

The Rights of Religious Minorities in International Legal Documents and Islamic Shariah

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Abstract

The right of religious minorities is one of the most important rights of human beings through which people can freely perform their religious practices and worship without any fear. According to international documents, no state party to international covenants and conventions is permitted to discriminate against religious minorities. In most countries, there are lots of religious minorities who live as citizens or as migrants. Both need the protection of the state, and should be treated equally in accordance with laws. Fortunately, Islam also supports the rights of religious minorities and protects the rights of all those non-Muslims who live in the Islamic territory by the name of "Dhimmis", who also have to respect the rules and regulations of Islam. The doctrinal research methodology and a descriptive, explanatory, and analytical research approaches are used in this work. It is worth mentioning that this research study is entirely based on library sources. Most of the sources are reputable and trustworthy textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area. Additionally, the position of Islamic jurisprudence has also been clarified regarding the rights of minorities.

Keywords: *Dhimmis, Hijab, Jizya, Minority, Mu'aahid*

INTRODUCTION

The rights of religious minorities are one of the most important issues through which the minorities can perform their religious activities without any fear of discrimination. Many religious minorities demand different forms of recognition and want to freely perform their cultural practices. They sometimes want to be exempted from some laws. For example, Sikhs have sought exemption from the motor cycle helmet law and also their police forces are exempted from official dress. Some ethno-religious people want to be exempted from some laws. For example, the Amish people want to be exempted from mandatory schooling legislation and military service (Kymlick, 2012). Approximately 73% of the world's people live in countries where their religious groups are the majority of the population, and 27 % live as a minority population. Muslims are a majority in 49 countries (Pew Research Centre, 2012). The United States of America also granted the religious freedoms to the minorities, and mentioned that religious freedom is one of the most fundamental and central principles of the United States, but in practice every religious group has been target of discrimination by others (American Civil Liberties Union, 2022). Although Islamic rules protect the rights of religious minorities, there are some countries and individuals who do not respect Islamic rules and engage in such unethical behavior. For example, the Indian ruling Bajaratia Janata Party spokesperson (Justice for Immigrants, 2022).

Research Questions

1. What is the importance of the rights of minorities in international law and Islam?
2. How the rights of minorities are protected by international documents?
3. What are the responsibilities of the government regarding the rights of minorities?

Research Objectives

1. To clarify the importance of minorities' right according to international 'law and Islam.
2. To explore the international documents related to religious minorities and their protection.
3. To clarify and analyze the responsibilities of the government regarding the rights of minorities.

Minority

A minority is a group of people of the same race, culture, or religion who live in a place where most of the people around them are of a different race, culture, or religion (Corbulid Advanced English Dictionary, 2006). A minority refers to those limited groups that live with the governing majority group in racial, cultural, and ethnic terms. (Ihandoost, 2016).

Religion

Describe the things that are connected with religion or with one particular religion (Corbulid Advanced English Dictionary, 2006). The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities defined religious minorities as a group numerically inferior to the rest of the population of a state, in a non-dominant position. For example, Christians and Yazidis are religious minorities in Syria and Iraq (Justice for Immigrants, 2022).

Religious Freedom

Everyone has the right to have own religion and beliefs as long as those beliefs do not harm others. Though in practice, disrespect for this issue is witnessed. For instance, in the UK and U.S.A., there are a lot of harassment and murder cases of Muslim women because of their head covering (hijab). There are lots of massacres of Muslims by Buddhists in Myanmar. In fact, the Islamic religion is the safest place for religious minorities to live in.

Minority Rights and Minority Groups Rights

Minority rights are the individual rights applied to the members of minorities, whether they are racial minorities, religious minorities, linguistic minorities, or sexual minorities, etc. It also applies to the individual rights of anyone who is not related to the majority decision. The differentiation among religious groups may be based on diffraction characteristics such as race, religion, ethnicity, gender, etc.

Islam and the Religious Minorities

According to the Holy Qur'an and Hadith, the Muslims have religious differences and this is an ethical teaching. "There is no compulsion in religion," cited by Michael Calabri (Quran 2:256). No doubt, on the Day of Resurrection, I will defend him if someone wrongs a person who is protected by a covenant, breaches his rights, gives him more work than he can handle, or takes something from him without his permission (Sunnah abundantly Dawud: 3052). Mohammad, peace be upon him, stated in the Covenant with the Christians of the world, "If a monk or pilgrim seeks protection, in mountain or valley, in a cave or in tilled fields, in the plain, in the desert, in a church, in such a case I am with him, and defend him from everyone who is his enemy."

The Manner of Prophet Mohammad with Non-Muslims

The prophet Mohammad had a good temper and tolerance, as Allah says in the Holy Quran: "So, by mercy from God [O Muhammad], you were lenient with them. And if you had been severe and harsh-hearted with them, they would have disbanded you. So, pardon them and ask forgiveness for them." [Quran 3:159]. When Mohammad, peace be upon him, conquered the Macca, he said that "today is the day of Mercy". Mohammad, peace be upon him, did not exact vengeance on non-Muslims and instead treated them well. But it should be noted that he prevented non-Muslims from taking hostile actions against Muslims. The Madina covenant is the best example of the tolerance of Mohammad, peace be upon him.

Categories of Non-muslims

Non-Muslims are divided into four groups.

The Dhimmis

Non-Muslims who live permanently in the Islamic polity are called Dhimmis, who are responsible for paying the poll tax (jizya), and the governments are responsible for protecting them. The contract of protection is called "Aqd al-dhamma" (Anwar, 2013). Dhimmis are those people who live in Islamic countries and are subjected to the law of the country they are in. They have to give taxes to the Islamic government, and it is the responsibility of the government to protect their lives, property, and rights.

Mu'aahid

It is also called the Contractor. These people are those who have friendly relations with non-Muslims and have commercial, economic, and cultural relations with Muslims directly or indirectly through international organizations and exchange of ambassadors. The agreements must be respected from both sides. In other words, Mu'aahid is a non-Muslim (Jewish, Christian etc.) who remains under the Muslim empire and pays the taxes according to the rules and contracts (<https://www.rekhtadictionary.com/meaning-of-muaahid>).

Muaahadin (Mild, Non-violent)

The countries that neither have war with Muslims nor have contracts with Muslims but do not annoy Muslims. The Islamic countries should maintain peace and mutual relations with these countries.

Muharib

The groups or states that are at war with Muslims. In these conditions, Muslims have to depend on their religion and country. (<https://www.rekhtadictionary.com/meaning-of-muhaarib?keyword=Muharib>).

The Rights of Minorities and International Law

International Law protects the rights of minorities through the principles of equality and non-discrimination. Some believe that minorities can enjoy two kinds of rights in international law; the right to live and the right of identity. Nowadays, some minorities are bothered by the majority of the country (Ihandoost, 2016).

International Covenant on Civil and Political Rights (ICCPR)

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) protects the rights of Freedom of thought, conscience, and religion and the "freedom to have or to adopt a religion or belief" of one's choice. (Christopher, 2008).

1. "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching".
2. "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice".
3. "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others".

The state parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions "(International Convention on Civil and Political Rights, 1976). According to Article 18 of the Covenant on Civil and Political Rights, the human rights committee declares and draws the attention of states that "the freedom of thought and the freedom of conscience are defended equally with the freedom of religion and belief." Article 18 of the

International Covenant on Civil and political Rights, give the freedom of religion, the concern of committee is, that the state may have tendency to discriminate against any religion on the basis of that it is newly established or related to religious minorities. The practice and teaching of religion or belief includes act such as the selecting of the religious leaders, priests and teachers, establishing seminars and religious schools well as they can distribute religious text or publication. (International Convention on Civil and Political Rights, 1976).

Article 18(3) allows the state to impose restrictions on the freedom to manifest religion or belief in order to protect public safety, order, health, or morals. (International Convention on Civil and Political Rights, article 18(3)). The human rights committee comments in Art. 20 of the Covenant on Civil and Political Rights that states parties are obligated to enact laws to prevent actions used for the purpose of war as propaganda or for racial, national, or religious hatred. (International Convention on Civil and Political Rights, 1976).

Article 26 of the International Convention on Civil and Political Rights states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law." In this regard, the law shall prohibit all forms of discrimination and provide equal and effective protection to all persons against discrimination on any basis, including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. (International Convention on Civil and Political Rights, 1976).

Art. 27 of the International Convention on Civil and Political Rights declared that, "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." (International Convention on Civil and Political Rights, 1976).

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities

The United Nations has an important role in the protection of minorities. Article 1 of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities states that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992).

Article 2.2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that "Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). Article 2.3 of the Declaration on the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that "Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). According to Art. 2.4 of the Declaration on the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that

“Persons belonging to minorities have the right to establish and maintain their own associations”. (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). According to Art. 2.5 of the Declaration on the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992).

Article 3 of the Declaration on the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that “minorities can exercise all the rights, individually or in community, which are stated in the present Declaration without any discrimination”. (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992).

Article 4.1 of the Declaration on the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards” (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). According to Article 4.2 of the mentioned Declaration states that “the state shall provide conditions for minorities to freely express their characteristics and to freely practice their culture, language, traditions, religion, and customs, provided that these practices do not violate international law standards” (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1929).

Article 4.3 of the mentioned declaration states that “States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). According to Article 4.4 “States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole” (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). Based on Article. 4.5 States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992).

Article 6 of the Declaration on the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that” States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). Article 9 of the Declaration on the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities states that “The

specialized agencies and other organizations of the United Nation's system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992).

The Universal Declaration of Human Rights and the Right of Minorities

According to Art. 2 of the Universal Declaration of Human Rights, everyone has the right to have rights and freedoms without any distinction on the basis of race, language, religion, color, sex, or other option (The Universal Declaration of Human Rights, 1948). Article 18 of the Universal Declaration of Human Rights states that "People have the right to freedom of thought, conscience, and religion; this includes the freedom to change their religion or belief, as well as the freedom to manifest their religion or belief based on teaching, practicing, observing or worshiping, whether they are alone or with others in the society, does not matter they are in public or private".

The preceding Article grants people the right to religious freedom and the ability to change their religion. (Universal Declaration of Human Rights, article 18, 2015), but it should be noted that Islam does not allow any Muslim to change their religion (Islam), or he will be punished according to Islamic law. No state should restrict the right of religion because of the reason that it is not the recognized religion of the state or has differing beliefs.

CONCLUSION

The right of minorities is one of the most important rights, declared not only in international documents and covenants but also in Islamic fiqh. According to Islamic rules, Muslim countries have to protect the rights of all minorities who live in the Islamic territory under the Zhimma agreement, and they also have to pay poll tax (Jizya) to Islamic states, because they have been protected there from any kind of assault. Racial minorities must have all of the necessary rights in society, though there are some countries where they are restricted, such as not being able to run for president or prime minister. In the end without religious rights and freedoms, minorities could not enjoy their lives.

RECOMMENDATIONS

1. The State should include the rights of minorities in their legal documents.
2. The rights of minorities should be seriously protected by the governments.
3. International organizations, especially the United Nations, have to observe all the concerns related to violations and discrimination against religious minorities.
4. Non-Islamic countries also have to protect the rights of Muslim minorities in their countries.
5. Those who commit violations against religious minorities should be punished seriously to prevent discrimination against religious minorities in the future.

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