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Religious freedom from the perspective of Islamic jurisprudence and international conventions

الحرية الدينية من منظور الفقه الإسلامي والمواثيق الدولية

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Abstract:

This research aims to clarify the perspective of the Islamic religion on religious freedom by presenting its concept and foundations in Islamic jurisprudence with mentioning the Sharia evidence from the Holy Quran and the Sunnah of the Prophet, to shed light on the recognition of the right to freedom of belief in Islamic jurisprudence. The legal texts of international and regional instruments clarify that the right to religious freedom and the exercise of religious rites is the right to freedom of conscience and conscience, with restrictions on this freedom not to violate the requirements of the public interest and the maintenance of public order.

Keywords: Religious freedom, Islamic jurisprudence.

الملخص:

يهدف هذا البحث إلى توضيح منظور الدين الإسلامي للحرية الدينية بعرض مفهومها وأسسها في الفقه الإسلامي مع ذكر الأدلة الشرعية من القرآن الكريم والسنة النبوية، لتسليط الضوء على إقرار الحق في حرية الاعتقاد في الفقه الإسلامي. وتوضيح النصوص القانونية للمواثيق الدولية والإقليمية أن الحق في الحرية الدينية وممارسة الشعائر الدينية هو الحق في حرية الوجدان والضمير، مع وضع قيود لهذه الحرية بعدم مخالفة مقتضيات المصلحة العامة وحفظ النظام العام. الكلمات المفتاحية: الحرية الدينية، الفقه الإسلامي.

1. INTRODUCTION

Religiosity is one of the basic characteristics of man from other beings; because his origins, rules and controls are the greatest guides for man in his life in all fields, political, economic, social and others, and this is guaranteed by the freedom to choose the belief in which the individual or group believes, in religious freedom has become of great importance in the present era because of the human right to freedom and liberation; until treaties, charters and agreements were written for him international and regional laws and decisions.

And that religious freedom emanating from international charters is due to the emergence of some intellectual and philosophical trends that call for the recognition of freedoms, as Western societies have experienced persecution through the ages.

As for religious freedom from the point of view of Islamic jurisprudence, it is based on firm foundations and explicit Sharia texts; because one of the purposes of Islamic law is to preserve the five necessities, religion is the first of the purposes of Islamic law.

And the forms presented in this research, to what extent is religious freedom enshrined in international charters? To what extent does Islamic jurisprudence recognize the freedom of a person to choose his religion or belief and practice his religious rituals?

This research requires the descriptive approach to explain the texts and contents of religious freedom in Islamic jurisprudence and international charters, and the analytical approach to legal texts and legal texts of international charters

to clarify the foundations of religious freedom.

The study of this topic requires dividing it into two topics, we devote the first to the study of religious freedom from the perspective of Islamic jurisprudence, and the second to the study of religious freedom in international charters.

1-Religious freedom from the perspective of Islamic jurisprudence:

1-1 Definition of religious freedom in Islamic jurisprudence:

First: Definition of Freedom in Islamic Jurisprudence:

1-Defining freedom in language:

Freedom is the source of a verb: liberated, "And H and R in the multiplier has two origins:

The first is: what is contrary to slavery and is innocent of defects and deficiencies ... The second: Contrary to the cold¹. "

"And freedom: the opposite of a slave. »².

2. Definition of freedom in terminology:

Freedom has many meanings in terminology, some of which correspond to the linguistic definition, and some of which oppose it, so we are limited to some contemporary definitions, including:

"Freedom does not mean that a person does what he wants and leaves what he wants, as this is consistent with the nature of his desire, and does not agree with the natures of existence as it is installed on it, but it means that a person does what he thinks he is entrusted with, and what is good for the benefit of all human beings³."

And it is: "You worship the Creator by your choice, and that creation does not enslave you in your outwardness or inwardness.⁴"

Second: Definition of Religion in Islamic Jurisprudence:

1-Defining religion in language:

Religion is defined by several meanings mentioned in the Holy Quran, including:

- Obedience, submission and worship:

It is said that he owed him the breaking of the sign, that is: I obeyed him, and therefore the law was called a religion,

As Allah Almighty said in Surat Al-Baqarah verse 193 that, and from it is obedience and submission, all of it is to Allah Almighty alone.

- Calculation, recompense and reward:

From this is the saying of Allah Almighty also in Surat Al-Fatihah aya 4, and also referred to by the Holy Quran in Surat Al-Hijr aya 35 and his saying also in Surat As-Saffat aya 53.

Religion calls Islam and the final message revealed to the Prophet Muhammad, peace be upon him, for the saying of Allah the Almighty in Surat Al-Imran, verse 83, a reference to that

2. Definition of religion in terminology:

Religion can be defined as: "The treatment between the slave and the Almighty God. All the ideas of the slave either relate to the slave and his attributes and conditions, or they relate to the idol and his attributes and actions, and he cannot deviate from these two sections⁵."

And that: "The set of beliefs, morals and laws that came to manage the affairs of human society and the education of man, if it is a truth, religion is called the true religion, and therefore the true religion is the one whose beliefs and laws came down from God

God Almighty, and the false religion is the one who came and established and organized from other than God.⁶ "

And that: "A divine situation that guides to the right to beliefs and to the good in behavior."⁷

Third: Definition of Religious Freedom in Islamic Jurisprudence:

Freedom of religion and belief is one of the fundamental principles of Islam, and it means: "Freedom of the individual and the group in life

private or public in manifesting their religion, beliefs, and religious rituals, whether by education, practice, or celebration⁸."

Abdul Majeed Al-Najjar says: "Freedom of belief is that man is free to choose the ideas, visions and beliefs that he sees as the truth, so he is not coerced to embrace what he does not see as such." Religious freedom is linked to freedom of thought⁹, because it is the realization of thought and meditation that directs man to choose the truth and the right.

1-2 The foundations of religious freedom in Islamic jurisprudence:

Religious freedom for a person to have the right to choose his religion by what he has reached with his thought. No one else can coerce him into a particular religion or belief or to change or alter what he believes or owes by any means of coercion¹⁰.

Religious freedom is based on the following principles:

First: Human Will:

The Holy Quran states that religious freedom is based on consent and choice, and there are many verses that give people full will and choice in the matter of believing in God, and the Holy Quran referred to it in Surat Al-Kahf, verse 83, and the Almighty's statement in the Holy Quran in Surat Younis, verse 99, is also a reference to that, as man is responsible for his will to achieve his worldly and eschatological

interest, as the Almighty said in the Holy Quran, Surat Al-Man, verse 3 .

The freedom to believe in Islam is based on consent, because guidance is only by consent, and consent is a cornerstone of The Islamic faith, and the contract of monotheism and faith with God Almighty, which is the first thing that enters into the word of God Almighty in the Holy Quran, Surat Al-Ma'idah, verse 1, and therefore God does not accept Islam as a slave who has not given up his heart and is not satisfied with God as a lord and with Islam as a religion and with Muhammad, peace be upon him, a prophet and a messenger.

Second: Not to be forced to take Islam as a religion:

Islam was not founded on physical violence or moral coercion, but its claim was based on wisdom and good preaching, as indicated by the Holy Quran in Surat Al-Nahl, verse 125 .

The Holy Quran has clearly and explicitly stipulated religious freedom as indicated in verse 256 in Surat Al-Baqarah, so Ibn Kathir says: "That is, do not coerce anyone to enter the religion of Islam, for it is clear, the clarity of its evidence and proofs, does not need to coerce anyone to enter it.
11,"

There are many verses that define the role of the Messenger, peace and blessings be upon him, and it is clear that it is not his task to force people to believe, but rather to communicate monotheism and guidance to him. There is also a reference in the Holy Quran, Surat Ash-Shura , verse 48 , and his saying in Surat Qar, verse 45, and also Surat al-Ghashiyah, verse 22, a reference to this.

Third: Respect for other divine religions and freedom of religious observance:

All the divine religions are from Allah, the Almighty, to guide humanity to the

worship of the One Sunday. Islam was the seal of the divine messages and was complementary to the previous divine scriptures. Its texts, rules and controls are among the highest laws and the first to initiate coexistence and peace with non-Muslims and those who profess a religion other than Islam. The Holy Quran also referred to it in Surat Al-Imran, verse 20, and also in Surat Al-Mumtahinah, verse 8, as a reference to this.

The Prophet (peace and blessings of Allaah be upon him) said in Surat Al-Kafirun verse 6 a reference to this.

This is also referred to in the Holy Quran in Surat Al-Ankabut, verse 46.

In the words of God Almighty, it is also an indication of how much is present in Surat Al-Baqarah aya 139, also Surat Ash-Shura aya 15, and also referred to by the Holy Quran in Surat Saba aya 25.

Mohammed Abu Zahra believes that freedom of belief is based on three elements, namely:

1- Free thinking that is not captivated by intolerance of nationality or tradition, or lust or whim, as passions and nationality often control in the name of religiosity.

2- Preventing temptation or coercion to carry on a belief. A religious person is not free to believe under the influence of temptation with money, position or status.

3- Working on the requirement of the faith, and facilitating this for every convert to a religion without fatigue¹².

However, Islamic jurisprudence deals with apostasy and apostasy from the religion of Islam to preserve the most important purpose of the Islamic Sharia, which is to preserve the religion by fighting apostates from the Islamic religion, as our master Abu Bakr al-Siddiq, may God be pleased with him, did after the death of the Prophet, peace

be upon him, when a group of Muslims apostatized from the religion. To achieve the purposes of the Islamic Sharia for his saying, peace be upon him, instead [of his religion]¹³, so they killed him, and many verses came from the Holy Quran showing the apostate's disbelief from the religion of Islam, as the Holy Quran referred to it in Surah Muhammad, verse 25., and in reference to this also in Surat Al-Baqarah verse 217. Because the motives of the apostate are malicious and involve the intrigue of Islam, which is contrary to respect for the Islamic belief in accordance with the principle of religious freedom. The punishment of Islam for the apostate is not just for changing his religious belief, but for the effects of leaving religion. Islam came with the principle of respecting freedoms, especially the belief of religion. The dhimmis and non-Muslims lived in Islamic countries and practiced their religious rituals freely.

The right to religious freedom in Islamic jurisprudence as a whole is an established interest of man that gives him the will to choose the principles and values that man believes in, adheres to, and is guided by in life, and practices his worship on its basis, and the divine true religion is a necessary interest for people; because it regulates man's relationship with his God, man's relationship with himself, and man's relationship with his brother man and society, and that true religion gives a rational perception of the Creator, the universe, life, and man, and is the source of truth, justice, integrity, and guidance¹⁴.

2- Religious freedom within the framework of international conventions:

The revolutions and struggles that contributed to the intellectual and

philosophical trends in Western societies emerged from them

Charters decided and organized by legal texts compiled in several declarations, resolutions and international agreements, including the Universal Declaration UN Human Rights, International Covenant on Civil and Political Rights.

2-1 Religious freedom in the international legitimacy of human rights:

The Basic Law on Human Rights is concerned with the various fundamental rights and freedoms of the human being, including religious freedom or freedom of belief, through the provisions of the articles stipulated in international covenants, namely the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

First: The Universal Declaration of Human Rights¹⁵:

The Declaration dealt with religious freedom within civil and political rights, in Article 18, which states: "Everyone The right to freedom of thought, conscience and religion, and this right includes his freedom to change his religion or belief, and his freedom to manifest his religion or belief in worship, observance, practice and education, alone or with a group, and in public or in private."¹⁶

Second: The International Covenant on Civil and Political Rights¹⁷:

The International Covenant on Civil and Political Rights is distinguished by the obligation to apply the principles contained in the Universal Declaration of Human Rights. Article 18 of the International Covenant on Civil and Political Rights is more detailed than Article 18 of the Universal Declaration of Human Rights¹⁸, which reads as follows:

1- "Everyone has the right to freedom of thought, conscience and religion. This includes his freedom to profess a religion, his freedom to adopt any religion or belief of his choice, and his freedom to manifest his religion or belief in worship, observance, practice, and teaching, alone or in community with others, and in public or in private.

2. No one shall be subjected to coercion that would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and

be necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to respect the liberty of parents or, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.¹⁹ "

It also provides for the recognition of freedom of belief and the practice of rites to minorities in Article 27, which states that: "In States in which ethnic, religious or linguistic minorities exist, persons belonging to the said minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

From the above, it is clear that the International Covenant on Civil and Political Rights affirms the religious freedom of man. Man has the freedom to adopt the religion of his choice and to be convinced of it or to change his religion, and the freedom to manifest his religion or belief by practicing religious rites, whether performed

individually or in groups, in an open or secret state of education or learning, and the freedom for parents to teach their children their own beliefs.

Third: United Nations Resolution on Combating Defamation of Religions of 2005:

The United Nations Commission on Human Rights issued a resolution on combating defamation of or contempt for religions on April 12, 2005, which is considered one of the most important international resolutions prohibiting defamation of religions, in which the Commission expressed its deep concern about the repeated negative pattern against religions and manifestations of intolerance and discrimination in matters related to religion or belief that are manifested in many parts of the world, and its strong condemnation of the attack and assault on business centers, cultural centers and places of worship for all religions, as well as the targeting of religious symbols. This resolution also urged States, non-governmental organizations, religious entities and the print and electronic media to promote a culture of tolerance and peace based on respect for human rights and different religions.

2-2 Religious freedom in international charters for members of society:

Several international conventions and declarations concerning specific individuals or minorities have been concluded in the form of charters; they provide for the right to religious freedom, including the following:

First: Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief²⁰:

Article 1 of it stipulates the following:

- "Everyone has the right to freedom of thought, conscience and religion. This right includes belief in a religion or any belief of his choice, and the freedom to manifest his religion or belief by worship, observance, practice, and teaching, whether alone or in community with others, and in public or in private.

It is not permitted to subject anyone to coercion that limits his freedom to have a religion or belief of his choice.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as may be prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

Article 6 of the Declaration clarifies the rules for the exercise of religious freedom, which reads as follows: "In accordance with Article 1 of this Declaration, and subject to the provisions of paragraph 3 of the said Article, the right to freedom of thought, conscience, religion or belief includes, inter alia, the following freedoms:

(a) The freedom to practise worship or hold meetings relating to a religion or belief, and to establish and maintain places for these purposes.

(b) The freedom to establish and maintain appropriate charitable or humanitarian institutions.

(c) The freedom to acquire and use a sufficient amount of necessary materials and things related to the rituals or customs of a religion or belief.

(d) The freedom to write, issue, and distribute publications about these fields.

(e) Freedom to teach religion or belief in places suitable for these purposes.

(f) Freedom to seek and receive voluntary financial and non-financial

contributions from individuals and institutions.

(g) The freedom to form, appoint, elect, or succeed appropriate leaders who are needed to meet the requirements and standards of any religion or belief.

(h) The freedom to observe rest days, celebrate holidays, and perform rituals in accordance with the teachings of a person's religion or belief.

(i) Freedom to establish and maintain contacts with individuals and groups on matters of religion or belief at the national and international levels. "

Second: Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities²¹:

Article 04 of this Declaration recognizes the religious freedom of minorities without discrimination, stating: "Persons belonging to national or ethnic, religious and linguistic minorities shall have the right to enjoy their own culture, to profess their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination²²."

2-3: Religious freedom in regional charters:

Religious freedom has received great attention from regional organizations by issuing several declarations and agreements that enshrine the right to choose religion and practice religious rituals. In this demand, we highlight some regional charters that have declared the right to religious freedom, including the following:

First: Religious freedom in European regional charters:

Religious freedom or belief was the most important of the fundamental freedoms stipulated in the European charters for the protection of human rights. Among these

charters is the European Convention on Human Rights, which stipulates many of the rights and freedoms stipulated in the Universal Declaration of Human Rights. Articles 02 to 10 stipulate human rights and religious freedom in Article 09, which reads:

1- "Everyone has the right to freedom of thought, conscience and belief. This right includes the freedom to change religion or belief, and the freedom to declare religion or belief in worship, education, practice and care, whether alone or in meeting with

Others, publicly or privately.

2. The freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of the security of the public, the protection of public order, health and morals, or the protection of the rights and freedoms of others²³. "

Through the aforementioned, the European Convention considered freedom of belief an inalienable natural right for every human being without discrimination, and stipulated the freedom to change religious belief, and the freedom to perform religious rites individually or collectively, in secret or in public. The Convention allowed individuals to protest before oversight bodies, such as the Human Rights Council, which was established after 2006, and the European Court of Human Rights, if they are victims of a violation of any of the rights contained in the Convention, and contributed significantly to strengthening the mechanisms of control over civil and political human rights²⁴.

Second: Religious freedom in Islamic, Arab and African regional charters:

(a) The Universal Declaration of Human Rights in Islam²⁵:

It provides for the declaration of freedom of religion and thought in Article 12 of it, which states the following:

1- "Every person may think and believe, and express his hatred and belief without interference or confiscation from anyone as long as he adheres to the general limits established by the Sharia, and it is not permissible to broadcast falsehood, nor to publish what is in it to promote obscenity or to disappoint a nation as in Surat Al-Ahzab, verse 60, is evidence of this.

2- Free thinking - in search of the truth – is not only a right, but also a duty as recognized by the Holy Quran in Surat Saba aya 46 also a sign and proof of this .

3- Every individual has the right and duty: to declare his rejection of injustice, his denial of it, and to resist it, without fear of facing an arbitrary authority, an unjust ruler, or a tyrannical regime. This is the best kind of jihad: the Messenger of] Allah (may Allah's peace and blessings be upon him) was

Salam: Which jihad is better? He said: A word of truth when an unjust sultan[, narrated by Al-Tirmidhi and Al-Nasa'i with a good bond.

4- There is no prohibition on the dissemination of correct information and facts, except for what is dangerous to the security of society and the state, as in Surat Al-Nisaa, verse 83, is evidence of this .

B- Arab Charter on Human Rights:

Article 30 of the Arab Charter states:

1- "Everyone has the right to freedom of thought, belief and religion, and no restrictions may be imposed on them except as stipulated in the legislation in force.

2. Freedom to manifest one's religion or belief or to practise one's religion alone or in community with others shall be subject

only to such limitations as are prescribed by law and are necessary in a tolerant society that respects freedoms and human rights for the protection of public safety, order, health or morals or for the protection of the rights and fundamental freedoms of others.

3. Parents or guardians shall be free to ensure the religious and moral upbringing of their children. "

The Arab Charter on Human Rights is distinct from some conventions because it emanates from an Arab, Islamic and Christian background, unlike Western conventions emanating from a secular background, which did not take into account countries that recognize an official religion as the religion of the majority, thus promoting the idea of separating religion from the state as a necessity to protect diversity and religious pluralism²⁶.

(c) African Charter on Human and Peoples' Rights²⁷:

This charter is concerned with the right of African peoples to freedom of belief and religious practice. Article 08 of the charter stipulates that "freedom of belief and religious practice is guaranteed, and no one may be subjected to measures that restrict the exercise of these freedoms, taking into account law and public order."

Conclusion

Islam takes precedence in determining religious freedom according to what is stated in the Quranic texts and the Sunnah of the Prophet. The greatest starting point and principle to ensure this freedom is a rule:

there is no coercion in religion. Islam calls people to embrace it and believe in God alone has no partner by choice and not by force. Religious freedom is established in Islamic jurisprudence on the basis of, *inter alia*:

Man has the right to choose his religion of his own free will.

Not to be forced to convert to Islam.

Respect for other monotheistic religions and freedom of religious observance for non-Muslims.

And that Islamic jurisprudence violates international conventions on the right to apostasy from religion or to change one's religion; because it contradicts the provisions and principles of Islamic law.

And that religious freedom in international charters was based on decisions of Western concepts that developed with the development of the ages, so it decided that the right to freedom of belief is the right to freedom of conscience and conscience in all that a person reaches from his choice of religion that he wishes, and gave him the right to atheism; that is, not to recognize any religion, and this is under the shadow of secular thought, and subjected the freedom to practice religious rites to restrictions not to violate the requirements of the public interest and the preservation of public order; on the pretext of keeping the state and the ruling authority the opportunity to control the religious freedom of the individual and society.

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