

LAW & PRACTICE

Critical Analysis and Legal Reasoning

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Law & Practice

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Minority Right to Freedom of Religion in International Legal Instruments and the *Shari'ah*

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Abstract. The right of the minorities to the freedom of religion has become one of the most debatable issues as it now forms the central theme advocated by human rights activists. Needless to say the right to religion is more than mere acts of activism; but draws its thematic importance from its close relationship to peace and stability in almost all known human societies. It is because of this that the right has been enshrined in many national and international legal instruments. However, despite such recognition, violations of the minorities' right to freedom of religion are widely witnessed across states as there are no coherent and consistent state practices on the protection of minority rights to religion. Based on this premise, the paper analyses the minority rights to freedom of religion from international law and the *Shari'ah* perspectives. It finds that international law has not offered much protection to the rights of religious minorities as there are inadequate firm guidelines on the rights of minorities. More so, the available legal frameworks are not realistic to protect the rights of minorities across states. This has led to continuous violations of many minority rights to practise their religion across nations. Many international legal instruments and the Qur'an and *Sunnah* of the Prophet (s.a.w.) and opinions of Muslim scholars are used to enrich the legal analysis.

1. Introduction

All states have social, political, religious, ethnic, cultural, racial and linguistic minorities.¹ Yet, there have not been dependable and coherent state practices in the protection of minority rights. In view of this, international law seems to have found it difficult in espousing firm guidelines in determining and protecting minorities. This is further compounded by the fact that unlike individual human rights, adequate protection of minority rights may threaten the territorial sovereignty of a nation or those who are at

¹ See generally Brolmann, Lefeber and Zieck (eds), *Peoples and Minorities in International Law*, (Martinus Nijhoff Publishers, 1993); Alfredsson and Zayas, "Minority Rights: Protection by the United Nations" 14 *HRLJ*, 1993; Rehman, *The Weaknesses in the International Protection of Minority Rights* (Kluwer Law International, 2000); Rehman, *Indigenous Peoples and Ethnic Minorities of Pakistan* (Curzon Press, 2001); Fottrell and Browing (eds.), *Minority and Group Rights in the New Millennium* (Brill, 1999); Weller, *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies* (Oxford University Press, 2007); Rehman, "Minorities" in Cane and Conaghan (eds.), *The New Oxford Companion to Law*, (Oxford University Press, 2008), 791-793; Rehman, *International Human Rights Law*, 2nd edn., Pearson, 2010, 433-470.