



The State in Islamic Political Thought: With Special Reference to the Position of Non-Muslim as Members of Parliament

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ABSTRACT

The Islamic law (shari'ah) refrains from providing detailed regulations for all changing requirements of our social existence. It is for the community to evolve the relevant comprehensive regulation and legislation through an exercise of independent reasoning (ijtihad) in consonance with the spirit of Islamic law and the best interests of the nation. This article tries to look at how the idea of state was emerged, what are the objectives of the state and the differences between an Islamic and secular state. This will followed with the elaboration on the status, the rights and obligations of non-Muslim as citizens in an Islamic state and on what basis that the non-Muslim citizens are also enjoy the same rights as Muslim enjoy and shoulder the same responsibility except for the post of the head of the state (uli al-amri) in an Islamic state.

Keywords: State, Islamic State, Non-Muslim, Member of Parliament

1. State: Historical Perspective

The theory of state and government has ever been the most controversial issue in Islamic history. The reason for this controversy is due to its absence of details in the Qur'an. Although the state is regarded as one of the most fundamental institutions of society, and a political organized community has existed in human history, but in the early days of Islam, the concept of society and state meant the same thing. For that reason the term "state" is not to be found in the Quran nor was it in the tradition (sunnah) of the Prophet Muhammad. The Quran merely refers to organized authority which belongs to God as the source of governing authority. It is believed that the current concept of "nation state" (dawlah in Arabic) is a relatively of recent development which generally linked to the "Treaty of Westphalia" 1648 (Abdul Rashid 1996).

The early Muslim jurists normally used the terms "khilafah" or "imamah" to denote the idea of a political order (Manzooruddin 1982). Beginning from the period of the first Muslim caliph Abu Bakr al-Siddiq to the period of the Ottoman caliphate, Muslims still regard the "institution of caliphate" (khilafah) as the central platform, as well as the only institution to be answerable for the implementation of Islamic law (shari'ah) in the Muslim empire.

Nevertheless, when the Ottoman caliphate collapsed in 1924, many Muslim kingdoms which were under its control have attained their independence “nation-state system”. With this new political development in the Muslim world, the Muslim scholars felt that an alternative platform was needed which can be used as the authority to be responsible for the implementation of Islamic law (shari’ah) in the newly changing world politics. Since that time the idea of an “Islamic state” was used in the writing of Muslim scholars “as an alternative to the caliphate”.

In modern Arabic, the term “dawlah” is used for state. Although the term “dawlah” did occur in the Quran, it is not used in the same meaning of state, rather it is used in the sense of “circulation or making a circuit” where it is stated that wealth should not circulate among the rich only. For example, God said in chapter 3:140: “watalik a al-aiyamunudawiluha” which means: “such days (of varying fortunes) we give to men in turn”. As well as in the chapter 59:7 God also said: “kaylayakunaduwlatanbainaaghniya’Iminkum” which means: “In order that it may not (merely) make circuit between the wealthy among you”. Perhaps it was in this figurative sense that the term came out to be used for political authority which does not remain in one hand. Although the explicit terms “state” or “polity” are lacking, the essential elements that constitute political order were referred to in the Quran which clearly indicate that the concept of “organized authority” or “political authority” was realized. For that reason also certain scholar it has said that although the usage of the word “ dawlah” in the mentioned verses was unrelated to the word state except perhaps figuratively to imply rotation (of political authority). However, Ahmed Davutoglu argues that the semantic transformation from the root *dwl* to *dawlah* occurred in three stages. First, it was used to denote the change of political power, next to denote continuity and for the ultimate political authority and finally as a nation state (Davutoglu 1989).

Historically, the term of “dawlah” used for “state” by Muslim for the first time was in the early seventh century A.H, which is in the Abbasid period. It was at first applied to a new regime established by revolution as opposed to the regime of Umayyad (Enayat 1982). However, as the Abbasid regime became permanently established, the emphasis was gradually changed from “revolution” to organized authority (state).

In modern constitutional terminology, state is defined as: “an organized group of individuals residing in a specific territory who possess sovereignty over it” (Mustafa 1975). According to this definition the constituents of a state are as follows: 1. Existence of a group of individual, 2. Existence of a specified territory of land, 3. A particular system of government, 4. Sovereignty. If we keep this modern concept of the state in mind, we find that the Medinah society which was established by the Prophet Muhammad carries the modern concept to its full meaning, both in political theory and in marks of statehood according to modern international law.

The Medinah society possessed all the four mentioned components. There was a group of individuals comprising Muhajirin (Muslims of Meccah origin) and Ansar (Muslim of Medinah). The city of Medinah and its neighbouring settlements was the territory, the Charter of Medinah was regarded as a specific system of government already there to guide and regulate the actions of the society, and the Prophet Muhammad was the head of the society. As the head of state, the Prophet entered several pacts in which he was not a party as a single individual but represented the entire Medinah society and therefore all the commitments

made by him were binding on the Medinah society. Then, the Medinah society was the oldest example of a political society organized in the form of “state”. This claim rests on the fact that it was an organized society based on “rule of law”. The supremacy of rule of law is a distinguishing factor between a state and other forms of organized political society.

2. The Classical Concept of an Islamic State

Muslim jurists call Islamic state as “dar al-Islam” which possesses all the characteristics of a state. Among the most popular definition of “dar al-Islam” is: “a state which is managed and administered in accordance with Islamic law (shari’ah)” (Iqbal 1987). Or is: “a place where Muslims dominate in power.” Some jurists have defined the territory of Islamic state (dar al-Islam) as where the Islamic traits and practices prevail as a result of vesting of sovereignty and power in the hands of Muslims.

It should be clearly understood that population under Islamic state does not mean Muslim population alone, but it includes non-Muslim citizens also. A state is not Islamic simply because it is inhabited predominantly or even entirely by Muslims, but rather, as Muhammad Asad points out, it is Islamic: “by virtue of a conscious application of the socio-political tenets of Islam to the life of the nation, and by an incorporation of those tenets in the basic constitution of the country” (Asad 1961). The Islamic state then, is a state which is built on and guided by Islamic law. It is the enforcement of this divine law (shari’ah) that distinguishes the Islamic state from other political systems. Then, the distinction must be made between a “Muslim state” and an “Islamic state.”

The “Muslim state” is any state which is governed by Muslim individuals. While “Islamic state” on the other hand, is a state which abides by the Islamic law, and conducts its internal and external affairs in accordance to that law. The concept of the “Islamic state” therefore, should not be confused with the concept of the “Muslim state” as the latter is manifested in the present Muslim nation-state systems.

Whatever the academic point of view is on the existence of “Islamic state”, the issue of the establishment of “an Islamic state” has always been a dominant issue in a country where the population is Muslim in majority, such as in the Middle East and Indonesia. The reason why an Islamic state is important for Muslims is due to its role as an institution and authority to be responsible for the implementation of the Islamic law (shari’ah) in all fields of human endeavor. Misunderstanding was raised by regarding that a state is Islamic due to the existence of the term “Islamic” in the constitution of the country or because of the implementation of Islamic criminal law (hudud) which is regarded as an aspect of the Islamic law (shari’ah) only in Islam. For that reason, for a state to be called “an Islamic state” should not be based on the implementation of Islamic criminal law (hudud) only, instead; it is necessary to study from all aspects of state activities, and should not be confined to its constitutional law only.

3. The Distinction between Islamic State and Secular State

According to Ibn-Khaldun, the distinction between an “Islamic state” and a “Secular state” is that the Islamic state is governed in accordance with the laws of God as revealed in the Quran whereas a secular state is governed by laws made through human reason (Esposito

1987). There are also other important differences between an “Islamic state” and a modern “secular state”. A modern secular state must have three features: it must be fully sovereign; it must be national; and it must have well-defined territories. When these three features exist, a state can be legitimately claimed to be a sovereign state.

However, an Islamic state although sovereign from this accepted standpoint, is not fully sovereign, because according to the faith in Islam, ultimate sovereignty is vested only in God. Strictly speaking, it is also not a national state because the Muslim community (ummah) is a community of faith consisting of people who may belong to different tribes, races, or even nationalities, and speak different languages and are of different colors, but who share a common spiritual aspiration i.e., their faith in Islam. Consequently, an Islamic state is a multinational state. An “Islamic state” is not a territorial state in the strict sense of the term, because it aims and aspires to become a universal state. Nevertheless, it is not utopia or an imaginary state. It has to be initially founded as a territorial state, although the territories are expected to expand.

4. The Objectives of the State

Muslim jurists in describing the objectives of the state in Islam mentioned that one of the most important reasons for the formation of society in classical period of Islam was: “to take Islamic principles and endeavor to realize them in a definite human organization in history” (Iqbal 1987). In other words, the objective of state in Islam is the enforcement of the Islamic law in all sphere and parts of the state, by virtue of which Islam becomes the way of life. As Muhammad Asad said: The foremost duty of such a state consists in enforcing the ordinances of the Islamic law (shari’ah) in the territories under its jurisdiction” (Asad 1961).

For analytical consideration this objective of state in Islam may be subdivided into two separate but complementary purposes, one of which is temporal, while the other is hereafter. The temporal purpose of the Islamic state includes the maintenance of peace and order, promotion of equity and justice, defense of the society and fight against internal and external aggression, and the enhancement of the spiritual and material well being of its citizens. Since the Islamic law (shari’ah) does not provide the means on how the temporal objective can be attained, the means and methods are left mainly to the discretion of the state. The only limit is that the realization of this temporal purpose must be done within the legal and ethical scope of the Islamic law.

The second objective is “to realize public interest” which is similar to the objective of state from the western perspective (Al-Ewa 1978). However, the difference is that the concept of “public interest” in the secular state is governed by the social and political life of the state. In other words it is the state who will determine “public interest” by eliciting the views of its constituents, or by following the indicators of public opinion. The “public interest” in an Islamic state is not determined by the political power or political opinion of the masses. Instead, the “public interest” in Islam is preceded by the state, that is the establishment of “faith” among the Muslim community, and the state will forfeit the justification of its existence if this objective is ignored.

5. The Status of Non-Muslim in Islamic Law

To evaluate whether the Islamic state, if it exists could accommodate the needs of a multiethnic society, it is first necessary to know that in Islamic political thought, the multiethnic society is defined in religious terms as those citizens who profess religions other than Islam.

The Qur'an called Christian and Jews as 'ahl al-kitab' which means 'people of the book'. By the 'book', the Quran refers to the Bible and to the religious traditions attributed to revelation, thus making faith the bases of their relation with the Muslims. This basis, on the part of the Muslims is strengthened by the fact that they believe in all former Prophet and revelations (Al-Qur'an:2:136). It was after the Quran had established this close bond with Christian and Jews, the Prophet Muhammad extended it to adherents of other creeds, particularly upon the first Muslim contact with Zoroastrians of Bahrain, as the Prophet said in one of his tradition (hadith) which means: "Let it be with them as it is with ahl al-kitab" (Abu Yusuf 1302 A.H.). This precedent of the Prophet was applicable to any other people with different creeds.

According to the Islamic law (shari'ah) the non-Muslims citizen in an Islamic state called ahl al-dhimmah, single dhimmi. The word dhimmah literally means pledge (al-'aqd), guarantee (al-daman), and safety (al-aman) (Al-Qardawi 1977). The non-Muslims are called dhimmis because they are under the pledge of God, the pledge of the Messenger of God, and the pledge of the Muslim community to live under the protection of Muslims.

In other word, they are under the protection of Muslims. The pledge of security and guarantee given to the protection of Muslims is like the political nationality given in the modern times on the basis of which people acquire all their rights of any citizen in nation state today. (Al-Qardawi 1977). The dhimmis from this point of view are "the people of the abode of Islam (ahl al-dar al-Islam)" (I Doi 1982). Hence, they are the possessors of Islamic nationality (al-Jinsiyyah al-Islamiyyah) (Al-Audah 1974). Their membership in the Islamic body politics is based on contract of protection ('aqd al-dhimmah) which is concluded between them and the Islamic state when they accept Islamic rule " without professing Islam " as their creed. For naturalized citizens of ahl al-dhimmah conclude 'aqd al-dhimmah personally (Ramadan 1987), while the non-Muslims who are born citizens of the Islamic state, have had the 'aqd concluded on their behalf by their ancestors.

This constitutional arrangement indicates that the Islamic state could be a multi-religious or multiethnic one, with Islam as the religion of the majority and the Islamic law as the public law of the land. Under this constitutional arrangement, Muslims and non-Muslims citizens have equal rights and obligations. This equality in rights and obligations forms the essence of a contract of protection ('aqd al-dhimmah).

Underlying this legal principle, the fourth caliph Ali bin AbiTalib state: "their agreement to conclude the dhimmah contract is upon the clear understanding that their property is to be like our property and their blood like our blood" (Ramadan 1987). As with contracts concluded according to the Divine law, a contract of protection is considered a pledge in the name of God, the fulfillment of which constitutes both constitutional and religious obligations of the contracting parties (Al-Bayati 1979).

6. Rights Due to Non-Muslim Citizens

The most important quality a ruler has to cultivate and exercise is justice to those under him. The Holy Quran commands those in a position of authority to rule with justice (Al-Quran, 2:185, 5:69, 22:78), and curses those who are unjust (Sahih al-Bughari 1969). This is echoed in verbal tradition of the Prophet (al-hadith) in which he counts a just ruler first amongst seven categories of people who will occupy a space of rest under the shade of God on the Day of Judgment when there will be no other shade to protect the others from the burning rays of the sun (Tabrani 1981).

Under the above mentioned Islamic principle of meticulous justice, the Islamic community is obliged to confer upon its minority all the rights and privileges provided by the Islamic law as citizens of the state. Chief among such rights is the freedom of religion (Al-Qur'an, 2:256). Indeed, freedom of religion, and other basic rights, such as the protection of life, property and dignity or honor, is guaranteed to non-Muslim citizens by the Prophet Muhammad (PBUH).

In the treaty which he concluded with the Christian of Najran, who accepted citizenship of Medinah state which by most Muslim scholars have regarded as the first Islamic state, the Prophet committed himself and his followers, as he said: For Najran and its dependents, they have God's enjoined protection, and the pledge of His Prophet and messenger Muhammad, this equality apply to their property, life, religion, kith and kin, churches and all that they hand in hand, little or much (Hamidullah 1979). No Bishop in his bishopric can be changed (by Muslims), nor a monk in his monastery, never will they be humiliated. Military service is not compulsory on them. Between them only justice shall prevail, and whosoever accepts what remains due from previous usurious dealings, my pledge for him shall no more be valid and none shall be held responsible for the guilt of another" (Abu Yusuf 1302 A.H.). In this second part of document, all embracing conception of protection is prescribed. Humiliation is precluded and military service is not compulsory. Usurious acts are declared as an act of rebellion, thus equalizing Muslim and non-Muslim before God. (Al-Qur'an, 2:279).

The fact that this treaty between the Prophet Muhammad and the Christian of Najran was an obligation, to which all Caliphs afterward had to subscribe, is enough to characterize the commitment it bears and the status it provides. It is not a political maneuver meant to gain time or to annex more territory. When Umar IbnHazm was appointed by the Prophet to supervise the execution of this treaty in Najran, his appointment was ordained by a prophetic decree which began with the Quranic injunction, "O ye who believed! Fulfill (all) obligations." In other words, whatever status such a treaty provided for a Jew or a Christian or to the adherents of any other creed, it is as authoritative as any other authentic text of Islamic law.

With regard to the principles of equal opportunity for employment, non-Muslim citizens, like their fellow Muslim citizens are to be trusted with public offices for which they are qualified except the head of the state (Abdul Rauf 1988). This legal opinion is based on a Quranic verse which is said to have settled the question of leadership in an Islamic state. The verse in chapter al-Imran is as follows: "Ati'u Allah waati'u al-rasulwauli al-amrimikum" which means: "Obey God, and the Apostle and those charged with authority among you" (Al-Qur'an, 4:49). The term "Among you" (wauli al-amrimikum) in the verse refers only to Muslims; hence they are the only persons who may shoulder such responsibilities and have legal claim to obedience. As to other public functions, the only criterion necessary is merit.

Even in the time of Imam al-Mawardi, the jurist believed that a non-Muslims citizen could be appointed in many positions in an Islamic state which might be as high as the position of foreign minister or secretary of state in the contemporary presidential system. The historical record also informed us that the secretary of the treasury in Medinah under Caliph Umar Ibn al-Khattab was a Christian citizen, as well as the first Prophet's Muhammad ambassador ever to be sent abroad, that was Amr Ibn Umaiyah al-Damri, was not Muslim at the time of his appointment (Hamidullah 1969).

Under this constitutional arrangement, Muslim and non-Muslim citizens have equal rights and obligations. These rights—the freedom of expression, oral and written, freedom of association, freedom of movement, and equality before the law are guaranteed by the Islamic law to all citizens regardless of religious, ethnic group as well as socio-economic status. This equality in rights and obligations forms the essence of a 'Contract of Protection'. With this makes it very clear that non-Muslim citizens in an Islamic state should not suffer any constraints or discrimination, nor should they be deprived of any state services.

Today we also see there are waves of Muslim immigrants in Great Britain, United States, Canada, France, and Australia where Christianity dominates. They have been granted full citizenship and, on the whole, they suffer no legal incapacities. It is hoped that when they have struck deeper roots in those advanced countries and begin to wield political influence that they will be of great service to Islam both in their adopted countries and their mother lands. If we insist on demeaning and mistrusting the fellow believers of the citizens of those countries who are in our midst, our own emigrating brethren will be severely exposed and might suffer unfortunate consequences.

With the development of modern political nationalistic thought and the decline of Islamic power, along with the international advocacy of the basic human rights, even the term of "dhimmi" has lost its traditional implications. It would be naively absurd and embarrassing in our contemporary context to advocate a status thought to be humiliating to our fellow non-Muslim citizens. What we have mentioned here is the Islamic ideals regarding the non-Muslim citizens in an Islamic state, but the practical politics normally depends very much on how the political set up was structured in every country.

7. Non-Muslim Citizens as Member of Parliament.

The question of the eligibility of non-Muslims for the office of representation (Member of Parliament) in an Islamic state has been one of the most burning issues in the Muslim world. The point was made that Parliament is considered to be a part of the governing body of 'uli al-amri'. Accordingly, obedience to the decisions of this body constitutes both a religious and constitutional obligation upon all Muslims. In addition to the Quranic provision and the constitutional arrangement regarding the position of non-Muslim citizens in an Islamic state, the practice of the Prophet also recorded in the Charter of Medinah which was written as the basis of the newly founded Islamic community, (Hassan 1964) the Prophet has accorded non-Muslim citizens the right to participate in the collective decision-making process of the state. Consider the following passage of that document: "all Jews who choose to join us shall have all the protection that Muslim have, neither will they be oppressed, nor may there be a Muslim communal agitation against them. To the Jews their religion, and to the Muslims

their religion. The Jews of baniawf constitute a community with the believers. Between all there should be benevolence and justice. Responsibility for any act of oppression or wickedness shall always be a mutual counsel and advice” (Hamidullah 1979). An example of this was the Prophet consulted ‘Abd Allah IbnAbi Salul, a non believer prior to the battle of Uhud. This precedent of the Prophet indicate that non-Muslim citizens are eligible to be consulted regarding the affairs of their country, and are ,by analogy, eligible for membership in Parliament (majlis al-shura).

The specification of rights and obligation in the mentioned document which includes the right of mutual counsel and advice, this implies their participation in the consultation and in the execution of plans adopted (Hamidullah 1969). Nothing less than this conclusion can be drawn from the Prophet’s practice, or to the well celebrated Islamic legal principle which states: “they enjoy the rights Muslim enjoy and shoulder the same responsibilities” (Al-Qardawi 1973). It is believed that with the participation of non-Muslim fellow citizens in the country’s administration will enrich the administration experience and contribute to the prosperity of the community. At the same time, it will also foster peace and stability and inspire cordial relationships among various communities in the nation. They also will be more expose to the ideals of Islam and become more appreciative values. With this brief review of the legal status of non-Muslim citizens in an Islamic state has provided the foundation for their eligibility for membership in the office of representation or Member of Parliament in an Islamic state.

However, the inclusion of non-Muslims in the office of representation (Member of Parliament) may present some legal problems with respects to the process of legislation. As legislation in an Islamic state is the exclusive domain of Muslim jurists and an exercise of ijihad, neither non-qualified Muslim nor non-Muslims are eligible in the process. Therefore, the participation of non-Muslims is seen by some scholars as conflicting with the Islamic law (shari’ah) principle (Al-Duri 1974).

Although the process of legislation in modern assemblies ought to be open to all members, there are ways to ensure that proposed laws are evaluated in consistency with the Islamic law. Among these safeguards is the stipulation in the constitution of the Islamic state i.e., firstly, it is unlawful for the Parliament to enact legislation which conflicts with the Quran and the tradition of the Prophet (sunnah). Secondly, the Quran and the Sunnah constitute the main source of legislation. Thirdly, the head of the state who promulgate all new laws must be a Muslim (Maududi 1960). This point of view based on the Quranic verse in chapter 4:49 which refer to the word of “wauli al-amriminkum” which means: “those charged with authority among you.” Majority of Muslim scholars have agreed that the term “Among you” in the verse refers only to Muslims; hence they are the only persons who may shoulder such responsibilities and have legal claim to obedience. As to other public functions, the only criterion necessary is merit. Both Muslims and Non-Muslims may compete for such positions on an equal basis. Accordingly non-Muslim citizens may occupy any lower post and may rise to the position of a cabinet minister.

With the inclusion of these constitutional safeguards in the constitution would settle the legal difficulty concerning the participation of non-Muslim citizens in the process of legislation. While this arrangement would make it possible for non-Muslim representative to introduce or propose laws and regulations, or to participate in drafting such laws, the

enactment of these laws would not take place unless they conform to the Islamic law. This legal compromise makes the minority eligible for participation in the legislative process. The solution of this legal problem, in our opinion, removes the final reservation about the eligibility of non-Muslim citizens for membership in the Parliament.

8. Conclusion

The precedent of the Prophet clearly indicated that non-Muslim citizens in a Muslim or an Islamic state are eligible to be consulted regarding the affairs of their country, as the constitution of Medinah which regarded as the basis of the newly founded Islamic community (ummah), has also accorded the non-Muslim citizens the right to participate in the collective decision-making process of the state. This shows that non-Muslim citizens are eligible for membership in Parliament (majlis al-shura). In addition to the mentioned legal principle and its analysis becomes clear that the participation of non-Muslim fellow citizens in the Parliament of a state will also enrich the administration experience and contribute to the prosperity of the Muslim community (ummah).

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