

## MINORITY RIGHTS: ELUCIDATING THE PROXIMITIES AND VARIANCES IN EUROPEAN UNION AND SHARIA LAW

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### Abstract

Unlike the United Nations Declaration for minorities (1992), European Union (EU) Laws do not distinct its citizen based on majority and minority, resultantly, EU has not passed any peculiar legislation over the issue of minorities. Keeping in view the above-mentioned fact, this study will investigate and delineate the Charter of Fundamental Rights of the European Union (2007) to draw a comparison between Sharia Law and EU Law over the issue of minority rights. Primarily, Charter of Fundamental Rights of the European Union is comprises of six parts, Dignity, Freedom, Equality, Solidarity, Citizen Rights and Justice. However, this study will bring first three parts into account to posture Sharia law, EU laws, and their viewpoint on minority rights.

### TITLE 1: DIGNITY

#### Article 1: Human Dignity

“Human Dignity is inviolable. It must be respected and protected”.<sup>4</sup>

This article underscores the inherited dignity of Human beings irrespective of cast, creed, nationality and religion. It is an intrinsic truth that man is '*ashraful makhlūqat*' (noblest of all creations) and people belonging to different strata of society carry equal esteem, solemnity and approbation. Allah testify Man's condescension by pledging in Surah At-Tin

(وَاللّٰتِ وَالرَّيْثُوْنَ) وَطُوْر سَيْنِيْنَ) وَهَذَا الْبَلَدِ الْاَمِيْنِ) لَقَدْ خَلَقْنَا الْاِنْسَانَ فِيْ اَحْسَنِ تَقْوِيْمٍ<sup>5</sup>

By the fig and the olive, By Mount Sinai, And By this secured Town. We certainly created man in the best of form.

In the above-mentioned verses, Allah repeatedly swear and confer his grace on Man by revealing the fact that He has created Man in the most excellent of molds. These verses do not discrete any person on the bases of faith, religion, creed, race, language, ethnicity and colour, contrarily, it shun humanly made propositions of dignity and talks about the sanctity of human being as a whole. Quranic teaching and specially Sharia Law prohibit passing acidulous remarks, using contemptuous language or make mockery of somebody on the bases of religion, colour and ethnicity. As per Badr al-Din al-'Ayni's<sup>6</sup> words (الهاء) "لمسلم او ذمی حرا deriding and pasquinade of a Muslim and Non-Muslim is forbidden in Islam". In the same manner, Islam not only guarantees the protection of Non-Muslim (lives) but it also indoctrinates its followers to take good care of Non-Muslim graves and corpses. (عظامهم لها حرمة اذا وجدت في قبورهم لحرمة)

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<sup>4</sup> Charter of Fundamental Rights of The European Union, Official Journal of European Communities,200/C364/01, p.9

<sup>5</sup> Surah Al-Tin, 95/1-4

<sup>6</sup> اية ، بدرالدين، العيني، ابو محمد محمود بن احمد، 36،7) البنائة في شرح الهد

عظم المسلمين) "Muslim and Non-Muslim corpse, their remains like flesh and bones are entitled with equal sanctity."

## Article 2: Sanctity of Human Life

"Everyone has the right to life and no one shall be condemned to death penalty or executed"<sup>8</sup>.

Human life carries paramount status in Islam. 'Maqasid al-Shari'ah' (core principles of Islam) emphasise on the preservation of human life, resultantly; it discourages the act of committing suicide. In the case of illness, Islam advice and encourage the patients to opt medical facilities to reinstate the healthy phase of human life. Moreover, Islamic teachings illuminate the sacredness and sanctity of human life in way that it hold one person's life equal to that of the entire humanity and it dictates its followers not to kill innocent people. Quran say, ﴿فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا﴾<sup>9</sup> "as if he killed all the people". Keeping in view the sanctity of human life, Quran did not discriminate the people on religious bases and broke down the binaries of Muslim and Non-Muslim. Quran set the guiding principles to run the affairs of Islamic State and instruct the Muslim rulers to take good care of lives and property of the Non-Muslim. As for as sanctity of life is concerned, Islam and Charter of Fundamental Rights of the European Union share common values, however, both have different stance over 'execution'. In the case of murder, rape, Apostasy and dacoity, Islam elevates the notion of 'retribution' as divine justice in such words ﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ﴾<sup>10</sup> "And in retribution you have life". Orientalists took Islamic notion of execution in a skeptic way, they raised numerous doubts over this issue and synonymized retribution with brutality. However, contrary to orientalist's protestations, Islam place the notion of retribution to shun the anarchy, avoid lawlessness and maintain the sanctity of human life, property and prestige. Severe punishments as if retribution create a sense of fear among felons and restrain them from committing heinous crimes like rape and murder.

## Article 3: Right to the integrity of the person

- 1) "Everyone has the right to respect for his or her physical and mental integrity. (ii)
- 2) In the field of medicine and biology the following must be respected in particular:
  - (a) The free and informed consent of the person concerned, according to the procedure lay down by the law. (b) The prohibition of eugenic practices in particular those aiming at the selection of persons. (c) The prohibition on making the human body and its parts as such a source of financial gain. (d) The prohibition of the reproductive cloning of human beings"<sup>11</sup>

Like the above mentioned rights granted by Charter of Fundamental Rights of the European Union, Islam also guarantee the physical, ethical and moral rights of minorities. Islam forbids using abusive language, roughness, sadism, physical violence, slandering and defamation of *dhimmi* (protected people).

<sup>7</sup> البحر الرائق، ابن قيم، 2/210

<sup>8</sup> ) Charter of Fundamental Rights of The European Union, Official Journal of European Communities, P.9

<sup>9</sup> سورة المائدة: 32/5

<sup>10</sup> سورة البقرة: 179/2

<sup>11</sup> ) Charter of Fundamental Rights of The European Union, Official Journal of European Communities, P.10

( لا تبعن لهم كسوة شتاء ولا صيفا ولا رزقا يا كلونه ولا دابة يعلمون , عليها ولا تصرين احدا

منهم سوطا واحداً)<sup>12</sup>

"Do not sell their clothes, victuals, and livestock and farm animals to collect *kharaj*. Likewise, do not whip them for the collection of tiny amounts".

In the same manner, Hazrat Umer wrote an official letter to his Syrian Governor regarding *dhimmi*, (وامنع المسلمين من ظلمهم والاضرار بهم واكل اموالهم الا بلهاها), "I command you to warn Muslims not to loot and plunder the belongings of *dhimmi*, moreover, I instruct you to convey my message to Muslim masters to treat their non-Muslim subjects justly". Islam not only ensures the personal integrity of *dhimmi* it also commands its officials to create a sustainable environment, which assure the socio- cultural, and religious rights of *dhimmi* in Muslim state.

#### Article 4: Prohibition of torture and inhuman treatment

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"<sup>13</sup>.

This article debars the authorities to use force, inflict pain or persecute the meager the people. In addition to it, this article refrains the State apparatus to avoid confessions out of custodial interrogations following in illegal arrests. Contrarily to the stance made by EU law, Islam believes in physical punishment, lashing, stoning and cutting of hands to maintain peace and justice in Muslim society. It is the sole responsibility of Muslim state to penalise the culprits and criminals through its apparatus. According to the Islamic law, adultery is a dreadful sin; it devastates the societal reputation and family unit of the concerned families. Due to its calamitous repercussions, Islam translates it as an unpardonable crime and the involved person will receive hundred lashes. Along with adultery, Islam took 'pilfering' and 'drug tariffing' as inexcusable crimes and felons have to face punishments. In the case of adultery, Quranic says, "Adulterer and adulteress, scourge each one of them with a hundred lashes" (الرَّانِيَّةُ وَالرَّانِي فَاجْلِدُوا). Similarly, keeping in view the catastrophic nature of false accusations, Islam categories it as an unpardonable evil. If a person fabricate a false evidence, he/she is liable to the punishment of eighty lashes; that person will be declared as deceitful and untrustworthy and in future his/her testimony will be quashed by court. (وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا)<sup>14</sup>. "Those who throw the fortified women and then did not bring four martyrs, then flog them eighty lashes, and never accept their testimony. Similarly, Islam abhors all form of drugs, narcotics and opium (liquor, cannabis, marijuana, heroin, Morphine) etc. and the involved/convicted person will be walloped with eighty lashes. Last but not the least, to maintain the peace and the exhibition of justices, Islamic law deals with thieves and buglers with an iron fist. Contrary to the European and western interpretations of cutting of hands, Islam orders its officials to circumspect the crime scene; evaluate the

<sup>12</sup> كتاب الحزاج، ابو يوسف، ص: 17

<sup>13</sup> ) Charter of Fundamental Rights of The European Union, Official Journal of European Communities, P.10

<sup>14</sup> سورة النور: 24/2

<sup>15</sup> سورة النور: 24/4

net worth of stolen assets/objects and present other relevant information/evidences to the judge. After a detailed preceding (listening both sides accused person and officials) judge will pass the judgment of cutting off the hands of burglar on the bases of Quranic teachings, ﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا﴾<sup>16</sup>, "As for male and female thieves, cut off their hands".

#### Article 5: Prohibition of slavery and forced labour

- i) "No one shall be held in slavery or servitude. (ii) No one shall be required to perform forced or compulsory labor. (iii) Trafficking in human beings is prohibited".<sup>17</sup>

Islam and Charter of Fundamental Rights of the European Union have consensus over the issue of slavery and forced labour. Like EU law, Islamic believes that every individual is born free and no one is allowed to curb the individual liberties of a Man. Quran condemns the notion of Slavery in such words, "It is not for a human (prophet) that Allah should give him the Scripture and authority and prophethood and then he would say to the people, Be servants to me rather Allah, but (instead, he would say), Be pious scholar of the Lord because of what you have taught of the Scripture and because of what you have studies". This fact can easily be unearthed not in the teachings/practices of the last messenger of Allah (PBUH) but also from the official letters dispatched by the rightly guided Caliphs for their Governors. These letters were not routine letters, Caliph Umar used to verify the state of affairs related to minorities from secret reports. Once son of Amr ibn al-As al-Sahmi (Governor of Egypt) punished a non-Muslim inequitably. Caliph Umar accredited the non-Muslim to beat the Governor's son and the Governor in such words, متى استعبدتم الناس<sup>18</sup> "when did you enslave people?". Similarly, Islam has not curtailed the liberty of people to abode, travel and work anywhere in the globe.

### TITLE II: FREEDOM

#### Article 6: Right to liberty and security

"Everyone has the right to liberty and security of person".<sup>19</sup>

We have already penned down the quote of Caliph Umar to communicate the magnitude of human liberty in Islam. Muslim state cannot confine someone in captivity without genuine reasons. Furthermore, prisoners have right to consult a lawyer, access the parole process, meet his family members, get protected from unidentified physical assaults, right to avail medical treatment, present his argument in the court of law and etc. Allah bestows individual rights to his Men; no one can curtail his/her rights in a Muslim State.

#### Article 7: Respect for private and family life

"Everyone has the right to respect for his or her private and family life home and communication".<sup>20</sup>

<sup>16</sup> سورة المائدة: 38/5

<sup>17</sup>) Charter of Fundamental Rights of The European Union Official Journal of European Communities, P.11

<sup>18</sup>) كثر العمال، 455/2

<sup>19</sup>) Charter of Fundamental Rights of The European Union, Official Journal of European Communities, P.11

According to EU Laws, every person is entitled to have his/her private life. EU law does not permit anybody to create hindrances and influence others' lives by altering their natural course of their lives. Similarly, Islamic teaching and Sharia Law promote the notion of secrecy and provide all kind of societal shelters to its followers so that they can easily peruse their ideals, personal relationship, interests, socio-political activities etc. Islam teaches not to enter in others home without knocking and prior permission. Quran says, "O you who believe! Let your legal slaves and slave-girls, and those among you who have not come to the age of puberty ask you permission (before they come to your presence)". Along with providing personal/private space, Islam discards snooping and apprise the people of severe punishment to those who are indulged in spying. Quran says, "O believers! Avoid many suspicions 'for' indeed, some suspicions are sinful. And do not spy". Surah An- Nur and Al- Hujurat are full of societal instructions and Allah Almighty is teaching social graces, manners and etiquette to the Muslims. Islam through its teaching put a bar on societal evils like snooping, spying, false accusations, gazing, stalking etc. so that people can breathe in a peaceful society.

#### **Article 9: Right to marry and right to found a family**

“The right to marry and right to found a family shall be granted in accordance with the national laws governing the exercise of these rights”.<sup>21</sup>

Islam does not advocates platonic love, celibacy and monasticism. Contrary to it, Islam fosters the tradition of *Nikah*. 'Family unit' holds a high status in Islam that is why Islam defines *Nikah* as a religious duty. *Nikah* is described as '*Mithaqun Ghaleez*', a challenging commitment in which both husband and wife find mutual accomplishment, self-realization, serenity, hope and a legitimate way of reproduction. As per Islamic teachings, no one can be deprived of getting married. Quran says, "Then marry other women of your choice". This verse carry the words " مَا طَابَ ", which give the liberty to a male to marry a women whom he likes, likewise, no one can force neither man nor women on this matter. Islam allowed men to get married with the people of the book (Jews and Christians). Islam bestows full rights to *dhimmi* to marry according to the teachings of their religions/family laws. Islam does also allow a brother to marry his real sister; however, in the case of *dhimmi* and gives them rights to obverse their family laws.

#### **Article 10: Freedom of thought, conscience and religion.**

“Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief and freedom, either alone or in community with others in public or private to manifest his religion or belief, in worship, teaching, practice and observance”.<sup>22</sup>

Although, Orientalists have written numerous books over the issue that foster forceful conversion, however, contrary to it, Sharia Law carry a rich treasure of Quranic commandments which provides rights to people in opting religion. Islam never incites its follower to curb the religious freedom of people, as Quran says, "And say, 'O Prophet,' this is the truth from your Lord. Whoever wills let them believe, and

<sup>20</sup>)Ibid,P.11

<sup>21</sup>)Charter of Fundamental Rights of The European Union, Official Journal of European Communities,P.11

<sup>22</sup>) Charter of Fundamental Rights of The European Union, Official Journal of European Communities,P.11

whoever wills let them disbelieve. Surely we have prepared for the wrongdoers a Fire". Similarly, in the case of faith and creed, Quran has clear message, "You have your way, and I have my way ". Throughout the course of History, Muslim states and officials tried to preserve the religious rights of Non-Muslims.

#### **Article 11: Freedom of expression and information**

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.<sup>23</sup>

As per Sharia Law everybody has the right to exhibit his/her faith while remaining within the domains set by law. However, Sharia Law does not permit to incite religious, political and ethnic hatred by disseminating mendacious propaganda about other communities. Islam bestow the right of expression to minorities and make its officials bound to deal the minorities issues as per their personal law. Moreover, in the case of clash between Sharia law and personal/religious laws of minorities, Non-Muslim are allowed to live according to the norms/traditions in their localities. Similarly, all citizens including Non-Muslims have the right to ruminate and communicate their thoughts freely.

#### **Article 12: Freedom of assembly and of association**

- 1) “Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels in particular in political trade union and civic matters which implies the right of everyone to form and to join trade unions for the protection of his or her interests”.<sup>24</sup>
- 2) Political parties at union level contribute to express the political will of the citizens of the union.

In EU Law, right to express and freedom of assembly are known as intertwined concepts. Islamic State led by Sharia Law do not discriminates on religious bases and provides them full liberty to speak their conscience. In Islam irrespective of religious affiliations can pose question to the officials and put him on trial. Likewise, officials are asked to seek advised from people on public matters. Quran says, "And consult with them in 'conducting' matter". Islam encourages assembly, political congregations and generating membership over issues related to social, economic and moral issues of society. However, Sharia Law do not allow anti-state meetings and gathering which can distort the public peace.

#### **Article 13-14: Freedom of the arts and science and Right to Education**

“The arts and scientific research shall be free of constraint. Academic freedom shall be respected”.<sup>25</sup>

##### **Article No. 14**

- (i) “Everyone has the right to education and to have access to vocational and continuing training.
- (ii) This right includes the possibility to receive free compulsory education”.<sup>26</sup>

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<sup>23</sup> ) Charter of Fundamental Rights of The European Union, Official Journal of European Communities,P.11

<sup>24</sup> ) Charter of Fundamental Rights of The European Union, Official Journal of European Communities,P.11

<sup>25</sup> ) Charter of Fundamental Rights of The European Union, Official Journal of European Communities,P.11

<sup>26</sup> ) Ibid, p. 11

Long before EU legislation and contemplation over the issue of getting knowledge, Islam declared acquiring knowledge a sacred duty of all Muslims. The very first verse of Quran is about seeking knowledge, Quran says, "Read, O Prophet in the name of your Lord who created". After the underscoring the significance of seeking knowledge in Islam, Quran further cemented this notion in another place, "Say, O Prophet, Are those who know equal to those who do not know? None will be mindful of this except people of reason". Islam do not create binaries between religious and worldly knowledge. Similarly, it do not propagate gender discrimination in getting knowledge. According to a tradition, "seeking knowledge is obligatory for every Muslim". Prophet Muhammad used to say, I have not but been sent as a teacher. Likewise, before his migration to Madinah, Prophet Muhammad arranged a tutor, dispatched Saad ibn Al Aas to Madinah and started educating local people about Islam. Prophet's thrust for knowledge is evident from the terms he offered to the prisoners of war. People of Makkah were well versed in reading and writing, Prophet asked the literate captives to teach ten children as ransom and return to Makkah.

#### **Article 15: Freedom to choose an occupation and right to engage in work**

(i) "Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation. (ii) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State. (iii) Nations of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union".<sup>27</sup>

#### **Article 16: Freedom to conduct a Business**

"The freedom to conduct a Business in accordance with union law and National Laws and practices is recognized".<sup>28</sup>

Except usury, Sharia Law provides grantee and tries to create a serene environment where non-Muslims can peruse all kind of business, professions and jobs according to their educations and skills. Even in the context of usury, Islam avoid discrimination and warns Muslim and non-Muslim not to run business based on usury. Islam consider usury a collective disadvantage for the humanity. Imam Abu Bakr Al-Jassas wrote about usury, "Allah has proscribed usury for Muslim and Non-Muslim". Except usury, Islam has not put any bar on Non-Muslim. They can peruse liquor business, eat and sell pork etc in their localities. Imam Ala al-Din al-Kasani wrote on this matter, "They are not prevented from showing anything that we mentioned about selling wine and pork".

#### **Article 17: Right to property**

(i) "Everyone has the right to own use dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possession except in the public interest and in the cases and under conditions provided for by law subject to fair compensation being paid good time for their loss. The use of property may be regulated by law in so far as necessary for the general interest. (ii) Intellectual property shall be protected".<sup>29</sup>

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<sup>27</sup>) Charter of Fundamental Rights of The European Union, Official Journal of European Communities, P. 11

<sup>28</sup>) Ibid, p.12

<sup>29</sup>) Charter of Fundamental Rights of The European Union, Official Journal of European Communities, P. 12

Islam laid stress over the notion of earning livelihood in a right manner. Islam prohibits its followers from manipulating the scheme of events to earn money out of illegal transactions and advise them in such words; "Do not consume one another's wealth unjustly". Islam has made the things clear by illustrating the rewards of righteous and wicked people on this matter. Jabir narrated that Allah's Prophet said a body/flesh, which is raised on illegal money, should not abode in Jannah. Hell is decorated for such bodies that raised on unjust sustenance (Ahmad). Once Prophet said, "Indeed, your blood and wealth is forbidden on you". On the other hand, Prophet Muhammad praised the trustworthy businessman and entrepreneurs by indicating his place along with Prophets and martyrs. Islam persuades its followers to invest money and strive for earning livelihood. Quran says, "So if the prayers are made up, then spreads out on the ground and seek the grace of God". Islam intertwine human life with wealth and strives to provide ownership to its real possessors. Article 18-19 deals about protection of job, which we have already discussed in above-mentioned article related to finance.

### TITLE III- EQUALITY

#### Article 20: Equality before Law

#### Article 21: Non-Discrimination

(i) "Any discrimination based on any ground such as sex, race, colour ethnic or social origin, genetic features, language, religion, or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. (ii) "Within the scope of application of the Treaties and without prejudice to any of their specific provisions any discrimination on grounds of nationality shall be prohibited".<sup>30</sup>

Islam has not divided the humanity on the base of colour, race, creed and religion. Contrary to this, Islam treats its citizen on the grounds of equality and with utmost respect. People residing in a Muslim state possess equal social, religious, financial and political rights. Qurans illustrates this fact in such manner, "O humanity, Indeed, We created you from a male and a female, and made you into peoples and tribes so that you many get to know one another". Moreover, Prophet Muhammad in his last sermon shunned the act of taking pride over family, tribe and caste in an eloquent way. "All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over a Black nor does Black have any superiority over a white except by piety and good action". Similarly, Islamic social justice does not bifurcate the people on the bases of being marginalized or impoverished and treat all strata of society equally.

#### Conclusion:

After having comparative study between Sharia law and charter of Fundamental Rights of the European Communities it is enlightened that these basic human rights which are prevailed to the people of European Union are the result of very long and hard struggle. On the other hand Islam has given all these human rights to all human being without discrimination of color, creed and religion. These said rights were not given in paper but practically were implemented and entertained in Islamic era to all people living in Islamic state. This comparison shows that Islam gave all these fundamental rights centuries ago and were enforced in Islamic state but Europe claim is not historically valid that we are the champion of human rights, we are the people who introduced basic human rights.

<sup>30</sup> )Ibid, p.13