



THE STATUS OF NON-MUSLIMS IN ISLAM

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An Excerpt from Dr. Muhammad Hamidullah's "Introduction to Islam" Chapter XII, Paragraphs 406 to 441.

It is natural that one should make a distinction, and even discrimination, between the near and the distant, between the relative and the stranger. With intellectual and moral evolution, there is a tendency in human society to facilitate the assimilation of the foreigner. If a society were to group itself solely on the basis of blood relationships, naturalization would be out of the question for ever. The same is true if the basis was the colour of skin, which cannot be concealed. Language as a factor of social unity requires long years for a veritable assimilation. Place of birth is even less perceptible in a stranger, and ever since man has crossed the horizon of city-states, not much importance has been attached to this last factor. However, one would remark that in all these various conceptions of social unity, the basis is a mere accident of nature, and belongs more to the animal instinct than to the rationality of man. It is common knowledge that Islam has rejected all these notions of nationality and selected only the identity of ideas – a thing which depends on the choice of man and not the accidents and hazards of birth – as the basic tie of society and the factor of union. Naturalization and assimilation in such a society is not only easy and accessible to all human races in their entirety, but it is also closer to reason and more practical, showing how to live one's life in peace and tranquillity.

If a believer in God or a capitalist is considered as a stranger in communist countries, a black-skinned in such white countries as practice social segregation, or a non-Italian in Italy, it should not be surprising if a non-Muslim should be considered as a stranger in the land of Islam. Conceptions, or rather angles of view, differ, yet everybody makes some distinction or other between those who belong to his own group and those who do not.

As in other political or social systems, Islam also makes a distinction between its "relatives" and "strangers," but there are two characteristics peculiar to it: (1) the facility to cross this barrier by subscribing to its ideology, and (2) but little inequality between the two categories regarding the affairs of this world. We shall try to throw some light on this last aspect of the

question.

Divine Origin of Duties

One should not forget the great practical importance attached to the fact that Muslims obey their system of law as something of Divine origin, and not merely the will of the majority of the leaders of the country. In this latter case, the minority enters on a struggle so that its own conceptions may prevail. In the democracies of our time, not only do the majorities often change from election to election but are also constituted or disintegrated by all sorts of commutations and combinations, and the party in power tries to upset the policy pursued by its predecessors, causing, among other changes, the modification of laws. Without entering here into the question of the adaptability of Islamic laws to the exigencies of social evolution, one might deem it as an incontestable truth that there is greater stability in the Muslim law – due to the Divine origin – than in any other secular legislation of the world with the following result :

The Islamic law ordains justice to, and observation of certain rules regarding the non-Muslims. These therefore feel no apprehension in the face of political quarrels and parliamentary elections of the country of their residence, with regard to the Islamic laws in force. The ruler or parliament cannot modify them.

Basic Notions

The believers and nonbeliever's cannot be equals, the former will go to Paradise, and the latter to hell, but all this concerns the Hereafter. As to the life in this world, Muslim jurists like ad-Dabusi and others have at all times revealed the greatest equality compatible with their system between "relatives" and "strangers," as we shall presently see.

There is the question of religious tolerance. The Qur'an (2:256) prescribes that there should be no

compulsion in religion. The residing subjects as well as the temporary sojourners have an assurance regarding their safety and the liberty of their conscience.

There is the question of hospitality and asylum, regarding which the theoretical position is strengthened by the practice of more than a thousand years. There is the well-known verse of the Qur'an (9:6): *‘And if anyone of the pagans seeketh thy asylum (O Muhammad), then give him asylum . . . and afterwards convey him to his place of safety . . .’* The victims of racial, religious, political and other persecutions have always found refuge and shelter in the land of Islam.

What a touching and even stupefying teaching is the command that a Muslim should collaborate even with the enemy in the state of war! Says the Holy Qur'an (5:2) *‘. . . and let not the hatred of a people who have stopped your going to the Inviolable Mosque (of the Ka'bah) incite you to transgress; but help ye one another unto charity and piety. Help not one another unto sin and transgression. Lo! God is severe in punishment.’* Mutual help is not to be restricted among Muslims alone, but with entire humanity without restriction of religion and race!

Practice of the Prophet

When the Prophet Mohammed settled down in Medina, he found there complete anarchy, the region having never known before either a State or a king to unite the tribes torn by internecine feuds. In just a few weeks, he succeeded in rallying all the inhabitants of the region into order. He constituted a city state, in which Muslims, Jews, pagan Arabs and also probably a small number of Christians, all entered into a statal organism by means of a social contract.

The constitutional law of this first “Muslim” State – which was the confederacy as a sequence of the multiplicity of the population groups – has come down to us *in toto*, and we read therein not only in clause 25: “to Muslims their religion, and to Jews their religion,” or, “that there would be benevolence and justice,” but even the unexpected passage in the same clause 25: “the Jews . . . are a community (in alliance) *with* – according Ibn Hisham and in the version of Abu-'Ubaid, a community (forming part) *of* – the believers (i.e., Muslims).”

The very fact that, at the time of the constitution of this city-state, the autonomous Jewish villages acceded of their free will to the confederal State, and recognized Muhammad as their supreme political head, implies in our opinion that the non-Muslim subjects possessed the right of votes in the election of the head of the Muslim

State, at least in so far as the political life of the country was concerned.

Military defence was, according to the document in question, the duty of all elements of the population, including the Jews. This implies their participation in the consultation, and in the execution of the plans adopted. In fact section 37 laid down: “the Jews would bear their expenses and the Muslims theirs, and there will be mutual succour between them in case an aggressor attacks the parties to this Document.” Further section 45 says that war and peace will be indivisible for the parties to the Document.

Some months after the establishment of this City-State, we see the Prophet Muhammad concluding treaties of defensive alliance and mutual aid with the pagan Arabs of the neighbourhood of Medina. Some of them embraced Islam about ten years afterwards. During all those long years, mutual confidence was most complete, as the following incidents will show.

In the year 2 AH, the pagans of Mecca sent a diplomatic mission to Abyssinia, in order to demand of the Negus the “extradition” of Meccan Muslims who had taken refuge in his country. To counteract their machinations, the Prophet also sent, in his turn, an ambassador for interceding with the Negus in favour of the Muslims who had sought asylum in his country due to religious persecution by their co-citizens. This ambassador of Islam was ‘Amr ibn Umayyah ad-Damri, “who had not yet embraced Islam.” In fact, he belonged to one of the Allied tribes of the neighbourhood of Medina just referred to.

At a time when there were constant wars on extensive frontiers of the Islamic territory, military service was very far from being an easy means of earning a livelihood, the risks to life and to the economic situation of the combatants were very real. Even if the exemption of the non-Muslim subjects from this service was motivated by the suspicions in regard to their trustworthiness, all non-Muslims who had accepted Muslim domination and did not seek its overthrow in collusion with foreigners welcomed this exemption from military service. They could thus pursue in tranquillity their avocations and prosper, while the Muslims would be engaged in military duties with all the attendant risks. So, the non-Muslims paid little supplementary tax, the *jizyah* – of which the women, children and the poor from among them were exempt – which was neither heavy nor unjust. In the time of the Prophet, the *jizyah* amounted to ten dirhams annually, which represented the expenses of an average family for ten days. Moreover, if a non-Muslim subject participated in military service during some expedition in a year, he

was exempted from the *jizyah* for the year in question. Some typical cases will show the real character of this tax.

In the beginning of Islam, this tax did not exist in the Muslim State, in either Medina or elsewhere. It was towards the year 9 AH that the Qur'an ordained it. That it was a question of expediency, and not a matter of dogmatic duty in Islam, is sufficiently shown by the following incidents. It is reported (by Ibn Sa'd on the authority of Zuhri) that at the moment of the death of his son, Ibrahim, the Prophet Mohammed declared: "Had he survived, I would have exempted all the Copts from the *jizyah*, as a mark of esteem for Ibrahim's mother. (Who was a Coptic girl). Or again, (cf. Suyuti *Husn al-Mahadarah*, ch. Khalij Amir al-Mu'minin), when a non-Muslim Egyptian laid before the Muslim government the project of re-digging the ancient canal from Fustat (Cairo) down to the Red Sea, thus facilitating the maritime transport of Egyptian food stuffs to Medina – the famous *Nahr Amir al-Mu'minin* – the caliph 'Umar rewarded him by exempting him from *jizyah* during his entire life. There are jurists who opine that one should also take into consideration the international repercussions affecting Muslim interests, in view of the fact that Islam has penetrated countries which are under non-Muslim domination; and the *jizyah* territory would inevitably produce a reaction on Muslims in Christian and other countries.

There is another saying of the Prophet which was pronounced on his death bed and which directs the transfer of the Jewish and Christian populations of the Hijaz to other regions; its context has not been mentioned in the traditions, but it is evident that it concerned certain populations of this region on account of their political behaviour, and that it was not a general prohibition against the members of these two communities. It may be noticed that, in the time of the caliphs, there were non-Muslim slaves, male and female, belonging to Muslims and living along with their masters, at Mecca, Medina, etc. A celebrated case of free non-Muslims is that of the Christian doctor, whose consultation rooms were just below the minaret of the mosque of the Ka'bah (*Mecca*). He lived there in the time of 'Umar ibn 'Abd al-'Aziz or soon after him (cf. Ibn Sa'd, V. 365 - Da'wud ibn 'Abdur Rahman. In fact Da'wud was a pious Muslim, yet his physician father remained a Christian). Ibn Sa'd (III/i, p.258) also records the case of a Christian, Jufainah, who taught reading and writing to school children in Medina.

We may also recall the direction of the Prophet on his death bed: "Observe scrupulously the protection accorded by me to non-Muslim subjects. Another saying

of the Prophet reported by Abu Da'wud is: "whoever oppresses non-Muslim subjects, shall find me to be their advocate on the day of Resurrection (against the oppressing Muslims)."

The directions as well as the practice of the Prophet constitute the highest law for Muslims. As to the assimilation of these laws into the life of Muslims and practice of later times, a study of history could profitability be pursued. We shall refer to a few facts here.

Later Practice

A governor of the Caliph 'Umar selected a non-Muslim secretary. Learning the news, the Caliph issued an order to have him replaced by a Muslim. This refers to a time when the province in question had not yet been purified, and a war was still in progress. This is understandable in view of the importance of the post and the natural mistrust of the inhabitants of the newly conquered country. Moreover this governor was an illiterate person. In order to better comprehend the attitude of 'Umar, let us recall another incident of the same great caliph (reported by al-Baladhuri, *Ansab*): "One day he wrote to his governor of Syria: Send us a Greek, who could put in order the accounts of our revenues." He put a Christian at the head of this administration, in Medina.

The same Caliph often consulted non-Muslims on military, economical and administrative questions.

One would not reproach Muslims for preserving the post of the *imam* (the leader of the prayer-service in the mosque) exclusively for their co-religionists. Islam has desired the coordination of all aspects of life, spiritual as well as temporal. Hence, the fact that the leading of the prayer-service in the mosque is a duty and privilege of the head of state who is also head of the religion. If one takes into consideration this state of things, one will understand easily why a non-Muslim subject cannot be elected head of a Muslim State.

But this exception does on no account imply the exclusion of non-Muslim subjects from the political and administrative life of the country. Ever since the time of the caliphs, non-Muslims have been seen holding the rank of ministers in Muslim States. A parallel practice has not been witnessed in the more important secular democracies of the world, where Muslim subjects are not lacking. That this practice of the caliphs is not contrary to the teaching of Islam, is borne witness to by classical authors, and Shafi'ite jurists (like al-Mawardi) and Hanbalite one's (like Abu Ya'la al-Farra') have not hesitated to support the view that the caliph may lawfully nominate non-Muslim subjects as ministers and

members of executive councils. We have already spoken of a non-Muslim ambassador sent by the Prophet himself to Abyssinia.

Social Autonomy

Perhaps the most characteristic feature of Islam, in its attitude regarding the non-Muslims, is the award of social and judicial autonomy. In a long passage of the Qur'an, we read:

*“If then they have recourse unto thee (O Muhammad), Judge between them or disclaim jurisdiction; if thou disclaimest jurisdiction, then they cannot harm thee at all; but if thou judgest, Judge between them with equity; lo! God loveth the equitable. How can they come unto thee for judgment when they have the Torah, wherein is contained the judgment of God? Yet even after that they turn away; such folk are not believers. Lo! We did reveal the Torah, wherein is guidance and a light, by which the prophets who surrendered (unto God) judged the Jews, and the rabbis and the priests judged by such of God’s Scripture as they were bidden to observe, and thereunto they were witnesses; so fear not mankind, but fear Me, and barter not My revelations for a little gain; **whoso judgeth not by that which God hath revealed: such are disbelievers.** And We prescribed for them therein the life for the life, and the eye for the eye, and the nose for the nose, and the ear for the ear, and the tooth for the tooth, and for wounds retaliation; but whoso forgoeth it (by way of charity) it shall be expiation for him; whoso judgeth not by that which God hath revealed: such are wrong doers. And we caused Jesus, son of Mary, to follow in their footsteps, confirming that which was revealed before it in the Torah – a guidance and an admonition unto those who are God-fearing. **Let the people of the Gospel judge by that which God hath revealed therein; whoso judgeth not by that which God hath revealed: such are evil-livers.** And unto thee (O Muhammad) have We revealed the Scripture with the Truth, confirming whatever Scripture was sent before it, and a watcher over it: so judge between them by that which God hath revealed, and follow not their desires away from the truth which hath come unto thee: for*

each We have appointed a Divine law (Shari’ah) and a traced-out way; had God willed, He could have made you one community, but He may try you by that which He hath given you (He hath made you as you are); so vie one with the other in Good works; unto God ye will all return, and He will then inform you of that wherein ye differ.” [Qur’an 5:42-48]

It is on the basis of this amendment, that the Prophet and his successors in Islam have conceded to every non-Muslim community, from among subjects of the Islamic state, a judicial autonomy, not only for personal status, but also for all the affairs of life – civil, penal, and others. In the time of the Orthodox Caliphs, for instance, we find evidence of contemporary Christians (for text cf. *infra* 497) attesting to the fact that the Muslim government had delegated in favour of Christian priests, many temporal judicial powers. In the time of the ‘Abbasid caliphs, we find the Christian patriarch and the Jewish *hakham*, among the highest dignitaries of state, connected directly with the Caliph.

In the time of the Prophet, the Jews of Medina had their *Bait al-Midrās* (both a synagogue and educational institute). In the treaty with the Christians of Najaran (Yaman), the Prophet gave the guarantee not only for the security of the person and property of the inhabitants, but had also expressly left the nomination of bishops and priests to the Christian community itself.

There is a tendency among a large number of people to imitate and ape their governors and chiefs in the outer conduct of life such as dress, coiffure, etiquette, etc. The result is a superficial assimilation, which brings no advantage to the ruling community, but which causes a moral damage to the classes which imitate in a servile manner. In an Islamic State, non-Muslims constitute a protected community (*dhimmi*). Therefore it is the duty of the government to protect the legitimate interests of these “strangers.” Hence that we see, during the ‘Abbasid caliphate that, far from seeking the assimilation of “strangers” by force, the government discouraged all imitation of one by the other: Muslims, Christians, Jews, Magians and others conserved by their own modes of dress, their social manners and their distinctive individualities. Only a total assimilation, for religious conversion, was sought, and not a confusion of communities. This is proof enough that the measure had nothing to do with the religious exigencies of Islam – and in the time of the Prophet there was absolutely no trace of it – but a condition of life, suiting the social conceptions of the epoch: and its essential purpose was

to recognize, at the very first sight, the religious community of each and every individual. The intention was to protect in this way the culture of everyone, so that its intrinsic values and defects should come more into relief. In passing, it may be repeated that the conception of nationality in Islam is based neither on an ethnic source nor on the place of birth, but on the identity of ideology, i.e., of religion.

The person, property and honour of every individual, whether indigenous or heterogenous, are fully protected in the Islamic territory. The *Sharh al-Hidayah*, which is a legal manual of current use, employs, for instance, the characteristic expression: "Defamation is prohibited, be it concerning the Muslim or a Protected (non-Muslim)." Another jurist of great authority, the author of *al-Bahr ar-Rai'iq* says: "even the bones of the dead among the Protected (non-Muslims) have the right to be respected, even as the bones of Muslims. It is not allowed to profane them, because if the ill treatment of a Protected (non-Muslim) is forbidden in his life-time, on account of the protection which he enjoys, the protection of his bones against every profanation is equally obligatory after his death." The jurists are unanimous in declaring that, if a Muslim violates a non-Muslim woman, he will receive the same punishment as is prescribed against the violation of Muslim women.

In the time of the caliph 'Umar, certain Muslims had usurped a piece of land belonging to a Jew, and had constructed a mosque on the site. Learning the news, the caliph ordered the demolition of the mosque and the restoration of the land to the Jews. Prof. Cardahi (a Christian of Lebanon, in a series of lectures on Private International Law of Islam, delivered at The Hague, 1933) writes, "this house of the *Bait al-Yahudi*, still exists and is well-known." Another classical example, cited by Ibn Kathir and others is that of the Grand Mosque of Damascus. An Umayyad caliph had occupied the church to enlarge the Mosque. Later when the complaint was brought before caliph 'Umar ibn 'Abd al-'Aziz, he ordered that part of the mosque to be built on the usurped piece of ground be demolished and the church restored there. But the Christians themselves preferred a monetary compensation and the matter was thus amicably be settled.

Let us cite the circular of the caliph "'Umar ibn 'Abd al-'Aziz, (preserved by Ibn Sa'd, V. 280), which is eloquent testimony:

"With the name of God, the Most Merciful, the All Merciful. From the Servant of God, Commander of the Faithful, 'Umar (ibn 'abd al-'Aziz) to (the governor) 'Adi ibn Artat and to

the believing Muslims in his company: Peace be with you. Whereafter I send you praise of God, beside Whom there is no God. Thereafter: Pay attention to the condition of the Protected (non-Muslims), treat them tenderly. If any of them reaches old age and has no resources, it is you who should spend on him. If he has contractual brethren, demand these latter to spend on him. Apply retaliation if anybody commits tort against him. This is as if you have a slave, who reaches old age, you should spend on him till his death or liberate him. I have learned that you accept tithe on the import of wine and make it enter the Treasury belonging to God. I warn you never to let it enter the Treasury belonging to God, however small the amount maybe, unless it be a legally pure property. Peace be with you."

Another letter of the same caliph (cf. Ibn Sa'd, V. 253) says :

" Purify the registers from the charge of obligation (i.e., taxes levied unjustly); and study old files (also). If any injustice has been committed regarding a Muslim or a non-Muslim, restore him his right. If any such person should have died, remit his rights to his heirs."

It is common knowledge that the Muslim jurists recognize the right of preemption in regard to neighbours. If anybody sells his immovable property, the neighbour has the prior right over a stranger. This right is recognized in favour of non-Muslims as well.

The safeguard of the rights of non-Muslims, in the Islamic territory, goes even to the extent of giving them the liberty of practising customs entirely opposed to those of Islam. For instance the consumption of alcoholic drinks is forbidden to Muslims, yet the non-Muslim inhabitants of the country have full liberty not only of consumption, but also of manufacture, importation and sale of the same. The same is true for games of chance, marriage with close relatives, the contract entailing interest, etc. In olden times, this did not affect Muslims, and abuses with their repercussions were rare. Modern jurists have restricted the liberty insofar as international commerce is concerned. As attempts to restrict alcoholic consumption will be ineffectual if they should not be applicable to the whole population, the consent of the representatives of non-Muslims has facilitated the task for jurists, who in

principle would not intervene in the practices of different communities differing in points of religion.

The Islamic law makes a certain distinction among different non-Muslim communities, insofar as their relations with individual Muslims are concerned. It divides non-Muslims into what we might call “developed” and “primitive,” or those who believe in the One God and follow Divine laws revealed to the founder of their religions, and those who do not do that (such idolators, atheists, pagans, animists, etc.). All are tolerated as subjects and enjoy protection with regard to the liberty of conscience and life, yet a Muslim in his private life treats them differently: a Muslim has the right to marry a “developed” non-Muslim woman, but not a “primitive” one. So is it too that a Muslim may not only marry a Christian or a Jewish girl, but also give her the liberty to conserve her religion. She may go to church or to synagogue, she may drink wine, etc. It is forbidden for a Muslim to marry a woman who does not believe in God or an idolatress or a polytheist. A Muslim woman cannot be the wife of non-Muslim to whatever category he may belong (Q. 60:10). Again, a Muslim cannot eat the flesh of animals slaughtered by members of the “primitive” communities.

Conversion

The Islamic law expressly recognizes for non-Muslims the liberty to preserve their beliefs; and while it forbids categorically all recourse to compulsion for converting others to Islam, it maintains rigorous discipline among its own adherents. The basis of the Islamic “nationality” is religious and not ethnic, linguistic nor regional. Hence apostasy has naturally been considered political treason. It is true that this crime is punished by penalties, but the necessity scarcely as history has proved. Not only at the time when the Muslims reigned supreme from the Pacific to the Atlantic Oceans, but even in our own age of political as well as material and intellectual weakness among Muslims, apostasy of Muslims is surprisingly non-existent. This is true not only of regions where there is the semblance of a Muslim State, but even elsewhere, under the colonial powers who have made all humanly possible efforts to convert Muslims to other religions. Islam is gaining ground today, even among Western peoples, from Finland to Norway to Italy, from Canada to Argentina. And all this in spite of the absence of any organized missionary activity.

Holy War

Let us conclude this brief expose with some words on a

question which is most misunderstood in non-Muslim circles. It refers to the notion commonly held of the holy war. The entire life of a Muslim, be it concerning spiritual affairs or temporal ones, is a discipline regulated by Divine law. If a Muslim celebrates even his service of prayer without conviction (for ostentation, for instance), it is not a spiritual act of devotion, but a crime against God, a worship of the self punishable in the Hereafter. On the contrary, if a Muslim takes his meals for the purpose of having the needed strength to perform his obligations regarding God, even if he cohabits with his wife, as an act of obedience to the Divine law which orders him that, these acts of need and pleasure constitute saintly acts, acts of devotion, meriting all the Divine rewards promised for piety, as a saying of the Prophet indicates.

Such being the concept of life, a just struggle cannot be anything except a holy act. All war is forbidden in Islam, if it is not waged for a just cause, ordained by the Divine law. The life of the Prophet provides reference to only three kinds of wars: defensive, punitive and preventive. In a celebrated correspondence with the Emperor Heraclius of Byzantium, in connection with the assassination of a Muslim ambassador in the Byzantine territory, the Prophet proposed three alternatives: “Embrace Islam – if not, then pay the *jizyah* tribute. . . if not, then do not interfere between thy subjects and Islam if these former desire to embrace Islam or pay the *jizyah*” (cf. *Abu ‘Ubaid, Kitab al-Amwal*, s. 5 5). To establish liberty of conscience in the world was the aim and object of the struggle of the Prophet Muhammad, and who may have a greater authority in Islam than he? This is the “holy war” of the Muslims, the one which is undertaken not for the purposes of exploitation, but in a spirit of sacrifice, its sole object being to make the Word of God prevail. All else is illegal. There is absolutely no question of waging war for compelling people to embrace Islam – that would be an unholy war.