

The Jurisprudential Principle of Equality between Muslims and Non-Muslims in Islamic Sharia

Abbas Mehregan, University of Tehran

- retaliation (qīṣāṣ)
- indemnities (dīyat)
- inheritance (irṭh)
- marriage (nikāḥ)
- testimony (shahāda)
- judgement (qīḍāwa)

- the administration of endowment (waqf)
- pre-emption right (ḥaqq al-shuf‘a)
- guardianship over the Muslim minor

- What are the jurisprudential reasons cited by Muslim jurists for issuing these non-egalitarian fatwas?

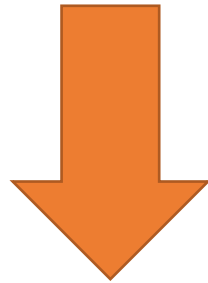
- The Qur'an
- Hadith
- Ijmā' (the consensus of Muslim 'ulamā')

Qur'an

- “... and Allah will give the disbelievers no means of overcoming the believers” (Al-Nisā, 141).

Qur'an

- “... and Allah will give the disbelievers no means of overcoming the believers” (Al-Nisā, 141).



- The principle of nafy al-sabīl (the negation of any way).

Hadith

- “Islam is always superior and should never be surpassed (by anything)” (Al-Bukhārī, 2001: 93 ; Al-Qomī, 1984: 334).

Ijmā'

- The consensus of Muslim jurists (ijmā' al-fuqahā) on the unlawfulness of supremacy of non-Muslims on Muslims.

Ijmā‘

- The existence of a religiously valid consensus is doubtful and consequently the claim of consensus is religiously unacceptable (see for example Al-Musawi Al-Bujnordi, 1998: 191).

Research Question

- Whether there is a jurisprudential basis for the issuing fatwa of equality between Muslims and non-Muslims according to Islamic Sharia.

- Ijtihad

Hypothesized Answer

- *Fiqh al-Maṣlaha* (the jurisprudence of public expediency/interest)

Maṣlaha

- According to *Tāj al-Arūs* (Zubeidī, 1969: 547) as well as *Lisān Al-Arab* (Ibn Manzūr, 1994), the literal root of *maṣlaha* is *Al-salāh* (correctness) which is the opposite of decadence (*Al-mafsada*).

Maşlahah in the main Islamic jurisprudential schools

Shafi'i school

- Abu Hamid Muhammad bin Muhammad Al-Ghazālī (1058- 1111): “Maṣlaha means the protection of the purposes of religion (**Maqāsid al-Sharia**)”.

Types of Maṣlaha according to Al-Ghazālī

1. Valid (Maṣālih Mutabara): Maṣālih which Sharia has emphasized their necessity or desirability through a particular proof.

2. Invalid (Maṣālih Mulghat): Those that are religiously forbidden because there is some proof against them.

3. Al-Mursala: Those that have no evidence of validity or invalidity in sharia.

A. Maṣālih in the area of necessary affairs (al-darūrat)

B. Maṣālih in the area of needs (al-Hājāt)

C. Maṣālih in the area of preferences (al-Mazāyā).

The purposes of religion (in the area of necessary affairs)

- The purposes of religion are these five: to protect the people's:
 1. religion (al-diyyn)
 2. life (al-nafs)
 3. reason (al-aql)
 4. descendant (al-nasl)
 5. property (al-māl)

Al-Ghazālī

- Anything that guarantees the preservation of these five principles is called Maṣlaha.
- Anything that destroys these principles is depravity and its elimination is Maṣlaha.

Al-Ghazālī

- In these cases a mujtahid can issue a fatwa even if there is no related primary principle (Al-Ghazālī, 1993 : 173-175).

Al-Ghazālī

- In sum, one can conclude that Al-Ghazālī acknowledges Maṣlaha as a **cause** for reaching the purpose of religion.

Maṣlaha as the purpose of religion (Sayf Al-Diyyn Ali ibn Muhammad Al-Āmidī (1156- 1233))

- Maṣlaha itself is the purpose of religion.

Maṣlaha as the purpose of religion (Sayf Al-Diyyin Ali ibn Muhammad Al-Āmidī (1156- 1233))

- The purpose of religious legislation (tashri' al-ḥukm) by Allah is either to give people Maṣlaha, or to ward off harm from them, or both of these goals either in this world or in hereafter (Al-Āmidī, 1982: 271).

Maliki school

Abu Ishaq Al-Shātabī (1320-1388),

- Maṣlaha is something that encompasses the whole of human life including his ultimate pleasure and his material as well as intellectual desires; whatever, man with it is perfectly convenient (Al-Shātabī, 1997: 44).

Hanbali school

Najm Al-Diyyn Al-Tūfī (1276-1316)

- Maṣḥala precedes even the Text (nass) and consensus (Ijmā‘) in transactions, politics and other secular matters.
- Mujtahids should explain and specify the nass and Ijmā‘ based on Maṣḥala.

Shia School

Al-Muhaqqiq Al-Hillī (1205 – 1277)

- Maṣlaha is something which is in harmony with humanity in the pursuit of his this-worldly, other-worldly, or both ends, and its result is reaching interests or avoiding losses.

- What are the Maṣlaha for which the fatwas of inequality between Muslims and non-Muslims can be violated?

The weakness of religion

(wahn al-diyyn)

Eliminating the weakness of religion (wahn al-diyyn).

- Wahn, literally, means to weaken and loosen someone or something (Farahidi, 1989: 94).
- Jurisprudentially, it means to do something that may insult religion (Makarim Shirazi, 2000).

Examples of the weakness of religion

- The acceptance of inadvertency of the Prophet (sahw al-Nabī) (Mar'ashī, 1988: 230);

Examples of the weakness of religion

- that the learned man of God tells people the truth, but they do not accept it and follow their sensual passion (hawā al-nafs);

Examples of the weakness of religion

- to believe that there is no connection between verses of the Qur'an (Ibn 'Arafa, 1986: 475);

Examples of the weakness of religion

- The mourning of the day of 'Ashūra with bloody heads and faces (Al- Khuee, n.d.: 339; Khomeini, 1979; Al-Amin, 1983: 363; Musawi Ardabili, n.d.).

Examples of the weakness of religion

- that Muslims, in Christian feasts, eat and behave like Christians (ibn Al-nahhās, cited in Al-Sahimi, 2003: 132);

Examples of the weakness of religion

- the humiliation of Arab Muslims (Al-Haddādī, 1937: 348);

Examples of the weakness of religion

- Employment of Muslims in a pig slaughter and in a casino garage (Al-Hakeem, 2013: 291-292);

Examples of the weakness of religion

- That a Muslim child serve his/her non-Muslim parents (Al-Shirbīnī, 1868: 187; Al-Marāghī, 1946: 84);

Examples of the weakness of religion

- In the commentary on the *Kashf al-Sidq* it has been cited from *Al-Yanābi'* that Malik believes if someone cut off the tail of a lay person's donkey, he/she must pay only the price of the amputated organ, but if someone cut off the tail of a judge's donkey, he/she must pay the full price of a donkey, because this crime weakens the religion (Al-Hillī, 1993: 501);

**Inequality between humankind
and the weakness of religion**

- Islamic values are portrayed as inimical to human rights and democratic freedoms (Huntington, 1993).
- “The basis of the Islamic attitude toward unbelievers is the law of war; they must be either converted or subjugated or killed ...” (Schacht, 1982: 130).
- “... Islamization became associated with a decline in the quality of the administration of justice” (Mayer, 1991, cited in Ibn Warraq, 2003: 188).

- “The horrendous behavior toward ... non-Muslims ... manifested in Islamic civilization was a direct consequence of the principles laid down in the Koran and developed by the Islamic jurists” (Ibn Warraq, 2003: 2).
- “Al-Sharia’h is founded on ... inequality” (Samir, Paolucci & Eid, 2008: 91).
- The “vision of the inequality ... and lack of humanity of kafirs are the divine teachings of Allah (the antiGod) ... Kafirs have zero humanity” (Neuman, 2009: 20).

- Whether these attitudes and much more offensive than these do not weaken Islam.
- Cannot these negative views of Islam, which are widely widespread in the world today, harm the credibility of Islam in the general public?
- Are these deeply rooted and increasing unpleasant beliefs about Islam comparable to the above examples of weakness of religion that have been mentioned by 'ulamā (such as cutting off the tail of a judge's donkey)?

Discussion and Conclusion

- Portraying an unjust image of Islam that does not equate human beings weakens the religion.

- Portraying an unjust image of Islam that does not equate human beings weakens the religion.
- The issue of weakening religion is so significant that nobody can endure it (Al-Dihlawi, 2003: 94) and even some fuqahā have issued a fatwa of wujūb al-‘einī (obligatory to every mature Muslim) for **jihad** to eliminate it (Murwarid, 1989: 159).

- Portraying an unjust image of Islam that does not equate human beings weakens the religion.
- The issue of weakening religion is so significant that nobody does not deserve to endure it (Al-Dihlawi, 2003: 94) and even some fuqahā have issued a fatwa of wujūb ‘einī (obligatory to every mature Muslim) for jihad to eliminate it (Murwarid, 1989: 159).
- Therefore, protecting Islam from threats with the fatwa of equality is the primary duty of Muslim fuqahā.

- The principle of Maṣlaha provides ‘ulamā with a jurisprudential foundation for issuing the fatwa of equality between mankind.

**Thank you for
your kind attention**