

The Role of Islamic Sharia in Protecting the Rights of the Minorities Rohingya as A Case Study

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Abstract

Islamic Sharia has always been defending minority rights from the advent of the Islamic era. This study aims to identify the role of Islamic Sharia in protecting the rights of minorities. The study examines the situation of the Rohingya minority as a case study. The importance of this study stems from the fact that it provides a scientific contribution to studies related to international law, especially with regard to the protection of minorities, and with regard to the Rohingya problem, with the special sensitivity it represents to the Islamic world. This study also provides up-to-date information to researchers about this crisis, the most prominent difficulties and obstacles, and the most prominent efforts made in this problem. To identify the issues and problems of the current study and the elements of these issues, the research followed a comparative descriptive and analytical approach. To analytically differentiate the most appropriate choice, the legal texts contained in international treaties and relevant national legislation were studied and analysed. Then the research analysed the mechanisms of legal protection of minority rights with criticism, and the description is used as an auxiliary means that paves the way for clarifying all aspects in identifying preference for choice. The interview was adopted to provide more data in the subject under study. The study reached several results, the most important of which is that Islam guarantees religious minorities all civil rights, including life, dignity, security, safety, and freedom of belief, including the practice of rituals and the building of temples.

Keywords: Islamic Sharia, Rohingya, International Law.

Introduction

The rights of minorities are considered of great importance in terms of consolidating their protection, given the existing confusion about the concept and nature of minority rights, as defining these rights or their ambiguity leads to the complexity of the problem of minorities. Governments do not find themselves free to conceptualize these rights. Also, the lack of a clear definition of the rights of minorities makes it harder to protect them when majorities

get more privileges and advantages that violate the principle of equality between citizens. International law has given great importance to the issue of protecting minorities, which is clearly evident in the establishment of legal rules that guarantee the accountability of states that violate the rights of these groups. The issue of protecting minorities is among the topics of great importance within the scope of international law, due primarily to what these minorities have been subjected to such as persecution and blatant violation of their rights under the control of the state in which they live. The lack of homogeneity and harmony between the majority and the minority, whether in terms of origins, culture, religion or language, often results in a clash and conflict between the two parties that often ends in the annihilation of the oppressed group (Saadallah, 1991).

From this standpoint, minorities turned towards international law, demanding that it provide the necessary protection to preserve their survival within the state in which they live. For this reason, we find that the international community seeks directly to protect these minorities of all kinds through the texts, laws and international agreements it issues. It deals in its entirety with a special system for protecting the rights of minorities by defining the state's obligations towards this category of its citizens (Musab, 2018).

However, despite the multiplicity of international texts and agreements dealing with the protection of human rights and the protection of minorities, we find that many countries are committing ethnic cleansing operations on the basis of religion, race, and color. Perhaps the international reality is the best witness to this through the ethnic cleansing and genocide that the Burmese Muslim minority, or the Rohingya, are suffering from. They are enduring various types of suffering that the world has never seen before (Musab, 2018).

In light of the Islamic Sharia, it becomes clear to us what non-Muslim minorities enjoyed. These minorities have been respected within Islamic societies, which other minorities have not enjoyed under international laws, local legislation, or national rights and privileges. This is because the existing relationship between Muslim society and the non-Muslim minorities that inhabit it is governed by divine rules and wisdom. The Almighty Allah said: "Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity" (Surat Al-Mumtahana: 9).

Islamic Sharia has guaranteed all the rights of minorities, including the right to freedom of belief and the protection of property, honor, and life. The Noble Verse has specified the moral and legal foundations by which Muslims must deal with other minorities and what they must do. The Verse commanded them to be kind and just to everyone who has not shown them hostility (Wafi, 2019). It also established the building of a strong relationship within the Muslim community between Muslims and other various minorities. Freedom of belief, for example, is guaranteed within Islamic Sharia for non-Muslim minorities, as evidenced in this noble verse in the Qur'an: "There is no compulsion in religion". (Al-Baqarah: 256).

Study Problem

Human rights guarantees and protection mechanisms are numerous in various laws, charters and agreements at the local, regional and international levels. This diversity has resulted in a great overlap between the concepts and mechanisms of guarantees. Studies agree among them on the basis that they are the same concept. Thus, the concept of international protection at that time was the result of international and regional situations in which national and international interests conflicted, and this conflict affected the effectiveness of international protection itself.

The Rohingya group has been exposed to acts of violence and persecution to which they have been exposed for several decades since 1784, when the Burmese Buddhist king Buda Bai occupied the Arkan region and annexed Muslim areas there by force. In 1942, a hideous massacre occurred in Myanmar, which was then called Burma, killing tens of thousands, the majority of whom were Muslims women and children. Despite the multiplicity of international texts and various legislation to protect the rights of minorities, these countries are still pressuring and working on the persecution, liquidation, and even extermination of minorities of all affiliations. This is what we see at the present time in the Muslim minority in Myanmar called the Rohingya, which is an example of what applies to the majority of minorities in the world (Wafi, 2005).

There are many crimes against humanity in Burma, and it is known that crimes against humanity do not occur unless a set of elements are present, represented by the legal statement of this crime, which is the material and moral element. Burmese government forces commit premeditated murder, extermination, forced deportation, displacement, rape, and ethnic cleansing.

Therefore, the problem of the research lies in the need to address this problem and raise questions about it to contribute to finding solutions for these minorities.

Study Objectives

The study seeks to achieve the following objectives:

1. Identify the role of Islamic Sharia in protecting the rights of the minorities.
2. Highlight the dimensions of the Rohingya crisis and evaluate the effectiveness of the rules of international law compared to Islamic sharia in resolving the Rohingya crisis.

Study Questions

The study seeks to answer the following questions:

1. Identify the role of Islamic Sharia in protecting the rights of the minorities?
2. What are the dimensions of the Rohingya crisis and what is the effectiveness of the rules of international law compared to Islamic sharia in resolving the Rohingya crisis.

The Importance of the Study

The importance of this study stems from the fact that it provides a scientific contribution to studies related to international law, especially with regard to the protection of minorities, and with regard to the Rohingya problem, with the special sensitivity it represents to the Islamic world. This study also provides up-to-date information to researchers about this crisis, the most prominent difficulties and obstacles, and the most prominent efforts made in this problem.

The scientific importance of this study is also highlighted in that it provides recommendations for consideration of international texts related to the protection of minorities, in addition to the knowledge enrichment it adds to the rights of Muslim minorities through reviewing and scrutinizing many references, literature, previous studies, and international laws related to the subject of the study.

The results of this study contribute to undertaking and identifying the best situation for protecting the rights of Muslim minorities and reducing the suffering of these minorities and assisting them by studying the rights of political and civil minorities and economic, social and cultural rights.

It develops a clear vision of how to control and regulate the rights of minorities under international law, so that governments can refer to them when disputes occur between their social components, which ensures achieving the goal of Islamic Sharia in this protection of minorities and resolving disputes by peaceful means.

Literature Review

Al-Hamam (2019) study aimed to clarify the conceptual framework for Muslim minorities in Australia, clarify the educational problems that Muslim minorities in Australia suffer from, and develop solutions for them. The study reached the following most prominent conclusions: Educational problems on the doctrinal and religious side are among the most serious problems and have the most impact on the souls and behavior of Muslim individuals in Australia. It is noted that they are prohibited from performing some religious duties, carrying out Christianization operations, and implanting principles and beliefs that differ from what is stated in the Islamic religion. They disrespect some things related to the sharia duties, such as the hijab and abaya. The study recommended activating local legislation and laws that promote human rights, especially freedom of opinion and expression, taking into account the numerous international and regional agreements, including Arab and Islamic ones, stipulating the establishment of international responsibility, and the imposition of penalties and sanctions in case of violation. The study also recommends an international agreement to regulate the means of communication between Islamic peoples and the world, and work to issue laws that reinforce the concept of freedom of opinion and expression and distinguish between freedom of opinion and expression and hostility to religions and sacred things.

Muhammad (2018) study highlighted the interrelation between the rights of minorities and the growing role of the international community in providing them with international protection. The research problem is limited to answering some questions, which are the concept of minorities and the nature of public rights and the special rights of minorities worthy of international protection. The research emphasized the necessity of working on analyzing the international reality that accompanied the protection of minorities from ancient times until the present day. The study used the applied descriptive analytical approach in studying the violations that affected minorities and the material and moral damage they caused, which was reflected in the reality of the international community. The study concluded by highlighting the interest of the international community in the protection of minorities, whether racial, linguistic, ethnic or religious. The study also attempted to identify the real threats facing minorities and evaluate the performance of international organizations in the field of dealing with the issue of minorities and international protection problems. One of the most prominent suggestions of the study is to urge the international community to make more collective efforts to protect minorities, whether linguistic, religious, or ethnic, and the necessity of replacing the term minorities with the term components, since any society consists of a fabric that cannot be dispensed with or ignored.

Mahdawi (2016) conducted a study to clarify the major legal objectives of the jurisprudence of Muslim minorities while showing the extent to which the jurists of minorities need knowledge of the objectives of Sharia in the calamities of Muslim minorities and their understanding of the reality of their dealings with Muslims in Western countries. The researcher used that descriptive analytical method based on presenting and interpreting the scientific material. The researcher expressed it through deconstruction and criticism. The study dealt with the major purposes of Sharia law for the jurisprudence of Muslim minorities. The concept of the jurisprudence of minorities is the need of the jurist of Muslim minorities

to know the objectives of Sharia. The study concluded that the objectives of Sharia law are the sum of the rulings and objectives set by Islamic Sharia to make those responsible satisfied in all the affairs of their lives, in addition to the diversity of the diligence of Muslim minority scholars in defining objectives and the inclusion of a group of new aspects that were not known in previous definitions, such as the family, community, and human development. The study also concluded that the jurist of Muslim minorities needs to recognize the objectives of Sharia law in order to understand and guide the texts and remove the perceived conflict between them.

Assaf (2010) study entitled "Influencing the Stability of Minorities and Nation-States: The Iraqi Kurds as a Model." The study aimed to show the role of minorities in the stability of the nation-state, of which the Iraqi Kurds were the model. The study was based on the basic hypothesis that minorities play a major role in the instability of the nation-state, including the Kurdish minority in Iraq. The study concluded that the Iraqi Kurds are the trump card in the hands of Iraqi Kurdistan, especially the countries interested in Iraq in general, so the Kurds will continue to be the engine of the revolution against the Iraqi government. Therefore, Iraq will remain unstable, and the interests of the countries interested in Iraq will be achieved.

As for the study of Qarah (2015), it identified the legal basis for protecting the rights of religious minorities and the mechanisms for respecting them internationally, as well as the right to humanitarian intervention as an urgent mechanism for protecting the rights of Muslim minorities. The study addressed the legal foundations for protecting the rights of religious minorities and the mechanisms for respecting them internationally. The study presented some agreements such as the Convention Children's rights, the International Covenant on Economic, Social and Cultural Rights, and presenting the international mechanism to monitor respect for the rights of Muslim religious minorities. The study concluded that the United Nations system remains respectful of the rights and freedoms associated with religious minorities. It needs to be strengthened by taking advanced steps, the first of which is codifying international legislation on minority rights and providing more effective mechanisms to ensure that states respect their pledges as a second step.

Al-Qadir (1982) study discussed minority and human rights." This study argued that minorities have all the rights that are protected internally and externally, and that weak groups must be protected and equated with the majority. It also indicated special protection in their rights to preserve the characteristics they possess and distinguish them from the majority, and the methods that must be done in order to gain the legitimate rights of those groups. The study referred to the local legislation that works to protect those rights, and he mentioned most of the rights called for by international laws, including the right to gender, religion, language, the right to education and preserving identity, and developing methods that would enable this protection for them. He pointed out, however, that there must be people from minorities to express them, and they must be citizens of these states. The protection of minorities must be applied through the role of nations politically rather than humanitarily. The researcher pointed out that it is better to protect minorities in the early stages, especially minorities that are close to extinction, in order to preserve the social identity of the country.

Methodology

To identify the issues and problems of the current study and the elements of these issues, the research followed a comparative descriptive and analytical approach. To analytically differentiate the most appropriate choice, the legal texts contained in international treaties and relevant national legislation were studied and analyzed. Then the research analyzed the

mechanisms of legal protection of minority rights with criticism, and the description is used as an auxiliary means that paves the way for clarifying all aspects in identifying preference for choice.

This approach also helps explain forms of abuse that extend to minorities, especially in the Rohingya problem.

As for the comparative analytical approach, the content of legal protection for minorities in international conventions was compared with what was recognized by Islamic sharia in terms of the extent of compatibility and difference and the extent of the possibility of harmonization, and reliance on the use of comparison between legal texts and positive laws in an attempt to understand the dimensions and purposes of Islamic law and compare them with positive laws. To achieve the research objectives, induction and analysis tools were used as follows: Regarding the use of the inductive approach, reliance will be placed on collecting legal texts, jurisprudential opinions, various legislations, and international laws related to the problem of protecting minorities, especially the Rohingya problem, to be presented in a simplified manner and then the provisions, duties, rights contained in those texts are highlighted.

As for the analytical aspect, these texts will be addressed with some analysis and comparison between international positive law and Islamic Sharia with regard to the problem of protecting minorities, especially the Rohaingya. A questionnaire will also be presented to a number of specialists in the field of law and those who study minority issues around the world, to take their opinions on the subject and then apply a comparison between the mechanisms that are used to maintain the protection of these minorities. This has been achieved through an interview with a person working within the United Nations.

Discussion

Islamic Sharia and Minority Rights

Most regions of the world are not devoid of citizens living together in one homeland, but with different affiliations, customs and cultures, such as Christians, Jews and other faiths.

Religious minorities, along with other minorities, whether ethnic, national or linguistic, are considered among the prominent human rights issues of our time. The reason for this is the long history of violations of minorities and the deprivation of many rights. Ethnic minorities are religious or ethnic, Arab, Islamic or non-Muslim. Therefore, they often fall under political, social, economic, or other educational pressures, which leads them away from integration and participation in building the nation, contrary to what Islam has done towards those minorities, honoring them, keeping their rights protected, and bringing them closer together as people of the Dhimma in confirmation of the words of the Almighty Allah: "And among His Signs is the creation of the heavens and the earth, and the difference of your languages and colours. Verily, in that are indeed signs for men of sound knowledge." (Surat Al-Rum, Verse 22).

Islam recognizes human differences through differences in language, skin colour, etc., and views this as Alla's law in his creation, and the advantages and privileges that are superior to others, except for piety (righteousness) among men, there is not the slightest problem with that. There is no difference between people whether they follow the Islamic religion or not, they all can enjoy justice. Muslim or non-Muslim is the only criterion for raising minority issues. This term for minorities in Islamic jurisprudence is not widespread and is considered modern expressions that were not previously established, but the expression that has been

used by all Islamic jurists is “people of the dhimma,” and therefore the concept of “people of the dhimma” and the terms related to it.

One of the terms is “jurisprudence of minorities,” and the word “jurisprudence” is a well-known term now and was used in the early days of this nation. In the sense of understanding, until the expression changed to jurisprudence. Ibn Khaldun referred to this in his famous introduction by saying: “Jurisprudence is the knowledge of Allah's rulings regarding the actions of people, duties, prohibitions, permissibility, and pardons that have been established by the Qur’an, Sunnah, and Sharia so that they may know them with evidence” (Ibn Khaldun, 2019). “Minority” is a political term used in international practice to refer to a group of citizens of a country outside the ethnic, linguistic or religious majority. It usually includes minority demands for equality with the majority in civil and political rights. However, the right to regional differences and distinctions between beliefs and values must be recognized (Attia, 2007).

Leadership is often established by minorities of prominent members who have the ability to communicate the demands of their families through their work in the following:

- a) Give an explanation of their minority, to which they belong through their historical roots, and all their advantages and justifications.
- b) Collecting minority elements and linking them.
- c) Adopting the largest cultural symbols that speak about the privacy of the minority.
- d) Achieving solidarity and livelihood security, as in the Jewish case.

Protecting the rights of minorities from the Islamic perspective

We always find that the Islamic perspective are from the widespread perspectives, especially the eastern ones. Islam, for example, does not differentiate between people. Minority in international law is defined as “endemic groups without a society, and are united by special traditions and ethnic, religious, or linguistic characteristics, it is clear what each remaining population has and wishes to preserve” (Zardumi, 2006). Minorities are considered one of the modern terms in Islamic legislation. Islamic civilization has not defined the term minority in its meaning known in the social sciences, which is based on reasons related to the minority’s disagreement with the majority. This difference leads to them being marginalized and, in some cases, ostracized. This forces individuals within society to stand against these practices and in solidarity with each other against injustice. It creates tension in the relations of the minority and the majority within society, and Islam is not known to discriminate between individuals on grounds color, gender, or custom. According to the Almighty’s words. “O people, We created you from a male and a female and made you into peoples and tribes that you may know each other” (Surat Al-Hujurat, verse 13).

Therefore, Islamic civilization has understood many terms that express its cultural nature, such as the People of the Book, the Dhimmis, and other people of the religion, which is their distinction on the basis of the Book, the Dhimma, and religion, meaning that the distinction here is based on the difference between religions and through that we see in our time some of these different nationalities, such as the Turks and Kurds in Iraq and Syria, and the Berbers in North Africa, are who are not minorities because Islamic Sharia considers them an important component of Muslim society.

However, the researcher in the science of minorities from the Islamic perspective finds multiple problems, and what is raised is not that the civilization of Islam did not understand the definition of the term and had its own terminology that is based on its religious and civilizational dimension, but rather because Muslims today live in a different political and

economic system, in which they are not the leaders, but rather its leaders are from the Western world, such as America, Japan, Europe, and other non-Islamic countries, including China and India, and their number amounts to the quarter of world's population. The majority of Islamic peoples have been subjected to occupation and the collapse of their political systems that express the political institution of the Islamic world, which is the Caliphate, and secular states dominate most of their trends. even if these secular countries refer to constitutions from Islam and Sharia in their documents.

This modern state is no longer the result of Islamic conquest, but rather is the product of new legal and political conditions that make the acceptance of the term minority inevitable. This situation makes the old Islamic term unacceptable today as it indicates a type of discrimination that means Non-Muslim minorities who live within Islamic countries and place them in a lower position in terms of social status, and that they are minorities and the relationships that bind them to colonial countries are merely a relationship between friendship and citizenship (Boumati, 2008).

Guaranteeing the rights of minorities in accordance with Islamic Sharia

Man, not Islam, is the caliph of Allah on earth, and within the covenant for succession is the adoption of the Sharia that Allah has commanded Muslims, which contains duties and rights, and those rights must be compatible between individual and public rights and interests. All individual rights may include rights to Allah, or rights of groups. Group rights take precedence when conflict arises. Islam has taken into account the interests of people in this world and the hereafter, which are the gradual interests necessary for full benefit. Those recommendations constitute the general framework through which the path of the individual is organized, this is considered a natural thing to be a consideration for the exercise of private and public freedoms. Islam is not limited to the religious aspects of the interests of people, but rather go beyond them to focus on the interests of their lives (Boumati, 2008).

It was the full rights of minorities, consistent with the development of modern state building after the "Treaty of Westphalia" in 1648, that began to build the concept of citizenship in the modern sense. In Islam, there is no room for belittlement and no room for second-class citizens. Modern Islamic thought does not attack peaceful non-Muslims, and some preachers and movements tend to read Islam in an incomplete and distorted way, and to agitate fanaticism within the Islamic community.

It has ensured for contemporary Islamic thought that reading the historical experience of Islam does not contain any mistreatment of non-Muslims, provided them with a guarantee to preserve their survival without fear of coercion, and contributed to the strength of the ideas put forward by contemporary Islamic thought. In the field of minorities, the study of Sharia jurisprudence and positive law was carried out by Wahab Khalaf and Sheikh Ali Al-Qafif who played an influential role in extracting the opinions of jurists and formulating them legally (Al-Bishri, 2004).

As contemporary Islamic thought has become interested in Islamic discourses on minority rights, many legal scholars have written about the rights of non-Muslims and dhimmis. (Khalaf, 1930). As for Sheikh Abdul Wahab Khalaf, his jurisprudence was more dramatic and bold, especially in what he called "national jurisprudence" or legal policy, which is reflected in his book "Sharia Policy or Legal System." It was clear that the Islamic State in constitutional, diplomatic and financial matters was protecting minority rights. Thus, ijthihad approached a moment of social and political brilliance.

Mohammed, may Allah bless him and grant him peace, warned against minority oppression and the deprivation of their rights, and made himself a worthy opponent to oppression makers. He said: "If anyone wrongs a man with whom a covenant has been made, or curtails any right of his, or imposes on him more than he can bear, or takes anything from him without his ready agreement, I shall be his adversary on the day of resurrection". This is what happened with our Messenger, may Allah bless him and grant him peace, in Khaybar, where Abdullah bin Sal Al-Ansari was killed. Since there is no evidence for this assumption, the Messenger of Allah, may Allah bless him and grant him peace, did not punish the Jews with any form of punishment, only to swear that they had not done so.

Here, may Allah's prayers and peace be upon him, the Messenger did what no one could have imagined. He personally paid blood money from the Muslims' money.. without persecuting the Jews to allay the fears of his followers. Putting the onus on the Islamic State to avoid questionable punishment of the Jews (Al-Bishri, 2004).

Results

1. Under the control of Western systems and laws, violations of human rights in general, and the rights of religious minorities in particular, have increased.
2. Religious minorities lived under Islamic rule in its various eras. No minority had their rights violated, because their source was a sacred, doctrinal faith.
3. In Islamic jurisprudence, the only criterion that gives a perception of minorities is the Islamic criterion, which they call the dhimmis, who represent non-Muslims. Islamic jurisprudence also allowed members of religious minorities, as subjects of Islamic countries, all the rights and freedoms enjoyed by the rest of the Islamic countries.
4. The application of Islamic Sharia is in itself a guarantee for minorities to enjoy their rights. Therefore, protection under Islamic Sharia is more effective, as it does not only effectively translate internal laws, but is also guaranteed by religion and customs, and therefore it is stronger than international law and there is a violation of its rules. And its double standards, because we see it as applying the law of force and not the force of law.
5. It became clear by tracking the development of the protection of minorities that the difference in religion was the criterion that prevailed throughout historical periods in distinguishing between the minority and the majority, and that other characteristics did not appear except during the last two centuries with the emergence of the modern state based on nationalism.
6. The process of recognizing the minority in Islamic law was established from the first moment in the "Al-Madina newspaper" in the wake of the Prophet's migration to it. The Qur'anic texts and other prophetic directives also specified the frameworks by which their rights were guaranteed. As for international human rights law, it reached the recognition of the rights of minorities after human tragedies. The ultimate goal is to preserve and honor human rights, especially the rights of minorities.
7. Islam guarantees religious minorities all civil rights, including life, dignity, security, safety, and freedom of belief, including the practice of rituals and the building of temples.

Conclusion and Recommendations

1. The international community must formulate an international agreement that guarantees the rights of minorities in general.

2. States and governments shall be urged to implement this comprehensive approach in their governmental systems and apply the provisions of Islamic Sharia to their citizens.
3. When dealing with minority issues, Islamic countries must take into account the Islamic perspective so that it does not conflict with the purposes and universals of Islamic Sharia. What is certain is that this is possible with contemporary jurisprudence that takes this into account, so that minorities are a path to social and cultural diversity and not a way to destabilize, break up homelands, and are an arena for foreign intervention.
4. The necessity of activating international mechanisms to protect the rights of minorities by linking them to deterrent penalties, and not just writing reports, condemning and denying practices that violate the rules of international law.
5. Justice and freedom (one of the most important pillars of Islam) are essential for the success of the proposed solutions to the problem of minorities and the protection of their rights. And for problems where one is a party and the other is not, it can be difficult to find real solutions to such problems as to the cause of the problem.
6. Urging states and governments to implement this comprehensive approach in their governmental systems and apply the provisions of Islamic Sharia to their citizens.
7. Educating Muslims about their rights to equality, justice, freedom, education, and worship, without discriminating between Muslims and others regarding these rights.
8. Islam is a comprehensive religion in all aspects of belief, worship, and trade, and it is a religion accepted by Allah, so all means are used to spread Islam.
9. It is necessary to teach those who are ignorant of Islamic Sharia, bring to them everything that has been issued about rights in Islam, and translate these rights into all the languages spoken by the masses.
10. Organizing international conferences to discuss life development and provide findings on some of the most pressing issues of our time.

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