

**SHARI'AH OBLIGATIONS OF MUSLIM
MINORITIES IN NON-MUSLIM COUNTRIES:
AN ANALYTICAL STUDY**

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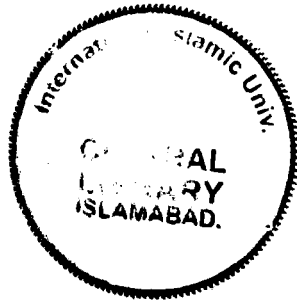
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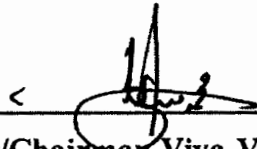
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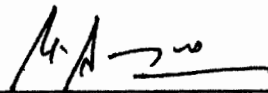
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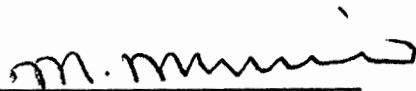
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ABSTRACT

Muslim Minorities' *raison d'etre* in non-Muslim countries has always been a debatable issue within the Muslim *Ummah*. Some Muslim scholars are of the view that Muslims neither have the right to live in non-Muslim countries nor co-exist with non-Muslims. They premise their contention on the *concept/theory* of the division of territories in Islam into *Dār al-Islam* and *Dār al-Harb*. For them, this *concept/theory* points to the fact that the normal relationship between Muslims and non-Muslims is that of hostility and antagonism. Moreover, they say that emigration to Islamic lands, as alternative, is a must.

This thesis argues, first of all, that there is nothing wrong in having a '*Fiqh* for Muslim Minorities' in the field of *Mu'āmalāt* (transactions and social dealings), as the traditional *Fiqh* has not answered many of the Muslim Minorities' questions in this field.

Moreover, this work analyses the *concept/theory* of division of territories in Islam and argues that the aim behind this theory were never meant for antagonising Muslims and non-Muslims relationship and/or to say that Muslims do not have the right to live in non-Muslim territories. It was, rather, meant for territorial jurisdiction purposes. Besides, this *concept/theory* of division of territories was the result of early *fuqahā's ijtihād* to respond to the need of their time and it does not emanate directly from the Qur'ān and the Sunnah and thus not necessarily applicable in today's world order.

Furthermore, this work argues that, in Islam, infidelity *per se* is not the cause of war, antagonism and disgust against non-Muslims, it's rather when aggression or hostility is thrust upon the Muslims from their part. Most of the Qur'ānic war verses were meant for specific confrontations and events and cannot be generalized. The Prophet's (peace be upon him) life is illustrative of this fact as he always had good relations with non-Muslims who were not hostile against Islam and the Muslims. After his demise, his Companions followed his footsteps.

In addition, this work analyses some injunctions, in the Shari'ah, which are found to be prohibiting Muslims from residing in non-Muslim countries and calling for *hijra*. After analyzing a number of Qur'ānic verses and *ahādith* (traditions) pertaining to *hijra*, this work concludes that there is no need to emigrate to an Islamic country. This is due to the fact that the Qur'ānic verses were specifically meant for those who were not in a position to practice their faith freely. Moreover, the *ahādith*, while some, on the one hand, advocate *hijra*, some others, on the other hand, articulate the contrary. Besides, most of the early *fuqahā* were of the view that, if Muslims are safe to practice their religion in non-Muslim countries, there is no need for emigration.

Last but not least, this thesis, while arguing that it is a must for Muslims in non-Muslim countries to be an integral part of their country of residence as full citizens, emphasizes also that Muslim unity is a must.

**IN THE NAME OF ALLAH, THE MOST GRACIOUS, THE MOST
MERCIFUL**

To *Zaibah*

(06-02-2004 to 15-02-2009)

**You are very dear to us in our hearts and you will always be remembered and
missed.**

As a *ma'soom* you are already a *jannati*

May Allah bless you.

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INTRODUCTION OF RESEARCH

1. Introduction and Importance of Research Topic

Islam is a religion that deals not only with beliefs, worships and rituals but it is, rather, a complete *mode de vie* that deals with each and every aspect of human's very existence and evolution. It is a comprehensive and ever-lasting system, a comprehensive code of life, comprising a set of universal principles and pan-cultural values for the socio-economic, political, legal and moral guidance of humanity.

God has created human beings to live on this earth and to socialize with each other, as the Qur'ān says:

*“O mankind! We have created you from a male and a female and made you into nations and tribes, that you may know one another. Verily the most honourable of you with God is the most pious. Verily, God is All Knowing, All Aware”*¹

This verse is very clear in pointing to the fact that we have been created by God to live and to get to know each other on the surface of this earth. It is pertinent to note, here, that Allah (swt) has addressed mankind as a whole without differentiating between Muslims and non-Muslims.²

Muslims living as minorities throughout the world represent one third of the Muslim Ummah. They live with non-Muslims and deal with them in their daily life. The issue of

¹ Qur'ān 49:13.

² See, Jamal Badawi, "Muslim and non-Muslim Relations: Reflections on Some Qur'anic Texts," 7, available at www.islamonline.net/english/Contemporary/2005/04/Article01.shtml

whether, in Islam, a Muslim can live in a non-Muslim country has long been a very argumentable and sensitive issue. Since long, Muslims have been hearing that it is not legal (*harām*) to reside in a non-Islamic country and are called for '*hijra*' (emigration) towards an Islamic country as an alternative.³ Moreover, the dealings of Muslims with non-Muslims have also come under severe criticism. The participation of Muslims in politics, elections, and the parliament in non-Muslim countries is declared un-Islamic. The concept/theory of the division of territories in Islam is said to be the reason behind this.

Due to these arguments and theories, there are Muslims who, caught in utter confusions, are afraid of participating in the social and political activities of their country. This creates a lot of problems regarding their full integration in the affairs of their country. It follows that it is of paramount importance that the real facts, according to the Shari'ah, be studied and appropriate solutions and strategies be adopted, through the exertion of *ijtihad*, to enhance the role of Muslims as full citizens in their non-Muslim countries.

2. Statement of the Research Problem/Thesis Statement

Being part of the *Ummah* is a central part of being a Muslim irrespective of whether one lives in a Muslim country or not. The deciding basis for *Ummah* is neither race, language, history or any combination of them, nor is it to be determined by geographical

³ An example of this perception is *Muslim minorities, Fatwa regarding Muslims living as Minorities* by the late Sheikh Ibn Baz and Sheikh Uthaymeen, two influential Saudi muftis. See Khalid Masud, "Islamic Law and Muslim Minorities," *Law and Society*, ISIM newsletter 11/02, 2 .

considerations. *Ummah* transcends race, language and geography. Keeping this in mind, this thesis will tackle the issue of Muslim Minorities' *raison d'etre*. The research will be based on analyzing and in answering several questions as hereunder:

1. What are the crises of Muslim Minorities?
2. Why a *Fiqh* for Muslim Minorities? Is it not tantamount to innovation? Is it not going to divide the *Ummah*? Is the traditional *Fiqh* not sufficient for Muslim Minorities? Can the *ijtihad* of classical Muslim scholars solve the contemporary problems that Muslim Minorities are facing?
3. Are Muslim Minorities a part of this *Ummah* while living in non-Muslim countries? Does the concept of being loyal to their country of residence negate the concept of *Ummahism*?
4. Do they have the rights to be full citizens of their countries? What consideration do they have, as Muslim Minorities, in the eyes of the Shari'ah? Are their lives to be governed by the Shari'ah or by the law of their respective countries or both?
5. Is it obligatory for Muslim Minorities, according to the Shari'ah, to emigrate to Islamic countries or not? What has prompted such confusions in the lives of Muslim Minorities? Is emigration, *en masse*, possible and realisable in today's world or is it a myth?
6. What is the *Shar'i* status of the concept/theory of division of territories in Islam? Does it have anything to do with the *raison d'etre* of Muslim Minorities in non-Muslim countries? What were the aims behind this concept?

7. Can Muslim Minorities live in non-Islamic countries and co-exist peacefully with non-Muslims? Is infidelity *per se* a cause of war and antagonism, vis-à-vis non-Muslims, in Islam?
8. What are the *shar'i* rulings about Muslim Minorities' participation in politics, elections, the parliament, and what about citizenship?

3. Hypothesis of the Research

Old and antiquated *concept/theory* like the division of territories in Islam into *Dār al-Islam* and *Dār al-harb* is still being used in portraying that Muslim Minorities do not have the right to live in non-Muslim countries and they have to emigrate to Islamic countries. This is pretty much damaging to Muslim Minorities' *raison d'etre*. Moreover, they are living in utter confusions which force them to refrain from taking active part in the affairs of their countries. It should be shown to Muslim Minorities that, according to the Shari'ah, wherever a Muslim is, he/she can live his/her life as a fully integrated citizen of his/her [non-Muslim] country. There is a lack of initiative to come up with new *ijtihād* to cope with realities which Muslim Minorities are facing in their day to day lives despite the fact that it is known that ground realities in non-Islamic countries are dissimilar to those of Muslim countries. Moreover, there is a total blackout for new *ijtihād* regarding the relationship of Muslims and non-Muslims. It should be proven to the Muslims that infidelity *per se* is not the reason for them not to deal with non-Muslims. It's of paramount importance to work towards the harmonization of Islamic principles to the ever growing and changing demands of this era. There is need for the re-interpretation of Islamic Law in the light of changing realities through the process of *ijtihād*.

4. Objectives of the Research

Muslims living as minorities throughout the world represent one third of the Muslim Ummah. They live with non-Muslims and deal with them in their daily life. The objectives of this research in relation to the theory of division of territories in Islam are:

1. To analyse the crises of Muslim Minorities.
2. To explain the concept of '*Fiqh for Muslim Minorities*' and its existence. To argue that it is of paramount importance to come up with new *ijtihad* regarding Muslim Minorities.
3. To analyse the Qur'ānic verses and *ahādith* pertaining to Muslims-non-Muslims relationship. To argue and to prove that according to the Shari'ah infidelity *per se* is not the cause of war and antagonism vis-à-vis non-Muslims in Islam.
4. To analyse the Qur'ānic verses and a number of *ahādith* (traditions) pertaining to *hijra* (emigration) and to argue that there is no Shari'ah necessity for Muslim Minorities to emigrate to Muslim countries.
5. To argue that Muslim Minorities should be full citizens of their respective countries and that Muslim's unity among themselves is a must.
6. To show that Islam has the innate capability to adapt to changing realities and circumstances and to cater any unprecedented and unforeseen needs of the Muslims as, when and where they arise.

5. Literatures review

Many original and contemporary related work/literatures have been consulted for the writing of this thesis. Among the original work referred to, there are *Kitāb al-Kharāj* of Abū Yūsuf, *Kitāb al-Siyar al-Saghīr* of al-Shaybāni (Ghazi ed.), *al-Mabsūt* of al-Sarakhsī, *Badā'i' al-Sanā'i'* of al-Kāsāni, *al-Mughnī* of Ibn-Qudāma, *Ahkām ahl al-Dhimma* of al-Jawzee, *Jāmi' al-Bayān* of al-Tabari, *Ahkām al-Qur'ān* of al-Jassas, *al-Sīrah al-Nabawīyyah* of Ibn Hishām, *Sharh al-'Aqūdah al-Tahāwīyyah* of Ibn Abi al-'Izz etc. Moreover, among the contemporary work, some of them are presented as hereunder:

1. *Towards a Fiqh for Minorities: Some Basic Reflections*, by Tāha Jābir al-Alwāni. In this work, Dr. al-Alwāni proposes a set of principles that he considers essential for the proper exploration of the status of Muslim Minorities.

2. *Fiqh of Muslim Minorities: Contentious Issues & Recommended Solutions*, by Yūsuf al-Qaradāwi. This book discusses the issues which Muslim Minorities face, ranging from social, economic and familial. It sheds light that the Shari'ah is feasible, facile and tolerant. This book deals with principles of Islamic jurisprudence in relation to the issues pertaining to Muslims living in minority positions while the second is a collection of fatwas on contentious issues raised among communities of Muslim Minorities. This work tackles questions like: Is it permissible to bring religions together? Can a Muslim be buried in a Christian cemetery? Will a female convert be obligated to separate from her non-Muslim husband? Moreover, it deals with interfaith inheritance,

congratulating the People of the Book on their feasts, dealing with non-Muslim neighbours in non-Muslim countries etc.

3. *The Muslim Conduct of State*, by Muhammad Hamidullah. This book is a treatise on (siyar). For Dr. Hamidullah, there was no international law in Europe before 1856. What has passed as such was admittedly a mere public law of Christian nations. This book deals with the subject of Muslim International Law, the Object and Aim of International Law, the contribution of Islam to the Internationalising of Human society, the Ethical basis of Muslim Law etc.

4. *Islamic Law, its Scope and Equity*, by Said Ramadan. The subject matter of this work is the methodology of Islamic Law and its application to practical problems of Jurisdiction. In this book, Dr. Ramadan disposes of the old fallacy that Islam is inherently hostile towards the non-Muslim world and that its political scheme envisages a suppression of the non-Muslim minorities living in its midst.

5. *Towards an Islamic Theory of International Relations*, by Abdul Hamid A. Abu Sulaymān. In this book, Dr. Abū Sulaymān deals with the issue of Islamic world order. The author attempts to develop a methodology for dealing with them in a creative and practicable manner.

6. *Al-Ahkām al-Siyāsiyyah lil-Aqalliyyāt al-Muslimah fi'l-Fiqh al-Islāmi*, by Sulaymān Muhammad Toboliyak. In this work, the author tackles the issue of Muslim Minorities,

their characteristics, their problems, the legal rulings on their residence in non-Muslim countries etc.

8. *Public International Law and Islamic International Law: Identical Expressions of World Order*, by Muhammad Munir. This article attempts to answer some of the very basic questions raised about the Islamic law of nations. For instance: What is the permanent basis of relations between Islamic and non-Islamic territories? Can there be peaceful co-existence between Islam and other faiths? Is Islamic history a history of violence? Is *siyar* relevant today? Is public international law a secular law? And can Islamic states sign international treaties?

9. *The Notion of Dār al-harb and Dār al-Islam with Special Reference to the Hanafi School*, by Muhammad Mushtaq Ahmad. For the author, the division of territories in Islam is essentially an affirmation of the principle of territorial jurisdiction. Moreover, it argues that seventh century Arabia was a very special case and Muslim jurists, especially Hanafi jurists, consider it *sui generis* which may not be extended beyond its space time.

10. *To be a European Muslim*, by Tariq Ramadan. In this work Dr. Ramadan draws the global framework of the Islamic concept of God, creation, worship, morality and social affairs. It treats some special aspects of Islamic jurisprudential rules in order to clarify some misunderstood concept. It provides elements of response to certain thorny problems such as defining notions like *dār al-Islam*, *dār al-harb* and *dār al-'ahd*, and attempts to give a clear definition of what the Muslim identity is.

11. *Fiqh al-Maqāsid: Inātat al-Ahkām al-Shar'iyyah bi Maqāsidihā/Assignment of Shari'ah Rulings with its Purposes*, (part 4: *Tatbīqāt 'alā Fiqh al-Aqaliyyāt al-Muslimah/Implementations on Fiqh of Muslim Minorities*) by Jasser 'Audah. In this work the author focuses on the study of *Maqāsid al-Shar'iyyah* in conjunction with *Ijtihād*. Moreover, it deals with the issue of residence of Muslim minorities in non-Islamic countries, the relationship of Muslims with non-Muslims etc. It argues that these issues should not be governed by only one or two fatwas for all times to come. For Audah, the dealings of Muslims with non-Muslims should be based on a broader vision embedded in the Shari'ah in conjunction with its aims and purposes.

6. Methodology of research

1. This is an analytical-oriented research work in which methods of descriptive research have been used.
2. As the majority of materials have been taken from Libraries, the principles of library research have been followed.
3. As far as the derivations of rulings, the *Usul al-Fiqh* methodologies have been used.
4. The analysis of *Ijtihād* is based on both the '*Aqli* and *Naqli Manhaj*.
5. The analysis and deductions have been made on the basis of the Classical and the Contemporary Research Methodologies.

This is what, by God's will and approbation, is intended, in all humility and humbleness, to be followed in due course of this thesis. This work is not all-

CHAPTER ONE

ORIGIN AND EVOLUTION OF ISLAMIC LAW FOR MUSLIM MINORITIES

(FIQH-AL-AQALLIYYĀT AL MUSLIMAH)

1. Introduction to Fiqh al-Aqalliyyāt al-Muslimah⁴

1.1 'The Shari'ah' Defined

1.1.1 Literal meaning

Shari'ah, in the language of the Arabs, means a drinking place where people go and drink therefrom.⁵ Shari'ah also means a path. God says: "Then We put you on a straight path (Shari'ah) in your affairs."⁶ Shari'ah is what God has legislated for His servants comprising of creedal matters and laws.⁷

1.1.2 Terminological meaning

Shari'ah is the total system of life comprising *al-tawhīd* (creed), *ibādāt* (worships), *mu'āmalāt* (transactions) and other noble deeds.⁸ For al-Tabari, 'It is comprised of the laws of inheritance, the hadd punishments, commandments and prohibitions.'⁹ Islamic Law (Shari'ah) is a manifestation of divine will. It finds its expression in the Qur'ān and the Sunnah.¹⁰ It is [a] revealed and immutable path. It is not restricted to the penal code... it is an element, a part of a global path, methodology and philosophy of life which is

⁴ This work tackles the issue of Muslim Minorities as a whole without differentiating between them living in the East or having integrated the West. Moreover, it is only a humble endeavor and a simple contributive piece of work to the already existing scholarly literatures in relation to this discipline.

⁵ See, Jamāl ad-Dīn Ibn Manzūr, *Lisān al-'Arab*, (Beirut: Dār Sādir, n.d), 8:176.

⁶ Qur'ān 45:18. See, Ibrahim Mustapha, *al-Mu'jam al-Wasīt*, (Tehran: Muassassah al-Sādiq, n.d), 479.

⁷ Ibid.

⁸ See, al-Qurtubī, *al-Jāmi' li-Ahkām al-Qur'ān*, (Beirut: Dar Ihyā al-Turāth al-Islami, 1959), 16:163-4.

⁹ See, Muhammad ibn Jareer ibn Yazeed ibn Katheer ibn Ghalib al-Āmili Abū Ja'far al-Tabari, *Jāmi' al-Bayān fī Ta'wīl al-Qur'ān*, (Muassassah al-Risāla, 2000), 22:70. (Maktaba Shamela).

¹⁰ See, Ahmad Hasan, *Principles of Islamic Jurisprudence*, (Islamabad: Islamic Research Institute, 1993), 1.

framed by the Qur'ān and the Sunnah.¹¹ It refers to the sum total of Islamic laws which were revealed to the Prophet (pbuh) and which are recorded in the Qur'an as well as deducible from the Prophet's divinely guided lifestyle (Sunnah).¹²

1.2 Definition of *Fiqh*

1.2.1 Literal Meaning

Fiqh, in the language of the Arabs, means understanding and knowledge.¹³ In this sense the Qur'ān says: "O Shu'aib, we don't understand (*nafqahu*) most of what you say."¹⁴ Moreover, the Prophet (pbuh) states: "To whomsoever God wishes good, He grants him understanding (*fiqh*) of the religion."¹⁵

1.2.2 Terminological Meaning

According to Abū Hanifah, 'Fiqh is a person's knowledge of his rights and duties.'¹⁶ It is the knowledge of the *Shari' ahkām* (legal rules) pertaining to conduct that have been derived from their specific evidences.¹⁷ It is the product of rational human elaboration based on the unchangeable rulings of the Shari'ah but with responses, adaptations and formulations which are in constant evolution, ...the state of juridical reflection reached

¹¹ See, Tariq Ramadan, *To be a European Muslim*, (Leicester: The Islamic Foundation, 1999), 59-61.

¹² See, Muhammad Shalabī, *al-Madkhal fī al-Ta'rīf bil-Fiqh al-Islami*, (Beirut: Dār al-Nahdah al-'Arabiyyah, 1969), 28.

¹³ Ibn Manzur, 13:522. See also, Ibrahim Mustapha, 698.

¹⁴ Qur'ān 11:91.

¹⁵ See, Sahih Muslim, (Beirut: Dār al-'Arabia, n.d.), 3, no. 4720.

¹⁶ See, Sadr Al-Shari'ah, *al-Tawdīh fī hall Jawāmid al-Tanqīh*, (Karachi, 1979), 2. See also, Al-Bayādi, Kamal ud-Deen, *Ishārat al-Marām min 'Ibārat al-Imām*, (Cairo, 1949), 28-9.

¹⁷ See, Badr al-Dīn al-Zarkhashi, *al-Bahr al-Muhīt fī Usūl al-Fiqh*, (Kuwait: Dār al-Safwah, 1992), 1: 21.

by Muslim scholars at a certain time and in a certain context in light of their study of the Shari'ah.'¹⁸

1.2.3 The difference between 'Shari'ah and Fiqh'

There is a profound misunderstanding regarding these two terms. The Shari'ah has often been equated with *Fiqh*. Though related and hence used synonymously, the two concepts are analytically different.¹⁹ The Shari'ah-Fiqh confusion is one of the major problems of the Muslims today.²⁰ For Fyzee, 'Shari'at is the wider circle, embracing in its orbit *all* human actions, while *fiqh* is the narrower one which deals with what are commonly understood as legal acts. The path of the *shari'at* is laid down by God and His Prophet; the edifice of *fiqh* is erected by human endeavour... *Fiqh* is the term used for the law as a science; and *shari'at*, for the law as divinely ordained path of rectitude.²¹

1.2.4: *The Outcome*

It could be noted that Shari'ah is the core of Islam, the divinely ordained way of life for man, the entire corpus of the divinely revealed law, the legal framework regulating the entire life from cradle to the grave in all its public and private aspects. It comprises belief, worships, and transactions including politics, economics, social life, education, law of war and peace etc, and is not limited to societal laws and a penal system. It regulates all aspects of human experience for prosperity. It is eternal and immutable. It is a law

¹⁸ Ramadan, *To be a European*, 59-61.

¹⁹ See, Abdul Karim Zaidān, *al-Madkhal li-Dirasāt al-Shari'ah al-Islamiyyah*, (Beirut: Muassassah al-Risālah, n.d), 62-69.

²⁰ See, Tariq Ramadan, *Islam, le face a face des civilizations*, (Jordan: Edition Tawhid, 1996), 51.

²¹ See, Asaf Fyzee, *Outlines of Mohammadan Law*, (New Delhi: Oxford University Press, 2007), 23-4.

characterized by perfection and sublimity and is a complete code of life.²² Fiqh is a human product. It can be better designated as applied Shari'ah since it represents the intention of the revealed will of God in a detailed and applied way. In other words, it is the science that deduces rules of law from the Shari'ah, or a human attempt to understand the Shari'ah. Thus, *Fiqh* is human, temporal and subject to change as it is an understanding of a given context and circumstance.²³

1.3 Definition of Fiqh al-Aqalliyyāt

Literally, *Aqalliyyah* (minority) is derived from *Qillah* (small quantity) which is the opposite *Kathrah* (big quantity).²⁴ In the terminological sense, the term 'Minorities' is a political one that has come into use in contemporary international convention. It refers to a group or groups of state subjects of a racial, lingual or religious affiliation different from the majority of the population.²⁵

²² See, Abdul Rashid Moten, *Political Science: An Islamic Perspective*, (London: Macmillan Press Ltd, 1996), 48-50.

²³ Ibid.

²⁴ Ibn Manzur, 11:563.

²⁵ See, Taha Jabir al-Alwāni, *Towards a Fiqh for minorities: Some Basic Reflections*, (London: The Institute of Islamic Thought, 2003), 2.

2. Muslim Minorities' *raison d'etre*²⁶

2.1 Historical Existence and Evolution of *Aqalliyyāt al-Muslimah* (Muslim Minorities)

In the annals of Islamic history, Muslims' journeys and residence in non-Muslim countries abound. In the time of the Prophet (pbuh) Muslims took refuge for certain years in Abyssinia.²⁷ In the year 31 H, a pact was concluded with the King of Nubia in which it was stipulated that no objection would be raised if Muslims visited his country or celebrated their services in the mosques in Dongola, his capital.²⁸ The Muslims had penetrated, in the very time of the Caliph 'Umar, into the seacost of Bombay and Sindh. When the Hindus recaptured the Sindān, they left the mosque in the possession of the Muslim population which had not evacuated the region, where it could hold its Friday service (prayer) and even pray for the Caliph.²⁹ Malabar had had contact with the Arabs of even pre-Islamic days. Muslims colonies of the South Indian seacost date back to the days of the Companions of the Prophet (pbuh). Malabar did not change much during the long centuries. Zain-ud Din al-Ma'bariy, of the time of Portuguese attacks, states that in the whole country of Malabar, there was no ruler for the Muslims who rule over them, administer their affairs, and fine them when they commit some delict. In spite of that, the Muslims enjoyed, among the people of this country, great respect and power. The Muslims could hold Friday and 'Eid services. The local chiefs paid the salaries of their *Qādis* (judges) and *Muadhdhins*, helped in the enforcement of the rules of the Shari'ah

²⁶ That is, their very existence and evolution throughout the annals of Islamic history.

²⁷ See, Muhammad Hamidullah, *The Muslim conduct of State*, (Lahore: SH. Muhammad Ashraf publishers, 1996), 121.

²⁸ Ibid, 122.

²⁹ Ibid, 123.

among them, and do not allowed that the Friday prayer be suspended and if anybody tried to suspend it, they punished and fined him in most cities.³⁰ Regarding China, as early as the third century, it is reported that at Khanfu, which was a rendez-vous for merchants, a Muslim was charged by the ruler to adjudicate the disputes that arose between the members of the Muslim community arriving in the country. Such was the desire of the King of China. On days of festival, this chief of the Muslims used to conduct the service of the Muslims, pronounce the sermon and pray for the Caliph.³¹ Similarly in those days, the foreign Muslims in Calicut had a governor of their own religion, and the King did not meddle with them.³² Regarding the people near the Caspian Sea, in the country of Khazar, it is reported that the Muslims were the elite because they constituted the King army and were known as the Larshiah. They were immigrants from Khwarizm, a place which was attacked by famine and they were forced to migrate. The Muslims accepted to settle in the country on the conditions, primarily, that they could openly profess their religion, have their mosques and the calls for prayer (*adhān*).³³

It seems that there are several reasons behind Muslim Minorities' journeys to non-Islamic countries: the lost of Muslim lands, fear of persecutions, lack of religious freedom etc. It is observed that the status of minority Muslims residing in non-Muslim territory has been the subject of juristic debate at least since the second/eight century. The position of these Muslims has been problematic for a variety of historical and doctrinal

³⁰ Ibid, 125-6.

³¹ Ibid, 127.

³² Ibid, 126.

³³ Ibid, 127-8.

reasons. The juristic discussions on legality of residence in non-Muslim territory in the first Islamic centuries were cryptic and ambiguous.³⁴ In the first four centuries, Muslim jurists manifested a degree of ambivalence towards the problem of Muslims residing in non-Muslim territories. Such Muslim Minorities are not specifically mentioned in the early legal texts. Despite the wealth of reports and concepts, the discussions are often cryptic and impressionistic. This ambivalence continued well into the fifth/eleventh century.³⁵ Since the second/eight century, significant Muslim populations have resided in non-Muslim territories, especially in coastal India and China. In the late Umayyad period, Muslims, reportedly, fled the tyranny of al-Hajjāj ibn Yūsuf (41-95/661-714) by taking refuge in Malabar, India. During the reign of al-Mahdi (158-169/775-785) and Hārūn al-Rashīd (170-193/786-809), Muslim lands were lost to non-Muslim rule. In the fifth/eleventh century, large Muslim populations came under non-Islamic rule in Messina and Sicily. The problem of how to treat Muslims who reside in non-Muslim territory became particularly urgent in the seventh/thirteenth century, when vast Muslim territory was conquered in the East by Mongols and in the West by the Christians.³⁶ These historical challenges elicited a variety of responses from Muslim jurists. Some jurists argued that Islam and *dār al-Islam* are inseparable and that Muslims, therefore, may not reside in non-Muslim lands under any circumstance. Other jurists conceived of *hijra* (emigration) as a dynamic concept that requires Muslims to be in a constant search for

³⁴ See, Khaled Abou el Fadl, "Islamic law and Muslim minorities: The Juristic Discourse on Muslim Minorities from the Second/Eight to the Eleventh/Seventeenth centuries," *Journal of Islamic Law and Society*, 1:2 (1994), 141.

³⁵ *Ibid*, 149.

³⁶ *Ibid*, 145.

lands in which they can attain greater religious fulfillment; some of these jurists argued that it may be recommended or even obligatory for a Muslim to reside among others.³⁷

2.2 Muslim Minorities' Crises and Problems within a non-Islamic milieu.

The issue of Muslim Minorities' rights has always been intriguing Muslim Minorities living in non-Muslim societies. Muslim Minorities have always asked themselves about the compatibility of them being Muslims and living in non-Muslim countries at the same time. This is a question that is being constantly asked throughout the world. It has been observed that, 'One of the most frequent questions among Muslims living in the West is to know whether they are allowed to live in Europe or the United States or not, for these areas are part of '*dār al harb*'(enemy territory) or, at least '*dār al kufr* (non-Islamic territory).³⁸

Contrary to those Muslims living in Islamic countries, Muslim Minorities keep on asking themselves whether their lives are to be regulated by Islamic law or by the law of the land or both. Though many firmly believe that they form part of one *Ummah* as a whole, they still fear of them being alienated from the *Ummah* in case their lives are not governed by the Shari'ah. Says Khaled Abou el Fadl that, 'It has often been argued that a just life is possible only if lived under the guidance of the Shari'ah which, in turn, is possible only if there is an Islamic polity dedicated to the application of the Shari'ah.'³⁹

³⁷ Ibid.

³⁸ Ramadan, *To be a European*, 165.

³⁹ Khaled, 141.

The issue of whether, in Islam, a Muslim has the right to live in a non-Muslim country has long been, also, a very argumentable and sensitive one. It has been repeatedly heard from some Muslim scholars that, according to the Shari'ah, it is *harām* (illegal) to stay in a non-Muslim country and they keep on calling for '*hijra*' (emigration) towards an Islamic country as an alternative.⁴⁰ Here, it is pertinent to note that *hijra* is meant for those Muslims who cannot practise their faith and religion freely. Says Mahmood Ghāzi, '*Hijrah* (emigration) is to be made from a non-Muslim state where the Muslims find no avenues for the propagation and free practice of their faith.'⁴¹

Furthermore, one opinion is that the dealing of Muslims with non-Muslims is illegal. It means that Muslims' participation in politics, elections, and the parliament of non-Muslims is prohibited. The holders of this opinion brand as *kāfir* (disbeliever) all those who work in non-Muslim societies' government, police and the army. When they are asked about the reasons behind their stance, they always refer to the classical concept of the division of territories into *Dār al-Islam* (land where Islamic rule is predominant/

⁴⁰ Among them are the Mālikiyyah and Ibn Hazm al-Zāhiri. See, Abū al-Walīd ibn Rushd, *al-Bayān wa al-Tahsīl*, (Beirut: Dār al-Maghrib al-Islami, 1984), 4:171. See also, Khalid Masud, 2.

⁴¹ See, Mahmood Ahmad Ghazi, *The Hijrah: its Philosophy and Message for the modern man*, (Islamabad: Da'wah Academy, International Islamic University, 2003), 61. '*Hijrah* literally means 'emigration' or 'self-separation' from one's fellows or country. Technically, i.e. as an Islamic term, it means the departure of the Prophet (pbuh) from Makkah al Mukarramah, his birthplace and city, to Yathrib, from that time to be known as Madinah al-Nabiyy or al-Madinah al-Munawwarah, and his arrival there on September 24, 622 A.C. Under the caliphate of Umar ibn al-Khattāb, the *Hijrah*, in the technical sense, was resolved to be the most crucial event in the history of Islam, and its date was declared the beginning of Islamic history." See, Ismail R. Al Faruqi, *The Hijrah: The Necessity of its Iqāmat*, (Islamabad: National Hijra Council, 1985), 1.

Islamic territory) and *Dār al-Harb* (land where non-Islamic rule is predominant/ non-Islamic territory/territory of war). It is observed that, 'In theory, the position of Muslim Minorities living in non-Islamic territory is problematic due to the traditional dichotomy between *dār al-Islam* and *dār al-Harb*.'⁴²

Those Muslim scholars, who advocate such concepts, though small in quantity, create and cause many problems leading to harrowing and catastrophic consequences which ultimately lead the Muslim *Ummah* into utter confusions. Says al-Alwani, 'No wonder Muslims find themselves in a sea of confusion, faced as they are with differences in opinion among jurists: some, to varying degrees of strictness, citing differences between life in Muslim and non-Muslim societies and others comparing the present with the past and ignoring the huge social and historic changes that have occurred. The overall result of these mistaken methods has been to throw the Muslims into confusion and disarray.'⁴³

All these claims, if taken to be correct, will project an assumption that Islamic Law is incapable of adapting itself with the needs of the hour. But, in this regard, Taqi Amini says that, 'An in-depth study of the Qur'ān and the Prophetic precepts reveal that divine instruction is comprehensive enough to take care of the time changes to maintain the

⁴² Khaled, 141.

⁴³ Al-Alwāni, *Towards*, 7. 'This, in turn, forced Muslims into isolation and restricted their contribution. It has disrupted Muslim life and kept it backward. Above all, it has portrayed the Islamic faith being incapable of facing and resolving the important pressing issues of our modern age such as progress and development.' Ibid.

necessary co-relation between the laws and the circumstances and conditions obtaining in a society for the proper ordering of human affairs.⁴⁴

In addition to this, these claims put at risk one of the attributes and characteristics of Islam i.e. its *universal character* in coping with any circumstance/s in any place for all times to come. In relation to this, al-Alwāni sees that most jurists overlooked the universality of Islam as a defining factor in their rationalization and analysis of relations between Muslims and non-Muslims. Their work reflects a certain degree of introversion incompatible with the universality of Islam's eternal message. For him, the thinking of Muslim jurists with respect to the geo-political world map of the time was influenced by contemporaneous historic convention. They overlooked the Qur'ān concept of the world and human geography and their works have tended to be localized and provincial.⁴⁵

Many Muslims living non-Muslim countries feel the need to know whether the Shari'ah approves of their living in non-Muslim countries and if yes, to what scope and extent. The dilemma with this topic is that many of the existing-related literatures have been written by Islamic scholars who were born or raised and/or educated in Islamic countries. What one can feel by reading most of these literatures is that they address the issue from a purely Islamic standpoint based on experiences gained within an Islamic milieu. Most of their *ijtihād* and *assessments* of the realities surrounding Muslim Minorities, it can be argued, are not based on solid and cemented facts of the ground

⁴⁴ See, Mohd Taqi Amini, *Time Changes and Islamic Law*, (Delhi: Idārah-I Adabiyāt-I, 1988), 1.

⁴⁵ Al-Alwāni, *Towards*, 9.

realities prevailing in non-Muslim countries, thus being, up to a great extent, irrelevant and inappropriate. This has, ultimately, led to too many misconceptions resulting in misunderstanding of the realities and giving *fatāwa* (Islamic verdicts) proclaiming that it is illegal to deal and live with non-Muslims!

Considering the gravity of these claims, Muslim Minorities feel that it is of crucial significance to know about the Islamic ruling/s on this. As a general rule, Islam has not ordained Muslims to do so until and unless open hostilities are raised against the Muslims and their religion. The Qur'ān says: "*Permission to fight* is given to those (believers) *who are fought against...*"⁴⁶ So in this regard, as an example, let's take the case of Mauritius. There is nothing in its Constitution which prohibits a Muslim citizen from practising his/her religion or asks/forces him/her to do the contrary.⁴⁷ A Muslim in Mauritius has full liberty to practice his/ her faith at will.

⁴⁶ Qur'an 22:39,40.

⁴⁷ Article 11 under Chapter II of the Constitution of Mauritius is for the "Protection of freedom of conscience". This section stipulates clearly in the following clauses that: '(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.' See, www.gov.mu/portal/site/AssemblySite/menuitem.ee3d58b2c32c60451251701065c521ca/?content_id=03654555fc808010VgnVCM10000ca6a12acRCRD#pro .This is, among other related Articles, what is embedded in the Constitution of Mauritius. Though, admittedly, there are isolated cases where some

Furthermore, ground realities in non-Muslim countries have been evolving since long. The first three centuries of Islam witnessed frequent hostilities between Muslims and non-Muslims.⁴⁸ This explains why many Muslim scholars have based their judgment on the feelings and sentiments arising from those hostile relations.⁴⁹

For instance, it can be argued that one cannot take the interpretations of Muslim scholars from Palestine or Kashmir or from those being victimized under certain specific regimes, be they Islamic or non-Islamic ones, regarding war-related Qur'ānic verses or war-related sayings of the Prophet (pbuh) and apply them in the world! It's because, due to the fact that they have been victimized and traumatized by wars, destructions, injustice or even betrayal, it follows that while interpreting those war-related verses of the Qur'ān or sayings of the Prophet (pbuh) they will be influenced by the sense of betrayal and the scars left in their heart!⁵⁰

individuals are hostile against Islam and the Muslims, but the fact is that these individuals don't represent the State of Mauritius, its Constitution or its people. This 'isolationism' of theirs represents none but themselves.

⁴⁸ See, Mahmood Ahmad Ghāzi, *Kitāb Al Siyar Al Saghīr / The Shorter Book on Islamic International Law*, (Islamabad: Islamic Research Institute, 2003), 4.

⁴⁹ 'An examination of the earlier centuries of Islam reveals that there were peculiar circumstances that prevailed at that time and relations between Islamic and non-Islamic territories happened to be hostile. The views of some jurists were formulated in the context of such circumstances. The prevailing politico-military situation during the early centuries of Islamic history led these jurists to hold that the world is split into two domains: the territory of Islam (*dār al-Islam*) and the rest of the world called *dār al-harb* or the territory of war.' See, Muhammad Munir, "Public International Law and Islamic International Law: Identical Expressions of World Order," *Islamabad Law Review*, 1: 3, 4 (2004), 403-4.

⁵⁰ 'For many centuries the territories adjacent to the Islamic state were at war with that state. It was natural, therefore, for the *fuqahā* (Muslim jurists) to be influenced by this fact in their perception of the world order

In addition to this, the *concept of reciprocity* is often ignored by many Islamic scholars. This, in practice, was put into operation more effectively by the Caliph Umar, who issued some directives on the basis of reciprocity which are often termed by the jurists as *mujāzah* or *mu'āmalah bi'l-mithl*.⁵¹ So if today the non-Muslims are dealing with Muslims in a fair manner, it should be known that the Shari'ah does not prohibit Muslims from reciprocating that on the basis of mutual respect and understanding. This reminds us of the example of those Muslims who immigrated to Abyssinia to take refuge under the rule of the Negus in the Prophet's (pbuh) era. Consequently, relations between Muslims and Abyssinia's Christian monarch flourished to such an extent that they would pray for his victory against other contenders for his throne. Umm Salama (one of the Prophet's Companions) said: 'We prayed to God to help the Negus prevail over his rivals and confirm his rule in his country.'⁵² The Muslims enjoyed, in Abyssinia, perfect freedom of conscience. The Prophet (pbuh) had recommended that refuge saying that a just ruler governed there. The refugees (Muslims) testified to the fact that they worshipped, there, according to their rites and celebrated daily services and nobody maltreated them nor abused them by unpleasant words. The Negus refused the demand of the Meccan delegates for their extradition and after hearing both sides, assured the Muslims that they were safe in his territory.⁵³

and this is reflected in their rulings.' See, Muhammad Mushtāq Ahmad, "The Notion of Dār al-harb and Dār al-Islam with Special Reference to the Hanafi School," *Journal of Islamic Studies*, 47: 1 (2008), 22.

⁵¹ Ghazi, *Kitāb al Siyar*, 3.

⁵² Al-Alwāni, *Towards*, 32.

⁵³ Hamidullah, 122.

In today's world, in most of the non-Islamic countries, if Muslims are being dealt with in all fairness and justice, without any discrimination against their lives and/or faith, why shouldn't they reciprocate that and set aside old interpretations and *fatwas* which are proven to be irrelevant in today's world order, thus forcing them to live a life of utter confusions on the basis of, perhaps, 'conservative blindness' and/or 'not being conversant' with the principles of the Shari'ah, its aims and objectives? 'It is clear that in present time strict dichotomy between *dār al-Islam* and *dār al-harb* is impossible in the context of geo-political realities of contemporary times which needs co-existence with non-Muslim nations. In many non-Muslim states full protection is given to the minorities, including Muslims, who are legally permitted to practice their faith. As such, peaceful relations between an Islamic State and the rest of the world are totally acceptable.'⁵⁴

3. Re-Interpretation of the Shari'ah regarding Muslim Minorities⁵⁵

There is no denying the fact that it is of great importance to come up with a fresh, vigorous and meaningful understanding and implementation of the Shari'ah regarding Muslim Minorities, as, when and where needed. It's time for the harmonization of Islamic principles to the ever growing and changing demands of this era. It's high time for Muslims to liberate themselves from the entanglement of *Taqīd*⁵⁶ to face the growing

⁵⁴ See, Jamshed A. Hamid, *Status of Treaties in Islam: A Comparison with Contemporary Practice*, (Islamabad: Shari'ah Academy, International Islamic University, 2001), 8.

⁵⁵ In addition to what Muslims have as classical heritage and interpretations, the process of re-interpretation of the Shari'ah should remain as a vital and inherent part of Islam, through *ijtihād*, so that rulings and solutions for all un-precedented issues and circumstances be found, for all times to come, as, when and where needed.

⁵⁶ The *Taqīd* which is being referred to, here, is very specific in nature. It is the 'negative mentality' of some who maintain that Muslim scholars should stick only to old *interpretations* and stand against the

un-precedented and un-foreseen realities facing them in their day-to-day life. There is need for the re-interpretation of the Shari'ah in the light of changing realities through the process of *ijtihād*.⁵⁷ The oft-quoted *hadith* of Mu'ādh ibn Jabal, when he was being sent to Yemen, is an ample example in this regard. When he was asked by the Prophet (pbuh) regarding what he will do if he does not find guidance in God's Book and the *Sunnah* (tradition) of the Apostle of God? He replied that he will do his best to form an opinion and spare no pains (*Ajtahidu ra'yi wala ālu*).⁵⁸

This saying of the Prophet (pbuh) is very clear in indicating that when the search in the texts has been exhausted, the principle of *ijtihād* is to be resorted to. For Said Ramadan, the concept of *ijtihād* as presented in the words of Mu'ādh Ibn Jabal, '*then I will exert myself to form my own judgment (Ajtahidu ra'yi wala ālu)*' initiated the healthy course of early Muslim jurisprudence and has reminded us of the unique authoritativeness of the Shari'ah. It is, in deed, the elixir of life in the applicability of Islamic Law.⁵⁹

adoption of new *ones* for the progress of the Ummah, as, when and where needed. This work is not talking about the rejection of *Taqīd* per se and does not subscribe to such a stand.

⁵⁷ The literal meaning of *ijtihād* is the expending of maximum effort in the performance of an act. Technically, it is the effort made by a *Mujtahid* (the one who is qualified for exercising *ijtihād*) in seeking knowledge of the *ahkām* (rules) of the Shari'ah through interpretations.' See, Imran Nyazee, *Outlines of Islamic Jurisprudence*, (Rawalpindi: Federal Law House, 2005), 199. '*Ijtihād* is derived from the root *j.h.d*. Its verbal noun is *Ifti'āl*. *Jahd* means effort, hardship and to take trouble, but *juhd* means might, capacity, capability. The term *ijtihād* combines both meanings in its essence. See, Khalid Musud, *Iqbal's Reconstruction of Ijtihād*, (Lahore: Iqbal Academy, 2003), 13.

⁵⁸ Abū Dawūd, *Sunan Abū Dawud*, tr. Ahmad Hasan, 3: 3585

⁵⁹ See, Said Ramadan, *Islamic Law, its Scope and Equity*, (Lahore: Shirkat Printing Press, 1970), 83.

Moreover, a vacuum can be felt in the existing *classical fiqh*⁶⁰ literatures, regarding the residence of Muslims and their dealings with non-Muslims within a non-Islamic milieu. Says al-Alwāni, "Though varied and rich, the volumes of theoretical *fiqh* bequeathed to us dealing with relations between Muslims and non-Muslims were closely associated with the historic circumstances in which it was developed. It is, therefore, part of its own time and space and none of it can be applied to other substantially different situations. It can only be considered as a precedent to be examined, noted and studied in order to discern the principles upon which it was based and which guided our predecessors to produce it."⁶¹ It is, also, observed that the notion (*fiqh for minorities*) itself underlines the fact that many Muslims have realised that they cannot follow the same *fiqh* rules meant for Islamic societies.⁶² So it automatically follows that there should be some specific rulings and guidelines for Muslim Minorities, so that they can live their lives at ease in their own country, as full-fledged Muslims and member of the one and only *Ummah*, within the ordainments of the Qur'ān and the Sunnah and simultaneously, being an integral citizen of their respective country of residence.

⁶⁰ The stance of this work is that the classical *fiqh* is the heritage of Muslims and it shall remain as guidance for them in the field of *fiqh*. However, this work is of the view that Islam's boundary is not limited to the *classical interpretations* and that *Ijtihād* is to be invoked in matters which are unprecedented, regarding which no 'rulings' or no 'specific rulings' are found in the classical *fiqh*, as, when and where needed.

⁶¹ Al-Alwāni, *Towards*, 7-8.

⁶² See Louay Safi, "The Creative mission of Muslim Minorities in the West: Synthesizing the Ethos of Islam and Modernity" (2004). (Article presented at 'Fiqh today': *Muslims as Minorities*, London: Westminster University, England). See, www.Isinsight.org/articles/current/muslimminorities.htm

3.1 Adaptability of Islamic Law: *Towards a Maqāsid-Oriented Approach*⁶³

Islam is a complete code of life encompassing its entire field. Moreover, the aim of Islamic Law (*Maqāsid al-Shari'ah*)⁶⁴ is to promote welfare (*maslaha pl. masālih*)⁶⁵ of mankind through establishment of the fivefold tenets i.e. protection of religion (faith), life, lineage, reason (intellect) and property.⁶⁶ For Hashim Kamali, the Shari'ah, generally, is based on the benefits of the individual and that of the community, and its laws are designed so as to protect these benefits and facilitate improvement and perfection of the conditions of human life on earth. For him, the Qur'ān is expressive of this when it singles out the most important purpose of the Prophethood of Muhammad

⁶³ 'The goals and purposes of the Shari'ah (*Maqāsid al-Shari'ah*), which remained for a long time as a neglected chapter of the *Usūl al-fiqh*, has the potential to revitalize the *Usūl* and the Shari'ah. The basic notion of the *Maqāsid al-Shari'ah* was never denied by the leading *madhāhib* (schools of thought), but they differed in the degree of prominence that should be attached to it. Except for the *Zāhiri* school (Literalists), which took a totally literalist view of the *Maqāsid* by saying that the *Maqāsid* can only be known when they are identified by the clear text, the majority of jurists did not confine the *Maqāsid* (aims) to the clear texts alone. They perceived and understood the Shari'ah to be rational, goal-oriented and comprehensive. A dry and mechanical conformity to rules (*ahkām*) that went against the purpose and intention thereof was consequently held to be unacceptable.' See, Hashim Kamali, *Issues in the legal Theory of Usūl and prospects for Reform*, (Islamabad: Islamic Research Institute, 2001), 3-4.

⁶⁴ 'The purposes of Islamic Law have been determined from the text through a process of induction (*istiqrā*) rather than through deduction. This is the reason why the *maqāsid* are considered definitive (*qat'ī*), and can be relied upon without a doubt, and the same pattern is to be found in other details of the Shari'ah. Jurists quote a large number of verses of the Qur'ān to show how ultimate purposes are indicated by the texts.' Nyazee, *Outlines*, 188.

⁶⁵ 'The words *maslaha* and *manfa'ah* are treated as synonyms. *Manfa'ah* means "benefit" or "utility" that is it leads to some kinds of benefit. In its literal meaning *maslahah* is defined as "*Jalb al manfa'ah wa daf' al madarrahl the seeking of benefit and the repelling of harm*". What Muslim jurists mean by *maslahah* is the seeking of benefit and the repelling of harm as directed by the Lawgiver.' Nyazee, *Outlines*, 185.

⁶⁶ Al-Qarāfi (d. 689/ 1290) added a sixth to the existing list of the five essential *maqāsid*, namely *al-'ird* (honour) i.e. protection of honour. Kamali, *Issues*, 15.

(pbuh) in such terms as: ‘We have not sent you but a mercy to the world.’⁶⁷ This can also be seen perhaps in the Qur’ān’s characterization of itself in that it is “a healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers” (and mankind)⁶⁸. The two uppermost objectives of compassion (*rahmah*) and guidance (*hudā*) in the foregoing verses are then substantiated by other provisions in the Qur’ān and the Sunnah that seek to establish justice, eliminate prejudice and alleviate hardship.⁶⁹ For Ibn al-Qayyim, everything which contradicts these is alien to the Shari’ah as it is God’s justice and mercy amongst His people.⁷⁰

The *Maqāsid-Oriented* approach that is being focused upon, here, is a comprehensive and foundational step towards formulating a comprehensive *ijtihād*, and an extension of its theory. As aptly observed that the *Maqāsid* only serve the purpose of opening up the avenues of *ijtihād* and enhance its ideational substance and foundation.⁷¹ However, it should not be forgotten that *ijtihād* can be exerted only in cases where there is no explicit injunctions (*nass*) which is ultimately resulted in what is referred to as *fiqh*.⁷²

⁶⁷ Qur’an 21: 107.

⁶⁸ Ibid, 10:57.

⁶⁹ See, Hashim Kamali, *Maqāsid al-Shari’ah: The Objectives of Islamic Law*, (Islamabad: Islamic Research Institute, 1999), 5-6.

⁷⁰ See, S. Mahmassani., *Falsafat al-Tashri’ fil-Islam/ The Philosophy of Jurisprudence in Islam*, (Leiden: E.J. Brill, 1961), 106.

⁷¹ Kamali, *Maqāsid*, 21.

⁷² Kamali, *Issues*, 19.

In addition, the 'concept of adaptability' correlates with that of 'evolution of laws'. For Ibn al-Qayyim, time changes and legal changes must go hand in hand to preserve the Shari'ah as the law of life in which the policy of 'no change' finds no support.⁷³ This points to the very fact that, bearing in mind that the Shari'ah is apt for every epoch for all times to come, the concept of evolution of laws is an inherent part of the Shari'ah. According to Ibn al-Qayyim, ignorance of this fact has resulted in grievous injustices viv-a-vis the Shari'ah, and has caused many difficulties, hardships and sheer impossibilities. For him, the noble Shari'ah, which serves the highest interests of mankind, would not sanction such results.⁷⁴ Moreover, we have seen how Imām al-Shāfe'i discarded his old Iraqi school and replaced it with his new Egyptian school under the influence of social circumstances in the various lands.⁷⁵ And when asked about the 'why' of this move of his, al-Shafe'i replied that the realities of Baghdad were different from those of Cairo and that the laws valid overthere was not necessarily valid here.⁷⁶ Sees Khalid Masud that, '...in order to translate Shari'a into a working law, even in the form of *fiqh*, it has to dig deep in social norms for its normative bases. Legal norms cannot be realized without their foundations in the social norms.'⁷⁷

⁷³ Amini, 9.

⁷⁴ Mahmassani, 107.

⁷⁵ Ibid.

⁷⁶ Ramadan, *Islam, le face a face des civilizations*, 51.

⁷⁷ See, Maleiha Malik, "Accommodating Fiqh in Europe, Opportunities for Minority Fiqh," *Law and society, ISIM newsletter 13*, (2003), 10.

4. A Fiqh for Muslim Minorities (*Fiqh al-Aqalliyyāt al-Muslimah*)

When we talk about Muslim Minorities⁷⁸, the first idea which comes to mind, among others, is the problem regarding whether they can live in non-Islamic countries or not. Besides, how are they going to live their life according to the Shari'ah in that non-Islamic environment? Are they under obligation to emigrate to Islamic countries? The problems regarding the issue of Muslim Minorities have always been felt by Islamic scholars of this *Ummah* throughout centuries. Questions regarding Muslim minorities were ^{not} born yesterday. It is observed that, 'The question of determining whether a Muslim was or was not permitted to live in a non Islamic country or area appeared very early on as an issue in Islamic *fiqh*. The '*ulama*', from Abū Hanīfa up to contemporary '*ulama*', were not unanimous in their answers, which depended on a close study of both the circumstances and the aims.'⁷⁹

Islamic law regarding Muslims living in non-Muslim territories/countries has been an important issue of *Islamic Fiqh*. It has been gaining great contemporary momentum in recent two decades by the name of *Fiqh al-Aqalliyyāt* (Fiqh for Minorities). It is seen by al-Alwāni that, 'Muslim Minorities did not attract as much attention in the past as they do today.'⁸⁰ Furthermore, according to him, a new *Fiqh* for minorities did not have the same strength in the past as it has today. It did not attract the attention of jurists to legislate and issue *fatwas*, as it existed casually and temporarily. For example, people would seek

⁷⁸ Today more than one third of the world's Muslims live as minorities in non-Muslim countries. See Khalid Masud, 1.

⁷⁹ Ramadan, *To be a European*, 165-6.

⁸⁰ Al-Alwāni, *Towards*, 9.

fatwas from their own ‘*Ulamā*’ (Islamic scholars) or from those outside their community, especially during the Hajj season. It remained isolated, and was simply known as the *Fiqh* of ‘*crises*’ or ‘*emergency*’.⁸¹ In recent decades, as this issue has been gaining momentum, some of the contemporary Islamic scholars came up with the idea of formulating some specific guidelines for Muslim Minorities according to the Qur’ān and the Sunnah.

Fiqh of Muslim Minorities’ is a legal doctrine introduced in the 1990s by al-Alwāni of Virginia and al-Qaradāwi of Qatar. The former’s booklet ‘*Nazariyyāt ta’sīsiyyah fi Fiqh al-Aqalliyāt/ Foundational views regarding Fiqh for minorities*’ was published in 2001.⁸² It is observed that Khalid Abd al-Qadir was probably the first to collect the special laws applicable to Muslims living as minorities in his book ‘*Fi Fiqh al-Aqalliyāt al-Muslimah*’.⁸³

Al-Alwāni invented the term *Fiqh al-Aqalliyāt*. It was used for the first time in 1994 when the Fiqh council of North America, under his presidency, issued a *fatwa* (legal opinion) allowing American Muslims to vote in American elections.⁸⁴ For al-Alwāni, *Fiqh* for minorities is a specific discipline that takes into account the relation between the religious ruling and the condition of the community and its location. Its discussion raises a number of questions as, for instance, under what discipline should this *Fiqh* be placed,

⁸¹ Ibid, xii-xiii.

⁸² Fishman, Shammai, "Fiqh al- aqalliyāt: A Legal Theory for Muslim Minorities, Research Monographs on Muslim world" 1:2, (Washington: Hudson Institute, 2006), 1.

⁸³ Khalid Masud, 2.

⁸⁴ Ibid. See also, Fishman, 1.

how it came to be known as the '*Fiqh for minorities*' and how accurate is this terminology? For him, this *Fiqh* for minorities cannot be included under *Fiqh* as it is understood today, i.e. the *Fiqh* of minor issues. Rather, it ought to come under the science of *Fiqh* in its general sense, as Abu Hanifah put it to be the '*greater Fiqh*' or '*macro Fiqh*', thus englobing and covering all theological and practical branches of Islamic Law and jurisprudence.⁸⁵ According to him, the problem of Muslim Minorities can only be tackled with a fresh juristic vision, based on the principles, objectives and higher values of the Qur'ān in conjunction with the aims of the Shari'ah – a fresh approach that draws guidance from the authentic Sunnah and example of the Prophet (peace be upon him) with a view to implementing the principles and values of the Qur'ān. A new methodology for replicating the Prophet's (peace be upon him) example is needed in order to make his way clearer and more accessible to everyone at all times.⁸⁶

Moreover, al-Qaradāwi, another pioneer in the development of this *Fiqh* for Muslim Minorities, relates that he was approached by the '*Rābita al-Ā'lam al-Islāmī*' / *Muslim World League* to write about the difficulties faced by Muslim Minorities in the West.⁸⁷ For him, Muslim Minorities require a specific branch of *Fiqh* that should be based on sound *Shar'i* personal reasoning. Such minorities' respective places, times and conditions should also be taken into account. *Fiqh* of minorities which is desired is a mere branch of

⁸⁵ Al-Alwāni, *Towards*, 2-8.

⁸⁶ *Ibid*, 7.

⁸⁷ See his introduction to his book '*Fī Fiqh al-Aqalliyyāt al-Muslimah/ Fiqh of Muslim minorities*', Arabic ed., Dar al-Shurooq, n.d. This introduction of his was written by him in 2001 when he was in Doha, Qatar. This book has been translated in English by Al Falah Foundation for Translation, publication & Distribution, Cairo, Egypt.

the 'general *Fiqh*'. This branch of *Fiqh* takes into account both the heritage of Islamic *Fiqh* and modern circumstances, trends, and problems. It neither neglects the glorious heritage produced by jurists over fourteen hundred years nor overlook the modern times with its theoretical and practical difficulties requiring deliberate consideration and knowledge of its main trends. It keeps a balance between partial texts of the Shari'ah and its collective objectives. It bears in mind the fact that *fatāwa* (Islamic verdicts) change according to time, place, circumstances and (due to differences in) custom (*urf*). This prospective *Fiqh* helps Muslim Minorities: individuals, families and communities lead a wholesome Islamic life. It helps them maintain the essence of their Islamic identity and to provide answers to their questions and deal with their problems in a non-Muslim community, with its dissimilar principles, values, concepts and customs, according to a modern *Shar'i ijtiḥad* (sound personal reasoning based on a profound knowledge of the Shari'ah and its aims and purposes) exerted by eligible jurists.⁸⁸

4.1 Criticism against 'Fiqh al-Aqalliyyāt al-Muslimah'

There have been many criticisms, by some contemporary Muslim scholars, against this *Fiqh* of it being un-Islamic, a plot and an ideological attack to alterate Islam and divide the *Ummah* and cherish the West. It is an innovation which should be disregarded as it contradicts the Shari'ah and Islam.⁸⁹ In response, al-Alwāni argues that this *Fiqh* constitutes an autonomous jurisprudence, based on the principle of the relevance of the

⁸⁸ See, Yūsuf al-Qaradāwi, *Fiqh of Muslim Minorities: Contentious Issues & Recommended Solutions*, (Cairo: Al Falah Foundation for Translation, Publication & Distribution, 2003), 1-12.

⁸⁹ Among them, is Sa'eed Ramadan al-Butti. See his article '*Fiqh of minorities*' released by www.marifah.net 1429 H, translated by Mahdi Lock on www.nottsnewmuslims.com

rule of Shari'ah to the conditions and circumstances peculiar to a particular community and its place of residence. It requires information about local culture and expertise in social sciences.⁹⁰ For him, it is important to consider this *Fiqh* as a considerable branch of jurisprudence in general to put it in its suitable framework, and to deal with the issues peculiar to the Muslims living in non-Muslim countries that have not been given certain rulings in the Shari'ah.⁹¹

Furthermore, regarding this *Fiqh* as an innovation that manipulates God's religion, Al-Shinqīti dismissed this by saying that jurisprudence (*fiqh*) differs from Shari'ah. Shari'ah refers to the revealed religion as a whole, while jurisprudence refers to how the rules of Shari'ah are to be applied from the point of view of the jurists. Hence, there is nothing wrong in having a *fiqh* that deals with issues and conditions peculiar to Muslim Minorities. For him, earlier books of jurisprudence (*fiqh*) have tackled many rulings peculiar to Muslims living in non-Islamic countries. This *Fiqh for minorities* is only the term given to such rulings. Though, *Fiqh for minorities* is an innovated term, but, according to him, there is nothing wrong in changing terms.⁹²

For Sheikh Muhammad Nur Abdullah, the rules of the Shari'ah that are not decisive regarding Muslim Minorities can be adjusted to suit them and ease their hardship.⁹³ In addition, we find many issues and problems that Muslim Minorities have to face which

⁹⁰ Khalid Masud, 2.

⁹¹ This question was asked on the 8th of December, 2003. See, www.islamonline.net/servlet/satellite/pagename=islamonline-English-Ask-The-Scholar

⁹² See, www.islamonline.net (Ask-the-Scholar)

⁹³ Ibid.

al-Qaradāwi mentions in his book *Fiqh of Muslim Minorities*. Some of them are as followed:

- 1: Performing the *Jummah* prayer before *Zohar* time and after the '*Asr* prayer.
- 2: Combining the Maghrib prayer and the Isha prayers in summer.
- 3: Building Islamic centers using Zakaat funds.
- 4: Burying Muslims in Christian cemeteries.
- 5: Interfaith Inheritance.
- 6: A Woman embracing Islam without her Husband: should they be separated?⁹⁴

Furthermore, the *Islamic Fiqh academy* of India in its 14th seminar has tackled many issues regarding Muslim Minorities in our contemporary era.⁹⁵ Likewise, more issues affecting Muslim Minorities can be found in the *fatwa* collections of the *European Council for Fatwa and research*.⁹⁶

It is to be borne in mind that if Muslim Minorities search for solutions, in the Shari'ah, for such kinds of issues aforementioned, it will be in no way a plot aimed at dividing Islam, the dissolution of the Islam and adopting Western civilization or trying to innovate a new Islam funded by non-Muslims. Re-interpreting Islam and the Shari'ah to cope with all these issues and their likes are related to *Fiqh* which is apt for change and is not, in anyway, tantamount to changing the Shari'ah. It is stated that, '...the precepts of

⁹⁴ See, for more detail, al-Qaradāwi, *Fiqh of Muslim Minorities*.

⁹⁵ See, Safdar Zubeir Nadwi, *Talkhees-e-Maqālaat: Ghair Muslim mamālik mein ābad Musalmānon ke kuch aham masā'il (Some important issues facing Muslim Minorities in non-Muslim countries)*, (India: Islamic Fiqh academy), 2004.

⁹⁶ See, for more detail, www.e-cfr.org.

the Shari'ah which require change to meet the new problems simply represent change of orders at the *operational level* and do not, in anyway, affect the *normative principle* which shall continue as such and are subject to no change.⁹⁷

Aquidah, 'Ibadāt and Mu'āmalāt

Re-interpreting the Shari'ah to cope with growing realities has never been meant to bring about changes in the field of worships and creed. Talking about *Fiqh*, here, means transactions (*mu'āmalāt*) only i.e. daily human to human mundane transactions and not creed ('*aquidah*) and worships ('*Ibadāt*). This is exactly what al-Qaradāwi asserts when he says that, '*Fiqh* is concerned with the deducement of rulings for the manifest and external life of man. It is not interested in spiritual, credal, or moral aspects of human life.' He also quotes al-Ghazāli in his '*Ihyā*' classifying *fiqh* 'as a science that deals with worldly affairs.'⁹⁸ Says Mansoori, 'A thorough study of the Qur'ān and the Sunnah on this subject reveals that '*ibādāt* have been dealt with in detail, while *mu'āmalāt* have been discussed in general terms. The wisdom appears to be that '*ibādāt* are held to be universal truths that are unaffected by time and space. The Shari'ah has laid down rules in connection with *mu'āmalāt* in general terms so that different people at different places and in different times may set guidance. By giving a general framework, the lawgiver conceded the right to Muslim jurists to frame specific rules for *mu'āmalāt* which may be deemed necessary under prevailing circumstances. This methodology envisaged by the

⁹⁷ Amini, 14.

⁹⁸ Al-Qaradāwi, *Fiqh of Muslim Minorities*, 2.

Shari'ah provides people a reasonable degree of liberty in their dealings with each other and entering into contracts and transactions.⁹⁹

So, it is to be reminded that bringing about changes in the Shari'ah to cope with the realities of Muslim Minorities, is only done in the field of *mu'āmalāt* (transactions), whenever necessary, within the framework of the Shari'ah. The social fabric in which Muslim Minorities live should be given due consideration for the better application of the Shari'ah. There should be a profound understanding of the legal and social norms so that a better result fitting the circumstances of the place and time of Muslim Minorities is found.¹⁰⁰

4.2 Evaluation of Fiqh al-Aqalliyyāt al-Muslimah: *The Outcome*

As seen above, Abū Hanifa raised the awareness regarding the problems of Muslim Minorities centuries ago. But it did not receive great consideration by the majority of Islamic scholars until recently when the sense of revivalism, in this regard, was felt by Muslim Minorities. They sensed that they cannot follow the same Islamic rulings adopted for Muslims for their applications in an Islamic milieu. This prompted some contemporary Islamic scholars of this century, among them al-Qaradāwi, al-Alwāni, al-Shinqiti etc. to take bold stances to transcend traditional concepts and practices and come up with a *Fiqh* for Muslim Minorities. In recapitulation, for al-Qaradāwi, *Fiqh* of minorities which is desired is a mere branch of the 'general fiqh'. This branch of *Fiqh*

⁹⁹ See, Muhammad Tahir Mansoori, *Islamic Law of Contracts and Business Transactions*, (Islamabad: Shari'ah Academy, International Islamic University, 2008), 3-4.

¹⁰⁰ See, for detail, Malik, "Accommodating Muslims in Europe: Opportunities for Minority Fiqh" 10-11.

takes into account both the heritage of Islamic Fiqh and modern circumstances, trends, and problems. It neither neglects the glorious heritage produced by jurists over fourteen hundred years' centuries nor overlook the modern times with its theoretical and practical difficulties requiring deliberate consideration and knowledge of its main trends. Moreover, for al-Alwāni, this *Fiqh* for Muslim minorities constitutes an autonomous jurisprudence, based on the principle of the relevance of the rule of Shari'ah to the conditions and circumstances peculiar to a particular community and its place of residence. It requires information about local culture and expertise in social sciences e.g. sociology, economics, political science and international relations.

However, there are many criticisms against this *Fiqh*. Opponents of this *Fiqh* premise their arguments on the presuppositions of it being something new, an innovation (*bid'ah*), an attempt to divide Islam and to uphold the non-Islamic way of life. In response, as seen above, al-Shinqīti argues that earlier books of jurisprudence (*fiqh*) have tackled many rulings peculiar to Muslims living in non-Islamic countries. This *Fiqh* for Muslim minorities is only the term given to such rulings. Though, it is an innovated term, but, according to him, there is nothing wrong in changing terms. Moreover, the problem lies in the misunderstanding of the word *Shari'ah* and *Fiqh* twain. Some Islamic scholars confound *Fiqh* for *Shari'ah*. As seen, the *Shari'ah* represents the precepts embodied in the Islamic revelation. *Fiqh*, on the other hand, is the result of human's attempt to apply the rule of the Shari'ah in a given social milieu for given issue or circumstance. This has been aptly stated by al-Shinqīti, above, that *Fiqh* differs from *Shari'ah*. For him, Shari'ah refers to the revealed religion as a whole, while jurisprudence refers to how the rules of Shari'ah

are to be applied from the point of view of the jurists. Hence, according to him, there is nothing wrong in having a *fiqh* that deals with issues and conditions peculiar to Muslim Minorities. Furthermore, the problem between '*ibādāt*' and '*mu'āmalāt*' seems to be inextricably associated with this topic in issue. It has been proven that the '*ibādāt*' and creedal disciplines are subject to no change, it is only those disciplines which are related to '*mu'āmalāt*' which are, time and again, subjected to change and adaptation. In addition, the 'concept of adaptability of the Shari'ah to new realities' is often misconceived by some Muslim scholars. For them this is meant to alter Islam and surrender it at the behest of the West. As already seen, this is not the case. Talking about the re-interpretation of the Shari'ah regarding Muslim Minorities does not in anyway mean alteration of Islamic law. In fact, Muslim Minorities face many realities dissimilar to those of Muslim majorities as the ground realities in non-Muslim countries are not the same as they exist in Muslim countries and/ or within an Islamic milieu. As seen above, the precepts of the Shari'ah which require change to meet the new problems simply represent change of orders at the *operational level* and do not, in anyway, affect the *normative principle* which shall continue as such and are subject to no change.

In a nutshell, the traditional *fiqh* bequeathed to Muslims by the early *fuqahā* and most of the interpretations brought forth by contemporary Muslim scholars have not yet answered most of the growing realities' needs of Muslims in non-Muslim countries. So, this work concludes that there is nothing wrong to develop a *Fiqh* for Muslim Minorities to solve problems which stem from inadequacies of the traditional *Fiqh* and to face unprecedented emerging challenges. '*Fiqh*' means 'understanding'. So, it is to understand

the problems of Muslim Minorities and come up with solutions which are not found in our classical fiqh and for issues and circumstances which are unprecedented. Then solutions which are found, instead of them being left scattered, they be classified under the heading of 'Fiqh for Muslim Minorities', like we have 'Fiqh' for purifications, 'Fiqh' for Prayer, 'Fiqh' related to transactions etc. It should be noted that there is nothing wrong in this and it, in no way, goes against the Shari'ah. God Knows Best.

CHAPTER TWO

JURISDICTION OF ISLAMIC LAW

The 'Dār al-Islam and Dār al-Harb' controversy

1. Jurisdiction of Islamic Law

Is Islam, as a complete system of life, applicable only to Muslims in Muslim countries and not to Muslim Minorities? Is Islam's applicability limited to certain borders or territories? Is Islam's jurisdiction confined within the limits of theories of division of territories in Islam into *Dār al-Islam* and *Dār al-Harb*? Moreover, what about other divisions like *dār al-'Ahd*, *dār al-Muwāda'ah* etc? As we will be dealing with all these terms, it is imperative that we start by giving their definitions so that it becomes clear in our minds what exactly we are referring to.

1.1 Definitions

1.1.1 Dār al-Islam

It is a place where Muslims have settled down and Islamic Law is a common practice.¹⁰¹ It is a territory where Islamic Law is implemented.¹⁰² It is a country which is ruled by a Muslim Head and the power and strength is for the Muslims.¹⁰³ It is a territory where Islamic Law is a common practice and those who live in that territory are safe in the hands of the Muslims, whether they are Muslims or *Dhimmi*s.¹⁰⁴ The abode of Islam (*dār al-Islam*) consists of countries where the power lies with Muslims, where the rules of Islam are implemented and Islamic rituals are performed. People of that abode are

¹⁰¹ See, Ibn al-Qayyim al-Jawziyyah, *Ahkām ahl al-Dhimmah*, (Beirut: Dār al-'ilm lil-Malāyīn, 1983), 1: 366.

¹⁰² See, Ibn Mas'ud Al-Kāsāni, *Badā'i' al-Sanā'i' fi Tartīb al-Sharā'i'*, (Beirut: Dār Kutub al-'Arabi, 1982), 7: 130.

¹⁰³ See, Muhammad Abū Zahrah, *al-Alāqāt al-Dawliyyah fi'l-Islam*, (Cairo: Dār al-Fikr al-'Arabi, n.d.), 53-4.

¹⁰⁴ See, Abdul Wahhāb Khallāf, *al-Siyāsah al-Shar'iyyah*, (Beirut: Muassassah al-Risālah, 1993), 71.

Muslims and the people of covenant (non-Muslims who live in Islamic territory according to a covenant).¹⁰⁵

1.1.2 Dār al-Harb

It is a territory where Islam is neither manifested nor implemented. It's rather where non-Islamic law is implemented.¹⁰⁶ As far as *dār al-harb* is concerned, Muslim jurists have diverged into two views: first, *Dār al-harb* is a territory where the power of ruling and strength is not with the Muslims. The cause, for this group, is power and strength. So, as long as the power and strength is not with the Muslims, without any covenant, it (the territory) is *dār al-harb*. This is the view of many Muslim scholars.¹⁰⁷ Second, is the view of Abū Hanifa, the Zaydiyyah and some Muslim scholars: it is not sufficient that only the power of ruling and strength is with non-Muslims to be called *dār al-harb*, but there should be the fulfillment of three conditions for a place to be *dār al-Harb*: 1: the power of ruling and strength to implement Islamic law i.e. manifestation of non-Islamic law are not with the Muslims. 2: the territory should be adjacent to an Islamic one where there is possibility of hostility against the Islamic territory. 3: there is no security for the Muslims and *Dhimmi*s (non-Muslim subjects of an Islamic country) as there was for them under the Islamic state.¹⁰⁸

¹⁰⁵ See, Wahbah al-Zuhaili, "Islam and international law", *International review of the Red Cross*, 87: 858, (2005), 278.

¹⁰⁶ See, Ibn 'Ābidīn, *Hāshiyā Rad al-Mukhtār*, (Beirut; Dār al-Fikr, 1979), 4: 175.

¹⁰⁷ Abū Zahrah, 53-4.

¹⁰⁸ *Ibid*, 17-8.

1.1.3 Dār al-'Ahd/Sulh/Muwāda'ah

Dār al-'Ahd, alternately called *dār al-Sulh*, is a term that was coined by al-Shafi'i to indicate non-Muslim territories involved in treaty agreements giving sovereignty to a Muslim state but maintaining local autonomy.¹⁰⁹ *Dār al-Sulh*, *dār al-'Ahd* or *dār al-Muwāda'ah* was that territory which was inhabited by the non-Muslims but they concluded a treaty with the Muslims on the condition that they retained the possession of their lands but the rights of the Muslims were recognized and they could practice their faith.¹¹⁰

1.1.4 The Outcome

1. Here it is seen that the causes for a place to be called *dār al-Islam* are two: a. Authority and b. Security:

(a) It shall be 'a territory being ruled by Muslim rulers' and/or 'where Shari'ah is applied'. According to Hamidullah, Radīyud-Dīn al-Sarakhsi records the opinion of Abū Yūsuf and al-Shaybāni in the following words: 'they both maintain: a territory is related to its people on account of their controlling hand over it and their establishing protective authority therein. And as al-Dabūsi put it, 'the distinguishing factor between Islamic and non-Islamic territories is the difference of authority and administration.'¹¹¹ (b) Moreover, it should be a territory where Muslims are secure and free to practice their faith. *Dār al-Islam* referred to territories under Muslim control in which they were secure and free and

¹⁰⁹ See Abdul Hamid A. Abū Sulaymān, *Towards an Islamic Theory of International Relations*, (Herndon: The International Institute of Islamic Thought, 1994), 19.

¹¹⁰ Jamshed, 5.

¹¹¹ Hamidullah, 86-8.

practiced their religion without any outside interference. In these territories Shari'ah is applied. On the other hand, *dār al-harb* referred to non-Islamic territories with open hostility towards Muslims and endangered their security and freedom.¹¹²

Words '*Dār al-Islam*' and '*Dār al-Harb*'

It is mentioned in some traditions of the Prophet (pbuh) that Mecca was *dār al-Harb* after the migration of the Prophet (pbuh) while Medinah became *dār al-Islam*. The word *dār al-Islam* was used for the first time by a Muslim commander Khalid ibn al-Walid (d.629), in a letter quoted by the great Hanafī jurist Abū Yusuf (d. 798), in his book *al-Kharāj*.¹¹³

2. Reasons of Division of Territories in Islamic Law

Many Scholars have been writing regarding *dār al-Islam* and *dār al-harb* and their definitions. But in this work it is attempted to focus on the subject from a different perspective. Here, the aim is not to present a semantic work of these terms or to focus on their classifications as formulated by the classical jurists. The arguments and analysis will be, rather, focused on them as being a '*concept/theory*' i.e. the *concept/theory* of division of territories in Islam: what were the aims behind the formulation of this *concept/theory*?

¹¹² Jamshed, 5.

¹¹³ Munir, *Public Int'l Law*, 404. Here it is worthy of pointing out that this work is not about the semantic use of the words *dār al-Islam* and *dār al-harb* as they appear in different *ahādīth*. These terms were used to refer to Islamic abode and non-Islamic one in Arabic as the language of the Arabs was Arabic. The appearance of these words *per se* does not denote the concept i.e. whether these two terms were used for the purpose of antagonizing Muslims and non-Muslims' relationship on a permanent basis and as a general rule.

Moreover, does this *concept/theory* of the division of territories stem from the Qur'ān and Hadith? Was this *concept/theory* of division of territories aimed at antagonizing the Muslims-non-Muslims and informing that the normal relationship between Islamic and non-Islamic territories is of permanent hostility? Or b: Was this *concept/theory* aimed at defining the territorial jurisdiction of the Islamic state, its laws and courts? Why and when was this *concept/theory* of division initiated? Is this *concept/theory* still applicable in our contemporary geo-political realities? And finally, is this *concept/theory* agreed upon or controversial?

The answers to the above posed questions are of paramount importance since, as pointed out earlier, this *concept/theory* has been misinterpreted, quoted out of context and misused by some Muslim scholars in their *fatāwa* (Islamic verdicts) for the purpose of antagonizing Muslims and non-Muslims relationship and by prohibiting Muslims from having normal and peaceful relationship with their fellow non-Muslims. Additionally, this concept has been used to portray *war* against non-Muslims on a perpetual basis i.e. till the annihilation and subjugation of their belief just because they are non-Muslims. This has led to too many confusions, chaos and bloodsheds in the world. Besides, this misinterpretation makes Muslims living in non-Muslim countries feel unease and alienated to their country of residence.

This *concept/theory* of division of territories is oft spoken and widely known within the Islamic scholarly milieu. It normally projects a picture of the Muslims and non-Muslims relationship and that of their respective territories. For instance, when the

division of territories is being referred to, the notions of war between Muslim and non-Muslims come to minds. Additionally, what if a Muslim has committed a crime in a non-Muslim territory, will it be punishable in a Muslim territory i.e. under the jurisdiction of an Islamic state. Moreover, if a Muslim travels to a non-Islamic country does he have the right to consume alcohol? What about interests/usury, is it legal for a Muslim to deal with usury in non-Muslim countries regarding business transactions or private dealings? The aims behind the formulation of this *concept/theory* of division of territories will be known by looking back at what the early Muslim scholars and jurists were referring to when they were using them i.e. in what contexts and circumstances and how they were applying them.

For instance, it is stated in *al-Mabsūt* that, the courts of *dār al-Islam* cannot settle any of the disputes of *Musta'mineen* which arise in *dār al-harb* because by entering with *amān* they do not become residents of our *dār* and the cause of action arose when they were not under the control of our ruler. But if they have a dispute after entering *dār al-Islam*, the courts can settle the dispute because the cause of action arose when they were under the control of the ruler.¹¹⁴ Forcefully taken possession (of property) is illegal only when it relates to a legally protected property (*māl al-Ma'sūm*) and the basis for *'ismah* (legal protection) is *ihrāz* (safe custody) the basis for which is *dār* and not *deen*. This is because of the fact that *ihrāz* by virtue of *deen* (*religion*) only occurs where one believes that one should abide by the Shari'ah and that its violation is a sin. Obviously, this does not apply to non-Muslims. For them, *ihrāz* takes place only when the property is brought

¹¹⁴ See, Abu Bakr Muhammad b. al-Hasan al-Sarakhsī, *al-Mabsūt*, (Karachi: Idārat-ul-Qur'ān, 1987), 93.

to *dār al-Islam* because it (*dār al-Islam*) physically defends (its residents) from external attacks. So, when the property is protected because of *ihraz* in *dār al-Islam* it cannot be owned by virtue of mere possession. However, when this protection is removed because of its being taken to *Dār al-Harb*, he who possesses it becomes its owner.¹¹⁵ If after entering *dār al-harb* with *amān*, a Muslim steals the property of a resident thereof and brings it to *dār al-Islam*, it will not be lawful for another Muslim to buy it from him because he brought it by the way of treachery and he is responsible before God to return it to them although the ruler cannot compel him to do so.¹¹⁶ If a Muslim soldier commits *zina* (adultery) in *dār al-harb*, the *hadd* punishment cannot be awarded to him because the cause of action arose outside the jurisdiction of the Islamic state.¹¹⁷ If a person comes to *dār al-Islam* from *dār al-muwāda'ah* with a fresh *amān*, Muslims should still respect his rights. If he enters *dār al-harb* and Muslims capture that territory they should respect his rights even there and his position is like a *Dhimmi* who enters a *dār al-Harb*, which later on captured by Muslims."¹¹⁸ If a Muslim exchanges one dirham with two dirhams in *dār al-harb*, the transaction will be invalid according to Abū Yūsuf because "a Muslim is bound everywhere by the laws of Islam." But according to Abū Hanifa and Hassan al-Shaybāni the transaction will be valid because he took their property with their consent...unlike the property of *Musta'mineen*¹¹⁹ in our territory because their property becomes legally protected by virtue of the contract of *amān*.¹²⁰

¹¹⁵ Ibid, 53.

¹¹⁶ Ibid, 61.

¹¹⁷ Ibid, 75.

¹¹⁸ Ibid, 89.

¹¹⁹ Alien non-Muslims who come to *dār al-Islam* on the basis of *amān* (security & protection)

¹²⁰ Ibid, 95.

Moreover, according to Abū Hanīfa, the position of a person who embraces Islam in *dār al-harb* and does not immigrate (*to dār al-Islam*) is like that of a *harbi* (alien non-Muslim) whose property is not protected in (*dār al-Islam*).¹²¹ If a Muslim trader goes to *dār al-harb* and acquires something by stealth, the courts of *dār al-Islam* will not punish him, even though he violated his promise and committed a violation of the Shari'ah and he will be responsible before God.¹²² Furthermore, there is also difference of opinions between Abū Hanīfa and Awzā'i related to the application of this *concept/theory* of division of territories in Islam. For instance one point of disagreement between them is the application of the Hudood laws to a *Musta'min* i.e. a non-Muslim Belligerent who enters the territory of Islam on a temporary permit of security and safe passage. Abū Hanīfa was of the view that if a non-Muslim *harbi* (citizen of *dār al-harb*) who enters the territory of Islam on a permission of security commits a crime liable to *Hadd* punishment, he shall not be awarded *Hadd* punishment. Contrariwise, Awzā'i was of the opinion that such a *Musta'min* was liable to *Hadd* punishment.¹²³ Regarding *Ribā* (usury), Abū Hanifah was of the view that a Muslim may receive money by way of *ribā* (usury) from a *harbi* in *dār al-harb* because its citizen are not bound by Islamic laws (*ahkām al-Muslimīn*) and a Muslim may acquire the latter's property with their consent in any way he likes. In his rejoinder, Awzā'i objected to it saying that *ribā* was prohibited everywhere including *dār al-harb*.¹²⁴

¹²¹ See, Zayn al-'Ābidīn b. Ibrāhīm Ibn Nujaym, *al-Bahr al-Rā'iq Sharh Kanz al-Daqā'iq*, (Cairo: Dār al-Kutub al-'Arabiyyah, 1978), 5:147.

¹²² See, Burhānuddīn al-Marghīnānī, *al-Hidāyah fi Sharh Bidāyat al-Mubtadī*, (Beirut: Dār Ihyā al-Turāth al-'Arabī, n.d.), 2: 395.

¹²³ See, for detail, Abū Yūsuf, *al-Radd 'alā siyar al-Awzā'i*, (Cairo, n.d.), 80-95.

¹²⁴ See, for detail, *ibid*, 96-8.

In addition, the early jurists addressed the issue of a non-Muslim who converted to Islam while in a non-Islamic territory. Should that person now migrate to *dār al-Islam*? For al-Shaybāni (d. 189/804) the duty to migrate to the land of Islam (*ard al-Islam*) after conversion was abrogated at the time of the Prophet (pbuh). Those who convert but do not migrate to *dār al-Islam* are like the nomads (*a'rāb*) who accepted Islam but refused to join the Prophet (pbuh) in Medina. Among the early Māliki jurists, Sahnūn (d. 240/854) reports that Mālik (d. 179/796) strongly disapproved of Muslims traveling to the lands of non-believers for purposes of trade because they might become subject to the laws of unbelievers. Al-Shafi'i (d. 204/819-20) chose a very different approach. He argued that even after the establishment of the Islamic state in Medina, 'Abdallah b. 'Abbās (a Companion of the Prophet (pbuh)) and others were allowed to reside in Mecca (then a non-Islamic territory). Additionally, the Prophet (pbuh) allowed nomadic tribes that converted to Islam to remain outside the domains of the lands of Islam. So for him, the Prophet (pbuh) would not have given these people a choice of residence if it was sinful for them to retain their independence.¹²⁵

On the ground of the above given examples, it is crystal clear that the aims behind this concept/theory of division of territories in Islam were in relation to the rights and duties of citizens of both territories. Regarding the necessity of this process (division of territories), it is observed that this helped the Muslim jurists to point out the fundamental conditions which make a place or a nation Islamic, and the rulings which determine the political and strategic relations with other nations or empires. Moreover, it helped them to

¹²⁵ Khaled, 145-7.

distinguish clearly, as regard legal issues, between the situation of Muslims living inside the Islamic world and those living outside.¹²⁶

The fact that the doctrine of *dār* denotes simply territorial jurisdiction, is aptly encapsulated by Muhammad Munir. He observes that it is never mentioned anywhere by the great jurists that there should be permanent enmity and hostile relations between the two rival domains. Instead the terminology was devised especially to discuss the positions of the inhabitants in both the territories and for discussing the application of Islamic laws or otherwise to the inhabitants of the Islamic territory when they lived in it and when they traveled to the non-Muslim territories. For instance, he argues: What Islamic laws can be applied to a Muslim in *dār al-harb*, for example? Certain things such as drinking and theft (per se) are prohibited for him wherever he (a Muslim) goes: both in Islamic territory and non-Islamic one. Thus according to Abū Hanīfa, a Muslim cannot be punished in *dār al-Islam* for stealing in *dār al-harb*. What about *salāh* (the daily prayers): it is obligatory for a Muslim everywhere. For Abū Hanīfa these come in the 'sphere of personal jurisdiction.' However, he pursues, there are acts, especially criminal, that if committed by a Muslim in non-Islamic territory, he cannot be punished for that in *dār al-Islam*, for instance, murder. What about interest on loan for a Muslim outside an Islamic territory? These are questions of territorial jurisdiction for Abū Hanīfa. Imām Sarakhsi (d.1097) have reasserted this rule explained by Abū Hanīfa and Shaybāni in his commentary on Shaybāni's treatise *al-Siyar al-Kabīr* in a maxim which says, "A Muslim

¹²⁶ Ramadan, *To be a European*, 123-4.

is bound to regulate his conduct according to the laws of Islam wherever he may be," that is, whether he is in an Islamic territory or a non-Islamic one.¹²⁷

2.1 Historical Development of the Theory of Division of Territories in Muslim Legal Thought.

Now, after it is seen that this *concept* was brought forth by Muslim scholars to decide matters relating to territorial jurisdiction regarding rights and duties of both citizens, what preoccupies the minds of Muslims is: When was this theory formulated? Furthermore, is there any textual support for this concept/theory in the Qur'ān and the Sunnah i.e. is it a concept which is directly articulated in the Qur'ān or is it explicitly drawn by the Prophet (pbuh), himself?

According to al-Qaradāwi, the concept of *dār al-harb* was introduced in the *Fiqh* Hanafi. Imām Abū Hanīfa divided the Muslim role into two categories: *Dār al-Islam* and *dār al-harb*. He would refer to any non-Muslim domain as *dār al-kufr* or *dār al-harb* even if there is no current war between them and the Muslims.¹²⁸ In the days of *ijtihad* (in the second century *hijri*), the majority of Muslim jurists, except al-Shafe'i, while explaining the relations of Muslims with the non-Muslims territories, called the territory under Muslim control and domination as *dār al-Islam* and territories which had hostile relations with the Muslim territory as *dār al-harb*. This division of the world however, was such because of the prevailing war situation between the Islamic state and the non-

¹²⁷ Munir, *Public Int'l Law*, 405-6.

¹²⁸ This was on Al-Jazeera Channel in the program entitled 'Al-Shari'ah Wal Hayāt (Islamic Law and Life), dated May 9th, 1999.

Muslim territories and was derived by jurists themselves.¹²⁹ Moreover, it is stated that different terms were being introduced for different regions according to the prevailing circumstances therein like *dār al-amān* (territory of security), *dār al-silm* (territory of peace) and *dār al-muwāda'ah* (territory of mutual peace) etc.¹³⁰ It is further stated that the rise of Islam, with its universal appeal to mankind, necessarily raised the problem for the Islamic state regarding its conducts and relations with non-Islamic states as well as with the religious communities within its own territory. The *siyar* developed by Muslim jurists to meet the need may aptly be called the Islamic law of nations which is simply an extension of the Shari'ah, designed to govern the Muslims-non-Muslims relations, whether inside or outside the territory of Islam.¹³¹

3. Foundation of this *Theory* in the Qur'ān and the Sunnah.

Here, the attempt is to figure out whether this *concept/theory* of division of territories in Islam stems from the Qur'ān and the Sunnah or not. According to al-Zuhaili, this division has no textual support as there is nothing provided for it in the Qur'ān or the Sunnah. It is only a temporary description of war situations between Muslims and others.¹³² According to one *fatwa* (verdict) of *al-Azhar*, a question was posed to Sheikh Atiyya Saqr regarding the meaning of *dār al-harb* and when and how one will know that a place is *dār al-harb*. He replied by saying that it is mentioned in the book *Bayān lin-Nās* issued by *al-Azhar*, in

¹²⁹ Ibid, 403-4.

¹³⁰ See, Abduljalil Sajid, *Dār al-Islam, Dār al-Harb— Definitions and Significance*, 6-7 at www.worldmuslimcongress.blogspot.com/2008/01/dar-al-islam-dar-al-harb.html

¹³¹ See, Majid Khadduri, *The Islamic Law of Nations: Shaybāni's Siyar*, (Baltimore: The Johns Hopkins Press, 1966), 1-14.

¹³² Al-Zuhaili, "Islam and international law," p. 278.

volume 1, page 248, that the concept of categorization of countries into *dār al-Islam* and *dār al-harb* is a matter of *ijtihād* (independent judgments) of Muslim scholars on the basis of the prevailing circumstance(s). Nothing, regarding this *concept*, is mentioned in the Qur'ān or the Sunnah.¹³³

Furthermore, it is observed that, '*Dār al Islam* and *dār al-harb* are two *concepts* which cannot be found either in the Qur'ān or the Sunnah. They actually do not pertain to the fundamental sources of Islam. It was the *Ulamā* who, by considering the state of the world – its geographical divisions, the powers in place through religious belonging and influence as well as the moving game of alliances – started to classify and define the different spaces in and around them.'¹³⁴ It is, further, said that the extrapolation of Islamic texts and the Islamic schools of Law (*Madhāhib Fiqhiyyah*) regarding these two terminologies points to the fact that they both are terminologies which are neither stated in God's word (Qur'ān) nor in the Prophet's (pbuh) traditions, but they were rather invented later to cope with specific historical facts and realities which policy was characterized by the confrontation between the young and widening civilization of Islam on the one hand and other surviving civilizations on the other.¹³⁵ The classical theory of the Islamic law of nations is found neither in the Qur'ān nor in the Prophet's (pbuh) utterances, although its basic assumptions were derived from these authoritative sources,

¹³³ See, www.kl28.com/fatlr.php?search=4619 and www.alkalemat.com . See, also, Abduljalil Sajid, "Dār al-Islam, Dār al-Harb," 18.

¹³⁴ Ramadan, *To be a European*, 123.

¹³⁵ See, Jasser 'Audah, *Fiqh al-Maqāsid: inātatul ahkām as-shar'iyyah bi maqāsidihā*, (Herndon: International Institute of Islamic Thought, 2006), 191-3.

it was rather the product of Islamic juridical speculation at the height of Islamic power.¹³⁶ What seems to be the basis for the division of territories is *ijtihād* and not definite text as this is not mentioned in the Qur'ān or Sunnah except for some indirect references contained in some *ahādīth* (traditions of the Prophet (pbuh)).¹³⁷

So as a sequel of the abovementioned arguments, it is seen that this *concept/ theory* of division of territories was the product of Muslim scholars' *ijtihād* to answer the pressant call of the realities prevailing in their epochs. *Ijtihād* of a certain epoch can be put aside when it ceases to cope with new realities and environments. It is observed that the doctrine of division of territories and the concept of permanent state of war resulted as a consequence of prevailing hostile conditions between the 'Abbasid caliphate and Byzantine empire.¹³⁸

3.1. The Contemporary Impact of this Concept/Theory.

This *concept* of division of territories in Islam has been looked at differently by Muslim scholars. One group opines that this division of territories was not based on the texts of the Qur'ān and the Sunnah. It was rather based on the Islamic international realities of those Muslim jurists. As at that time the surrounding realities of Muslims were mostly dominated by war, the Muslim jurists gave the name *dār al-harb* to all those territories which were not Islamic. This does not necessarily mean that the Muslim and non-Muslim

¹³⁶ Khadduri, 1-14.

¹³⁷ See, "Al Dābit baina Dār al-harb wa Dār al-Islam" at www.alrbanyon.yoo7.com/montada-f8/topic-t3580.htm

¹³⁸ Ibid.

relationships are based on a constant and perpetual war. A second group sees that there is a constant and perpetual war between Muslims and non Muslims with the possibility of occasional/contemporary ceasefire in between. In their view, it is because of this fact (the perpetual war) that Muslim jurists termed all those territories which are not under the control of Muslims as *dār al-harb*.¹³⁹

The consideration of our epoch and environment, which differ totally from what they were centuries ago, push us to ask whether this *concept* which was devised to suit the geo-political realities of yester-centuries still fit in our world today. Are the old concepts chosen by our great ulamā still fit for our situation? Are the antithetic and bipolar appellations: *dār al-Islam* and *dār al-harb* appropriate when the world has become a village, with a very complex geo-political configuration and multipolar areas of power and influence?¹⁴⁰ A group of mostly Egyptian scholars believe that this oft-talked division of the world by the early jurists was because of the circumstances surrounding them and normality of hostile relations between the Islamic and non-Islamic territories. There are no sound arguments in the Islamic sources that support the view of the division of the world and, therefore, this was based merely on *ijtihad* at that time.¹⁴¹ It is, further, observed that the strange thing is that these historical terminologies still have control after a thousand years on the selves as if they are *Islamic texts* despite the political and cultural changes. As far as the *Islamic texts* are concerned they are divine, eternal,

¹³⁹ See Muhammad Mushtāq Ahmad, *Jihād, Muzāhimat aur Baghāwat: Islami Shariat aur Bain-al-Aqwāmi Qanoon ki Roshni mein/ Jihād, Resistance and Rebellion: In the light of the Shari'ah and International law*, (Gujranwala: Al-Shari'ah Academy, 2008), 74-5.

¹⁴⁰ Ramadan, *To be a European*, 123.

¹⁴¹ Munir, *Public Int'l Law*, 407-8.

comprehensive, sublime and flexible, *but human terminologies and categorization deduced from political realities can be removed (and changed) with the change in time and circumstances.*¹⁴²

4. Diversity of opinions regarding this *Concept/Theory*

Before concluding this chapter, it is of vital importance to point to the fact, which is constantly raised by our contemporary Muslim scholars and intellectuals, regarding the controversiality of the very *concept/theory* itself among Muslim scholars. It is to be pointed out that the theory of the division of the world is extremely controversial among early jurists themselves. Thus according to Abū Hanīfa, all the Islamic territories or *dār al-Islam* should be attached to each other geographically and if they are separated by some non-Muslim territories, then the Islamic territory so separated will not be *dār al-Islam*, while the disciples of Abu Hanīfa, especially Abū Yūsuf and Shaybāni do not agree with him and for them the safety of a Muslim is one of the prerequisites of *dār al-Islam*; the other being the implementation of Islamic laws to qualify for *dār al-Islam*. Whereas al-Shafe'i thought that there is a third division, namely, *dār al-'ahd* in addition to *dār al-Islam* and *dār al-kufr*. Thus, if the view of Abū Yūsuf and Shaybāni are taken, then no place in the world today would qualify as *dār al-Islam* as there is hardly any country where Islamic laws are fully implemented. Again what about a Muslim territory if it is occupied by non-Muslims and is no more under the sovereignty of Muslims? Does it become *dār al-harb*?¹⁴³ Although scholars often have claimed that Islamic law divides

¹⁴² Audah, 191-3. The *italics* highlight is mine.

¹⁴³ Munir, *Public Int'l Law*, 408.

the world into two basic categories, they do not reflect the complexity of Islamic thought on the issue. Muslim jurists did attempt to find a way to distinguish between the jurisdiction of Muslims and non-Muslims, but they could not agree on a definition of *dār al-Islam* or on the number of categories into which the word is divided. Consequently, the classification of territories in Islamic Law is laden with ambiguity.¹⁴⁴ It is, also, observed that the peaceful relationship between Abyssinia and the Islamic state is very significant for rebutting the concept of the two territorial division of the world, and its corollary conception of a permanent state of war which does not permit the recognition of any non-Muslim state as a sovereign entity and insists that the latter should always pay a tribute to the Islamic state. For although Abyssinia had never been a Muslim nation, it was recognized by the early Islamic state as an independent state that could be let alone without imposing any kind of tax on it or forcing it into the orbit of the Islamic state. Obviously, Abyssinia could not be considered a part of the territory of Islam (*dār al-Islam*), for Islamic rule had never been exacted therein; nor would it be considered a part of the territory of war (*dār al-harb*), since there had been no attempt to force it into the pale of Islam or to declare a permanent war against it. The only satisfactory explanation of the peculiar position of Abyssinia is that the doctrine of the two territories was founded on a fragile basis.¹⁴⁵

The proof of this, it is argued, is the terminologies themselves. There is divergence of views among Muslim scholars regarding what territory can be *dār al-Islam*. There are

¹⁴⁴ Khaled, 161.

¹⁴⁵ See Louay Safi, "Peace and the Limits of War, Transcending Classical conception of Jihād," International Institute of Islamic Thought, Herndon, (2002), 11.

those who have linked *dār al-Islam* with the manifestation of Islam in it, (there are) those who have linked it with the establishment of Islamic rituals or most of them though taken over by non-Muslims, (there are) those who have linked it with the security of Muslims and neighboring an Islamic territory. As far as *dār al-harb* is concerned, there is also divergence of views, as in the former one, between it being a territory in which the non-Islamic law is manifested and not being a place where Muslims and *Dhimmi*s are secure and it being adjacent to non-Islamic countries. Moreover, the issue of geographical borders (conceptualized) within the old context of war is not significant today in our contemporary world.¹⁴⁶ It still remained, however, for the *'ulamā* to define these two entities in order for Muslims to have a clear picture of the geo-political reality of their era.¹⁴⁷

¹⁴⁶ Audah, 191-3.

¹⁴⁷ Ramadan, *To be a European*, 125-6. 'A close study of these two definitions (even if is not exhaustive) shows that the parameters on which the recognition of a specific and qualified *dār* is based are not strictly antithetical; the majority of the *ulamā* insist on the ownership of the land and the application of the Islamic legal system as indices for determining the existence of *dār al-Islam*, whereas it is the nature of the government and the legal system which are relevant for determining the abode of war. The emphasis is placed on population in the former and on government in the latter and the hiatus is, in fact, the cause of the profound divergence of opinion among contemporary *ulamā* for they all admit that the Islamic legal system (which is the second condition whose application in part facilitates definition of a space) is not nowadays truly or completely applied. Thus, some *ulamā* who refer to population are of the opinion that Islamic countries are still to be considered as *dār al-Islam* whereas others concentrating on governments which clearly do not respect Islamic teaching, state that these countries cannot be called *dār al-Islam* any longer. If moreover, we take into account the parameters considered by some *ulamā* of the Hanafi school i.e. those based on safety and security, the conclusion is not only different but in complete opposition since Muslims are sometimes safer in the West, regarding the free practice of their religion, than they are in Islamic countries. Thus, this could lead us to conclude, with respect to the parameters of the safety and peace, that

4.1 Conversion of *Dār al-Islam* into *Dār al-Harb*

Furthermore, there is divergence of views regarding whether *dār al-Islam* can become or be changed into *dār al-harb*. The majority from the Hanbalis and the Zahiris and Abū Yūsuf and al-Shaybāni are of the view that a territory becomes *dār al-kufr* if it has been occupied by non-Muslims and non-Islamic laws become apparent. Some of the contemporaries among the Shafe'is went on to say that *dār al-Islam* can never be converted into *dār al-kufr*. Some among the Mālikis and the Shafe'is were of the view that *dār al-Islam* does not change into *dār al-kufr* only by the implementation of non-Islamic laws in it or just because it's being taken over by non-Muslims as long as Muslims are able to observe some of the Islamic rituals.¹⁴⁸

4.2 The *Dār al-'Ahd* controversy

In addition, there is divergence of views regarding *dār al-'ahd* also. Some, especially Shafe'i jurists, devised a third temporary division called the *dār al-sulh* (territory of peaceful arrangement) or *dār al-'ahd* (territory of covenant), giving qualified recognition to non-Muslim communities if they entered into treaty relations with Islam on conditions agreed upon between the two parties. Most jurists, however, especially the Hanafi School, did not recognize the third division, arguing that if the people of a territory concluded a peace treaty and paid tribute to the Islamic State, it became part of the *dār*

the appellation *dār al-Islam* is applicable to almost all western nations whilst it is not the case for the great majority of the Islamic countries where the populations are overwhelmingly Muslim.' Ibid

¹⁴⁸ See, Sulaymān Muhammad Toboliyak, *Al-Ahkām al-Siyāsiyyah lil-Aqalliyyāt al-Muslimah fi'l-Fiqh al-Islāmi*, (Amman: Dār al-Bayāriq, 1997), 20-24.

al-Islam and its people are to be protected by Islam.¹⁴⁹ Even the addition of a third concept, introduced by al-Shafe'i, referring to the abode of treaty (*dār al-'ahd*) is insufficient to take us out of this twofold vision of the world.¹⁵⁰ In fact, *dār al-'ahd* acquires specific meaning only in relation to the two other *dars*. To define a treaty means that we should know the countries which have agreed on its clauses; thus, to have a clear idea of what *dār al-Islam* is and what it is not.¹⁵¹ So what can be deduced from the above is that there has been much divergence of views among Muslim scholars, themselves, regarding these terms and their implications.

4.3 The Outcome

In summary, is Islam, as a complete code of life, limited to certain borders or territories? Isn't Islam's applicability suitable for every nook and corner of the world? Isn't Islam for Muslims and Muslim Minorities alike? Isn't Islam apt for every issue, circumstance and event in every era for all times to come? Is Islam's jurisdiction entangled within the

¹⁴⁹ Khadduri, 1-14

¹⁵⁰ Ramadan, *To be European*, 127-8.

¹⁵¹ Ibid. 'Based on the idea of two virtual entities (*dār al-Islam* and *dār al-harb*) having come to an agreement, it seems impossible to use such a concept without precaution in our contemporary world. These entities do not have real and defined existences and the treaties, because of intricate political influences and imbalanced power struggles, cannot be considered as expressions of agreement between two or more independent and free governments. To use the same word (*'ahd*) when referring to both the 'treaties' between countries and the relations Muslims have with one state (and its constitution) could lead to a profound shift in meaning. This is because the content we are referring to is by no means of the same nature. In using these three old concepts, the *ulamā* have neglected some important geo-political data which should be taken into consideration inasmuch as they have a great influence on the new world vision we must develop.' Ibid.

concept of division of territories: *dār al-Islam* and *dār al-harb*? It is the Shari'ah obligation of Muslim Minorities to know the answers of the aboveposed questions so that they can conduct their lives, in their country of residence (non-Muslims countries), according to the ordainments of the Qur'ān and the Sunnah. As seen, the answers of the above questions are in the negative. Islam is not limited to certain borders or territories. Islam's jurisdiction is not limited to the doctrine of *dār* i.e. the *concept/theory* of division of territories in Islam. Moreover, it is imperative for them, according to the Shari'ah, to know that the *concept* of division of territories denotes the concept of territorial jurisdiction of Islamic Law. It was not coined for the sake of establishing the facts about Muslims and non-Muslims relationship i.e. there should be a permanent enmity and hostility between Muslim and non-Muslim countries and their respective subjects. It was, rather, a human endeavor to develop a set of rulings regarding the two territories and the legal rights and duties of their respective subjects. Furthermore, we should avail ourselves of the very fact that the *concept* of division of territories in Islam, as seen above, besides being one which does not emanate from the Qur'ān and the Sunnah, is pretty much controversial in itself and inapplicable in our contemporary realities either.

It can be argued that using this *concept/theory*, which is based on *ijtihād* to begin with and was devised for territorial jurisdiction purposes, for the purpose of antagonizing the Muslims and non-Muslims relationship, is totally in contrast, in letter and spirit, with the Shari'ah. This ultimately results in chaos, anarchy and the spilling of innocent blood of Muslims and non-Muslims. Besides, to interpret this *concept/theory* in such a way to portray, as if, it is the Shari'ah which prohibits Muslims from residing in non-Muslim

countries or even declares the emigration from non-Muslim territories as compulsory is not in tune with the truth embedded in the Shari'ah. It is also seen that this *concept/theory* of division of territories has no relevance with the concept of perpetual hostility and antagonism vis-à-vis non-Muslims or non-Muslim states. It follows that the use of this *concept/theory* to establish that Muslims do not have the right to stay in non-Muslim countries or being a part of the system in place does not stand and it is, it can be argued, a totally irrelevant interpretation. In due of this fact, it is a Shari'ah obligation of Muslims in general and Muslim minorities in particular to turn to the Qur'ān and the Sunnah to know about their rights and obligations towards non-Muslims. God Knows Best.

CHAPTER THREE

THE MUSLIMS-NON-MUSLIMS RELATIONSHIP: A '*QUR'ĀN AND SUNNAH*' *PERSPECTIVE*

1. Nature of Relationship between Muslims and non-Muslims

The different interpretations of the doctrine of *dār* have greatly impact on the relations of Muslims vis-a-vis non-Muslims culminating into a 'concept of permanent antagonism and hostility' in the minds and hearts of many Muslims. In the previous chapter, we have seen that the purposes behind the *theory* of division of territories in Islam were meant for territorial jurisdiction purposes and were never aimed at antagonizing Muslims and non-Muslims relationship.¹⁵²

So in this chapter, some of Qur'ānic war-related verses and *Ahādīth* (sayings of the Prophet (pbuh)) regarding Muslims and non-Muslims relationship will be analyzed to argue that, as contrarily conceived by some Muslim scholars, the Qur'ān never ordered the Prophet (pbuh) to fight non-Muslims for the sake of subjugating them or annihilating their faith only because they are non-Muslims. This analysis is of vital importance as the Muslims-non-Muslims relationship is the very backbone of a peace and stable society in non-Muslim countries. It is one of the Shari'ah obligations of Muslim Minorities to know how they have been ordained, by the Qur'ān and the Sunnah, to co-exist with non-Muslims. If there is permissibility for a peaceful co-existence, according to the Qur'ān and Hadith, then this will automatically entail mutual respect and understanding between the two entities.

It is well known, among Muslims, that the Qur'ān and Hadith are the two original sources of Islamic Law which should be referred to for the deducement of rulings of

¹⁵² The relationship between Muslims and non-Muslims, in this work, incorporates relations between their respective territories also.

every single issue that governs our lives. So to get an idea of the normal relationship of Muslims with their fellow non-Muslims, its better to let the Qur'ān and the Sunnah speak.

1.1 Qur'ānic Concept of Humankind

It is very important to start by pointing to the very sense of universalism in Islam's concept of universal brotherhood among humankind. The Qur'ān addressing the human race states:

"O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honorable of you in the sight of God is the most pious. Verily God is All-Knowing, All Aware."¹⁵³

In this verse, God is referring to mankind as a whole without differentiating between Muslims and non-Muslims. 'It must be noted that this verse does not address Muslims exclusively, but begins with the inclusive address 'O Humankind', an address that embraces all. This sweeping statement in the Qur'ān about broad human brotherhood is a profound basis for peace for and among all.'¹⁵⁴ Moreover, the aim behind the creation of mankind, as seen in this verse, is to get to know each other. This is a clear sign of universal brotherhood. As aptly put by al-Zuhaili, 'People are equal in terms of humanity, respect for human rights and human dignity, and no category or individual is better than others except in piety and good deeds, co-operation is a principle that all people are required to observe.'¹⁵⁵

¹⁵³ Qur'ān 49:13.

¹⁵⁴ Badawi, "Muslim and non-Muslim relations," 7.

¹⁵⁵ Al-Zuhaili, "Islam and Int'l law," 270.

Moreover, the Prophet (pbuh), in his Farewell sermon, focused on the sense of universalism and against any sort of discriminations because of nationality, race or colour. He (pbuh) told all those present that they were to learn of the equality of all people in front of God and the necessary humility because they all descend from Adam and Adam was created from dirt. He (pbuh) recalled the essential point in the One's message: the absolute equality of human beings before God, regardless of race, social class, or gender, for the only thing that distinguishes them lies in what they do with themselves, with their intelligence, their qualities, and most of all their heart. Wherever they come from, whether they are Arabs or not; whatever their color, black, white, or any other; whatever their social status, rich or poor; whatever they are men or women, human beings stand out by the attention they show in their heart, their spiritual education, the control of the ego, and the blossoming of faith, dignity, goodness, nobleness of soul, and, for coherence's sake, commitment among their fellow human beings in the name of their principles.¹⁵⁶

For Syed Mawdoodi, Islam not only recognizes the principle of absolute equality between men irrespective of colour, race or nationality, it makes it an important reality. He observes that all human beings are brothers. For him, the division of human beings into nations, races, groups and tribes is for the sake of distinction, so that people of one race or tribe may meet and co-operate with one another... the division of human race is neither meant for one nation to take pride in its superiority over others nor for one nation to treat other with contempt... the superiority of one man over another is only on the

¹⁵⁶ See, Tariq Ramadan, *The Messenger: The meanings of the Life of Muhammad*, (London: Peinguin Books, 2008), 195-7.

basis of God-consciousness, purity of character and high morals, and not colour, race, language or nationality.¹⁵⁷

1.2 Honour of Humankind and Need of War

The Holy Qur'ān considers, as basic elements in the perception of humankind, the honour of human being, his/her protection and the preservation of their rights, regardless of their attitude or behavior.¹⁵⁸ The rights of the human being like the right to life, freedom, equality, justice, consultation and ethical conduct, are the essential and fundamental principles that should be preserved.¹⁵⁹ War is not acknowledged as a national policy or a means to satisfy a desire for hegemony or to gain spoils in Islam.¹⁶⁰ So if this is the case, then why this environment of hostility-cum-warfare in the Prophet's (pbuh) era? What, actually, explains the confrontation-cum-animosity milieu in the day-to-day life between Muslims and non-Muslims in those days?

This is aptly answered by one scholar. For him, this is because of the constant psychological torture which the early Muslims bore in the form of economic and social boycott, humiliation, torture, and killing at the hands of the Quraysh. In Madinah, their pressure and aggression continued by contacting the Jewish and Arab tribes to destroy the

¹⁵⁷ See, Syed Abul A'ala Mawdoodi, *Human Rights in Islam*, (Islamabad: Dawah Academy, International Islamic University, 1999), 19-20.

¹⁵⁸ "We have honoured the sons of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favours, above a great part of Our Creation." Qur'ān 17:70.

¹⁵⁹ Al-Zuhaili, "Islam and Int'l law," 273.

¹⁶⁰ *Ibid*, 280.

Prophetic mission.¹⁶¹ Thus, after having been persevering for so long, the Muslims could not remain silent in the face of what they were constantly enduring. It was totally instinctive on their part to ask such questions as it was completely difficult for them to live in peace especially in this antagonistic milieu. In the face of this, it was imminent that God would come with an injunction allowing the Muslims to defend themselves. So let's see what the Qur'ān says. We will divide this discussion into two parts. Part 1 will be regarding permission to fight because of being wronged and fought against, while part 2 will be regarding the cessation of fighting, inclination to peace and prohibition of transgressions.

2. Permission of War for Defence.

Says the Qur'ān:

*"Permission to fight is given to those (believers) who are fought against, because they have been wronged; and surely God is able to give them victory. Those who have been expelled from their homes unjustly only because they said: Our Lord is Allah."*¹⁶²

Thus, the time for ordainment finally came allowing the Muslims to fight. The verse is very clear in itself, that because the Muslims were being fought and were being wronged they have the permission to defend themselves. This was not, at all, an injunction ordaining the Muslims to fight others only because they were non-Muslims. So this verse starts by pointing out to the very fact that Muslim's permission to fight was

¹⁶¹ Abū Sulaymān, 38-40.

¹⁶² Qur'an 22:39,40.

conditional upon being fought against and being wronged. As pointed by al-Tabari, 'When the Muslims were being persecuted by the Quraish in Mecca and were unjustly expelled from their homes in Mecca, these verses were revealed.'¹⁶³ According to Wahbah al-Zuhaili, this verse was prescribed because of the harm done to the Muslims by the pagans for fourteen years. For him, the divine words, "they were wronged" and "those who have been expelled from their homes" illustrate the reason for the legality of war, namely that Muslims are oppressed by others (the unbelievers).¹⁶⁴ For Abū Zahra, the basis of relationship in Islam is peace and not war until and unless hostility is raised and war is thrust upon and against the Muslims.¹⁶⁵ For Ibn Taimiyyah (1263-1328), 'The Prophet's (pbuh) conduct was that he never waged war against non-Muslims who had a pact with him.'¹⁶⁶

This verse, according to Hamidullah, referred to the Prophet (pbuh) and other Muslims who had taken refuge in Madinah and were still being harassed by the Meccans in many ways. They addressed, for instance, an ultimatum to a Madanite magnate 'Abdullah ibn Ubayy, either to fight and kill or expel the Prophet (pbuh) or they would attack Madinah. Another instance is provided by the expedition against Dūmatul-Jandal in the year 5 H., where the local chieftain, Ukaidir, was molesting the caravans going from the north to Madinah. The attack on Khaibar is an instance of nipping war in the bud. The battles of Uhud and Khandaq were defensive. Hunain was preventive even as

¹⁶³ Al-Tabari, *Jāmi' al-Bayān*, 18: 642-44.

¹⁶⁴ Al-Zuhaili, "Islam and Int'l law," 279.

¹⁶⁵ See, for detail, Abū Zahrah, 47-52.

¹⁶⁶ Al-Zuhaili, "Islam and Int'l law," 281.

that of Banu'l Mustaliq. The attack on Tā'if was the continuation of the battle of Hunain and Badr was for reprisal.¹⁶⁷

Now, after the Qur'ān has allowed the Muslims to fight in defense against those who meted out ill treatment against them, it commands them to show restraint in their fight and not to have recourse to any sort of transgressions or hostilities.

The Qur'ān states:

"And fight in the Way of God those who fight you, *but transgress not the limits. Truly God likes not the transgressors.*"¹⁶⁸ "And kill them wherever you find them and turn them out from where they have turned you out. And *Fitnah* is worse than killing. And *fight not with them* at Al-Masjid Al-Harām (the sanctuary at Makkah), *unless they (first) fight you there.* But if they attack you, then kill them. Such is the recompense of the disbelievers. *But if they cease,* then God is Oft-Forgiving, Most Merciful."¹⁶⁹

"And fight them until there is no more *fitnah* and worship is for God alone. *But if they cease,* let there be *no transgression except against the wrongdoers.*"¹⁷⁰

Here, the injunctions are crystal clear. In these aforementioned verses God has stressed on the sense of reciprocity. It is clear in these verses 'to fight those who fight you' i.e. when you are being attacked and when war is thrust upon you, then you (Muslims) have to defend yourselves. However, whenever they (the enemy) desist from attacking you and stop fighting you then you should also stop and you should not seek any pretext

¹⁶⁷ Hamidullah, 167.

¹⁶⁸ Qur'ān 2:190.

¹⁶⁹ Ibid, 2:191-2.

¹⁷⁰ Ibid, 2:193.

whatsoever to continue your fight, aggression or hostilities against them. So we see that God has stressed on being just and not to transgress the limit.

2.1 Ethics of War

So what does 'transgression' mean here? According to Ibn Abbās, it means don't kill women, children, old person, and those who want peace by not fighting you. If you kill them then you will be among the wrongdoers. For 'Umar ibn 'Abdul 'Azīz transgression also means that it is forbidden to kill those who don't fight you and the priests. It is also reported that transgression means not to kill those who pay *jizyah* from *Ahl al-kitāb* and the *Majoos*.¹⁷¹ According to al-Zuhaili, the aim of war (*jihād*) in Islam is not to impose the Islamic doctrine or a racist, social class on others, nor does it stem from a nationalistic tendency or material or economic interests.¹⁷² However, if war takes place, it is, subjected to clear procedures according to the Shari'ah. The conduct of hostilities/aggressions is strictly regulated by the Qur'ān (see the above verses) and the Sunnah. Examples of prohibition of transgressions/hostilities abound in the Sunnah. We will suffice with some of them as follows:

2.1.1 Prohibition of the killing of Women, Children, Old persons etc.

Once while observing the dead body of a woman lying on the battlefield, the Prophet (pbuh) indignantly remarked: "She was not among the combatants."¹⁷³ Then He (pbuh)

¹⁷¹ Al-Tabari, *Jāmi' al-Bayān*, 3: 561-74.

¹⁷² Al-Zuhaili, "Islam and Int'l law, " 280.

¹⁷³ Sunan Ibn Mājah, *Kitāb al Jihād, Bāb alGharātu wa al-Biyāt*.

dispatched an order to the field commander Khalid ibn Walīd: "Do not slay the woman or the workman."¹⁷⁴ According to another tradition, after this incident the Prophet (pbuh) forbade the general massacre of women and children: "The Prophet (pbuh) forbade the killing of women and children."¹⁷⁵ In another tradition it is stated: "Neither kill old man far advanced in age, nor a minor child nor a woman."¹⁷⁶ However, if they participate in hostilities (war) they can be fought or when the killing is unintentional.¹⁷⁷

2.1.2 Prohibition of Night Assault

The Arabs used to deliver night assaults upon the enemy when he was asleep. These surprise night raids were generally made after midnight when the enemy would be fast asleep. The Prophet (pbuh) abolished this custom and laid down the rule that the enemy was not to be attacked before dawn. Anas b. Mālik relates: "When the Prophet (pbuh) approached a hostile people at night, he would not attack them till dawn."¹⁷⁸

2.1.3 Prohibition of Immolating Enemies

The Prophet (pbuh) said: "No one has the right to put anyone to the torment of fire save He who is the Creator of fire."¹⁷⁹ Once 'Ali (the fourth Caliph) put the heretics (Zanādiqah) to the torment of fire, whereupon Ibn Abbās restrained him by reminding

¹⁷⁴ Sunan Abū Dawūd, *Kitāb al-Jihād, Bāb fī Qatl al-Nisā*

¹⁷⁵ Sahih al-Bukhāri, *Kitāb al-Jihād, Bāb Qatl al-Nisā fī al-Harb.*

¹⁷⁶ Mishkāṭ al-Masābīh, *Kitāb al-Jihād, Bāb al-Qitāl fī al-Jihād.*

¹⁷⁷ See, Muhammad Munir, "Suicide attacks and Islamic Law," *International Review of the Red Cross*, Cambridge journals, 90: 869, (2008), 85.

¹⁷⁸ Sahih al-Bukhāri, *Kitāb al-Jihād, Bāb Du'ā al-Nabi ilā al-Islam.*

¹⁷⁹ Sunan Abū Dawūd, *Kitāb al-Jihād, Bāb Karāhiyat al-Harq al'aduw bi al-Nār.*

him of the following decree of the Prophet (pbuh): "Fire is the torment of God, don't you put any man to this torment."¹⁸⁰

2.1.4 Prohibition of Torturing to death

The Prophet (pbuh) forbade Muslim soldiers to bind the captive before slaying him or to torture him to death. Abū Ayūb Ansari said: "I have heard from the Prophet of God (pbuh) that he forbade binding the prisoner before killing him. By God I would not have bound a hen before slaughtering it..."¹⁸¹

2.1.5 Prohibition of Plundering and Mutilation of corpses

Once at the conclusion of the battle of Khaybar, some fresh recruits of the Muslim army abandoned all restraint and started plundering the enemy property, whereupon a Jewish chief waited on the Prophet (pbuh) and addressed to him rather roughly: "O Muhammad! Does it behave you to slaughter our donkeys, eat our fruit and beat our women? Thereupon the Prophet (pbuh) instantly issued an order to call an assembly and then he (pbuh) said: "God has not made it lawful for you to enter the houses of the people of the Book without permission, beat up their women and then eat their stores of fruit when they have given you all that were due from them."¹⁸² Once during an expedition of *Jihād*, the troops commandeered some goats and wished to cook their meat for dinner. When this was

¹⁸⁰ Sahih al-Bukhāri, *Kitāb al-Jihād, Bāb La Yu'adhhab bi 'Adhābil Allah.*

¹⁸¹ Sunan Abū Dawūd, *Kitāb al-Jihād, Bāb fī Qatl al-Asīr.*

¹⁸² Ibid, *Bāb al-Kharāj wa al-Amāra wa al-Fay.*

reported to the Prophet, he (pbuh) went to the troops and overturned their cooking pots, saying: "Plundered things are no better than carrion (dead or decaying flesh)."¹⁸³

For Mawdoodi, Islam has categorically prohibited its followers from mutilating the corpses of their enemies, as was practiced in Arabia before the advent of Islam. The Prophet (pbuh) has prohibited mutilation of the corpses of enemies. The occasion on which this order was given is highly instructive. In the battle of Uhud, the disbelievers (non-Muslims) mutilated the bodies of the Muslims who had fallen on the battlefield by cutting off their ears and noses and threading them together to put round their necks as trophies of war. The stomach of Hamza, the uncle of the Prophet, was ripped open by the Quraysh and his liver was taken out and chewed by Hind, the wife of Abū Sufyān, the leader of the Makkan army. The Muslims were naturally enraged by this horrible sight. But the Prophet (peace be upon him) asked his followers not to mete out similar treatment to the dead bodies of the enemies.¹⁸⁴

2.1.6 Prohibition of the killing of Ambassadors/Envoys/Emissaries

The Prophet (pbuh) also prohibited the killing of ambassadors and emissaries. When Ubādah b. al. Hārith, the emissary of Mussaylamah, the false prophet came and delivered his insolvent, the Prophet (pbuh) observed: "Had it not been unlawful to kill the emissaries, I would have beheaded you."¹⁸⁵ The envoys are officially entertained. There

¹⁸³ Ibid, *Bāb fī al-nahy 'an al-Nuhba*.

¹⁸⁴ Mawdoodi, 35.

¹⁸⁵ See, Martin Lings (Abū Bakr Sirāj ad-Deen), *Muhammad: his life based on the earliest sources*, (Lahore: Suhail Academy, 1994), 336.

were several large houses in Madinah, in the time of the Prophet (pbuh), specially meant for foreign guests.¹⁸⁶ The Prophet (pbuh), when in Madinah, used to receive foreign envoys in the Great Mosque where the 'Pillar of Embassies' still commemorates the place. The Prophet (pbuh) and his Companions are said to have usually put on fine dress at the time of the ceremonial reception of the envoys.¹⁸⁷ Envoys, along with those who are in their company, enjoy full personal immunity: they must never be killed, nor be in any way molested or maltreated and they are accorded full freedom of prayer and religious rites.¹⁸⁸

2.1.7 Prohibition of Breach of treaty and promise

The Prophet (pbuh) said: "Whosoever kills a partner in the treaty he shall be deprived of even the scent of Paradise, although this scent could be enjoyed (felt) from as far as the distance of forty years' journey."¹⁸⁹ According to Amir b. Abasah the Prophet (pbuh) said: "Whosoever has a treaty with a nation, he should not amend it till after its expiry or if he fears breach by the other party, he should give notice of the termination of treaty on equal terms."¹⁹⁰

2.1.8 Prohibition of Disorder and Indiscipline

It was customary with Arabs armies to molest way-farers and to always spread over the ground haphazardly without order when they halted at camp thus obstructing all passages.

¹⁸⁶ Hamidullah, 151-2.

¹⁸⁷ Ibid, 149.

¹⁸⁸ Ibid, 151-2.

¹⁸⁹ Sunan Ibn Mājah, *Kitāb al-Diyat, Bāb Man Qatala Mu'āhidan*.

¹⁹⁰ Sunan Abū Dawūd, *Kitāb al-Jihād, Bāb fi al-Imām Yaqūmu bi Bay'ah*.

The Prophet (pbuh) said: "Whoever obstructs the passage or plunders the way-farers, his *jihād* will be of no avail."¹⁹¹

2.1.9 Humane treatment to Prisoners and Captives

In Islam that prisoners of war (captives) are to be treated kindly, as God the Almighty says: "And they feed, for the love of God, the indigent, the orphan and the captive."¹⁹² The Prophet (pbuh) commanded that captives be treated well. They are often either released through 'grace', or in exchange for money or for other captives.¹⁹³ The prisoners of war were always given better food than what the Muslims had themselves, although the latter equally needed it. It was done in compliance with the orders of the Apostle of God.¹⁹⁴ It is reported that when the Muslims held Samāmah ibn 'Assāl captive they used to bring him food and milk from the Prophet's (pbuh) house.¹⁹⁵ The Prophet (pbuh) has prohibited the killing of anyone in captivity." And the Prophet (pbuh) instructed that no prisoner should be put to sword.¹⁹⁶

¹⁹¹ Ibid, *Bāb ma Yu'maru indman al-'Askar*.

¹⁹² Qur'ān 76:8.

¹⁹³ Al-Zuhaili, "Islam and Int'l law," 283.

¹⁹⁴ Munir, *Public Int'l law*, 382.

¹⁹⁵ Ibid. 'However, on the day Mecca was occupied by the Muslims, the Prophet (pbuh) ordered six or seven or eleven persons to be killed out of whom only two were killed. One of them was 'Abd Allah ibn Khattal who was a Muslim, lived in Medina and was sent by the Prophet (pbuh) to collect Zakat. He was given a servant to help him. Abd Allah killed that servant, fled to Mecca, reverted to Jāhiliyyah (pre-Islamic Arab custom), and bought two girls who used to sing songs against the Prophet (pbuh) and the Muslims. He was therefore killed along with (only) one of the girls. Therefore, those prisoners who were not accused of such crimes were never killed.' Ibid.

¹⁹⁶ Mawdoodi, 34.

All these instructions and codes of conduct should be strictly observed by the Muslims as general rules. None of them should be overstepped or violated, except in absolute necessity, as an exception.¹⁹⁷

2.2 Prohibition for the killing a Human being (Muslims and non-Muslims alike)

Islam upholds, in all severity and seriousness, the sanctity of human life as it holds human life as sacred. If all these aforementioned acts are prohibited while war is on with enemy non-Muslims and their property, so *a fortiori* all these acts are forbidden when not at war in a peaceful society with peaceful non-Muslims and their property. Because if killing non-Muslims just because of their infidelity i.e. of them being non-Muslims would have been the case, the Prophet (pbuh) would have ordered that no one among non-Muslims should be spared as there would not be any reason for not killing non-Muslim's women, children, old people, monks, priests, sick, wounded, non-combattants, farmers etc, as all of these are non-Muslims alike. Why then sparing them and fighting only the fighters? The Qur'ān is clear in stating that the killing of one innocent human being is like killing the entire humanity: "Because of that, We ordained for the children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land— it would be as if he killed all mankind, and if anyone saved a life it would be as if he saved the life of all mankind."¹⁹⁸

Says Mawdoodi, while commenting on this verse, that, "The propriety of taking life in retaliation for murder or for spreading corruption can be decided only by a competent

¹⁹⁷ Al-Zuhaili, "Islam and Int'l law," 283.

¹⁹⁸ Qur'ān 5:32.

court of law. During a war it can be decided only by a properly established government. In any event no individual has the right to decide such question by himself. As the Holy Qur'ān makes clear, "Do not kill a soul which God has made sacred, except through the due process of law."¹⁹⁹ Homicide is thus distinguished from destruction of life carried out in the pursuit of justice. The Prophet (peace be upon him) has declared homicide as the greatest sin after polytheism. A tradition of the Prophet (peace be upon him) reads: "The greatest sins are to associate something with God and to kill human beings." In all these verses of the Qur'ān and traditions of the Prophet (peace be upon him), the word 'soul' (*nafs*) has been used in general terms without any indication that citizens belonging to one's own nation or the people of a particular race or religion should not be killed. The injunction applies to all human beings.'²⁰⁰

Moreover, the Prophet (pbuh) always advised the Muslims to respect human life. Anas b. Mālik related that the Prophet of God (pbuh) observed: "Among capital sins, the biggest is to set partner with God; next is homicide; then disobeying parents and then telling lie."²⁰¹ The Prophet (pbuh) said: "The first thing for which a man shall be held accountable on the Day of Judgment is prayer and the first thing which shall be decided among the people are the claims arising out of bloodshed."²⁰² Regarding non-Muslim minorities of an Islamic state, it is reported by Abdullah b. 'Amr that the Prophet (pbuh) said: "The one who has killed a *Dhimmi* (a non-Muslim citizen of an Islamic state) will

¹⁹⁹ Qur'ān 6:151.

²⁰⁰ Mawdoodi, 15.

²⁰¹ Sahih Muslim, *Kitāb al-Imān, Bāb al-Kabā'ir wa Akbaruha*.

²⁰² Sunan al-Nasā'i, *Kitāb al-Tahrīm al Dam, Bāb Ta'zuīm al-Dam*.

not smell the fragrance of Paradise (*Jannat*) despite the fact that its fragrance can be felt from the distance of forty years."²⁰³ Likewise it is reported by Abū Hurayra that the Prophet (pbuh) said: "The one who has killed a *Dhimmi*, who is under the protection of God and His Messenger, will not smell the fragrance of Paradise, though its smell can be felt from a distance of forty years."²⁰⁴

2.3 Muslims and Major sins

A Muslim does not fall outside the fold of Islam even for a *gunah kabīra* (major sin) and as such should not be ex-communicated and be killed. According to the Islamic creed²⁰⁵, contrary to the *Khawārij* corrupted creed, a major sin does not throw a Muslim outside the fold of Islam.²⁰⁶ The Muslim will be, without doubt, a sinner (*gunahgār*) and it's obligatory upon him/her to repent. If he/she has committed serious crimes/infractions which requires punishment, then it's for the state (whether Islamic or non-Islamic) and its court of law to judge and to pass judgment accordingly. Extra judicial killing is prohibited by the Qur'ān: "... and kill not anyone whom God has forbidden, except through the due process of law."²⁰⁷ Moreover, the Qur'ān states: "And whoever kills a

²⁰³ Sahih al-Bukhāri, *Kitāb al-Diyāt, Bāb Athima Man Qatala Dhimmiyyan*.

²⁰⁴ Sunan Ibn Mājah, *Kitāb al-Diyāt, Bāb Man Qatala Mu'āhidan*.

²⁰⁵ Ahl al-Sunnah wa'l-Jamā'a.

²⁰⁶ See, for detail, Sadruddīn Ibn Abī al-'Izz, *Sharh al-Aquidah al-Tahāwīyah*, (Peshawar: Kutub Khāna Akramiyyah, n.d.), 350-351.

²⁰⁷ Qur'ān 6:151. See also Qur'ān 17:33. "The Prophet (pbuh) said: "When a Muslim calls another Muslim *kāfir*, then surely one of them is such." This means that unless the accusation is validated and substantiated, it will fall back on the accuser, who will face great danger in this world and the hereafter. Even major *muharramāt* such as murder, fornication and drinking alcohol do not justify the accusation of *kufr*, provided that the person concerned does not show disrespect for, reject or refuse to recognize the Shari'ah.' See, Yūsuf al-Qaradāwī, *Islamic Awakening between rejection and Extremism*, (Herdon: The International Institute of Islamic Thought, 1992), 43-6.

believer (Muslim) intentionally, his recompense is Hell to abide therein; and the Wrath and the Curse of God are upon him, and a great punishment is prepared for him."²⁰⁸

2.4 Suicide & Suicide Bombings

Suicide and suicide attacks are totally forbidden in Islam. Says Munir that, 'Suicide is strictly illegal in Islam. The Prophet (pbuh) is reported to have said, "None amongst you should make a request for death, and do not call for it before it comes, for when any one dies, he ceases [to do good] deeds and the life of the believer is not prolonged but for goodness." According to him, suicide in Islamic Law is intentional self-murder by the believer. Any person carrying out a suicide attack should not forget that God has entrusted him with life and that it is not his personal possession to destroy as he pleases. In another saying of the Prophet, he (pbuh) has given a stern warning to a person committing suicide, stating that the wrongdoer would be repeating the suicidal act endless in hell and would reside in hell for ever.'²⁰⁹

As far as non-Muslims are concerned, if a suicide bomber kill them it will be against the directives of the Qur'ān and the Sunnah. The Qur'ān states: "Because of that, We ordained for the children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land— it would be as if he killed all mankind, and if anyone saved a life it would be as if he saved the life of all mankind."²¹⁰ And the Prophet (pbuh) has clearly warned Muslims not to kill innocent non-combatants (non-

²⁰⁸ Qur'ān 4:93.

²⁰⁹ See, for detail, Munir, *Suicide Attacks*, 79.

²¹⁰ Qur'ān 5:32.

Muslims). In addition to what is mentioned above, if in a state of war the Prophet (pbuh) has prohibited the killing of innocent people (non-Muslims) not taking part in war, then how can killing non-Muslims, in a state of peace, through suicide bombings be justified and legalized? Needless to say, the means itself (suicide) is illegal in Islam. It is very important to stress on the very fact that the Prophet (pbuh) never violated any of the Islamic principles whatever the situation was and he (pbuh) always upheld the principle of humanism even under the most difficult of situations. The Prophet (pbuh) asked Muslims, who were being persecuted and even tortured by the Quraysh, to endure and persevere in Mecca for 13 years and even asked some of them to migrate to Abyssinia to escape persecution but never told or allowed the Muslims, who were very weak at that time, to have recourse to suicide bombings or other illegal means, as they did not have adequate strength, to fight the non-Muslim enemies in Mecca. The Prophet (pbuh) did not use any excuse, pretext or justification, because what is illegal is illegal and cannot be used to spill the blood of innocent human beings. There is no denying the fact that the violation of principles always lead to unending chaos and bloodshed. That is why we see that the Prophet (pbuh) never violated any principle in his life. The Qur'ān says: "Verily there is in the person of God's Messenger an excellent example for you..."²¹¹

3. Islam's Intrinsic Commitment to Peace

However, if war and hostility is put to an end by the enemy and/or they accept to incline to peace, then it is imperative on Muslims also to have recourse to peace. The Qur'ān says: "*But if they incline to peace, you also incline to it, and (put your) trust in God.*

²¹¹ Qur'ān 33:21.

Verily, He is All-Hearer, the All-Knower."²¹² Says al-Tabari, 'If they incline (towards you), either by accepting Islam or by paying *jizyah* or by any peace agreement, so you (O Prophet) also incline towards them in the same manner."²¹³ Moreover, the Qur'ān says: "...So long as they are true to you be true to them. Verily God loves the pious."²¹⁴ Furthermore: "So if they withdraw from you and fight not against you and offer you peace, then God has opened no way for you against them."²¹⁵ Additionally: "God does not forbid you to deal justly and kindly with those who fought not against you on account of religion nor drove you out of your homes. Verily, God loves those who deal with equity."²¹⁶ It is only as regards those who fought against you on account of religion and have driven you out of your homes, and helped to drive you out, that God forbids you to befriend. And whosoever will befriend them will be the wrongdoers."²¹⁷

In these abovementioned verses, the Qur'ān is stressing on peace with those non-Muslims who incline towards it. Moreover, the Qur'ān stresses that if they (the non-Muslims) are true to you, be true to them. Furthermore, the Qur'ān is pointing to the fact that God does not forbid Muslims to be just and kind with those non-Muslims who don't fight them on account of religion. So it can be seen that peace, being truthful and kind, and just dealing with the non-Muslims, who are not hostile against Islam, has been allowed by the Qur'ān. However, there are some Muslim scholars who still argue that

²¹² Ibid, 8:61.

²¹³ Al-Tabari, *Jāmi' al-Bayān*, 14: 40-3.

²¹⁴ Qur'an 9:7.

²¹⁵ Ibid, 4:90.

²¹⁶ Ibid, 60:8.

²¹⁷ Ibid, 60:9.

peace with non-Muslims is not possible. So instead of beating about the bush, it is better to, directly, cite some examples from the life of the Prophet, where he (pbuh) did, in fact, deal kindly and justly with non-Muslims.

3.1 *Hilf al-Fudūl (pact of Chivalry and Virtuosity)*

One striking instance from the Prophet's (pbuh) life regarding non-Muslims is what is known as *Hilf al-Fudūl*. This was a pact which was taken in those days, before the revelation, to uphold justice and to protect of the weak.

A merchant from the Yemeni port of Zabīd sold some valuable goods to a notable of the clan of Sahn. Having taken possession of these, the Sahnite refused to pay the promised price. The wronged merchant was a stranger to Mecca, and had no confederate or patron in the entire city to whom he might go for help. But despite that he appealed to Quraysh to see that justice was done. An immediate response came from most of those clans which had no traditional alliance with Sahn. 'Abd Allah ibn Jud'ān offered his large house as a meeting place for all lovers of justice. After an earnest discussion, they agreed to do justice and help the weak. The Sahnite was, finally, compelled to pay his debt. The Prophet (pbuh) took part in the oath before his prophethood said long after revelation had begun that he was present in the house of 'Abd Allah ibn Jud'ān. He (pbuh) said that so excellent a pact it was that he would not exchange any part in it even for a herd of red camels; and if now, in Islam, he were summoned unto it, he would gladly respond.²¹⁸

²¹⁸ Lings, 31-2. See, for detail, Ibn Hishām, *al-Sīrah al-Nabawīyah*, (Beirut: Dār al-Ma'rifah, 2004), 1&2: 139-141.

From the above, it can be seen that not only did the Prophet (pbuh) stress the excellence of the terms of the pact as opposed to the perverted tribal alliances prevailing at the time, but he (pbuh) added that even as the bearer of the message of Islam – even as Muslim– he (pbuh) still accepted its substance and would not hesitate to participate again. He (pbuh) acknowledged a pact that was established before the beginning of revelation and which pledges to defend justice imperatively and to oppose the oppression of those who were destitute and powerless. He (pbuh) acknowledged the validity of a pact established by non-Muslims and the validity of adhering to principles of justice and defending the oppressed, regardless of whether those principles come from inside Islam or outside it.²¹⁹

3.2 Hijrah

Another ample instance is the Prophet's (pbuh) emigration from Mecca to Medina, alongwith Abū Bakr (the first Caliph), when his very life was at stake. At this precious time they needed a guide with particular expertise regarding the path from Mecca to Medina to help them escape the enemy Quraysh-led government. At that time, instead of choosing a Muslim, they chose a non-Muslim guide, thus trusting a non-Muslim at this deadly time for this journey which was fraught with peril. The Prophet (pbuh) had not hesitated to enlist the help of a Bedouin who, although he share their enemies' polytheistic beliefs, was well known to them for his trustworthiness and his abilities as a guide.²²⁰ Furthermore, it should be noted that Muhammad (pbuh) had always retained very strong ties with the members of different clans and with his kin who had not accepted Islam. His uncle Abū Tālib, whom he (pbuh) loved so much and whom he

²¹⁹ Ramadan, *The Messenger*, 21-2.

²²⁰ Ibid, 83. See, for detail, Ibn Hishām, 434-444.

(pbuh) accompanied until he breathed his last, was one such example. The Prophet (pbuh) himself was a model of equity toward those who did not share his faith. Through all the years of his mission, he (pbuh) had continued to receive important deposits from non-Muslim traders who went on dealing with him and wholly trusted him. On the eve of his departure for Medina, Muhammad (pbuh) asked 'Ali (the fourth Caliph) to give back one by one to their respective owners the deposits he still held; he scrupulously applied the principles of honesty and justice that Islam had taught him, whomever he dealt with, be they Muslims or non-Muslims.²²¹

3.3 Religious Dialogue

In addition, it is pointed out that, notwithstanding the emphasis on the charge of *tahrīf* (distortion of early pre-Qur'ānic revealed scriptures by the Jews and the Christians), the Qur'ān as well as the Prophet (pbuh) never closed the inter-faith dialogue, nor of cordial interaction with non-Muslims at the socio-economic and cultural levels. Rather, he (pbuh) exemplified, in an excellent manner, the Qur'ānic norms of interaction between the followers of different religions. Thus, while the Prophet (pbuh) and his Companions maintained the charge of *tahrīf*, they also provided an environment of religious freedom and tolerance unprecedented in history.²²²

²²¹ Ibid, 76-7.

²²² See, Ghulam Haider Aasi, *Muslim Understanding of Other Religions: A study of Ibn Hazm's Kitāb al-Fasl fī al-Milal wa'l-Ahwa wa al-Nihal*, (Islamabad: International Institute of Islamic Thought and Islamic Research Institute, 1999), 24-5.

3.4 Religious Freedom & Protection of property

The Prophet (pbuh) made an agreement with the Christians of Najrān: 'Najrān and its neighbouring areas are in the security of God and His Prophet (pbuh). The property, religions and churches of the inhabitants, as well as all their possessions, whether much or little are in the protection of the Prophet (pbuh).'²²³ During the caliphate of Abū Bakr, a treaty was concluded by Khalid b. Walīd with the people of *al-Hīrah*. It was clearly stipulated that neither a church nor monastery will be destroyed nor a fort where they used to take refuge in case of attack; nor will they be prohibited from ringing bells nor from displaying crosses on Christmas.²²⁴

3.5 Being merciful to non-Muslims

Although 'Umar (the second Caliph) was assassinated by a non-Muslim magian, nevertheless, he instructed his successor, on his deathbed, to be merciful to non-Muslims, to fulfil our (Muslim) covenant with them, to fight for the sake of their protection, and not to overburden them.²²⁵

3.6 Good treatment to Neighbours

The Qur'ān says: "Worship God and join none with Him (in worship); and do good to parents, kinsfolk, orphans, the poor, the neighbour who is of kin (unto you) and *the*

²²³ See, Abū Yūsuf, *Kitāb al-Kharāj*, (Maktaba al-Mishkāt al-Islamiyyah, n.d.), 71-2. See www.almeshkat.net

²²⁴ Ibid, 143-4.

²²⁵ See, Zein al-Abdin, "Rights of Non-Muslims in an Islamic State," *Islamabad Law Review*, 1: 1&2, (2003), 138.

neighbour who is not of kin (Muslims and non-Muslims)...²²⁶ Ibn 'Umar reported that [once], a goat was slaughtered in his house. When he came home he inquired whether the gift was sent to the neighboring Jew or not? He further said: "I have heard the Messenger of God (pbuh) as saying (that) Jibreel (the archangel Gabriel) had been regularly insisting on me to treat my neighbors kindly, so much so that I surmised that the neighbour would be made a recipient of the inheritance."²²⁷

4. Some Clarifications& Reflections regarding Muslims' relations with non-Muslims

4.1 *Walā* (Friendship, Support and Help)

There are some verses of the Qur'ān which are, constantly, used by some Muslim scholars to say that *Walā* for and with non-Muslims is not permissible i.e. Muslims do not have the rights to befriend, protect or support non-Muslims. Among those verses:

"O you who believe! Take not my enemies and your enemies (i.e. disbelievers and polytheist) as friends, showing affection towards them, while they have disbelieved in what has come to you of the truth, and have driven out the Messenger (Muhammad) and yourselves (from your homeland) because you believe in Allah your Lord! If you have come forth to strive in My Cause and to seek My Good Pleasure (don't be-friend them). You show friendship to them in secret, while I am

²²⁶ Qur'ān 4:36. See, al-Qaradāwi, *Fiqh of Muslim Minorities*, 148.

²²⁷ See, Muhammad al-Ghazali, *Muslim's Character*, (Lahore: Talha Publications, 2006), 45.

All Aware of what you conceal and what you reveal. And whosoever of you (Muslims) does that, then, indeed he has gone (far) astray from the Straight Path."²²⁸

According to Qatāda, this verse was revealed because of Hātib ibn Abi Balta'a when he wrote to the Quraysh secretly, through a woman, to inform them regarding the plan of the Prophet (pbuh) regarding them.²²⁹

Moreover, the Qur'ān says:

"O you who believe! Take not the Jews and the Christians as *Auliya* (friends, protectors, helpers); they are but *Auliya* of each other. And if anyone among you takes them as *Auliya*, then surely, he is one among them. Verily, God guides not those people who are wrongdoers."²³⁰

According to 'Atiyah ibn Sa'ad, this verse was revealed in relation to 'Ubāda ibn al-Sāmit and Abdullah ibn Ubay. The former accepted to renounce his '*wilāya*' (friendship and support) for his '*Auliya*' in Mecca while the latter [a well known hypocrite] refused to do so. For al-Tabari, God prohibited all the believers from supporting Jews and Christians against those who believe in God and the Prophet (pbuh). It is also reported that this verse is related to Abū Lubāba ibn abd al-Mundhir.²³¹

²²⁸ Qur'ān 60:1.

²²⁹ Al-Tabari, *Jāmi' al-Bayān*, 23: 309-3.

²³⁰ Qur'ān 5:51.

²³¹ Al-Tabari, *Jāmi' al-Bayān*, 395-404.

Commenting upon some related verses, including these two, al-Qaradāwi says that some people don't give serious thought to the Qur'ānic verses and the Prophetic traditions. For him, they are unmindful of their real sense and their context. They just pick up a word from them and spread this misunderstanding that Islam is biased against non-Muslims. Particularly the following verses are put forth, in which stress has been laid on non-cooperation with the non-Muslims... Maintenance of relations has been prohibited only with those who are religiously and ideologically opposed to the believers and not with the neighbours, comparisons and countrymen... The friendship and protection seeking which has been prohibited is with those who openly demonstrated their opposition to God and His Prophet (pbuh) and continually caused hurt to the Muslims and not with peace-loving non-Muslims...²³²

This is very aptly articulated by al-Qaradāwi, because on the one hand, the Prophet (pbuh) was fighting those non-Muslims who were hostile against Muslims and their religion and on the other, he (pbuh) was having, simultaneously, good relations with other non-Muslims who were not hostile.²³³ Moreover, even after he (pbuh) was forced to leave Mecca, on arriving at Medina he (pbuh) wrote the Constitution of Medina offering protection to Jews and made pacts with Christians. If these verses were revealed against all non-Muslims, it is obvious that the Prophet (pbuh) would have never done that.

²³² See, Yūsuf al-Qaradāwi & A. Azhar Nadvi, *Islam, Muslims and non-Muslims*, (New-Delhi: Adam Publishers & Distributers, 2004), 163-8. See, also, Wahbah al-Zuhaili, "Mawqif al-Islam min ghair al-Muslimīn khārij al-Mujtama' al-Islāmi/ Islam's stance regarding non-Muslims in a non-Islamic milieu," *al-Majma' al-Malaki li buhūth al-Hadāra al-Islamiyyah*, 2: 266, (1989).

²³³ See, for detail, Abū Sulaymān, 109-110.

4.2 *'Illat al-Qitāl* (Ratio/Cause of war)

It is stated that mere disbelief (according to Islam) does not, in itself, legalise the killing (of a non-Muslim). Rather it is the initiation of war from the other side (*muhārabah*) that makes it permissible to kill the one who initiates it (*muhārib*). That is why it is forbidden to kill women, children, old people, the handicapped and others who do not have fighting capabilities.²³⁴ So, it is crystal clear that the cause of war and antagonism against non-Muslims was never infidelity i.e. because of them being non-Muslims; it was rather for the defense of faith. Because if, for instance, infidelity (only because they are not Muslims) would be a cause to fight non-Muslims, then why did the Prophet (pbuh) accept poll tax (*jizyah*) from non-Muslims because accepting *jizyah* from them means that they are totally free to practice their religion. Moreover, why did he (pbuh) release the prisoners of war either for ransom or without ransom because they were released as non-Muslims? Why was the killing of civilians, especially women and children prohibited in war? Women and children, religious personnel, elderly and even farmers or all those who do not participate in hostile activities, shall not be killed during armed conflicts or during captivity thereafter.²³⁵

Furthermore, the Prophet's (pbuh) own good and peaceful relationship with non-Muslims, who were not hostile against Muslims, is a conclusive proof that infidelity *per se* cannot be the cause of war and hostility, its rather open hostility, aggression or attack from the other side. It is stated that the original position of Muslims concerning the Jews of Madinah was also based on the principle of peaceful co-existence. A few months after

²³⁴ See, Burhānuddin al-Marghīnānī, *al-Hidāyah*, (Beirut: Dār Ihyā al-Turāth al-'Arabi, n.d.), 2: 380.

²³⁵ Munir, *Public Int'l Law*, 399-400.

the Prophet (peace be upon him) arrived in Madinah, he concluded a covenant of friendship, alliance and cooperation between the Muhājirun and the Ansār on the one side, and the Jews on the other. The covenant not only recognized the freedom of religion of the Jews and assured their security, but also provided them with complete autonomy, bound with certain duties and obligations, mutually applicable on both Jews and Muslims.²³⁶

4.3 Meccans' Betrayal: *Misinterpretation & Abrogation*

Some verses of the 9th chapter (*surah*) are, also, very often used by some Muslim scholars to say that non-Muslim should be annihilated and not be befriended at all. They often, randomly, take one or two separate piece of verses in isolation to prove their arguments. It is observed that unfortunately the Qur'ānic verses calling for *jihād* are read in isolation and not together with the "peace verse", thus, resulting in misinterpretation. The context of the verse 9:5 is from verse 1-15 of *al-Tawbah*. These verses are about the Meccans who had broken the treaty of *Hudaybiyyah*.²³⁷ The verses were revealed in

²³⁶ The first confrontation between Jews and Muslims took place after the Battle of Badr when some Jews of Banu Qaynuqā' violated the right of a Muslim woman by forcefully exposing her nakedness. This incident developed into fighting between a Muslim passerby and the Jewish assailants in which a Jew and the passerby were killed. Consequently, general fighting, between the clan of the murdered Muslim and Banu Qaynuqā' erupted. When the Prophet (pbuh) was informed of the confrontation, he (pbuh) sent word to Banu Qaynuqā' asking them to stop the attacks and keep the covenant of peace and security. Banu Qaynuqā' responded by ridiculing the Prophet's (pbuh) request, leaving the Muslims no option but to fight.' Safi, *Peace*, 4.

²³⁷ At the end of the 6th year after Hijrah, the Prophet (pbuh) asked his companions to accompany him to Mecca on a pilgrimage. Some 1400 companions followed him and when they reached Hudaybiyyah, a place outside Mecca, they were stopped by the Meccans who told them that they cannot enter Mecca and after envoys were exchanged between the Muslims and the infidels (enemies/non-Muslims), both sides

Medina when the Meccans breached their treaty with the Muslims, and a tribe in their alliance (that is Banu Bakr) attacked the tribe of Banu Khuzā'ah, who were in alliance with the Muslims. Subsequently, the Meccan envoy declared that the treaty of *Hudaibiyyah* as terminated. In other words, the breach of the treaty turned relations from peaceful into hostile. The above verses (that is 9:5 and 9:1-15) were revealed in the background of Meccans betrayal and breach of the treaty. The verses therefore gave the Meccans four months to surrender failing which they were to be attacked by the Muslims. The Meccans surrendered without a fight and these verses were therefore not put into practice.²³⁸

Moreover, jurists are divided as to whether these verses (9:1-15) abrogate other Qur'ānic verses that address the initiation of war. Those who claim that the verses abrogate other verses on the subject, base their judgment on the grounds that these verses embody general rules which cancel any other preceding rules. The abrogation, thus, is not predicated on textual evidence (nass), but rather on reasoning and speculation. It follows that the question of abrogation is a matter of opinion and, as such, is subject to discussion and refutation.²³⁹

signed the famous treaty known as the treaty of Hudaibiyyah (named after the place where it was signed). They agreed not to fight each other for ten years; to remain peaceful and refrain from hostile activities against each other;...and that the Prophet (pbuh) shall come the following year for *umra* but shall not be allowed to perform it this year. Munir, *Public Int'l Law*, 391-2.

²³⁸ Munir, *Public Int'l law*, 375-6.

²³⁹ Safi, *Peace*, 5-6. The word *mushrikeen* in verse 5: "...slay the *mushrikeen* (polytheists) wherever you find them..." in this context indicates specifically the *Pagan Arabs* as can be inferred from the first verse: "A declaration of disavowal from God and His Messenger to those of the *mushrikeen* with whom you contracted a Mutual alliance". The reason for this all-out war against the *Pagan Arabs* was their continuous

4.4 Be-friending& Pleasing non-Muslims

The Qur'ān says:

"Never will the Jews or the Christians be pleased with you (O Prophet) till you follow their religion..."²⁴⁰

This verse is, also, very frequently referred to, by some Muslim scholars, to claim that if the non-Muslims are pleased with Muslims then it, automatically, means that the latter are following the religion of the former. Is this true? The answer is 'No', because it is an undeniable fact that the Prophet (pbuh) had good relationship with non-Muslims who were not hostile against Islam and were peaceful and many non-Muslims were pleased with him for his truthfulness and sincerity. There are many instances regarding the Prophet's (pbuh) good and truthful relationship with non-Muslims.

For example, the Prophet (pbuh) sought and obtained the support of polytheists (non-Muslims), and especially from his uncle Abū Tālib who never rejected the old Arab beliefs. When the persecutions became almost unbearable, he received God's permission to send some of the new Muslims away so that they could secure protection. They went to the Christian leader, al-Najāshi, the Negus, in Abyssinia who accepted them even though he was not a Muslim himself nor was his people. The Prophet (pbuh), himself, subjected to terrible and continuous persecution, was allowed to leave Makka. He had prepared for his departure to Madina for more than a year and eventually left with his

fight against the Muslims to turn them out of Madinah as they had been turned out of Makkah and their infidelity to and disregard for the covenant they had made with the Muslims: "Why you not fight people who violated their oaths, plotted to expel the Messenger, and attacked you first..." Qur'ān 9:13. Ibid.

²⁴⁰ Qur'an 2:120.

close Companion Abū Bakr. In this very crucial situation, for it was a question of life or death, the Prophet (pbuh) chose a very competent and trustworthy polytheist (non-Muslim) 'Abdullah ibn 'Urayqat to guide them... Therefore, it can be seen that the Prophet (pbuh) worked together and dealt with non-Muslims on the basis of trust and competence. This is not only because he (pbuh) and his community were in the minority, but as an expression of a fundamental principle directing relations between Muslims and non-Muslims. Once in Madina, a funeral procession passed near the Prophet and he (pbuh) stood up as a mark of respect. Embarrassed, his Companions said, "O Messenger of God, this is the procession of a Jew!" to which the Prophet (pbuh) firmly answered, "Was he not a human being?"²⁴¹

Furthermore, there were those non-Muslims who entrusted him (pbuh) with their cash and property. Before he (pbuh) left for Medina, he (pbuh) entrusted Ali (the 4th caliph) with the responsibility to return their trusts/deposits to them.²⁴² In addition, the Prophet's (pbuh) another uncle, Abbās, remained by the Prophet's side even though he had not yet converted. The Prophet's (pbuh) trust in him was tremendous, and he did not hesitate to confide in him or have him take part in private meetings involving the future of the community. His remaining a polytheist never prevented the Prophet (pbuh) from showing him the greatest respect and deepest confidence in situations where his very life

²⁴¹ Ramadan, *To be a European*, 168.

²⁴² See, Muhammad al-Ghazālī, *Muslim's Character*, (Damascus: Dār al-Qalam, 1987), Arabic ed., 52-3. See, also Ramadan, *The Messenger*, 77.

was at risk.²⁴³ Do all these imply, God forbids, that the Prophet (pbuh) accepted and followed their religion (*millat*)? The answer is, definitely, 'No!'²⁴⁴

As a general rule, each and every verse of the Qur'ān or even each saying of the Prophet (pbuh) should be visualized and interpreted according to its own context. Moreover, the time-space factor should, also, be considered. Narrow interpretations of the Qur'ān and the Sunnah and/or even excessive use of abrogation may not lead towards the proper understanding and implementation of the Shari'ah.²⁴⁵

4.5 Prohibition of Compulsion in Faith/Religion

The Qur'ān has given clear cut guidance that while inviting others towards Islam; it should be done in a good manner and with wisdom. The Qur'ān says: "Invite (mankind) to the Way of your Lord with wisdom and fair preaching, and argue with them in a way that is better. Truly your Lord knows best who has gone astray from His Path, and He is the Best Aware of those who are guided."²⁴⁶

But the Qur'ān lays down, very clearly, that there is to be no compulsion, whatsoever, in the propagating Islam. No one should be compelled or coerced to accept Islam or punished for not accepting Islam in this world. We find that, in numerous verses in the Qur'ān, compulsion is prohibited: "Let there be no compulsion in Religion: Truth

²⁴³ Ramadan, *The Messenger*, 76.

²⁴⁴ So it is crystal clear that the Jews and Christians referred to in the above verse are those who were particularly antagonistic against Islam and the Muslims, and this can't be used to meant all non-Muslims.

²⁴⁵ See, for detail, Abū Sulaymān, 48-9.

²⁴⁶ Qur'ān 16:125.

stands out clear from error" ²⁴⁷ "So remind them (O Prophet), you are only one who reminds. You are not a dictator over them."²⁴⁸ "And had your Lord willed, all those on earth would have believed. So, will you then compel people till they become believers?"²⁴⁹ Furthermore, it should be noted that the Qur'ān has not prescribed any worldly punishment for rejecting the invitation to Islam: "But if they turn away (from accepting the Islamic message, then know that), We have not sent you to be a watcher over them (i.e. to take care of their deeds and to recompense them). Your duty (O Prophet) is only to convey the message."²⁵⁰

Says al-Rāzi that, 'Compulsion in religion is not permissible in this world, which is a place of exams and trials, as coercion and compulsion in religion destroys the meaning of trials and exams.'²⁵¹ However, Muqātil ibn Sulayman claims that the verse of 'no compulsion in religion' (2:256) has been abrogated. But this claim is only an opinion of Muqātil. The truth is what Qatāda and al-Dihāk have said that this verse has not been abrogated. Ibn Taymiyyah, also, is of this view that this verse has not been abrogated. He says that the majority of our predecessors (early Muslim scholars) are of the view that this verse has not been abrogated and that there is no one who can bring anything proving that the Prophet (pbuh) coerced or compelled anyone to accept Islam.²⁵² It is argued that the claim of abrogation is clearly flawed; for both verses 10:99 and 2:256 (see above)

²⁴⁷ Ibid, 2:256.

²⁴⁸ Ibid, 88:21,22.

²⁴⁹ Qur'ān 10:99.

²⁵⁰ Ibid, 42:48.

²⁵¹ Al-Zuhaili, *Mawqif*, 265.

²⁵² Ibid, 264-5.

embody firm rule (*muhkam*). The first verse 10:99 points out in a clear manner that it had not been God's will that mankind should be forced to believe; and the second verse 2:256 provides more explanation as to why people should not be compelled to accept Islam by indicating that "Truth stands out clear from error."²⁵³

More importantly, it is to be reminded that coercing people to accept Islam had never been a practice of the Prophet (pbuh) and his Companions. He (pbuh) never ordered nor coerced non-Muslim citizens of the Islamic State to embrace Islam. The *Dhimmi*s (non-Muslim citizens of an Islamic state) were free to practice their religion and deal with their life according to their own creed and concept. Once 'Umar ibn 'Abd al-Azīz wrote to Hasan al-Basri for a *fatwa* asking him: 'Why did the Rightly Guided Caliphs (Khulafā al-Rashidūn) leave the *Dhimmi*s free as regard their marriage between unmarriageable persons (*Mahārim*), dealings in alcohol and pork? Hasan al-Basri replied: 'They pay the poll-tax so that they can act freely according to their belief (*aqūidah*) and you (Umar) are to follow your predecessors and not to invent new ways (in dealing with them).'²⁵⁴ It follows that if Islam has ordained Muslims to respect the belief and dealings of non-Muslims in an Islamic State, *a fortiori* it would be a duty on Muslim Minorities, also, to respect their belief and dealings. Islam and the Shari'ah stand for mutual respect and justice and not for coercion and injustice.

²⁵³ Safi, *Peace*, 5.

²⁵⁴ See al-Sarakhsi, *al-Mabsūt*, (Maktaba al-Mishkāt al-Islāmiyyah, n.d), 5:29 at <http://www.almeshkat.net/books/list.php?cat=38>

4.6 The issue of *Abrogation (Naskh)*

There are some Muslim scholars who stand by the claim that the sword verses like 9:5 ordering the Muslims to slay the idolaters when the sacred months are drawn away "wherever you find them," and verse 9:29 asking Muslims to fight the unbelievers until they pay the poll-tax (*jizyah*), have abrogated the peace verses like 2:190 ordering to fight those who fight you but not to transgress and 9:13 ordering to fight back the leaders of unbelief if they break their covenant and thrust at your religion. But says al-Zuhaili that, 'Abrogation of the peace verses are not properly established, as the *principles of abrogation* regarding them have not been fulfilled.'²⁵⁵

Moreover, is there any excessive use of the concept of abrogation of Qur'ānic verses as regards Muslims-non-Muslims relationship? Is the Prophet (pbuh), himself, behind these abrogation claims? Are the principles of Abrogation fulfilled before being applied? Is there any profound analysis by the contemporary Muslim scholars regarding abrogation, or only a blind application of old interpretations and analysis?

It is argued that although jurists and scholars quote the Companions of the Prophet (pbuh) on the abrogation of this or that verse, they do not quote the Prophet (pbuh) himself specifying any verse abrogating any other verse. As a matter of fact, the jurists expended a great deal of effort to prove the very existence of abrogation in the Qur'ān. Although they give great importance to the definition of abrogation, even contemporary scholars pay no attention to the framework of abrogation. What can be deduced from

²⁵⁵ Al-Zuhaili, *Mawqif*, 267.

their lengthy arguments is that their framework is static, that abrogation is a result of an act which occurred once in history, and that Muslims are trapped in a single position decided by an accident during a course of events that took place some time back in history... It is important to put the concept of abrogation back into its proper context so as to limit it basically to abrogation of the messages and *āyāt* (verses) revealed before the message of Islam was complete. The classical interpretation, today, is damaging too many aspects of the multidimensional Islamic character of the Qur'ānic philosophy and does not fit the needs and challenges of the contemporary world...²⁵⁶

²⁵⁶ Abū Sulaymān, 115- 124. 'The Qur'ān is basically composed of verses concerned with general principles, directions, and philosophy. But along with these verses, other verses refer to specific cases, elaborate on them, and provide the Muslims, involved in these cases, with specific directions and orders. Early writers and commentators on the Qur'ān used to overlook the significance of the contexts and the characteristics of these verses when they generalized and abstracted meanings and directions from them. The Verse of the Sword or the Verse of Fighting is a good example at hand. The simple, classic, juristic approach of *naskh* (abrogation) helped the cause of a war already in progress against the big powers of the north before the death of the Prophet (pbuh). As a matter of fact, this approach had the advantage of a direct and simple explanation, this added tremendous moral power to the war efforts against the stubborn, imperial Roman enemy to the north. The Verse of the Sword says: "Wage war on all the idolaters as they are waging war on all of you" (9:36), and the related verse in the same chapter says: "O you who believe! Fight those, of the disbelievers, who are near to you, and let them find, in you, harshness" (9:123). These two verses played, in classical jurisprudence, a central role in determining the Islamic position pertaining to the relations among nations... Upon closer examination, the above verse (the Sword verse) involved a situation where the Muslims were already engaged in an all-out and vicious war against the Quraysh and its allied tribes. The verses instruct the Muslims in the best manner and strategy to deal with this savage enemy in a war that was already in progress. Thus, the verses were dealing with a very specific situation. Their purpose was to complement, not to negate the general rules, attitudes, and moods of the wider framework and scope of Islam in the field of external relationships. In the light of the total Qur'ānic revelation and experience, and considering contemporary needs and challenges, Muslim scholars need to reform their approaches and their methods for understanding and interpreting the Qur'ān and the Islamic message to humankind. All concrete cases and examples should be examined closely and with full appreciation for the time-place dimension, in order to grasp their true significance and emphasis within the value framework revealed throughout the Qur'ān and manifested in the early Islamic experience.' Ibid.

4.7 The *Jizyah* issue (*Poll-Tax*)

One other verse needs clarifications because it is used by some Muslim scholars to say that non-Muslims should be fought and humiliated. Moreover, it is also used to portray that Islam coerces its opponents and humiliates them. The Qur'ān states:

"Fight against those who believe not in the last day nor forbid that God and His Messenger forbade and those who acknowledge not the religion of truth from among the people of the book, *until they pay the jizyah with willing submission, and feel themselves subdued (sāghiroon)*."²⁵⁷

Is this verse to be taken as a general rule against all non-Muslims? The answer is 'No', because this verse is not general in itself, and thus, is not to be applied against all non-Muslims. It is argued that the first outstanding remark about the verse is that it is not all-inclusive, and, thus, does not render a general rule. The verse posits four criteria for those who are to be fought among the "People of the Book": Those who do not believe in God, do not believe in the last day, do not uphold that which is forbidden by God and His Messenger (peace be upon him), and do not acknowledge the religion of truth. The verse, obviously, has not been phrased in a way that would implicate the "People of the Book" as a whole, but in a way that sets aside a particular group of the "People of the Book"... The extension of the application of these criteria to the "People of the Book" as a whole is not based on textual evidence (*nass*) but on reasoning and argumentations; and that the interpretation provided by classical jurists is debatable.²⁵⁸

²⁵⁷ Qur'ān 9:29.

²⁵⁸ Safi, *Peace*, 8-9.

For Abū Sulaymān, the verse in question is part of an address to the early Muslims on the subject of confrontation with the aggressive *mushrikūn* (Polytheists) as well as with those People of the Book who shared the *mushrikūn's* qualities and who, at the time, were fighting the Muslims.²⁵⁹ For him, the jurists simply extended a treatment that was intended for an aggressive and corrupt enemy to include all non-Muslims, regardless of their actual attitudes, and in spite of the universal meaning and basic objective of Islam to guide and serve man. He pursues that to accept this major conclusion of the classical jurists, we have to forget all about the significance of the constitutional agreements of Madinah and Najrān.²⁶⁰

²⁵⁹ "They want to extinguish God's light with their utterances; but God will not allow this to pass, for He has willed to spread His light in all its fullness, however hateful this may be to all who deny the truth. He it is Who has sent forth His Apostle with the task of spreading guidance and the religion of truth, to the end that He may cause it to prevail over all false religions- however hateful this may be to those who ascribe divinity to aught beside God. O you who have attained to faith! Behold, many of the rabbis and monks do indeed wrongfully devour men's possessions and turn others from the path of God." "And wage war on all idolaters as they are waging war on all of you, and know that God is with those who keep their duty unto Him." Qur'ān 9: 32-6

²⁶⁰ Abū Sulaymān, 49-50. "The fundamental Islamic attitude concerning relations among human beings is expressed in the Qur'ān and the Sunnah in terms of love (*tawadūhum*), help (*tuhsinū*), gentleness (*allatī hiya ahsan*), and protection (*dhimmah*). This attitude, however, should not be confused with situations of confrontation, particularly that of the historical confrontation faced by the early Muslims in Arabia. It was the Prophet (pbuh) himself who drew up the honorable agreement of *jizyah* with the friendly Christian tribes of Najrān and before that the Madinan pact with the Jewish tribes of Madinah, and it was the Prophet (pbuh) who waged a war of life and death against some of the same Jewish tribes who sought the destruction of the Muslim community. These confrontations were situational and tactical and do not destroy the bases of Islamic ideology... The issue of all-out war against the pagan Arab tribes unless they turned to Islam cannot be understood as ideological oppression. This decision came after establishment of the Muslim state at Madinah and after the Muslims had undergone about twenty-two years of persecution and war. It is not acceptable to say, as do the traditionalists, that the Prophet (pbuh) was obligated to force them to accept Islam, because the verse concerning the payment of *jizyah* by the People of the Book had not been

4.8 To fight non-Muslims till they say: "There is no God but Allah."

The Prophet said: "I am ordered to fight (*uqātil*) against the people until they say: there is no God but Allah and that Muhammad is God's Messenger..."²⁶¹

It is contended that this saying of the Prophet (pbuh) proves to the fact that Islam was propagated by compelling people through the sword. Moreover, the verb *uqātil* is from '*qatala*' which is usually interpreted as 'to kill' instead of 'to fight'. For al-Zuhaili, 'People' in this *hadith* are, by consensus of the Muslims (*ijma'*), the *Arab polytheists* because they unanimously agreed on killing the Prophet (pbuh). The proof of this is in another narration by al-Nasāi with the word 'polytheists' which goes: "I was ordered to kill polytheists."²⁶² Moreover, this was for the sake of propulsion of evil and not for propagation of Islam i.e. to force them to accept Islam. Furthermore, the Arabic verb '*uqātil*' is from the source *qatala*, the verbal noun of which is *muqātala* on the pattern of *mufā'ala* which requires that something be happened from both sides and in this case its requirement is that fight be occurred from both sides. So the verb used in the *hadith* does not mean 'to kill', it's rather 'to fight' (those who initiate war, as those polytheists

revealed at the time the Prophet (pbuh) gave the order to force the Arab Bedouins to convert to Islam. In fact, the Prophet (pbuh) never tried at any time to convert the Jewish tribes of Madinah or the Arab Christians of Najrān by force. If forced conversion were simply an exercise to show superiority, or a denial of the right of religious freedom, the Prophet (pbuh) had more reason and time to practice this against the Jewish tribe of Madinah; however, he never attempted that policy either before or after issuing his orders regarding the islamization of the Arab tribes.' Ibid, 109-110.

²⁶¹ Sahih Bukhāri, *Kitāb al-Imān, Bāb Fa in Tābū wa Aqāmū al-Salāt wa Ātaw al-Zakāh.*

²⁶² Sunan al-Nasā'i, *Kitāb al-Muhārabah, Bāb Tahrīm al-Dam.*

agreed on killing the Prophet (pbuh)).'²⁶³ It is further stated that the word 'people' here implies the *Pagan Arabs* only... for obviously the word cannot be considered to include all people, since that contradicts the Qur'ānic directions, as well as the practice of the Prophet (pbuh), which permit the 'People of the Book' to maintain their religion.²⁶⁴

4.9 The Outcome

In summary, the issue of whether to be-friend a non-Muslim or not is very problematic because of the 'concept' by some that *infidelity* per se (i.e. just because they are not Muslims) is the cause of war against non-Muslims, that they should be annihilated and their faith be extirpated. However, if infidelity would be a cause of war against non-Muslim, the Prophet (pbuh) would not have had good relations with those non-Muslims who were not hostile and antagonistic against Islam and the Muslims. It is reported in al-Bukhari and Muslim that Asma bint Abu Bakr said to the Prophet (pbuh) that her mother, who was still a non-Muslim, came to her desiring to receive a reward from her. So when Asma asked the Prophet (pbuh) whether she can keep good relation with her mother, the Prophet (pbuh) replied, "Yes, keep good relations with her."

It's the Shari'ah obligation of Muslims to know that peaceful co-existence with non-Muslims is what Islam ordains. Moreover, they should know that along with the life of non-Muslims, their properties also are inviolable. The proof of this is, as mentioned earlier, the agreement of the Prophet (pbuh) with the Christians of Najrān, where he (pbuh) took responsibility to protect their properties. There is no justification in Islam to

²⁶³ Al-Zuhaili, *Mawqif*, 267

²⁶⁴ Safi, *Peace*, 7.

violate their life and confiscate their properties just because they are not Muslims. It follows that robbing, plundering or looting the properties of non-Muslims, either on Islamic soil or outside, is totally forbidden in Islam. It is to be noted that infidelity *per se* is not the cause of war or antagonism, against non-Muslims, in Islam. All these are amply illustrated in the life of the Prophet (pbuh). He (pbuh) had always had good relationship with non-Muslims who were not at all hostile against Islam and the Muslims.

CHAPTER FOUR

MUSLIM MINORITIES' *RAISON D'ETRE*: *IDENTITY, RIGHTS AND DUTIES*

1. Muslim Minorities' *Raison D'etre*

In addition to all that have been said so far, we have, now, reached to the point of deciding whether Muslim Minorities have the right to live in non-Muslim countries, i.e. Muslim Minorities' *raison d'etre* as an integral part of their country of residence, or not.

Among the major impediments regarding this issue, is the *concept/theory* of division of territories in Islam. Those who prohibit residence of Muslims in non-Muslim countries use this *theory* as a ground to say that it was devised to show that permanent relations between Islamic territories and non-Islamic territories were of permanent enmity and hostility and not peace, and that Muslims don't have the right to live in non-Muslim countries.

But as already discussed, at length, in chapter two, this *concept/theory* of division of territories was not devised for the purpose of prohibiting Muslims from residing in non-Muslim countries. Furthermore, it was not designed by the early *fuqahā* to show that there should be permanent enmity and hostile relations between the two rival domains. Instead the *concept/theory* was devised, especially, to discuss the legal positions of the inhabitants in both the territories and for discussing the application of Islamic Law to the inhabitants of the Islamic territory when they lived in it and when they traveled to the non-Muslim territories. In sum, it was designed for the purpose of territorial jurisdiction of the Islamic court to adjudicate cases and infractions which were committed by the citizens of both territories.

More importantly, as already seen, this *concept/theory* does not stem directly from the Qur'ān and Hadith, it was rather the product of *ijtihād* of the classical Muslim jurists to fit their particular epoch and realities. Moreover, besides being a mere product of *ijtihād*, this concept was very controversial among early *fuqahā* themselves i.e. there was no unanimity as regard the implementation of this concept and regarding the residence of Muslims in non-Muslim countries. What seems to be behind the jurists' stances, in prohibiting Muslims residence in non-Muslim countries and imposing *hijra*, to Islamic countries, as an obligation, are, in addition to the above concept, the Qur'ānic verses regarding *hijra* and a number of *ahādīth* of the Prophet (pbuh) regarding the prohibition of residing among non-Muslims and the obligation of *hijra* to Muslim lands. So, in addition to what has been analysed so far, a further analysis of these verses and *ahādīth* feels imperative.

1.1 Hijra

Literally *Hijra* means to leave one place to another.²⁶⁵ In its terminological sense it means to leave a non-Muslim territory towards an Islamic one.²⁶⁶

1.1.1 *Hijra* in the Qur'ān

The Qur'ān states:

"As for those whose souls are taken by the angels (at death) while in a state of injustice against themselves, they will be asked by the angels: "What state were you in?" They will answer: "We were oppressed in the land." And the angels will say: "Was not God's

²⁶⁵ Ibrahim Mustapha, 973.

²⁶⁶ See, Muhammad al-Rāzi, *al-Tafsīr al-Kabīr*, (Beirut: Dār al-Fikr, 1985), 10: 288.

earth large enough for you to migrate?"...But those who are helpless, men, women and children, who can neither contrive a plan nor do they know the way, may well hope for the mercy of God; and God is full of mercy and grace. Whosoever migrates in the cause of God will find many places of refuge and abundance on the earth."²⁶⁷

Commenting on these verses, al-Tabari says that they refer to a specific group of people who converted to Islam but refused to join the Prophet (pbuh) in Medina, preferring to stay in Mecca.²⁶⁸ According to Ibn Kathīr, this verse was revealed regarding all those who were living among the polytheists and were not able to practice their religion. But despite this fact they did not emigrate.²⁶⁹ For al-Baidāwi, this verse prove to the fact that *hijra* is obligatory from that place where one finds it difficult to practice his religion.²⁷⁰

So, what can be seen here is that the cause/'*illat* behind *hijra* (emigration) is the problem of worshipping freely. There is nothing, in this verse, suggesting that this is a general rule. 'The Prophet (pbuh) required them to migrate to Medina because they were unable to worship freely in Mecca. Hence, the operative cause ('*illat al-hukm*) is the inability to practice Islam.²⁷¹

²⁶⁷ Qur'ān 4:97-100.

²⁶⁸ Al-Tabari, *Jāmi' al-Bayān*, 9:102.

²⁶⁹ Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azūm*, (Beirut: Dār al-Ma'rifah, 1983), 1: 542.

²⁷⁰ Al-Qādi al-Baidāwi, *Tafsīr Baidāwi*, (Istanbul, 1988), 2:163.

²⁷¹ Khaled, 147.

1.2 *Hijra* in the Sunnah & Prohibition from Residing with non-Muslims.

Moreover, there are some *ahādith* (sayings of the Prophet (pbuh)) which are used, as ground, to contend that Muslims don't have the right to live in non-Muslim countries and that migration to Muslim lands is obligatory. Here, we will try to see whether these *ahādith* are *sahih* (authentic) or not. However, there are, also, other *ahādith* pointing to the contrary. So, an analysis of these *ahādith* is essential.

It is reported in Abū Dawūd that Mu'āwiyah said: "I heard the Prophet (pbuh) saying: *Hijra* will not come to an end until repentance comes to an end, and repentance will not come to an end until the Sun shall rise from its place of setting (west)."²⁷² Jareer ibn 'Abdullah reported that the Prophet (pbuh) said: "I am innocent of [I disown] any Muslim who lives with the polytheists (non-Muslims)."²⁷³ Samra ibn Jundub reported that the Prophet (pbuh) said: "Do not live with and do not associate with the polytheists. Whoever lives with them and associates with them is like them."²⁷⁴

As far as hadith Mu'āwiyah is concerned, says Khattabi, 'there is something regarding its attribution (transmission), there is in its attribution (*isnād*): Abdul Rahman ibn 'Awf and Abū Hind al-Bajli who are unknown.' So, because of this, the hadith is weak and cannot be used as proof. As for hadith Jareer, Muslim scholars are not unanimous regarding its transmission. Al-Tabrāni has reported it '*Mawsūlan*' (that is the transmission goes till the Prophet), but al-Bukhāri, al-Tirmizī, Abū Dawūd and others have attributed

²⁷² Sunan Abū Dawūd, *Kitāb al-Jihād, Bāb fī al-Hijra Hal Inqata'at*.

²⁷³ Sunan al-Timidhī, *Kitāb al-Siyar, Bāb Mā Jā'a fī Karāhiyat al Maqām Baina Azhur al-Mushrikīn*.

²⁷⁴ Sunan al-Bayhaqī, *Kitāb al-Siyar, Bāb al-Rukhsah fī al-Iqāma bi Dār al-Shirk Liman Yakhāf al Fitnah*.

its transmission up to Qais ibn Abi Hāzim. And for hadith Samra ibn Jundub, there is in its transmission Ishāq ibn Idrees regarding who said Yahya ibn Mu'een: he is a liar and he invents hadith. And said al-Dārquṭni: he is a disowner [denier] of hadith.²⁷⁵

Hadith Jareer

Regarding hadith Jareer (see above), we have seen that while al-Tabrāni has reported that its transmission goes till the Prophet (pbuh), al-Bukhāri, al-Tirmizī, Abū Dawūd and others have attributed its transmission up to Qais only and not up to the Prophet (pbuh). Moreover, this hadith was meant for those Muslims who remained among non-Muslims amidst war where their lives were in danger. This is according to one hadith in al-Tirmizī, "that the Prophet (pbuh) sent one brigade to Khath'am. Some Muslims took refuge in Prostration (to save themselves from being killed), but despite that fact the killing took place and when the Prophet (pbuh) was informed about that he said that he disowned any Muslim who stayed among polytheists", because in such a situation if those Muslims were killed by Muslim soldiers, the Prophet (pbuh) would not be responsible.²⁷⁶ So, it is very clear that this saying of the Prophet (pbuh) was specific for those Muslims who persisted in staying among the polytheists (non-Muslims) in such a delicate situation and if they were killed accidentally even by Muslim soldiers, the Prophet (pbuh) and the Muslims were not to be blamed. This hadith, obviously, was only meant for a specific event and situation and not as a general rule.

²⁷⁵ Audah, 194.

²⁷⁶ Ibid, 195.

Moreover, there is another *hadith* which is reported in al-Nasāī from al-Sa'dī that the Prophet (pbuh) said: "*Hijra* will not end as long as the non-believers (non-Muslims) are fought."²⁷⁷ Inconsistently, however, we find other *ahādith* asserting that *hijra* ended with the conquest of Mecca. It is reported in al-Bukhāri that Ibn 'Abbās said that the Prophet (pbuh) said on the day Mecca was conquered: "No more *hijra*, but *jihād* and intention..."²⁷⁸ Moreover, there is another *hadith* in al-Bukhāri where 'Āishah (the Prophet's wife) was asked about *hijra* by 'Ubaid ibn 'Umair. She ['Aishah] said: "No *hijra* today, as *hijra* was towards God and His Messenger (pbuh), Muslims were escaping with their religion, from persecusion, towards the Prophet of God (pbuh) ... now God has made Islam known (has made Islam public), so wherever a man (person) wants, he (or she) can worship his Lord, but *jihād* and intention."²⁷⁹ So, what is seen here is that one *hadith* is reported in *al-Nasāī* from al-Sa'di saying that *hijra* will not come to an end as long as unbelievers are fought. But, at the same time we have seen two *ahādith* reported in *al-Bukhāri* by Ibn 'Abbās and 'Āishah saying that *hijra* came to an end with the conquest of Mecca. There is, it should be reminded here, a consensus among the Muslims that *Sahih al-Bukhāri* is the most authentic book of compilation of *ahādith*.

Furthermore, there is one another tradition regarding Nu'aim al-Nuhām. When he intended to emigrate, his people Banu 'Adī came to him and ask him to stay with them (in their non-Muslim territory) while practicing his religion freely. They told him that they will protect him against those who want to harm him... He remained there for some time

²⁷⁷ Sunan al-Nasāī, *Kitāb al-Bai'a*, *Bāb Zikr al-Ikhtilāf fi Inqitā' al-Hijra*.

²⁷⁸ *Sahih al-Bukhāri*, *Kitāb al-Jihād wa al-Siyar*, *Bāb La Hijra Ba'da al-Fath*.

²⁷⁹ *Ibid*.

but emigrated later. The Prophet (pbuh) said to him: "Your people were better than mine, they protected you and defended you while mine expelled me and wanted to kill me."²⁸⁰ So, what can be inferred from this tradition is that if a Muslim is safe and protected in a non-Muslim country and can practice his religion freely, then it is permissible for him to stay in that non-Muslim country. It is worthy of pointing out that the Prophet (pbuh) did not rebuke Nu'aim for residing in there.

In addition, there is one another tradition reported in *Sahīh Ibn Hibbān* and *Sunan al-Bayhaqī*, regarding one Companion of the Prophet (pbuh) whose name was Fudayk. He said to the Prophet (pbuh): "O Prophet of God, people are claiming that the one emigrates not is destroyed." The Prophet (pbuh) said: "O Fudayk, establish the prayer, pay the zakah, stay away from sin, and then live in the land of your people wherever you wish."²⁸¹ This Hadith is very clear in pointing to the fact that *per se* there is no prohibition in residing in non-Muslim countries. It is rather when Muslims are not safe and not able to practice their faith freely.

Additionally, scholars of al-Azhar, in their *fatwa*, have stated that if a Muslim can practice and implement his religion safely in a non-Muslim or an atheistic country, his residence in such a place is right. However, if he fears for his religion, honour and

²⁸⁰ Al-Qurtubī, *al-Istī'āb fī Asmā al-Ashāb*, (Beirut: Dār al-Kitāb al-'Arabi, n.d.), 3:527.

²⁸¹ 'Alā ad-Dīn 'Alī ibn Bilbān, *al-Ihsān fī Taqrīb Sahīh ibn Hibbān*, (Beirut: Muassassah al-Risālah, 1988), 11: 203.

property, then it becomes obligatory for him to emigrate to a country where he could find security.²⁸²

1.3 Diversity of opinions among Muslim scholars regarding residing in non-Muslim countries and *Hijra*.

In addition to the above analysis regarding the Qur'ānic verses and *ahādith*, we will now take a look about the views of classical Muslim jurists, themselves, regarding *hijra* and residence in non-Muslim lands. One group of Muslim scholars is of the view that to reside in Muslim lands is prohibited and *hijra* to an Islamic one is obligatory. Among them are the scholars of the Māliki School of thought and Ibn Hazm.²⁸³ However, the majority of the Muslim scholars are of the view that residing in non-Muslim countries is subject to whether a Muslim is safe and free to practice his religion or not. For them if a Muslim is safe there and free to practice his religion, then there is no need to emigrate. Among them are scholars from the Hanafi, Shaf'i and Hanbali Schools of thought.²⁸⁴

A deep analysis of the views of classical Muslim scholars is aptly drawn by one scholar. It is stated that according to the early Hanafi jurist, al-Shaybāni, the duty to migrate to the land of Islam after conversion was abrogated at the time of the Prophet (pbuh). Those who convert but do not migrate to *dār al-Islam* are like nomads who accepted Islam but refused to join the Prophet (pbuh) in Medina.²⁸⁵ Furthermore, among

²⁸² See, Jād al-Haq 'Ali Jād al-Haq, "Fatwa regarding Muslim Minorities in non-Muslim countries," *al-Azhar Magazine*, 6: 618, (1991).

²⁸³ Abū al-Walīd, 4: 171.

²⁸⁴ Al-Jassās, *Ahkām al-Qur'ān*, (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 2: 305.

²⁸⁵ Khaled, 146.

the Māliki jurists, Sahnūn (d. 240/854) reports that Mālik (d. 179/796) strongly disapproved of Muslims traveling to the lands of non-believers for the purposes of trade because they might become subject to the laws of unbelievers.²⁸⁶ The fact remains, however, that the Māliki position, which predominated in al-Andalus and Sicily, was heavily influenced by its own historical experience.²⁸⁷ Moreover, Al-Shāfi'i (d. 204/819-20) chose a very different approach. He argued that even after the establishment of the Islamic state in Medina, 'Abdallah b. 'Abbās (a companion of the Prophet) and others were allowed to reside in Mecca (then a non-Muslim territory). Additionally, the Prophet (pbuh) allowed nomadic tribes that converted to Islam to remain outside the domains of the lands of Islam. The Prophet (pbuh), according to al-Shāfi'i, would not have given these people a choice of residence if it was sinful for them to retain their independence. Consequently, Muslims who convert in non-Muslim lands may reside there unless these Muslims fear enticement away from Islam.²⁸⁸ The late Shafi'i position holds that migration may be recommended, not recommended, or even prohibited, depending on the degree of freedom and autonomy a Muslim enjoys in non-Muslim countries.²⁸⁹ As far as the Hanbalis and Ja'faris are concerned, they argue that if Muslims can practice their religion in non-Muslim territories, provided that they are secure from harm and do not fear the loss of their religion, migration is not obligatory.²⁹⁰ For the Shi'as, early Shi'i jurists reportedly disapproved of Muslims residing among nomads because this was bound to lead to ignorance. Residence in an area in which access to jurists is difficult is

²⁸⁶ Ibid, 146.

²⁸⁷ Ibid, 156.

²⁸⁸ Ibid, 147.

²⁸⁹ Ibid, 163.

²⁹⁰ Ibid, 157.

dangerous to one's level of knowledge. But when someone reportedly asked Ja'far al-Sādiq if he would die an unbeliever if he entered the lands of unbelief, al-Sādiq suggested that he might in fact be able to better serve Islam in non-Muslim territory.²⁹¹

So, what have been seen so far, in addition to chapter two, is that everything that were formulated by early *fuqahā* (classical jurists) were based on their own judgment and understanding extrapolated from the Qur'an and Hadith to fit the ground realities of their times and epochs, which sometimes were political in nature and/or social and/or religious.²⁹² There is nothing divine behind this *concept/theory* of division of territories in Islam; it was, as already seen, merely a product of *ijtihād*.

²⁹¹ Ibid, 148.

²⁹² 'Early jurists recommended that a Muslim should reside among Muslims in a place in which religion could be learned and practiced. But those who chose to reside in non-Muslim territory were not necessarily considered to be immoral or un-Islamic. Subsequently, historical circumstances forced most Māliki jurists to adopt an absolute and uncompromising position. As Muslim territory came under siege and vast Muslim populations were threatened, most Māliki jurists responded by demanding that all Muslims make a clear and decisive choice in favor of Muslim lands. Theological doctrines combined with political polemics because, for most Malikis, choosing to reside in non-Muslim lands was a religious and ethical decision as much as a political one. Muslim lands, Islam and a moral life, became inseparable. Making the political decision to favor non-Muslim territory is the ultimate unethical act. Hanbali and Shi'i jurists, who were not involved in this particular dilemma to the same extent as the Mālikis, adopted a compromise position. They conceded that a good, ethical Muslim might prefer to reside among non-Muslims. But lest this admission be understood as a political concession, Hanbali jurists, in particular, maintained the superiority of Muslim territory even under the worst of conditions. Hanafi and Shafi'i jurists in the seventh/thirteenth century confronted a harsh reality similar to the one confronted by the Mālikis, as Muslim territory came under siege by Christians and Mongols. Unlike the Mālikis, the Hanafis and Shafi'is predominated in areas that were closer to the heartland of Islamic territory, and their response was more sophisticated and discriminating. They distinguished between Islam and the territory of Islam. Islam could exist in non-Muslim territory and, at times, it is morally imperative for Muslims to maintain Islam in foreign lands. But they refused to admit that territory conquered by non-Muslims necessarily becomes un-Islamic. As befits great legal minds, their response was, 'it depends.' Ibid, 163.

In addition, several jurists extended their discussions of *hijra* beyond the dichotomy between Islamic territory and non-Islamic one. For them, a Muslim should leave any territory in which corruption is widespread or in which a Muslim is not physically secure. Therefore, one should migrate to places where one can attain greater religious fulfillment and physical safety. This view may have been a natural extension of the early reports regarding the Muslim emigrants to Abyssinia who reportedly fled from oppression in Mecca, and of reports regarding the nomads of Arabia.²⁹³ So if this, also, is taken into consideration, then many non-Muslim countries are, nowadays, safer to reside in and to practice one's faith than some Islamic countries.

An illusion, a myth

Last but not least, to emigrate *en masse* today, in this era of ours, is not realizable. If ever Muslim Minorities, in general, decide to emigrate to Islamic countries, anyone with a sane mind can understand that this is not possible in today's world. Considering the geo-political and socio-economic realities of this era, this is not something which is only impossible, but mere illusion, imaginary and mythical. So it automatically follows that we are in need of new *ijtihad* to suit our own geo-political realities within the framework of the Shari'ah.

²⁹³ Ibid, 152.

2. Citizenship & Identity ²⁹⁴

After what have been discussed so far, it is clear that Muslims have the right to reside in a non-Muslim country where they are secure and free to practice their faith. It follows that to live in a country, one should be an integral part of it i.e. a full citizen of that country. So when we are talking about being a full citizen of one's country, it is being a full one and not a secondary or alienated one, i.e. being a full citizen by enjoying the status of a full member of that country with no variance in degree as compare to other communities of that country.

2.1 Characteristics of a Citizen

Being a citizen of one's country is being loyal, sincere and law abiding. Besides, there should be full social cooperation for the betterment and advancement of that country. Moreover, there should be full political participation and sincere willingness to ensure stability and progress of that country. Furthermore, there should be profound and sincere respect for fellow citizens etc. All these characteristics are inherent in a Muslim's very own faith. The Qur'ān and the Sunnah are replete with responsibilities, duties and rights for a Muslim, to be observed anywhere including his/her own country and vis-à-vis Muslims and non-Muslims alike. In addition to all previously said, some more of them are as follows:

²⁹⁴ 'Citizenship' as the concept is understood today, was unknown in the heyday of Islamic fiqh. Instead, there were cultural and political affiliations which were often based on ideological and traditional loyalties. Interreligious and cultural interactions were undertaken with reserve and caution, mixed with varying of tolerance. Europe had the Spanish inquisition while Muslims treated non-Muslims as *ahl al-dhimmah*. There were no established criteria, such as birth, domicile or marriage for gaining citizenship in another country. Common beliefs and culture were sufficient to confer 'citizenship' on new arrivals... See, al-Alwāni, *Towards*, p. 10.

1. *The right to co-operate*

The Qur'ān says: "Co-operate with one another for virtue and heedfulness and do not co-operate with one another for the purpose of vice and aggression."²⁹⁵

2. *Respecting other's wealth*

The Qur'ān says: "Do not devour one another's wealth by false and illegal means."²⁹⁶

3. *The Protection of Honour*

The Qur'ān states:

- A. O you who believe, do not let one group of people make fun of another group.
- B. Do not defame one another.
- C. Do not insult by using nicknames.
- D. And do not backbite or speak ill of one another.²⁹⁷

4. *The Sanctity of Private life and no undue encroachment on the privacy of others*

The Qur'ān has laid down:

- A. "Do not spy on one another."²⁹⁸

²⁹⁵ Qur'ān 5:2.

²⁹⁶ Ibid, 2:188.

²⁹⁷ Ibid, 49:11-12.

²⁹⁸ Ibid, 49:12.

- B. "Do not enter any houses except your own homes unless you are sure of their occupants' consent."²⁹⁹

5. Justice and Truthfulness

The Qur'ān says: "Whenever you judge between people, you should judge with justice."³⁰⁰ "O you who believe! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor; for God can best protect both. Follow not the lusts (of your heart), lest you swerve, and you distort (justice) or decline to do justice, verily God is well acquainted with all that you do."³⁰¹ The Qur'ān says: "O you who have faith! Fear God and be with the truthful people."³⁰²

6. Ordain what is good and forbid what is evil

The Qur'ān says: "They enjoin what is proper and forbid what is improper."³⁰³ "Let there be a community among you who will invite (people) towards (doing) good, command what is proper and forbid what is improper, those will be prosperous."³⁰⁴ And "You are the best community which has been brought forth for mankind. You command what is proper and forbid what is improper and you believe in God."³⁰⁵

²⁹⁹ Qur'ān 24:27.

³⁰⁰ Ibid, 4:58.

³⁰¹ Ibid, 4:135.

³⁰² Ibid, 9:119.

³⁰³ Ibid, 9:71.

³⁰⁴ Ibid, 3:104.

³⁰⁵ Ibid, 3:110.

7. Assistance of the needy

The Qur'ān says: "And in their wealth there is acknowledged right for the needy and the destitute."³⁰⁶

8. Respect of Religious Sentiments of others

The Qur'ān says: "Do not abuse those they appeal (worship) instead of Allah..."³⁰⁷
"Do not argue with the People of the Book unless it is in the politest manner."³⁰⁸

9. Freedom of Conscience and Conviction

The Qur'ān states: "Let there be no coercion in Religion (in the matter of faith)..."³⁰⁹

10. Participation in matters of the state, religion etc through consultation

The Qur'ān says: "And their affairs are (conducted) through consultation among themselves."³¹⁰ Abū Hurairah reports that, "I have never seen anyone consulting his companions more than the Messenger of God."³¹¹ "Ali ibn Abi Talib reports that the Prophet said: "The one who is consulted is like a trustee; whenever he is consulted he should exactly advise to adopt course as he would have adopted for himself."³¹² Baihaqi

³⁰⁶ Ibid, 51:19.

³⁰⁷ Ibid, 6:108.

³⁰⁸ Ibid, 29:46.

³⁰⁹ Ibid, 2:256.

³¹⁰ Ibid, 42:38.

³¹¹ See, Mahmood Ahmad Ghāzi, *State and Legislation in Islam*, (Islamabad: Shari'ah Academy, International Islamic University, 2006), 142-5.

³¹² Ibid, 144.

reports on the authority of Ibn 'Umar that the Prophet has said: "Whosoever desires to do something and takes a decision after due consultation he shall be guided towards the best of ways."³¹³

11. *Deception in Trade and Business*

The Prophet (pbuh) said: "It is not lawful for a Muslim to sell such a commodity that has a defect, except that the defect is shown to the buyer."³¹⁴ "The buyers and sellers are free till they do not separate and if they have acted with honesty and have explained the defects of commodities then God will bless them with prosperity. And if both of them tried to deal dishonestly and tried to hide defects then it is likely that they may get some profit but the prosperity will vanish from their trade."³¹⁵

12. *Best moral character*

The Prophet (pbuh) was asked: "Which Muslim has the perfect faith?" He (pbuh) answered: "He who has the best moral character."³¹⁶ Another tradition has it: "They (the Companions) asked, "What is the best thing given to man?" He replied: "Best moral character."³¹⁷

³¹³ Ibid, 145.

³¹⁴ Al-Ghazāli, *Muslim's Character*, 58.

³¹⁵ Ibid, 57-8.

³¹⁶ Ibid, 15.

³¹⁷ Ibid.

13. *Respect for Woman*

The *Qur'ān* says:

"And among His (God) signs is this, that He created for you wives from among yourselves, that you may dwell in tranquility with them, and He has put between you affection (love) and mercy."³¹⁸ "But the believers who do good works, whether men or women, shall enter the gardens of Paradise, they shall not suffer injustice."³¹⁹ "And We have enjoined on man (to be dutiful and good) to his parents. His mother bore him in weakness and hardship upon weakness and hardship, and his weaning is in two years— Give thanks to Me and to your parents. Unto Me is your final destination."³²⁰

In the Sunnah of the Prophet (pbuh)

It is reported that the Prophet said: "Fear God in respect of women."³²¹ "Treat women well, for they have been created from a rib. The rib is most curved in its upper part, so that if you try to straighten it out, it will break, but if you leave it as it is, it will remain intact. Therefore, follow my advice on giving women fair treatment."³²² "Only a man of noble character will honor women, and only a man of base intentions will dishonor them."³²³ "The most perfect man of religion is one who excels in character. The best among you is he who gives the best treatment to his womenfolk."³²⁴ In the time of the Prophet, women used to attend the night prayer, and sometimes they used to take their

³¹⁸ Qur'ān 30:21

³¹⁹ Ibid, 4:124.

³²⁰ Ibid, 31:14.

³²¹ See, Wahiduddin Khan (Maulana), *Woman in Islamic Shari'ah*, Tr. Farida Khanam, (Goodword Books, New Delhi, 2002), 18.

³²² Ibid.

³²³ Ibid, 17.

³²⁴ Ibid.

small children along with them. The Prophet used to pay special attention to strict and full observance of prayer. Yet so great was his consideration for women that sometimes, when he heard babies crying, he would cut short the prayer. He once said: "Sometimes I stand up for prayer, my intention being to make it a long one. Then I hear a baby crying. So I cut short the prayer, not wanting to make things difficult for the child's mother."³²⁵ In his Last Sermon the Prophet said: "O men, to you a right belongs with respect to your women and to your women a right with respect to you...Do treat your women well and be kind to them, for they are your partners and committed helpers. Remember that you have taken them as your wives and enjoyed their flesh only under God's trust and with His permission..."³²⁶ "A man asked the Prophet (pbuh) 'Who deserves my companionship most?' The Prophet (pbuh) replied 'your mother.' He asked 'And who next?' The Prophet (pbuh) replied 'your mother'. He asked 'And who next?' The Prophet (pbuh) replied 'your mother.' He asked 'And who next?' The Prophet replied 'then your father.'³²⁷

These are some of the qualities which are inherent in a Muslim's faith and which he/she is bound to observe, by the very virtue of him/her being a Muslim, in his/her dealings with others. So, being a Muslim is, in itself, a guarantee for being a good person, a true patriot and being loyal and sincere towards his/her fellow citizens and country.

³²⁵ Ibid, p 37.

³²⁶ Moten, 73-4.

³²⁷ Abdel Rahim Omran, *Family Planning in the Legacy of Islam*, (London: Routledge, 1992), 30.

3. The Application of *Hudood* Punishments in non-Muslim Countries

To what extent is Islamic law applicable to Muslims in non-Islamic countries? The permissibility of residing in non-Islamic countries and the extent to which Islamic Law is applicable to Muslims are interrelated issues. What if a Muslim has committed adultery (zina) or theft or has consumed alcohol etc, should he/she be punished according to the Islamic capital punishments? The issue is, also, related to whether Islamic courts have extraterritorial jurisdiction to punish crimes committed in non-Muslim countries?

For al-Shāfi'i and Mālik, *Hadd* is applicable in any place. Contrariwise, says Abū Hanifah, 'There is neither Hadd (capital punishment) nor Qisās (retaliation) in non-Muslim territory.'³²⁸ The Shāfi'i, Hanbali and Māliki jurists often make similar statements, that is, Islamic Law applies to Muslims with equal force wherever their residence. According to most schools, not only does Islamic Law apply as a moral imperative, but also the Islamic polity has enforcement jurisdiction. Consequently, if a Muslim fornicates, steals, murders, consumes alcohol or transgresses any other Islamic norm, the Islamic polity has extraterritorial jurisdiction over the infraction and that Muslim may be punished by the Islamic polity although the offense did not occur in *dār al-Islam* (Islamic territory). However, the Hanafis, for whom in the case of most infractions, the prohibitions of Islamic law apply without distinction. Hence adultery, theft, murder, defamation and the consumption of alcohol are prohibited in *dār al-harb* (non-Islamic territory) as well as *dār al-Islam*. But this prohibition is merely a moral imperative; a person committing any of these offenses in a non-Muslim territory is liable

³²⁸ See, Abdullah ibn Ahmad ibn Muhammad ibn Qudāmah, *al-Mughni*, (Saudi Arabia, 1999), 13: 172-3.

only before God in the Hereafter. Islamic courts have no jurisdiction over crimes committed outside of Islamic territory and consequently may not punish extraterritorial crimes.³²⁹

So, as seen from the above, for Abū Hanīfa, contrary to other *Imāms* (founders of schools of thought), *hudood* is not applicable in a non-Islamic territory.³³⁰ The Hanafis

³²⁹ Khaled, 173. "The Hanafi School distinguishes between two perspectives of the Shari'ah (as regard the division of the world into *dār al-Islam* and *dār al-harb*). The first one, which can be termed as the pietistic one, is that since the main sanction behind the commands of the Shari'ah is the love of God and seeking to ward off His displeasure, and the full reward for adherence to, and the full punishment for violation of God's command is that which will be awarded in the hereafter, the law, in the precepts of the Shari'ah wherever he might be. If he violates a rule of the Shari'ah, he will be responsible for it before God on the day of judgement. According to the Hanafi jurists the rights of those Muslims who live outside the territorial limits of *dār al-Islam* will not be enforced by the courts in the Islamic state because these courts can exercise their jurisdiction only over the territory under the effective control of the Imam (ruler) of *dār al-Islam*. If the cause of legal action arises outside that territory they cannot take cognizance of it. This raises the issue of the territorial jurisdiction of the courts in the Islamic state, which we may call the *municipal law perspective* of the Islamic Shari'ah. According to the founder of the Hanafi school, Abu Hanifah al-Nu'man ibn Thabit (d. 150/767) and his well known disciple, Muhammad ibn al-Hasan al-Shaybāni (d. 189/805), Muslim courts have no jurisdiction to try a case if the cause of action arises beyond the territorial limits of the Islamic state. In other words, the courts cannot enforce the rights of a citizen beyond the territorial limits of the Islamic state. As opposed to the Hanafis, the generality of Shafe'i, Maliki and the Hanbalis, is of the view that Islamic Law knows no territorial limits. Hence, if a Muslim violates a rule of the Shari'ah he will be liable for punishment not only in the hereafter, but also by the courts of the Islamic state in this world. Similarly, if a non-Muslim resident of a non-Islamic state violates the rights of any Muslim, according to the opinion of these jurists, the wrongdoer can be punished by the courts of the Islamic state if he is captured by Muslims or if he enters the Islamic state. In other words, these jurists do not subscribe to the principle of territorial jurisdiction. Mushtāq, *The Notion*, 7-10.

³³⁰ This divergence of views among the Hanafi jurists on the one hand, and the Māliki, Shafe'i and the Hanbali jurists on the other, in Islamic Jurisprudence, fall under the category of '*Ta'ārud al-'Ām wa'l Khās/Conflict of the General and the Specific*'. For the Shafe'is and the Malikis, anyone who commits zina/adultery, whether be it in an Islamic territory or a non-Islamic one, is to be punished by *Hadd* (Capital

(the followers of the school of thought of Abū Hanifa) agree, in the same degree as those from other schools of thought (Mālikis, Shafi'is, Hanbalis) that adultery, theft, murder, defamation, the consumption of alcohol, etc. are *harām* (illegal). This is very clear, there is no doubt among Muslims that these are sins. But, what they are simply saying is that Muslims in non-Muslim countries, who commit these infractions, are going to be accountable before God and the capital punishments of Islam (*hudood*) will not be applicable in non-Islamic countries. For the Hanafis, contrary to the other Schools of thought, it is a matter of territorial jurisdiction i.e. the Islamic courts do not have the authority (*wilāyah*) to try infractions which arise outside the Islamic territory. So it can be concluded that, according to the Hanafis, *hudood* is not applicable in non-Muslim countries where the authority (*wilāyah*) for its enforcement is not in Muslims' hand.³³¹

3.1 Extension of Muslim Personal Law on Muslims living in non-Muslim Countries.

Drafting a Personal Law for Muslims, in a non-Muslim country, does not in anyway undermine the supremacy of the Constitution of that country. The Muslim Personal Law Act will be subordinate to the Constitution and the Constitution will remain supreme.

punishment). They say that the Qur'ānic verse, in this regard, is general. The Qur'ān says: "The Fornicatress and the Fornicator flog each of them with a hundred stripes." (24:2). Contrariwise, the Hanafis are of the opinion that *Hadd* punishment will not be implemented on any one who commits any infractions which is normally punished by *Hadd*, if that infraction is committed in a non-Islamic territory. The reason they advances is that this verse is particularized by this hadith (*Takhsīs al-Āyah bi hādha'l-Hadith*), which goes: "*Hudood* are not implemented in a non-Islamic territory." See, for detail, Mustaphā Sa'eed Al-Khann, *Athar al-ikhtilāf fī Qawā'id al-Usūliyyah fī Ikhtilāf al-Fuqahā*, (Beirut: Muassassah al-Risālah, 1985), 226-7. (Originally submitted as a Ph.D thesis at Al-Azhar University)

³³¹ In my opinion, *Hudood* is not applicable in non-Muslim countries due to lack of Islamic *wilāyah* for its enforcement.

This is amply evidenced by the implementation of 'Muslim Personal Laws' in several countries like India, Singapore, England, etc. A Muslim Personal Law Act is not and has never been meant to Islamize a non-Muslim country. It is only meant to facilitate Muslims to govern their life according to the Shari'ah regarding issues which, normally, are not in line with non-Muslim laws.

A Muslim Personal Law Act can be drafted regarding marriage, divorce, heritance, domestic violence, and financial disputes etc, in other words for community/social affairs of the people.. A living example is the adoption of Shari'ah law in Britain in 2008, under the Arbitration Act, where Shari'ah councils are working *en étroite* collaboration with civil courts and Shari'ah judges can adjudicate Muslim civil cases regarding divorce, financial disputes, domestic violence etc. Five Shari'ah courts are enforceable with full power of the judicial system, through county courts, in London, Birmingham, Bradford, Manchester (Nuneaton) and Warwickshire.³³²

Drafting such an Act in a manner that it does not clash with the law of the land is not, in anyway, going to compromise the objectives of the Shari'ah. Islam is such a complete code of life which adapts itself anywhere, anytime and under any circumstances. Moreover, it is of paramount importance that there is no clash between that Muslim Personal Law Act and the Constitution. The Shari'ah, by virtue of its being a complete *mode de vie*, sees no problem with that. Each and every hurdle and impediment, coming in the way of compatibility between the Constitution and the Muslim Personal Law Act, can be figured out and removed, keeping in view the Objectives of the Shari'ah,

³³² See www.timesonline.co.uk/tol/news/uk/crime/article4749183.ece

through *ijtihād* in particular and the principles of Islamic jurisprudence in general. But there should be nothing which compromises the spirit of the Shari'ah and everything should be within the framework of the Qur'ān and the Sunnah.

A Sugestion

In Islam, the two original sources that Muslims have are the Qur'ān and the Sunnah. Interpretations that are extrapolated from them, by Muslim scholars, are called *fiqh*. All the different schools of thought that we have are simply schools of interpretations of the Shari'ah and not the original sources. Moreover, the interpretations of the founders of schools of thought (*Imāms*) are, also, derived rulings from the Qur'ān and the Sunnah, regarding different issues facing the Muslims. So, while drafting the Muslim Personal Law Act, it wouldn't be proper to restrain the drafting to one or two schools of thought. Moreover, Muslims should know that there is nothing in the Qur'ān and the Sunnah mandating the following of any school of thought (*madhhab*) or implementing their interpretations. All the works of the *Imāms* are to be taken, with all due respect, as guidance. In addition to their works, Muslim scholars should exert their *ijtihād* to find new solutions for new matters as, when and where needed. It should be noted that it's only the Qur'ān and the Sunnah which are *sacred* and uphold the final words. Only one school of thought can never embody the solutions for all the problems facing the Muslims.

One example that can be cited, here, is the refusal of [Imām] Mālik (the founder of the Māliki school of thought) to the Caliph al-Mansūr, when the latter wanted to impose

the former's *al-Muwatta* as the only official *fiqh authority* (i.e. his *madhhab*) to be followed. Mālik rejected that suggestion saying that people [in various parts of the Muslim lands] already possess a body of knowledge based on reports they have received and sayings of the Prophet (pbuh) they have heard prior to this...'³³³

4. Politics

The word 'politics' is derived from the Greek word polis, which means city or state. The definitions of the Political Science or Politics suggested by prominent political scientists of nineteenth and twentieth centuries relate, in one way or the other, to the state.³³⁴

There are many Muslims in non-Muslim countries who believe that politics is something which is not good and should be shunned. They believe that religion should not be mixed with politics. Thus, they prefer to confine themselves to religious and social matters. This is, it can be argued, due to a total misunderstanding of what Islam is and what the Shari'ah stands for. They still nurture this misconception that politics is something alien to Islam. An important incident is worth mentioning, here, regarding one Muslim scholar, Sheikh 'Ali 'Abd al-Rāziq who graduated from al-Azhar University. He, in his work, 'Islam and the Principles of Government', wrote that politics and religion are two separate things in Islam and that the Prophet (pbuh) was a Messenger purely for religious message etc. The punishment meted to him was very severe so much so that the

³³³ See, Taha Jabir al-Alwāni, *The Ethics of Disageement in Islam*, Tr. Abdul Wahid Hamid, (Herndon: The International Institute of Islamic Thought, 1994), 92-3.

³³⁴ See, Mahmood Ghāzi, , 2.

Grand Council of al-Azhar stripped him of his al-Azhar degree and unceremoniously terminated the judicial appointment he held.³³⁵

Politics is central to Islam. There is no such concept as 'separation of religion and politics' in Islam. The 'concept' is a Christian doctrine and not an Islamic one. The New Testament...divides life into two parts: one for God, or religion, the other for Caesar, or the state: 'Render to Caesar things which belong to Caesar, and render unto God things which belong to God.' (Mathew: Chapter 22).³³⁶ The fusion of religion and politics cannot be put aside as it is the dictate of Islam. The choice between the Creator and Caesar simply does not arise.... Religion and politics are not 'two sides of a single coin in Islam.'³³⁷

There is, also, a misconception regarding why Islam does not differentiate between spirituality and temporal. Some people are afraid of the word 'spirituality'. There is a 'phobia' rampant within many people's mind regarding this 'spirituality' when it is associated with politics that it is meant for the Islamization of everything including a non-Islamic country. This is something which is not accurate. 'Spirituality' means, here, 'check and balance'. To check one's conscience and innerself, to be truthful, sincere, humble etc. In other words, spirituality is morality. Moreover, to ordain what is good and forbid what is not is controlled by one's spiritual strength. To fight for the poor and destitute is also

³³⁵ Moten, 25-6.

³³⁶ Al-Qaradāwi, *Islamic Awakening*, 86. See, also, Shibli No'mani & Syed Suleiman Nadvi, *Sīratun Nabi*, Eng. Ed., (Karachi: Dārul Ishā'at, 2003), 7:67.

³³⁷ Moten, 21.

controlled by one's innerself. If one's innerself is clean, this will dictate his/her actions. Besides, one should not forget that governance is a trust and should be discharged of very sincerely and responsibly. All these characteristics are embedded in the very faith of a Muslim. A Muslim is bound to be an integral part of the system in which he/she is living. Muslim Minorities should participate fully, sincerely and truthfully, as far as there is nothing being legislated against Islam, in the political system of their country of residence to contribute towards its aggrandisement, progress and stability.³³⁸ The example of the Prophet Yūsuf (Joseph) is very supportive and illustrative of this responsibility. The Qur'ān states:

And the King said: "Bring him to me so that I may attach him to my person. And when he had spoken to him, (the king) said: "Verily, this day, you are with us high in rank and fully trusted." Yūsuf (Joseph) said: "Place me in charge over the storehouses of the land; I will indeed be a good and knowing keeper."³³⁹

Moreover, we have seen the Prophet's (pbuh) willingness, long after being a Prophet of God, to participate to another 'Pact of Chivalry' of the non-Muslims which took place before the Prophethood. The Prophet (pbuh) expressed his satisfaction regarding sitting with those non-Muslims to decide people's affairs.

³³⁸ The concept of 'doing politics in Islam' *per se* is not meant for islamising a non-Islamic country.

³³⁹ Qur'ān 12:54 -55.

4.1 A Misconception, a Clarification: "*inil-hukmu illa lillāh*"

There is one opinion who says that Muslims should not participate in non-Muslims' parliament because, besides being a non-Muslim's one, it is a place where law is being legislated. For them human beings cannot legislate law, as this right belongs to God alone. They cite the Qur'ānic verse: "*inil-hukmu illa lillāh*": The judgement/decision belongs to/rests with God alone."

4.1.1 Origin of this Concept³⁴⁰

It is worth reminding that this concept so derived from this verse was brought forth by the *Khawārij*³⁴¹ (Khārijites/Dissenters) who rebelled against the fourth Caliph 'Ali. Among the bones of contention between them and the Caliph was that he made men judges in

³⁴⁰ See, for detail, ibn al-Qayyim al-Jawzee, *Talbīs Iblīs/The Devil's Deception*, Tr. Bilal Philips, (New Delhi: Millat Book Centre, n.d), 28-9.

³⁴¹ 'Extremism reaches its utmost limit when a single group deprives all people of the right to safety and protection, and instead sanctions their killing and the confiscation of their lives and property. This, of course, occurs when an extremist holds all people— except those in his group— to be *Kuffār* (disbelievers). This is the trap into which the *Khawārij* fell during the dawn of Islam, although they were known for their strict observance of religious duties such as prayer, fasts and recitation of the Qur'ān. However, their thinking rather than their conscience was distorted and corrupted. Hence they were so infatuated by their belief and behaviour that they, unintentionally, deviated from the right path. The Prophet (pbuh) described the devotion of such people by saying: "One of you would hold insignificant his own prayer compared with their (*Khawārij*) prayer, and his *qiyām* (supererogatory prayer/devotion) compared with their *qiyām*, his recitation [of the Qur'ān] compared with their recitation." But the Prophet (pbuh) said of them: "They would recite the Qur'ān but it would not go beyond their throat, and they pass through religion without a mark." This means that they would slip out of religion as an arrow would slip out of its bow... See al-Qaradāwi, *Islamic Awakening*, 43-6.

God's affairs even though God has said, 'Judgment belongs only to God.'³⁴² This contention was refuted by Ibn 'Abbās on behalf of the Caliph. Ibn 'Abbās put, in front of them, two verses of the Qur'ān which prove that God has given men the permission to be a judge and an arbitrator in His affairs. The Qur'ān says: "O Believers! Do not kill game in a state of *ihram* (pilgrim dress). If any of you does so intentionally, the compensation is the sacrifice of a domestic animal similar to it near the Ka'bah according to the judgement of two just men from among you."³⁴³ Moreover, the Qur'ān states: "If you fear discord between them, appoint a judge from his family and one from hers to arbitrate. If they wish to reconcile, God will make it happen between them. For God is all-knowing, whose expertise knows no bounds."³⁴⁴

In the former verse, we see that God has allowed men to judge/arbitrate when a rabbit is killed within the boundary of the Sacred House and in the latter, when there is a dispute between a husband and his wife, God has allowed the appointment of one person from the husband's side and one from the wife's side to help settle the matter through arbitration. Furthermore, what should be borne in mind is that man is the vicegerency of

³⁴² "On the basis of strange "religious" notions and delusions, they fought the great Muslim Ali ibn Abū Tālib, although they were among his followers and soldiers. The main reason for their disagreement with 'Ali was his decision to accept arbitration to settle his differences with Mu'āwiyah ibn Abū Sufyān in order to maintain the unit of his army and to save the lives of Muslims on both sides. The *Khawārij*, however, rejected any arbitration because of their misunderstanding and misinterpretation of the Qur'ānic verse: "...the command is for none but God" (12:40), and accused 'Ali, one of the first Muslims to give in the cause of Islam his essential support, of deviation. 'Ali replied to their citing of the above verse with his famous saying: "A word of truth twisted to serve *bātil* (falsehood)." Al-Qaradāwi, *Islamic Awakening*, 67.

³⁴³ Qur'an 5:95.

³⁴⁴ Ibid, 4:35.

God on earth. For Mahmood Ghāzi, according to the Qur'ān, *Hukm* (authority to rule, authority to decide and judge) and *Mulk* (Kingdom, ruler-ship or Kingship) are the property of God alone and no one else is associated with Him in these Divine Attributes. This is clearly, repeatedly and unequivocally laid down in so many verses of the Qur'an.³⁴⁵ Side by side with these verses there is another category of verses which show that God bestows this *Hukm* and *Mulk* to his Messengers because the Messengers of God are the only divine representatives unto mankind who have the sole authority of expressing the divine will in their sayings and demonstrating it through their deeds and actions.³⁴⁶ Therefore the authority exercised by the Prophet (pbuh) is, in fact, the authority of God.³⁴⁷ ...There is a third category of verses which show that God sometimes awards this *Mulk* and *Hukm* to the Muslim *Ummah* in its capacity as the collective successor of His Messengers. The Qur'ān, for example, refers to the *Ummah* raised by Prophet Ibrahim and was awarded a great *Mulk* by the Almighty.³⁴⁸ It refers to the *Hukm* given to Bani Isrā'īl along with the Book.³⁴⁹ ...The community or the *Ummah*, thus, assumes this authority as the trustee of the divine mandate.³⁵⁰

Regarding the abovementioned concept, in itself, it is not a part of the Muslims' creed, as it emanated from those *Khawārij* who rebelled against 'Ali (the forth Caliph),

³⁴⁵ Ibid, 6:57, 12:40, 12:67, 28:70, 28:78, 3:189, 5:17-8, 17:111, 25:2, 35:13, 67:1.

³⁴⁶ Qur'an 5:42, 4:105, 39:46, 24:48, 24:51, 6:89, 19:12, 12:22, 21:74, 21:79, 26:21, 26:21, 26:83, 28:14, for *Mulk* awarded to Messengers 2:251, 12:101).

³⁴⁷ Ibid, 4:80.

³⁴⁸ Ibid, 4:54.

³⁴⁹ Ibid, 45:16.

³⁵⁰ Ghāzi, 102-4.

ex-communicating him as well as the Prophet's (pbuh) Companions. When they (the *Khawārij*) killed 'Abdullah ibn Khabbāb by chopping his head off and cut open the stomach of his pregnant wife and spilled its contents, 'Ali told his followers to engage them in battle and, ultimately, they suffered a terrible defeat.³⁵¹ Al-Bukhāri records that Ibn Umar used to consider the *Khawārij* as the worst of God's creatures and said: "These people took [Qur'ānic] verses that had been revealed concerning the disbelievers and interpreted them as describing the believers."³⁵²

Qur'ān 5: 44, 45 & 47

These verses are, also, referred to by some Muslim scholars to say that Muslims should not participate in non-Muslims' parliaments as they don't pass laws in accordance with the Qur'ān. The Qur'ān states in these verses: "And whosoever does not judge by what God has revealed, such are the *Kāfirūn*" (disbelievers) (5:44)³⁵³, "...such are

³⁵¹ See, for detail, al-Jawzee, *Talbīs Iblīs*, 33

³⁵² See Sidheeque M.A. Veliankode, *Ashrāt al-Sā'ah fī'l-Qur'ān wa'l-Sunnah/Doomsday: Portents & Prophecies*, (Toronto: Al-Attique Publishers Inc, 1999), 106-7.

³⁵³ There are various interpretations of the above verse. Ibn Abbās says: 'It is not *kufr* which excludes a person from the fold of Islam, but has an element of *kufr* in it, because the person who commits it does not deny God and the Last Day.' See al-Qaradāwi, *Islamic Awakening*, p. 64. 'Ibn al-Qayyim says: 'Judging contrary to what God has revealed contains both types of *kufr*; the *major* and the *minor*, according to the attitude of the person making the judgment. If he believes that a judgment must be passed according to what God has revealed and a punishment decided, but refrains from doing so out of disobedience and transgression, in that case he commits *minor kufr*. But if he believes that it is not obligatory and that he is free to act, notwithstanding his conviction that it is divine, he then commits a *major kufr*. But if he acts out of ignorance, or makes an unintentional mistake, he is only to be judged as a wrongdoer.' See *ibid*, p. 65. According to Sa'id ibn Jubayr, among the allegorical verses misinterpreted by the *Khawārij* are 5:44, which they usually combine with "Yet those who reject *Faith* hold [others] as equal with their Guardian-Lord" (6:1). Therefore they reached the conclusion that if a ruler does not rule justly, he commits *kufr*, and he who commits *kufr* associates others with God and therefore commits *shirk*. On this basis they declare people

Zhālimūn" (wrongdoers) (5:45), and "...such are the *Fāsiqūn*" (disobedient) (5:47). It should be noted that these verses can't be said to be enforceable in non-Islamic countries as the authority (*wilāya*) for the enforcement of laws are not in the hands of the Muslims.³⁵⁴

4.2 Political Parties

A political party may be defined as a group of citizens who act together for the furtherance of similar political ideas or the realization of common political goals. In this sense political parties have always existed in Islamic polity. The *Muhajirīn* under the leadership of Hazrat Abū Bakr and Hazrat 'Umar and the Ansār under the leadership of Sa'ad ibn 'Ubādah and others emerged as two distinct political groups soon after the Prophet's (pbuh) demise and assembled in the conference Hall of Bani Sā'idah. They held political views opposite to each other and the leaders of both the parties presented their respective points of view to the people present in the Conference Hall. Every group sought the concurrence of the people. A third party of Bani Hāshim under Hazrat 'Ali was not present there... Likewise the supporters of Bani Umayyah and the supporters of Bani Hāshim flourished as two rival political groups for more than a century.³⁵⁵

mushrikūn and fight and kill them. This indeed is the kind of misinterpretation which Ibn Abbās has warned against, and which results from ignorance of the meaning intended in the revelation.' Ibid, 70.

³⁵⁴ These verses are, obviously, addressed to Muslims to judge by what Allah has revealed. It is illogical to think that Allah is addressing non-Muslims ordering them to judge by the Qur'ān, if not they are going to be disbelievers! As already said, in non-Islamic countries, the *wilāya* (the authority to enforce laws) is not in the hands of Muslims. Thus, in my opinion, to use these verses as justification to prevent Muslims' participation in non-Muslims' parliament is totally irrelevant and does not stand.

³⁵⁵ Ghāzi, *State and Legislation*, 54-5.

4.2.1 Alliance with non-Muslims

After all the analysis and arguments of this work, so far, it can be said that there is nothing wrong, according to the Shari'ah, in working with peaceful and sincere non-Muslims for political and social purposes both at individual and party levels. Moreover, it can be argued that there is, also, nothing wrong for a Muslim to be a member of a non-Muslim political party, which is not hostile against Islam and the Muslims, and/or to vote or show support for it. To substantiate this fact, among many others, the example of the 'Pact of Chivalry/Hilf al-Fudūl', which took place between non-Muslims, can be cited. The Prophet (pbuh) was a part of it, at that time, before revelation started. Long after being a Prophet of God, he (pbuh) showed satisfaction to be a part of that and willed to participate more if ever asked to. Furthermore, what can be deduced is that it is permissible to sit with sincere and peaceful non-Muslims, whether in a 'house' or a 'parliament', to decide matters of the people. Needless to say that there is nothing wrong for an Islamic political party to contract alliance with such non-Muslim political parties. As we have seen, infidelity *per se* i.e. just because one is not a Muslim is not a cause for considering a non-Muslim as enemy or show disgust towards him. All these have been amply proven in the course of this work.

4.3 Muslim's Unity

The Qur'ān orders: "And hold fast, all of you together, to the rope of God (unto the bond with God), and be not divided among yourselves..."³⁵⁶

³⁵⁶ Qur'ān 3:103.

4.3.1 Unity and Organisation

Muslim Minorities should be united as one body. They should not fall into disunity and discord by falling prey to some misconceptions which are rampant within the community, especially regarding non-fundamental issues in Islam. Among those, are issues like belonging to this *jamaat* or that one and this *madhhab* or that one. There is a big dose of fanaticism and sacredness attributed to the *concept* of belonging to this *jamaat/madhhab* or that one, so much so that many Muslims believe that their *jama'at* and/or *madhhab* is the *deen* (religion) itself and they have the final authority. It is worthy of pointing out, here, that belonging to this *jamaat/madhhab* or that one, as pointed here, was not known in the first four centuries of Islam. This was something which started after the fourth century.³⁵⁷

Madhāhib (sing. *Madhhab*), schools of thought, are not different *deens* (religions) in themselves. They are simply schools of interpretation. We have, for instance, four well leading schools of thought among the Sunni Muslims. Though they differ in their approach in interpreting Islam, the fact is that each school of thought follows the Qur'ān and the Sunnah of the Prophet (pbuh). We find that Abū Hanīfa, Mālik, Shāfe'i and Ahmad ibn Hanbal have advised Muslims to follow and to give the Qur'ān and the Sunnah precedence over their opinions and views.³⁵⁸

³⁵⁷ See, for detail, Amin Ahsan Islāhi , *Juristic Difference and how to resolve them in an Islamic state*, Tr. S.A. Rauf, (Lahore: Islamic Publications Limited, 1986), 74&98.

³⁵⁸ Abū Hanīfa and Abū Yūsuf are reported by Ibn al-Qayyim to have said, 'It is not legitimate for anyone to follow our views until he has learned the source wherefrom we derived those views.' It is reported that Ma'd ibn Isa heard Mālik say, 'I am but a human being who is capable of right and error. Consider my views carefully; whatever is compatible with the Qur'ān and the Sunnah, accept it; whatever is in conflict

It is pertinent to note that all the *Imāms* followed the Qur'ān and the Sunnah. They may have had their different principles regarding the approach to interpretations and they may have relied upon different *ahādith* from different narrators, but the fact is, ultimately, each and every *hadith* emanated from the Prophet (pbuh), either directly narrated by himself or by a Companion (*Sahābi*).³⁵⁹ It follows that a Muslim following any of the *Imāms* is, in fact following the Sunnah of the Prophet (pbuh). However, one thing which is in need of clarification, here, is that there is nothing explicit or implicit in the Shari'ah which says that one should follow a school of thought (*madhhab*).

*Sects*³⁶⁰

Moreover, it is very important for Muslims, especially Muslim Minorities, to know that traditional groups like *Sunnat jamaat*, *Tabligh jamaat*, *Tawheed jamaat* etc are neither different *deens* (religions) nor different sects nor castes. These are simply different groups of Muslims who stood as groups for ensuring the propagation and defense of Islam. The Qur'ān says: "Let there arise among you a group of people inviting to all that is good, enjoining what is good and forbidding what is wrong..."³⁶¹ So, here, it

with the Qur'ān and the Sunnah set it aside.' Shafi'i said, 'If you come across a statement by the Prophet (pbuh), then follow the Prophet's statement and do not imitate me. Similarly if an authentic tradition conflicts with my school, then follow the former and know that it's my school.' Ahmad ibn Hanbal said, 'Do not imitate me, Mālik, al-Shafi'i or al-Thawri, but learn from the source from which they learned.' See, Muhammad Muslehuddin, *Philosophy of Islamic Law and the Orientalists*, (Lahore: Islamic Publications (Pvt) Ltd, 1994), 143-4.

³⁵⁹ See, for detail, al-Alwāni, *The Ethics*, 88.

³⁶⁰ 'A Sect is a group of people forming a distinct unit within a larger group by virtue of certain refinements or *distinctions of belief or practice*.' See www.thefreedictionary.com/sect

³⁶¹ Qur'ān 3:104.

is clear that propagation of Islam is an obligation and no one among the different *jamaats* deny that. They simply differ, on the basis of different interpretations, in their approach in propagating Islam. One group, for instance, wants to foccuss on purely religious matters and the purification of the innerself. The second one focusses on religious and social matters simultaneously. The third one focusses on religious, social and politics, all at the same time, like for instance, *Ikhwān al-Muslimeen* and *Jamaat-e-Islami* etc. Each group, simply, differs in the way it will take the propagation of Islam (*da'wah*) ahead. It's, simply, it can be argued, differences in approach.

Moreoever, it is worth pointing out that there is no fundamental divergence (i.e. difference regarding Fundamentals of Islam and Pillars of Faith) between these *jamaats*. All differences are within the arena of *furū'* (subsidiaries) with the juristic status of being recommended (*sunnat*), supererogatory (*nafils*) and *fazā'il* (things if one does, he/she is being rewarded). There is no denying the fact that Muslims agree on the belief in one God, one last Prophet (pbuh), one Qur'ān, one *Quiblah* (the Ka'bah) and one *Kalima* (attestation of faith).³⁶² Thus, there is nothing, in essence, which separates Muslims from being one soul and body, under one Islamic roof, having with them the Qur'ān and the Sunnah as their eternal guidance. It is worth mentioning, here, that following one school of thought and/or being a part of one *jamaat* does not, in anyway, negate or affect the fact

³⁶² In the famous hadīth Jibreel, when the Prophet (pbuh) was asked about Islam, he replied: "Islam is that you testify that there is no god but God (i.e to worship God alone and to associate no other beings with Him) and that Muhammad is the Messenger of God; to perform *salāh* (prayer); to pay the ordained *zakāh*; to fast in Ramadan and to perform *hajj* to the House of God if you are able to do so." And when asked about *Imān* (faith), the Prophet said: "It is to believe in God, His angels, His books, His Messengers, and the Last Day and to believe in Divine Destiny both the good and adverse thereof." See, Yahya bin Sharaf-ud-Dīn al-Nawawi, *Arba'īn Nawawi*, (Lahore: Dār al-Andlus, n.d), 14-6.

that Muslims are one body, one soul and one *Ummah* as cooperation between Muslims is a religious obligation as well as a vital necessity.³⁶³

Furthermore, in Islam, when we talk about '*aqūdah* (creed) i.e. the Islamic concept of *aqūdah*, it only means that we are Muslims, they are Christians and those are Hindus etc. There is no concept of '*my aqūdah or your aqūdah*' in Islam and between Muslims. This *concept* of '*my aqūdah and your aqūdah*' as it is, unfortunately, known and used between Muslims is a wrongly conceived 'concept' due to a partial or total misunderstanding of the fundamentals of Islamic creed which should be shunned once for all, as it does not stem from the Qur'ān and the Sunnah. All what lead to discord and religious schism should be shunned at all cost. The Qur'ān warns us: "Verily, as for those who have broken the unity of their faith and have become sects; you (O Prophet) have nothing to do with them. Their case rests with God and in time He will make them understand what they were doing."³⁶⁴

4.3.2 Acceptable and Unacceptable Differences

Differences in opinions and approaches breed flexibility, which is compatible with human nature. Adherence to one school of thought or one group (*jamaat*) does not, in

³⁶³ 'Islam does not want a Muslim to work alone. The Prophet (peace be upon him) said: "God's Hand [of support] is with the group (*jamaat*)," and also: "A believer to another believer is like a building whose different bricks enforce one another." Cooperation in kindness and in commanding righteousness is not only a religious obligation but a vital necessity. It is no wonder, therefore, that collective work in the field of *da'wah* is an obligatory duty, because that without which a *wājib* (obligation) cannot otherwise be completed is in itself a *wājib*.' Al-Qaradāwi, *Islamic Awakening*, 91.

³⁶⁴ Qur'ān 6:159.

anyway, mean that we are divided. God, himself, has created differences in human regarding their mental capabilities, their languages, the color of their skin, and their perceptions and thoughts. So, definitely, all these give rise to a multiplicity and variety of opinions and judgment.³⁶⁵

'Differences' which occur is an inherent characteristic of human beings. They should, however, be maintained within the standard norms of ethics and proper behavior which enrich the Muslim mind and stimulate intellectual development. Thus disagreement based on authentic *ijtihad* which does not create discord or disunity is a blessing for the Ummah and an enrichment of *fiqh*. The Prophet's (pbuh) Companions differed among themselves on many issues but despite this, they still never condemned one another and had cordial and strong relations. 'Umar ibn 'Abdul 'Azīz said he never

³⁶⁵ Al-Alwāni, *The Ethics*, 13. 'The scholars of various schools of thought differed in the principles and rules they used. Some, for example, admitted the rulings of Companions of the Prophet (pbuh) as a sound basis for making a judgment on the grounds that a Companion of the Prophet (pbuh), because of his moral probity, would only give a verdict on the basis of proper evidence, or on the basis of having heard a relevant statement directly from the Prophet (pbuh) which they were unaware of. Others did not place such a great reliance on the rulings of the Companions, choosing to go by only what the companions reported directly from the Prophet (pbuh) and not their interpretations, impressions, or actions. Some scholars adopted the principle of *al masālih al mursalah* (public interest) which is neither commanded nor prohibited in any primary source but is based on the conviction that all the laws of the Shari'ah are intended for realizing the welfare or the good of mankind. Others did not take this principle as a valid source of law, and this led to actual differences in formulating laws. There are many other principles of this kind on which the scholars were at variance. They differed over the admissibility of using the principles of "blocking the means to wrongdoing" (*sadd al dharā'i'*); "juristic preference (*istihsān*); "presumption of continuity" (*istishāb*); "adopting the more cautious" (*al akhdh bi al akhaff*); "adopting the more severe" (*al akhdh bi al athqal*); "customary law" (*al 'urf*); and "local custom" (*al 'ādah*). They also differed on the implications of primary texts, the methods of arriving at these implications, and what could justifiably be supported from these texts. In this way, there arose many differences in the field of subsidiary laws.' Ibid.

wished that the Prophet's (pbuh) Companions had not had disagreement as their disagreement was a mercy.³⁶⁶

4.3.3 Ramadan Moon Sighting: A Reflection

The sighting of the moon is another issue which is still dividing the Muslims all around the world. The *choice* of whether to start fasting with the world or with one's own country is divided among Muslims. Among the Sunni Schools of thought, the Hanafis, Mālikis and the Hanbalis are of the view that if people of one country have seen the moon then it

³⁶⁶ See, for detail, al-Qaradāwi, *Islamic Awakening*, 118. 'Like the Companions of the first generation and their immediate successors—the Tābi'ūn—the leading scholars of the second and the third centuries had many differences on issues which required *ijtihād*. Since their differences were not motivated by any form of egoism or desire to create discord, one can venture to say that they were all on the right path... When they faced with a difficult issue, some jurists would consult the literature of another school without any hesitation or embarrassment, even though they might not agree on the type of evidence used... They were easy going and open-minded, and their concern was to facilitate matters for people. Among the Companions of the Prophet, their Successors, and the leading scholars after there were several differences relating, for example, to the preparation for and the performance of *salāh* (prayer). Some recited the *Basmalah* (to recite *Bismillah ir Rahman ir Raheem*) at the beginning of *Sūrat al-Fātihah* and others did not. Some uttered it aloud and others did not. Some recited the Qunūt supplication as parts of the *Salāt al Fajr* (Dawn prayer) while others did not. Some renewed their *wudū* (ablution) after nose-bleeding, vomiting, and cupping (*hijāma*) while others did not. Some considered that any physical contact with women nullified *wudū* (ablution) while did not. Some renewed their *wudū* after eating camel meat or food cooked on a direct fire while others saw no need for that. These differences never prevented them from performing *salāh* behind each other. Abū Hanifah and his followers, as well as al-Shafi'i and other leading scholars, performed *salāh* behind the *a'immah* (pl. of *Imām*) of Madinah from the Māliki School and others as well, although these *a'immah* did not recite the *Basmalah*, whether silently or audibly. It was reported that Abū Yūsuf, a leading scholar of the Hanafi School, performed *salāh* behind al-Rashīd. Abū Yūsuf found later that al-Rashīd had been cupped. He did not repeat the *salāh*, although he was of the opinion that cupping nullifies ablution. Ahmad ibn Hanbal believed that nose-bleeding and cupping nullified ablution. He was asked if people could perform *salāh* behind an *imām* who did not renew his ablution after bleeding. He replied: "How could I not pray behind Mālik and Sa'īd ibn al Musayyib?" Al-Alwani, *The Ethics*, 91-2.

becomes obligatory on other countries, also, to start fasting. For them the *hadith* of the Prophet (pbuh): "Fast when it (the moon) is sighted and break (your fast) when it is sighted", is in the general sense without differentiating between this country and that one. Contrariwise, the Shafe'is opine that every country has to look for its own moon before start fasting.³⁶⁷ To fast in Ramadan is obligatory, but what should be noted is that a Muslim has the *choice* to start fasting with his/her own country or with the world community. Anyone's opinion can be taken or rejected.³⁶⁸ Consequently, as contrarily conceived and portrayed by some Muslim scholars, the *choice* to start fasting with the world community, instead with one's own country, is not an obligation *per se*, it's simply *permissibility*.³⁶⁹

The reason behind starting to fast with the world is, as advocated by some Muslim scholars, the Muslim's unity. For them, to unite Muslims at the global level is a must as one *Ummah*. But to bring about unity within the *Ummah* necessitates, also, the bringing of ease and benefits. Moreover, trying to unite the Muslims would mean working for the betterment of the *Ummah*. So, is this *choice* of fasting with the international community

³⁶⁷ See, Mohammad 'Ali al-Sābounī, *Rawā'i al-Bayān Tafsīr Āyāt al-Ahkām min al-Qur'ān*, (Beirut: Dār Ihyā al-Turāth al-'Arabi, 1998), 1:211. See, also, Al-Sayyid Sābiq, *Fiqh al-Sunnah*, (Peshawar: Dār al-Kutub, n.d.), 1:385-6.

³⁶⁸ Says Imām Mālik that, 'Everyone's saying can be taken or rejected except for the Prophet.' See, Yūsuf al-Qaradāwi, *Shari'ah al-Islam: Khulūduhā wa salāhuhā li al-Tatbīq fi kulli Zamān wa Makān*, (Algeria: Dār al-Shihāb, n.d), 107.

³⁶⁹ For Imām al-Shafe'i, God has ordered not to fast until the moon is sighted which means that it is not obligatory on you to start fasting until you see the moon. So even if you fear that others have already seen the moon, don't fast until you see it and don't break your fast until you see it. See, Mohammad b. Idris al-Shafe'i, *Ikhtilāf al-Hadith*, (Beirut: Muassassah al-Kutub al-Thaqāfiyyah, 1985), 249-252.

bringing the *Ummah* towards unity or towards more disagreement, schisms and discord?

Do the *pros* of this practice weigh more or the *cons*?

Is this choice of fasting with the world beneficial to the Muslims? The answer is 'No'. This practice of fasting with the international community has been much more damaging to the unity of the Muslims than being beneficial to them. This practice, as it is seen in all countries, has been proven to be fatal, among many a family, to the relationship between husbands and wives, parents and children, and between families among Muslims. Consequently, this has been creating much upheaval within Muslim families, communities and the Muslim Ummah.³⁷⁰

In this case, if the *cons* of this practice are far much greater than its *pros*, is it proper to continue with this practice?³⁷¹ Muslims should know that the objectives of the Shari'ah are to facilitate people and not to put difficulties or complicate things for them. The Qur'ān says: "And we task not any soul beyond its scope and with Us (God) is the record which speaks the truth and they will not be wronged."³⁷² "God does not task a soul beyond its scope."³⁷³ "God desires for you ease; He does not desire hardship for you."³⁷⁴ "God has not put on you in matter of religion any hardship."³⁷⁵

³⁷⁰ On the basis of my personal experiences on Mauritius soil, this practice has been destabilizing relationships and creating more problems, complications and confrontations, within many Muslim families and the Muslim community, than being beneficial to them.

³⁷¹ I am of the view that Muslims should start fasting with their own country and not with the world.

³⁷² Qur'ān 23:62.

³⁷³ Ibid, 2:286.

³⁷⁴ Ibid, 2:185.

³⁷⁵ Ibid, 22:78.

Furthermore, we find, in the Sunnah, many an example in the life of the Prophet (pbuh) where he was against hardships, excessiveness, complications etc. 'Āisha reported that whenever two choices were being presented before the Prophet (pbuh), he used to choose the easier of the two provided it was not a sin.³⁷⁶

4.3.4 Rethinking a new Approach for Unity.

Since the collapse of the *Khilāfah*, Muslim scholars have been trying to unite the *Ummah*. Many definitions of unity and many ways of its implementation have been brought forth. After many decades, we see that these formulae, devised and designed by our Muslim scholars, have not yet been a success. If this is pondered upon, the only conclusion which can be reached is that the way many Muslim scholars perceive and try to achieve the *unity* of the *Ummah* is not compatible with the realities of this contemporary epoch of ours. Moreover, the *concept* of *Nationalism v/s Ummahism* has to be re-defined, while considering the time-space factor and the geo-political realities surrounding us. It is

³⁷⁶ Al-Ghazālī, Arabic ed., 16. 'When the Prophet (pbuh) sent Mu'ādh and Abū Mūsa to Yemen, he gave them the following advice: "Facilitate [matters to people] and do not make [things] difficult. Give good tidings and do not put off [people]. Obey one another and do not differ [amongst yourselves]. The Prophet (pbuh) said: "Religion is very easy, and whoever overburdens himself will not be able to continue in that way. Be right [without excessiveness or negligence], near [perfection], and have good tidings [in being rewarded for your deeds]. Abū Mas'ūd al Ansāri narrated that a man said to the Prophet (pbuh): "O Messenger of God, I keep away from *salāt al-fajr* (fajr prayer) only because so and so prolong it." The Prophet (pbuh) became very angry and said: "O people, some of you make people dislike good deeds. Whoever leads people in *salāh* (prayer) should shorten it because among them are the weak, the old, and those who have business to attend to. See al-Qaradāwī, *Islamic Awakening*, p. 26. The Prophet (pbuh) said: "I have been sent with an easy, magnanimous and upright system." See, Ghāzi, *State and Legislation*, 125.

strongly suggested that Muslim scholars come up with new ways and different definitions of 'unity'.³⁷⁷

4.4 The Word *Kāfir*: A Reflection

The use of the word *kāfir* (infidel/disbeliever), in non-Muslim countries, in many a case portray that all non-Muslims are *enemies* of Islam just because of them being non-Muslims. Consequently, besides being offensive to many non-Muslims, this projects a negative impact on the Muslims and non-Muslims relationship by creating a confrontation-cum-antagonistic environment. This word is mostly used by some Muslim scholars, while referring to non-Muslims, who are of the view that infidelity *per se* is the cause of war and antagonism in Islam and that the normal relationship between the two entities is that of hostility. It is already seen that this contradicts the teachings and practice of the Prophet (pbuh) and his Companions.

In addition to the word *kāfir* in the Qur'ān, non-Muslims have also been referred to as *Ahl al-Kitāb* (People of the Book). Moreover, the generality of non-Muslims in the

³⁷⁷ I am of the view that, in this epoch of ours, unity of the *Ummah* can be achieved much more easily by, first, uniting the Muslims of each country. There is nothing divine in this opinion of mine, it's simply to consider the realities of human evolution and to proceed as per those realities. It is suggested that whenever there is any better formula which can unite Muslims, it be brought forth. Meanwhile, I am of the view that, for the sake of avoiding more schisms and discord, Muslims should start fasting with their own country rather than with the international community. Besides, the unification of the Muslims of every country is, also, a must. It does not, in any sense, negate the concept of *Ummahism* i.e. the fact that we are one *Ummah*. It is strongly suggested that for each and every epoch, Muslim scholars should, through empirical approach, come up with real and practical definitions of *unity*. For me, in the meantime, Muslims are firmly united in their sentiments and feelings, as one body, globally.

Prophetic era and those of his Companions, when being dealt with, were being referred to as Jews and Christians etc. and not generally as *kāfirs*. Furthermore, to the extent of my knowledge, nothing is found in the Shari'ah which mandates the use of the word *kāfir* while referring to non-Muslims. So, is it proper to refer to non-Muslims as *kāfir* if this is offensive to them and breeds hatred and antagonism? As already seen, the Qur'ān enjoins Muslims to be kind and just to non-Muslims who don't fight against them and don't do injustice towards them (60:8). Islam stands for peace and love and not for hatred and antagonism. The world order which Islam seeks is only peace, and Islam's commitment to peace is absolute, comprehensive and universal.³⁷⁸

4.5 The Outcome

In summary, after analyzing a number of Qur'ānic verses and *ahādith* regarding the prohibition of Muslims' residence in non-Muslim countries, it is seen that the Qur'ānic verses were meant for those who could not practice their faith freely. Moreover, regarding the *ahādith*, while some advocate the prohibition of residing with non-Muslims, others point to the contrary. Some of them were specific in nature and cannot be taken as general rule. Besides, the authenticity of the some of the *ahādith* advocating prohibition is seen to be disputed among Muslim scholars. Furthermore, it is seen that, according to the Shari'ah, there is no prohibition for Muslims to co-exist and interact peacefully with sincere and peaceful non-Muslims and who are not against Islam. Lastly it is seen that Muslim should be an integral part of their country as true and loyal citizens.

³⁷⁸ Abū Sulaymān, xxxvii. I am of the view that the word *kāfir* should not be used as an attribution while referring to non-Muslims in general.

CONCLUSION

The facts presented in this research reveal that there are many issues regarding Muslim Minorities which our traditional/classical *fiqh* have not addressed. There is a need for *ijtihad* for every unforeseen and unprecedented issue and event that crops up in our daily life. Islam's claim to being the eternal and complete mode of life for all mankind at all times to come pre-supposes a legal mechanism to determine its response to the constantly changing situations in human societies. When confronted with new questions and problems for which no direct answers are available in the Qur'ān and the Sunnah, the principle of *ijtihad* (analogical reasoning) has to be invoked by Muslim scholars in the light of the Qur'ān and the Sunnah without compromising on the objectives and spirit of the Shari'ah.

'*Fiqh for Minorities*' is not an innovation and is not meant to divide Islam and damage Muslims' entity as an *Ummah*. '*Fiqh for Muslim Minorities*', as is being conceived in this work, is simply to understand the problems which Muslim Minorities are facing and find Islamic rulings, which can't be found in the classical *Fiqh*, to solve their problems. Then when solutions are found, instead of being left scattered they be compiled and classified under the heading '*Fiqh for Muslim Minorities*'. This justifies the existence of a '*Fiqh for Muslim Minorities*' in the field of worldly transactions and social affairs.

Moreover, the *concept/theory* of division of territories in Islam was the product of *ijtihad* of early *fuqahā* (classical jurists) who were in need of responding to the needs of

their hour. This *concept* was devised mainly for Islamic law jurisdictional purposes. It was never meant to inform that hostility is the norm in the relationship between Muslims and non-Muslims. Besides, it was never meant to prohibit Muslims from residing in non-Muslim territories. This work sees that, in today's world, there is no *Shar'i* necessity in using the concept/theory of division of territories in Islam into *dār al-Islam* and *dār al-Harb* and that it has no relevance in today's world order.

Furthermore, infidelity *per se* is not, in Islam, the cause of war, animosity or antagonism against non-Muslims. The cause of war or hostility is an aggression or hostility from the other side, first. Only because a human is a non-Muslim does not, according to Islam, make him an enemy. There is no permissibility, according to Islam, to try to annihilate non-Muslims' entity from the surface of the earth just because they are not Muslims. Islam allows, recommends and at times orders Muslims to live and co-exist in peace, on the basis of trust and sincerity, with all those non-Muslims who are not hostile against Islam and the Muslims. This was amply illustrated by the Prophet (pbuh), himself, where he used to deal sincerely and truthfully with all non-Muslims who were peaceful and/or were not hostile against Islam and the Muslims, and after his demise this was the practice of his Companions. It is to be noted that most of the Qur'ānic verses regarding Muslims and non-Muslims relationship were specific in nature and were meant to address particular circumstances and situations and cannot be taken as general rules and applied generally. Besides, many verses are singled out, quoted out of context, misread, misunderstood and misinterpreted.

In addition, injunctions in the Shari'ah have been found prohibiting Muslims from residing in non-Muslim countries. After analysis of the Qur'anic *hijra*-related verses in chapter 4, it is found that they are very clear in pointing to the very fact that the cause for emigration was because those Muslims could not worship freely. Moreover, the authenticity of some *ahādith*, regarding *hijra* and prohibition for living with non-Muslims, are found to be disputed among Muslim scholars. The gist of the matter, here, is regarding whether these *ahādith* emanate directly from the Prophet (pbuh) or not. Besides, they are contradicted by other authentic *ahādith* of the Prophet (pbuh) which point to the contrary. As a matter of principle, the different circumstances in which the Prophet (pbuh) promulgated different pronouncements should, always, be taken into account. Furthermore, most of the early Muslim jurists were of the view that if Muslims are safe and free to practice their faith in non-Muslim countries, then there is no need to emigrate to Islamic lands. This work sees that there is absolutely no need for Muslim Minorities to emigrate to Islamic countries.

Lastly, Muslim Minorities are, by their very faith, bound to be responsible and full citizens and patriots of their country of residence and need to act responsibly as an integral part in the advancement and stability of their country. Moreover, they have to unite between themselves and put aside trivial and petty issues dividing them. More importantly, it is strongly suggested that Muslim scholars shun the practice of 'dogmatizing' opinions and get out of the stagnation and intellectual sterility which have been devastating the Muslim Ummah for centuries, consequently leading it, on a constant basis, towards atrophy and decay. Additionally, they should not overlook the fact that,

considering the time-space factor, Islam has meant many things to different societies throughout ages. Last but not least, only the true teachings of Islam enshrined and codified in the Qur'ān and exemplified in the authentic Sunnah of the Prophet (pbuh), should be taught, followed, portrayed and implemented. God Knows Best.

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All praises be to God.

