

Believer and Non-Believer: A Comparative Analysis of the Relationship Between Jewish and Islamic Law

İnanan ve İnanmayan: İlişkilerin Yahudi ve İslam Hukuku Arasında Karşılaştırmalı Bir Analizi

İsmail ERİŞ^a

^aMarmara University
Faculty of Theology,
Basic Islamic Sciences,
Department of Islamic Law,
İstanbul, Türkiye

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Correspondence:
İsmail ERİŞ
Marmara University
Faculty of Theology,
Basic Islamic Sciences,
Department of Islamic Law,
İstanbul, Türkiye
iseris@gmail.com

ABSTRACT There are many religions living all over the world today. As a result of globalization, daily human relations are getting closer every day. Religion is one of the most effective factors in the regulation of these relations. In this article, two of the Divine religions, namely Islam and Judaism, have been selected for comparison. In the article, the provisions of the two religions regarding the relations between believers and non-believers are examined comparatively. The comparisons have been made based on primary and secondary sources. The comparisons regarding relations between believers and non-believers were made mostly on the basis of the regulations regarding the non-believers who are permanent residents in the lands where the believers live. Such a study based on the primary and secondary sources shows that in all branches of law, both religions regard their adherents superior to the adherents of other religions, and when declaring a rule they first consider the benefit of their adherents. However, at least in principle, both Judaism and Islam have also fair rules about non-believers.

Keywords: Judaism; Islam, believer; non-believer; law of minorities

ÖZ Bugün dünyanın her yerinde yaşayan birçok din bulunmaktadır. Küreselleşme ile birlikte, günlük insan ilişkileri her geçen gün biraz daha da yakınlaşmaktadır. Bu ilişkilerin düzenlenmesinde en etkili faktörlerden biri de dindir. Bu makalede, karşılaştırma için İlahi dinlerden iki tanesi, yani İslam ve Yahudilik seçilmiştir. Makalede iki dinin kendisine inanan ve inananlar arasındaki münasebetlerine dair hükümleri karşılaştırmalı olarak incelenmiştir. Çalışmadaki karşılaştırmalar, birincil ve ikincil kaynaklara dayalı olarak yapılmıştır. İnanan ve inananlar arasındaki ilişkilere ilişkin karşılaştırmalar, daha çok inananların yaşadıkları topraklarda kalıcı olarak ikamet eden inananlara ilişkin düzenlemelere dayanılarak yapılmıştır. Kaynaklara dayalı böyle bir çalışma, her iki dinin de hukukun bütün dallarında kendi taraftarlarını diğer dinlerin mensuplarından üstün gördüklerini ve bir kural ilan ederken öncelikle mensuplarının menfaatini düşündüklerini göstermektedir. Bununla birlikte, en azından prensipte, hem Yahudilik hem de İslam, inananlar hakkında adil hükümlere sahiptir.

Anahtar Kelimeler: Yahudilik; İslam; inanan; inananlar; azınlıklar hukuku

EXTENDED ABSTRACT

There are many religions living all over the world today. As a result of globalization, daily human relations are getting closer every day. Religion is one of the most influential factors in regulating these relations. In this article, two of the Divine religions, namely Islam and Judaism, have been selected for comparison. In the article, the provisions of the two religions regarding the relations between believers and non-believers are examined comparatively. The comparisons have been made based on primary and secondary sources. The comparisons regarding relations between believers and non-believers were made mostly on the basis of the regulations regarding the non-believers who are

permanent residents in the lands where the believers live. The article includes five sections organized according to the branches of law in addition to starting the topic with a section regarding general terminology about the law of minorities. In the first section, I dealt with the general terminology related to the non-believer groups used by each religion. This is important to establish a foundation for the subject for there are different rules for different religious groups in the sources of both religions. In the second section, I discussed the religious rights of non-believer groups in Jewish and Muslim society. In the third chapter, I examined the rules related to civil law. I especially focused on family law like inter-marriage between the members of the different religions. Another important topic of that chapter was about economic regulations related to non-believers. In the fourth chapter I compared each religions' rules about penal law. In that chapter, I concentrated on whether there is a judicial autonomy of non-believers or not, and to what extent non-believers are enforced to follow the same rules with Jews and Muslims. The fifth chapter of my essay is about the dietary rules. In that chapter, I talked about whether non-believers' foods are permitted to the believers or not. In the six and last chapter of my essay, I dealt with political rights of non-believers and what kind of duties that non-believers can perform in Jewish and Muslim government. In each chapter, first I mentioned the textual foundations of the issue in question from sources of both religions. After that I discussed the views of scholars related to the subject. I tried to choose unanimously accepted views, but I sometimes mentioned the controversial opinions as well, if they have an exceptional significance. Such a study based on the primary and secondary sources shows that in all branches of law, both religions regard their adherents superior to the adherents of other religions, and when declaring a rule they first consider the benefit of their adherents. However, at least in principle, both Judaism and Islam have also fair rules about non-believers.

I. TERMINOLOGY AND DEFINITION

1. JUDAIC TERMINOLOGY

A. Foreigners (נכרי or זרים)

In Judaic sources there are two groups of phrases for foreign groups. The first group is the terms of *nokhri* נכרי and *zarim* זרים. Both of them literally mean foreign, strange, alien, and unknown.¹ In terminology, they're used for the real stranger who is only temporarily in Jewish community, and who has not given up his original home, and wanted to keep their original political or social status.² Although they sometimes came as invaders,³ they mostly came into the Jewish land for the purpose of trade and other business enterprise.⁴ According to the following verse, another characteristic of the foreigners is that they come from a distant place:

“...and the stranger who comes in from a distant land, shall say when they see the plagues of the land...”⁵

In another verse the word *goyim* גוים⁶ is used as a synonym of the word *nokhri*.⁷

The term *nokhri* is most clearly defined in the following verse:

“And also, to the stranger who is not of your people Israel, and has come from a land afar off for Your name's sake”⁸

The usual law rules weren't applied for them. According to Michael Guttman, they are often the political even the war enemy of Jewish community. Consequently, the hostile feelings against war enemies should be considered natural.⁹

¹ Arie Comey and Naomi Tsur, *NTC's Hebrew and English Dictionary*, Chicago Illinois, 1999.

² Michael Guttman, “The Term ‘Foreigner’ Historically Considered”, *Hebrew Union College Annual*, 1926, vol. 3, p. 1.

³ For instance, II Samuel 22; 45-46.

⁴ D. L. L., “Strangers and Gentiles” *Encyclopedia Judaica*, Jerusalem, 1971-1972; For detail about trade between Palestinians and Israelites see Guttman, *the term “foreigner” Historically considered*, p. 4-5.

⁵ *Bible Hebrew-Greek the interlinear Hebrew-Greek English Bible*, Lafayette, 1976, Deuteronomy 29; 22.

⁶ The phrase *goyim* literally means nations and people. In terminology it's used for gentiles “*NTC's Hebrew and English Dictionary*”

⁷ “Yes all the nations shall say, why has Jehovah done this to this land...” Deuteronomy 29; 24.

⁸ I Kings 8; 41.

⁹ Guttman, *The term “foreigner” Historically considered*, p. 2-3.

B. Resident Aliens (גרִים)

The second expression is *ger* גר or in plural form *gerim* גרִים. It connotes either a proselyte-*Ger tsedek*, or a foreigner- *ger toshav*.¹⁰ In terminology it is used for resident aliens. *Gerim* lived more or less permanently in Jewish community. The common point between the former group of foreigners and *gerim* is that both of them had been from afar place. However, *gerim* cut their political or social relations with their previous country.¹¹ Like the Arabic *jar* جار or neighbor, they were protected strangers. Even though they enjoyed some more privileges than temporary residents in Jewish land, they had different status from the natives. In return for the privileges they were expected to be loyal and obey the rules of Jewish law.¹² This is mentioned in the Bible as follows:

“So swear now to me here by the God, that you will not lie to me, and to my son, and to my posterity according to kindness which I have shown to you, and to the land (in) which you have lived.”¹³

“As for the congregation there shall be one statute both for you, and for the alien that lives with you, a never-ending statute throughout your generations; as you are, shall the alien be before Jehovah. There shall be one law and one ordinance both for you, and for the alien that lives with you”.¹⁴

Under the light of aforementioned verses, the requirements of Judaism to become a *ger toshav* and to enjoy the privileges are also discussed in Talmudic law. There are two general opinions: According to the first one, renouncing idolatry is enough for becoming *ger toshav*. As to the second view, one must accept the whole Torah except the ban of eating improperly slaughtered meat to become a *ger*. Maimonides had a middle view, and according to him acceptance of seven Noahide laws is enough for it.¹⁵

2. ISLAMIC TERMINOLOGY

“And for every *Ummah* (a community or a nation), there is a messenger; when their messenger comes, the matter will be judged between them with justice, and they will not be wronged.”¹⁶

According to this verse, Allah sent Prophets to every nation beginning from the first human and first Prophet Adam to the last Prophet Muhammad and the chain of those religions has been called as Islam. Muslim scholars divided the people into two general groups on the basis of their acceptance of Islam as a God revealed religion and Muhammad as the last messenger of God:

1. Muslim who believes in Islam and Muhammad
2. Ghayr al-Muslim or non-Muslim who does not believe in Islam and accept Muhammad as a prophet of God.¹⁷

¹⁰ C. K. Harris, Chief Rabbi, *Jewish obligation to the non-Jew, Source material*, Tikkun publications, 1996.

¹¹ D. L. L. “Strangers and Gentiles” *Encyclopedia Judaica*; Guttman, *The term “foreigner” Historically considered*, p. 1.

¹² D. L. L., “Strangers and Gentiles”, *Encyclopedia Judaica*.

¹³ Genesis 21; 23.

¹⁴ Numbers 15; 15-16.

¹⁵ David Novak, “The Treatment of Islam and Muslims in the Legal Writings of Maimonides”, vol. 1, *Studies in Islamic and Judaic Traditions*, 1986, pp. 233-250. I will discuss the seven Noahide laws in the next chapter.

¹⁶ The Noble Qur’an 10: 47.

¹⁷ Abd al-Karim Zaydan, *Ahkam al-Dhimmiyyin wa al-musta'minin fi dār al-Islam*, p. 10.

In this chapter I would like to examine some of the phrases used for non-Muslim groups in Islamic sources.

A. Non-Muslim Religious Groups in the Qur'an and Sunnah

a. *Nasārā* (نصارى)

In Arabic the word *nasrānī* نصراني and its plural form *nasārā* نصارى come from the verb n-s-r نصر, which means to help. *Nasrani* or *nasārā* literally means helper(s). In terminology they are used for Christians. Although they are criticized in the first group of verses because of the principle of trinity, as it is seen in the following verses, they are accepted as the closest group to the Muslims:

“Surely, disbelievers are those who said: “Allah is the third of the three (in a Trinity).” But there is no *ilāh* (god) (none who has the right to be worshipped) but One *Ilāh* (God-Allah). And if they cease not from what they say, verily, a painful torment will befall the disbelievers among them.”¹⁸

“Verily, you will find the strongest among men in enmity to the believers (Muslims) the Jews and those who are *al-Mushrikūn*, and you will find the nearest in love to the believers (Muslims) those who say: “We are Christians.” That is because amongst them are priests and monks, and they are not proud.”¹⁹

b. *Yahud* (يهود)

The second term is the word *yahud*. It literally means those who were guided or those who repented for their sins. In Islamic sources it is used for Jewish people. There are several verses in the Qur'an talking about Jews. In these verses they are criticized because of breaking the covenants and their harsh treatment against prophets.²⁰

c. *Al-Sabiah* (الصابئة)

The root of the word *al-Sabiah* الصابئة is s-b-a which means “converting religion or changing the way from right to wrong”. Polytheist Arabs were calling Muslim proselytes as Sabii, because of their leaving polytheism and accepting the new religion.²¹ There are three place in the Qur'an mentioned the word *al-Sabiah*.²² In terminology, Muslim scholars have different opinions about Sabiah. Some scholars accepted them as a group of Christians; and some of them said that they were worshippers of stars. However, the reason of their debate seems that they didn't have satisfactory information about Sabiah. Today there is a group living in Iraq called as *al-Sabiah*. They believe in God, say that they are the followers of Adam, and they have similar prayers to the Muslims'.²³ Those discussions affected the opinion of scholars about whether followers of Sabeah are a group of *ahl al-kitab* or not.²⁴

¹⁸ The Noble Qur'an 5: 73.

¹⁹ The Noble Qur'an 5: 82.

²⁰ Some of these verses are The Noble Qur'an 2; 97 -98, 3; 183, 2; 55.

²¹ Muhammad ibn Ahmad Qurtubi, *al-Jami' li-ahkam al-Qur'an*, vol. 1, p. 295, Beirut, 1996; Tabari, *Jami' al-bayan 'an ta'wil ay al-Qur'an*, vol. 1, Egypt, 1968, p. 319.

²² The Noble Qur'an 2; 62, 5; 72, 22; 17.

²³ For detail see Zaydan, *ibid* pp. 13-5.

²⁴ I will talk about those discussions under the title of *ahl al-kitab*.

d. *Majus* (المجوس)

Another religious group stated in the Qur'an is *Majus* المجوس. It is used for Zoroastrians. I would like to deal with the discussions among the Muslim scholars under the title of *ahl al-kitab*. Today there is a small group of *majus* live in Iran.²⁵

e. *Dahriyya* (الدهرية)

In Arabic the word *dahr* دهر means time. In terminology it is used for people who believe that there is no God, and everything in the universe come into existence by chance in course of time. They are cited in the Qur'an as follows:

“And they say “there is nothing but our life of this world, we die and we live and nothing destroys us except *Al Dahr* (time). And they have no knowledge of it, they only conjecture.”²⁶

f. *Mushrikūn* (المشركون)

The root of the word *mushrik* is the verb sh-r-k, which means to share, to accept partners. In terminology it is applied for polytheists.²⁷

g. *Murtaddūn* (المرتدون)

Murtaddun المرتدون literally means who retreat, withdraw, or turn back. In terminology it is used for whom apostates from Islam.²⁸ *Murtaddūn* are accepted as a group of non-believers, but there are different rules about them. The first step is trying to remove his or her doubts about Islam and to make him Muslim again. This step takes three days. Hence apostasy has been considered political betrayal, if he doesn't change his mind, he is punished by death. According to Hanafi scholars, capital punishment is applied just for men, not for women.²⁹

B. AHL-I KITAB (اهل الكتاب)

One of the most controversial expressions about non-Muslims is the term “*Ahl al-Kitab*” اهل الكتاب. It literally means the people of the book or possessors of the Scripture.³⁰ In terminology, it is used for religious groups who have a holy book revealed from Allah. Muslim scholars differ about its extent. On the one hand, Shafii and Hanbali scholars by using the following verse limited it just for the Christians and Jews.

“Lest you (pagan Arabs) should say: “The Book was only sent down to two sects before us (the Jews and the Christians), and for our part, we were in fact unaware of what they studied.”³¹

They said that in this verse the word *taefatain* (two groups) grammatically طائفتين can be used only for two groups, and these are the Christians and Jews. If it included other groups, it had to be in plural form.³²

²⁵ Zaydan, ibid pp 15-6.

²⁶ The Noble Qur'an 45: 24.

²⁷ Muhammad Rawwas Qal'aji - Hamid Sadiq Quanibi, *Mu'jam Lughat al-Fuqaha' Dictionary of Islamic Legal Terminology*, Beirut, 1996.

²⁸ Hans Wehr, *A dictionary of Modern written Arabic*, New York, 1971.

²⁹ Muwaffaq al-Din 'Abd Allah ibn Ahmad Ibn Qudamah, *al-Mughni li-Ibn Qudamah*, vol. 8, Egypt, 1968, pp. 540-550.

³⁰ Georges Vajda, “Ahl al-Kitab”, *Encyclopaedia of Islam*, Leiden Brill, 1993.

³¹ The Noble Qur'an 6: 156.

³² Ibn Qudamah, *Ibid.*, vol. 7, p. 53.

On the other hand, Hanafi scholars on the basis of the literal meaning of the term construed that all possessors of Scripture from Allah should be in the limits of *ahl kitab*. However, there is not a unanimous opinion among Hanafi scholars about what other groups have a Scripture. Some of them extended the term to the Sabeah and Majus; some others did not accept this extension.³³ During the Islamic history, we see that Hanafi opinion was in practice. Christians, Jews, Sabeans, Zoroastrians and even Hindus were accepted under the meaning of *ahl kitab*.³⁴ This controversy led them to the different conclusions about Muslims' relationship with them such as payment of *jizya*, intermarriage, consumption of their foods etc. which I will examine in the next chapters.

C. Musta'man, Dhimmi, and Dhimma (الذمة و الذمي و المستامن)

Another controversial phrase is the term *Dhimma* الذمة. The word *dhimma* means a contract in which a Muslim accepts to show respect to the non-Muslim. *Dhamm* الذم or the root of the term *dhimma* literally means blame. We see the effect of its root meaning in its terminology. The violation of the contract by Muslim makes him liable to blame.³⁵ As regards to the term *dhimmi* الذمي is used for the permanent non-Muslim subjects of an Islamic state. In other words, *dhimmi* is the person who signs the *dhimma* contract.

The controversy about the term *dhimma* is based on the debate about the extent of the phrase *ahl al-kitab*. Even though in principle the covenant could be made between Muslims and every other nation, but in usual meaning and in practice it was made only with *ahl kitab*. As I mentioned above in practice, Christians, Jews, Sabeans, Zoroastrians and even Hindus were considered under the meaning of *ahl al-kitab*.

Regarding to the term *al-musta'man* المستامن, it literally means a person who is safe. In terminology, it means a non-Muslim who has the right of temporary residence in the land of Islam by means of assurance of protection granted by an Islamic state.³⁶ The difference between Dhimmi and Musta'man is that the permanent membership of an Islamic state is accorded to non-Muslims under the Arabic term *dhimmi*, while the temporary non-Muslim visitors are called as *musta'man*.³⁷ In an aspect they are similar to the terms *nokhri* and *ger toshav* of Judaic terminology.

D. Dār al-Islam, Dār al-Harb

The last part of this chapter is about the sovereignty dimension of Islamic view of nations. It is the one of the results of division of people as Muslims and non-Muslims. Muslim scholars examined the countries according to the prevailing rules over them. The word دار "dār" literally means house, building, locality, area, land, and country.³⁸ In terminology it means "a country which is under the control of Muslim or non-Muslim ruler."³⁹ According to this definition, the ruling power is the distinctive factor for determination of the type of the country. As to the Islamic law generally there are two kinds of countries:⁴⁰

³³ For more information see Zaydan, *ibid* pp 11-6. Zaydan agrees that Sabeans can be accepted as *ahl al-kitab*, but Majus cannot.

³⁴ Nettler, "Dhimmi", *Oxford Encyclopedia of Modern Islamic World*.

³⁵ Sheikh Showkat Hussain, "Status of Non Muslims in an Islamic State", *Hamdard Islamicus*, vol. 16, No. 1, 1993.

³⁶ Zaydan, *ibid.*, pp. 46-56.

³⁷ A. D., Muztar, "Dhimmi in an Islamic State", *Islamic Studies*, vol. 18, 1979, pp. 65-75.

³⁸ Hans Wehr *A dictionary of Modern written Arabic*, New York, 1971.

³⁹ Ibn 'Abidin, Muhammad Amin ibn Umar *Radd almuhtar 'ala al-Durr al-mukhtar sharh Tanwir al-Absar*, Beirut, vol. 6, 1994-1998, p. 275.

⁴⁰ There are two more divisions of *dār*, *dār al-baghy* and *dār al-sulh* but these can be accepted as subdivisions of *dār al-Islam* and *dār al-harb*.

a. *Dār al-Islam* دار الإسلام

It literally means the land of Islam. In terminology as I mentioned above, the ruling power is the determinative factor for the definition. The whole territory in which Islamic law prevails is called *dār al-Islam*.⁴¹ Most of the Muslim scholars made a similar definition for *dār al-Islam*. For example, Hanafi scholar Sarakhsi defines it as the lands under the ruling of Muslims. Another Hanafi scholar Kuhistani characterizes *dār al-Islam* as the lands under the power of Muslim ruler. In another one, it is defined as the land under the control of Islamic law.⁴² Shafii scholars made a different definition for *dār al-Islam*. According to them, there are three types of *dār al-Islam*: 1. Lands where Muslims live 2. Lands that are conquered by Muslim army and left to the non-Muslims in return for the *jizya* 3. Lands that were under the ruling of Islam but later conquered by non-Muslims. According to these definitions, the religion of the population is not important. In other words, *dār al-Islam* is the land that the Muslims have the ruling power and they rule the country according to the Islamic law, it is not important whether they are the majority of the population or not.⁴³ There are different terms used for *dār al-Islam* by Muslim scholars. For example, *dāruna* (our land-Sarakhsi), *dār al-Iman* (land of faith-Ibn Arabi), *dār al-tawhid* (land of monotheism-Sarakhsi), *dār al-Muslimin* (land of Muslims-Imam Shafii), and *dār al-Ahkam* (land of rules-Sayyid Sharif Jurjani).⁴⁴

b. *Dār al-Harb* دار الحرب

It literally means the land of war. In terminology, there are some different definitions. In one of them, *ahl al-harb* is defined as follows: “those who have refused to be converted after being properly invited on the best terms, against whom any kind of warfare is henceforth permissible in keeping with the rules in surah IX”.⁴⁵ Another one made by Shafii scholar Bujayrimi for *dār al-harb* is as follows: lands that are under the control of non-Muslim ruler who doesn't give *jizya* to the Muslims and have never been under the control of Islam.⁴⁶ As to the extension of the meaning of the term *dār al-Islam*, the limits of *dār al-Harb* increase or decrease. Other terms used for *dār al-harb* are *dāruhum* (their land- Sarakhsi), *dār al-shirk* (land of polytheism-Imam Shafii), and *dār al-kufr* or *dār al-kuffar*. Some compound nouns containing nation names have also been used for *dār al-harb*, such as *dār al-Turk*, and *dār al-Hind*.⁴⁷

II. THE GENERAL ATTITUDE TOWARDS THE NON-BELIEVERS

In Judaism, there are three approaches about the members of the other religions. On the one hand, there is an approach that concentrates on individual Jewish society, and try to minimize the social contact with others, on the other hand there is an opposite approach trying to earn Judaism a wider and more universal role. The third one tries to keep a middle approach between the first two. According to medieval Jewish philosopher Yehuda Halevi everything in this universe can be categorized into four groups: minerals, vegetables, animals and human beings. The Jewish people belong to a special fifth group. There is a similar approach in Kabbalistic sources. As to them, the soul of gentile originates from evil powers, thus they are incapable of doing fair actions. On the other hand, another group of Jewish

⁴¹ A. Abel, “*Dār al-Islam*” Encyclopaedia of Islam, Leiden Brill, 1993.

⁴² Ozel, *İslam Hukukunda Ülke Kavramı Darulislam Darulharb*, pp. 80-81.

⁴³ Ozel “Dār’ul Islam”, *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, Istanbul, 1988.

⁴⁴ Ozel, *İslam Hukukunda Ülke Kavramı Darulislam Darulharb*, p. 83.

⁴⁵ A. Abel, “Dār al-Harb”, *Encyclopaedia of Islam*, Leiden Brill, 1993.

⁴⁶ Ozel, *İslam Hukukunda Ülke Kavramı Darulislam Darulharb*, pp.73-5.

⁴⁷ Ozel, *İslamda Ülke Kavramı*, p. 83.

thinkers are criticized because of forgetting their own people as a result of their extreme humanist approach.⁴⁸

The followers of the third view believe that Jewish people has a special position in the world. However, this does not mean that other people are insignificant. In Exodus 4: 22, God calls Jewish people as his first-born sons. This is interpreted as other people, even if they don't have the value of first-born, are also the children of God. The idea of chosen people is mentioned in the following verses:

“...You shall become a peculiar treasure to Me above all the nations, for all the earth is Mine. And you shall become a kingdom of priests for Me, a holy nation...”⁴⁹

“I, the Lord, have called you with righteous purpose and taken you by the hand; I have formed you, and destined you to be a lamp to all peoples, a light unto the nations.”⁵⁰

According to the third group, these and other similar verses just signifies the responsibility of Jewish people against other people.⁵¹

In biblical Judaism, the worship of the One God was seen as a unique characteristic of Jewish people. Israel was considered the only monotheist nation, and all the other nations or *goyim* were polytheistic. In the rabbinic writings it is seen a more radical approach. In Jewish society practice idolatry and polytheist beliefs were prohibited to both Jews and non- Jews. However, in later times the approach against non-Jews was changed. In Hellenistic Jewish writings, it was recognized that non-Jews could be monotheists and they were considered as potential Jews.⁵² In Maimonides' writings, for instance, it is seen that he accepted Muslims as monotheistic believers:

“These Muslims are not idolaters (*ovdei avodah zarah*) at all. It has already been cut off from their mouth and mind. For they are totally and properly committed to the One God (*yihud ke- ra'y*) without deceit (*dof*)... And if someone says that the house that they praise [*al-Ka'ba*] is an idolatrous shrine and an idol was hidden in it which their ancestors used to worship- what about it? Those who worship in its direction today, their thoughts are only for God (*en libbam ella la-Shamayim*)... So it is with these Muslims today, all of them, even children and women, idolatry is cut off from their mouth.”⁵³

Although he treated Islam as complete monotheism, and Christianity as a form of idolatry, he considered Christianity superior to Islam. This is seen in his opinion about teaching any more of the Torah than seven Noahide commandments to Christians and Muslims. He permitted it for Christians but not for Muslims:

“It is permitted to teach the commandments (*ha mitzvot*) to Christians (*Nosrim*) and to draw them to our religion, but this is not permitted with Muslims because of what is known to you about their belief that Torah is not a divine revelation (*enah min ha Shamayim*). When you will teach something from the Scripture, they will find that it contradicts what they have revised (*she badu hem*) from their own minds according to the confused stories and incoherent doctrines which have come to them, and this will not be a proof to them because they possess error (*she-ta'ut be -*

⁴⁸ Harris, Ibid., pp. 1-2.

⁴⁹ Exodus 19: 5-6.

⁵⁰ Isaiah 42: 6.

⁵¹ Harris Ibid. pp. 8-9.

⁵² Novak, *The treatment of Islam and Muslims in the legal writings of Maimonides*.

⁵³ Novak, Ibid.

yadehem),... but the uncircumcised ones believes that the version (*nusah*) of the Torah has not changed, only they interpret it with their faulty exegesis ... But when these scriptural texts will be interpreted with correct exegesis (*'al ha-perush ha-nakhon*), it is possible that they will return to the good... There is nothing that they will find in their Scriptures which differs from ours.”⁵⁴

It is also seen that according to Maimonides the superiority of Judaism over Christianity and Islam is not because of its monotheistic character, but because of the superiority of Mosaic prophecy whose product is the Torah. Mosaic prophecy is the full expression of original monotheism. Any contradiction with this original monotheism would render the subsequent prophecy false.⁵⁵

Like in Judaism, in Islam too there are different rules for believers and non-believers. They are not equal not only in the Hereafter but also in this world. Making such a distinction among the subjects of an Islamic state is one of the controversial topics of the Islamic law. Especially Western scholars pay attention to the inequality of Muslims and non-Muslims.⁵⁶ On the other hand Muslim scholars such as Muhammad Hamidullah and Muhammad Sharif Chaudhry, think that such a distinction is very normal in an ideological state. If a believer in God or a capitalist is considered as a stranger in communist countries, it should not be surprising if a Non-Muslim should be regarded as a stranger in the land of Islam. As in every other ideological system, Islam naturally makes distinction between who accepts its ideology and who does not.⁵⁷

In Islamic sources, naturally believing in Islam is accepted superior to believing into the other religions. Like Jews in a Jewish society, Muslims in a Muslim region are the full citizens and only they enjoy the rights of full citizenship. All others have the benefit of rights varying degrees according to their relationship to the Muslims.⁵⁸ This is mentioned in the 139th verse of 3rd surah: “...You will be superior if you are indeed (true) believers”. However, a full freedom is granted to non-Muslims about choosing to believe in Islam or not.

The following verses, *ahadith*, and historical evidences show Islamic approach about the religious freedom of non-Muslims:

“There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in *Tāghūt* and believes in Allah, and then he has grasped the trustworthiest handhold that will never break. And Allah is All-Hearer, All-Knower.”⁵⁹

This verse and others⁶⁰ prescribe that there should be no compulsion in religion. Both *dhimmis* and *musta'mans* have the right of choosing and living according to the rules of whatever religion they choose. They have an assurance regarding their safety and conscience.⁶¹ In another verse Allah says that nobody even the Prophet himself has the right of compulsion:

“And had your Lord willed, those on earth would have believed, all of them together. So, will you (O Muhammad SAW) then compel mankind, until they become believers?”⁶²

⁵⁴ Novak, *Ibid*.

⁵⁵ Novak, *Ibid*.

⁵⁶ Ronald L. Nettler, “Dhimmi”, *Oxford Encyclopedia of Modern Islamic World*, New York, 1995.

⁵⁷ Muhammad Hamidullah, *Introduction to Islam*, New Delhi, 1992, pp. 200-201; Muhammad Sharif Chaudhry, *Non-Muslim Minorities in an Islamic State*, Lahore, 1995, pp. 5-16.

⁵⁸ Majid Khadduri, *War and Peace in the law of Islam*, Baltimore, 1955, p. 163.

⁵⁹ The Noble Qur'an 2: 256.

⁶⁰ Such as the Noble Qur'an 18: 29; 109: 1-3.

⁶¹ Muhammad Yusufuddin, *Islamic State: Treatment of Non-Muslim Subjects*, Islamic literature, 1966; Muhammad Hamidullah, “Status of Non-Muslims in Islam”, *Majallat al Azhar*, November & December, 1973.

⁶² The Noble Qur'an 10: 99.

The Prophet himself applied the best example of this freedom. When he established the first Islamic state in Medina, which was a confederacy as a sequence of the multiplicity of the population groups, Muslims and other religious groups in Medina signed a constitution. The clauses of this Constitution have completely come down to us. Especially the 25th clause is important about the religious rights of the subjects of Islamic state:⁶³

“To Muslims their religion and to Jews their religion”⁶⁴

I also want to mention two sayings of the Prophet about the protection of the rights of the non-Muslims. When he was on his deathbed, he said:

“Observe scrupulously the protection accorded by me to non-Muslim subjects”⁶⁵

In another saying reported by Abu Dawud, he says:

“Whoever oppresses the non-Muslim subjects, shall find me to be their advocate on the day of the Resurrection (against the oppressing Muslims).”⁶⁶

One of the natural results of religious freedom is the freedom of religious education. According to Muhammad Hamidullah, in the time of the Prophet, the Jews of Medina had their *Bait al-Midrās* that was both a synagogue and educational institute. He says regarding to the Christians, when the Prophet made an agreement with the Christians of *Najran*, he granted them not only for the security of the person and property of the inhabitants, but also left the appointment of bishops and priests to the Christian community itself.⁶⁷ According to this agreement, if they do not break the conditions of the agreement, they will not be compelled to change their religion, their place of worship will not be demolished, and their priests will not be forced to leave their places.⁶⁸ During the Caliphate of ‘Umar, the similar rules are seen in the treaty of Muslims with Christians whereby Jerusalem surrendered to the Muslims.⁶⁹

Another significant verse about the religious rights of non-Muslims is the following:

“And insult not those whom they (disbelievers) worship besides Allah, lest they insult Allah wrongfully without knowledge. Thus, We have made fair-seeming to each people its own doings; then to their Lord is their return and He shall then inform them of all that they used to do.”⁷⁰

⁶³ The summary of the relevant portion of the covenant is as follows:

“Whoever among the Jews follows us shall have help and equality; they shall not be injured nor shall any enemy be aided against them. The Jews maintained their religion and the Muslims theirs’. Among the Jews (belonging different tribes), so with their adherents: those who transgress and behave unjustly and sinfully hurt but themselves and their families. Loyalty is a protection against treachery. The close friends of Jews are as themselves. Each if attacked shall come to the help of the other. The Valley of Yathrib (Medina) shall be sacred and inviolable for all who join this treaty. Strangers under protection shall be treated on the same grounds as their protectors.” Hamidullah, *Majmu‘at al-Wasaiq al-Siyasiyah lil-‘ahd al-Nabawi wa- al-khilafah al-Rashidah*, pp. 59-61.

⁶⁴ Hamidullah, *Introduction to Islam*, p. 203; Chaudhry Ibid. p. 13.

⁶⁵ Hamidullah, *Introduction to Islam*, p. 206, quoted from Mawardi, *al-Ahkam al-Sultaniyah*.

⁶⁶ Hamidullah, *Introduction to Islam*, p. 206.

⁶⁷ Hamidullah “Status of Non-Muslims in Islam”, *Majallat al-Azhar*, November & December, 1973; Huseyin Yilmaz, *Kur’an’ın Isiginda Muslim-Gayrimuslim Munasebetleri*, Istanbul, 1997, p. 88. The summary relevant portion of the Prophet’s letter to the Christians of Najran is as follows in Hamidullah’s *Majmu‘at al-Wasaiq al-Siyasiyah lil-‘ahd al-Nabawi wa- al-khilafah al-Rashidah* pp.175-76.

“To (the Christians of) Najran and the neighboring territories, the Security of Allah and the pledge of His Prophet are extended for their lives, their religion and their property...to those present as well as the absent ones and others besides: there shall be no interference with (the practice of) their faith or their observances, nor any change in their rights or privileges; no bishop shall be removed from his bishopric, nor any monk from his priesthood, and they shall continue to enjoy everything great and small as heretofore; no image or cross shall be destroyed; they shall not be oppressed suppressed; they shall not practice their rights of blood-vengeance as in the days of ignorance; no tithes shall levied on them nor shall they be required to furnish provisions for the troops, nor shall troops be quartered on them.”

⁶⁸ Yilmaz, Ibid. p. 88.

⁶⁹ See for the details of the treaty Chaudhry, Ibid. pp. 13-14 quoted from Sir William Muir *The Caliphate, its rise, decline and fall*.

⁷⁰ The Noble Qur’an 6: 108.

In this verse, Allah prohibits to ridicule, and insult the religion of non-Believers. Even in the case of the propagation of Islam, Muslims are ordered to be very polite and respectful to non-Muslims.⁷¹ A. D. Muztar narrates a very good example related to this order. He says that the *dhimma* contract does not come to an end even if a *dhimmi* is found guilty of blasphemy. During the Caliphate of Abu Bakr, a Muslim officer severed one hand and two teeth of a woman singer who had sung blasphemous songs about the Muslims. Abu Bakr disapproved this and said shirk (polytheism) is the greatest of all the sins. So if a Muslim state tolerated their major sin, and allowed to live among the Muslims, their minor sins could also be tolerated.⁷²

There is a similar view in Judaism. Crimes against non-Jews are considered worse than the crimes against Jews, because it might cause profanation of God's Name. It is illustrated as follows in Tosefta:

“One person robs a non-Jew must return the article to the non-Jew; stealing from a non-Jewish person is worse than stealing from a Jewish person, because it constitutes a desecration of God's name.”⁷³

Muslim scholars also established some rules about the places of worship. According to these rules, if the city is established by Muslims, non-Muslims are not allowed to build temples. If the city had been under the rule of non-Muslims and then it was conquered by force, non-Muslims are not allowed to build new temples even if the old temples are not demolished. If Muslims conquer a city with an agreement, the situation of the temples depends on the agreement rules. Although these are the rules, in practice, non-Muslims have been allowed to build new ones.⁷⁴ For example, Adud al-Dawla, the Buwaihid ruler gave permission to his Christian minister Nasr ibn Harun to build new churches for the Christians in his country.⁷⁵ Another good example about the situation of place of worships happened during the time of Abbasid Caliph Hadi. His governor of Egypt, Ali b. Sulayman demolished some churches in Egypt. Ali was dismissed by the next Caliph Harun, and Musa ibn Ali was appointed as governor. Musa asked the opinion of Muslim *ulama* or Muslim scholars. Al Layth ibn Sa'd judged that all demolished churches had to be reconstructed and the state treasury had to pay the expenses, because all of those churches had been constructed during the time of the companions of the Prophet and they had approved them.⁷⁶

As I mentioned above Islam is against the pressure over the right of choice. This is applied not only to the non-Muslim subjects of Muslim state but also to the victims of racial, religious, political and other persecutions outside the Muslim world. In practice, people under the pressure of another ideology found shelter and refuge in the land of Muslim state. The right of asylum is granted by the following verse:

“And if anyone of the *Mushrikūn* (polytheists, idolaters, pagans, disbelievers in the Oneness of Allah) seeks your protection then grant him protection, so that he may hear the Word of Allah (the Qur'an), and then escort him to where he can be secure, that is because they are men who know not.”⁷⁷

⁷¹ The Noble Qur'an 16; 125, and 29; 46.

⁷² Muztar, Ibid. p. 71.

⁷³ Harris, Ibid.

⁷⁴ Ahmet Ozel, “Gayri Muslim”, *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, Istanbul, 1988; Muztar, Ibid. p. 70; Arthur Stanley Tritton, *The Caliphs and their Non-Muslim Subjects*, London, 1970, p. 38.

⁷⁵ Muztar, Ibid. p. 70.

⁷⁶ Muztar, Ibid. p. 71.

⁷⁷ The Noble Qur'an 9: 6.

III. CIVIL LAW RULES

1. RULES RELATED TO FAMILY LAW

In Judaism, one of the prohibited marriage types is mixed marriage. It is defined as a marriage of a non-Jew to a Jew, i.e., one born of Jewish parents or whose mother alone was Jewish, or who has become a proselyte in accordance with Jewish law⁷⁸ The basis of this prohibition is the following verses:

“When Jehovah your God shall bring you into the land to which you are going to possess it, and He has cast out many nations from before you, the Hittites, and the Girgashites, and the Amorites, and the Canaanites, and the Perizzites, and the Hivites, and the Jebusites, seven nations greater and mightier than you; and when Jehovah your God shall deliver them before you, and you shall smite them, (then) you shall utterly destroy them; you shall cut no covenant with them, nor show mercy to them; Nor shall you make marriages with them you shall not give your daughter to his son, nor shall you take his daughter to your son. For he will turn away your son from following Me, that they may serve other gods; so will the anger of Jehovah be kindled against you, and He will destroy you quickly.”⁷⁹

According to one interpretation of these verses, the prohibition of mixed marriage is limited just with those seven nations mentioned in the first verse. Others think that although in some other cases, such as dietary rules, there is difference between monotheists and polytheists,⁸⁰ about the prohibition of intermarriage there is no difference among non-Jews, because the reason for prohibition is explained after saying “Nor shall make marriages with them...” as “For he will turn away your son from following Me”, and this includes all people who would turn Jewish children away.⁸¹ According to Jewish scholars mixed marriage is legally invalid, consequently it doesn't have any legal consequences. For example, it doesn't change personal status. Regular inheritance rules as in a valid marriage such as the husband's right to inherit his wife's estate, are not applicable for mixed marriage.⁸²

In Islamic law there are three different situations about intermarriage:

- A. Muslim men's marriage with possessors of Scriptures
- B. Muslim men's marriage with others
- C. Muslim women's intermarriage

A. Muslim Men's Marriage with Possessors of Scriptures

According to majority of Muslim scholars, it is allowed for Muslim men to marry a woman who is *ahl al-kitab*. Abdullah Ibn 'Umar, one of the companions of the Prophet, think that it is *makruh* or objectionable.⁸³ As I mentioned in the first chapter, there is a disagreement among the Muslim scholars about the extent of the term *ahl kitab*. The effect of this disagreement is also seen about intermarriage. Majority of scholars think that the permission of intermarriage is just for marriage with Christian and

⁷⁸ Ben Zion Scheresschewsky, “Mixed Marriage”, in *The principles of Jewish Law* edited by Menachem Elon, Jerusalem, 1975, p. 376-77.

⁷⁹ Deut. 7; 1-4.

⁸⁰ Novak, Ibid.

⁸¹ Scheresschewsky, Ibid.

⁸² Scheresschewsky, Ibid.

⁸³ Ibn Rushd (Averroes), *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, pp. 51-2; Zaydan, Ibid. pp. 34-42.

Jewish women. However, there is a debate about intermarriage with *Majusi* and *Sabean* women. Majority of scholars do not permit marriage with *Majusi* women, because they do not accept them as a group of *ahl al-kitab*. While Zahiri scholars and Abu Sawr permit intermarriage with them.⁸⁴ Their evidence is a *hadith* narrated from the Prophet:

“Treat them (*majus*) like treatment ahl al-kitab.”⁸⁵

It is also narrated that one of the companions, Huzayfa was married with a *Majusi* woman.⁸⁶ Some Shiite scholars give permission for *mut'a* or temporary marriage not for permanent marriage.⁸⁷ As regards to the *Sabean* women there are two opposite opinions. The scholars who accepted them as a group of *ahl al-kitab*, such as Imam Abu Hanifa, permitted their marriage. However, majority of scholars disapproved their marriage.⁸⁸ The permission of marriage with ahl kitab women is given to Muslim men in the following verses:

“(Lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the Scripture (Jews and Christians) before your time, when you have given their due *Mahr* (bridal money given by the husband to his wife at the time of marriage), desiring chastity (i.e. taking them in legal wedlock) not committing illegal sexual intercourse, nor taking them as girl-friends. And whosoever disbelieves in the Oneness of Allah and in all the other Articles of Faith [i.e. His (Allah's), Angels, His Holy Books, His Messengers, the Day of Resurrection and *Al Qadar* (Divine Preordainments)], then fruitless is his work, and in the Hereafter he will be among the losers”⁸⁹

Another evidence for their opinion is the practice of some companions of the Prophet.⁹⁰ According to Muslim scholars, the only condition for this permission is that the ahl kitab woman must be chaste. This is declared in the following verse:

“The adulterer marries not but an adulteress or a *Mushrikah* and the adulteress none marries her except an adulterer or a *Mushrik* [and that means that the man who agrees to marry (have a sexual relation with) a *Mushrikah* (female polytheist, pagan or idolatress) or a prostitute, then surely he is either an adulterer, or a *Mushrik* (polytheist, pagan or idolater, etc.) And the woman who agrees to marry (have a sexual relation with) a *Mushrik* (polytheist, pagan or idolater) or an adulterer, then she is either a prostitute or a *Mushrikah* (female polytheist, pagan, or idolatress, etc.)]. Such a thing is forbidden to the believers (of Islamic Monotheism).”⁹¹

Some scholars also say that this permission is just for the women who are *dhimmis* and *musta'mans*. Marriage with *ahl al-harb* is not permitted.⁹²

⁸⁴ Qurtubi, Ibid., vol. 6, p. 51-54.

⁸⁵ Yaqub Abu Yusuf, *Kitab al Kharaj*, p. 143, Cairo, 1999; The following *hadiths* is another version of this *hadith* which has been used as an evidence for prohibition of intermarriage with *Majusi* women by Majority of scholars:

سنوا بالمجوس سنة اهل الكتاب غير ناكحي نسايتهم وال اكلني ذياتهم

“Treat them (*majus*) like treatment ahl al-kitab except do not marry their women and do not eat their slaughtered animals”

⁸⁶ Ibn Qudamah, Ibid., vol. 7, p. 53-54; Zaydan Ibid., pp. 345-46.

⁸⁷ Muhammad Jawad Maghniyah, *Fiqh al-Imam Ja'far al-Sadiq*, vol. 5, Beirut, 1984, pp. 208-11.

⁸⁸ Ibn Qudamah, Ibid., vol. 7, p. 53.

⁸⁹ The Noble Qur'an 5: 5.

⁹⁰ “For instance, Talha ibn Ubaydullah married with a Jewish woman from Syria”. Zaydan, Ibid. p. 342.

⁹¹ The Noble Qur'an 24: 3.

⁹² Tabari, Ibid., vol. 6, p. 108; Qurtubi, Ibid., vol. 6, p. 53; Muhammad ibn al-Hasan Shaybani, *Sharh Kitab al- Siyar al-kabir*, vol. 1, Cairo, 1971, p. 337.

B. Muslim Men's Marriage with Others

It is unanimously accepted that marriage with other than ahl-kitab women is prohibited in Islam. This is mentioned in the following verse:

“And do not marry *Al-Mushrikāt* (idolatresses, etc.) till they believe (worship Allah Alone). And indeed, a slave woman who believes is better than a (free) *Mushrikah* (idolatress, etc.), even though she pleases you. And give not (your daughters) in marriage to *Al-Mushrikūn* till they believe (in Allah Alone) and verily, a believing slave is better than a (free) *Mushrik* (idolater, etc.), even though he pleases you. Those (*Al-Mushrikūn*) invite you to the Fire, but Allah invites (you) to Paradise and Forgiveness by His Leave, and makes His *Ayāt* (proofs, evidences, verses, lessons, signs, revelations, etc.) clear to mankind that they may remember”⁹³

C. Muslim Women's Intermarriage

As regards to Muslim woman, like in the case of men's marriage other than ahl al- kitab, it is unanimously accepted that she cannot marry with a non-Muslim man.⁹⁴ There is no difference between ahl kitab and others. This is mentioned in the above-mentioned verse.⁹⁵ The reason of prohibition of intermarriage with ahl kitab for Muslim women, while it is permitted for Muslim men, is that Muslim family is patriarchal family. So every newborn is related to the father to the contrary of Judaism.⁹⁶

2. FINANCIAL RELATIONS

A. General Rules

In Islamic law there is a general rule about transactions of non-Muslims. According to this rule they are under the same regulations with Muslims about their transactions.⁹⁷ This equality is seen all their economic activities, like renting, buying, and selling. They even have equal rights about pre-emption. If anybody sells his property, the neighbor has priority over the stranger.⁹⁸ The situation of *dhimmi*s and *musta'mans* about the regulations are the same. The only exception for this rule is about the types of merchandise. In addition to the freely transaction right with allowed commodities for Muslims, they even have the right of transaction among the non-Muslim community with some goods which is forbidden to the Muslims, such as alcoholic beverages, and pig meat.⁹⁹

In both of the religions there is a special situation about usurious transactions. In Judaism, usury is prohibited among the Jews while it is permitted against strangers. Prohibition of usury among Jews is mentioned in Exodus 22: 25 and Leviticus 25: 35 -37:

“If you lend money (to) my people, the poor with you, you shall not be as a money-lender to him. You shall not put interest on him.”

“And when your brother has become poor, and his hand has failed with you, then you shall uphold him; he shall live with you as an alien and a tenant. You shall take no interest from

⁹³ The Noble Qur'an 2: 221.

⁹⁴ Muztar, Ibid. p. 71.

⁹⁵ The Noble Qur'an 2: 221.

⁹⁶ Yilmaz, Ibid. pp. 115-6.

⁹⁷ Zaydan, Ibid. p. 547.

⁹⁸ Hamidullah, “Status of non-Muslims in Islam”, *Majallat al-Azhar*, December 1973.

⁹⁹ Zaydan Ibid. pp. 551-560.

him, or increase, and you shall be afraid of your God; and your brother shall live with you; you shall not give money to him in interest and you shall not give your food for increase”.

However, in Deuteronomy 23: 19-20, usury is permitted against strangers:

“You shall not lend at interest to your brother: interest of money, interest of food, interest of anything which is loaned at interest. You may lend to a stranger at interest, but you shall not lend at interest to your brother; so Jehovah your God may bless you in all that you put your hand (to), in the land where you go to possess it”.

Although, all kind of interest is prohibited among the Jews, in practice some evasions are seen about the prohibition. For instance, Jews used non-Jews as intermediaries for interest bearing transactions between two Jews.¹⁰⁰

There is a similar discussion among the Muslim scholars related to this topic. It is unanimously accepted by Muslim scholars that *riba* رِبُو or interest is prohibited among the Muslims wherever they are. It is prohibited for non-Muslim living in the land of Islam, too. However, there is a disagreement about interest-bearing trade between Muslims and non-Muslims inside the borders of *dār al-harb*. Maliki, Shafii, Hanbali, Zahiri and Hanafi scholar Abu Yusuf (d. 182 ah/ 798 ad) have the same opinion. According to them, *riba* is prohibited for Muslims for every condition. They think that the verses and ahadith, which prohibit *riba*, are for every condition. According to them *riba* is prohibited for non-Muslims too like Muslims.¹⁰¹ Imam Abu Hanifa and Muhammad disagree them. On the condition that Muslim is the receiver party of the interest, they permit interest-bearing transactions in the borders of *dār al-harb*. They have the same opinion about getting non-Muslim’s money by their consent like gambling, selling swine or meat of a dead animal to them. Their first evidence is a *hadith* narrated from the Prophet:

“Interest rule is not applied between Muslim and non-Muslim on the land of Kufr.”¹⁰²

Another evidence is that Abbas uncle of the Prophet had made interest-bearing transactions in Mecca after the prohibition of *riba*. The Prophet hadn’t prevented him before the conquest of Mecca.¹⁰³ Jafari scholars agree with Imam Abu Hanifa and Muhammad about this subject. They use another hadith as an evidence:

“Prophet said that there is no *riba* between us and a group that we fight against them. We take from them a thousand *dirham* in return for a *dirham*. We don’t give them”.¹⁰⁴

Non-Muslim subjects can freely possess property in Muslim land. However, in Judaism, it is seen that there is an opposite approach. Some Jewish scholars think that there is consensus about that aliens cannot possess land in Jewish society.¹⁰⁵ Selling land to a gentile in disregard of a neighbor’s preemption right was also seen as a offence for the punishment of isolation from his community.¹⁰⁶ On the other hand Muslim scholars unanimously accepted that if non-Muslims completely perform their financial requirements towards the Muslim state, Muslim government had to protect their property.¹⁰⁷

¹⁰⁰ Haim H. Cohn, “Usury”, in *The principles of Jewish Law*, edited by Menachem Elon, pp. 500-505.

¹⁰¹ Malik ibn Anas, *Al-Mudawwanah al-Kubra*, Volume: 6, Beirut, 1994, p. 271; Sarakhsi, *Al-Mabsut*, Volume:14, p. 56; Shafii, *al Umm*, Volume: 7, pp. 358-59; Abu Jaghfar Muhammad Ibn Jarir al-Tabari, *Ikhtilaf al-fuqaha*, Beirut, 1980, pp. 82-3.

¹⁰² Sarakhsi, *Al-Mabsut*, Volume: 10, p. 28; Muhammad ibn Idris al Shafii, *al Umm*, Volume:7, 1900, pp.358-359.

¹⁰³ Sarakhsi, *Ibid*. Volume: 10, p. 28; Volume: 14, p. 57.

¹⁰⁴ Muhammad Jawad Maghniyah, “*Fiqh al Imam jafar al sadiq*”, Volume: 3, Beirut, 1984, p. 278.

¹⁰⁵ D. Kellerman, “גור Gur; גר Ger; גרות Geruth; מגורים Meghurim” in Botterweck, *Theological Dictionary of the Old Testament*, Michigan, 1975, pp. 439-50.

¹⁰⁶ Cohn, “Herem”, in *The principles of Jewish Law*, edited by Menachem Elon, pp. 539-544.

¹⁰⁷ Yusuf Qaradawi, *Ghayr al Muslimin fi al Mujtama’ al Islami*, Cairo, 1977, p. 15.

There are some debates among the Muslim scholars related to protection of non-Muslims' possessions. According to Hanafi and Zaydi scholars if a Muslim damage a non-Muslim's alcoholic beverage or something else, which is permitted to non-Muslims but forbidden to Muslims, he must compensate the damage. Because even if these materials are invaluable for Muslims, they are valuable for non-Muslims. Although Shafii and Hanbali scholars have the opposite opinion, in practice the first opinion is the preferred one.¹⁰⁸ Muhammad Hamidullah narrates another good example about the right of possessing property. In the time of the caliph 'Umar some Muslims took a piece of land belonging to a Jew violently, then built a mosque on it. Learning the news, the caliph ordered knocking down the mosque and restoring the land of the Jew. Professor Hamidullah also says that this house of the Jew still exists.¹⁰⁹

I also would like to mention a rule about the penalty of theft, which is related to the topic. All Muslim scholars agree with that there is no difference about the enforcement of the penalty of theft whether the victim is a Muslim or non-Muslim. If a Muslim steals the property of a non-Muslim, he deserves the same penalty when he steals the property of a Muslim.¹¹⁰

B. Financial Responsibilities of Believers and Non-Believers

a. Financial Responsibilities of Non-Muslims in an Islamic State

In this chapter I would like to deal with the financial responsibilities of non-Muslims in an Islamic state. Non-Muslims who have *dhimma* agreement with Muslim state are accepted as citizens of the Muslim state. Consequently, like for the Muslim citizens, there are some financial requirements for the non-Muslim subjects in an Islamic state. According to Islamic law, three kinds of taxes are charged from non-Muslims:

a. Jizya

b. Kharaj

c. Ushr

a. Jizya

The root of the word *jizya* comes from *jaza* جزى that means to reward, to punish, or to compensate.¹¹¹ In terminology, it refers to a kind of tax that is taken from non-Muslim subjects of an Islamic state. It is translated as capitation tax, poll tax, and protection tax. In the beginning of Islam this tax does not exist. It was towards the year 9 hijri, *jizya* was ordered by the following verse:

“Fight against those who believe not in Allah, nor in the Last Day, nor forbid that which has forbidden by Allah and His Messenger and those who acknowledge not the religion of truth (i.e. Islam) among the people of the Scripture (Christians and Jews), until they pay the *jizya* with wiling submission, and feel themselves subdued.”¹¹²

The Prophet applied *jizya* to the Christians, Jews, and Zoroastrians. Later after the conquests of Persia, Iraq, Egypt, Palestine, and Syria it was collected from all non-Muslim groups belonging to any of

¹⁰⁸ Zaydan, Ibid. p. 553.

¹⁰⁹ Hamidullah, *Introduction to Islam*, pp. 210-11.

¹¹⁰ Hamidullah, *Introduction to Islam*, pp. 210-11.

¹¹¹ Hans Wehr, *A dictionary of Modern written Arabic*, New York, 1971.

¹¹² Noble Qur'an 9: 29.

faith during the time of the first four caliphs. This and the interpretation of the aforementioned verse caused disagreement among the Muslim scholars about from whom *jizya* should be charged. According to Imam Shafii, it can be applied only for *Ahl Kitab* and Zoroastrians. On the other hand, Imam Malik and some Hanafi scholars think that *jizya* can be applied all non-Muslim groups except the apostates.¹¹³

Only adult non-Muslim men who are able to fight in a battle pay Jizya. Non-combatants like women, children, the old, the sick, the blind, the insane, and the poor who cannot afford it are exempted from its payment.¹¹⁴ Also it is seen that during the Islamic history, some non-Muslims were exempted from payment of *jizya* as a reward for them. For example, a non-Muslim Egyptian was rewarded by Caliph ‘Umar for his project of digging the ancient canal from Fustat (Cairo) down to the Red Sea, so facilitating the maritime transport of the food stuffs of Egypt to Medina. Another example is shown by one of the sayings of the Prophet. He declared at the moment of death of his son, Ibrahim, “Had he survived, I would have exempted all the Copts from the *jizya*, as a mark of respect for Ibrahim’s mother (who was a Coptic girl)”. If a non-Muslim participated in military service, he was exempted from payment of *jizya*, too for that year.¹¹⁵

The amount of *jizya* was ten *dirhams* annually in the time of the Prophet, which was equal to the expenses of an average family for ten days.¹¹⁶ However, during the time of caliph ‘Umar, the rate of tax was increased and fixed according to the financial situation of non-Muslims. It was 4 *dinars* for rich, 2 *dinars* for middle class, and 1 *dinar* for lower class per person per year.¹¹⁷

There have been some discussions about the obligation of *jizya* on non-Muslim subjects. One of them is about why Muslim state forces such a tax on non-Muslim subjects. It is usually understood as a kind of tax that is imposed on non-Muslims because of their disbelief of Islam. However, after a comprehensive examination of the sources of Islamic law, it will be easily seen that it is not a tax taken in return for preserving the belief, because as we mentioned above, compulsion in religion is not accepted in the main sources of Islamic law. To understand the nature of *jizya*, one should bear in mind that non-Muslim subjects are exempted from the military duties. They are citizens of Muslim state and have the right to be protected from all assaults. For that reason, some Muslim scholars translate *jizya* as “protection tax”. There are examples proving this. For example, Khalid ibn Walid declares in the treaty that he made with some town neighborhood of Hira: “If we protect you, then *jizya* is due to us, but if we do not, then it is not owed.” In addition to that, even Muslim subjects of Muslim state were made to pay a tax similar to *jizya* if they were exempted from military services.¹¹⁸

The use of force in the collection of *jizya* is not allowed in Islamic law. The Caliph ‘Umar issued a directive to Abu Ubaidah, the governor of Syria, the collector of taxes should not harm the non-Muslim subjects. According to Hanafi scholar Imam Abu Yusuf, if any *Dhimmi* who has to pay *jizya* dies before paying it, his successors are not responsible for paying it and it is not charged from the property that he left.

¹¹³ Abu Yusuf, *Ibid.*, p. 142; Qurtubi, *Ibid.*, Volume:8, pp. 70-74.

¹¹⁴ Chaudhry, *Ibid.* p. 46.

¹¹⁵ Hamidullah, *Introduction to Islam*, p. 205.

¹¹⁶ Hamidullah, *Introduction to Islam*, p. 204.

¹¹⁷ Chaudhry, *Ibid.* p. 46.

¹¹⁸ Muztar, “Dhimmis in an Islamic State”, *Islamic Studies*, Volume: 13, 1979, pp. 69-70.

b. *Kharaj*

The word *kharaj* is not an original Arabic word. After assimilation into Arabic it is used in the meaning of revenue, crop from the land, tax. In Islamic fiscal administration, the meaning of *kharaj* is a land tax if it used without qualification or in contrast to '*ushr* (tithe) or *jizya*. The word *kharaj* is not used in the Qur'an. It was first established by the Prophet after the battle of Khaibar when the Prophet allowed the Jews of Khaibar to return their lands on the condition that they paid half of their produce as *kharaj*.¹¹⁹ The *kharaj* is a similar tax to *ushr*, which is taken from Muslims, and represents the *zakat* on crops.¹²⁰

It was assessed in different ways. Sometimes the basis of it was the measured acreage; sometimes as shown in the practice of the Prophet it was as percentage of the crop; and sometimes it was a fixed amount.¹²¹ In practice, the governor of Muslim state decides the amount and payment method. For instance, caliph 'Umar charged it as cash.¹²²

c. *Ushr*

The word *ushr* literally means tithe. In terminology, it has two different meanings:

1. It is a tax taken from Muslims for their crops. The amount of it depending on the irrigation is a tenth or a twentieth of the produce.

2. The other meaning of *Ushr* is a kind of customs duty taken from non-Muslim merchants when entering and trading in Muslim land. This tax was first introduced by Caliph 'Umar. He ordered that it should not be taken from *dhimmi*s who paid *jizya*. In theory some scholars accept this, but in practice it was taken from them in addition to *jizya* and *kharaj* and it was even taken from Muslims. However, its rate was changed according to the taxed person.¹²³

All these three kinds of taxes are required from the non-Muslims who can afford the payment of them. The poor non-Muslim subjects of a Muslim state are not forced to pay them.

b. Financial Responsibilities of Believers Towards Non-Believers

Both Judaism and Islam give special importance helping the needy non-believers. In Judaism there is difference between resident aliens and temporary foreigners about helping. In Deuteronomy chapter 15 verses 1-3, it is mentioned that every seven year one should release his loans to his neighbors, but this rule is not applied for foreigner:

“At the end of every seven years, you shall make a release. And this is the manner of release: Everyone who has a loan to his neighbor shall release it; he shall not exact (it) of his neighbor or his brother, because a release has been proclaimed for Jehovah. You may exact it from a foreigner, but your hand shall release whatever is yours with your brother”

¹¹⁹ Abdul Rahman I. Doi, “Kharaj”, *Oxford Encyclopedia of Modern Islamic World*, New York, 1995; Hossein Moderressi, *Kharaj in Islamic Law*, London, 1983, pp. 2-3.

¹²⁰ Doi, “Kharaj”

¹²¹ Moderressi, *Ibid.*, pp. 3-6.

¹²² Yusuf Qaradawi, *Ibid.*, p. 32.

¹²³ Moderressi, *Ibid.*, p. 8; Yusuf Qaradawi, *Ibid.*, p. 36; Yilmaz, *Ibid.* p. 124-25.

The reason for this is establishing a support system that would guarantee that helpless, and landless members of society would not be poor.¹²⁴ This is explained in the Deuteronomy chapter 15 verse 4:

“Except when there shall be no one in need among you...”

Another place that it is ordered to help the needy resident aliens in the Bible is Deuteronomy 24: 17-21. In those verses, there are three groups of dependent people: aliens, the fatherless, and widows. Those laws are providing for the economic protection of groups who have no lands.¹²⁵ The other financial order in the Bible is that the Jewish employer must pay his laborers daily, there is no difference whether they are Jews or aliens.¹²⁶

In both Judaism and Islam, a part of charity should be paid to the poor non-believers. We see the same Judaic discrimination of resident aliens and foreigners that I mentioned before. While in Islam there isn't any discrimination among non-believers. In the Bible this is ordered in the following verses:

“At the end of every three years, even the same year, you shall bring forth all the tithe of your increase and shall lay it up within your gates. And the Levite, because he has no portion nor inheritance with you, and the stranger, and the fatherless, and the widow, that are within your gates, shall come and shall eat and be satisfied; that Jehovah your God may bless you in all the work of your hand which you do.”¹²⁷

According to Islamic law, the Muslim state has to help the poor non-believers too. Because according to the following verse, one of the expenditures of *zakāt* is appropriated for poor non-Muslim subjects:

“*As-Sadaqāt* (here it means *Zakāt*) are only for the *Fuqarā* (poor), and *Al-Masākin* (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islām); and to free the captives; and for those in debt; and for Allah's Cause (i.e. for *Mujāhidūn* - those fighting in the holy wars), and for the wayfarer (a traveler who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise.”¹²⁸

As it is seen in the aforementioned verses, one of the receiver groups of *zakāt* is those whose hearts to be attracted towards Islam.¹²⁹ I would like to conclude this chapter with a circular of caliph 'Umar ibn Abd al Aziz which is preserved by ibn Sa'd:

“With the name of God, the Most merciful, the All Merciful. From the servant of God, Commander of the faithful, 'Umar (Ibn abd al Aziz) to (the governor) Adi ibn Artat and to the believing Muslims in his company: Peace be with you. Where after I send you the praise of God, beside Whom there is no God. Thereafter: pay attention to the condition of the Protected non-Muslims (*Dhimmi*s), and treat them tenderly. If any of them reaches old age and has no resources, it is you who should spend on him. If he has contractual brethren, demand these latter to spend on him. Apply retaliation if anybody commits tort against him. This is as if you have a slave, who reaches old age, you should spend on him till his death or liberate him. I

¹²⁴ Christina van Houten, *The Alien in Israelite Law*, London, 1991, p. 123.

¹²⁵ Houten Ibid. pp. 94-99.

¹²⁶ “You shall not withhold the wages of poor and needy laborers, whether other Israelites or aliens who reside in your land in one of your towns.” Deut. 24: 14.

¹²⁷ Deut. 14: 28-29.

¹²⁸ The Noble Qur'an 9: 60.

¹²⁹ Yilmaz, Ibid. p. 95; Ozel, “Gayri Muslim”, *Türkiye Diyanet Vakfı İslam Ansiklopedisi*.

have learnt that you accept tithe on the import of wine and make it enter the treasury belonging to God. I warn you never enter it in the treasury belonging to God, however small the amount be, unless it be a legally pure property. Peace be with you.”¹³⁰

IV. PENAL LAW RULES

There are different types of crimes and punishments in Islamic law.¹³¹ For my essay, the important types are *hudud* and *qisas* crimes, because they were fixed by Qur’an and Sunnah, and normally cannot be changed. Muslim scholars have different opinions about whether *hudud* and *qisas* punishments must be applied or not, when victim or guilty or both of them are non-Muslims. I would like to summarize their opinions. Majority of scholars kept the benefit of Muslims in their opinions. For instance, if a Muslim kills a non-Muslim, according to them retaliation is not applied for the guilty Muslim. However, the stronger and preferred opinion is the minority’s opinion. If the victim is *dhimmi* or *musta’man*, the same rules must be applied for the guilty Muslim, because they are under the protection of Muslim state.¹³²

We see the same idea in Judaism too. For example, according to the Bible exodus 21: 16, the penalty of abduction is capital punishment. However, if a Jew abducts a non- Jew, the death penalty is not applied for him.¹³³ Another example, although bribery is forbidden among Jews, bribing non-Jewish officials is permitted in Judaism.¹³⁴

As regards to judicial autonomy both Islam and Judaism have similar rules. In Judaism if non-Jews sue or are sued in a Jewish court, they may demand that their non- Jewish law be applied to them.¹³⁵

Islam grants non-Muslim subjects judicial autonomy in Muslim land. This is explicitly mentioned in the following verses:

“(They like to) listen to falsehood, to devour anything forbidden. So if they come to you (O Muhammad), either judge between them or turn away from them. If you turn away from them, they cannot hurt you in the least. And if you judge, judge with justice between them. Verily Allah loves those who act justly. But how do they come to you for decision while they have the Torah, in which is the (plain) Decision of Allah; yet even after that, they turn away. For they are not (really) believers. Verily, We did send down the Torah (to Moses), therein was guidance and light, by which the Prophets who submitted themselves to Allah’s Will, judged the Jews. And the Rabbis and the priests (to judge the Jews by the Torah after those Prophets) for them was entrusted the protection of Allah’s Book, and they were witnesses thereto. Therefore fear not men but fear Me (O Jews) and sell not My Verses for a miserable price. And whosoever does not judge by what Allah has revealed, such are the *Kafirun* (i.e. disbelievers).

¹³⁰ Hamidullah, “*Introduction to Islam*” p. 211.

¹³¹ In Muslim penal law, there are three different groups of crimes and punishments. The crimes which are considered as transgression of public rights, and whose punishments are fixed by Qur’an, or Sunnah make up the first group. These are called *hudud*. There are seven types of crimes in this group: adultery, theft, usurpation, consuming alcoholic beverages, false accusation of unchastity, rebellion, and apostasy. A crime whose punishment is retaliation is the second group, which is called as *qisas*. The *qisas* crimes and punishments are also fixed by Qur’an and Sunnah. There are two kinds of crimes in this group: homicide, and wounding. Crimes other than the first two groups are in the second category. These are called as *ta’zir*. In normal conditions the first two groups of punishments are fixed and cannot be changed, but the third group’s application can be different in different times and places. Hayrettin Karaman, *Ana Hatlariyla Islam Hukuku*, Volume: 1, Istanbul 1993, pp. 218-233; Halil Cin - Ahmet Akgunduz, *Türk Islam Hukuk Tarihi*, Volume: 1, Istanbul, 1990, pp. 314-337.

¹³² For details see Zaydan, *Ibid.*, pp. 212-334.

¹³³ Cohn, “*Abduction*”, in *The principles of Jewish Law* edited by Menachem Elon, p. 479-80.

¹³⁴ Cohn, “*Bribery*”, in *The principles of Jewish Law* edited by Menachem Elon, p. 510-11.

¹³⁵ Cohn, “*Practice and Procedure*”, in *The principles of Jewish Law* edited by Menachem Elon, pp. 574-75.

And We ordained therein for them: “Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds for equal for equal.” But if anyone remits the retaliation by way of charity it shall be for him expiation. And whosoever does not judge by what Allah has revealed, such are the *Zalimun* (polytheists and wrongdoers). And in their footsteps, We sent Jesus, son of Mary, conforming the Torah that had come before him, and We gave him the Gospel, in which was guidance and light and confirmation of the Torah that had come before it, a guidance and an admonition for *Al Muttaqun* (the pious). Let the people of the Gospel judge by what Allah has revealed therein. And whosoever does not judge by what Allah has revealed (then) such (people) are the *Fasiqun* (the disobedient) to Allah. And We have sent down to you (O Muhammad) the Book (this Qur’an) in truth, conforming the Scripture that came before it and *Mohayminan* (trustworthy in highness and a witness) over it (old Scriptures) So judge between them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. To each among you, We have prescribed a law and a clear way. If Allah willed, He would have made you one nation, but that (He) may test you in what He has given you; so strive as in a race in good deeds. The return of you (all) is to Allah; then He will inform you about that in which you used to differ.”¹³⁶

On the basis of these commandments, a judicial autonomy, not only for personal matters but also for all of the affairs of the life: civil, penal and others was granted to the non-Muslim subjects both in the time of the Prophet and in the time of his successors. For example in the time of Abbasid Caliphs, the Christian patriarch and the Jewish *hakham* (rabbi) were among the highest dignitaries of the Muslim state, connected directly to the Caliph.¹³⁷ According to the aforementioned verse, they also have the right of choice between Muslim court and their own court, but if they choose the Muslim court, the Muslim judge has the right of accepting or rejecting to hear their case.¹³⁸ If he accepts he must be just in hearing the case. This is ordered by Allah in the following verse:

“Verily! Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All Hearer, All Seer.”¹³⁹

There is a good example in Islamic history for fairness in cases of non-Muslim. In a letter, the caliph ‘Umar ibn Abd al Aziz demands from one of his governors to check the cases of Muslims and non-Muslims, and if he finds any injustice practice committed regarding to either a Muslim or a non-Muslim, then purify and correct it. If any such person should have died, then send his rights to his heirs.¹⁴⁰

SEVEN NOAHIDE LAWS

The last topic that I would like discuss about is seven Noahide laws in Judaism. These are important in Judaism, because although the Jews were never in a position to compel any large community of non-Jews to follow these rules, nevertheless any non-Jews was permitted to reside permanently in Palestine or to remain a slave of Jew unless he accepted the Noahide laws.¹⁴¹

¹³⁶ The Noble Qur’an 5: 42-8.

¹³⁷ Hamidullah, *Status of Non-Muslims in Islam*.

¹³⁸ Qurtubi, *Ibid.*, Volume: 6, pp. 119-122.

¹³⁹ The Noble Qur’an 4: 58.

¹⁴⁰ Hamidullah, *Introduction to Islam*, pp. 211-12.

¹⁴¹ Hirschel Revel, “Noahide Laws” *The Universal Jewish Encyclopedia*.

According to the rabbinic interpretation of certain passages in Genesis, the following seven commandments were considered as the minimal moral duties ordered by god on all people: 1. Refraining from Idolatry, 2. Adultery and incest, 3. bloodshed 4. Blasphemy, 5. Robbery, 6. Eating flesh from cut from a living animal, 7. Establishing a just legal system. All these are negative orders except the last one. Some interpretations increase the number of those commandments to thirty, but they are just the details of the seven basic commandments. The punishment for transgression of one of these laws is death by strangulation.¹⁴²

V. CULTURAL AND DIETARY RULES

Both in Judaism and Islam there are some strict dietary rules. Jewish dietary rules are mentioned in Deuteronomy 14: 3-21. The important one of these verses about our topic is the verse 21st:

“You shall not eat of anything that died of itself: You may give it to the alien who is within your gates, that he may eat it; or you may sell it to a foreigner; for you are a holy people to Jehovah your God. You shall not simmer a kid in its mother’s milk.”

According to the Talmud another prohibited food is the wine that is produced by non- Jews. There are same reasons under both of these rules. In the Talmud there are two reasons given for this prohibition: 1. It was supposed that all wine produced by non-Jews has been devoted to idolatry. 2. In order to minimize the social contact, non-Jews’ wine must not be consumed by Jews.¹⁴³ Like in the last part of the above-mentioned verse, In Leviticus 11: 45, it is ordered to the Jews to distinguish clean and unclean as a result of their character as a holy people. According to interpretation of Deut. 14: 21, it is not the reason for prohibition that the animal has died from an illness which would make the meat inedible. The meat is unfit for the Israelites only because the animal has not been properly slaughtered. Another significant aspect of that verse is the discrimination between resident aliens and foreigners, which is also important Jews and non-Jews financial relations. Whereas the Jews are ordered to be charitable to the alien and giving dead animal without a payment, they are allowed to sell it to the foreigner. We also see that in that verse only alien is mentioned but the widow and fatherless are not as in the aforementioned verses, because all Jews, both poor and rich, must obey the dietary rules.¹⁴⁴

In Islam, there is not any problem for Muslims about consumption of non-Muslims’ foods if they are legal according to Islamic law except the consumption of meat. In order to be edible there are some more rules about meat, in addition to being meat of a lawful animal, like lamb, cow, etc. In the following verse Allah says:

“Eat not (O believers) of that (meat) on which Allah’s name has not been pronounced (at the time of slaughtering animal).”¹⁴⁵

According to this verse a Muslim can eat meat of animals only if the name of Allah is pronounced at the time of slaughtering. According to the following verse, the animals slaughtered by ahl kitab are accepted legal, but the consumption of the animals slaughtered by polytheists is forbidden in Islamic law.¹⁴⁶

¹⁴² St. Sch., “Noachide Laws”, *Encyclopedia Judaica*, Jerusalem, 1971-1972; Revel, Ibid.

¹⁴³ Novac, Ibid. p. 236.

¹⁴⁴ Houten, Ibid. p. 81.

¹⁴⁵ The Noble Qur’an 6: 121.

¹⁴⁶ Qurtubi, Ibid., Volume:6, pp. 51-54; Tabari, Ibid., Volume: 6, p. 108; Muhammad ibn Idris Shafi’i, “*al-Umm*”, Volume. 2, Beirut, 1973, pp. 131-32; Abu Bakr ibn Mas’ud Kasani, *Kitab bada’i’ al-sana’i’ fi tartib al-shara’i’*, Volume: 5, Beirut, 1974, pp. 45-46.

“Made lawful to you this day are *At Tayyibāt* [all kinds of *Halāl* (lawful) foods, which Allah has made lawful (meat of slaughtered eatable animals, etc., milk products, fats, vegetables and fruits, etc.). The food (slaughtered cattle, eatable animals, etc.) of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them.”¹⁴⁷

Non-Muslims also have very vast cultural liberty in Muslim land. They were even allowed to practice their customs that is opposite to Islam. For instance, consumption of alcoholic beverages is forbidden to Muslims, but non-Muslims have the right not only consumption of them, but also the right of manufacture, importation and sale. Other examples are liberty of gambling, marriage with close relatives etc. The only restriction for their liberty is that they cannot use this right publicly, and become a bad example for Muslims.¹⁴⁸

In the time of Abbasid caliphate all kind of imitation attempts between Muslim and Non-Muslim societies were discouraged. All religious groups conserved their own mode of dress, their social manners and their characteristic personalities.¹⁴⁹ In Judaism too, dressing like non-Jews fashion was regarded as a step of assimilation and was not allowed.¹⁵⁰

VI. POLITICAL AND MILITARY RELATIONS

1. POLITICAL RIGHTS AND DUTIES

Some contemporary Muslim scholars such as Muhammad Hamidullah, A. Muztar, think that non-Muslims have the right of vote in a Muslim state. Because when the Prophet migrated to Medina, he signed the constitution of Medina with non-Muslim groups of Medina. These groups accepted the Prophet as the supreme authority by this constitution. Consequently, some modern Muslim scholars draw the conclusion of right of vote for non-Muslims.¹⁵¹ Muslim scholars do not permit for non-Muslims to be head of the state, because of some religious obligations of the head of the state, such as leading the *Juma* prayer. However, they can be ministers of the state.¹⁵² We see the same rule in Judaism too. In Deuteronomy 17: 15, foreigners' ascending the throne is forbidden:

“(then) you shall certainly set a king over you whom Jehovah choose; from among your brothers you shall set a king over you; you may not set a stranger over you, one who is not your brother”.

D. L. L. says that from some other Biblical implications, it is understood that strangers occupied some important positions during the age of monarchy.¹⁵³

There are several examples in Islamic history that show duties of non-Muslim subjects in an Islamic state. In the 2nd hijri year the pagans of Mecca sent an ambassadorial mission to Abyssinia, in order to demand Negus the exile of Meccan Muslims who had taken protection in his country. Upon that the Prophet sent an ambassador for negotiating with Negus in favor of the Muslims. This ambassador was

¹⁴⁷ The Noble Qur'an 5: 5.

¹⁴⁸ Qurtubi, *Ibid.*, Volume: 6, pp. 119-122.

¹⁴⁹ Hamidullah, *Status of Non-Muslims in Islam*.

¹⁵⁰ Cohn, “*Police Offences*”, in *The principles of Jewish Law*, edited by Menachem Elon, pp. 519-20.

¹⁵¹ Hamidullah, *Status of Non-Muslims in Islam*; Muztar, “Dhimmis in an Islamic State”, *Islamic Studies*, pp. 65-75.

¹⁵² Yilmaz, *Ibid.* pp. 162-63.

¹⁵³ D.L.L. “*Strangers and Gentiles*”

Amr ibn Umayyah ad-Damri, and he had not been a Muslim yet. The Prophet chose him just because of his appropriateness for this mission. Another example after the battle of Badr, non-Muslim captives were released on the condition that teaching ten Muslim children the reading and writing. The head of the clerks of revelation, Zayd Ibn Thabit learned Hebrew from Jewish people.¹⁵⁴ Arthur Tritton mentions several more examples for non-Muslim officers in Muslim state.¹⁵⁵

2. MILITARY DUTIES AND RELATIONS

The last topic that I would like to talk about is the military relations of Muslim state with other countries, which has caused discussions among the modern scholars. As I mentioned in the chapter about the financial responsibilities of non-Muslim subjects, they do not have to perform military services, if they pay an additional tax, or *jizya*. Because in the early stages of Islamic history, there were constant wars on widespread limits of Muslim land, and military service was not a proper way for earning livelihood. In return for the protection provided by Muslim government, and exemption from the military services, non-Muslims pay *jizya* to the Muslim state. If Muslim government cannot grant protection of them, they do not have to pay *jizya*. Abu Ubayda ibn Al-Jarrah returned the *jizya* which he collected from the *dhimmi*s because it was feared that Romans were mobilizing their forces against the Muslims and Abu Ubayda had to give his full attention to the Romans; therefore, he could not promise complete protection to the *dhimmi*s. Ubayda ordered to his assistants, Habib ibn Maslama and Suwayd ibn Kalthum to return the amount of *jizya* to the people; and it is stated that the order was performed.

The basis of military relations of Muslim state with non-Muslim states depends on peace. The only reason for war in Islam is to eliminate the obstacles before the free will. The goal of Islam like all other universal religions is to reach all people, and to show them what is Islam. If this goal can be realized peacefully, it is preferred. This is seen in the Qur'an and in the practice of the Prophet. In chapter 2 verse 193, Allah says:

“And fight them until there is no more *Fitnah* (disbelief and worshipping of others along with Allah) and (all and every kind of) worship is for Allah (alone). But if they cease, let there be no transgression except against *Zalimun* (polytheists, and wrong-doers etc).”

When the Prophet and his companions wanted to perform *umra* or pilgrimage in the 6th year of *hijra*, Meccan pagans did not want to let them visit Mecca, and prepared for war. However, the Prophet at the cost of not to perform *umra*, accepted their treaty offers, and signed the Hudaibia treaty with pagans.

There are also some war rules in Islam. The first rule is that the Muslim commander have to offer non-Muslim groups three choices: embracing Islam, accepting sovereignty of Muslim government and paying *jizya*, finally if they do not accept the first two, fighting. Muslim soldiers must not kill people who cannot fight, like children, women, the old, and people who are in charge of religious duties. It is also forbidden to destroy the nature, and kill the animals without a reason.¹⁵⁶ Persecution is not allowed. *Muthla* or cutting the organs of the deceased people in the battlefield is another prohibition.

¹⁵⁴ Ibid. pp. 164-65. ¹⁵⁵

¹⁵⁵ Tritton, *The Caliphs and their Non-Muslim Subjects*, pp. 18-36.

¹⁵⁶ Yilmaz Ibid. pp. 183-86.

The war ends either with a treaty or with defeat of the one of the parts. If non- Muslims offer to sign a treaty with or without paying *jizya*, it can be accepted on the condition that it must be for the advantage of the Muslims.¹⁵⁷ This is explained in the following verses:

“Except those of the *Mushrikūn* with whom you have a treaty, and who have not subsequently failed you in aught, nor have supported anyone against you. So fulfill their treaty to them to the end of their term. Surely Allah loves *Al- Mattaqūn* then when the Sacred Months (the 1st, 7th, 11th, and 12th months of the Islamic calendar) have passed, then kill the *Mushrikūn* (see V.2: 105) wherever you find them, and capture them and besiege them, and prepare for them each and every ambush. But if they repent and perform *As-Salāt* (*Iqāmat- as-Salāt*), and give *Zakāt*, then leave their way free. Verily, Allah is Oft- Forgiving, Most Merciful. And if anyone of the *Mushrikūn* (polytheists, idolaters, pagans, disbelievers in the Oneness of Allah) seeks your protection then grant him protection, so that he may hear the Word of Allah (the Qur’an), and then escort him to where he can be secure, that is because they are men who know not”¹⁵⁸

Disloyalty to the treaties is not allowed. Even if there are signs of treachery by non- Muslim, Muslims cannot break the treaty without informing them. This is ordered in the following verse:

“If you (O Muhammad SAW) fear treachery from any people throw back (their covenant) to them (so as to be) on equal terms (that there will be no more covenant between you and them). Certainly, Allah likes not the treacherous”¹⁵⁹

CONCLUSION

In this essay, I tried to compare the rules of two Divine religions, Judaism and Islam in respect to the relationship of their believers with others. As it is seen in all branches of law, both of the religions accept their adherents superior to the others, and when declaring a rule they first consider the benefit of their adherents. However, I saw that at least in principle, both of them have fair rules about non-believers. I would like to conclude my essay with a few points about both of these religions, which seem to me important.

When I was doing my research, I have read lots of the Jewish scholars complaining about biases about Judaism. For example, in his article Jacob Z Lauterbach says

“The greatest injustice which has been done to the Jewish people throughout the ages and which has been the cause of all horrible crimes and outrages committed against them, has been the tendency among gentiles to consider the Jew a stranger instead of a brother, an enemy instead of a friend. This attitude is not based upon correct information and sound conclusions; it is simply result of ignorance as to what the Jews and Judaism stands for...The opinions of the majority of the gentiles on Jews and Judaism are based mostly on traditional hearsay and false rumors.”¹⁶⁰

¹⁵⁷ Yilmaz Ibid. pp. 195-96.

¹⁵⁸ The Noble Qur’an 9: 4-7.

¹⁵⁹ The Noble Qur’an 8: 58.

¹⁶⁰ Jacob Z Lauterbach, “The Attitude of the Jew Towards the Non-Jew”, *Yearbook of the Central Conference of American Rabbis*, Volume: 31, 1921, pp. 186-233.

Unfortunately, this observation seems to be true. However, Jewish people are not purely innocent for this image. As I mentioned before, according to Jewish authorities, teaching Jewish sources were considered unlawful. Thus, the only way to learn about Judaism might be rumors and hearsays in those days.

The basis of relationship between Muslim and non-Muslim depends on peace and reciprocity. This is mentioned in the following verse:

“Perhaps Allah will make friendship between you and those whom you hold as enemies. And Allah has power (over all things), and Allah is Oft-Forgiving, Most Merciful. Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity. 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 Allah forbids you to befriend them. And whosoever will befriend them, then such are the *Zālimūn* (wrong-doers those who disobey Allah).”¹⁶¹

According to this verse, non-Muslim subjects of a Muslim state have right of freedom, if they do not break the peace, and attack the Muslims. The rule of reciprocity is seen in every aspects of relationship: personal, military, financial, etc. For example, the caliph Umar decided to the same amount of customs duty, when Abu Musa al Ash'ari told him that non-Muslim countries charged a certain amount of tax from Muslim merchants.¹⁶²

Some scholars especially in non-Muslim circles have misunderstood one of the basic ideas of Islam, *jihad* or holy war. The term of *jihad*, though it is one of the three kinds of it, does not refer only for the *jihad* that is made by sword. Of course, if it is necessary, it is a requirement of Islam. However, every act of a Muslim is accepted as *jihad* if he or she does it for the sake of God, and under normal circumstances struggle for being a pious Muslim is more important than jihad by sword. On the other hand, there are scholars who fairly observes Islamic system like Thomas Arnold. I would like to conclude my essay with a quotation from his book:

“The theory of Muslim faith enjoins toleration and freedom of religious life for all followers of other faith... Who pay tribute in return for protection, and though the pages of Mohammedan history are stained with the blood of many cruel persecutions, still, on the whole, unbelievers have enjoyed under Mohammedan rule a measure of toleration, the like of which is not found in Europe until quite modern times.”¹⁶³

¹⁶¹ The Noble Qur'an 60: 7-9.

¹⁶² Abu Yusuf, *Ibid.*, p. 148.

¹⁶³ Muztar, *Dhimmi in an Islamic State*, p. 73 quoted from Thomas Arnold, *Preaching of Islam*, p. 420.

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