

The Rights of Non-Moslems In Contemporary Islam

Presented at:
Conference of "Reframing Islam: Politics into Law"
10-11Th September 2005
Irish Center for Human Rights
National University of Ireland, Galway

Dr. Mohsen Kadivar
Mojtahed in Shari'ah(Islamic Jurisprudence), Qom Seminary,
Assistant Professor of Islamic Philosophy and Theology,
Tarbiat Modarres University, Tehran, Iran

Introduction

An important issue of Islam today is "The Rights of non-Moslems in Islamic Societies". The origin of the problem is that there is a direct relationship between the rights of people in one side and their religion and political situation towards the Moslems on the other side in Islamic Jurisprudence (*Shari'ah*).

The above means that from the first point of view - meaning religion - we face three different kinds of rights: First, the rights of the Moslems; Second, the rights of the followers of ones adherent to one of three recognized religions (Christianity, Judaism and Zoroastrianism), and the third, rights of the infidels.

From the second view point - which is a political point of view - there are at least two situations possible: The first, peaceful and mutual respect which usually lead to signing of contracts and treaties, and the second, belligerence that usually leads to war between Moslems and Non-Moslems.

Accordingly the world is divided in to three territories: The Moslem territory (*Dar ol-Islam*), the enemy territory (*Dar ol-Harb*), and territory of treaty (*Dar ol-Ahd*). The first is where the Moslems form the majority or is under their reign, the second are the territories that have declared a war against the Moslems, and the third are the territories that have signed treaties with the Moslems and there exists economical, political and cultural relationship between the two States.

It is axiomatic that not all the people in the Moslems territories are Moslems. From the beginning of Islam many groups of Judaists, Christians and Zoroastrians have lived side by side by the Moslems. The non- Moslems that live in the Moslem territories are not limited to the three religions mentioned above and it may embody the citizen of any non-Moslem State that is a party to a treaty with the Moslems. It is clear too that all people in the territory of treaty are not necessarily non-Moslems, and Moslems may be living in these territories. Even though it is hard to imagine Moslems living in the enemy territories but this is not impossible.

Anyways in this three way division we face two undisputable minorities: The non-Moslem minority in the Moslem territory, and the minority of the Moslems in the territory of the treaty. In Islamic literature there are different religious terms that are used for the non-Moslem minorities mentioned above (for example "*ahlo-Zemme*", "*al-Mo'ahad*" and "*al-Mosta'man*").

"*Ahlo-Zemme*" is one of the followers of ones adherent to one of three recognized religions that has signed a special treaty with the rulers of the Moslem States and pay a certain kind of tax called "*al-Jezyah*" and as a result is able to live securely amongst the Moslems. "*Al-Mo'ahad*" is an infidel that has signed a treaty with the Islamic ruler and is treated as agreed in the contract. "*Al-Mosta'man*" is a non- Moslem that through a temporary contract that is often binding for less than a year has traveled to a Moslem State to become familiar with the Islamic teachings.

"*Ahlo-Zemme*" having many important rights such as right to live, security, ownership, commercial, religious raising of their children, keeping their own places of worship and temples, complete freedom in their private sphere, and the right to exercise their religion; at the same time are deprived of many other rights such as the right to advertising their religion amongst the Moslems, not demonstrating affairs that are in contrast with the Islamic *Shari'ah* in public, and construction of new places of worship.

The non-Moslems that have not signed the "*Zemme*" contract will be considered a "*al-Moa'had*" if they sign another contract and as a result they will usually be entitled to lesser right as compared to the "*zemme*" contracts, and many more rights as compared to infidels.

There have been many books and articles written about the rights of the non-Moslems residing in the Moslem territories especially *ahlo-Zemme*. In addition in Islamic jurisprudence books a great section exclusively pays to commandments in this area. The list of the such books and articles in itself will be a lengthy list. The lawyers under the title of international Islamic law have discussed the rights of the non-Moslems in Islamic societies. The historians have studied the way of the Moslems with the religious minorities thoroughly.

The report card of the ways of the Moslems with the non-Moslems residing in the Moslem territories in comparison with the ways of the non-Moslems with the Moslems in their territories is as a whole a successful one that can easily be defended. In this article we are not to review the report card of the past. I believe that the way of Shari'ah concerning the non-Moslems has been reasonable considering the times.

Different Hypothesizes of Non-Moslems rules

The question that we are to answer here is that which kind of rules are the religious commandments and rules concerning the non-Moslems such as the rules of "*ahlo-Zemme*"?

A) Are they permanent and unchangeable which are always absolutely executable?

B) Or are they conditional religious rules that are obligated whenever their conditions are available? The most important of the conditions is the power of the Moslems. Therefore when the Moslems are not the higher international or regional power then are not such rules executable as the conditions are not met?

C) Or are such religious commandments and rules temporal and changeable that the time of their validity has passed, and now they are not applicable and as a result they are null and void? Meaning that in general have they been valid in their time and with modification their specific conditions are to be changed?

We will have three different hypothesizes about Non-Moslems rules by choosing one of the above choices.

Theoretically no matter which one of these three hypothesizes we believe there is no doubt that not all the conditions today can be implemented. Even the believers of the first theory (religious rules being permanent and unchangeable through time) do not have a choice but consenting to not implementation of many of these religious rules even though they may believe such religious rules to be valid absolutely.

What this article endeavors to prove is another forth hypothesis. The said hypothesis is a combination of the three hypothesizes above. The latter means that the religious rules concerning the non-Moslems in the book of God (*Koran*), the tradition of the prophet (*Sonnah*), and generally in Islamic jurisprudence (*Shari'ah*) are not all of the same kind, but can be divided to three categories:

1. Permanent religious rules that can be refereed to as " the principles of the rights of non-Moslems"
2. Conditional religious rules depending on the power of the Moslems
3. Modifiable religious rules that are considered null and void.

The difference of the second and the third categories is that the second is valid and implemental in time but the validity of the third category has come to an end. Although the third rules were religious rules, but they aren't among the religious rules (*al-Ahkam-o Shar'iyyah*) in current times.

To be more concise it can be said that the religious rules of non-Moslems in contemporary Islam can be categorized in to two kinds:

1. The permanent religious rules of non-Moslems that are the basis and principles of other religious rules

2. Conditional and modifiable religious rules that are made at the basis permanent principles and shall shape the Islamic politics that are for the protection of public interest and the general convenience of Moslems and does not have a constant shape and fixed form.

The important issue is distinguishing the abolished rules, and more important than that is finding and derivation of those permanent principles. Some Moslems believe that all religious rules of the revelation time (*Asro- Nozou*) are permanent and are not influenced by time.

They have not taken into attention this axiomatic point that the prophet in addition to informing and advertising the religious perpetual and international commandments, was also in charge of the problems and issues of his own era and time, and any religious rules for solving those problems and issues is temporary and not permanent. Also there were some temporal and local problems, which could not be solved by the prophet alone, and he needed a celestial revelation. Based on the latter a very few of the verses of Koran can state temporary rules.

Nevertheless the majority of the religious rules concerning non-Moslems in the text of the narratives are conditional religious rules, and the principles and basis of the rights of the non-Moslems are more than usual clarified in the Koran and often in the tradition of prophet.

The Principles and Basis of the Rights of Non-Moslems

The most important principles and basis of the rights of the non-Moslems are as follows:

1. Essential Human Dignity: in the Koran all humans not depending on sex, race, color, religion or belief have dignity. Holy Koran stating: " We honored the children of Adam"[17,70] testifies to that fact. Without a doubt this honoring is the origin of all rights, and is the minimum that must be abided by everyone. This also includes the non-Moslems as well the Moslems.

2. The diversity of the religions and the difference of opinion in this area is a fact that cannot be ignored. This phenomenon has been realized as a result of God's will. Through the viewpoint of Islam humans are free to choose their religion and no one can force a person to become a Moslem. If all people were supposed to be Moslems God would have done so, yet this has not been done. God has seen the good of the peoples in diversity of religions and their difference of opinion in this area .The many verses would testify to the latter. Some important verses are as follows:

"...Say that the right words are from your God therefore everyone who wants to, can bring faith or become infidels"[18,29]

" If your God wanted to, he would have created one *Ommah*(one religion)"[11,118]

"If your God wanted to, all who are on earth would have brought faith, so do you make people bring faith even though they do not want it!"[10,99]

The prerequisite of the above principle is the acceptance of the rights of the followers of other religions.

3. A Moslem is not obligated to call to account of the religions of the others. Penalties and judgment will take place in the place in the next world, and God is the judge of that. Human cannot be the judge as he or she can make a mistake. When believing that it is permissible to penalize others through religion is taking the place of God and it is also bringing the next world into this world. A Moslem believes that the fair judgment about religions of human being will be done by God in the next world. This undisputable Koranic principle has been stressed on in different verses. An example of such a verse is as follows:

"If they argue or dispute with you say that God is omniscient to what you do, God will be arbitrate your dispute in resurrection"[22,68-69]. In another place in Koran God reminds his prophet that he should be persistent in his faith and tell him to say: "God is ours and yours, we with our tasks and you with your tasks, there is not dispute between us and you. God will round us (In resurrection) and everyone's return is to his direction"[42,15].

4. living together amicably and mutual action: Moslems are obligated to be at peace with each other and others, and are not permitted to go to war against ones that have not acted against Moslems. On the other hand they are obligated to be on friendly terms and be benevolent with such nations or individuals. This is the fundamental principle for the foreign relation policy of all Islamic nations for dealing with the non-Moslems and has been clearly stressed on in Koran:

"God does not prevent being benevolent and just with ones that did not go to war with you for religion and did not run you out of your abode, as God likes just persons. God only prevents you from being friends with those that went to war with you because of your religion, and ran you out of your abode, and helped each other in this task; everyone who contracts them as friends, he will be the unjust"[60,8-9].

Depending to the above regulations dealing of the Moslems with non-Moslems is based on benevolence, justice and friendship; and it is only necessary to cut relations with the unjust, invading non-Moslem. This command of Koran is perfectly rational and is correspondent mutual action in international law.

5. Basing all relations of the Moslems with non-Moslems on contracts: The relation of the Islamic States with religious minorities must be based on mutual agreements. Therefore "*Zemme*" should be considered a contract that has been concluded between the Moslem ruler and the followers of three recognized religions (Christianity, Judaism and Zoroastrianism).

An agreement is also concluded with the followers of religions other than Christianity, Judaism and Zoroastrianism. Such an agreement is called a treaty ("*al-Mo'ahede*") and the infidel party to the contract is called an infidel treaty party ("*al-Kafer ol-Mo'ahad*").

And in *Most'aman* there is a temporary contract between the non-Moslem and the Moslem that is honored by all Moslems. All three agreements are irrevocable by the Moslem and permissive for the non-Moslems. This means that the non-Moslems can unilaterally terminate the agreement. The parties to the contract are bound by the contract as long as the other side is performing their obligations by the contract. Therefore if the Islamic State is unsuccessful in providing the security of non-Moslems, the non-Moslem party does not have to pay the special tax ("*al-Jezyah*"). It is clear that the non-Moslem party is completely free to conclude or not to conclude the contract.

Fulfillment of an obligation is one of the necessities in Islam. In many verses in Koran it has been clearly stressed on fulfillment of an obligation in general and it has specifically stressed on fulfillment of obligation with the non-Moslems as long as they have not breached the contract. For example: "Believers, fulfill the obligations in contracts that you conclude"[5,1]. "finish your obligations to the end of your contracts, God loves all pious persons."[9,7]. "As long as the your infidel contracting parties are bound by their contract with you should also be bound to your contract with them. God loves pious persons."[9,7]

The relationship of the Moslems and non-Moslems being based on contract whether with religious minorities in the Islamic territories or in non-Moslems outside those borders is very much rational and correspondent with the international laws and regulations of today's society. It is clear that both parties include what is best for them in these contracts and it is axiomatic that the content of such contracts would not be the same in different times or places.

6. The principle of eye for an eye with taking justice in mind is a principle that governs the relation of Moslems with non-Moslems. This means that a Moslem or an Islamic State has the right to act and the treat the party as the other party has treated him. The principle of eye for an eye is rational and deterrent. The Koran has also stressed on this principle in many verses. For example: "if anyone that injures you unjustly, injure him (to that extent), god is with pious persons." [2,194]. "if a person does you wrong you can retaliate up to the extent that he or she has done you wrong, and if you are patient, patience I obviously better." [16,126]

But the principle of eye for an eye has been restricted with the principle of justice. Moslems are obligated to retaliate to a point where they are not unjust. They must always be very much just." it is clear that the enmity of a group should not make you to be unjust, as justice is closer to piousness" [5,8]. Both principles of justice and eye for an eye are rational and are based on religion and it applies to both Moslems and non-Moslems equally.

Conclusion:

Considering the above principles it seems that there are no formulas that can be implemented at all times and places. It is only natural that the convenience of the Moslems is not the same at different times and places. on the other side the convenience of the non-Moslems is also not the same in for all times and places. At some times Moslems are strong and at some times they are weak. How can one find a single formula that would work for all times and places? Therefore regulations such as "*al-Jezyah*" and its amount and the content of the "*Zemme*" contract in books of Shari'a have all been limited to the time and place that they have been made. There is no reason for trying to implement them at another time and place. All the dimensions of the "*zemme*" or "*Mo'ahedah*" contract is in the hands of the elected Islamic State, and the elected ruler concludes the "*zemme*" or "*Mo,ahedah*" contract as he sees fit. He decides whether there is a need for special tax "*al-Jezyah*", if a new place of worship should be built or not, if the religious minorities should be drafted for military service, and none of these are permanent and they are all temporary religious rules.

In addition there is also another criterion and that is the way of living with the Islamic minorities in other countries. The Islamic ruler believes that a way to determine the amount of rights and freedoms of other religious minorities the amount of rights and freedom of the Islamic minority in non-Moslem regions. But of course this is just one criterion because if Moslems are mistreated in countries where they are a minority, this does not mean that the believers of other religions should be treated in an inhumane or an unjust manner in the Islamic countries. Moslems do not have the right to act outside of the framework of justice.

In what was covered in this article it has become clear that the social Islamic rules are related to the political situations of different times. It is impossible to execute the religious rules without considering the different conditions of place and time. In another words, with regarding the Islamic principles and basis, most of the religious rules (excluding the ones that involves worship) "*Ahkam ol Mo'amela*" had been enacted considering the conditions of place and times at which it has been enacted. They have the necessary flexibility at different times and conditions. This flexibility is a necessary tool for today's Islamic "*Ijtihad*" to encounter different situations.