

Protection of Human Rights for Non-Muslims: An Examination of Islamic Ethical Perspectives and Fundamental Rights of Non-Muslims in the Constitution of Pakistan 1973

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Abstract

In the complex interplay between Islamic ethical perspectives and the constitutional framework of Pakistan (1973), a profound exploration of fundamental rights emerges, particularly concerning the protection of basic human rights and the rights of non-Muslims. This examination delves into the conceptualization of human rights in Sharī‘ah, the legal status accorded to non-Muslims, and the specific rights guaranteed to minorities within the Islamic legal framework. Within the context of Sharī‘ah, this study explores the comprehensive spectrum of rights designated for non-Muslims and minorities. It investigates their rights to life and peaceful living, respect and honor, impartiality and justice, freedom, fairness and equality, religious belief, and ownership and protection of property. These fundamental aspects underscore the commitment within Islamic ethics to foster peaceful co-existence and harmonious living among diverse communities. Transitioning to the constitutional realm, the Constitution of Pakistan (1973) provides a structured framework for the safeguarding of fundamental rights for non-Muslims. Examining these constitutional provisions reveals the commitment to principles such as equality of citizens, security of person, protection of non-Muslims/minorities, freedom of various forms, preservation of language, script, and culture, as well as social rights. Moreover, the Constitution establishes safeguards against discrimination, unfair taxation for religious purposes, and ensures the protection of educational institutes in reverence of any religion. This comprehensive exploration seeks to illuminate the harmony between Islamic ethical perspectives and constitutional provisions, exemplifying how the Constitution of Pakistan (1973) aligns with the core principles of Sharī‘ah, upholding fundamental rights for non-Muslims and fostering a society based on justice, equality, and respect for diversity.

1. Islamic Guarantees for Protection of Basic Human Rights and Rights of Non-Muslims

The acquisition of fundamental human rights demonstrates peace and harmony in a society with balanced human mental comfort because non-violence and peace are caused by human satisfaction.¹ There are certain Islamic guarantees for non-Muslims as their fundamental human right to live their lives peacefully regardless of color, caste, and religion. In multi-cultural communities, these guarantees help them to live peacefully.

1.1 Concept of Human Rights in Shari‘ah

Understanding human rights from an Islamic perspective is emerging from the notion of 'right' in Islamic Jurisprudence. The Islamic term for the right is called Ḥaqq (pl. Huqūq) and this concept has been used in many verses of the Qur’ān in different meanings.² The term Ḥaqq is multi-dimensional in its meaning, and thus could mean right or duty or claim. Ḥaqq, as opposed to Bāṭil in the literal sense in Arabic, is used in a range of forms, such as a duty to one-person, to prescribe and to the decree, to engrave on an object, to inscribe or to write, and also means something right, valid, and real that is binding on man as the right of God.³ It was described by an Islamic jurist as an accepted reality that cannot be denied. In this sense, this word has become similar in meaning to 'fact' and 'truth'.⁴ The determination of its proper meaning depends on the context in which it is used.⁵ Muslim jurists or jurist-theologians have given Ḥaqq general meaning in their legal, theological, and political treaties.⁶ In addressing ownership rights, the Egyptian jurist, Ibn Nujaym (d. 970/1563) made it very clear that human beings are the bearers of rights, without stipulating a reciprocal obligation. He argued that the “right” is the “competence” or “capacity” bestowed on an individual or a collective body. Thus, a person or an object becomes the subject of a right.⁷ When we claim that Ḥaqq denotes both what is real and what is true, it implies that Ḥaqq has an element of the real and an element of the truth in the sense that the real refers to the epistemological and the true refers to the rational orders of existence.⁸ Within Islamic practices, these rights may be assessed.

From a very early period, going back to medieval times, Muslim scholars have described categories of rights or claims. They distinguished between three primary forms of rights: the “rights of God” (Huqūq Allāh), the “rights of persons” (Huqūq al-‘ibad), and the “dual rights” shared by God and persons (State or Sultan).⁹ The rights of God (Huqūq Allāh) are those rights that have a revealed obligation and a divine rationale.¹⁰ Both can be obligatory

devotional responsibilities, such as ritual duties, or they can include the performance of acts that benefit the entire society. For example, following the five pillars of Islam, such as believing in one God, praying five times a day, paying charity, observing the annual fasting, and carrying out the pilgrimage, will be considered to fulfill God's rights.¹¹ In the category of "rights of God," the provision of services that result in the protection of the society from harm and the promotion of good in the broadest sense may also be included. The rights derived from secular and civil principles and worldly rationales are referred to as an individual's or a person's rights. These are individual rights under which a person is the owner of the right and he may forgive or take revenge. This right covers the matter of Tazīr and ordinary everyday matters that are not included in the law of God. They are bound to the individual and serve to safeguard the social interests of the people. This category encompasses financial rights and contract-related matters, intellectual rights, rights of benefit, general rights (such as the right to use roads, the right to worship in mosques), and rights of ownership. Dual rights, state rights, or sultanate rights are individual rights, but when these rights are addressed collectively, they are regarded as sultanate rights or government rights. Government rights are individuals' obligations towards the state and other fellow citizens. However, human rights are more of an enforcement power than the state's rights. Therefore, the Islamic human rights system is based on the significance of this right. The definition of this right is flexible. Some forms of rights can be transferred, while others can be voided with the owner's permission.¹² The classification listed above relates to the creation of rules of obligation and demonstrates how each form of law is connected to a right that is either the right of Allāh, or the right of the person, or the right of both. However, the most important thing to note is that a particular right or combination of rights must be granted to each act to which a *hukm* is connected. Thus, any act is the right of Allāh or a person.¹³

1.2 Legal Status of Non-Muslims in Sharī'ah

Qur'ān is the holy scripture of Islam and it forbids Muslims from using any form of compulsion to manipulate religious traditions and beliefs.¹⁴ The

Qur'ān continues to protect the rights of adherents of other religions by compelling Muslims to protect the rights of everyone.

“[They are] those who have been expelled from their homes in defiance of right,- [for no cause] except that they say, “our Lord is Allāh”. Did not Allāh check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allāh is commemorated in abundant measure. Allāh will certainly aid those who aid his [cause];- for verily Allāh is full of Strength, Exalted in Might, [able to enforce His Will].”¹⁵

Concerning various racial, cultural, and religious communities, the Qur'ān tells Muslims that the most honored is the one who is the most righteous of all.

“O mankind! We created you from a single [pair] of a male and a female, and made you into nations and tribes, that ye may know each other [not that ye may despise [each other]. Verily the most honoured of you in the sight of Allāh is [he who is] the most righteous of you. And Allāh has full knowledge and is well acquainted [with all things].”¹⁶

Mankind was one community, and Allāh sent messengers with glad tidings and warnings and sent a scripture to judge the people in affairs in which they differed. Allāh could have just guided the people if he intended, it shows Islam gave respect to everyone, not only the Muslims.¹⁷

“And unto Allāh leads straight the Way, but there are ways that turn aside: if Allāh had willed, He could have guided all of you.”¹⁸

The Qur'ān in Surah Ma'un declares that the people who do not believe in the Day of Judgment are the ones who mistreat the orphans. And does not advocate feeding the needy. And who is ignorant of their prayers.¹⁹

1.3 Rights of Non-Muslims/Minorities in Sharī'ah

The very first Islamic State to be founded in Medina by Prophet Muḥammad (Peace Be Upon Him). He (Peace Be Upon Him) gave absolute religious freedom to all non-Muslims/minorities which later came to be known as the Charter of Medina. It was the first ever charter for human rights. With it, He promised that there will be equal opportunities for minorities to live their lives peacefully. Non-Muslims have also been permitted to merge into Medina of their own will. They were granted political representation and had the same right as regards the election of the Head of State. Even on His deathbed, He (Peace Be Upon Him) instructed his followers to give full protection to non-Muslims. In most countries of the world, despite

widespread education, literacy, and constitutional protections, minorities still face prejudice and discrimination in every way of life. Minorities have been marginalized. Although secular states have been considered to guarantee the security of minorities, but, the situation is not as it seems. In America and other developing countries, minorities are considered second-class people whereas, the ideology of Islam guarantees freedom of faith and peaceful life.²⁰

The basic rights of non-Muslims, granted to the Jews, Christians, and Sabaeans by God in the Qur'ān, were extended to the Zoroastrians, Hindus, Buddhists, and adherents of other religions when they interacted with them. So, Islam, today provides the original flexibility of all three religions to adherents of all religions of the world.²¹ The following verse of the Holy Qur'ān deals with the integrity of an individual,

*"We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation."*²²

This verse demonstrates that the integrity or reputation of a man is the most important thing to be cared for in Islam. A Muslim is compelled by his religion to present Islam to a non-Believer. But this duty must be carried out on the condition of 'no coercion in the choice of faith.' No compulsion is the guarantee of the right to convince as well as to be reassured of the facts. It means that the non-Muslim converter must make up his mind as to the merits or demerits of what is offered to him.

*"Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allāh hath grasped the most trustworthy hand-hold, that never breaks. And Allāh heareth and knoweth all things."*²³

Based on the above-mentioned normative prohibition of coercion in all that applies to faith or religion, all Islamic jurists, without exception, hold that compelled conversion is null and void in all circumstances and that any effort to force a non-believer to embrace the faith of Islam is a terrible sin, a verdict that removes the common misconception that Islam imposes before the unbelievers the option of "conversion or sword."

*"To you be your Way, and to me mine."*²⁴

In undeniable ways, the Qur'ān forbids any interference whatsoever with the process. Allāh has asked the Prophet (Peace Be Upon Him) to call them to the path of Allāh with wise preaching.

"Invite [all] to the Way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are

best and most gracious: for thy Lord knoweth best, who have strayed from His Path, and who receive guidance."²⁵

In another verse of the Holy Qur'ān, Allāh has instructed that the Qur'ān be revealed to you and that you may propagate it to the people. These are the facts. Whoever acknowledges this is doing so to his credit. Whoever refuses it does so to disappoint him. You are not liable for their decisions (in case people reject the revelation).²⁶

*"[We sent them] with Clear Signs and Books of dark prophecies; and We have sent down unto thee [also] the Message; that thou mayest explain clearly to men what is sent for them, and that they may give thought."*²⁷

*"Say: "O ye men! Now Truth hath reached you from your Lord! those who receive guidance, do so for the good of their own souls; those who stray, do so to their own loss: and I am not [set] over you to arrange your affairs."*²⁸

Islam has a very particular fondness for minorities living in the Islamic State. Islamic law ensures and protects the right to life, property, honor, freedom of faith and religion to all its people, i.e., Muslims and non-Muslims without any form of prejudice. There is much misinformation being propagated against Islam in the West regarding the treatment of non-Muslims. It is alleged that non-Muslims are being discriminated based on their faith and religion. But if it were to research in detail the teachings of Islam on the rights of minorities, it would clarify the rights of non-Muslims in the Islamic State.²⁹

1.4 Basic Human Rights for Peaceful Co-existence in Perspective of Shari'ah

The origin of the word Islam in Arabic is *Islam*, or "submission to God's will," aslama, "he resigned, he surrendered, he submitted."³⁰ It also gives a sense of guiding peace and contentment and maintaining stability and agreement. Islam is a religion of security, stability, and harmony. These values are permeating the lives of Muslims. When the Muslims gather to pray, they cut off their association with this world, turn to the Lord in faith and obedience, and stand in His presence. At the end of the prayer, as if they had come to life, they welcome those on their right and left, wishing happiness: "Stay safe and in peace." With a desire for protection and security, harmony, and contentment, they return once again to the ordinary world. Greeting and wishing protection and security to others is considered as one of the most valuable actions in Islam. Muslims are a religious community, believing and belonging to the community (ummah) go hand in hand. Its worldly purpose is to create a coherent, human, and just social order. It seeks to establish a society in which individuals and society are

obliged to enjoin good and to forbid bad and evil.³¹ Al-Qur'ān also points out that differences do not mean that their origin is different, but rather that human beings have a similar faith and morality.³² In fact, differences based on religions are differences in human choice because God has given them freedom of choice. Differences of belief are seen in Islamic belief as part of God's strategy. The abolition of such differences is not the intention of Islam, nor has the Prophet Muḥammad (Peace Be Upon Him) been sent for that reason. Differences are part of life, but human rights must be made accessible to all, irrespective of their religion, race, or color. Islam offers a message of peace and gives people the fundamental rights to a peaceful coexistence in society.

1.4.1 Right of Life and Peaceful Living

According to Islam, life is a supreme reward for a human being with having a unique preference over other creatures. According to the Qur'ān, life is a divine bestowal on humanity that should be guaranteed and protected by all means as its fundamental right by the Creator. According to the Qur'ān, it is the individual and essential obligation of the Muslims to preserve the human merits and virtues of others. The Qur'ān prohibits the taking of life without due process of law,³³ and also obliges Muslims to care for anyone who cannot provide for themselves, which is believed to be the greatest virtue of Islam.³⁴ Life is endorsed by great values in Islam, in fact, the Qur'ān says that if anyone slew an individual unless it was for murder or spreading misfortune in the country, it would be as if he slew the whole of mankind and if someone saved a life, it would be as if he saved the whole of mankind's lives.³⁵ The Qur'ān points out that each person's life is, in essence, equivalent to that of all humanity and should therefore be handled with the greatest concern. Even during the war, the right to life is conferred by the Qur'ān on one's enemy because Muslims are prohibited from using force except in self-defense.³⁶ The aged, females, and children of the enemy are also covered by the Qur'ān and there are no exceptions to these.³⁷

1.4.2 Right of Respect and Honor

In the Holy Qur'ān, Almighty Allāh says we have honored the Children of Adam.³⁸ Without any distinction of gender, faith, and color, every Muslim must honor another human being. Human beings are considered deserving of respect because, of all creation, they have chosen to acknowledge the trust, one element of which is the independence of the will. In another verse of the Qur'ān, Allāh says that we have given the heavens and the earth and the mountains the trust [of reason and volition], but they have rejected to bear it because they were afraid of it. Yet man took it up because he was always inclined to be the most wicked, the most foolish.³⁹ Human beings can practice the freedom of the will because they have the logical capacity

that separates them from all other species. Though human beings may become “the lowest of the lows” (by doing evil deeds), the Almighty Allāh declares that they have been created “in the best of all things”⁴⁰ human beings may think, distinguish right from wrong, and do good and avoid evil. Therefore, all human beings are to be admired on consideration of the guarantee contained in being human (namely, the potential to be big revenue of Allāh on earth), and their humanity is to be considered an end in itself.

1.4.3 Right of Impartiality and Justice

Islam instructs upon humanity’s equality for justice and has ordered justice to rise among all individuals who overlook the relationship of blood and faith with others. In the Qur’ān, the right to pursue justice and the responsibility to do justice are greatly emphasized. Prophet Muḥammad (Peace Be Upon Him) condemns prejudice by denying the inequality of family attachment that is equal rights for humanity by the highest definition. The duty of the Muslims to be just and truthful enjoys a high priority in the Qur’ān,⁴¹ and is stated as follows: “True believer is one who is the protector of justice, the bearer of a witness for Allāh’s sake, though it may be against their selves or (your) parents or close relatives; whether he is rich or poor.”⁴² Hadīth says, “By Allāh, if Fatimah, the daughter of Muḥammad (Peace Be Upon Him), stole, I could cut off her hand.”⁴³ This preamble refers to the establishment of peace and harmony in a multi-cultural society that recognizes rights for all. In the context of Surah Al-Ma’idah, the importance of upholding justice is stressed as Allāh commands the believer not to let hate of people incite you not to deal justly.⁴⁴ Justice and compassion are desirable in the context of the Qur’ān⁴⁵ and also in the context of the Ḥadīth, “When two disputants sit before you, do not pass judgment until you have listened to the second as you have listened to the first.”⁴⁶ Do not make any remarks in favor of Muslims when the second party is non-Muslim in the decision because, according to Islam, fairness is superior and everyone is equal.

1.4.4 Right of Freedom

Islam genuinely respected freedom as a human need for the whole of mankind, without prejudice, even when slavery was a global tradition of almost every culture and society. Democracy requires freedom in every personal area of human need, such as education, economics, and the social system. The system of slavery ran as a tradition and dishonor to humanity in the world, but Islam eventually tried to demolish the system of slavery in order to develop the liberation of humanity. Prophet Muḥammad (Peace Be Upon Him) said: “If anyone manumits a Muslim slave, Allāh will save every part of his body from the fire for the freedom of the corresponding

parts of the slave's body, even his private parts will be saved from the fire) for the freedom of the slave's private parts."⁴⁷ Slavery was an inevitable part of society, and Islam came to relieve people, but in a way that they could embrace and follow, that is why Islam did not prohibit slavery. Rather, it changed it by justice but actively urged to free slaves. In addition, the Islamic legal maxim states that "customs is a legal authority" therefore also revoked this inhuman behavior by putting an end to slavery as a custom of Islam.

1.4.5 Right of Fairness and Equality

The Qur'ān explains that all human beings are the descendants of one man, Adam, and are therefore brothers to one another. The only person nearest to the Almighty is due to his good deeds.⁴⁸ Equality is promoted without the preference of any nation, tribe, or race. In another verse of the Holy Qur'ān, it was made clear that Allāh exalted the children of Adam and gave them rides on land and in the sea and gave them significant value than any other creature which demonstrates that all people are born equally by the creation of Allāh the Almighty.⁴⁹ Humanity's oppression does not have any special privilege in the eyes of the Law to become unique, but based on its values, it will be judged in this world and hereafter. Islam ensures that everybody must be equal before the law and enjoy the security of the law, including non-Muslims. Equality before the law ensures that everyone has the rights to equal regulation, equality, and justice as part of humanity.

1.4.6 Right of Religious Belief

Islam rewarded the freedom of the individual to choose their faith, and every religion is given due respect. Allāh the Almighty said in the Holy Qur'ān that there is no coercion in religion.⁵⁰ By stating the limits to secure that right, Allāh the Almighty said in the Holy Qur'ān that everyone is responsible for their deeds if anyone embraces Islam, it would be advantageous to them in the afterlife, otherwise everyone would receive the reward of their deeds.⁵¹ Religion is the significant requirement of humanity, with complete freedom of belief and conscience. These guidelines are not only for the Lord, the idols, and the other gods of any country, but also for the rulers or national heroes of the people. Besides, Islam encourages the concept of plurality and is ordered to interact with the people of the book with good manners.⁵² Islam has fostered respectful manners of communicating with people of other faiths to respect their religious perspectives and sentiments considering the fundamental right of humanity.

1.4.7 Right to Own and Protect Property

The Qur'ān grants upon individuals both the right to property and the freedom to trade as they please in what they own, given that they do so fairly. It is prohibited to consume each other's property illicitly.⁵³ The

concepts of the just protection of the rights and property of those in need of such protection, such as orphans, are brought together effortlessly in the Qur'ān.⁵⁴ Corruption on earth is forbidden by the following verse of the Holy Qur'ān, which states that Allāh does not love corruption.⁵⁵ So the fair right of owning property regardless of their faith has been given to all humanity.

2. Islamic Ethical Perspectives: Upholding Fundamental Rights for Non-Muslims in the Framework of the Constitution of Pakistan (1973)

This section of the research endeavors to intricately examine the convergence of Islamic ethical perspectives with the constitutional framework outlined in the Constitution of Pakistan (1973). Building upon the foundational insights gained from the preceding exploration of Islamic guarantees for the protection of basic human rights and the rights of non-Muslims, this segment seeks to unravel the specific ways in which Islamic ethics influence and uphold the fundamental rights of non-Muslims within the legal structure of Pakistan.

Drawing from the research on the concept of human rights in Sharī'ah, the legal status of non-Muslims in Sharī'ah, and the delineation of rights for non-Muslims and minorities within Islamic principles, this section aims to delineate how these ethical perspectives are translated into constitutional safeguards. It delves into the provisions of the Constitution of Pakistan (1973) that explicitly address the rights of non-Muslims and minorities, examining how these align with the broader principles of justice, equality, and respect for diversity inherent in Islamic ethics.

The analysis extends to the constitutional guarantees such as equality of citizens, security of person, protection of non-Muslims/minorities, freedom, and the right to practice religion. It scrutinizes how the Constitution safeguards cultural identity, social rights, and educational institutions in reverence of any religion. Additionally, the section explores provisions concerning property rights, access to public spaces, protection against unfairness in services, and the overall protection of fundamental rights for non-Muslims.

By synthesizing Islamic ethical perspectives with constitutional provisions, this segment aims to provide a nuanced understanding of how the Constitution of Pakistan (1973) aligns with, complements, or diverges from Islamic principles. The exploration seeks to shed light on the practical manifestation of Islamic ethics in the legal realm, emphasizing the commitment to fostering a just, inclusive, and diverse society that respects the fundamental rights of all its citizens, regardless of their religious affiliation.

3. Conclusion

In traversing the intricate intersection of Islamic ethical perspectives and the constitutional fabric outlined in the Constitution of Pakistan (1973), this comprehensive exploration has sought to illuminate the nuanced dynamics surrounding the protection of human rights for non-Muslims. The journey through the conceptual landscape of Shari'ah, scrutinizing the legal status and rights of non-Muslims, has provided valuable insights into the foundational principles that underpin the treatment of minorities within Islamic ethics.

The Constitution of Pakistan (1973) emerges as a pivotal document in this discourse, embodying a delicate balance between Islamic principles and modern governance. The examination of fundamental rights for non-Muslims within its provisions reveals a concerted effort to align the legal framework with the broader principles of justice, equality, and respect for diversity embedded in Islamic ethics.

From the fundamental right to life and peaceful living to the protection of religious beliefs, ownership of property, and access to public spaces without prejudice, the Constitution of Pakistan (1973) articulates a commitment to safeguarding the rights of non-Muslims. The constitutional provisions ensure the security, freedom, and cultural preservation of minorities, fostering an environment that promotes interfaith harmony and social cohesion.

This research contributes to the broader discourse on human rights and religious freedom, demonstrating the compatibility between Islamic ethical perspectives and constitutional safeguards. By shedding light on the shared principles that underlie both realms, it offers a nuanced understanding of how Islamic values are translated into legal protections for non-Muslims in the specific context of Pakistan.

As the world navigates the complexities of religious diversity and seeks models for inclusive governance, this examination serves as a valuable case study. It highlights the potential for harmony between religious principles and constitutional guarantees, emphasizing the importance of upholding the fundamental rights of all citizens, irrespective of their religious affiliations. In conclusion, this exploration underscores the significance of aligning legal frameworks with ethical principles, showcasing a harmonious coexistence between Islamic values and constitutional safeguards. It is a testament to the evolving nature of legal systems in accommodating diversity, ultimately contributing to the broader global conversation on human rights and the protection of minority rights within the context of Islamic governance.

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