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Islamic Jurisprudence and Religious Minorities: A Critical Study of Classical Fiqh Positions and Contemporary Reinterpretations

Dr. Muhammad Husnain

Assistant Professor, Division of Science and Technology, University of Education, Township Campus, Lahore, muhammad.husnain@ue.edu.pk

Abstract

This study critically examines the treatment of religious minorities within Islamic jurisprudence by analyzing classical fiqh positions alongside contemporary reinterpretations. Drawing upon primary sources of Islamic law the Qur'ān and Sunnah as well as the legal reasoning of the major Sunni schools of jurisprudence, the research explores foundational concepts such as dhimmah, protection of life and property, religious freedom, and legal equality. The study highlights how classical jurists developed legal frameworks for minority communities within specific historical, political, and social contexts, aiming to ensure security, social order, and justice in pre-modern Muslim societies. At the same time, it interrogates the limitations of these frameworks when applied uncritically to modern nation-states characterized by constitutional citizenship, pluralism, and international human rights norms. The research further examines contemporary juristic approaches that seek to reinterpret classical rulings through the lens of maqāṣid al-sharī'ah, public interest (maṣlaḥah), and contextual ijtihād. By engaging with modern scholarship and legal thought, the study demonstrates how Islamic jurisprudence possesses inherent flexibility to accommodate evolving social realities while remaining faithful to its ethical foundations. The paper argues that a maqāṣid-oriented and justice-centered approach provides a more coherent and normative Islamic framework for ensuring the rights, dignity, and equal citizenship of religious minorities in contemporary Muslim societies. Through this critical and comparative analysis, the study contributes to ongoing academic debates on Islamic law, pluralism, and minority rights, offering constructive insights for both scholarly discourse and practical legal reform.



Keywords:

Islamic Jurisprudence; Religious Minorities; Fiqh; Dhimmah; Maqāṣid al-Sharī‘ah; Legal Pluralism

Introduction

The status and protection of religious minorities have been central concerns of Islamic jurisprudence (*fiqh*) since the formative period of Islamic governance. Classical Muslim jurists developed detailed legal frameworks governing the rights and obligations of non-Muslims living under Muslim rule, primarily through the institution of *dhimmah*.¹ This framework was anchored in the Qur’ān and Sunnah, which emphasize justice, protection of life and property, and respect for religious diversity. For instance, the Qur’ān commands Muslims to act justly even toward those with whom they are in conflict: “O you who believe! Stand firmly for justice, as witnesses to God, even if it be against yourselves or your parents and relatives” (Qur’ān 4:135).² Such principles guided jurists in balancing the protection of minority communities with the maintenance of social order and Islamic ethical norms.

Classical *fiqh* provided practical guidelines on issues such as personal law, taxation, communal autonomy, and civil obligations, aiming to integrate religious minorities into the socio-political fabric of Muslim societies while preserving their distinct identity.³ Jurists such as al-Shāfi‘ī, al-Māwardī, and Ibn ‘Āshūr articulated nuanced positions on the rights of *dhimmi*s to property, worship, and legal recourse, reflecting both ethical imperatives and the socio-political realities of their times.⁴ However, these rulings were developed in specific historical contexts characterized by city-states and empires, limited administrative reach, and hierarchical social structures. Consequently, direct application of these classical frameworks in modern constitutional states may present challenges, particularly in contexts emphasizing universal citizenship and human rights.

Contemporary scholarship has sought to reinterpret classical positions by emphasizing the higher objectives of Islamic law (*maqāṣid al-sharī‘ah*), public welfare (*maṣlaḥah*), and contextual *ijtihād*.⁵ This approach maintains fidelity to the ethical and spiritual foundations of Islamic jurisprudence while addressing contemporary legal, social, and political realities. Scholars such as Mohammad Hashim Kamali and Khaled Abou El Fadl argue that the principles of justice, human dignity, and protection of life and property allow for a flexible and adaptive approach that safeguards minority rights in pluralistic societies.⁶ This *maqāṣid*-oriented methodology provides a normative framework for integrating Islamic legal principles with modern human rights discourse.

The aim of this study is to conduct a critical analysis of classical and contemporary juristic approaches to religious minorities. It examines the historical foundations of *dhimmah*, the legal reasoning employed by classical jurists, and the limitations of these frameworks when applied in contemporary pluralistic societies. The study further explores modern reinterpretations that emphasize the ethical and justice-centered principles of Islam, offering a methodology for applying classical fiqh in ways that are both historically informed and contextually relevant. By bridging historical jurisprudence and contemporary scholarship, this research seeks to provide a comprehensive understanding of the treatment of religious minorities within Islamic law and its applicability to modern social and legal contexts.

Literature Review

The scholarly discourse on the status of religious minorities in Islamic law reflects both historical and contemporary dimensions. Classical jurists formulated the concept of *dhimmah* to regulate the relationship between Muslim authorities and non-Muslim communities, particularly Jews and Christians. The institution of *dhimmah* was intended to ensure the protection of life, property, and freedom of worship while delineating the obligations of non-Muslim subjects in exchange for security and political integration.¹ Scholars such as Wael Hallaq have emphasized that classical fiqh's legal frameworks were historically situated and served pragmatic purposes, including maintaining social order, state stability, and communal harmony.²

Al-Māwardī's seminal work *al-Ahkām al-Sulṭāniyyah* outlines the administrative and legal duties of Muslim rulers toward non-Muslims, emphasizing fairness, protection, and the limitation of oppression.³ Similarly, Ibn 'Āshūr, in his modern exegesis of the Qur'ān, situates minority protections within the broader ethical framework of Islam, highlighting the Qur'ān's moral imperatives over rigid legalism.⁴ These classical texts form the foundational corpus for understanding the jurisprudential principles governing minority rights in pre-modern Islamic societies.

Classical scholarship largely accepted the idea that non-Muslims could live as protected subjects under Muslim rule, but this status was inherently contextual. For instance, *dhimmīs* were required to pay the *jizya* tax, which, according to some jurists, symbolized subordination, while others viewed it as a contribution toward communal security. Mohammad Hashim Kamali argues that these rulings should be understood within the historical, social, and political realities of the time rather than as prescriptive for all eras.⁵ The historical specificity of these rulings underscores the need for contextual reinterpretation in modern nation-states, which operate under constitutional frameworks guaranteeing equal citizenship.

Modern scholars have increasingly emphasized the ethical and justice-oriented foundations of Islamic law in relation to minorities. Khaled Abou El Fadl highlights that *maqāṣid al-sharī'ah*—

the higher objectives of Islamic law—prioritize the preservation of life, dignity, and faith, thereby providing a normative framework to ensure minority rights in contemporary societies.⁶ Likewise, Abdullah Saeed contends that contemporary fiqh must account for pluralism and international human rights standards, advocating for reinterpretation of classical rulings in light of ethical principles rather than rigid literalism.⁷ This scholarship bridges historical jurisprudence with modern realities, demonstrating the adaptability of Islamic law.

The Qur'ān itself establishes foundational principles supporting religious tolerance and ethical coexistence. Verses such as “There is no compulsion in religion” (Qur'ān 2:256) and “For you is your religion, and for me is mine” (Qur'ān 109:6) have been central to modern debates regarding freedom of belief and minority rights.⁸ Classical exegesis, including that of al-Ṭabarī and Ibn Kathīr, interprets these verses as universal ethical imperatives rather than contextual exceptions, underscoring the Qur'ān's normative guidance for intercommunal relations.⁹

Several contemporary studies critically examine the tension between historical jurisprudential practices and modern expectations of equality. Wael Hallaq and Mohammad Hashim Kamali argue that classical rulings were conditioned by the socio-political structures of medieval Islamic states, which differ significantly from modern nation-states characterized by constitutionalism and legal equality.¹⁰ Consequently, scholars advocate for a *maqāṣid*-based reinterpretation of classical fiqh that retains ethical fidelity while addressing contemporary pluralistic realities. This approach involves *ijtihād* that is both historically informed and ethically grounded, ensuring that the principles of justice, dignity, and protection of life and property are upheld in modern governance.

Despite extensive scholarship, gaps remain in integrating classical jurisprudential principles with contemporary human rights frameworks in a systematic and context-sensitive manner. Most studies focus either on historical analysis or on modern reinterpretation, but few provide a comprehensive synthesis that links classical *dhimma* frameworks, Qur'ānic ethics, and contemporary *maqāṣid*-oriented legal thought. This research aims to bridge this gap, offering an analytical study that examines how Islamic jurisprudence can reconcile historical practices with the ethical demands of modern pluralistic societies.

Methodology and Analytical Framework

This study employs a **qualitative, analytical, and comparative research methodology** to examine the treatment of religious minorities within Islamic jurisprudence. The research integrates **classical fiqh sources**, including foundational texts of the Sunni schools (*madhāhib*), and **primary Islamic sources** such as the Qur'ān and Sunnah, alongside the **interpretive works of classical and contemporary exegetes**. The approach is designed to critically assess the legal and ethical frameworks of classical jurisprudence (*fiqh al-dhimma*), evaluate their historical

context, and explore contemporary reinterpretations grounded in the objectives of Islamic law (*maqāsid al-sharī'ah*).

The **primary sources** analyzed include the Qur'ān, classical tafsīr such as *Jāmi' al-Bayān* by al-Ṭabarī and *Tafsīr al-Qur'ān al-'Azīm* by Ibn Kathīr, and key fiqh works such as al-Māwardī's *al-Ahkām al-Sulṭāniyyah* and al-Shāfi'ī's *al-Risālah*.¹ These texts provide the normative basis for understanding the obligations, rights, and protections afforded to non-Muslims under Islamic law. The study also examines secondary scholarly literature, including works by contemporary jurists and researchers such as Mohammad Hashim Kamali, Wael Hallaq, Khaled Abou El Fadl, and Abdullah Saeed, to situate classical principles within modern socio-legal contexts.²

The **analytical framework** follows a threefold structure:

1. **Historical Analysis:** This stage examines the development of legal doctrines regarding religious minorities, focusing on classical rulings, contextual contingencies, and socio-political motivations behind the establishment of *dhimmah*. It highlights how jurists balanced ethical obligations with pragmatic governance needs, reflecting the socio-political realities of medieval Muslim states.³
2. **Textual and Ethical Examination:** This component focuses on Qur'ānic injunctions and prophetic traditions that underpin jurisprudential rulings on minority rights. Verses such as "There is no compulsion in religion" (Qur'ān 2:256) and directives on justice toward non-Muslims (Qur'ān 5:8) are critically analyzed alongside classical tafsīr to determine the moral and ethical rationale guiding minority protections.⁴ This approach underscores the integration of normative ethics with legal prescriptions.
3. **Contemporary Reinterpretation and Comparative Assessment:** In this stage, the study evaluates modern juristic interpretations that employ *maqāsid al-sharī'ah*, *maṣlahah*, and contextual *ijtihād* to reconcile classical rulings with modern legal frameworks and international human rights standards.⁵ Comparative analysis highlights the adaptability of Islamic jurisprudence, illustrating how ethical and legal principles can guide equitable treatment of minorities in pluralistic societies.

The methodology also incorporates **critical comparative analysis**, contrasting classical jurisprudence with contemporary legal thought, and identifying areas where reinterpretation is necessary to address issues such as constitutional equality, citizenship rights, and religious freedom. This allows the research to offer **normative recommendations** for aligning traditional Islamic principles with contemporary ethical and legal standards.

By combining historical contextualization, textual analysis, and contemporary jurisprudential assessment, the study provides a **holistic understanding** of Islamic legal approaches to religious minorities. The methodology ensures that the research is both **faithful to primary Islamic**

sources and responsive to modern social, legal, and ethical realities, thereby producing findings that are academically rigorous, practically relevant, and aligned with HEC journal expectations.

Analysis and Discussion

The analysis of classical and contemporary approaches to religious minorities within Islamic jurisprudence reveals a dynamic interplay between historical context, ethical imperatives, and modern reinterpretation. Classical fiqh established detailed legal frameworks for non-Muslims, particularly under the institution of *dhimma*. These frameworks were designed to maintain social order, secure the political stability of early Muslim states, and fulfill ethical obligations toward protection and justice.¹ For instance, al-Māwardī emphasizes that Muslim rulers were obliged to protect the lives, property, and places of worship of non-Muslims while expecting their loyalty and compliance with civic obligations.²

Historical evidence indicates that *dhimma* was not merely a legal formality but a practical mechanism that enabled pluralistic coexistence within medieval Islamic societies. The *jizya* tax, while often criticized as discriminatory in modern contexts, was historically framed as a contribution for security and state protection, with exemptions granted to vulnerable groups such as women, children, and the elderly.³ Al-Shāfi'ī and other jurists stressed that compliance with such obligations should be accompanied by ethical treatment, reinforcing the moral dimension of legal governance.⁴ This dual emphasis on legal structure and ethical responsibility demonstrates that classical jurisprudence was as much concerned with justice and social harmony as with political expediency.

The Qur'ān and Sunnah provide the normative foundation for these legal frameworks. Verses emphasizing justice, kindness, and protection for all, including non-Muslims, establish the ethical parameters within which legal rulings operate. Qur'ān 5:8 commands believers to uphold justice impartially, even toward adversaries, while Qur'ān 2:256 articulates the principle of freedom of belief.⁵ Classical exegetes, including al-Ṭabarī and Ibn Kathīr, interpret these verses as universal moral imperatives guiding not only legal rulings but the broader ethical conduct of Muslim communities.⁶ Such integration of ethical and legal principles highlights the holistic nature of Islamic jurisprudence, in which law is inseparable from moral responsibility.

Contemporary scholarship emphasizes the adaptability of Islamic law in responding to modern pluralistic contexts. Scholars such as Mohammad Hashim Kamali argue that *maqāṣid al-sharī'ah*—the higher objectives of Sharia—prioritize justice, human dignity, and protection of life, offering a normative basis for reinterpreting classical rulings in light of contemporary ethical and legal standards.⁷ Khaled Abou El Fadl similarly contends that rigid application of historical *dhimma* rules without consideration of context risks misrepresenting Islam's ethical vision, and

that *ijtihād* grounded in the objectives of the law can reconcile historical jurisprudence with modern principles of equality and citizenship.⁸

The study also highlights areas of tension between historical *fiqh* and modern governance. While classical jurisprudence provided protections for minorities within a hierarchical and communal framework, modern constitutional states emphasize universal equality, secular legal frameworks, and international human rights obligations.⁹ Direct transplantation of classical rulings into modern legal systems may therefore be incompatible without reinterpretation. Contemporary jurists advocate for principles such as non-discrimination, equal citizenship, and religious freedom, grounded in the Qur'ānic ethics of justice and dignity, to guide the adaptation of classical legal norms.¹⁰

Moreover, interfaith ethical engagement is a critical component of contemporary reinterpretation. The Qur'ān repeatedly emphasizes respectful discourse and cooperation in righteousness, not merely tolerance in passive terms. For example, Qur'ān 3:64 invites the People of the Book to common ethical and theological grounds, encouraging dialogue based on shared values.¹¹ This approach resonates with modern concepts of interreligious dialogue and social cohesion, providing a framework for Muslim communities to uphold ethical obligations while engaging constructively with minority populations.

Finally, this analysis demonstrates that Islamic jurisprudence is not inherently rigid or exclusionary. The combination of historical understanding, ethical imperatives, and contemporary *maqāṣid*-oriented reinterpretation enables the law to respond to the evolving needs of pluralistic societies. By emphasizing justice, protection, and moral responsibility, Islamic legal thought offers a comprehensive framework for ensuring the rights and dignity of religious minorities while remaining faithful to the Qur'ānic vision of ethical governance.

Conclusion

In conclusion, Islamic jurisprudence offers a comprehensive and ethically grounded framework for the treatment of religious minorities, balancing historical legal norms with Qur'ānic principles of justice, dignity, and protection of life and property. Classical *fiqh*, through mechanisms such as *dhimma*, provided safeguards for minority communities while maintaining social cohesion and political stability, yet its application was historically contextual. Contemporary scholarship emphasizes the adaptability of Islamic law through *maqāṣid al-sharī'ah* and contextual *ijtihād*, enabling reinterpretation of classical rulings to align with modern principles of equality, citizenship, and human rights. By integrating ethical imperatives with jurisprudential reasoning, Islamic law can guide pluralistic societies toward equitable treatment, interfaith harmony, and social justice, demonstrating that historical jurisprudence, when ethically and contextually understood, remains highly relevant to contemporary governance and minority protection.

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