

BANNING NON-MUSLIMS FROM ENTERING AND BUILDING PLACES OF WORSHIP IN MECCA AND MEDINA: AN INTERNATIONAL LAW PERSPECTIVE

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Sometimes, Islam has been criticised for violation of human rights. It is realised that there is a massive campaign against Islam whether considering it as a religion that condones terrorism or violates human rights. This paper highlights that Islam is a religion of peace and humanity for which it provides various freedoms for the betterment of mankind. It particularly discusses the right of movement in Islam and mainly analyses the issues of banning non-Muslims from entering into and form building places of worship in Mecca and Medina. Even under international law, every State has a right to implement its own laws to protect its national integrity and security. Likewise, Saudi Arabia has a law which restricts non-Muslims from entering into Mecca and Medina and building places of worship there. Accordingly, the author humbly opine that every other State and individual should respect the Saudi Arabian domestic laws to that effect as it does not amount to any kind of violation of human rights.

INTRODUCTION

Every country has its own laws, rules and regulations that allow and control entering into its territory. One can visit a country as a foreigner, visitor or tourist. However, a visitor or tourist and civilian person may not be permissible to enter certain places, cities, and building of the country, such as military and security bases in the country. This kind of restriction may not be called as a human rights violation so far. There are two major Islamic events yearly, which are ‘Hajj’ and ‘Ramadan-Umrah’ that represent a huge number of Muslims throng from around the globe driving into the city of Mecca and Medina. It is also obvious that the crowd

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rises every year and the Saudi Arabian authority has to pull the majority of the wealth of the country to manage those two Islamic events apart from the usual tourists. There is even a limit on the number of Muslim visitors each year that are serviced by Saudi Arabian authority which differs from country to country.

There are usual story of mishaps occurring regardless of tireless management of the occasions. To one side of these two main events, there are yearlong visits by Muslims called as 'Umrah' that keep up a regular flow of Muslims during the so-called 'Off Season'. The absolute extent of Muslims visitors resulting in the reasons mentioned above and several other reasons forces the Saudi administration to prevent non-Muslims tourists from entering Mecca and Medina in order to control the situations peacefully and properly. Due to the points mentioned above, it does not make sense to criticise the prohibition of non-Muslims tourists from entering the two holy cities, and giving confusing reasons like 'non-believers not permitted' to the question. However, the matter is completely simple and sound, and logical obviously, were there are similar situation of banning the believers of other religions to visit religious sites, namely; 'Guruvayur Temple in Kerala, India'¹ and several other orthodox churches and societies similar to the 'Lutheran GEL churches in Jharkhand, India'.² They give the single reason as no entry to people of different belief.

It is imperative to start the conversation with the brief information of the two holy sites, i.e., 'Mecca' and 'Medina'. The Holy City of Mecca is situated in the Kingdom of Saudi Arabia (KSA). It is both the birthplace of Prophet Mohammed (*s.a.w.*)³ and the religion of Islam.⁴ Mecca is also the holiest city in the Islamic world. Masjid Al-Haram (also known as 'Kaaba'), the largest and the holiest Mosque of Muslims,⁵ is also located in Mecca.⁶ It was built by the Prophet Ibrahim (peace be upon him) and his son Prophet Ismail (peace be upon him). Muslims around the globe head towards the 'Kaaba' in Mecca for prayers and this is called as 'Al-Qibla'.⁷ Medina is the second Holy City in Islam and also known as the 'City of the Prophet'. It is also situated in the KSA. Prophet Mohammed (*s.a.w.*) migrated to Medina when

he was initially driven out from Mecca. It was the place where he attracted his first followers and companions. He built the first mosque of Islam known as 'Masjid al-Quba' and later 'Masjid al-Nabawi' also known as 'Mosque of the Prophet' there. By observing the migration of the Prophet Mohammed (*s.a.w.*), Islam considers the freedom of movement as inherent human rights.

FREEDOM OF RELIGION IN ISLAM

In Islamic narration, every person had made a promise to Allah (*s.w.t.*) before he was born into this world. The promise consists of the conversation and answer between Allah (*s.w.t.*) and the Son of Adam (Bani Adam) in which every person agreed that there is no God except Allah (*s.w.t.*): "And when they Lord brings forth from Adam's children-out of their loins-their offspring and makes them witnesses against their own selves by saying: 'Am I not your Lord?' They say, 'Yea, we do bear witness.' This He does lest you should say on the Day of Resurrection, 'We were surely unaware of this. Or lest you should say, 'It was only our fathers who attributed copartners to God in the past and we were merely a generation after them. Wilt Thou then destroy us for what was done by those who lied?" (Quran, 7:172-173). This verses mentions that the all humans have taken undertaking from Allah (*s.w.t.*) in oneness of Allah (*s.w.t.*), and he will never worship except Allah (*s.w.t.*).

Hadith from the Prophet Mohammed (*s.a.w.*) confirms that the all humans were born in Islamic Faith (*Fitrah*), later his parents changes his Faith (*Fitra*) in to Jewish or Christianity or Zoroastrianism, etc. "[T]here is no born except born on instinct-faith (*Fitrah*) later hih father changes his faith (*Fitra*) in to Jewish or Christianity or Zoroastrianism" (Bukhari and Muslim). It means that Allah (*s.w.t.*) - as a creator of everything in this universe or multiverse as the case may be - has the obligation on every person to worship Allah (*s.w.t.*) alone. Nevertheless, Allah (*s.w.t.*) has showed and guided every person to the right path from the wrong one, yet gives option to every person to choose what he wants in believing to be his religion. It can be seen in the following Quranic verses: "[W]e have shown him the way, whether he be grateful or

ungrateful” (Quran, 76:3); “[A]nd we have pointed out to him the two highways of good and evil” (Quran, 90:10); “[A]nd say, it is the truth from your Lord; wherefore let him who will, believe, and let him who will, disbelieve” (Quran, 18:29); “[T]here should be no compulsion in religion” (Quran, 2:256). It can be observed that Islam has given a genuine freedom of religion to the mankind.

FREEDOM OF MOVEMENT IN ISLAM

Ath this juncture, it is relevant to discuss about rights of movement in Islam briefly as the main issue discussed in this paper is relating to the freedom of movement such as traveling to Mecca or Medina. Generally, Islam grants the right to free movement to every person, whether Muslims or non-Muslims. It can be seen in the following Quranic verses: “[S]ay, travel the earth and observe the final fate of the deniers” (Quran, 6:11); “[S]ay, travel through the earth, and observe the fate of the guilty” (Quran, 27:69); “[S]ay, travel the earth, and observe how He originated the creation” (Quran, 29:20).

AUTHORITIES ON BANNING NON-MUSLIMS FROM ENTERING INTO AND BUILDING PLACES OF WORSHIP IN MECCA AND MEDINA

However, this right to free movement is not absolute as the same in any other human rights. There are verses of the Quran and Hadith talking about the issues of banning non-Muslims from entering into Mecca and Medina and from building places of worship. During the last pilgrimage ‘Hajjital Wadaa’, the Prophet Mohammed (*s.a.w.*) declared City of Mecca as the Holy Place and ordered not to cut trees or kill living things and allow the entry of polytheists into Mecca in line with the following verse in the Quran: “O you who believe! The polytheists are polluted, so let them not approach the Sacred Mosque after this year of theirs. And if you fear poverty, God will enrich you from His grace, if He wills. God is Aware and Wise” (Quran, 9:28).

This verse clearly talks about banning polytheists from entering into Mecca. That means it is allow for people of the book ‘Ahlulkitab’ to enter into Mecca. There is deference between

polytheists and people of the book, i.e., the 'Torah' revealed to Prophet Moses (Musa) (peace be upon him); the 'Zabur' revealed to Prophet David (Daud) (peace be upon him), the 'Gospel' (*Injil*) revealed to Prophet Jesus (Isa) (peace be upon him) and the 'Quran' (*Tauhid*) to Prophet Mohammed (*s.a.w.*).⁸ Polytheists are those who do not receive such a book from God and have no religion or those who worship idols, evil, fire, and others, while the people of book has a book and religion. However, it has been argued that there is no real people of book right now and all have become polytheists since there is no authentic 'Torah', 'Zabur' and 'Gospel' to be followed nowadays. They just have Bibles which are call "New and Old testaments". These books are considered as the genuine books which had been revealed by Allah (*s.w.t.*) to Prophet Moses (Musa) (peace be upon him), Prophet David (Daud) (peace be upon him), Prophet Jesus (Isa) (peace be upon him) respectively. Therefore, there is no real 'AhluKitab' left nowadays and thus all non-Muslims are forbidden to enter Mecca let alone building palces of worshih there.

On the other hand, some of the Muslims scholars argued that there is no evidence for banning non-Muslims from interring into Medina and Haram of Medina. However, it is not permissible to non-Muslims to make Medina as the place of residence. It should be noted that there is difference between whole Medina and Haram of Medina as not the whole geography of Medina is considered as Haram. There are specific places which are considered as a Haram. According to the some Muslims scholars, it is allow for non-Muslims to inter Medina regardless it is whether Haram of Medina or Medina city as a whole. Only it is not allowed for non-Muslims to take Medina as a place of residence under the Hadith of Prophet Mohammed (*s.a.w.*) said: "I will take out the Jews and Christians from the Arabian Peninsula" (Bukhari and Muslim). On the basis of this Hadith, if it is not allow for non-Muslims to make Medina as the place of residence, it would also extend to building places of worships at Medina. However, according to some Muslims scholars, it is not allow for non-Muslims to enter Medina at all. Therefore, under the Saudi Arabian laws, rules and regulations, it is not allow

for non-Muslims to enter Medina as every country in the world has inherent right to take measures for public interest and national security.⁹ As noted earlier in this paper, there are similar cases of prohibitions in the holy cites of other religions too.¹⁰

INTERNATIONAL LAW PERSPECTIVE

At the international level, States have the sovereign authority over the people and property within their territory.¹¹ Article 2(1) of the Charter of the United Nations (UN) states that: “[t]he Organization is based on the principle of the sovereign equality of all its Members”. Furthermore, Article 2(7) of the UN Charter prohibits intervention in the internal affairs of one State by another by stating that: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”. Besides, Article 12(3) of the International Covenant on Civil and Political Rights 1966 (ICCPR) restricts the freedom of movement, after mentioned to the right to liberty of movement and freedom, by stating that: “The above-mentioned rights shall not be subject to any restrictions except those provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant”.

Accordingly, the KSA is one of the States in the international community which recognises the right of sovereignty to all its regions according to the laws, rules and regulations of the country. Under international law, every State has the right to restrict places in its territory for special purposes, such as security and public interest, to name a few. States may impose restriction of movement in its territory, i.e., land, sea and air. For instance, “flight restriction in airspace due to the movement of government in special events, natural disasters, security or other events”.¹² For practical example on the security and peace purpose, the Saudi Arabian government

does not allow any flight to pass over two Holy Mosques, to avoid the issues of aircraft accident over the Holy Mosque in Mecca and the Holy Mosque in Medina.

In the issue of banning non-Muslims from building places of worship, as a sovereign State, the KSA has absolute rights to permit or not to permit to build any type of infrastructure in its territory including building places of worship in Mecca and Medina to anyone on any reason just like any other sovereign State. Of course, the citizens of the Kingdom may have a right to claim or request to do so. Even if it is the case, the issue of banning the non-Muslims from building places of worship in Mecca and Medina will not arise in the first place since all Saudi citizens are Muslims. Therefore, under international law, no sovereign State or private individual including multinational corporation can impose a duty on the Saudi government to allow foreigners to build such places of worship in Mecca and Medina.

CONCLUSION

In a nutshell, it can be observed from the above discourses that banning non-Muslims from entering into Mecca and Medina and from building places of worship there is neither a violation of human rights nor international law. Therefore, the author humbly proposes every other State and individual to respect the Saudi Arabian domestic laws in this regard.

Notes

- 1 Junaid Hasan Hashmi, "Why are only Muslims allowed into Mecca and Medina?" <<https://www.quora.com>> (accessed 20 June 2019).
- 2 *Ibid.*
- 3 Patrick Eisenlohr, "As Makkah Is Sweet and Beloved, So Is Madina: Islam, Devotional Genres, and Electronic Mediation in Mauritius", *American Ethnologist*, 2006, Vol. 33, No. 1, pp. 231-235.
- 4 F. E. Peters, *Mecca: A Literary History of the Muslim Holy Land*, (Princeton: University Press, 1994).
- 5 El-Awaisi, Khalid, "Mapping the Sacred: The Haram Region of Makkah", *Milel ve Nihal*, 2017, Vol. 14, No. 2, pp. 25-30.

- 6 Simone Petroni, "Mecca: The Bless Heart of Islam", *European External Action Services*, 2014, pp. 1-5.
- 7 Huda, "Why Are Only Muslims Allowed to Visit the Holy City of Mecca?", *Mecca and Non-Muslim Visitors Learn Religious*, 2018.
- 8 Muhamad Hassan Ahmad and Ashgar Ali Ali Mohamed, "Legal Theory and Concept of Law", in Ashgar Ali Ali Mohamed (ed.) *Malaysian Legal System* (CLJ Publication: 2020), pp. 41-43.
- 9 Huma Ahmad, *Top Ten Misconceptions About Islam: Muslims Are Violent, Terrorists and/or Extremists* (UKM Press: 2010), p. 1.
- 10 Junaid Hasan Hashmi, n. 1.
- 11 Globalization, "The Issue of Sovereignty", <<http://www.globalization101.org>> (accessed 20 June 2019).
- 12 *Ibid.*



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