of his life or property. (4) Damage or wound sustained while peeping through someone's window or screen without permission. (5) In defence of one's religion or for protection of a family. (6) Death or wound caused to a person who is guilty of constantly speaking ill of the Holy Prophet or casting blasphemous aspersions upon him.

¹⁵Qur'ān, ch. 5:32.

¹⁶Mishkāt al-Maṣābiḥ, ch. 25, Ḥadīth 10.

¹⁷Ibid.

¹⁸Ibid, ch. 25, Ḥadīth 52.

¹⁹Mishkāt al-Maṣābiḥ, ch. 15, Ḥadīth 55.

²⁰Ibid, ch. 25, Ḥadīth 57.

(b) REBELLION AND ARMED ROBBERY (AL-HIRĀBAH)

It is also not less a crime than murder as it invites and causes deaths. The Qur'ān says: "Rebellion is greater than murder."²¹ "Allah prohibits indecency, evil and rebellion."²² The Prophet said: "There is no sin which meet with punishment in this world along with what is in store for him in the next world except rebellion and severance of blood-tie."²³ Such being the strong condemnation against rebellion, extreme penalty of law has been prescribed in extreme cases. The Qur'ān says: "The sentence of those who wage war against Allah and His Apostle and strive to make mischief in the land is only this that they shall be murdered or crucified, or their hands and feet shall be cut off from their opposite sides or they shall be deported. There is disgrace for them in this world and in the next world, they shall have a severe punishment except those who repent before you have them in your power."²⁴

(c) ADULTERY (AL-ZINĀ)

The sentence of adultery has been prescribed by the Qur'ān in the following verse: "The adulteress and the adulterer, flog each of them, giving a hundred stripes."²⁵ The sentence of adultery, if it is committed by a married person, is *Rajm* or stoning to death. The Prophet said: "It is not lawful to take the blood of a Muslim except for either of three things: "Adultery after marriage, infidelity after accepting Islam and murder of a person without any right."²⁶ Shari'ah has taken a very serious view of the moral dereliction of duty and as such prescribed sentence for them from death up to imprisonment. It has not spared the female culprits either. This ordinance alone is a solution of recent increase of abductions, adultery, fornication, debauchery and indiscriminate criminal and indecent assaults on females. The measure seems to be the most severe, but the evil is also the most heinous creating a great disturbance in the society. It has been found that lenient dealings with the criminals of this sort give more encouragement for committing these crimes. No measure short of extreme penalty can stop these offenders. Slight punishment shows indeed very low standard of sexual moral sense of the people. This shows that the

²¹Qur'ān, ch. 2: 217.

²²Qur'ān, ch. 16: 90.

²³Mushkāt al-Masābīh, ch. 2, Hadith 119.

²⁴Qur'ān, ch. 5:33.

²⁵Qur'ān, ch. 24: 20.

²⁶Mishkāt al-Masābīh, ch. 25, Hadith 45.

Prophet had the greatest moral sense in the world and he attached the greatest value to morality. The breach of the greatest trust which is imposed on a man or a woman, the breach of which ruins families, destroys household peace, deprives innocent children of their loving mother, a beloved husband of his dear wife, is not looked upon as seriously as the breach of a few pounds. In societies other than Islam, the females are not at all punished for their willful disrespect of chastity. Let every Government follow the noble example of Shari'ah in this respect, and until the females are punished along with the males, there will be no end to fornication, kidnapping or adultery.

(d) ACCUSATION FOR ADULTERY OR DEFAMATION

Though there is the most severe sentence for fornication, yet a very few cases could have been legally proved as four eye-witnesses are required to establish this crime. If the witnesses failed to establish the crime, each of them will be whipped with 80 stripes. In view of proof necessary to establish such an offence, the utmost secrecy in which these crimes are committed and the absence of any confession of crimes, the Hadd punishment of Shari'ah can hardly be meted out. The Qur'an says: "And those who accuse free women and do not bring four witnesses, flog each of them with 80 stripes and do not admit any evidence from them ever."²⁷

In case of wife's adultery, husband's evidence four times is sufficient together with an invocation of curse upon him if he be a liar. To repel it, the wife must deny it four times together with an invocation of curse for the fifth time upon her if he be truthful. The Qur'an says: "And as for those who accuse their wives, and have no witnesses except themselves, the evidence of one of these should be taken four times, bearing Allah to witness that he is one of the truthful, and in the fifth time that the curse of Allah be on him if he be one of the liars. And it shall avert the sentence from her if she testifies four times bearing Allah to witness that he is one of the liars, and in the fifth time that the wrath of Allah be on her if he be one of the truthful."²⁸

(e) THEFT (AL-SARIQAH)

Theft deprives a man of his hard-earned money and property. Therefore it is an encroachment upon the property of a man without any justifiable reason and causes unrest in the society. Thieves are a menace to a peaceful society and are looked upon with terror. With a

²⁷Qur'an, ch. 24:4.

²⁸Qur'an, ch. 24:6.

view to put them under guard, strict measure has been ordained. The Qur'ān says: "And as for the man who steals and the woman who steals, cut off their hands as a punishment for what they have done, an exemplary punishment from Allah, and Allah is Mighty, Wise. But whoso repents after his transgression and reforms himself, Allah will turn to him mercifully, for Allah is Forgiving, Merciful."²⁹

If theft is committed for the second time, the second hand shall be cut off, and if for the third time, one leg shall be cut off, and if for the fourth time, the other leg shall be cut off.³⁰ Theft which calls for amputation shall be in relation to such property which is in careful protection of a man. There is, however, no cutting of hand in case of theft in the houses of his relatives within the prohibited degrees, nor for theft committed in journey, expedition or Jihād, nor for theft committed by a servant or slave.

(f) AL-TA'ZĪRĀT - MINOR CRIMES

Minor Crimes are called *Ta'zirāt* that is an offence for which punishment has not been prescribed by the Holy Qur'ān. It is entirely left in the hands of the judges, magistrates and legislatures who are at liberty to determine the extent and form of punishment in each case with reference to the circumstances of that case. The sentence may include slight beating, rebuke, imprisonment and imposition of fine.

EVIL PROPAGANDA AGAINST HADD PUNISHMENTS

There is so much evil propaganda against the Islamic *Hadd* punishments that people begin to think that once they come in force they will cause havoc and lead to the wholesale cutting of hands and stoning people to death. This is far from the truth since no nation in the world is full of thieves and criminals. Even in countries like Saudi Arabia and Maldives where Shari'ah law is applied, crimes like theft, murder, rape have virtually ceased to exist. One can take statistics and find out how many hands have been cut off in any given year in those countries. Perhaps, hardly any.

Besides, death sentences are given for various crimes in many countries of the world, and still they are not condemned as barbarous. The countries which had abolished capital punishment have re-introduced it recently. Justice Salahuddeen Ahmad gives the following survey:

²⁹Qur'an, ch. 5:38.

³⁰Cf. *Mishkat al-Masabih*, ch. 25, Hadith 127

In America and Taiwan (China) persons found guilty of traffic in narcotics (aggravated) are sentenced to death.

In Yugoslavia, Russia and Poland, grave crimes against socialised property are punished with death. In Yugoslavia, Vietnam, Spain and Taiwan (China) death sentence is prescribed for offences of aggravated hoarding and unlawful raising of prices and misappropriation of public funds.

In USSR and Poland, persons found guilty of counterfeiting currency notes, and currency speculation are liable to sentence of death.

In the Republic of South Africa, Netherlands, Greece, France, Nigeria and Ivory Coast, death sentence is prescribed for armed robbery (armed burglary).

Ruthlessness practised in the Communist countries for certain acts and offences is well known. Persons are whisked into oblivion for criticism of the government.

Persons condemning Islamic Penal Law for cutting of a hand for a particular kind of theft should wake up their own conscience and condemn persons who threw atom bombs on Nagasaki and Hiroshima and destroyed the entire cities together with millions of people and incapacitated or affected a large number of their population.³¹

Non-Muslims living in Islamic States of the first centuries of Islam were also subject to the same equal treatment as their Muslim counterparts whenever they committed any crime. Justice was properly meted out without any fear or favour. The practical benefits conferred on society by the promulgation of such a law are amply demonstrated in Saudi Arabia and Maldives where the rate of crime has gone down considerably.

SPECIAL PREROGATIVES OF NON-MUSLIMS IN THEIR PERSONAL LAW

In an Islamic state (*Dār al-Islām*), the non-Muslims will be subject to the same Law as Muslims in all their affairs,³² with the exception of their Personal Law in respect of marriages, divorce, inheritance,

³¹Cf. Ahmad, Salahuddeen, *Renewal of the Covenant with Allah, The Journal of Rabetat 'Ālam al-Islāmi*, vol. 5, no. 6, April 1978, p. 14.

³²See Sahnūn bin Sa'īd, *Al-Mudawwanah al-Kubrā*, undated, vol. 4, p. 162 and vol. 8, p. 97; also cf. Ibn Ḥazm, *Al-Muḥalla*, vol. 9, p. 586.

selling of wine, eating of pork and trading in it.³³ The application of Shari'ah to Muslims and non-Muslims alike is to do equal justice to all the citizens of an Islamic state, but the belief and practice of non-Muslims of their religion and religious law in their personal matters is to be strictly adhered to, and no Muslim ruler is empowered to usurp their rights.

In all personal laws, however, the non-Muslims will not be forced to be governed by the Shari'ah law. All their cases will be decided in accordance with the personal law of their own choice. All the laws in respect of marriage, divorce and related matters will not be interfered with by any Muslim ruler. If eating of pork, drinking of wine or marriages regardless of consanguinity etc. are permitted by their religious or customary law, they will not be prohibited from them by the Shari'ah. During the early Muslim Caliphate period, there were many rulers who did not like their non-Muslim subjects drinking wine and eating of pork which are forbidden in the Shari'ah for Muslims. But they were constrained by the learned 'Ulama not to interfere in the matter of personal law of the non-Muslims. Once Caliph 'Umar bin 'Abd al-'Aziz had asked a similar question to the famous Muslim servant, Shaikh Hasan al-Basri, as to why the former Caliphs (Rāshidūn Caliphs) left the non-Muslim *Dhimmi*s free in the matters of marriage regardless of consanguinity and in the matters of drinking wine and eating pork. The Shaikh replied as follows:

“You have only to follow what your predecessors did (according to the Shari'ah). You are not to deviate or innovate.”

But whenever the non-Muslims would opt for Shari'ah in the matter of personal law, the Shari'ah law will apply to them even if the members of their community insist on their being tried according to their personal law.

The cases of non-Muslims are to be decided by no one else but their co-religionists in accordance with their personal, traditional or religious law. The verses 45 - 48 of *Sūrah al-Mā'idah* in the Holy Qur'ān bear the glowing testimony to this fact in respect of the adjudication of non-Muslims according to their religious and personal law. The searching question is asked in the Holy Qur'ān:

«وكيف يحكمونك وعندهم التوراة فيها حكم الله.»

³³For fuller details on these exceptions, see Al-Jassas, *Akhām al-Qur'ān*, Cairo, 1928, vol. 2, p. 460; Al-Shāfi'i, *Al-Umm*, Cairo, 1969, vol. 5, p. 44; Ibn Hazm *Al-Mahalla*, Cairo, 1350 A.H., vol. 10, p. 201 and Al-Kharshi, *Sharh al-Kharshi al-Mukhtasar al-Khalil*, Cairo, 1317 A.H., vol. 3, p. 250.

“But why do they come to you (O Prophet) for decision, when they have their own Law (Torait) before them? Therein is the plain command of Allah”³⁴

The above verse poses a searching question as to the motive of the Jews in bringing their cases for decision to the Messenger of Allah in Medina. They came either to ridicule whatever he said or to deceive him as to facts and snatch a favourable decision which was against equity. At times, if their own law did not suit their selfish interest, they tried to twist it, but the Prophet was inflexible in his justice. When it is merely a trick to catch out the unwary, a just man honourably declines to interfere in a cause submitted to him, as also in a case where the parties are not honestly desirous of justice, but each hopes that some partiality will be shown to it. Therefore, the Qur’anic commandment to the Prophet was as follows:

«فلان جآزك فاحكم بينهم أو اعرض عنهم – وان تعرض عنهم فلن يضروك شيئا ، وان حكمت فاحكم بينهم بالقسط ان الله يحب المقسطين» .

“If they do come to you, either Judge between them, or decline to interfere. If you Judge, Judge in equity between them. For Allah loves those, who Judge in equity.”³⁵

The non-Muslim citizens during the life-time of the Prophet and the Rāshidūn Caliphs were given the judicial autonomy not only in the matters of their personal status but also in civil and penal affairs. The Rashidun Caliphs had delegated many temporal judicial powers to the Christian priests. During the Abbāsīd Caliphate, the Christian Patriarch as well as the Jewish Rabbi and *hakham* were considered to be the highest dignitaries of the Muslim state and the Caliph used to consult them in the affairs of their respective communities.

The Jews of Medina had set up their own religious and educational institution called *Bait al-Midras* during the time of the Prophet. The Jewish and Christian educational institutions were left to their communities to manage their affairs during the Umayyad and the Abbāsīd Caliphates. Muslims, Christians, Jews and Magians had conserved their own modes of dress and social customs. An effort was made in this way to protect the culture of every religious community living in a Muslim State.

³⁴Qur’ān, ch. 5:46.

³⁵Qur’ān, ch. 5:45.

(a) MARRIAGE, DIVORCE AND INHERITANCE

Marriage between a Muslim man and a non-Muslim woman belonging to the *Ahl al-Kitāb* (People of the Book), who are the Jews and the Christians, is permitted in the Shari'ah. Even after the marriage, the woman may chose to observe her faith and celebrate her festivals without any compulsion from the husband. The best example of this type of marriage is given by the Prophet himself. He had married a coptic lady, Māriyah Qibtiyyah, who had given birth to Ibrahim, the Prophet's son who died during his life-time.

In the matter of marriage and divorce, all the marriages and divorces which may be against the Islamic legal system are lawful for the non-Muslims if they are permitted by their respective religious and legal systems. In the personal matters, Shari'ah law will not interfere except when a non-Muslim asks specifically that the Shari'ah law should be applied to him. In the case of a non-Muslim wife, she will continue to enjoy her rights and live as an adherent of her religion and celebrate her religious festivals, which a Muslim wife will not be entitled to. The Qur'anic injunction in respect of marriage with non-Muslim women runs as follows:

«والمحصنات من المؤمنات والمحصنات من الذين أتوا الكتاب من قبلكم إذا اتيمومن أجورهن
محصنين غير مسفحين ولا متخذين أخدان» .

“(Lawful unto you in marriage) are not only chaste women who are believers, but chaste women among the people of the Book, revealed before your time, when you give them their due dowers, and desire chastity, not lewdness, nor secret intrigues.”³⁶

In other words, when a Muslim man marries a woman from *ahl al-Kitāb*, he must give her an economic and moral status, and it must not be actuated merely by motives of lust or physical desire.

In the matter of succession, a Muslim will not inherit the property left behind by his non-Muslim relative, just as a non-Muslim will not be entitled to the right of inheritance of the property left behind by his Muslim relative.

(b) WINE-DRINKING

According to some Ulamā, particularly the *Ahnāf*, even if any punishment is accorded to a non-Muslim who is found drunk it will

³⁶Qur'an, ch. 5:6

not be because of the crime of drinking as it applies to the Muslims who are found drinking. The punishment will only be given for being found intoxicated and drunk. This is the opinion of Ḥassan bin Ziyād and al-Kāsānī, who have based their argument on the view that intoxication is unlawful in almost all the religions³⁷ and that the punishment is given in the public interest to stop the drunkards from creating chaos.

Imām Abū Ḥanīfa says that wine as well as the premises on which it is prepared and sold is a valuable property as far as the non-Muslims are concerned since wine-drinking is not forbidden in their religions.³⁸ We shall examine this issue in greater details while discussing the rights of non-Muslims to their property.

³⁷Al Kāsānī, *Al-Badā'ī' wal-Ṣanā'ī'*, vol. 7, p. 49.

³⁸Abū Zahra, *Al-'Uqūbah*, op. cit. p. 190.

CHAPTER FOUR

EQUALITY AND THE JIZYAH TAX: A MISUNDERSTANDING REMOVED

What is Jizyah?

The word *Jizyah* needs some explanation. There are some writers who have deliberately misinterpreted the Jizyah tax. Even some Muslim scholars feel shy while explaining this tax and often tend to give an apologetic interpretation rather than calling a spade a spade. The wrong impression created by them only gives three alternatives in the Shari'ah for the non-Muslims namely, 'Islam, *Jizyah* tax or the sword' which is wholly untrue. Islam is a missionary religion like some other missionary religions and hence it is a duty of every Muslim to preach it to others in order to establish Peace between man and man and man and his Creator. The sword is not to be used all of a sudden but the Shari'ah requires that all peaceful means of settlement with enemies be exhausted first; and sword is only taken as a last resort. War is only sanctioned by the Shari'ah only in order to repel tyranny and aggression and is to be terminated as soon as aggression is thwarted.

Jizyah, in reality, means a reasonable tax that a non-Muslim citizen is required to pay.

If a Muslim ruler fails to protect the life and property of non-Muslim citizens, he has to return the *Jizyah*. They will pay *Jizyah* just as the Muslims will give an obligatory *Zakāt*, the poor-due. The payment of *Jizyah* will absolve a non-Muslim from the payment of *Zakāt* although he will still enjoy the right to share the *Zakāt* money if he happens to be poor, and needy like any other Muslim. Moreover, he will be absolved from any compulsory military service which hazard a Muslim citizen cannot escape once he is called upon to do so. The amount of *Jizyah* must be reasonable. So that it can easily be paid by non-Muslims. It will be interesting to note that Caliph Uthmān fixed equivalent to one shilling (12 p) per month for the rich, 6 p for the middle class and 3 p for the ordinary people. These destitutes were exempted from payment.

Imam Abu Yusuf, the illustrious pupil of Imam Abū Ḥanīfah, has given some details of the *Jizyah* tax in his famous work *Kitāb al-Kharāj*. The *Jizyah* is to be paid by males only. Women and children are exempted from the payment. The amount of *Jizyah* was to be paid once a year only, and could also pay value instead of cash if they wished to. The very poor people and destitutes who received charity, the blind people and those who were out of work or were chronically sick or crippled, lunatics, the monks and very old people who had no wealth or any source of income were exempted from the payment of the *Jizyah* tax.¹ Prophet Muhammad said that the taxes must not be levied beyond the capacity of any non-Muslim: "Whoever oppresses a non-Muslim subject or taxes him beyond his capacity, then I shall be the opposite party to him in the litigation."²

As we have seen before, the non-Muslim subjects of Islamic state are exempted from any military service and conscription. But if a non-Muslim wishes to render any such service voluntarily, he will be exempted from the payment of *Jizyah* tax.³

The obedience to Shari'ah is a duty to every Muslim and its prescriptions are universal and require submission from all Muslims. Just as a Muslim is bound by Shari'ah and cannot behave as he likes, a non-Muslim citizen must also share in all the activities for the welfare of the state and should not jeopardise the activities launched for the betterment and well being of the state. Just as a Muslim shares rights and obligations with every other Muslim everywhere, regardless of nationality, so does the non-Muslim citizen.

If a Muslim ruler fails to protect the life and property of non-Muslim citizen, he must return the *Jizyah* collected from them. The illustrious example in this regard is that of the Companion Khālīd bin al-Walīd who was given the title of *Saif-Allah*, the sword of Allah, and who was an outstanding military genius of Islam. As the historical records show, Khālīd returned to the Christians of Homs (Emesa) their taxes because he had failed to protect their city since he did not possess the power to repel the attacks of the Christian Byzantine Emperor Heraclous on Homs. Khālīd said to them while:

"We accepted (the *Jizyah*) as a token of your good will and in return for defending you, but (in this), we have failed (you)."⁴

¹ Cf. Imām Abū Yūsuf, *Kitāb al-Kharāj*, pp. 69-72.

² Ibid.

³ Al-Tabarī, Abū J'afar Muhammad bin Javīr, *Tarīkh al-Tabarī*, vol. 1, pp. 2497, 2665.

⁴ Azzām, Abd al-Rahmān, *The Eternal Message of Muhammad*, New York, 1965, p. 62. For further details, see *Mabsūt*, vol. 10, pp. 78-79; also *Fath al-Qadir*, vol. 4, pp. 827828.

Another example is that of Salah al-Din al-Ayyubi, popularly known as Saladin, who returned the Jizyah collected from the Christians of Syria when he was compelled to withdraw from there. The *Jizyah*, it should be borne in mind, is not a right of conquest given by Shari'ah to the victor over the vanquished, but is rather a benefit in exchange for benefit and a compensation for a fulfilled task. Another point of interest in the matter of *Jizyah* is that in lieu of its payment, the non-Muslims will also be exempted from compulsory military duty for the defence of the state against its enemies. This hazard will solely be on the shoulders of Muslims. *Jizyah*, from this point of view, is not only a symbol of loyalty but it is also a contributory compensation for exemption from military service, and that is why it is imposed only on males, capable of military service.

The *Jizyah*, in other words, is a tax levied on non-Muslims mainly as the counterpart of *Zakāt*. As Caliph Ali once pointed out, "We receive *Jizyah* from them to protect their property and their person so that their property becomes as sacred as our own property and their blood like our own blood."⁵

***Jizyah*, according to Imam Muhammad bin Idris al-Shafi'i, is a tax (Daribah)⁶ which is imposed by the Islamic government on non-Muslim citizens in return for their complete safety and protection⁷ both from external and internal threats.**

The *Jizyah* tax is to be accepted from all non-Muslims, whether belonging to *Ahl-al-Kitāb* (People of the Book) like Jews and Christians as well as Zoroastrians, Budhists, Hindus, Saracens, Magians, etc., etc. The Muslim jurists say that all non-Muslims are to be considered as belonging to one and the same category for the purpose of *Jizyah* tax.⁸

The *Jizyah* was neither heavy nor unjust. The *Jizyah* tax during the time of the Prophet amounted to only ten dirhams yearly which represented the expenses of an average family for ten days.

Although non-Muslims were exempted from any military service, yet if any non-Muslim did participate in the defense of his country, he was exempted from paying the *Jizyah* for the whole year. Similarly, if a non-Muslim rendered an important service to the cause of the country, he used to be exempted from paying *Jizyah* for the life time

⁵Ibn Qudāmah, *Al-Mughni*, vol. 8, p. 445; also cf. Al-Kasani, *Al-Badaiwal Sanā'i*, vol. 7, p. 111.

⁶Al-Shāfi'i, *Al-Umm*, vol. 4, p. 120.

⁷Al-Māwardi, *Al-Ahkām al-Sultāniyyah*, p. 143.

⁸Al-Shaybāni, *Al-Asl*, vol. 11, p. 141-142; also al-Sarakhsi, *Sharh Siyar al-Kibar*, vol. 4, p. 139; *Al-Mabsūt*, vol. 9, p. 119.

which almost equated any meritorious service to the military service required of every able bodied Muslim in the days when tribal wars, were too frequent and the pagan Arabs were out and out to give a crushing blow to Islam and Muslims. During the Caliphate of Umar bin al-Khaṭāb, the second caliph of Islam, a non-Muslim Egyptian laid before the Muslim government the project of clearing and re-digging the ancient canal named *Nahr Amīr al-Muminīn* from Cairo down to the Red-Sea which would facilitate the transportation of food-stuff from Egypt to Medina, the capital. Sayyidnā ‘Umar exempted him from *Jizyah* payment throughout his life.

JIZYAH IS OBLIGATORY BUT SYMBOLIC

The theological question that arises is whether or not the imposition of *Jizyah* tax is obligatory on the part of Muslim rulers over the non-Muslim subjects in the modern time? The answer is that it will depend squarely on the circumstances of the country concerned. If the oil-rich Muslim countries like Saudi Arabia can do away with a number of taxes which are payable by the citizens in other countries they may as well exempt the *Jizyah*. *Jizyah* is a tax like any other tax and can be waived whenever it is deemed necessary. The Holy Prophet himself expressed the wish of exempting all the Copts from paying the *Jizyah* tax. When the Prophet’s son Ibrahim, the son by his coptic wife Māriyah Qitiyyah, died the Prophet said: “Had Ibrahim survived, I would have exempted all the Copts from paying the *Jizyah* tax as a mark of esteem for the mother of Ibrāhīm.” Had the *Jizyah* been obligatory to be imposed on non-Muslims, the Prophet would have never expressed his desire of exempting all the Copts.

When we cast a glance at the history of Islam, we come across many rulers who had abolished the payment of *Jizyah* by non-Muslims. Islam, in the modern world, has spread in every nook and corner of the world and many Muslims live in non-Muslim countries. If Muslim states impose *Jizyah* today, there will be an ugly reaction from non-Muslims towards the Muslims living in secular and non-Muslim states. I do not think that there exists any Muslim state or kingdom where *Jizyah* is collected from non-Muslim citizens. But it is an irony of fate that although *Jizyah* is not imposed on any non-Muslim in any country of the world, the critics of Shariāh still dwell upon the *Jizyah* which they consider as a discrimination against the non-Muslims.

Whenever a truly ideal Islamic state comes into existence, the *Jizyah* will be an obligatory imposition as it is commanded by Allah in the Holy Qur’ān in the following verse:

« قاتلوا الذين لا يؤمنون بالله ولا باليوم الآخر ولا يحرمون ما حرم الله ورسوله ولا يدينون دين الحق من الذين اتوا الكتاب حتى يعطوا الجزية عن يد وهم صاغرون . »

“Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which has been forbidden by Allah and His Messenger, nor acknowledge the Religion of Truth, of the People of the Book, until they pay the *Jizyah* with willing submission, and feel themselves subdued.”⁹

Jizyah, as we have seen before, is only imposed on those who do not accept the Religion of Islam, but are willing to live under the protection of Islam, and thus are tacitly willing to submit to its ideals being enforced in the Muslim state, while enjoying their personal liberty of conscience. Since there is no amount fixed for it, it was merely symbolic¹⁰ — an acknowledgement that those whose religion was tolerated, would not in their own turn interfere with the preaching and progress of Islam. As a token of willing submission, there is no fixed amount of *Jizyah* as such, and the amount is decided by the ruling authorities of the time¹¹ with fair play and justice. Although Imām al-Shāfiī suggests one Dinar per year (about 40p sterling) but adds that it would differ according to the time of ease or difficulty and the capacity of those on whom it is imposed.¹²

At times, one begins to wonder after cataloging the rights of non-Muslims under Shariah and comparing them with the parallel rights granted to Muslims that in many respects the non-Muslims are much better off. As for example, like the non-Muslims paying the *Jizyah* tax, Muslims pay an obligatory state-tax called Zakat not merely 2½ on their surplus property by male, female and young or old Muslims but also on their herds of animals like cow, camel, sheep and goat. The non-Muslims do not have to pay any tax on their animals.¹³

Similarly, *al-Ribā* (usury) is forbidden in Shari‘ah. But the non-Muslims are not debarred from lending money on interest and doing

⁹Qur‘ān, ch. 9, verse 29.

¹⁰Yūsuf Ali, *The Holy Qur‘an: Text Translation and Commentary*, Beirut, 1968, p. 447 (note 1281).

¹¹Al-Ṭūsī, Abū Ja‘far Muḥammad bin al-Hasan, *Masāil al-Khilāf*, Government printers of Iran (undated), vol. 2, p. 200.

¹²*Al-Shāfiī, Al-Umm*, vol. 4, p. 122.

¹³Al-Sarakhsī, *Sharḥ Siyar al-Kabīr*, vol. IV, p. 293.

any trade which involves interest. The *Jizyah* tax, therefore, seems to be a technical device for procuring social equilibrium in the communities subject to different systems of law among the Muslim and non-Muslim subjects of any Muslim state.¹⁴

RESPONSIBILITIES OF MUSLIMS AFTER ACCEPTING *JIZYAH*

Without a strong practical character, any religion is likely to pass into mere idealism, and it will cease to exercise influence on the practical life of man. The precepts of Islam, which inculcate duties towards the Creator and duties towards man, are based on that deep knowledge of human nature. Justice to one and all is the keynote of the precepts of Islam. The following incident will clearly show as to how the early Muslims and the Rāshidūn Caliphs were mindful of their responsibilities towards all their subjects, Muslims as well as non-Muslims. Once Caliph 'Umar was passing along a street where he saw someone asking for charity (begging). He was old and blind. 'Umar tapped his shoulder from behind and said: "To which community do you belong to?" He replied: "I am a Jew." He (the Caliph) asked: "And what has constrained you to the condition I see you in?" He replied: "I have to pay the *Jizyah* and I am poor and old." On hearing this Caliph 'Umar took him by the hand and led him to his own house and gave him something from his private coffers. Then he sent word to the cashier of the *Bait al-Māl* (Public Treasury) "Look after him and people like him. By Allah, we should never be doing justice if we eat out of his youth and leave him deserted in his old age. Caliph 'Umar then exempted him from the payment of the *Jizyah* tax and also exempted others like him."¹⁵

The famous Muslim General Khālid bin al-Walīd informed Caliph Abūbakr immediately on the conquest of Al-Hirah as to how he implemented the *Jizyah* tax and exempted the poor, old and handicapped non-Muslims from the payment of *Jizyah*. He said: "I counted the male population. They were seven thousand. On further examination, I found that one thousand of them were permanently sick and invalid. So I excluded them from the imposition of *Jizyah*; and those susceptible of the tax thus remained six thousand people. . . I have accorded them that any old man who could no more earn his livelihood for his weakness, or who should otherwise be afflicted by a

¹⁴Cf. Hamidullah, M., *Muslim Conduct of State*, Lahore, 1973, p. 115.

¹⁵Cf. Imām Abū Yūsuf, *Kitāb al-Kharāj*, pp. 69-72.

calamity, or one who was rich but became poor to the extent that he requires the charity of his co-religionists, I shall exonerate him from the *Jizyah* and he and his family will be supported by the Muslim treasury (*Bail al-Māl*) so long as he lives in Muslim territory.”¹⁶

¹⁶Abū Yūsuf, *Kitāb al-Kharāj*, pp. 84-85.

CHAPTER FIVE

FREEDOMS OF NON-MUSLIMS UNDER SHARĪAH

Before we proceed to discuss the various freedoms of non-Muslims provided for under Shariah, it is essential that we examine the notion of the Islamic view of freedom. One of the most familiar themes of the Divine Lordship in Islamic theology, is that which relates to human destiny in time and history. According to the Qur'ān, the Lord of the Universe, its Creator, Master and Sovereign created Man and bestowed upon him the faculties of learning, speaking, understanding and discerning right from wrong and good from evil. He granted him freedom of choice, freedom of will, freedom of action and gave him authority to acquire and make use of the things round him. In short, he granted him a kind of autonomy and appointed him as His *Khalīfah*¹, (vicegerent) on the Earth and instructed him to live in accordance with His Guidance:

“Behold, thy Lord said to the angels, ‘I will create a vicegerent on earth.’ They said: ‘wilt Thou place therein one who will make mischief therein and shed blood? Whilst we do celebrate Thy praises and glorify Thy holy name?’” He said: “I know what ye know not.”²

‘Allāma Yūsuf ‘Alī has beautifully explained this verse.³ It would seem that the angels, though holy and pure, and educated with power from Allah, represented only one side of creation, we may imagine them without passion or emotion. If man was to be endued with emotions, those emotions could lead him to the highest or drag him to the lowest depths. The power of will or the exercising of choice would have to go with them, in rightly order that man might steer his own bark. This power of will when used alright gave man, to some extent, a mastery over his own fortunes and over nature, thus bringing him nearer to the Allah-like nature which has supreme mastery and will.

¹Qur'an, ch. 2:30.

²Ibid.

³A. Yusuf 'Ali, *The Holy Qur'ān: Text Translation and Commentary*, Beirut, 1968, p. 24.

The angels had no independent wills of their own, their perfection in other ways reflected Allah's perfection but could not raise them to the dignity of vicegerency (Khalīfa). The perfect vicegerent, therefore, is he who has the power of initiative himself, but whose independent action in their one-sidedness saw only the mischief consequent on the misuse of the emotion nature by man: perhaps they also, being without emotions, did not understand the whole of Allah's nature, which gives and asks for love. In humility and time devotion to Allah, they remonstrate. We must not imagine the least tinge of jealousy as they are without emotion. This mystery of love being above them, they are told; "I know what ye know not."⁴

MAN'S FREEDOM AND HIS RESPONSIBILITIES: THE TRUST (AMĀNAT) FROM ALLAH

At the time when the Lord of the Universe appointed Man and His vicegerent, he gave him such bounties that he cannot even count them. As a matter of fact, the universe is really to serve man.

"And if you were to count the gifts of Allah, you would not be able to number them. Surely Allah is Forgiving, Compassionate."⁵

"And He has made the night and the day subject to an order for your use, so also the sun and the moon. And the stars are subject to an order by His command. In these there are signs for those who are able to understand."⁶ "Do you not consider that Allah has made all that is in the heavenly bodies and all that is in this earth subject to an order (or law) for your use, and He has given you life full of blessings that are apparent and that those are hidden?"⁷

Everything that Allah created is for the service of man. He has put a use in everything on this earth for him. Even the heavenly bodies are of some use to him in every moment of their existence. The choice is now of man as to how he is going to dispose of these free services of all great things. Is he going to say (and he is given the choice) that these things belong to him and have not been given to him? This is what Fir'aun (Pharaoh) did and set himself up as Allah. Allah has given man the gift of knowledge. What is he going to do with it? Allah has given him health. How is he going to make use of it? He is also

⁴Qur'ān, ch. 2:30.

⁵The Qur'ān 14: 84.

⁶Qur'ān, 16:12.

⁷Qur'ān, 31:30

given the gift of making beautiful things and doing beautiful deeds what is he going to do with these gifts? Is he going to be proud? Above all these, Allah has given man the gift of becoming conscious of His own Being. Is man going to become conscious of Allah or is he going to deny him? The choice lies with man. Allah intended a very high destiny for man, and placed him in his uncorrupted state even above the angels, but in his corruption he made himself even lower than the beasts. What is it that makes man potentially so high and noble? The differentiating quality which Allah gave man was that Allah breathed something of His own spirit into him.⁸ This meant that man was given a limited choice of good and evil, and that he was made capable of Forbearance, Love, and Mercy and thus he is a microcosm of that great Macrocosm.

That man should possess some of the attributes of the Allah-like attributes (in however small a degree of will). Forbearance, Love and Mercy, brought him nearer to Allah than was possible for any other creature of Allah. This was part of Allah's will and plan, but little did man realize then what a tremendous task he was undertaking or question himself whether he would be equal to it.

“Verily We offered present of the Trust (*Amānat*) on heavens and the earth and the mountains, but they refused to bear it and shrank therefore and man carried it.”⁹

The Trust mentioned in this passage of the Qur'ān is obviously the trust of free choice and accountability. It is a moral responsibility, which is the human sense of answerableness for all acts of thought and conduct. Thus, its first and foremost prerequisite is freedom of choice, which is the real function of a human being as a moral agent.

The Trust is something given to a person, over which he has the power of disposition. He is expected to use it as directed or expected, but he has the power to use it otherwise. There is no trust if the trustee has no power, and the trust implies that the giver of the trust believes and expects that the trustee would use it according to the wish of the creator of the trust, and not otherwise.

The heavens, the earth and the mountains i.e. the other creatures of Allah, besides man, refused to undertake the Trust of responsibility, and may be imagined as happy without a choice of good or evil being given through their will. Man was too audacious and ignorant to realize this, and the result has been that man as a race has been disrupted: the evil ones have betrayed the Trust and brought

⁸Qur'ān, ch. 33: 72.

⁹Qur'ān, ch. 56:2, 56:88.

punishment on themselves, though the good have been able to rise far above the next of creation to be the *Muqarrabīn*,¹⁰ the nearest ones to Allah or *Auliyāʾ-Allah*, the Friends of Allah.

“Read these what thine own deeds have written, today thyself by thyself shall be judged.”¹¹

The doctrine of personal responsibility is insisted on further in another *Sūrah* of the *Qurʾān*, and the basis of ethics is shown to be our own good or evil as furthering or obstructing our highest development:

“Who receiveth guidance, receiveth it for his own benefit; who goeth astray doth so to his own loss; no bearer of burdens can bear the burden of another.”¹²

The doctrine of vicarious atonement is condemned in Islam. Salvation for the wicked cannot be attained by the punishment of the innocent. One man cannot bear the burden of another: that would be unjust. Every man must bear his own personal responsibility. There are a number of *Qurʾānic* verses in which human responsibility and the freedom of human will are laid down in emphatic terms:

“And whosoever gets to himself a sin, gets it solely on his own responsibility.”¹³

“And let alone those who make a sport and a mockery of their religion, and whom this present world has deluded, and thereby bring to remembrance that any soul perished for what it has got to itself.”¹⁴

“When they commit a deed of shame they say: we have found that our father did so, and Allah obliges us to do it; say thou: surely, Allah requires not shameful doing.”¹⁵

“They did injustice to themselves.”¹⁶

“Yonder will every soul experience that which it has bargained for.”¹⁷

¹⁰*Qurʾān*, ch. 17:14.

¹¹*Qurʾān*, ch. 17: 15.

¹²*Qurʾān*, ch. 4:111.

¹³*Qurʾān*, ch. 6:70.

¹⁴*Qurʾān*, ch. 7:28.

¹⁵*Qurʾān*, ch. 9:70.

¹⁶*ibid*, ch. 10: 30.

¹⁷*ibid*, ch. 10: 108.

“So then, whosoever goes astray, he himself bears the responsibility of wandering.”¹⁸

MAN AND HIS KNOWLEDGE

We have already seen that Allah has preferred Man above the rest of His creation. He has imparted knowledge to man which He did not even give to angels. What can this knowledge be? It is selfconsciousness. It is a gift from Allah, the Creator. The Qur’ānic description runs as follows:

“And Allah taught Ādam all the names of all things (quality of things) and then presented them to the angels and said:

“Let me know the names (qualities) of these if you speak the truth.”

“They replied: Glory to Thee! We have no knowledge except what Thou has taught us. Though art surely All-Knowing, All-Wise.”

“He (Allah) said: ‘O Ādam, Let these (angels) know what are their qualities.’ ”

“So when he (Ādam) had informed them about their names (qualitie Or Jaws), Allah said: ‘Did I not tell you that I know the secrets o. eaven and earth, I know what ye reveal and what ye conceal.’ ”¹⁹

The words ‘names of all things’ mean inner nature and qualities of things according to the commentators of the Qur’an, and ‘things’ also include feelings. The particular qualities or feelings which were outside the nature of angels were put by Allah into the nature of man. Man was thus able to understand love and thus plan and initiate as become the high office and status of the *Khalifa* of Allah (vicegerent of Allah). The angels acknowledged this. Man thus has spare of divine knowledge from Allah and has many qualities which are latent or which he may wish to suppress or conceal, to his own detriment. Since Allah has infused into man’s heart the knowledge of things and their qualities and properties, he has been charged with great responsibilities.

The word ‘knowledge’ occurs at least eighty times in the Qur’ān and its derivatives about eight hundred times. Whilst the other attributes of mind such as ‘understanding’, ‘thinking’, ‘judging’, ‘collocating’, ‘reasoning’, etc. and their derivatives are numerous.

¹⁸Ibid, ch. 2: 31 — 33.

¹⁹Qur’ān, ch. 33: 72.

This shows the importance that the Qur'an gives to the knowledge in man.

MAN'S FREEDOM OF ACTION AND THE GRACE OF ALLAH

Man, inspite of all his greatness, still is sometime *Zalum* and *Jahul*²⁰ — i.e. unjust and ignorant. In his ignorance and haste he sometimes mistakes evil for good, and desires what he should not have. The wise and instructed soul has patience and does not put its own desires above the wisdom of Allah. He receives with contentment the favours of Allah, and prays to be rightly guided in his desires and petitions (Du'ā). In such cases, Allah's Grace comes to his assistance. Where man did his best, he won through by Allah's Grace, even though man's Best was but a poor Good. Similarly, those who remain firm and exercise properly the freedom of option given them, choosing Forbearance, Love and Mercy will receive the aid of Allah's Grace. Their faults and weaknesses will be cured and they will be worthy of their exalted destiny for Allah is Oft-Returning and Most Merciful.²¹

Through His Grace, Allah gives every chance to the wicked to repent. When wickedness gets so rampant that punishment becomes inevitable, even then Allah's Mercy and Justice act together. Those who are gifted from Allah — it may be with wealth or position, or it may be with talents and opportunities — are expected to understand their responsibilities. They are also given a definite order and warning. If they still freely transgress, there is no further room for argument. They cannot plead that they were ignorant. The command of the Lord is proved against them, and its application is called for beyond doubt. It is only then that their punishment is completed.

Allah's Grace is not something that one earns. It may be purely an undeserved favour which may descend on seemingly an undeserving person. In this case Allah alone knows His secret and we cannot probe Allah's Mind. "Do not be disappointed from the mercy of Allah",²² is the Qur'anic gospel of hope. In the evolution of Islamic *Umma* in Medina, and as the Islamic nation grew in numbers, Allah's mercy was stressed again and again. Allah is *Rahmān* and *Rahīm*— was the repeated teaching of the Qur'an. After the credal statement of Islam, the most frequently used dictum in the Muslim world is *Bismillāh-al-Rahman al-Rahim* which is spoken at the beginning of

²⁰Ibid ch. 33: 72.

²¹Qur'an, ch. 2.

²²Qur'an, ch. 7, verse 169.

every work that a Muslim does and also occurs at the beginning of 114 Sūrah's of the Qur'ān. It contains these Attributes of hope and mercy. Allah is *Rahmān*, the loose translation of which would be the Beneficent since there is no other English word that can better convey the idea of *Rahmān*. It means that Allah is merciful to all, believers as well as non-believers—even to those who abuse Him day and night. It is in other words a great favour from Allah which is, so to say, a favour undeserved judging by their faith and action.

Allah's plan is to use the human will to cooperate in understanding Him and His relations to us.

"If it has been Allah's plan, they should have not taken false gods." This Qur'ānic verse is an answer to an objector who might say: "If He is All-Powerful, why does sin or evil exist in the world? Can He not destroy it?" He certainly can, but His plan is different. If it had been Allah's plan or will not to grant the limited Free-Will that He has granted man, His omnipotence could have made all mankind alike: all would then have Faith, but that Faith would have reflected no merit on them. In the actual world as it is, man has been endowed with various faculties and capacities, so that he should strive and explore, and bring himself into harmony with Allah's Will. Hence faith becomes a moral achievement, and to resist faith becomes a sin. As a complementary proposition, men of faith must not be impatient or angry if they have to contend against unfaith, and most important of all, they must guard against the temptation of forcing Faith, i.e. imposing it on others by physical compulsion, or any other form of compulsion such as social pressure or inducement, held out by wealth or position, or other adventitious advantages. Forced Faith is no faith. They should strive spiritually and let Allah's plan work as He wills.

SELF-DISCIPLINE IS NOT AN ENCROACHMENT ON MAN'S FREEDOM

Forgiveness (*Maghfirah*) can only be achieved through the grace of Allah, yet it would be a mere mockery to ask for forgiveness without accepting and practicing forgiveness and goodness, in one's life. This requires unrelenting self-discipline in the service of Allah. Self-discipline in this wise is not to be misconstrued as lack of human freedom, but it is one's ability to resist those choices which are attractive but contrary to the accepted standards of religion. It also includes the ability to implement what one ought to do against what one can do.

Thus it is self-discipline which gives shape to human maturity. Like a jug of water when it is spilled carelessly on the floor, it splashes in

every direction shapelessly. But the same water, if it is put in a beautiful bottle, it gives shape to the water. Similarly, the carelessness of the worldly was a source of continued bewilderment to the Prophet Muhammad, to all earlier Prophets of Islam as to most religious minds. The Prophet of Allah came to guide such careless people unto the right path, but some people chose for themselves the vanities of this world, as the Qur'ān says:

“They chose for (themselves) the vanities of this world saying (for excuse): “Everything will be forgiven us.” (Even so), if similar vanities came their way, they would (again) seize them.”²³

The Prophet Muhammad referred to self-discipline as the *Jihād al Akbar* that is the Greatest *Jihād*. Once he was returning to Medina from a battle of defense against the Quraishites along with his Companions (sahaba). He said, “We are returning from a smaller *Jihād* to the Greatest *Jihād*.” Medina, where they were going to was a peaceful place. There were no enemies and no war. The Messenger of Allah (*Rasūl-Allah*) really meant the *Jihād* against one’s carnal desires as the greatest *Jihād*. The Prophets (*Anbiya*) and Messengers (*Mursalūn*) of Allah were sent to mankind as a divine gift through Allah’s grace to explain their mission, but their credentials were doubted.

“The (people) said: Ye are only men like ourselves, and (Allah) Most Gracious sends no sort of revelation: Ye do nothing but lie.”²⁴

These divine messengers explained their mission and role that they were going to play under the direction of Allah. They were not going to use force, but their method of introducing reforms was by persuading people to refrain from evil-deeds. They said:

“And our duty is only to proclaim the clear message.”²⁵

The brilliant commentator of the Qur’ān, ‘Abdullāh Yūsuf ‘Alī writes while explaining this verse in his commentary:

“Then they (the Prophets) proceed to explain what their mission is. It is not to force them but to convince them. It is to proclaim openly and clearly Allah’s will, which they (the people) were

²³Qur’ān, ch. 36, verse 15; cf. Acts XIV. 15, where Paul and Barabas say, in the city of Lystra near the modern Konia: “we are men with like passions with you, and preach unto you that you should turn from these vanities. . .”

²⁴Qur’ān, ch. 36, verse 17.

²⁵A. Yūsuf ‘Alī: *The Holy Qur’ān*, Beirut 1968, p. 1173.

breaking, to denounce their sins and to show them the better path. If they were obstinate, it was their own loss. If they were rebellious against Allah, the punishments (these they deserved) rested with Allah."²⁶

The Qur'ānic view on this is expressed clearly in the following verse:

"He who follows the guidance of the Apostle, follows the guidance of Allah: But if any one turns away, we have not sent thee to watch over their evil-deeds."²⁷

In other words, all that the Apostle did was to preach, guide, instruct, and show the way, — not to drive people to good or to detect all that was evil. That is not Allah's plan, which trains and disciplines the human will. The Apostle's duty then is to convey the Message of Allah, in all the ways of persuasion that are open to him. If men perversely turn away, they are not disobeying him but they are disobeying Allah. Similarly, those who follow the guidance are not obliging the Messenger: they are merely fulfilling their own responsibility. The Qur'ān further stresses the idea of freedom in the words of Allah which teaches the Prophet to declare:

"If they charge thee (Prophet) with falsehood, say (Prophet): "My work to me, and yours to you! Ye are free from responsibility for what I do, and I am free from responsibility for what ye do!"²⁸

MAN'S FREEDOM AND THE NOTION OF ORIGINAL SIN

Islam does not believe in the doctrine of original sin. It is not Adam's sin that a child inherits and manifests at birth. Every child that is born is sinless and the sins of the fathers are also not visited upon the children. It is only when the child grows in age, that he becomes aware of his surroundings and then turns towards good or evil through the handiwork and temptations of satan, "the open enemy of man."²⁹ In Christianity, it is the sin that dwells within one's self that drives one to error and evil. "I can will what is right, but I cannot do it. For I do not do the good I want, but the evil I do not want is what I do. Now if I do what I do not want, it is no longer I that do it, but sin which dwells within me."³⁰

²⁶Qur'ān, ch. 26, verse 80.

²⁷Qur'ān, ch. 10, verse 41.

²⁸Qur'ān, ch. 2: 168-208

²⁹Romans 7: 18-20.

³⁰Reported by Abū Saïd al-Khudrī: Bukhārī.

Islam denies emphatically the concept of original sin and hereditary depravity. Every child is born pure and true; every departure in after-life from the path of truth and rectitude is due to imperfect education. Prophet Muḥammad's saying makes it more clear: "Every man is born religiously constituted; it is his parents who make him afterwards a Jew, a Christian, or a Sabaeen like as ye take up the beast at its birth — do ye find upon it any mutilation, until ye yourselves mutilate it? In other words good or evil is not created in man at birth. Infants have no positive moral character. Those who die in early life Allah best knows what would have been their conduct if they had lived to maturity. Every human being, it is related in the Hadith of the Prophet,³¹ 'has two inclinations, — one prompting him to good and impelling him thereto, and the other prompting him to evil and thereto impelling him; but the assistance of Allah is nigh, and he who asks the help of Allah in contending with the evil promptings of his own heart obtains it.'"

Allah, out of His Wisdom, has made man's actions to depend on his own initiative, and He has also put obstacles in the race which man has to run. But He has pointed the way to get over those obstacles and He also promises help as long as man is willing to be helped. Why Allah has done, what has He done, is beyond our knowledge. To ask that question is to assert our superiority over Him and may lead to our denial of Him. He may tell us all about it when we have run the race, have had our thousands of falls and yet not denied Him; but before the race is finished the asking of this question in a defiant spirit is rebellion against Allah. Man has the freedom, let each one do according to his light of knowledge and will. The question is between each individual and his soul.

It is unfortunate that there prevails a common view that Muslims are traditionally 'fatalistic'. It is true that there appeared in Islam a group of people called the Jabarites as we have seen before, who held a strict doctrine of predestination. They also quoted the Qur'ānic passages and interpreted them to suit their purpose. It was an extremist group of thinkers who rendered man merely a helpless creature who was shackled and put into prison and that everything was destined to him. They thus tried to make Allah a participator in every sin they committed and called Allah a tyrant for punishing them for their sin. On the other extreme were the 'Free thinkers' and 'libertarians' like Al-Nazzām who not only made man an absolute author of his actions but also imposed necessity on Allah that Allah could not do anything either in this world or the next whatever was

³¹Reported by Abū Saïd al-Khudrī: Bukhārī.

not for the creatures good and in accordance with strict justice and thus Allah had no power to do anything evil. This meant evidently that Allah's personality was made to fast vanish behind an absolute law of right. Some of the champions of absolute liberty (Tafwīd) did not mean just freedom of human will, but affirm such a principle would destroy all the foundation of morality, and give to all human beings absolute license in the indulgence of their animal propensities. If each individual is given an absolute discretion to choose what is right or wrong, no sanction, no law can have any force. Man has no capacity of turning evil into good, or sin into virtue. The Ash'arite and the Māturidite scholars presented the intermediate orthodox in Islamic point of view on the position of man's freedom. Their point of view is more logical. Allah is just (Ādil): therefore, justice ('Adl) of Allah requires man's freedom and man has in him the consciousness of his freedom. A man will be rewarded or punished according to his free choice of action (af'āl al-ikhtiyāriyya).³² Man 'acquires' for himself the action according to his consciousness of free will. The Qur'ānic evidence is quite clear in this regard:

"Allah does not change a peoples' condition until they change their own heart's thoughts."³³

These savants supported the moderate Islamic view of human freedom as the middle path between the two extremes (amr bayn al amrain). Man is not the absolute master of his actions nor is he bound by fixed immutable decrees. Our actions, they mentioned, depended partly on our free-will and partly on causes outside us. We are free to wish and to act in a particular manner; but our will is always restrained by exterior causes. These causes spring from the general laws of nature; Allah alone knows their sequences. Sa'd al-Dīn al-Taftā-zānī said in his commentary on the Articles: "It is not possible to render this free choice by any expression, but the creature finds a difference between the movement of his hand when he moves it himself and when the wind moves it against his will."

Man's true freedom is the realization or emergence of his true self. It still involves detailing the notion of freedom from that of his absolute discretion and choice. In accordance with this definition of freedom, one's freedom can easily be infringed by a tyrant. According to a Ḥadīth of the Prophet Muhammad, a Muslim should exert and launch a Jihād of reform against such a ruler. Justice is the right of every individual and he is free to demand it. The Prophet says: "The

³²Al-Nasafi, *Aqā'id*, edited with commentary of Al-Taftāzānī, Cairo 1321, p. 97

³³Qur'ān, ch. 13: 12.

best Jihād is to speak up the truth in the face of a tyrannical ruler.”³⁴

Although one’s freedom can be infringed by the tyranny of a ruler, it is not infringed by an earthquake, hurricane, famine, crop-failure, disease, death or anything beyond human control. These are the mysteries of Allah and we are capable of reading Allah’s mind nor of questioning them about His actions. According to Abū Ḥāmid al-Ghazzālī, ‘injustice can be predicated only of one who deals wrongly with things he does not own. This cannot be said of Allah.’

The Caliph ‘Alī bin Abī Tālib’s words of wisdom gives the balanced Islamic belief on Man’s freedom. He was once asked to explain the meaning of Qadā (predestination) and Qadar (power). He said: ‘The first (i.e. Qadā) means obedience to the commandments of Allah and avoidance of sin: the latter (i.e. Qadar), the ability to live a holy life, and to do that which brings one nearer to Allah and to shun that which throws him away from his perfection say nor that man is compelled, for that is attribution of tyranny to Allah; not say that man has absolute discretion — rather that we are furthered by His help and grace in our endeavours to act righteously, and we transgress because of our neglect (of his commandments).’³⁵

Freedom for a Muslim is to free himself to lead a good moral life, follow the guidelines of the Prophet Muḥammad and all the great teachers. It is to teach and practice what the Qur’ān calls Amr bil maruf (virtuous commands) and refrain from Munkar (the bad practices). The famous Muslim scholar and theologian Imām Abū Ḥāmid al-Ghazzālī (d. 1111 A.D.) called it Freedom from Error³⁶ (Al-Munqidh min al-Ḍalāl)? and thus submitting one’s self to Allah by fulfilling one’s obligations to Allah (Ḥuqūq Allāh) and one’s responsibilities to the people of Allah (Ḥuqūq al ‘Ibād) which is the true meaning of the word Islam.

With the above discourse in mind, we shall now discuss various freedoms enjoyed by non-Muslims under shariāh.

FREEDOM OF RELIGION

The Islamic view of freedom of religion and religious worship is expressed in the Holy Qur’ān in the following verse of *Sūrah al-Baqarah*:

« لا اكراه في الدين قد تبين الرشد من الغي . »

³⁴Abū Dāūd, Tirmidhī and Ibn Mājah.

³⁵Qur’ān, ch. 2: 86, 134, 141, 225, 281, 286; 3: 25, 161, 6: 70, 157, 13: 33, 14: 51, 10: 27, 30: 41, 40: 17, 52: 30, 45: 22, 74: 38.

³⁶This is the name of his book in which he has shown how he freed himself of the erroneous beliefs and practices.

“Let there be no compulsion in religion: Truth stands out clear from Error.”³⁷

Compulsion in the matter of religious worship is incompatible with the religion of Islam because every religion depends upon faith and will, and these would be meaningless if they are induced by force. According to Islamic belief, Truth and Error have been so clearly shown up by the Mercy of Allah that there should be no doubt in the minds of any person of good-will as to the fundamentals of faith. Besides, the protection of Allah is continuous, and His plan is always to lead us from the depths of darkness into the clearest light. Hence no compulsion is necessary to change people by force from one religion to the other. The only thing permitted is to invite people to the right path as Islam happens to be a missionary religion and anybody can accept it irrespective of race, creed, colour or national traditions and customs.

If it had been the plan or will of Allah to grant the limited free-will that He has granted to mankind, He could have made the entire mankind alike. In that case, all would have had certain faith, but that faith would have reflected no merit in them. In the actual world, as it is, man has been endowed with various faculties and capacities, so that he should strive and explore, and bring himself into harmony with Allah’s will. The Qur’ān emphasizes on this point:

« لو شاء ربك لآمن من في الارض كلهم جميعا – أفأنت تكره الناس حتى يكونوا مؤمنين ».

“If it had been thy Lord’s Will, they would all have believed, all who are on earth. Will you then compel mankind against their will to believe?”³⁸

According to Islamic principles, man of Faith must not be impatient or angry if they have to contend against Unfaith, and most important of all, they must guard against the temptation of forcing Faith by imposing it on others by physical compulsion, or any other forms of compulsion such as social pressures, or inducements held out by wealth or position, or other adventitious advantages. They should only preach and teach their religion (*Dāwah*) striving spiritually and let Allah’s plan work as He wills. The Prophet (s.a.w.) was asked by Allah to declare:

³⁷Qur’ān, ch. 2: 256.

³⁸Qur’ān, ch. 10: 99.

«قل يا أيها الكافرون لا أعبد ما تعبدون ولا أنتم عبدون ما أعبد ولا أنا عابد ما عبدتم ولا أنتم
عبدون ما أعبد لكم دينكم ولي دين.»

“Say: O you that reject Faith!
I worship not that you worship.
Nor will you worship that which I worship:
And I will not worship that which you have been wont to
worship.
Nor will you worship that which I worship
To you be your way and to me mine.”³⁹

THE MESSAGE OF TOLERANCE

The Prophet witnessed with his Allah-guided outlook that in the name of religion the most horrible atrocities were perpetrated by the followers of different religions in the world, and that the different existing religions were deadly against one another. In order to promote good will and mutual respect for one another’s religion, he taught that every prophet was sent by Allah, that every true religious book was revealed and that they all came to preach the one and the same religion of Allah and that the different revealed religions, as seen in the world, are but different facets of the same jewel. To establish peace, the Shari’ah of Islam went so far as to lay down article of faith to believe in all the religious personalities (the prophets) of the world and all the religious scriptures. The Qur’ān therefore says:— “And they say: Be Jews or Christians, then you will be on the right course. Say: Nay, rather the religion of Ibrahim, the upright one, and he was not one of the polytheists. Say, we believe in Allah, and in that which has been revealed to us and in that which was revealed to Ibrahim and Ismail and Ishaq and Yaqub and the tribes and in that which was given to Mūsā and Isā, and in that which was given to all the prophets from the Lord. We do not make any distinction between any of them and to Him do we submit.”⁴⁰

In order to cement peace firmly and surely, Islam proposed to make a League of Faiths on the universal precept as in the Qur’ān — “Come to an equitable proposition between us and you that we shall not serve any but Allah, that we shall not associate aught with him and

³⁹Qur’ān, ch. 109: 1-6.

⁴⁰Qur’ān, ch. 2: 136

that some of us shall not take others as lords besides Allah."⁴¹

In order that the nationalities of the world can harmonize with one another, Islam laid down a principle of the greatest magnitude and established true democracy in the world and removed all distinctions between man and man, wherever he came from and to whatever nationalities he belonged to. It is this: "The most honourable of you is he who is the most Allah-fearing of you."⁴² So all distinctions of birth, pedigree, wealth, and power were banished and the foundation stone of honour was laid on piety and fear of Allah.

In order to achieve peace among the different communities, Islam preached against the abusing of even idols and other objects of worship of other peoples — "Do not abuse those whom they worship besides Allah."⁴³

The Muslims were directed to do justice to the people irrespective of colour, creed and faith: "Let not hatred of a people incite you to act unjustly." To prevent the slightest ruffle in the atmosphere of peace, even laughing was prohibited: "Let not one people laugh at another, perchance they may be better than they."⁴⁴

Lastly, there is no forcible conversion to Islam, thereby giving a sense of relief to the non-Muslims in the Muslim-governed countries: "There is no compulsion in religion"⁴⁵ and "For you, there is your religion and for me my religion."⁴⁶

In the sixth year of Hijrah, the Prophet, acting on these guiding principles, granted to the monks of St. Catherine, near Mount Sinai,⁴⁷ and to all Christians, a charter which is a monument of great administrative ability and statesmanship. The terms are briefly as follows:— (1) They were not to be unfairly taxed, (2) no bishop was to be driven out of his bishopric, (3) no Christian was to be forced to reject his religion, (4) no monk was to be expelled from his monastery, (5) no pilgrim was to be detained from his pilgrimage, (6) nor were the Christian churches to be pulled down for the sake of building mosques or houses for Muslims, (7) Christian women married to Muslims were to enjoy their own religion, (8) if the Christians should

⁴¹Qur'ān, ch. 13: 63.

⁴²Qur'ān, ch. 49: 13.

⁴³Qur'ān, ch. 6: 109.

⁴⁴Qur'ān, ch. 49: 11.

⁴⁵Qur'ān, ch.

⁴⁶Qur'ān, ch. 109: 6.

⁴⁷Ibn Hishām, *Sīrah*, p. 718.

stand in need of assistance for the repair of their churches or any other matter pertaining to their religion, the Muslims were to assist them.”

Freedom of religion and religious worship of the non-Muslims was also clearly spelled out in the Prophet’s treaty with the Jews of Medina: “To Muslims their religion and to Jews their religion. . . that there would be benevolence and justice. . . The Jews are a community in alliance with (according to Ibn Hishām) and a community forming part of the believers (according to Abū ‘Uбайд).”⁴⁸

In the lifetime of the Prophet, the Muslims also entered into a treaty with the Christians of Najrān in Yemen. The Prophet granted ‘he Christians not only the security of the person and property of the inhabitants, but had also left the entire authority to nominate their bishops and priests to the community itself.⁴⁹

It has been made a duty of every Muslim ruler to protect the places of worship of non-Muslims and respect their religious relics. If enemies from other countries attacked the non-Muslims of any denomination in an Islamic State, the Muslims were asked to fight in order to protect the freedom of religious worship of the non-Muslims. The Qur’ān says:

«أذن للذين يقاتلون بأنهم ظلموا ، وإن الله على نصرهم لقدير – الذين اخرجوا من ديارهم بغير حق إلا أن يقولوا : ربنا الله ، ولولا دفع الناس بعضهم ببعض لهدمت صوامع وبيع و صلوات ومساجد يذكر فيها اسم الله كثيرا .»

“Permission to fight is given to those against whom war is made, because they have been wronged and Allah indeed has power to help those who have been driven out from their homes unjustly only because they said: “Our Lord is God.” And if Allah did not repel some men by means of others, there would surely have been pulled down monasteries and churches and

⁴⁸See Hamidullah, *Introduction to Islam*, I.I.F.S.O. publication (undated), Kuwait, p. 171.

⁴⁹For details see Balādhuri, *Futūḥ al-Baldān*, tr. Hitti, Beirut, 1966, pp. 98-105; also see Ameer ‘Alī, *The Spirit of Islam*, London 1922, p. 273. Ameer ‘Alī has called in exclamation while commenting on the Treaty of Najrān: “Has any conquering race of faith given to its subject nationalities a better guarantee than is to be found in the words of the Prophet?”

synagogues and mosques, wherein the name of Allah is often commemorated.”⁵⁰

The Prophet’s city-state of Medina provides us with an excellent example of the just treatment meted out to non-Muslims. ‘Umar, the second Caliph, granted full freedom of religion to the Christian population of Ilya as recorded in the following words of the famous historian, Al-Tabari:

“They were granted safety of their lives, their property, their churches, their crosses and all their religious relics. No one would ever destroy their Churches or decrease any portion of it or desecrate their crosses or confiscate their property or hate them for their religion or harm any one of their followers. No Jew will be allowed to live with them in Ilya (due to age old hostility between the Jews and Christians during that period.)”⁵¹

Likewise, Khālīd bin al-Walīd, the famous companion of the Prophet (s.a.w.) had granted the following freedom to the people of ‘Anat:

“They (the Christians) may blow their *Nāqūs* at any time they pleased either during the day or night except at the time of the five daily prayers of the Muslims (living in that area so as not to disturb them while they offered their prayers.) They might, if they liked, take out the processions of their crosses during their religious festivals.”⁵²

The practical example of fair treatment of non-Muslims in the matter of their religion was given by Caliph ‘Umar himself when he visited Jerusalem. Upon entering Jerusalem, ‘Umar went straight to the Temple of David where he offered his *Ṣalāt* under Prophet Dāūd’s Arch. Then he visited the biggest Christian Church in the company of the priest. In the meantime, time for the next prayer came. The priest asked him to say his prayer at the Church. The priest was taken aback and was most surprised when ‘Umar expressed his wishes not to. ‘Umar hastened to explain: “If I do pray at the church, I am afraid the Muslims may, one day make this an excuse for taking over the church

⁵⁰Qur’ān, ch. 22 (Ḥajj): -39.40.

⁵¹Al-Ṭabarī, *Tarīkh al-Ṭabarī*, vol. 3, p. 609.

⁵²Abū Yūsuf, *Kitāb al-Kharāj*, p. 146.

from you." When the priest heard the explanation, he admired the Caliph and Muslims."⁵³

Another example recorded in the history of the Umayyad dynasty is that of Caliph Walīd bin 'Abdul-Malik who had forcibly annexed a portion of a Christian cathedral into a mosque in Damascus. Later, when 'Umar bin 'Abd-al-'Azīz became a Caliph, the Christians reported of this injustice to him. 'Umar wrote to his functionaries to pull down the portion of the mosque which once belonged to the cathedral and the land was handed over to the Christians.⁵⁵

There have been reported a large number of cases in many Muslim countries in the later centuries which show the spirit of justice of the Muslim jurists and the 'Ulamā advising rulers against any injustice done to the non-Muslims. When Walid bin Yazīd was fearing a Roman attack, he exiled the Cypriot *Dhimīs* to Syria. The jurists as well as the Muslim public strongly condemned this action as an un-Islamic treatment meted out to the *Dhimīs*. His son Yazīd bin Walīd had to succumb to the opposition of the 'ulamā and the public and sent them back to Cyprus.

The non-Muslims have every right under the Sharīah to keep their own languages and customs, to open their own schools and colleges and to be visited by missionaries of their own faith from the Christendom.⁵⁵ They are free to do missionary activities and to propagate their faith. In the history of Islam, the Muslims have never interfered with the religion of the subject non-Muslims, and if there are few examples of intolerance, they should be attributed to individual human weaknesses as they abound among all religious groups. But there have never been incidents "like the inquisition or the fires of Smithfield on the contrary a number of small Christian sects, called by the larger sects heretical, which would inevitably have been exterminated if left to the tender mercies of the larger sects whose power prevailed in Christendom, were protected and preserved until today by the power of Islam."⁵⁶

The history has witnessed that innumerable monasteries, with a wealth of treasure of which the worth has been calculated at not less than hundred million sterling, enjoyed the benefits of the Holy

⁵³Hashim, A.S. *Al-Khulafā al-Rāshidūn*, Maryland, 1955, p. 36. ¶

⁵⁴Balādhurī, *Futūh al-Buldān*, p. 132.

⁵⁵Pickethall, Marmaduke, *Cultural Side of Islam*, Lahore, 1976, p. 116.

⁵⁶ibid, p. 113.

Prophet's Charters to the monks of Sinai and were religiously respected by Muslims. The various sects of Christians were represented in the Council of the Muslim Turkish Empire by their patriarchs, on the provincial and district councils by their bishops, in the village council by their priests, whose word was always taken without question on things which were the sole concern of the Christian community. In countries like India, the generous lands and donations were given by the Muslim Moghul Emperors for the purpose of building and restoring the Hindu temples. Even Aurangzeb, who is so much criticised for his religious zeal, gave '*Jāgirs*' (landed property) for the maintenance of temples.

Marmaduke Pickthall quotes a recent example showing the Islamic attitude towards non-Muslim citizens. In 1908, the Arabic congregation of the Greek Orthodox Church in the church of the Holy Sepulchre, or Church of the Resurrection as it is locally called, rebelled against the tyranny of the monks of the adjoining convent of St. George. The Convent was extremely rich, and the large parts of its revenues were derived from lands which had been made over to it by the ancestors of the Arabic congregation for security at a time when property was insecure, relying on the well known Muslim reverence for religious foundations. The income was to be paid to the depositors by their descendants, after deducting something for the convent. No income had been paid to anybody by the monks for more than a century, and the congregation now demanded that at least a part of that ill-gotten wealth should be spent on education of the community. The patriarch sided with the congregation; but was captured by the monks, who kept him prisoner. The congregation tried to storm the convent, and the amiable monks poured vitriol down upon the faces of the congregation. The congregation appealed to the Turkish government, which secured the release of patriarch and some concessions for the congregation, but could not make the monks disgorge any part of their wealth because of the immunities secured to monasteries by the Shari'ah law of Islam. What made the congregation more bitter was the fact that certain Christians, who in old days, had made their property over to the Masjid al-Aqṣā in Jerusalem for security, receiving income yearly from it even then.⁵⁷

It is interesting to note that all the old and famous Churches of Cairo, were according to Al-Maqrīzī, built during the Islamic period.⁵⁸ As for example the famous church 'Mar Marcus' in Alexandria was

⁵⁷Pickthall, Marmaduke, *Cultural Side of Islam*, op. cit. pp. 114-115.

⁵⁸Al-Maqrīzī, *Al-Khatat*, cf. Al-Qardāwī, *Ghayr al-Muslimin fil Mujama' al-Islamī*, Cairo, 1977, p. 21.

built between 39-56 A.H.⁵⁹ Similarly, the first church in Fustat, old Cairo, was built between 48-68 A.H.⁶⁰ The Muslim rulers did not stop non-Muslims from building the places of worship of their respective religions. Muslim rulers even provided them with facilities in building and preserving churches and synagogues.

The liberty of conscience and religion is so much emphasised in the Sharia'ah that if a non-Muslim minor is taken as a prisoner of war along with his parents, the child still has the right to continue the religion of his fore-father, even if his parents **die later**.⁶¹ The rights of a *Dhimmi* minor is fully protected in this **regard**.

Muslims have also been commanded not to abuse or speak ill of the non-Muslim religious leaders or saintly persons. Likewise, every Muslim is **asked** not to say anything insulting to other religions. The Islamic state where Muslim happens to be in overwhelming majority shall not interfere with the personal rights of the non-Muslims. They will have full freedom of conscience and belief and will be at **complete** liberty to perform their religious rituals and celebrate their religious festivals and ceremonies. Even when hostility breaks out between a Muslim and a non-Muslim state, and if Muslims have victoriously entered a town inhabited by non-Muslims, they have no right to confiscate their places of worship. Most of the early conquests were made by Muslims in the period of Caliph 'Umar, the second Caliph of Islam. Muslims went in **different** countries far and wide and there is not a single example of any place of worship belonging to another religion being ever desecrated or ruined. "All such places of worship were left as they were. They were neither razed to the ground nor were the conquered deprived of their goods and property."⁶²

Once a dead body was carried by group of people and passed by the Prophet and his companions. The Prophet immediately stood up in respect. The companions of the Prophet said: "It is a bier of a Jew." The Prophet replied: "Is it not a soul?" The idea behind this teaching of the Prophet is that every human being while dead or alive must be respected, no matter whatever is his religion, colour of skin or sex.

There cannot be a better example of tolerance than that of Caliph 'Umar who was stabbed by a non-Muslim named Abū Lu'lū, a Zoroastrian and the fire-worshipper. The Caliph was then lying on his death-bed due to very severe wound. He admonished people around

⁵⁹Al-Qardāwī, op. cit., p. 21.

⁶⁰ibid.

⁶¹See al-Sharakhṣī, *Sharḥ al-Siyar al-Kabir*, vol. 4, pp. 369, 372.

⁶²Cf. Abū Yūsuf, *Kitāb al-Kharāj*.

him in respect of the rights of non-Muslims in the following words:

«أوصى الخليفة من بعدي باهل الذمة خيرا . ان يوفى بعهدهم وان يقاتل من ورائهم . والا يكلفهم فوق طاقتهم» .

“Admonish whosoever becomes a Caliph after me concerning the fair treatment of the non-Muslims. He must fulfil his pledge of protection towards them, and should fight for their rights and should not take more work from them beyond their capacity.”⁶³

The fair treatment (*al-Birr*) of the non-Muslims has been very well defined by the Jurist Shihāb al-Dīn al-Qarāfi in the following words:

“The fair treatment consists of showing kindness to their weak and helping their poor and destitute, and feeding their hungry, clothing their naked, and uttering kind words to them — from the position of grace and mercy and *not* from the position of fear and disgrace — and removing their hardship as their neighbours if you have power to remove it, praying for their guidance so that they can become the happy and fortunate people, giving them good advice in all their affairs — the affairs of this world and the next world — and looking after their interest in their absence. If anyone hurts them and deprives them of their property of family, possessions and their rights, you should help them by removing their persecution and make sure to restore all their rights back to them.”⁶⁴

The Shari‘ah emphasises on giving due respect to the rights of non-Muslims working in an Islamic organisation. A Jew will be given free time on Saturday since he believes that it is Sabbath day and he should not work. The Hanbali jurists opine that they should be exempted from work on Sabbath day basing their argument on the Hadith narrated by al-Nasāi and al-Tirmidhi:

«وانتم يهود عليكم خاصة الا تعدوا في السبت» .

“And you are Jew. It is incumbent that you should not transgress the regulations of the Sabbath Day.”

Similarly, the Christians will enjoy the same privilege and will be allowed to go to their churches on Sunday.

⁶³Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*; also cf. Al-Baihaqī, *Sunan*, vol. 9, p. 206.

⁶⁴Al-Qarāfi, Shihāb al-Dīn (al-Malīki), *Al-Furūg*, vol. 3, p. 15.

MERCY (RAHMAH) AS THE GUIDING PRINCIPLE

Prophet Muḥammad was sent as 'a Mercy to the world.'⁶⁵ And hence the fundamental principle of legislation in the message of Allah to the Prophet is mercy to one and all. Whenever the Muslim or non-Muslim nations lost this ideal of mercy, they became a plague on earth. Whenever such people appeared, Allah replaced them by others. Even Arab Muslims in the tenth and eleventh centuries became oppressive on fellow Muslims. As a result, hordes of Arab nomads such as Hilal and Sulaiman tribes migrated to North Africa and began their century-long feud with the Berber Zanāta tribe. Then Allah raised the Ottoman Turks who inherited the mercy Allah had removed from the hearts of the Arabs. As long as they kept the ideal of *Rahmah* (mercy) as the guiding principle, they thrived. The Muslim Turks not only ruled the lands of the Arabs but also dominated large areas of Central and Eastern Europe when they had come as the *Khalīfa-Allāh* on earth, their hearts filled with mercy ordained by the Qur'an. They conquered to the gates of Vienna not because of their superior equipments or numbers, but because of their sense of justice and mercy which paved their way as had happened with their early Arab predecessors. They remained masters of earth as long as they ruled with the Shari'ah and the sense of justice preached by Islam. There were eminent Shari'ah jurists who checked the rulers whenever they fell short of the required standard of justice and fair play. One can see this from glowing example of the Turkish Sultān Selim I who ruled the Ottoman Empire from 1512 to 1521 once he conceived the unIslamic idea of uniting the religion and language of the state by force. The Shaikh al-Islām, the head of the Shari'ah, and the Muslim jurists opposed the idea saying that Islam provided for respect for the rights of Christian subjects and the display of mercy towards them. The Sultān had to abandon the scheme.

The annals of history point out to the fact that the same degree of religious freedom as granted by Shari'ah to the non-Muslims living in an Islamic State were non-existent in the history of other religions. When one thinks of the Christian onslaught of Muslims of Spain after their long rule of about eight centuries, and demolition and confiscation of their mosque buildings and then changing them into churches, forcing Muslims to renounce their religion or leave Spain, one realises the blessings of Muslim rule in countries like India, Balkh and Bukhara, China and Indonesia and many other parts of the world.

When we cast a glance on the present day world of ours. Muslims and Christians suffer a great deal of atrocities in Soviet Russia,

⁶⁵Qur'an, ch. 21, verse 107.

Yugoslavia, China and other communist countries. Muslims in these countries cannot carry out their religious duties freely. They cannot build their places of worship, nor can they go for Hajj or organise their religious institutions. Let alone the differences between various religions, what is happening in Northern Ireland is an eye-opener for every right-thinking person. The Christians are at daggers drawn with their religious counterparts who speak the same language, belong to the same race and have the same skin of colour. Not a day passes without some ghastly incident in which some innocent passersby are killed or stained due to the animosity between Protestants and Roman Catholics, although Christianity emphatically teaches love and peace.

CHAPTER SIX

NON-MUSLIMS RIGHT TO PERSON UNDER SHARĪ'AH

Right to Life:

The position of Sharī'ah in respect of right to life and person of a non-Muslim is unmistakable. Human blood is sacred and is not to be spilt in vain. When nobody has a right to give life, no one possesses the right to take away any life, even if it is his own. The Qur'ān says:

« ولا تقتلوا النفس التي حرم الله الا بالحق » .

“Take not life which Allah has made sacred, except by way of justice and law.”¹

In *Sūrah al-Mā'idah*, Allah's injunction on murder is as follows:

“That if any one slew a person—unless it be for murder or for spreading mischief in the land—it would be as if he slew the whole people: and if anyone saved a life it would be as if he saved the life of the whole people.”²

The above verses clearly show that life of a Muslim or a non-Muslim is equally precious and his blood is as sacred as that of a Muslim. According to the Muslim jurists, if a Muslim kills a *Dhimmi*, retribution and restitution will have to be made just as it happens in the case of a Muslim's murder. We have such an example in the life time of the Prophet. A Muslim killed a *Dhimmi*, the Prophet immediately ordered the execution of Muslim and said: “I am responsible for obtaining redress for the weak persons.”³ The Prophet's example was followed by the Rāshidūn Caliphs. Umar, the second Caliph, strongly reproached and reprimanded one of his

¹Qur'ān, ch. 6, verse 151.

²Qur'ān, ch. 5, verse 32.

³Shaukānī, Mohammad bin Ali Muḥammad, *Nail al-Awtār*, Cairo (undated), vol. 7, p. 154.

greatest generals, Amr bin al-'Ās, whose son had brought harm upon a Christian member in Egypt. 'Umar said: "O Amr, would you enslave a human being born to be free?" It should be noted that 'Amr bin al-'Ās was that great general who subdued the Nile valley and the Berbers of North Africa in 642 A.D.

The other caliphs followed the suit. Caliph 'Uthmān, the third Caliph, was dauntless when he ordered for execution of his predecessor's son 'Ubaid-Allāh bin 'Umar because he was reported to have killed two *Dhimmīs*, Hurmuzan, the murderer of his father and the daughter of Abū Lulu under the impression that they were involved in the conspiracy of murdering his father.

Another glowing example of the protection of non-Muslim's person is recorded during the period of 'Alī, the fourth Rashidun Caliph. A Muslim killed a *Dhimmī* and the case was brought to 'Ali, who ordered for the execution of the Muslim who was proven guilty. The brother of the deceased *Dhimmī* received blood-money (*Diyah*) and forgave the Muslim. When 'Ali heard of this, he was not satisfied as he thought that perhaps Muslims had threatened the *Dhimmī* and through duress, he did not want the execution. Later, the brother of the deceased assured 'Ali that it was not the case and that he had received blood-money and forgiven the Muslim. 'Alī was then satisfied but still remarked: "Whosoever is our *Dhimmī*, his blood is as sacred as our own and his property is as inviolable as our own property."⁴

There are a number of such examples recorded in Islamic history, but these few would suffice our purpose. It should be borne in mind that the same punishment and compensation will apply for an intentional or unintentional murder of a *Dhimmī* as that of a Muslim under the Shari'ah.

The right of a non-Muslim to his person and property is also mentioned in the following Ḥadīth contained in *Ṣaḥīḥ al-Bukhārī*:

عن عبد الله بن عمر قال : قال رسول الله صلى الله عليه وسلم « من قتل معاهدا لم يرح رائحة الجنة » .

" 'Abdallah bin Amr reported. Allah's Messenger (s.a.w.) as saying: 'If any one kills a covenanted man (any one who belongs to a non-Muslim community with whom a treaty of peace has been made, or a member of protected communities) he will not experience the fragrance of paradise.' "

⁴ Maudūdī, Abul Ālā, *Islamic Law and Constitution*. Karachi, 1969, p. 273.

عن ابن عمر قال : قال رسول الله صلى الله عليه وسلم « لن يزال المؤمن في فسحة من دينه ما لم يصب دما حراما » .

'Ibn Umar has also reported from the Messenger of Allah who said: "A believer will continue to find ample scope in his religion as long as he does not kill anyone unlawfully."

The golden Islamic principle on which rests the ideal of justice and obedience to the Divine law is the Ḥadīth of the Prophet reported by Al-Nawās bin Sam'ān which goes as under:

عن النواس بن سمعان قال : قال رسول الله صلى الله عليه وسلم « لا طاعة لمخلوق في معصية الله » .

"Al-Nawās bin Sam'ān reported Allah's Messenger (s.a.w.) as saying: "A creature is not to be obeyed when it involves disobedience to the Creator."

According to the above Ḥadīth, no matter how powerful is the ruler, he is not to be obeyed if he orders to do anything against the principles of justice as contained in the Qur'ān and the Sunnah. The same applies to any one in authority (*Ullil-Amr*) who demands obedience in the matter of those rights and responsibilities spelled out in the Shari'ah. Similarly, any legislative assembly which passes a law which is against the fundamental beliefs and practices of the religion of Islam are not to be obeyed since the supreme allegiance a Muslim owes is to nobody else but Allah. The Qur'ān and the Sunnah have granted the rights of non-Muslims which no Muslim ruler or any legislative assembly in any Muslim country has any right to temper with. Supposing a war is declared by a Muslim country with a neighbouring non-Muslim country, the Shari'ah stipulates that the non-Muslims living in a Muslim country are to be fully protected even if those fighting in the neighbouring country happen to be their blood-relatives and follow the same faith.

The *Ḥadd* punishment ordained by Allah for every believer can never increase or decrease in case of any given crime. Even the *Qādi* (judge) cannot substitute one punishment for another. The punishment in the Shari'ah does not change from an individual to an individual nor from a Muslim to a non-Muslims⁵ But there are differences of opinion of the Muslim jurists in the following three

⁵Awdah, 'Abdul Qādir, *Al-Tashrī' al-Janāi al-Islāmī*, Cairo, 1968 (1388 A.H.), vol. 1, p. 339.

cases:

1. An Intentional murder (*al-Qatl al-'Amad*)
2. Fornication (*al-Zinā*)
3. Slander (*al-Qadhaf*)

For intentional murder, the Shari'ah stipulates that punishment should be in the form of an equitable retaliation (*al-Qaṣās*), but Imām Mālik, Imām Shāfi'ī and Imām Aḥmad bin Hanbal say that if a Muslim kills a non-Muslim intentionally, there is no *Qaṣās*. They base their opinion on the Ḥadīth of the Prophet which says:

«ألا لا يقتل مسلم كافر» .

“Beware, a Muslim should not be killed for a Kafir.”

Imām Abū Ḥanīfah takes a different view altogether and says that if a Muslim kills a *Dhimmī*, there would be *Qaṣās* because he interpretes the word *kafir* in the above Ḥadīth to mean 'one who is not covenanted' but a *Dhimmī* is one who is covenanted and hence there should be *Qaṣās* if there is going to be fair play and justice.

In the matter of adultery, there is difference of opinion about the punishment as long as an unmarried person is concerned, whether he happens to be a Muslim or a non-Muslim. The punishment will be through flogging the adulterer. But the jurists differ when the adulterers happen to be married. According to Imām Abū Ḥanīfah, a married non-Muslim adulterer should not be stoned to death as this sort of punishment will only apply to a Muslim married man who committed adultery. The reason Imām Abū Ḥanīfah gives is that in order to be married from the point of view of Shari'ah one must be a Muslim. Therefore, one of the conditions of being married (*muḥsin*) is that one should be a Muslim. A non-Muslim (*Dhimmī*) is not a *Muḥsin* and hence his punishment will be through flogging (*al-Jild*) only. Imām Mālik, Imām Shāfi'ī and Imām Aḥmad, on the contrary, believe that 'Islam' is not a condition for *Ihsan*, and hence a Muslim adulterer and a non-Muslim adulterer will have the same punishment, i.e. stoning to death (*al-Rajam*). The difference of opinion arises out of the different interpretations of the word *Ihsan*.

The same argument stands in the matter of slander (*al-Qadhaf*) of the married woman (*al-Muḥsināt*). According to Imām Abu Hanifah, since 'Islam' is a condition for '*Ihsān*', a Muslim slanderer will receive the *Hadd* punishment which is eighty lashes and a non-Muslim slanderer will be punished by *Ta'zir* which is usually lesser punishment as compared to *Hadd* punishment. This again is a matter of interpretation of certain terms.

If the two views are taken together it seems that in the matter of

adultery a Muslim will have harsher punishment than his non-Muslim counterpart, while in the case of murder, a non-Muslim will have harsher punishment than a Muslim.

If a Muslim kills a non-Muslim intentionally and it is proved, the *Hadd* punishment of *Qaṣās* (equitable retaliation) will apply, and the Muslim will be put to death unless the relatives may forgive him by accepting the blood-money (*Diyah*). The same law will apply to a non-Muslim who kills a Muslim. The eminent jurists like Abū Hanīfah, al-Nawawī and Ibn Abī-Laylā have given the following reasonings why the Shari'ah grants the same right to a non-Muslim in the matter of *Qaṣās*:

1. The non-Muslim is believed to be as innocent as a Muslim. If he is killed wrongfully, his blood and the blood of a Muslim is of the same value.
2. Justice towards the non-Muslims is of primary importance in Shari'ah as the Prophet himself has said in this regard:

« من آذى ذمياً فأنا خصمه يوم القيامة ».

“Whosoever injures a non-Muslim, I shall rise as a complainant on his behalf on the Day of Judgement.”

When the Prophet himself rises as a complainant against some one, there certainly will be a grave punishment for him. It can be deduced then that there is the right of *Qaṣās* if a Muslim wrongfully kills a non-Muslim. Absence of equitable relation means siding on the side of sin and tyranny which is against the spirit of Islam.

3. The Qur'ānic text “O you faithful, *Qaṣās* is made obligatory on you in the matter of killing” makes an important duty for every believer to render just and equitable retaliation to whomsoever it is due without any distinction between a Muslim and a non-Muslim.
4. If a Muslim steals the property of a non-Muslim, the *hadd* punishment will be applicable to him and his hand will be cut off after due process of law. In the matter of murder, it is more important to apply the same principle and implement the *Qaṣās* and the Muslim should also be killed for his crime unless he is forgiven by the acceptance of *Diyah* by the family of the non-Muslims.
5. It is reported of the Prophet (s.a.w.) that he ordered the *Qaṣās* on the day of Khybar and a Muslim was put to death for killing a non-Muslim.⁶

⁶For fuller discussion on the subject, cf. Abū Zahrah, Muḥammad, *Al-Jarīma wal Uqūbah fil-Fiqh al-Islāmī*, Dār al-Fikr al-'Arabī, undated, pp. 401-404.

When the holy Prophet (s.a.w.) sent Khālīd bin al-Walīd to Yemen for preaching Islam, he gave him strict instructions that no force should be used. He stayed there for six months but nobody paid any attention to him. Khālīd was basically a soldier and not a preacher and teacher. Then 'Alī was sent for the same mission, and the entire country accepted Islam. Later Khālīd was sent to the tribe of Banī Judhaimah on the same mission and some killing was reported. When the Prophet heard of this, he stood up facing the Ka'bah: "O Allah, I have nothing to do with what Khalid has done." Then he sent 'Ali to that tribe who paid *Diyah* not only for every person killed but also their dogs which were killed in the encounter.⁷

Off all precious things in the world is the life of a man from Islamic point of view. All the laws concerning *Hadd* punishments and *Ta'zir* were revealed a few years after the Hijrah of the Prophet from Mecca to Medina. But the injunction about the sanctity of human life was revealed while he was still in Mecca.

«ولا تقتلوا النفس التي حرم الله إلا بالحق ومن قتل مظلوما فقد جعلنا لوليه سلطانا فلا يسرف في القتل انه كان منصورا» .

"Do not kill a soul which is made unlawful for you except for a valid cause. One who is killed unlawfully, we have authorized his guardian (to Qaṣāṣ). He should not overdo in Qaṣāṣ, i.e. *equitable retaliation*."

Some of the laws concerning *Qaṣāṣ* did prevail in Arabia even before the advent of Islam. The Jews who enjoyed a respectable position then, had the injunction of the Torah in respect of *Hadd* punishment and *Ta'zir* but due to love of discipline and moral laxity, they were not applied. When the Prophet went to Medina, the legal cases were referred to him and he decided them generally according to the injunctions (*aḥkām*) contained in the Torah.⁸

The verses of equitable retaliation (*Qaṣāṣ*) were revealed in Medina after the Battle of Badr when the Muslims emerged powerful and the city state of Medina had come into existence. The Jews had established their own system of retaliation or receiving blood money partly because of the local tribal influence before the spread of Islam. The two most important Jewish tribes living in Medina then were Banū Qureizah and Banū Nadīr. If any Qureizi killed any Nadīrī, the

⁷Numānī, Shiblī, *Sīrat al-Nabī*, vol. 1, Azamgarh, 1375 A.H., p. 22-23.

⁸Numānī, Shiblī, *Sīrat al-Nabī*, vol. 1, Azamgarh 1375 A.H., p. 134.

Banū Nadīr used to kill the Qureizī instantly as a retaliation. But if any Nadīri happened to kill any Qureizī, he was given the blood money of one hundred date palm stalks. This was complete deviation from the Mosaic law. When the Prophet came to Medina, a case of similar nature between a Qureizī and a Nadīri came to the Prophet, it was then that the following verses of *sūrah al-Mā'idah* were revealed:⁹

« وكتبنا عليهم فيها ان النفس بالنفس والعين بالعين والانف بالانف والاذن بالاذن والسِّن بالسِّن والجروح قصاص » .

“We ordained therein for them: “life for life, eye for eye, nose for nose; ear for ear, tooth for tooth and wounds equal for equal”.

This injunction was meant for Jews but the following verse made it applicable to all:

« يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ » .

“O you, who believe! The law of Equality is prescribed to you in cases of murder.”

Upto the 6th year of *Hijra*, there was no clear distinction between an intentional and an unintentional homicide. On the conquest of Mecca and in the Farewell Pilgrimage Address (*Khutbah Hajj al Wida'*), the Prophet spoke about the tribal killings of the Jahilliyya society which believed in taking revenge even if they could take it after hundred years. If a man belonging to one tribe was killed either through an accident or through a design, the other tribe as a whole was responsible to take revenge by killing any innocent man from the tribe of the killer. The Prophet said about such revenge for blood: “All the murders and killings of the Jāhiliyya period (before Islam) are under my feet.” i.e. all the past revenge is forbidden.

The blood of non-Muslims is sacred (*Ma'sūm*) as agreed by the jurists and their killing unlawfully is forbidden according to the consensus (*Ijmā'*) of 'Ulamā. The Prophet (s.a.w.) has said:

« من قتل معاهدا لم يرح رائحة الجنة ، وان ریحها لیوجد من مسيرة اربعین عاما » .

“Whosoever killed a *Dhimmi*, he will not even smell the fragrance of paradise although its fragrance will be smelt from the distance of forty years' journey.”¹⁰

⁹Cf. Abū Dāūd: *Kitāb al-Diyāt*.

¹⁰Narrated by Ahmad and Al-Bukhārī in the chapter on Jizyah.

As Ibn al-Athīr has said, this is applicable to disbelievers generally, but especially to the *Dhimmīs*.¹¹ All the jurists agree on this point that the killing of a *Dhimmī* is one of the great sins (*Kabā'ir al-Muḥarramāt*). According to Imām Mālik bin Anas, if a Muslim kills a non-Muslim with a malice, his punishment would be that he would be killed too.¹² Abanah bin 'Uthmān, the Emir of Medina who was also a famous jurist of Medinah ordered the killing of a Muslim who killed a Copt.¹³ Al-Sha'bī, Al-Nakhī, Ibn Abī Laylā, Imām Abū Ḥanīfah and his famous disciples, Imām Yūsuf and Imām Muḥammad all agree that if a Muslim kills a *Dhimmī*, the killer will be killed. When a Muslim killed a *Dhimmī* during the caliphate of 'Alī, the fourth Caliph, 'Alī ordered that the Muslim be killed. His brother came to 'Ali and said: "I have forgiven him" 'Alī said: "It seems as if they (relatives) have threatened you and thus you have changed your mind." He replied: "This killing will not bring back my brother." 'Alī said: "You know it better. As far as we are concerned, whosoever is under our protection, his blood is like our blood and his *Diyah* is also like our own."¹⁴ In the time of 'Umar bin 'Abdal-'Azīz, 'Umar wrote to one of his governors in the case of a Muslim who had killed a non-Muslim *Dhimmī* that the killer must be handed over to his guardian. If he wished to kill him, he might do so; if he wished to forgive him, it was up to him.¹⁵ According to this instruction, he was handed over to his guardian who killed him.¹⁶

It is argued by Muslim jurists that if a Muslim steals the property of a *Dhimmī*, his hands must be cut off according to Sharī'ah. The property is certainly of less value than the killing of a man. Therefore, the saying of the Prophet that a Muslim should not be killed in retaliation of a non-Muslim, merely refers to a non-Muslim who lives in an enemy country — (*al-Ḥarabī*). Therefore the Ḥadīth does not contradict the opinions of the jurists.¹⁷ It was this practice which continued in the Ottoman Caliphate and many other independent Muslim States in the World.

It will therefore, be the duty of the Muslim State to safeguard the life and property, of non-Muslim subjects exactly like those of the

¹¹Ibn al-Athīr, 'Alī bin Aḥmad *Faid al-Qādī*, vol. 6, p. 153.

¹²Muḥammad bin 'Alī Muḥammad al-Shaukānī *Nail al-Awtār*, vol. 7, p. 154.

¹³Cf. Baihaqī, *Al-Sunan al-Kubrā*, vol. 8, p. 30.

¹⁴Al-Baihaqī, *Al-Sunan al-Kubrā*, vol. 8, p. 34.

¹⁵Abd al-Razāq, *Al-Muṣannaf*, vol. 10, pp. 101-102.

¹⁶*Ibid*.

¹⁷Al-Jassās, *Aḥkām al-Qur'ān*, vol. 1, pp. 140-144.

¹⁸See Abū Yūsuf, *Kharāj*, p. 71; also cf. Al-Sharakhsī, *Sharḥ Siyār al-Kabīr*, vol. 4, p. 52.

Muslim citizens. There should be no difference on religious ground.¹⁹ The right to person is, therefore, the first and foremost human right. The right to person will also include, as we have seen, the right to life, liberty, security, honour and privacy.

HONOUR OF EVERY INDIVIDUAL

The honour of every citizen, whether a Muslim or a non-Muslim is fully protected in the Shari'ah. Defamation, as explained in the Hanafi law book *Sharh al-Hidayah*, is prohibited, be it concerning a Muslim or a non-Muslim.

According to the Shari'ah, even the dead body and bones of a non-Muslim are to be respected just as it is done in the case of any Muslim. Anyone showing disrespect to a corpse of a non-Muslim is, therefore, committing a grave sin. When any degree of ill-treatment of a non-Muslim is forbidden in the Shari'ah during his life time since he happens to be a covenanted person and under the protection of the state, the protection of his corpse and even his bones against any disrespect is equally necessary even after his death.²⁰

When the Shari'ah gives so much importance to the sanctity of human life and blood, it is understood that the same principle will apply to the beating, torturing and injuring of the bodies of non-Muslims as well as Muslims. Just as any Muslim in an Islamic state who denies to pay Zakāt, severe action will be taken against him like the wars waged by Abūbakar, the second Caliph. Similarly the refusal to pay *Jizyah* will also amount to similar offense and punishment. No non-Muslim will be unduly imprisoned or tortured. Imām Abū Yūsuf, the famous disciple of Imam Abū Hanīfah, has mentioned an incident that Ḥakīm bin Hishām, one of the companions of the Prophet (s.a.w.) saw a man being punished for non-payment of *Jizyah*. He surprisingly asked "Why are you doing so?" I heard the Prophet (s.a.w.) saying:

« ان الله عز وجل يعذب الذين يعذبون الناس في الدنيا .»

"Undoubtedly, Allah, the Almighty will punish those who punished people in the world."²¹ Even in the case of non-payment of *Jizyah*, they should be treated kindly.

¹⁹*Sharh al-Hidayah*.

²⁰Cf. Al-Bahr al-Rāiq.

²¹Abū Yūsuf, *Kitāb al-Kharāj*, p. 125; also cf. Al-Baihaqi, *Al-Sunan al-Kubrā*, vol. 9, p. 205

TREATMENT OF NON-MUSLIM ENEMIES IN WAR

In the event of war, if non-Muslims are taken prisoners from an enemy country by Muslims, they should be treated fairly and should not be tortured. The famous Khalīfa 'Umar bin 'Abd al-'Azīz had ordered that non-Muslim subjects, if taken prisoners by an enemy, should be as much ransomed and liberated on state expenses as any Muslim subject.²²

It is not allowed in Islam to provoke war, nor are the Muslims allowed to be aggressors. Whenever any war is forced on them, they must take up arms and fight *Jihād* to defend their lives, property and places of worship. Even they must take up arms to defend the non-Muslim citizens living with them if an enemy country is after their life and property. If the enemy wants peace after the struggle has started, the Muslims must not refuse, even though there seems to be doubt about the enemy's honesty of purpose.

The word *Jihād* is derived from the Arabic word *Jahada* meaning 'he struggled', means in religious connotation striving and struggling for the cause of right. This striving can be accomplished by telling the truth to a tyrant, and also by taking up arms and laying down one's life for the just cause. The Prophet was once returning from a *Jihād* to Medina along with his companions. He pointed out that they were "returning from a smaller *Jihād* to a bigger *Jihād*" and by bigger *Jihād*, he meant a war against one's carnal desires since in Medina there were no enemies. Like other Islamic teachings, *Jihād* is also most misunderstood. If we were to analyse the verses of the Qur'ān which pertain to warfare and avert to the circumstances of their revelation and follow the events of the Prophets' life, his wars and expeditions, war by war and expedition by expedition, there would be not the slightest doubt that the war sanctioned by the Shari'ah is the war of self-defence.

The following words of the Prophet sum up the instructions given by the Prophet to troops dispatched against the Byzantine forces who had threatened to invade the Muslims:

"In avenging the injuries inflicted upon us, molest not the harmless inmates of domestic seclusion; spare the weakness of the female sex; injure not the infants at the breast or those who are ill in bed. Refrain from demolishing the houses of the unresisting inhabitants; destroy not the means of their

²²Ibn Sa'd, Muḥammad bin Sa'd, *Al-Ṭabaqāt al-Kubrā*, vol. 5, pp. 26, 272.

subsistence, nor their fruit-trees and touch not the palm.”²³ The Prophet also said:

“Fight and do not exceed the limits and be not unfaithful and do not mutilate bodies and do not kill children.”²⁴

The first Caliph, Sayyidnā Abūbaker, gave the following instructions when he sent forth the Muslims to Syria:

“When you meet your enemies in the fight, behave yourself as befits good Muslims, and remember to prove yourselves the true descendants of Ismail. . . If Allah gives you victory, do not abuse your advantages and beware not to stain your swords with the blood of one who yields, neither you touch the children, the women, nor the infirm also men whom you may find among your enemies. In your march through the enemy territory, do not cut down the palm, or other fruit-trees, destroy not the products of the earth, ravage no fields, burn no houses. . . let no destruction be made without necessity. Treat the prisoners and he who renders himself to your mercy with pity, as Allah shall do to you in your need; but trample down the proud and those who rebel, nor fail to crush all who have broken the conditions of treaty solemnly entered into. Let there be no perfidy in all things proving yourself ever upright and noble and maintain your word and promise truly. Do not disturb the quiet of the monks and the hermits, and destroy not their abodes. . .”²⁵

The prisoners of war were treated with kindness. Devastation was strongly condemned. Resort to sword or demand of ransom was made only when terms of peaceful settlement were refused or when actual forcible resistance was offered. Sayyidnā ‘Alī, the fourth Caliph, strongly forbade the Muslims in their civil strife to slay a fugitive after he had escaped from the battlefield or to pursue him beyond a single mile or to continue a siege beyond a set period.

The best example of fair treatment of the prisoners of war was set by the Prophet himself and later followed by the Rashidūn Caliphs and all the Muslim rulers. In the famous Battle of Badr, seventy prisoners were taken and they were granted freedom by exacting a strange ransom. The ransoms that these prisoners had to give was that they should teach some illiterate Muslims how to read and write.

²³Ibn Hishām, *Sīrat* and Ṭabarī’s *Tarīkh* have given full descriptions of these instructions and conduct of Jihād in the time of the Prophet. Cf. Qādrī, Anwār Aḥmad, *Islamic Jurisprudence in the Modern World*, Lahore, 1973, p. 278.

²⁴*Ṣaḥīḥ Muslim*, 2: 32.

²⁵See Ṭabarī’s *Tarīkh* and Ibn Hishām, *Sīrat*. Also see Qādrī, Anwār Aḥmad, *Islamic Jurisprudence in the Modern World*, Lahore, 1973, pp. 278-279.

In the battle of Hunayn, six thousand prisoners of war were taken from the Hawazin tribe and they were all set free as is recorded in *Sahih al-Bukhari*.²⁶ The famous historian Al-Tabarī reports that **one hundred families** belonging to the tribe of Banī Mustāliq were taken prisoners but were set free even without any ransom.²⁷

The following rules pertaining to the prisoners of war were laid down by the Prophet:

“They are your brothers. Allah has put them in your hands; so whosoever has his brother in his hands, let him give food to eat out of what he himself eats and let him give him clothes to wear out of what he himself wears, and do not impose on them a work they are not able to do themselves. If at all you give them such work, help them to carry it out.”²⁸

When Khālid bin al-Walīd in his enthusiasm put to death the captives of the tribe of Jadhīmah, the Prophet became very unhappy and said in utter disapproval:

“O Lord, I register to you my displeasure at what Khalid has done.”

HONOUR OF NON-MUSLIMS

Just as every Muslim has a right to his honour, it is essential that non-Muslim must always be respected. He must not be abused or no body should put any calumny against him or tell lies against him or disrespect his genealogy or family. As *Dhimmi*s, their protection in every respect is the duty of every Muslim as it is a responsibility imposed by the religion of Islam and it amounts to fulfilment of one's pledge to Allah and His Messenger (*Dhimmat Allāh wa Rasūlihī*). Therefore, “if anyone persecuted a non-Muslim even by uttering insulting words, he has in reality broken his pledge to Allah and His Messenger and also his pledge to the religion of Islam.”²⁹

THE RIGHT TO PRIVACY OF EVERY INDIVIDUAL

The life of every human being is sanctified in Sharī'ah. Likewise, he has every right to enjoy his privacy. In *Sūrah al-Baqarah*, we are directed to enter other peoples' houses, or even ones own, only by using the front door so as not to surprise **anyone** in his or her privacy.

²⁶*Sahih al-Bukhari*, ch. 40: 7.

²⁷Al-Tabarī, *Tarikh al-Tabarī*, vol. III, p. 132.

²⁸*Sahih al-Bukhari*, 2: 22; Hanbal, *Imām Ahmad Musnad*, 1 247

²⁹Al-Qarāfi, Shihāb al-Dīn, *Al-Furūq*, vol. 3, p. 14.

“Enter houses through proper doors.”³⁰

A Muslim has no right to enter into his non-Muslim neighbours' house without first seeking his permission. In *Sūrah al-Nūr*, the full code of conduct is given while calling upon people:

“O you who believe! Enter not houses other than your own, until you have asked permission and saluted those in them; that is best for you, in order that you may heed what is seemly. If you find no one in the house enter not until permission is given to you: If you are asked to go back, go back: that makes for greater purity for yourselves: and Allah knows well all that you do.”³¹

This right has been considered so precious that Muslim Jurists recognize and give effect to easement of privacy. After a fixed period of time, any premises used as a residence are, for purposes of privacy, treated as though they were private houses.

FREEDOM OF MOVEMENT AND SEEKING ASYLUM:

Islamic Shari'ah treats mankind as one and that all the universe belongs to Allah. All the people have a right to move around and carry out whatever profession and vocations if they are not against the law. The freedom of movement in Shari'ah is limitless, and ideally speaking, should not be limited by immigration laws as is done by the western countries and followed by Muslim countries as well. In the present circumstances, such immigration restrictions seem to be unavoidable but still from the point of view of Shari'ah the entire process is regrettable. The Qur'an declares:

“Between them and the cities on which we have poured our blessings, We had placed cities in prominent positions, and between them We had appointed stages of Journey in due proportion: Travel therein, secure, by night and the day”.³²

When we compare this unlimited right to travel and move round in Shari'ah, and compare it with the provisions of the United Nations' Covenant on Civil and Political Rights, it becomes apparent that the right of movement within the borders of each state is given by the Shari'ah to all and sundry. The Islamic freedom of movement provides for Journey to any land in the world. Islamic Law does not provide for entry and exit visas, and in the earlier centuries people used to visit Muslim countries without any restrictions. Non-Muslims could also

³⁰Qur'an, ch. 2: 189.

³¹Qur'an, ch. 24: 28.

³²Qur'an, ch. 34: 18.

move freely without any restriction like other citizens.

Non-Muslims can seek asylum in Muslim lands and Muslims can get asylum in non-Muslim countries like the earliest Muslims who were asked by the Prophet to go to Abyssinia and seek refuge in the Christian country of Negus. The Qur'an encourages that those who are living in sin under duress, should migrate to another peaceful place:

"When angels take the souls of those who die in sins against their souls, they say: "In what plight were you?" They reply: "Weak and oppressed were we in the earth". They say: "Was not the earth of Allah spacious enough for you to move yourselves away from evil?"³³

These regulations of Shariah were not merely preserved in text books of *Fiqh* but were fully practiced in the time of the Prophet and the Rashidun Caliphs about thirteen centuries ago. At about the same period, in Europe, mankind seemed to be doomed to live in constant distrust or hostility and regarded as a stronger enemy. So late as the time of Cardinal Richelieu, it was held to be the right of all nations to arrest strangers who came into the country without a safe conduct.³⁴ We have several examples, in the life time of the Prophet, that non-Muslims even coming from enemy territories but not with evil intentions were given protection. The Prophet confirmed the protection given by Umm Hanifah, daughter of Abu Talib, to two relatives of her non-Muslim husband breathes a spirit of humanity only known to the present advanced stage of international practices.

The non-Muslims will have equal rights in choosing their own localities. It will be within their rights to decide whether to live in the neighbourhood of the Muslims or of their co-religionists.³⁵ In this case, the Muslims as well as non-Muslims will respect the views and beliefs of each other and live in peace. The Muslim neighbour has been asked by his religion to look after his neighbours, to help them in their hours of need. According to the Prophetic Traditions, he is not a true Muslim if he eats his fill while his neighbour remains hungry. He has been asked to put more water in his soup and send some of it to his neighbours. He will be responsible to protect the honour and respect of his neighbour and his family.

Although there are no restrictions imposed on non-Muslims on their freedom of movement and that they are free to travel from one

³³Qur'an, ch. 4: 97.

³⁴Cf. Kent, *Commentary on International Law*, edited by Abdy, London, 1877, pp. 8-9, 11, 21 ff. Also cf.

³⁵Maududi, *op. cit.*, p. 29.

country to another like any Muslim and can choose to settle down in whatever country they like, yet the exception to this rule is the *ḥudūd al-ḥarḥmain al-sharīfain*, the boundaries of the two holy sanctuaries in Mecca and Medina on religious ground). There have been cases reported that some non-Muslims disguised as Muslims and after spending a long time in Muslim lands received Islamic education in order to enter the holy land to desecrate the holy sanctuaries. Besides, the Ka'bah has been reserved as the Qiblah of the Muslims and, therefore, non-Muslims are not allowed to perform in that holy land their pagan and idolatrous rites.³⁶ The famous scholar Dr. Ḥamidullah bases his opinion on the Ḥanafī school of thought and remarks that the non-Muslims "will not be debarred from entering the mosque of the Ka'bah as they are not debarred from entering any other mosque. In this respect, non-Muslims from among the subjects of the Muslim state and from among the foreigners coming with safe conduct are alike. And the verse of the Qur'ān which forbids their entry³⁷ is to be interpreted to mean that the non-Muslims should not enter the mosque of the Ka'bah according to their pre-Islamic customs."³⁸

In the early days of Islam, when there were no separate court buildings in the Muslim state, the mosque was a religious, social, cultural and judicial centre. The freedom of non-Muslims to enter even the holy sanctuary was not curtailed as is evidenced from the administration of Caliph 'Umar bin al-Khaṭṭāb. He used to receive Christian complainants even when delivering the sermon of Jum'ah in the mosque of the Ka'bah.³⁹ But in the later centuries, the Muslim non-Muslim relationship and good will towards each other and respect for their places of worship did not remain as it was in the *Qur'ān al-Ulā* (early centuries) and hence the non-Muslims were forbidden to enter Ka'bah and later even the boundaries of *Ḥaram al-Sharīf*.

The Qur'ānic injunction concerning the asylum of non-Muslims in the Muslim land clearly states as follows:

"And if anyone of the pagans seeks asylum (O Muḥammad) then give him asylum so that he may hear the word of Allah, and afterwards convey him to his place of safety."⁴⁰

³⁶Al-Sarakhsī, Abūbakr Muḥammad, *Sharḥ al-Siyar al-Kabīr*, Hyderabad 1335 A.H. vol. 1, p. 93.

³⁷Qur'ān, ch. 9, verse 28.

³⁸Ḥamidullah, Muḥammad, *Muslim Conduct of State*, Lahore, 1973, p. 117 (footnote)

³⁹Cf. Abū Yūsuf, *Kitāb al-Kharāj*, p. 79.

⁴⁰Qur'ān, ch. 9, verse 6.

Allāmah Yūsuf 'Alī, while explaining this verse says that even among the enemies of Islam, actively fighting against Islam, there may be individuals who may be in a position to require asylum. Full asylum is to be given to them, and opportunities provided for hearing the word of Allah. If they accept the word, they become Muslims and no further question arises. But if they do not accept Islam, they will require double protection: (1) from the Islamic forces openly fighting against their people and (2) from their own people, as they detached themselves from them. Both kinds of protection should be ensured for them, and they should be safely escorted by Muslims to a place where they can be safe.⁴¹

FREEDOM FROM ARBITRARY ARREST AND DETENTION

According to the Sharī'ah, no person whether a Muslim or a non-Muslim must be arrested or detained without any valid accusation, and it is required in the Sharī'ah that such valid accusation must be made in the presence of the defendant who confronts his accuser in this case, then accusation is made, the defendant has every right to cross-examine and interrogate and ask the accuser to take an oath. According to Imām Khaṭabī, there are only two kinds of detention in Sharī'ah.⁴²

- (a) Detention on the order of the court, and that is usually when a person has already been sentenced by the court.
- (b) Detention before sentencing during the courts' investigation of a criminal violation.

Besides these two kinds of detention, Imām Khaṭabī maintains, there is no other valid ground for restraining a man's freedom.⁴³ Caliph 'Umar once pronounced while deciding a case: "In Islam no one can be imprisoned without the course of Justice".⁴⁴

RIGHT OF PEACEFUL ASSEMBLY AND ASSOCIATION

In the present political and social set-up, the right of peaceful assembly is most important in any country where democracy prevails. Even in the ancient times, human nature being what it is, the right was equally important. But this right according to Shariah, is

⁴¹Yūsuf 'Alī, *The Holy Qur'ān. Text Translation and Commentary*, Beirut, 1968, p. 440.

⁴²Baroody, *Sharī'ah, The Law of Islam*, 72 cases and comments 2, (1967) quoted by Dr. Anwar Beg in his article *Civil and Political Rights in Islam*, op cit., p. 48.

⁴³Maudūdī, A.A., *Islamic Law and Constitution*, 1967, p. 198.

⁴⁴Mālik (Imām) bin Anas, *Kitāb Ahkām al-Khilāfah*, quoted 67 Bassouni, *Islam; concept, law and world habeas corpus* — Al-Ittiḥād, September, 1971.

to be used for lawful purposes and not for causing breach of peace or for engaging in subversive activities (The hypocrites (*Munāfiqūn*) had established "a mosque of mischief" (*Masjid al-Dirār*) in order to give a heavy blow to the early Muslim community as mentioned in Qur'ān.⁴⁵ In Sūrah *al-Mā'idah*, the right of peaceful assembly and association is granted to both Muslims and non-Muslims alike in the following words:

"Co-operate with one another in the promotion of virtue and beneficence but co-operate not with one another in fostering sin and transgression."⁴⁶

Holding of secret counsel for evil conspirational purposes is forbidden in Shari'ah. The Qur'ān declares:

"When you hold secret counsel, do it not for crime and wrong doing and disobedience towards the Prophet, but do it for righteousness and piety, and keep your duty towards Allah unto whom you will be gathered."⁴⁷

FREEDOM OF EXPRESSION, ASSOCIATION AND POLITICAL FREEDOM

The freedom of thought, conscience and belief in the matters of religion and also politics would require the freedom to express thoughts and beliefs openly and without undue hinderance from any quarter. In other words, the freedom of expression of opinion is most essential to give meaning and significance to the freedom of religious belief and thought and conscience. It will not be proper for human nature to hold a belief or opinion secretly without being able to share it with fellow-beings and co-religionists. This right is well recognized and guaranteed in Shar'iah, although along with enjoying these rights, the Shar'iah has spelled out various responsibilities. The Holy Qur'ān says:

"Allah loves not that evil should be noised abroad in public speech, except where injustice has been done."⁴⁸

The Prophetic tradition also says:

"The most excellent *Jihād* is the speaking up the truth in the face of an unjust ruler."⁴⁹

⁴⁵Qur'ān, ch. 58: 9.

⁴⁶Qur'ān, ch. 5: 3.

⁴⁷Qur'ān, ch. 58: 9.

⁴⁸Qur'ān, 4: 148.

⁴⁹*Mishkāt*: 17.

The non-Muslim citizens of an Islamic state are entitled to enjoy the same rights and privileges as Muslims in expressing their views and opinions in any public affair. They will have freedom of conscience, of opinion and of expression through speeches, questioning and protests. They will enjoy the same rights in respect of sending in their written petitions on any national or communal matter but all these are subject to the same limitations as are imposed by law on the Muslims. Within those limitations, they will be entitled to criticize the government and its officials, including the Head of State.⁵⁰

In the matter of religion, they will have full freedom to run their missionary organizations and evangelist activities. They will be free to propagate their creed openly and praising their beliefs in comparison to beliefs of Muslims. Even they will enjoy the same rights of criticizing the religion of Islam as the Muslims will have to criticize their religion⁵¹ as long as it does not create any breach of peace. No Muslim will ever be allowed to hurt their feelings; nor will they be permitted to hurt the feelings of Muslims.

Whatever criticism they may have against each other's religion, they must be within limits. Every non-Muslim will have a right to change from one religion to another. If a missionary of any religion works on a Muslim and the Muslim is inclined to change his religion, the non-Muslim individual or his missionary organization will not be taken to task by the Islamic state, but the Muslim himself will be answerable to the Muslim authorities.

There will be no compulsion on any non-Muslim to adopt any belief contrary to his conscience. If at all he refuses to act against his conscience or belief or creed, he will be perfectly within his constitutional rights as long as he does not violate the law of the land.⁵²

The non-Muslims, as can be seen in the first treaty of the Prophet with the Jews of Medina, participated freely in the consultation and in the execution of the plans adopted.⁵³ The military defense of Medina was the duty of all elements of the population including the Jews.⁵⁴ The non-Muslim citizens of a Muslim state also possessed

⁵⁰Maudūdi, A.A., *Rights of Non-Muslims in Islamic State*, op.cit., p. 29.

⁵¹Ibid.

⁵²Ibid.

⁵³C.F. Hamdullah, *Introduction to Islam*, op.cit., p. 172.

⁵⁴Ibid.

the right to vote or not to vote in the election of the head of state and thus they can contribute in the political life of the country. This fact is again contained in the Treaty of Medina in which the autonomous Jewish states acceded of their free will to the confederal state (city state) and recognized Prophet Muḥammad as their supreme political head.⁵⁵ A non-Muslim living in a Muslim State can be appointed to serve as an ambassador of his country in the foreign land, and was done in the lifetime of the Prophet. In the second year after the Hijrah, the pagan Arabs of Mecca sent a delegation to Abyssinia to demand the extradition of Meccan Muslims who had migrated to Abyssinia in 618 A.D. to seek shelter from a just Christian King Negus after suffering untold persecution from the pagans simply because they had accepted Islam.

Prophet Muḥammad then sent a non-Muslim envoy in the person of Amr bin Umayyah al-Damri, who belonged to one of the allied tribes of the neighbourhood of Medina. It was Amr who pleaded on behalf of the Muslim immigrants.

POLITICAL REPRESENTATION OF NON-MUSLIMS AND THEIR PARTICIPATION IN CONSULTATION (SHURA) AND ELECTION

In the early days of Islam, there is no available proof that shows that the non-Muslims were asked to participate in any consultation (*shūrah*) or election. The reason for keeping them away from this function was that the 'new' religion of Islam and the Prophet himself along with his companions were persecuted by non-Muslim pagan Quraishites of Mecca and were hated by the Jews of Medina and the neighbouring countries and the Christians of the Roman Empire. In the early formative periods, as the historical records show, the Muslims, few in number, had to defend themselves in various expeditions and battles waged by the non-Muslims.⁵⁶ When the city-state of Medina was established, the same danger continued, wars waged and various treaties entered into by the Prophet and the non-Muslim animists and the people of the Book (i.e. Jews and Christians). In this situation, it was impossible and highly dangerous to involve non-Muslims in the affairs of consultation election of a leader and other important matters concerning the government of the Islamic state.

But as the time passed, the non-Muslims, particularly the Jews and Christians, began to understand the spirit of the new religion and

⁵⁵Ibid.

⁵⁶Al-'Ali, *Al-Hurriyat al-Ammah*, op.cit., p. 321.

there was no hostility against Muslims. Besides, Islam and the non-Muslims had come to live in Islamic state. Hence we see in the period of the Rāshidūn Caliphs, that the Caliphs had begun to consult non-Muslims in those affairs which had no connection with the religion of Islam and the beliefs of the Muslims. From the Islamic viewpoint, there does not exist any Qur'ānic injunction or any Ḥadīth of the Prophet which specifically denies the non-Muslims from taking part in consultation on the national affairs or the state election. The non-participation of non-Muslims in the early days of Islam was due to the situation of that time and it came to an end as soon as the causes for threat to the Islamic state came to an end. This is the reason why one does not find it objectionable if non-Muslims, living in a Muslim state in the present time, are allowed to participate in the *shura* and election in all those affairs which have no connection with the matters of belief (*Aqā'id*) of the Muslims.

Since an Islamic government is an ideological government, "it cannot afford to indulge in the deceptive measures which are commonly employed by secular national states with regard to the rights of national minorities. The Head of an Islamic state is bound by law to conduct the administration of the state in accordance with the Islamic principles. It is thus obvious that those who do not accept the ideology of Islam as their guiding light cannot become the Head of the Islamic state."⁵⁷ In this regard, the political representation of non-Muslims is restricted both in the matter of election as well as consultation (*shūrā*). But this is not peculiar to an Islamic state. There are many non-Muslim countries where the president or a King can not be other than believing in certain Christian, Jewish or Buddhist ideologies. This may not be clearly written in the constitution, but this is the practice. Even the person elected or selected for such posts must conform to certain sectarian belief only.⁵⁸

In the present day parliament or legislature in an Islamic State, the non-Muslims can become its members provided it has been fully ensured in the constitution that it would be *ultra vires* of the parliament or the Legislature to enact any Law which is repugnant to the Qur'ān. It must also be ensured that the Qur'ān and the Sunnah would be the chief source of the public law of the land.⁵⁹

⁵⁷Maudūdī, A.A., *Rights of Non-Muslims in Islamic State*, Lahore, 1976, p. 27.

⁵⁸He must be, for example, in the case of England, a protestant belonging to the Church of England only and not a Roman Catholic or even belonging to any other Protestant sects. Likewise in Irish Republic, he must be a Catholic only.

⁵⁹Cf. Maudūdī, op. cit., p. 27.

In all the matters relating to general problems of the country or to the interest of the non-Muslim minorities, the non-Muslims will have full political representation. They will have full freedom to propose any law or its amendment in connection with the Personal Law of the minorities. In the matter of general administration of the government and decisions of parliament, they will enjoy full freedom to protest, or submit representations, objections or suggestions. The Islamic state will have to consider them justly and sympathetically.

CHAPTER SEVEN

NON-MUSLIMS' RIGHT TO PROPERTY AND FREEDOM TO PRACTICE ANY TRADE OR PROFESSION

RIGHT TO PROPERTY

Muslims have been instructed not to seek desensations with non-Muslims unnecessarily but to live with them with the spirit of co-existence, peace and amity. There is no difference between a Muslim and a non-Muslim citizen in respect of the civil or criminal law although the Islamic state will not interfere with the personal rights of non-Muslims. If any Muslim tries to curtail the rights of non-Muslims, the Prophet says that he would himself be a complainant against such a Muslim on the Day of Judgement:

“Beware! whosoever is cruel and hard on such people (non-Muslims) or curtails their rights or burdens them more than they can endure, or realize anything from them against their free will, I shall myself be a complainant against him on the Day of Judgement.”¹

It becomes, therefore, an obligatory duty for every Muslim to protect the property and land belonging to a non-Muslim. The non-Muslims will enjoy all their rights of ownership, sale, transfer, grant and mortgage of their property like any Muslim, and no individual or state will interfere with it. ‘Alī, the fourth Caliph, once said about the rights of non-Muslims to their property:

“They have accepted the position of *Dhimmīs* on the explicit understanding that their properties and their lives will remain sacred like those of our (i.e. the Muslims).”²

The non-Muslim citizens of the state with which Muslims had treaty relations in the lifetime of the Prophet and the Rashidun

¹Abū Dāūd: A Hadīth narrated in the *Kitāb al-Jihād*.

²Maudūdī, A.A. *Islamic Law and Constitution*, Karachi, 1966, p. 273.

Caliphs needed no extra permission or passport to enter the territory for a **sojourn** and that too with their families and property and could live and do trade unmolested.³ Even such an arch enemy of Muslims and Islam, and particularly that of the Prophet before his acceptance of Islam, like Abū Sufyān made a trade journey to Medina during the truce of Ḥudabīyah.⁴ The non-Muslims of another country who were permitted to enter the country with which Muslims had treaty relations, could also safely enter the Muslim territory without any passport or permit.⁵ (During the **life** time of the Prophet, non-Muslim foreign traders came to Medina and Muslims purchased merchandise from them. Once a non-Muslim came with a herd of sheep and goats without securing any permission, and even the Prophet bought a goat from him.⁶

(The life and property of non-Muslim citizens and tourists or temporary sojourners is protected by the Muslim state in the same way as those of the Muslim citizens. These details are contained in various utterances of the Prophet.⁷)

There are some incidents reported during the Rāshidūn Caliphate and the Caliphates of the Umayyads and the Abdāsids in which some Muslims tried to usurp the land or property of some non-Muslims. The Caliphs and rulers not only restored their properties, but gave the Muslim exemplary punishments. In the time of Caliph ‘Umar, the second Caliph, certain Muslims had usurped a piece of land belonging to a Jew and then constructed a Mosque on its site in their over-enthusiasm for their religion. Such a mosque cannot in actual fact be a place of worship and such religious zeal, in the Shari‘ah, will be considered a grave sin. Caliph ‘Umar therefore, ordered the demolition of the mosque and the restoration of the land to the Jew.⁸ Dr. Ḥamidullah says that a Lebanese Christian scholar, Professor Cardahi wrote in 1933 about this land: “This house or the *Bait al-Yahūdī*, still exists and is well known.”⁹

³Al-Sharakhṣī, *Sharḥ al-Siyar al-Kabīr*, ch. 160, 163, 173.

⁴Cf. *Al-Mabsūt*, p. 89.

⁵Al-Kāsānī, *Al-Badāyī‘ al-Ṣanāyī‘*, vol. 7, 109.

⁶Cf. *Saḥīḥ al-Bukhārī*, Book of Trade, see the sub-chapter entitled “*Selling and Buying with the Polytheists*.”

⁷For details, see Al-Sarakhṣī’s *Sharḥ al-Siyar al-Kabīr*, vol. IV, p. 52. Also cf. Imām Abū Yūsuf, *Kitāb al-Kharāj*, p. 71.

⁸ Cf. Ḥamidullah, M. *Introduction to Islam*, Kuwait, 1970, p. 179.

⁹Ibid.

FREEDOM TO PRACTICE ANY PROFESSION OR TRADE

Caliph 'Umar in whose period Islam spread in various parts of the present Middle East, consulted non-Muslims on military, economic and administrative problems. This tradition not only continued but also increased tremendously during the Umayyad and 'Abbāsīd Caliphates. The non-Muslims were appointed in the most important positions of trust in the 'Abbāsīd period. The non-Muslims were appointed as ministers and in various executive positions. The famous scholars like al-Mawardi who belonged to the Shafīī school of thought and Abū Ya'lā al-Farrā, who happened to be a Hanbali jurist have supported the view that the Caliph may lawfully appoint a non-Muslim citizen of the Muslim State as ministers and the members of Executive Council of the state. They have derived this position from various examples in the history of the Rāshidūn Caliphs as well as the appointment of a non-Muslim envoy by the Prophet who sent him to Abyssinia to plead on behalf of the Muslim immigrants. Al-Balādhurī¹⁰ has reported that Caliph 'Umar wrote to the governor of Syria asking him to "send us a Greek, who could put in order the accounts of revenues."

The Caliph had appointed a Christian at the head of the revenue administration in Medina.¹¹

It is also reported by Ibn Sa'd in his famous book *Ṭabaqāt* that a Christian doctor was occupying his clinic just below the minaret of the Holy Sanctuary of the Ka'bah. The name of the Christian doctor was 'Abd al-Rahmān, but his son Daud bin 'Abd al-Rahmān was a Muslim.

(Non-Muslims, like their Muslim compatriots, can carry on all kinds of trade, industry, agriculture and adopt any profession of their choice) Muslim citizens will not enjoy any special privileges in this regard, nor non-Muslims will be prohibited from any trade or profession which Muslims are permitted to carry on. On the contrary, non-Muslims will enjoy more freedom in this regard since there are a number of things which are unlawful for Muslims to trade in while they are lawful for non-Muslims.

As for example, the Sharī'ah makes a distinction between a valuable property (*māl-matqūm*) and a non-valuable property (*māl-ghayr matqūm*). According to this distinction, wine or anything connected with it or pig or anything made from skin or flesh of it are considered to be a property without any value (*ghayr-matqūm*) for a

¹⁰Cf. Al-Balādhurī, *Ansāb*.

¹¹Hamīdullah, *Introduction to Islam*, op. cit. p. 175.

Muslim.¹² The same principle also applies in case of a dead animal which was not properly slaughtered or blood of animal even if they may have any value in the market. As far as the non-Muslims are concerned, wine and pigs and their products are valuable property, although Imām Al-Shāfiī differs from this point of view.¹³

When we cast our glance at various countries of the world today, a citizen of one country is not allowed to seek an employment without a work permit or carry on a business. Still we do not consider these restrictions as any encroachment on the rights of man. In the lifetime of the Prophet and the Rāshidūn Caliphs, non-Muslims were free in visiting Muslim countries without any restrictions or requirements. They were also free to carry on business and even the Prophet himself used to buy from them. Likewise, in the communist countries of the world, the non-communists or believers in God are looked down upon and often harassed in their lawful trades and businesses. During the 'Abbāsīd Caliphate, non-Muslims were not only free citizens enjoying all their fundamental human rights, they could carry on their business without any difficulty and had even risen to very important positions of trust under the Caliphs.

THE RIGHTS OF NON-MUSLIMS IN THE FUNDS OF BAIT AL-MAL OF MUSLIMS

All the Muslim jurists are unanimous in their opinion that Muslims as well as non-Muslims are to be treated equally in their rights to be looked after from the funds of *Bait al-Māl* in any Muslim State.¹⁴ Their arguments are based on the following incidents:

a. It is reported by Abū 'Ubaid from Saīd bin al-Musayyab: "The Messenger of Allah (S.A.W.) gave charity to the families of Jews, since it is permitted for them."¹⁵

b. Imam Muḥammad, the pupil of Imām Abū Ḥanīfa has reported that the Prophet (S.A.W.) sent some property to the people of Mecca to be distributed among the poor people during the period of famine.¹⁶ They were idolaters and were engaged in fighting against Muslims. The *Dhimmīs* are far better than them.

c. During the Caliphate of Abūbakar, Khālīd bin al-Walīd recorded

¹²al-Khafīf, 'Alī, *Aḥkām al-Mu'āmlāt al-sharīyyah*, Cairo, 1947, p. 34.

¹³Ibid.

¹⁴Al-'Ilī, 'Abd al-Ḥakīm Hasan, *al-Hurriyyat al-'Āmmah lil fikr waṣ Nizām al-Siyāsī lil Islām*, Cairo, 1974, p. 313.

¹⁵Abū 'Ubaid, al-Qāsim bin Salām, *Al-Amwāl*, Cairo, 1969, p. 804. ||

¹⁶Al-Sharakhṣī, *Sharh Siyar Al-Kabīr*, vol. 1, p. 144. ||

among the terms of his treaty with the people of al-Hirah that if there was any old man incapable of doing any work or he has been struck by some calamity or he was rich and then became a pauper, he must be exempted from the payment of *Jizyah* and that he should be maintained from the *Bait al-Māl* of Muslims.¹⁷

d. 'Umar bin al-Khattab, the second Caliph, while returning from Damascus, saw some Christian lepers. He ordered that they should be given *Sadaqah* (charity) and stipends from the public treasury.¹⁸

e. Caliph 'Umar also took a poor Jew to the *Bait al-Māl* and ordered the official to fix maintenance for him and other people of his kind.¹⁹

f. Abū 'Ubaid has narrated that the Umayyad Caliph 'Umar bin 'Abd al-'Azīz wrote to 'Adī bin Artat, his official in Baṣrah: "Look after the affairs of the *Dhimmi*s, particularly those who are old and weak and have no any means of income. They should be given maintenance from the *Bait al-Māl* of the Muslims."²⁰

From the above incidents from the life of all the great administrators of early Islamic state, it is quite clear that the poor *Dhimmi*s have the same rights as any Muslim in the funds of the public treasury of the Muslim state.

PAYMENT OF ZAKAT TO NON-MUSLIMS

There are similar arguments in favour of giving the *Zakāt* to the needy *Dhimmi*s in an Islamic State. *Zakāt* is only given by Muslims and non-Muslim are exempted from it. *Zakāt* is one of the five pillars of Islam and, therefore, it must be given at the rate of 2½% by the Muslims from their annual savings. Although the non-Muslims have not contributed anything to it, they still can be the recipients from the *Zakāt* funds according to Imam Zufar who thinks that it is lawful to give *Zakāt* to the poor and destitute *Dhimmi*s in order to draw them closer to Muslims. Another group of jurists only allows the payment of *Zakāt* to the poor *Dhimmi*s when one can not find any poor Muslim recipients. The following incidents speak in favour of giving *Zakāt* to non-Muslims:

(a) When the second Caliph 'Umar bin al-Khattāb saw a Jew begging from the people, he asked him the reason for it. The Jew told him of his old age and inability to earn his bread but still he had to pay

¹⁷Abū Yūsuf, *Kitāb al-Kharāj*, p. 144.

¹⁸Al-Balādhurī, Aḥmad bin Yahyā bin Ja'far, *Futūḥ al-Buldān*, Cairo, 1959, p. 177.

¹⁹Cf. Al-Tamāwī, Sulaimān, *Umar bin al-Khattāb wa Uṣūl al-Siyāsah wal Idārah al-Hadīthah*, Cairo 1969, p. 128.

²⁰Cf. Abū 'Ubaid, al-Qāsim bin Salām, *Al-Arwāḥ*, Cairo, 1969, pp. 45, 46.

Jizyah. Caliph 'Umar on hearing this recited this verse of the Qur'ān: "Undoubtedly the *Zakāt* is for the poor and the destitutes."²¹

Then he said: "The poor mentioned in the verse are the poor Muslims and the destitutes are those belonging to the people of the Book."²² According to al-Jaṣṣāṣ, this argument of 'Umar refers to the lawfulness of giving *Zakāt* to the *Dhimmis*.²³

(b) Abū Ja'far Muḥammad bin Jarīr al-Ṭabarī says in his famous commentary of the Qur'an, *Tafsīr al-Ṭabarī*, on the authority of Naḥī that he heard 'Akramah' concerning the Verse: "Undoubtedly *Zakāt* is for the poor and the destitutes", that the poor (*Fuqarā*) among the Muslims should not be called 'the destitutes' (*Masākīn*). The reference to the destitutes is made in respect of the people of the book.²⁴ Therefore, this verse about giving the *Zakāt* includes also the non-Muslims.

(c) The view of the Mālikī and Zaidī schools of jurisprudence is that it is lawful to give *Zakāt* to non-Muslims. It will make them well disposed to Islam and that they will not side with the enemies.²⁵

In spite of the above arguments there are still some jurists belonging to different schools who insist that *Zakāt* should not be given to non-Muslims.²⁶

PUBLIC SERVICES BY NON-MUSLIMS

The public services in which the non-Muslims are engaged in an Islamic state are those which concern the worldly affairs. The appointment of Judges (*al-Qāḍī*), in a Muslim state, for example, will be from among the Muslims if they are meant to administer justice according to the Shari'ah. Even if a non-Muslim is well versed in the Shari'ah, he cannot be made a judge since all the decisions will require both his fundamental belief in Islam and his enthusiasm to maintain Islamic spirit in all his pronouncements.²⁷ But in the

²¹Qur'ān, ch. 13.

²²Abū Yūsuf, *Kitāb al-Kharāj*, p. 144.

²³Al-Jaṣṣāṣ, Abūbakr Aḥmad bin 'Alī al-Rāzī, *Aḥkām al-Qur'ān*, Cairo, 1928, vol. 1, pp. 461-462.

²⁴Al-Ṭabarī, Abū Ja'far Muḥammad bin Jarīr, *Tafsīr al-Ṭabarī*, Cairo, vol. 2, p. 159.

²⁵'Āliṣh, Shaikh Muḥammad, *Minḥ al-Jalīl sharḥ 'alā Mukhtaṣar al-Imām Sayyidī Khalīl*, vol. 1, p. 370.

²⁶Ibn Qudāmah, Muwaffiq al-Dīn bin Qudāmah al-Madisi, *al-Mughnī*, Cairo, 1348 A.H., vol. 11, pp. 653-654.

²⁷Al-Māwardī, Abul Ḥasan bin 'Alī bin Muḥammad al-Baghdādī, *Al-Aḥkār al-Sultāniyyah*, p. 241.

affairs concerning Jews, Christians or followers of other religions, their co-religionists will be appointed to administer justice according to their personal laws.²⁸

As far as the other administrative services are concerned, non-Muslims can be employed without any difficulty. There are some extremely Orthodox views which favour the restricting most public services among Muslims only and they stretch their imagination on the basis of the following verse of the Holy Qur'an:

«يا أيها الذين آمنوا لا تتخذوا بطانة من دونكم لا يبالونكم خيالا ودوا ما عنتم - قد بدت البغضاء من أفواههم وما تخفي صدورهم أكبر قد بينا لكم الآيات ان كنتم تعقلون» .

“O you who believe! take not into your intimacy those outside your ranks: they will not fail to corrupt you. They only desire your ruin: rank hatred has already appeared from their mouths: what their hearts conceal is far worse. We have made plain to you the Signs, if you have wisdom.”²⁹

According to Imam Muhammad bin Jarir al-Tabari, this verse of the Qur'an is restricted to the circumstances when certain non-Muslims show their enmity and hatred to the cause of Islam and welfare of Muslims and Islamic state in which they live and their activities point out to some great loss and hardship of Muslims in general.³⁰ Rashid Raïda, the famous Egyptian scholar and the worthy disciple of Sheikh Muhammad 'Abduh, has also given the same view while explaining this verse. In the early days of Islam those who were enemies of the Muslims and Islam, later became helpers of Muslims in some of their victories like the victory of Spain. The Egyptian Copts helped Muslims against the Romans. Why should they be considered then as enemies at all time?³¹

In our times, (there are large number of non-Muslims living in Muslims countries and have shown their loyalty and support to the cause of the state and hence are enjoying highest positions in the public services of those states.)

²⁸Ibid, pp. 65-66.

²⁹Qur'an, ch. 3, verse 118

³⁰Al-Tabari, *Jami' al-Bayan min Ta'wil Aya al-Qur'an*, Dar al-Maarif, Cairo (undated) vol. 7, p. 146

³¹Rashid Raïda, *Tafsir al-Munar*, Cairo, 1927, vol. 4, p. 66 ff.

The justification of the above position can be seen in the books of the jurists like al-Māwardī's *al-Aḥkām al-Sultāniyyah* and another book bearing the same title by Abu Ya'la al-Ḥanbalī and many others.³² There are a great number of examples of public positions concerning the accountancy and administration of taxes like *Jizyah* and *Kharāj* handled efficiently by non-Muslims.³³ There are many incidents in the time of *Khulafā al-Rāshidūn* and the Umayyads and the 'Abbasids who appointed non-Muslims in important positions. Even Caliph 'Umar bin al-Khaṭṭāb had appointed Sabī Qaysariyyah in bookkeeping and managing other affairs of Muslims.³⁴ Caliphs 'Uthmān and 'Alī had continued the same practice during the period of their Caliphate. After the conquest of Egypt, 'Umrū bin al-'As, a companion of the Prophet, had appointed and allowed the **Byzantines** to remain in their various important posts. The Umayyad **Caliph**, Sulaimān bin 'Abd al-Malik had appointed a Christian cashier named al-Biṭriq (Patrick) ibn al-Naqa while building a large Friday congregational mosque in al-Ramlah in Palestine.³⁵ In the later Umayyad and 'Abbāsīd periods, a large number of important posts were manned by non-Muslim personnels. During the Moghul period of India and the Ottoman Empire, non-Muslims rose to the highest ministerial posts and became trusted consultants of the Muslim Emperors. The only distinction that was always necessary to be maintained was about those posts which had some connection with the beliefs of the Muslims. They were only given to the Muslims.

HEADSHIP OF AN ISLAMIC STATE: CAN IT BE GIVEN TO A NON-MUSLIM?

Islam is the religion for this world and for the next world (*Dīn al-Duniyā wa Dīn al-Ākhirah*). In order to establish peace and harmony in the world, it is essential to run an efficient administration. The administration of an Islamic State is to be run on the Qur'ānic principle: "your affairs will be resolved through consultation!" The highest administrator of an Islamic State will consider himself as one of the public and will not allow undue respect given to him as was the practice in non-Muslim empires in the time of the Prophet (S.A.W.) and after him. The Prophet (S.A.W.) said about himself:

³²Al-Māwardī, Abul Ḥasan 'Alī bin Muḥammad bin Ḥabīb al-Baṣrī al-Baghdādī, *Al-Aḥkām al-Sultāniyyah*, Cairo, 1966, p. 126; also Abū Ya'la Muḥammad bin al-Ḥusain al-Farā al-Hanbalī, *al-Aḥkām al-Sultāniyyah*, Cairo, 1357 A.H., p. 124.

³³Ibid.

³⁴Al-Balādhurī, *Futuh al-Buldan*, p. 193.

³⁵Al-Rafīn, Mustafā Sādiq, *Al-Islām Intilāq Lā Jamūd*, Cairo, 1959, p. 16.

³⁶Al-Ilī, Abd al-Ḥakīm Ḥasan, *Al-Ḥurriyyat al-Āmmah*, Cairo, 1341 A.H., p. 10.

« لا تعظموني كما تعظم الاعاجم ملوكها »

“Do not respect me as the non-Muslims respect their Kings.”³⁶

The political freedom that Islam has granted to the *Ummah* are the following:³⁷

(a) The right of the *Ummah* to elect their caliph, ruler or government.

(b) the right of the *Ummah* to watch and criticize the actions of the caliph, ruler of the government, if necessary.

(c) the right of the *Ummah* to dismiss their ruler.

The *Khilāfah* or the office of the President of the country is the leadership (*al-Imāmah*) in the spiritual sense as well as the leadership (Imarah) in the worldly sense of faithful:³⁸ Just as he will look after the welfare of the citizens of the Muslim State, the citizens will be required to listen to him.³⁹ The office of the Caliphate (or Presidentship in modern terminology) is essential (*wājib*) to be established in an Islamic State according to the Shari‘ah.⁴⁰ Sheikh Muḥammad ‘Abduh considers the following two verses which makes this office essential in an Islamic State:

1. *Nisā* 59:

« واطيعوا الله واطيعوا الرسول وأولى الأمر منكم »

“You who believe! Obey Allah and obey the Messenger of Allah and those charged with authority among you.”

2. *Nisa* 58:

« ان الله يامرکم ان تؤدوا الامانات الى اهلها واذا حکتم بين الناس ان تحکوا بالعدل »

“Allah does command you to render back your trusts to whom they are due, as when you judge between man and man that you judge with justice.”

³⁷al-Māwardī, *Al-Aḥkām al-Sultāniyyah*, p. 5; also cf. Al-Tamawī, *‘Umar bin al-Khaṭṭāb*, op. cit., p. 254.

³⁸Ibid.

³⁹Khallāf, Abd al-Wahhāb, *al-Siyāsah al-Shariyyah*, Cairo, 1350 A.H., p. 59.

⁴⁰Abduh, Sheikh Muhammad, *Tafsīr al-Manār*, Cairo, 1927, vol. 5, p. 268.

The Prophet (S.A.W.) has also said:

« إذا خرجتم في سفر وكنتم ثلاثة فأمرُوا احدكم » .

“If you go out on journey and you are three, appoint one of you as your leader.”

and he has also said:

« اسمعوا واطيعوا وان ولى عليكم حبشي » .

“Listen and obey even if an Abyssinian slave is appointed your ruler.”

As it is apparent from the above discussion, headship or presidentship of an Islamic State is an essential office and such an officer is to be elected after due consultation (*Shūrā*). Consultation is an essential (*wājib*) aspect of electing a Khalīfa or a head of State because this is the key position and has a great importance both in Religion and Society.⁴¹ The affairs of consultation (*Shūrā*), therefore should rest with those who believe in the Islamic ideology. Those who do not believe in the ideology of the state, can no doubt be asked to cooperate, if they so like, with the Muslims in the task of administration but they should be neither called upon to undertake nor can be entrusted with the responsibility of policy-making.⁴² This issue has grossly been misunderstood by some scholars who try to portray it as inhuman and a violation of the rights of non-Muslims.

The leader of Muslims is both a temporal and a religious leader. He is the Imām, leading their prayer-service in the mosque and the highest administrator of the Islamic state. This is the reason why the Muslims are required to preserve the post of the Imam and the Khalīfa exclusively for the co-religionists, since the head of state must be a Muslim.

{ Since an Islamic state is an ideological state, it is bound to be quite different from any national state.⁴³ It is because of this basic difference that the people living in such a state are divided into *Muslims* who believe in the ideology of that state and *non-Muslims* who do not subscribe to that ideology but still live in that state as its citizens and under its protection. There is no distinction of any ethnic origin, racial identity or linguistic belonging which bring them under one umbrella in a Muslim state. All citizens are equal under the law,

⁴¹Al-Māwardī, *Al-Aḥkām al-Sultāniyyah*, p.6, also cf. Al-Māwardī's *Adab al-Duniyā wal-Dīn*, Maktabah al-Amīriyyah, Cairo (undated), p. 85.

⁴²Maudūdī, *Rights of Non-Muslims in Islamic State*, Lahore, 1976, p. 2.

⁴³Ibid.

but the only difference is that the non-Muslim minority does not subscribe to the religious ideology of the Muslim majority of the population as well as the basic principles of the Muslim state. This is the reason why a non-Muslim cannot be expected to become a head of state or members of the *Shūrā*, the men of impeccable integrity, piety and learning (*ahl al-ḥall wal 'Aqd*).⁴⁴ Even in these days of hypocrisy, it is the Shari'ah that defines the Muslims and non-Muslims and their rights in a very upright manner. Most national states today grant 'equal' rights to all citizens but these rights only exist on paper and in their bulky constitutions. It is a common knowledge that Muslims and Christians are persecuted in the godless communist countries although they belong to the same race and speak the same language. Likewise, in some Asian countries Muslim minorities are often barred from entering into any military service for the unfounded fear that they will not prove to be loyal. The immigrants in some European countries are forced to live in segregated areas and face ugly discrimination in the matter of seeking jobs, buying houses in certain localities and appointments in state administrative position. "Generally speaking the fate of minorities", says Professor Macartney, once the Secretary to the Minorities Committee of the League of Nations, "has been one of suffering. Almost every state has committed, and every minority suffered under flagrant violations of the Minority Treaties. And these have been committed, to all intents and purposes, with impunity."⁴⁵

{The Shari'ah has made the distinction between a Muslim and a non-Muslim like that of 'a relative' and 'a stranger' who may easily cross this barrier by subscribing to the ideology of the Islamic state without much difficulty, but this distinction between a Muslim and a non-Muslim does on no account imply the exclusion of non-Muslim subjects from the political and administrative life of the Islamic state.

MEDICAL CARE AND SOCIAL SECURITY OF NON-MUSLIMS

Islamic Shari'ah lays down that all the citizens of an Islamic State must be looked after by the state in the time of distress and in old age. The Prophetic tradition says:

"All of You are shepherds and all of you will be responsible for people placed under your authority."

⁴⁴Al-Māwardī, *Al-Aḥkām al-Sulṭāniyyah*, p. 6.

⁴⁵Macartney, C.A., *National States and National Minorities*, quoted by Khurshid Ahmad in Maudūdī's *Rights of Non-Muslims in Islamic State*, op. cit., p.6.

Non-Muslim citizens are also part and parcel of an Islamic state and it will be the responsibility of the state to provide them with the same social security. This was the practice of the Prophet (s.a.w.), the Rāshidūn Caliphs, the rulers of Umayyad and 'Abbāsīd dynasties. In the period of Abūbakr, the first Caliph, Khalid bin al-Walid wrote in respect of the Christian inhabitants of Al-Hira in Iraq:

“Any old man incapable of work or anyone who has suffered from any calamity, or any person who was rich and suddenly became a pauper asking for charity from his people, Jizyah must not be collected from him. He and his family, as the contrary should be maintained through the *Bait al-Māl* of Muslims”⁴⁶

The caliphates of Abubakr and 'Umar saw the organization of social security which worked for Muslims and non-Muslims alike. The pensions for the poor and needy, sick and handicapped citizens were paid out of *Bait al-Māl* (public treasury) of the Muslim state.⁴⁷ 'Umar, the second Caliph, had set up the *Dirwān*, a special department to manage the pensioners' register and regular amount of pensions were paid to them. When Caliph 'Umar visited Al-Jābiyah, he passed by some Christian lepers. He gave orders that they should be paid out of the poor due and that they should be given regular pension to sustain them.”⁴⁸

Similarly, when Caliph 'Umar saw an old Jew begging, he was very much upset. He asked the Jew about his problems and he told him that it was due to his old age and inability to work that he was forced to beg in the streets. Caliph 'Umar immediately took him to the treasurer of the *Bait al-Māl* of Muslims and ordered him to grant him maintenance and also people like him. “It is no justice” he said, “that we collect *Jizyah* from them when they are young and abandon them when they became old.”⁴⁹ Likewise, once he passed by Al-Jābiyah, a place in Syria and saw some Christian lepers. 'Umar immediately ordered that they should be given charity and looked after properly.⁵⁰

(According to Shari'ah, it is essential that Muslims and non-Muslims should be treated equally and fairly. It is not lawful that any member of the society in an Islamic state is deprived of his right to live, eat, clothe himself and his family, and medical treatment

⁴⁶Abū Yūsuf, *Kitāb al-Kharāj*, p. 144.

⁴⁷For detailed study on social security device, see Yusufuddin, M., *Social Security in Islam*, Istanbul, 1951.

⁴⁸Al-Balādhurī, Aḥmad bin Yaḥyā bin Jābir, *Futūḥ al-Buldān*, p. 129.

⁴⁹Abū Yūsuf, *Kitāb al-Kharāj*, p. 122.

⁵⁰Al-Balādhurī, *Futūḥ al-Buldān*, p. 177.

whenever necessary. It is a religious duty to relieve the problems of those who are suffering in the society whether they happen to be Muslims or non-Muslims. Shaikh Sharf al-Din al-Nawawī, the famous traditionalist, has said that it is a general obligation (*Fard al-Kifāyah*) to clothe the needy and feed the hungry.⁵¹)

Sheikh Shams al-Dīn Ramlī, the famous commentator of *Al-Minhāj* of Al-Nawawī says that 'the non-Muslims are like Muslims when it comes to relieving them from their sufferings. It is essential (*wājib*) for all Muslims to remove any harm coming to them. Apart from food and clothing of the needy non-Muslims, it is also *fard al-Kifāyah* to help them in the treatment of their sick and giving fees to the doctors, and buying medicines, etc.⁵²

MILITARY SERVICE BY NON-MUSLIMS

According to the Sharī'ah, it is not essential for any non-Muslim to render military service in an Islamic state because the *Jihād* is only an obligatory religious duty which is compulsory only on Muslims. Since the Qur'ānic principle is quite categorical that 'there is no compulsion in the matter of religion, it will be wrong to compel the non-Muslims to defend the ideology of an Islamic state to which they do not subscribe. In lieu of the military service, the non-Muslims will have to pay the Jizyah for their protection by the Islamic state. But the Muslim jurists have not stopped the non-Muslims from taking part in fighting voluntarily along with Muslims in the interest of their state provided the authorities are convinced that they would not betray them in the battle-field while fighting against their co-religionists if they happened to be the enemies. In such situation, they will *not* be required to pay the Jizyah tax.

It is the view of some scholars that the Jizyah tax may be imposed not less than the amount of *Zakāt* (i.e. 2½%) which would bring about an equality in respect of payment by both Muslims and non-Muslims.⁵³ Likewise, they say that there is no harm in associating non-Muslims in the Protection of an Islamic State since it would mean a religious obligation (*Faridah Diniyyah*) for a Muslim and a national obligation (*wājiban wataniyyan*) for non-Muslims.⁵⁴

⁵¹Al-Nawawī, Sharf al-Dīn, *Al-Minhāj*.

⁵²Al-Ramlī, Shams al-Dīn, *Miḥayāt al-Muḥtāj ilā sharḥ al-Minhāj*, Bulaq 1292 A.H., vol. 8, p. 46.

⁵³Cf. Al-'Ilī, *Al-Hurriyat al-'Āmmah*, op.cit. p. 327.

⁵⁴Ibid.

CHAPTER EIGHT

THE MODERN WORLD AND THE FATE OF SHARĪ'AH

Faith and legislation in Islam are inseparable. Legislation is a component of faith and an extension to it. It is the practical side of the faith in the Unity of God, in His Angels, His Prophets, in Fate in the Day of Judgment and Life after Death.

Legislation in Islam is a detailed code of life organizing man's relation with his Creator and with the members of his society, beginning from the family in general.

All these relations that the Islamic legislation deals with interlock and cooperate to provide guidance for the regulation of life in the best interests of man. Its objective is to create the right men, the happy family, the strong society and the perfect human life.

Legislation begins with the individual, showing him the straight way of living through worship, commands and inhibitions. Worship in all its forms is the means of one's relation to God, associating his feelings towards Him, and transforming his faith into practical results. Moreover, worship controls one's relations with the members of one's society, as it makes him aware that God is ever watchful over all and aware of things open or hidden. With this conviction, you will tend to act the right way.

Justice in Islam, in reality, means justice for all people — Muslims and non—Muslims alike. Rights, whatever they are, should be for all, under all circumstances, irrespective of religion, colour or race.

In Islam virtue is an entity that cannot be divided, and so is evil. Allah commands you to be kind to your neighbours, to sympathize with them, call on them when they are sick, and offer them help if they are in need of help, and never to cause them harm, whether they are Muslims or not. Your obligations towards them and their rights on you shall never be influenced by any difference in religion. This is a golden rule that applies to all Muslims' dealings, with other members of their society.

If Muslims observe the moral law in all their actions, they can become good Muslims. Nay, they can become an inspiring example of

perfect Muslims. There can be established once again equilibrium between individualism and collectivism. Through the proper practice of Shari'ah, the relations between the individual and the society can be regulated in such a manner that neither the personality of the individual suffers any diminution, or corrosion as it does in the communist and fascist social systems, nor the individual is allowed to exceed his bounds to such an extent as to become harmful to the community, as happens in the Western democracies. In Shari'ah, "the purpose of an individual's life is the same as that of the life of the community, namely, the execution and enforcement of Shari'ah and the acquisition of Allah's pleasure. Moreover, Islam has, after safeguarding the rights of the individual, imposed upon him certain duties towards the community. In this way, requirements of individualism and collectivism have been so well harmonized that the individual is afforded the fullest opportunity to develop his potentialities and is thus enabled to employ his developed faculties in the service of the community at large."¹

Faith in Islam is not a mere profession of beliefs but it is a complete way of life in which righteous conduct must follow belief in one and only one Allah. "Muslims, therefore, are those who, if life establish them in the land will keep up prayer and pay the *Zakāt*, and command what is proper and forbid what is improper."² The Holy Prophet has said: "The believer in Allah is he who is not a danger to the life and property of any other."

The early Muslims lived and ruled according to these principles. They were loved by their non-Muslim subjects who even preferred them to their co-religionist overlords. When Muslims returned the *Jizyah* to non-Muslims in Homs in Syria simply because they felt they were unable to protect them, the non-Muslims then cried out as reported by Balādhurī:

"We prefer your government and its keen sense of justice to the cruelty and injustice of our own co-religionists and we are not going to allow their agents to enter the gates of the city unless we are overpowered by them."³

As we have seen, there was no interference with the religious affairs of the non-Muslims. The glowing example was provided in Turkish Empire when a sub-prior of the Monastery of St. George

¹Maudūdī, A.A., *Political Theory of Islam*, a chapter in *Islam — Its Meaning and Message*, London, 1975, p. 171

²Qur'ān, ch. 22: 40-41.

³Balādhurī, *Futuh-al-Buldan*, p. 137.

purloined the amount of £40,000 and tried to get away with it to Europe. He was caught at Jaffa by the Turkish customs officers and brought back to Jerusalem. The culprit implored the *Mutasarrif* with tears in his eyes to be tried by Muslim Law, but he was told: "We have no jurisdiction over monasteries." He was then handed over to the monks.⁴

The records in Muslim courts the world over are full of various cases decided in favour of non-Muslims. After the decline and fall of the Turkish Caliphate as well as other Muslim Empires and Kingdoms, Shari'ah system has been completely neglected. Under the colonial period, a mixture of common law, native customs and Shari'ah came into existence and it was named the 'Mohammadan Law' and the Shari'ah was branded as 'cruel' in its applications. Even Muslims have been brain-washed to believe that the Shari'ah cannot function in the modern times. There is so much ignorance about the Shari'ah system that it orders 'the hands to be cut off, neck to be chopped off and stoning in public'. The 'Ulamā and the Muslim scholars have also failed in their responsibility to make people understand their religion and the Shari'ah. The fault lies with the Muslims that they have not done any effort to educate either their own folks or the non-Muslims about the Shari'ah. Most of the Muslim countries have stopped practicing Shari'ah under colonial rule and hence no court cases concerning non-Muslims are decided under the Shari'ah system in the modern times to reassure the non-Muslims that they have rights under Shari'ah which are not granted by any men but by Allah, the Creator of mankind.

Since we have discussed in detail the rights of non-Muslims under Shari'ah, it should be remembered that while the believers and non-believers are equal in their treatment before Islamic Law, they are not equal from spiritual point of view and their lot in the hereafter. This is not different from the beliefs of any other religion in the world. Even the members belonging to one sect among the *ahl al-Kitāb* consider the members of another sect as heretics and hence destined to go to hell.

The inherent nature of Shari'ah, if properly understood, would make it possible, after its long stagnation, to be developed further to modernize through the principles of *Ijtihād* and not in the orientalist sense which only aims at secularizing the Islamic Legal system. The Shari'ah system bears the seeds of Universal due process going even beyond World Habeas Corpus and the Proclaimed Fundamental Human Rights. This is so because Islamic freedom, justice, and

⁴Pickethall, Marmaduke, *Cultural Side of Islam*, op. cit., p. 115.

equality are as Universal as the faith of which they are a part. It is beyond the scope of this work to discuss the growth of Shari'ah, which, if traced properly, would show the amazing flexibility of the *Shari'ah* precepts and that how fast and progressively they have developed.

The Muslim countries and their rulers must realize the fact that the paths by which we came to the present can never be traversed again but can easily be reconstructed and the same model of the city-state of Medina can be erected through proper efforts by Muslims living in Europe, Africa, Asia or Arabia. The basic sources of the Qur'an and the Sunnah have provided us with the knowledge, the techniques and tools necessary for our contemporary world. After the eclipse of the *Khilāfah al-Rāshidah*, our forefathers committed many mistakes, fell and rose and fell again, sometimes deviated from the original path and traversed different roads out of the past. Coming by different roads out of the past, all the Muslim Peoples of the earth are now arriving in the new but very confused world community. The rate of crimes, inequality, respect for mankind seem to be lost in their trials and errors in adopting various un-Islamic systems of law in their daily life. The so-called modernist rulers like Muḥammad Ālī Pasha and Ismā'īl Pasha took pride in equating themselves with the European rulers and calling Egypt part of Europe. Kamāl Atatürk committed the same mistake in his enthusiasm in portraying Turkey as a European country. In the present Muslim world too, there are some rulers who are aping the European (Eastern and western) rulers.

It is an irony of fate that in the last days of the Turkish Ottoman Empire, which was gradually entering into foreign treaties and establishing relations with western European countries, it was always subject to scorn and attack by Western scholars and politicians.⁵ The Muslim rulers, as time went on, became weaker both in their power as well as their religious enthusiasm and began to suffer from inferiority complex as is the case even today. Even after the Ottoman Empire had been admitted to the Concert of Europe in 1856, some jurists continued to regard it as beyond the application of the Law of Nations because of its Islamic religious beliefs in the Shari'ah which in reality is not opposed to the Law of Nations. This was reflected in Judge Weiss's dissenting opinion in the case of *S.S. Lotus*⁶ wherein he considered Turkey not a subject of the Law of Nations. This remained the position until Turkey entered the treaty of

⁵Khadduri, Majid, *Islam and the Modern Law of Nations*, 1956, p. 50 or 358.

⁶S.S. Lotus, 1927, P.C.I.J. Ser. A, Judgement No. 9.

Lausanne in 1723:⁷ It was due to the foreign occupation and the weakness of brain washed Muslim leaders that reduced the Muslim states to accept the western concepts in totality without bringing to it much of Islam's needed immortalizing and ethical concepts. Turkey under Kamāl Atatürk is one of many such examples in the Muslim world. It may be argued that due to the weakness of Muslim states caused them to abandon rather than to strengthen the application of Shari'ah and its International law concepts since they did not feel as if they had any need for application or use of Divine and perfectly humanitarian Law.

The impact of Western education and ideas slowly but inexorably shattered the respect for the rules of the sacred law of Islam. Islamic legal institutions were minimized and even substituted by Western and European systems. Penal, procedural and judicial affairs saw the introduction of European codes of civil law. In British-occupied territories the Common Law was introduced, codified and imposed upon Muslims, while the French, in their lands of conquest, imposed the Code-Napoleon upon their Muslim subjects. In each Muslim territory, and in almost every sphere of Muslim activity, now national legal system was developed. Only the law regarding family relations was initially left largely untouched, and this was merely because of diplomatic and precautionary measures. However, even in this area innovations were later introduced, as it was felt that these laws, being based on Fiqh, hindered industrial, economic and scientific advancements, and it was not long before public exposure was given to the private affairs of the female. The stage was reached at which Muslim countries began to remodel and develop their legal systems utilizing western techniques and patterns. In these attempts to modernize the law, Muslims introduced secular legislations under religious ideals. They began to separate law and religion, both of which are inseparable in Islam. Without any close or serious examination, Islamic institutions were orientated along Western models.

The Shari'ah is a great legal system that ruled over the Muslim *ummah* exclusively until the end of the 19th century. It was able to meet all the demands of social change and promote a great civilization that is still striding in the world as a living force.

If the Muslim countries do not feel shy but take firm steps to reinstate Shari'ah, it can once again become a directive force in the affairs of the world. Shari'ah only then will have the dignity and

⁷Wood, *The Treaty of Paris and Turkey's Status in International Law*, *American Journal of International Law*, 1943, p. 262.

authority that was given to it by Allah, the Law Giver, and His Holy Messenger, Peace be unto him.

I conclude with the words of George Bernard Shaw who said: "If a man like Muḥammad (s.a.w.) were to assume the dictatorship of the modern world, he would succeed in solving its problems in a way that would bring it much needed peace and happiness: I have prophesized about the faith of Muḥammad that it would be acceptable to the Europe of tomorrow as it is beginning to be acceptable to the Europe of today."⁸

⁸Shaw, George Bernard, *The Genuine Islam*, vol. 1, no. 8, Singapore, 1936. Also Khurshid Ahmad, *Islam: Basic Principles and Characteristics*, London, 1974, p. 11.

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About the author:

Professor Abdur Rahman I. Doi, born in an Islamic environment in Himmatnagar (India) started his early education in Madrassah. He secured his B.A. (Hon.) in the first class from the University of Bombay and was awarded a gold-medal. He passed his M.A. examination in the first-class from the same University and was awarded a gold-medal. The University of Bombay then awarded him a merit scholarship to join the University of Cambridge as a research scholar. In England he had enormous opportunity to work on Arabic and Islamic manuscripts deposited in various libraries. He obtained his Ph.D. degree in 1964. He revived the Muslim Student's Association at the University of Cambridge which was lying dormant for many years after Sir Muhammad Iqbal's departure.

In 1965, he took up his appointment at the University of Nigeria, Nsukka, where he designed, introduced and taught the courses in Islamic studies. In 1967 he moved to the University of Ife as a research scholar in the Institute of African Studies. Later on he became Head, Department of Religious Studies and Philosophy at Ife. When the department was split into two he became the Head, Department of Religious Studies. In 1977 he was appointed as Professor and Director, Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria. Professor Doi has also taught at the International Islamic University, Malaysia.