

Legal Foundations of Regulating War and Peace in Islamic Law

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Received: 12 February 2025; **Accepted:** 13 March 2025; **Published:** 10 April 2025

Abstract: This study explores the foundational legal framework within Islamic law that governs the treatment and status of non-Muslims (dhimmis), particularly during periods of war and peace. Drawing upon classical Islamic legal texts, Qur'anic verses, and Hadiths of the Prophet Muhammad (peace be upon him), it outlines the categories of people under Islamic rule — Muslims, dhimmis, musta'mins, combatants, and others. Special emphasis is placed on the rights, restrictions, and duties of dhimmis (primarily Jews and Christians), and the nature of their treaties with the Islamic state, including the payment of jizya and kharaj. The paper analyzes social, legal, political, and economic dimensions of coexistence, including their dress code, religious freedoms, and civil protections. The work relies on interpretations by classical jurists such as Abu Yusuf and historical precedents set during the era of the Prophet and early caliphs.

Keywords: Islamic law, dhimmi, jizya, kharaj, musta'min, Ahl al-Kitab, TRUCE, Sharia, non-believer, apostate, treaty, legal status, religious freedom, Hadith, Qur'an.

Introduction: According to Islamic law, the population of a country is classified into several groups based on their legal status:

1. From a Political Perspective:

Muslims: Enjoy all political and civil rights and fulfill their obligations.

Dhimmi: Non-Muslims residing in the territory of the Islamic state, whose lives and property are protected by the state under agreements. They benefit from rights stipulated in the agreements and fulfill their obligations. This category typically includes Christians and Jews.

Musta'min: Foreigners in Dar al-Islam who are granted safety and security.

Combatants: Non-believers who are enemies of Islam and reside within the Islamic state's territory.

2. From a Religious Perspective:

Sunnis: The majority group in Islam, adhering to Ahl al-Sunnah wal-Jama'ah and constituting the main population of Muslim states throughout history.

Shiites: A major branch of Islam, followers of Abu Talib

Ali.

Ahl al-Kitab: People of the Book, including Christians and Jews.

Magians: Worshippers of the sun or fire, typically from pre-Islamic Persian communities.

Idolaters: Pagans from foreign lands or Arab tribes.

Apostates (Murtads): Those who have left Islam.

3. From the Perspective of Freedom:

Free Individuals and Slaves: The legal status, rights, and obligations of slaves differ significantly from those of free individuals, as slaves were considered the property of their owners.

The "Ahl al-Dhimma" or "Dhimmis" refers to non-Muslims residing in the Islamic state, who are under the state's protection in exchange for paying the jizya tax.

Islamic law places significant emphasis on the rights and obligations of dhimmis living in Muslim territories. These typically include Christians, Jews, and Sabians, who have agreements with the Islamic state specifying mutual rights and obligations. Dhimmis are often referred to as "Ahl al-Kitab".

Under agreements with the Islamic state, dhimmis are guaranteed protection for their lives, health, property, religious practices, and customs. In return, dhimmis are obligated to respect Islamic law, adhere to the established order, and pay taxes as determined by the state. Certain restrictions are also placed on dhimmis, distinguishing them from Muslims. These include prohibitions on:

- Riding horses,
- Owning weapons,
- Building houses taller than those of Muslims,
- Marrying Muslims,
- Owning Muslim slaves,
- Sitting above Muslims in gatherings,
- Greeting Muslims first,
- Engaging in behavior offensive to Muslims (e.g., drinking wine),
- Reading the Bible aloud in public,
- Constructing new churches and synagogues (though maintaining old ones is permitted).

Islamic law also specifies clothing and outward appearance for dhimmis to distinguish them from Muslims. For example:

- Dhimmis paying jizya must wear a special tag until the tax is paid.
- Dhimmis are prohibited from imitating Muslims in dress, mounts, or appearance.
- They must wear a thick rope-like belt, their clothes must be woven, and their saddles must have wooden handles.
- Their shoes must have two laces, and dhimmis must not imitate Muslims in any matter.
- Dhimmi women are forbidden to use leather saddles.

Islamic jurists have elaborated on this matter in detail. Specifically, as noted in Abu Yusuf's *Kitab al-Kharaj*, the treaty written by Khalid ibn al-Walid to the inhabitants of Hira regarding the attire of dhimmis states:

“Dhimmis may wear any clothing except military attire, provided that their garments do not resemble those of Muslims. If a dhimmi is found wearing military attire, they will be questioned about it. If they provide a valid reason, they will be excused; otherwise, they will be punished for wearing military clothing”.

According to the treaty between the Islamic state and the dhimmis, the Islamic state assumes the responsibility of protecting the safety, lives, and property of the dhimmis from any form of aggression. Dhimmis, in turn, are obligated to pay the jizya and

kharaj taxes on time and in the prescribed amounts.

It is essential to emphasize that the primary sources of Islamic law, the Qur'an and the Hadiths of Prophet Muhammad (peace be upon him), pay special attention to the legal status of dhimmis. Several verses in the Qur'an establish guidelines regulating the interactions between Muslims and dhimmis, stating that Muslims should not harbor hostility toward followers of other religions and should treat them positively. If non-believers seek protection from Muslims, appropriate measures must be taken to ensure their safety. Based on these instructions, the agreements between Muslims and dhimmis were enriched and clarified.

In particular, treaties between the Islamic state and dhimmis outlined the rights and responsibilities of both parties. These agreements detailed the Islamic state's obligations toward dhimmis, the rights of dhimmis as individuals and citizens of the Islamic state, guarantees of their rights, and the fundamental principles governing their accountability for failing to meet their obligations. The guiding principles of these agreements are based on Qur'anic verses and Hadiths dedicated to the relationship between the Islamic state and dhimmis.

For instance, in Surah Al-Hashr, verses 6-9, the Qur'an states:

6. “And what Allah restored to His Messenger from them – you did not spur for it any horses or camels. But Allah gives His messengers power over whom He wills, and Allah is over all things competent”.

7. “What Allah gave as booty to His Messenger from the people of the towns – it is for Allah and for the Messenger and for his near relatives and orphans, the needy, and the traveler – so that it will not merely circulate among the rich from among you. And whatever the Messenger has given you – take; and what he has forbidden you – refrain from. And fear Allah; indeed, Allah is severe in penalty”.

8. “(It is also for) the poor emigrants who were expelled from their homes and their properties, seeking bounty from Allah and His approval and supporting Allah and His Messenger. Those are the truthful”.

9. “And (also for) those who were settled in the Home (i.e., al-Madina) and (adopted) the faith before them. They love those who emigrated to them and find not any want in their breasts of what the emigrants were given but give them preference over themselves, even though they are in privation. And whoever is protected from the stinginess of his soul – it is those who will be the successful”.

Verse 29 of Surah At-Tawbah: “Fight those who do not

believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture – (fight) until they give the jizyah willingly while they are humbled”.

On the relationship between the Islamic state and dhimmis, several hadiths from the Prophet Muhammad (peace be upon him) provide guidance:

1. “Whoever oppresses a dhimmi oppresses me”.
2. “We remain faithful to our treaties with non-believers while continuing to seek Allah's support for our victory”.
3. “Muslims must strictly adhere to agreed-upon treaties”.
4. “Whoever insults a non-believer will be struck with a whip of fire on the Day of Judgment”.
5. “Whoever kills a non-believer living under a peace treaty before the expiration of the treaty will be deprived of Paradise. Whoever harms a dhimmi, I will be his enemy, and my enmity will be evident on the Day of Judgment”.
6. “Whoever kills a non-believer living under a treaty in the Muslim land will not even smell the fragrance of Paradise, though its fragrance can be detected from a distance of forty years”.
7. “Jizyah is to be taken only from the People of the Book”.

On the issue of magic performed by a dhimmi against a Muslim:

Ibn Shihab said: “The Messenger of Allah (peace be upon him) was bewitched, yet he did not kill the one who bewitched him, and that person was from the People of the Book”. Aisha (may Allah be pleased with her) narrated: “The Messenger of Allah (peace be upon him) was so severely bewitched that he would imagine doing something he had not done”.

Regarding the sin (punishment) of killing an innocent dhimmi:

Abdullah ibn Amr (may Allah be pleased with him) narrated: “The Messenger of Allah (peace be upon him) said: “Whoever kills an innocent dhimmi will not smell the fragrance of Paradise, though its fragrance can be detected from a distance of forty years””.

On expelling Jews from the Arabian Peninsula:

Hazrat Umar (may Allah be pleased with him) reported: “The Messenger of Allah (peace be upon him) said to the Jews of Khaybar: “Allah has decreed your fate, and so we abide by it. We will let you remain here until Allah determines otherwise. However, whenever we wish,

we will expel you from here, for Allah has already decreed your expulsion””.

Abu Hurairah (may Allah be pleased with him) narrated: “We were sitting in the mosque when the Messenger of Allah (peace be upon him) came out and said: Let us go to the Jews”. We set out and arrived at their assembly. The Messenger of Allah said to them: “Accept Islam, and you will be safe. Truly, the Earth belongs to Allah and His Messenger. I have decided to expel you. If anyone of you owns property, let them sell it. Otherwise, know that the land belongs to Allah and His Messenger”.

On the Thursday of calamity:

Sa'id ibn Jubayr (may Allah be pleased with him) narrated: “Ibn Abbas (may Allah be pleased with him) said: “Thursday... what a calamity Thursday was!”. He then wept so profusely that the stones around him became wet. I asked: “O Ibn Abbas, what happened on Thursday?”. He replied: “The Messenger of Allah's (peace be upon him) illness worsened, and he said: “Bring me a shoulder blade (or writing material) so I may write for you instructions, after which you will not go astray”. However, people began disputing in his presence, despite the impropriety of doing so in front of a Prophet. The noise increased, and the Messenger of Allah said: “Leave me alone! My current state is better than what you are disputing about”. Then he commanded three things: “Expel the polytheists from the Arabian Peninsula, honor the delegations as I used to do by giving them gifts, and...””. He either mentioned the third command or I forgot it”.

On the will of the Prophet Muhammad (peace be upon him) regarding the protection of non-Muslim subjects (dhimmis):

Juwayriya ibn Qudama al-Tamimi (may Allah be pleased with him) narrated:

“I heard Umar ibn al-Khattab (may Allah be pleased with him) say in his will before his passing: “I urge you to fulfill Allah's responsibility, which is to honor the covenant with the non-Muslim subjects (dhimmis), for they are under the protection of your Prophet (peace be upon him). Their payment of jizya is the provision for your dependents””.

Regarding jizya and treaties with dhimmis and non-believers:

Allah Almighty says in the Qur'an: “Fight those who do not believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture – (fight) until they give the jizya willingly while they are humbled”. (Surah At-Tawbah, Verse 29)

The caliph is obliged to protect dhimmis and not burden them with more than they can bear. Umar ibn al-Khattab (may Allah be pleased with him) said:

"I urge the caliph after me to fulfill the covenant between the Muslims and the non-Muslims (dhimmis) under their protection, to ensure their safety, and not to impose upon them burdens beyond their capacity".

Umar also expelled polytheists from the Arabian Peninsula. Hence, his instructions likely referred to dhimmis residing in territories beyond the Arabian Peninsula.

Explanation from Islamic legal scholars:

The relationship between the Islamic state and dhimmis, as outlined in the Qur'anic verses and Hadiths, has been clarified in works by Islamic jurists. In Abu Yusuf's *Al-Kharaj*, it is stated:

"The treaty between Muslims and dhimmis is based on the payment of the *jizya* tax. Their cities are conquered, yet their synagogues and churches, both inside and outside the cities, are not destroyed. Their lives are protected, and the Muslims defend them against their enemies. In exchange for this, dhimmis pay the *jizya* tax. The peace agreement is written, stating that dhimmis must not build new synagogues or churches. The cities and villages of Sham and most of Hira were conquered under these terms, which is why their synagogues and churches were not destroyed".

Abu Yusuf also emphasizes that adherence to the agreements between the Islamic state leaders and the dhimmis by both parties strengthened the relations between Muslims and dhimmis, yielding positive outcomes for both. He states: "Abu Ubayda al-Jarrah made a peace treaty with the people of Sham. When he arrived there, he did not destroy their synagogues. However, he stipulated that they should not build new synagogues or churches, that they guide any lost Muslim to the right path, construct bridges over rivers at their own expense, host traveling Muslims for three days, refrain from insulting or striking Muslims, not display their crosses during Muslim assemblies, not release their pigs into the courtyards of Muslims, light warning fires for Muslim warriors in the path of Allah, not expose unprotected Muslim lands to the enemies, and not beat drums before or during the Muslim call to prayer (*adhan*). They were also forbidden to raise banners or carry weapons during their festivals, as well as to keep weapons in their homes. If they violated any of these conditions, they would be punished and fined. The treaty with the dhimmis was based on these conditions. Later, the dhimmis asked Abu Ubayda, "Allow us to come out with our crosses once a year on our most important holiday without raising banners". Considering their request, Abu Ubayda allowed it. The

dhimmis had no option but to comply fully with the conditions set upon them".

Treaties between Muslims and dhimmis also addressed matters related to dhimmi places of worship, monasteries, synagogues, religious items, and the conduct of religious ceremonies. Islamic jurists have expressed their opinions on these matters. Abu Yusuf writes:

"...Dhimmis should be prohibited from building new places of worship or churches in the cities. However, those places of worship and churches that are guaranteed to remain under the terms of their agreements should be preserved, not destroyed, and left to them. This also applies to the temples of the Magians. Dhimmis may reside in Muslim cities and conduct trade in their markets, but they are prohibited from trading intoxicating drinks and pork, as well as displaying their crosses in public. Their headwear must be long and woven".

According to Ibn Abbas, "Dhimmis are not allowed to build synagogues and churches, beat drums, display intoxicating drinks, or show their pigs in cities conquered by the Arabs".

According to Islamic law, along with obligations, dhimmis were also granted several rights. These rights were guaranteed by verses of the Qur'an, Hadiths of Prophet Muhammad (peace be upon him), and treaties between Muslims and non-Muslims. These rights included the protection of their dignity and honor, the right to practice their religion, the right to live according to their laws, the right to be protected by justice, the protection of their lives, property, and honor, defense against external enemies, the right to demand good treatment from others, social security, and more.

The Qur'an mentions these rights in several verses, highlighting the honor of humans above all other creatures, the subjugation of all things in the heavens and the earth for human benefit, and the resolution of disputes between Muslims and the People of the Book through reconciliation. Relevant verses include:

1. Surah Al-Isra, Verse 70: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with (definite) preference".

2. Surah Ibrahim, Verses 32-34: "It is Allah who created the heavens and the earth and sent down rain from the sky and produced thereby some fruits as provision for you and subjected for you the ships to sail through the sea by His command and subjected for you the rivers". "And He gave you from all you asked of Him.

And if you should count the favors of Allah, you could not enumerate them. Indeed, mankind is (generally) most unjust and ungrateful”.

3. Surah Al-Hujurat, Verse 13: “O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted”.

4. Surah Al-Ankabut, Verse 46: “And do not argue with the People of the Scripture except in a way that is best, except for those who commit injustice among them, and say, “We believe in that which has been revealed to us and revealed to you. And our God and your God is one; and we are Muslims (in submission) to Him””.

On the Prohibition of Insulting the Idols of Non-Believers in the Qur'an:

The Qur'an prohibits insulting the idols and gods of non-believers. Although non-believers may deny monotheism, they do not reject the existence of Allah. Regarding this, the Qur'an states in Surah Al-An'am, verse 108:

“Do not insult those they invoke besides Allah, lest they insult Allah in enmity without knowledge. Thus, We have made pleasing to every community their deeds. Then to their Lord is their return, and He will inform them about what they used to do”.

On Religious Freedom in the Qur'an:

Several verses in the Qur'an emphasize that no one should be coerced in matters of faith and that everyone is free to follow the religion of their choice.

1. Surah Yunus, verse 99: “If your Lord had willed, all those on earth would have believed together. Will you then compel people to become believers?”

(This means that faith accepted willingly, not through compulsion, is the true and acceptable faith.)

2. Surah Al-Baqarah, verse 256: “There shall be no compulsion in (acceptance of) the religion. The right course has become clear from the wrong. So whoever disbelieves in Taghut and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing”.

3. Surah Al-Hajj, verse 40: “(They are) those who have been evicted from their homes without right – only because they say, ‘Our Lord is Allah’. And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed,

Allah is Powerful and Exalted in Might.

Governance of Non-Muslims in Islamic Law:

According to Islamic law, relations within non-Muslim communities and among their members are governed by their own laws. However, interactions between non-Muslims and Muslims or the Islamic state, as well as actions by non-Muslims that disrupt public order or conflict with the interests of Muslims or the Islamic state, are governed by Islamic legal norms.

Matters such as property, family, inheritance, crimes, and penalties among non-Muslims are regulated by their laws and handled by their courts. The legal basis for such arrangements is provided in Surah Al-Ma'idah, verse 42:

“They are avid listeners to falsehood, devourers of [what is] unlawful. So if they come to you (O Muhammad), judge between them or turn away from them. And if you turn away from them, never will they harm you at all. But if you judge, judge between them with justice. Indeed, Allah loves those who act justly”.

The legal framework of Islamic law provides a comprehensive and structured approach to regulating the relationship between the Islamic state and non-Muslims (dhimmis) living under its rule. Based on primary sources such as the Qur'an, the Hadiths of the Prophet Muhammad (peace be upon him), and the works of classical Islamic jurists, the status of dhimmis is defined by a set of mutual obligations and protections.

Dhimmis are granted safety, religious freedom, property rights, and civil protections in exchange for adherence to the conditions of their treaties, including the payment of jizya and kharaj. While some restrictions are imposed to maintain the distinct identity and authority of the Islamic state, Islamic law strictly forbids injustice, oppression, or harm toward dhimmis. Numerous Qur'anic verses and Hadiths emphasize the importance of justice, coexistence, and the preservation of human dignity, regardless of faith.

The historical application of these legal principles—especially during the early Islamic caliphates—demonstrates a pragmatic and balanced legal system that sought to ensure peaceful coexistence, political stability, and protection for religious minorities. The agreements made with the dhimmis not only safeguarded their rights but also obligated the Islamic state to uphold justice and security, proving that Islamic law, when properly applied, can foster a harmonious and inclusive society even in times of political and religious diversity.

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