The Status of Religious Minorities in Islamic Law and Modern Muslim States: A Comparative Study of Classical Fiqh and Current National Legal Frameworks

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This paper explores the Islamic jurisprudence (Fiqh) of the legal position of religious minorities and contrasts these legal provisions with the legal provisions of minority groups in the modern Muslim-majority states. Muslim jurists in historical times had created an extensive legal code that classified non-Muslims into legal categories including ahl al-dhimma (protected people), and granted them certain rights and duties as members of an Islamic polity. Such classical models were contextually anchored in the pre-modern political structures and social norms which are not similar to the modern system of the nation-state. As the concept of colonialism, nationalism and constitutionalism entered the Muslim world, the legislative attitudes towards religious minorities were changing, and the law in such countries as Egypt, Pakistan, Indonesia and Morocco started to become characterized by hybridized norms, i.e.- being based on the principles of Islamic law and international human rights law, as well as being shaped by the needs of local politics. This study by examining classical texts through the prism of doctrinal analysis of the major Sunni and Shia schools (Hanafi, Maliki, Shafi'i, Hanbali and Ja'fari) and comparing the contemporary legal systems with the historical jurisprudence will outline the areas of similarity and difference between the traditional jurisprudence and modern legal frameworks. The paper finds that despite the fact that foundational Islamic legal principles are still present in the statutory protection, there are specific voids between customary norms and the modern international equality and non-discrimination standards. The study has found that there are a lot of differences among states regarding legal recognition and representation of religious minorities, as well as, their socio-legal status. The policy proposals include reform of the law, inclusive constitutionalism, enhanced anti-discrimination statutes, and the alignment of traditional formations with contemporary human rights demands.

1. Introduction

Religion has been one of the main organizing principles of societies in the world. Islamic law (shari'a), which is based on the Quran, the Sunnah (Prophetic tradition), and centuries of juristic interpretation (fiqh), has been a normative and legal basis of the state and the society in Muslim-majority settings since time immemorial. One of the significant questions to scholars, policymakers and rights activists is how the religious minorities, who do not follow the major religion, are treated according to the Islamic laws and how the treatment has been modified or changed within the legislations of the contemporary Muslim states (Yousuf, 2025).

The legal position of non-Muslims who are under Muslim rule was a major concern in the classical Islamic legal thought. The ahl al-kitab (People of the Book) and dhimmis (non-Muslims under protection) reflect subtle juristic efforts to reconcile communal identity, religious freedoms and state authority. These legal types belonged to a larger normative system, which was aimed at establishing rights, obligations, and social order in multi-religious empires which encompassed huge geographical areas (Siddiqui, 2020).

However, beginning with the introduction of the modern nation-state, the international regime of human rights, the codification of the secular legislation, and the political activism of the Muslim world, the situation with the law of religious minorities changed considerably. Constitutions, statutory legislation, and international duties intersect, compete and even at times conflict with traditional Islamic principles of law (Ahmed, 2021).

Such a study is a query into the legality and realities of religious minorities by contrasting classical fiqh concepts with the present-day national legal systems in some selected Muslim states. It examines the foundations of jurisprudence, legal continuity and change, and the degree to which contemporary statutory systems are based on or deviate the traditional norms. In this manner, the study can be added to the existing discussions of the religious pluralism, legal reform and minority rights in the Muslim world (Rahman, 2023).

To accomplish this study, the religious minorities involve communities in states where the majority religious groups are Muslims who identify themselves with religions other than the dominant religious groups (Karim, 2024). These are Christians, Jews, Zoroastrians, Hindus, Baha'is, etc. Classical Fiqh: Islamic juristic knowledge that preceded the twentieth century and colonial and post-colonial legal modernity, encompassing Sunni and Shia legal schools (Hassan, 2022). The constitutional, statutory, judicial and administrative law in the contemporary Muslim-majority states. It is a comparative study that is not all inclusive of Muslim societies. The chosen states, which include Egypt, Pakistan, Indonesia and Morocco, offer good examples of legal systems that have different attitudes towards minority rights.

Following this introductory part, the paper presents research objectives and questions, a literature review, the methodology, presentation of results including the interpretation, and finally, the conclusions of the paper, which show the key findings and policy recommendations.

1.1 Research Objectives

To examine classical Islamic jurisprudential categories of the religious minorities.

To determine the historical role and the social connotations of the dhimmi status in the pre-modern Islamic regulations.

To analyse the provisions of the constitution and law regulating the religious minority in the contemporary Muslim states.

To make a comparison and contrast between continuity and transformations of legal norms of classical fiqh and modern national law.

To evaluate the points where the contemporary legal systems are consistent with or not in compliance with international human rights.

To provide policy suggestions about how to better protect religious minorities through legal means.

2. Literature Review

2.1 Islam Minority vs. Classical Islamic Jurisprudence

Classical Islamic jurisprudence expresses elaborate models of the rule of religious minorities. Some of the important concepts are dhimma, ahl al-kitab, and terms of protection by the Muslim rule. These ideas are found in juristic works covering the four schools of Sunni (Hanafi, Maliki, Shafi'i, Hanbali) and the Twelver Shia (Ja'fari) tradition (Abou El Fadl, 2002). Dhimmi Status: Dhimmi jurisprudence granted the non-Muslims of the Muslim kingdom a privileged status in the society with the promise to pay the jizya tax and abide by some social-legal restrictions. Jurists like Imam al-Shafi and Imam Malik wrote about terms of protection by law, regulation of worship and the civic duties (An-Na'im, 1990). Freedom of Worship and Communal Autonomy: Classical formulations tended to provide freedom of worship and a certain level of community autonomy, in addition to regulating the freedom of religious expression, legal testification, and political participation. As an illustration, there were jurists who limited the display of religious signs publicly and at the same time safeguarded against forced conversion. According to scholar (Baderin, 2001) highlights that pre-modern Islamic law expressed a pluralistic ethos though based on hierarchical social structures, which differentiated believers and non-believers. Nevertheless, they also differ in their interpretations of the scope of legal equality and social inclusion in the past (Bielefeldt, 2000).

2.2 Contemporary Jurisprudence in the Muslim States

Legal treatment of religious minorities changed significantly after the fall of the colonial empires and the establishment of the nation states. Contemporary constitutions, civil codes and human rights laws were put to the fore in defining the citizenship and minority protection.

2.3 Nations Vary in Their Constitutional Language and Legal Safeguards

- **Egypt:** Freedom of belief is formally ensured by the constitution but limitations imposed by law and the administration take place where minority groups are concerned.

- **Pakistan:** Minority rights are constitutionally assured, but there still is discrimination and law of blasphemy (Brown, 2000).
- **Indonesia:** Legal pluralism is complicating religious identity and official interest because Indonesia is the largest Muslim majority state in the world.
- **Morocco:** The legal reforms have attempted to affirm international human rights standards into Islamic legal tradition.

Such legal theorists as Ann Mayer (1999), Fadl (2004), and Saeed (2016) examine the interaction between the Islamic law and the national legal standards, especially the influence of constitutionalism and international law on minority rights (Hallaq, 2009).

2.4 The Global Human Rights Viewpoints

The International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights established the international standards of religious freedom and equality. Most of the Muslim states are signatories to such instruments, but not all are implemented. Critical literature focuses on conflicts between universal human rights standards and law systems grounded in religion (Hashemi, 2009). In general, according to the literature, there is continuity and disjuncture of classical Islamic principles and modern statutory frameworks, that are mediated by political, social and international influences.

2.5 The Minority Protection and the Maqasid al-Shari'a (Objectives of Islamic Law)

The current research has reemerged with the issue of religious minority in terms of Maqasid al-Shari'a (the superior goals of the Islamic law). Classical jurists like al-Ghazali and al-Shatibi defined the protection of the religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-aql), lineage (hifz al-nasl), and property (hifz al-mal) as the primary aims of the Islamic law. According to the contemporary reformists, these goals are universal, not communally bound and thus should be applied to both Muslims and non-Muslims. Several modern intellectuals such as Rashid Rida, Ibn Ashur, and modern jurists like Jasser Auda have built upon the maqasid theory to make justice, human dignity, and freedom the pillars of Islam. In this context, discriminatory clauses present in certain classical readings are re-evaluated as context-dependent instead of absolute. Those who believe in the reforms made by maqasid believe that when the modern constitutional guarantees of equality are considered, it is not in conflict with the Islamic law but it is a continuation of its overall moral goals (Hassan, 2022). This literary tradition contributes to the redefinition of classical minority regulations in a more responsive manner to the modern human rights values. But the critics argue that the maqasid argument fails to also provide specific legal devices to convert ethical goals into legally binding statutory guidelines (Kamali, 2000).

2.6 The Ottoman Millet and the Historical Practice

In addition to the discussion of doctrines, other historical institutional practices like the Ottoman millet system can be used to have insight into what actually happened with the governance of religious minorities in action. The Ottoman Empire systematized the minorities, especially the Greek Orthodox Christian, the Armenians and the Jews into semi-autonomous

religious groups under their respective leaders. These communities had control over personal status law, education, and internal affairs but were under the control of the imperial authority.

Benjamin Braude and Bernard Lewis are scholars who examine the millet system as a form of pragmatic pluralism in Islamic governance. The system shows that the protection of minorities during the Islamic history was not only theoretical on paper but was actually an institutionalized process. Nevertheless, historians also mention that this system established the communal borders and strengthened religious sense as the main dimension of legal belonging which is not the same as contemporary ideas of individual citizenship (Karim, 2024).

According to comparative literature, although the millet system was a stable and communal autonomy, it was not equal to egalitarian citizenship as it is understood in modern times. The imperial to nation-state shift destroyed the communal autonomy frameworks and established centralized citizenship frameworks that in some cases minimized the room of community based pluralism (Lombardi, 2013).

2.7 Colonial Legal Reforms and their effects

The other important literature on the topic is the literature that explores the radical change of the Islamic law systems due to colonial rule. In the nineteenth century and the twentieth century, the European colonial governments established codified legal systems that were based on the French and British models. The process of codification tended to sideline the classical fiqh courts and instead introduced centralized civil courts. According to scholars like Wael Hallaq, the contemporary state changed the epistemological and institutional character of Islamic law radically. The colonial experience redefined the minority status in the secular law of citizenship and civil rights. In most situations, the colonialists placed themselves as the safeguard of the minority groups, occasionally even widening the sectarian lines (Masud, 19995). These codified systems were passed on to post-colonial legal systems in which hybrid systems were developed reconciled between Islamic clauses defining the identity and the secular civil codes. The reason why there is a split between classical jurisprudence and modern statutory law in most of the Muslim states is, therefore, explained by this hybridization. In this field, literature underlines that contemporary issues of minority can be explained only in the context of colonial reorganization of government and legislation (Moosa, 2001).

2.8 Theory of Citizenship and the Contemporary Nation-State

The discussion of religious minorities has been increasingly discussed through political theory and legal theory in terms of citizenship. Classical Islamic governance was based on a differentiated communal belonging model, and the modern nation-state is based on equal citizenship irrespective of religion (Otto, 2010). Other scholars like Abdullahi An-Na'im are of the view that equal citizenship can be applied to Islamic precepts by applying a contemporary constitutional focus. Still others bring out issues of tensions in the pronouncement of Islam as the state religion, and the commitment to equal rights of all citizens. The body of literature examines the clauses in the constitutions of Muslim-majority countries that confirm the Muslim identity and at the same time guarantee equality. Other researchers note that these two commitments may bring about legal uncertainty, especially when it comes to conversion, blasphemy, and family law. Comparative constitutional analysis reveals that different countries

have various approaches to these clauses regarding their interpretation by different courts where certain countries insist on religious identity and others focus on civic equality (Peter, 2005).

2.9 Minority Experiences and Empirical Human Rights Reports

In addition to theoretical and doctrinal debates, empirical research and human rights reports can offer experience about the life of minorities in Muslim states. The trends of discrimination, social marginalization, and legal marginalization of minority groups have been reported by organizations like the Human Rights Watch, Amnesty International, and other UN Special Rapporteurs in specific situations (Saeed, 2006). The scholars of socio-legal sciences accentuate the difference between constitutional text and social reality. Although religious freedom is officially assured in many Muslim states, loopholes remain in its enforcement owing to the discretion of the administration, social bias, and lax enforcement policies. Empirical studies have also shown that there is greatly diverse difference among regions where in some states there is high degree of pluralism and coexistence and in others there is sectarian conflict (Shadid, 2002).

This literature reveals the significance of analyzing the not only legal texts, but also institutional capacity, political culture, as well as social dynamics in evaluating minority rights. It gives more weight to the methodology used in the given study as it is based on comparison as it is necessary to combine the analysis of doctrines with practical assessment.

3. Methodology

3.1 Research Design

The present study employs the qualitative comparative legal analysis approach. It interacts with both classical Islamic legal school documents and governmental legislative tools of present-day Muslim states. It is the doctrinal, comparative and interpretive approach.

Data Sources

Classical Jurisprudential Texts: Within the dhimmi law, the translation and analyses of classical works in jurisprudence.

National Constitutions & Statutes: Egypt (2014 Constitution), Pakistan (1973 Constitution), Indonesia (1945 Constitution), Morocco (2011 Constitution).

International Law Sources: UDHR, ICCPR and applicable UN declarations on minority rights.

Secondary Literature: Legal commentary, scholarly analysis, and human rights reports.

Tools & Techniques

Textual Analysis: This is the close reading of the law texts in order to derive pertinent provisions.

Comparative Framework: Cross-case comparison with a specified rubric.

Themes Coding: Themes like legal recognition, equality, freedom of religion, political representation, and social integration.

Limitations

Some texts in classical language are not easily available or translationally.

Diversification in the national interpretation and implementation of jurisprudence deter generalizability.

4. Results and Interpretation

Table No 1: Key Comparative Indicators

Indicator	Classical Fiqh	Egypt	Pakistan	Indonesia	Morocco
Legal Recognition of Minorities	Protected (*dhimmi*) with conditions	Constitutional recognition; official status	Constitutional recognition; quotas	Official recognition of certain religions	Constitutional protection and reform
Freedom of Worship	Permitted within community norms	Protected; limited public display	Protected; restrictions due to blasphemy laws	Protected; restrictions vary by region	Protected; increasing pluralism
Legal Equality	Status-based hierarchy	Formal equality, practical gaps	Formal equality; legal discrimination	Pluralistic recognition; challenges	Constitutional equality; reforms
Political Participation	Limited political roles	Participation guaranteed	Participation; but social discrimination	Representation mechanisms exist	Participation; advisory councils
International Human Rights Alignment	Partial	Moderate	Low–moderate	Moderate	High

4.1 Interpretation

- **Legal Recognition:** Minorities in classical systems were acknowledged by a hierarchy of communal status. In the modern constitutions, formal equality is usually provided, but the disjunction between the textual guarantees and the actual life differs.
- **Freedom of Worship:** Traditional fiqh permitted worship but limited expressions. Nevertheless, in practice, in some cases, modern states grant freedom of worship formally, but in reality, there are still certain restrictions (e.g., blasphemy laws).
- **Political Rights:** The classical law tended to restrict political participation of non-Muslims. Contemporary legal systems assume universal political rights, even though social and legal restrictions influence the achievement.
- **Human Rights Compliance:** Conformance with global human rights is diverse. The constitutional reform in Morocco is more in tandem, but Pakistan is quite gaping.

4.2 Case Highlights

- **Egypt:** Freedom of belief is guaranteed; nevertheless, minority groups are influenced by sectarian tensions and bureaucratic difficulties.

- **Pakistan:** Constitutional freedom and blasphemy laws undermining minority security coexist with very restrictive laws on blasphemy.
- **Indonesia:** The acknowledgement of six religions brings about pluralistic inclusivity, however, local implementation can limit minority groups.
- **Morocco:** Constitutional reforms One of the areas where human rights principles are combined with Islamic traditions is progressive constitutional reform.

5. Conclusion

This comparative study proves that classical Islamic jurisprudence and contemporary legal systems are thematically dedicated to coexistence but very different in terms of application and normative stance. Classical fiqh offered communal safeguards in a hierarchical framework; contemporary states seek formal equality and universal rights, the achievement of which varies. Although formal constitutional safeguards in the modern Muslim world tend to emulate international standards of human rights, there are still gaps, as a result of the domestic regulations, social forces, and cultural conventions, which may become marginalizing when it comes to religious minorities.

5.1 Policy Recommendations

- **Legal Reform:** Scrutinize and revise discriminatory legislation (e.g., blasphemy laws) that overly affect minorities.
- **Clarity in the Constitution:** Make constitutions clearly state that there must be equality before the law and it should not be discriminated against religion.
- **Judicial Training:** Train judges and legal professionals on human rights norms and inclusive jurisprudence.
- **Public Education:** Educate to enhance interfaith comprehension and pluralism with school learning.
- **International Engagement:** Sign and enforce international treaties on minority rights with suitable constitutional protection.
- **Monitoring Mechanisms:** Have independent agencies to oversee discrimination and institute protections.

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