

IBN HALDUN UNIVERSITY  
ALLIANCE OF CIVILIZATIONS INSTITUTE  
DEPARTMENT OF CIVILIZATION STUDIES

MASTER'S THESIS



**THE NOTION OF DHIMMA:  
FROM THEORY TO EVERYDAY SPACE**

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JUNE 2019

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# ABSTRACT

## THE NOTION OF DHIMMA: FROM THEORY TO EVERYDAY SPACE

GÜLEÇYÜZ, ZEYNEP BÜŞRA

MA in Civilization Studies

Thesis Advisor: Dr Heba Raouf

June 2019, 79 Pages

Social sciences have been preoccupied with the study of the “self” and “agency.” Since the Enlightenment, theories continue to explain the self and agency based on the absoluteness of human reason, power, and knowledge through the scientific and empirical methods and/or based on moral standards defined by humans. However, with the criticism of the Enlightenment, these secular perspectives have fallen short of explaining the human self. This study offers the notion of *dhimma* which presents an illuminating perspective in understanding the human self. *Dhimma* has the meanings of covenant, assurance, security, safety, sanctity, and right and responsibility. In addition to these meanings, *dhimma* is also defined as the self and an attribute of the self. This study explores these meanings of *dhimma* throughout the Qur’an, *hadith* and Islamic Jurisprudence and brings them together. According to this thesis, *dhimma* indicates the self of human being with regard to having the privilege of *tasarruf* (power and authority to act on and make use of the creatures) on earth, and to the responsibility shouldered upon man as a result of this privilege. In other words, man becomes competent / eligible to have a right over the creation and bear its responsibility by virtue of his *dhimma*. This aspect of the self contributes to explaining the position of the human in the world and his moral responsibility towards the creation.

Keywords: *dhimma*; self; agency; *amanah*; covenant; everyday space

# ÖZ

## TEORİDEN GÜNDELİK MEKÂNA ZİMMET MEFHUMU

GÜLEÇYÜZ, ZEYNEP BÜŞRA

Medeniyet Araştırmaları Yüksek Lisans Programı

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Haziran 2019, 79 sayfa

Sosyal bilimlerde “benlik” (self) ve “fâil” (agency) kavramları önemli bir araştırma alanı haline gelmiştir. Aydınlanma sürecinden bu yana geliştirilen teoriler insanın benliği ve fâiliyetini; kendi aklının, kudretinin ve bilgisinin mutlaklığına binaen; bilimsel ve empririk metotlar üzerinden ve kendi belirlediği ahlâki değer yargılarını temel alarak açıklamaya çalışmaktadır. Ancak bu seküler anlayışlar, aydınlanmaya karşı yapılan eleştirilerle beraber insanın benliğini açıklama noktasında yetersiz kalmaktadır. Bu çalışma insanın nefsinin, zâtının, benliğini açıklamada aydınlatıcı bir kavram olarak “zimmet”i önerir. Zimmet ahit, antlaşma, emniyet, güvenlik, hürmet ve hak ile sorumluluk anlamlarına gelir. Bunun yanı sıra insanın nefsi, benliği veya nefsin bir vasfı olarak da tanımlanmıştır. Bu çalışma, zimmetin Kur’ân’da, hadislerde ve fıkhındaki manalarını incelemektedir. Buna göre zimmet, insanın yaratılmışlar üzerinde tasarruf etme ayrıcalığı ve bu ayrıcalığın insana yüklediği sorumluluk cihetiyle insanın zâtına işaret eder. Başka bir deyişle, insan zimmetiyle dünya üzerinde hak sahibi olmaya ve sorumluluk yüklenmeye ehil olmaktadır. İnsana bu açıdan bakmak, onun yeryüzündeki konumunu ve etrafındakilere karşı olan ahlâki sorumluluğunu anlamlandırmaya yardımcı olur.

Anahtar Kelimeler: zimmet; benlik; fail; emanet; sözleşme; gündelik mekân



To my mother

## ACKNOWLEDGEMENTS

الحمد لله الذي سخر لنا ما في السماوات وما في الأرض وجعلنا فيها خليفة له  
وأكرمنا بالعقل والذمة لتكون بها أهلاً لوجوب حقوق الله تعالى علينا  
والصلاة والسلام على من بعثه الله بالهدى ودين الحق فيبين لنا طريق الهدى واتباعه الذي يعطينا فرديتنا واجتماعيتنا  
ورضى الله عن صحابته الأخيار وأزواجه الأطهار وآل بيته الأبرار  
ومن تبعهم بإحسان إلى يوم الدين

I would like to thank my supervisor Dr Heba Raouf for her invaluable guidance throughout my journey of graduate studies and writing my thesis. I am deeply indebted to her for opening me up to new horizons of thought, synthesis and expression. I am also thankful to Dr Tahsin Görgün and Dr Hasan Hacak for agreeing to be a part of my thesis committee and for offering their enlightening comments and feedback.

I would like to express my gratitude to Dr Recep Şentürk for all his support and guidance in our learning in EDEP. My special thanks go out to him, my teachers and friends at EDEP who became a family to me in the way of knowledge. My sincere thank you to my ISAM team with whom I have shared days and nights in the library of ISAM which provided us a large spectrum of sources and a great environment to study.

I am grateful to my teacher Nurdan İhtibar Okumuş for everything she taught me, which as a result of her sincerity, shall continue to have a beautifying effect upon my life. I would like to thank Aygöl, Fatmanur and Betül for their precious friendship during this process and for their companionship along with the hill of Hüdâyi and sharing with me a different space of knowledge and tranquility.

My deepest thanks go to three wonderful men; to my father who has been both my father and mother; to my older brother who has always been a source of confidence and supporter of me; and to my younger brother, one of my greatest teachers and motivators.

Last but not least, I would like to thank my fiancé who became a great motivation in completing this study.

Zeynep Büşra Güleçyüz

İstanbul, 2019

## SYMBOLS AND ABBREVIATIONS

ﷻ :	the Most Exalted
ﷺ :	Peace be Upon Him
a.s. :	Peace be Upon Him
r.a. :	May Allah be Pleased With Him
A.H. :	Anno Hegirae (after Hijra)
Ibid. :	In the same source
Diss. :	Dissertation
Trans. :	Translated



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## INTRODUCTION

Self discovery and awareness continue to be great drives in man's quest to make sense of life. The pursuit might either be to attain the knowledge of God, for "He who knows himself, knows his Lord" or to have the knowledge of the "self" for "He who knows himself, knows himself". The process that the self has undergone in modern times can be described as a shift from the first towards the second. In that process, social sciences have been preoccupied with the study of the self; theories have attempted to construe the self in different disciplines via different methods. At every turn, the meaning attributed to the self has altered.

In that process tradition, religion, values have been accused for shaping and controlling the selves. In order to release the self from the hegemony of these "structures", the human built new constructions to which he; himself gives the legitimacy and authority over himself. Modern state, class, and company occurred as the new actors shaping and controlling the selves of human beings and creating their identities. It is promoted that people should come together under these constructions in order to maintain their existence, to define their rights and responsibilities and to decide on what is moral.

When man attempted to make sense of the self by himself, he employed an "inward thinking", which resulted in him becoming more and more self-determinant and individualistic. People started to create their own understandings of themselves in an era described as "post-modern" in which all that is solid melt into air. The self has been dealt by many approaches in many disciplines and in the end turned into a fragmented and ambiguous concept.

One of the most important issues about the self in the modern approaches is its disconnection with the transcendence where it actually finds a fundamental meaning. In this study I will elaborate this aspect of the self that is provided within the Islamic tradition. The Qur'an mentions two transcendent basis of the self: the Covenant<sup>1</sup> of

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<sup>1</sup> Qur'an 7:172.

man before coming to the world and *amanah*<sup>2</sup> (the trust) which is given to mankind in order to be fulfilled in the world. Based upon these two occasions, Islamic tradition propounds the notion of *dhimma* in order to conceptualize the human self in the context of rights and responsibilities. This thesis is an attempt to introduce the theoretical basis of *dhimma* as it is mentioned in two main sources (the Qur'an and the *hadith* of the Prophet ﷺ), and in the classical texts in order to shed light on the human self in relation to "responsibility". Therefore, the main question this thesis asks is "How does Islamic tradition approach the self with the power to act in the world and what is the basis of its accountability?"

The Qur'an says earth and all what is on earth are made *musakhhar* (مسخر)<sup>3</sup>, subjected to, tamed for and given over to the use of man; and man was bestowed with the eligibility for *tasarruf* (تصرف), power and authority to act on, deal with, and make use of the provisions on earth. The thesis approaches the self from this perspective and defines *dhimma* in relation to man's creation, authority, and mission in the world. It attracts attention to that this aspect of the self cannot be thought independently of responsibility. It asks what *dhimma* tells us about man's right to make use of the creation and in his responsibility towards the creation. I argue the notion of *dhimma* presents a unique and comprehensive approach in understanding the self with the power to act on earth and act with responsibility, which I examine in the first three chapters of this thesis. The last chapter, on the other hand, is a study of everyday space which I argue presents a good opportunity to observe manifestations of *dhimma* in everyday life.

## Methodology

The methodology I adopt is mainly conceptual analysis in the sense that it aims to analyse the concepts via other relevant concepts, in order to have a better understanding of a particular issue which incorporates that concept. By this means, the thesis aims to present *dhimma* as described within the classical Islamic sources and comprehend it through the concepts like "covenant", "*amanah*", "*khalifa*", *etc.* Conceptual analysis includes a lot of subsequent techniques within different disciplines. The method particularly adopted in this study can be described as

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<sup>2</sup> Qur'an 33:72.

<sup>3</sup> Qur'an, 45:13; 31:20; 14:33.

“critical reconstruction” which implies regaining a concept within the structure that it was established before. This means that the study does not pursue a random way to analyse a concept, rather seeks to regain the concept in a way through which it was interpreted before. Therefore, this study can be considered as an investigation of how *dhimma* was provided within the Islamic tradition.

By the Islamic tradition, I refer to the classical Islamic texts based upon the Qur’an and the *sunnah* of the Prophet ﷺ, which are also the main sources of this thesis. In order to understand the verses in the Qur’an, I benefited from the exegesis of *Jami’ al-Bayan fi Tafsir al-Qur’an* by al-Tabari (310/923), *al-Tafsir al-Kabir (Mafatih al-Ghayb)* by Fakhr al-Din al-Razi (606/1210), *al-Jami’ li Ahkam al-Qur’an* by al-Qurtubi (671/1273), *Ruh al-Ma’ani* by al-Alusi (1270/1854), *Irshad al-‘Aql al-Salim* by Ebussuud Efendi (1490/1574), *Hak Dini Kur’an Dili* by Elmalılı Hamdi Yazır (1361/1942), and *Khulasah al-Bayan* by Mehmed Vehbi Efendi (1369/1949). In terms of hadith, I utilized *al-kutub al-sitta*, the six canonical (*Sahih al-Bukhari*, *Sahih al-Muslim*, *Sunan al-Nasai*, *Sunan Abu Dawud*, *Sunan al-Tirmidhi*, and *Sunan Ibn Majah*) and *Musnad Ahmad ibn Hanbal* which are to be known as the most important and authentic *hadith* sources. I benefited from *Fath al-Bari* by Ibn Hajar and *al-Minhaj* of Imam al-Nawawi for the explanations of hadiths in *Bukhari* and *Muslim*. Regarding *usul al-fiqh*, to a large extent I utilized the Hanafi books, mainly *Taqwim al-Adilla* by Dabusi (430/1039), *Usul al-Din* by Bazdawi (482/1089), *Usul* by Sarakhsi (490/1090), *Kashf al-Asrar* by ‘Abdulaziz al-Bukhari (730/1330), *Tawzih ala al-Tankih* by Sadr al-Shari’ah (747/1346), *Khashiya ala Talwih* by Molla Hüsrev (885/1480) and also *Talwih* by Taftazani (792/1390).

The classical texts tell us *dhimma* denotes the meanings of ‘*ahd* (compact, covenant, treaty), *damaan* (assurance), *aman* (security, safety, safeguard), *hurmah* (sanctity, sacred), and *haqq* (right and responsibility).<sup>4</sup> *Dhimma* is also interpreted as *nafs*, *zat* (self) and *wasf* (attribute) of human. *Dhimma* as self is interpreted as the human self that has a covenant.<sup>5</sup> And the attribute meaning is explained as what enables man to

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<sup>4</sup> Edward William Lane, *An Arabic English Lexicon*, (Beirut: Maktaba al-Lubnan, 1980) Vol.3, 976-977. Also see: Ibn Manzur, *Lisan al-‘Arab*, ed. Amin Muhammad Abdulwahhab, (Beirut: Dar al-Ihya al-Turath al-‘Arabi, 1997), 60.

<sup>5</sup> Al-Jurjani, *Kitab al-Ta’rifat*, (Beirut: Dar al-Kutub al-‘Ilmiyya, 1983), 107. Also see: Abu Zakariyya al-Nawawi, *Tahrir Alfaz al-Tanbih*, ed. ‘Abd al-Ghaniy al-Daqr (Damascus: Dar al-Qalaam, 1408 A.H.), 343.

have rights and responsibilities after covenanted with Allah ﷻ. This is the content I predicate on in this study while other meanings of *dhimma* appear as the connotations of this essential meaning. Even though the term has such an array of meanings in the Islamic tradition, modern approaches focus more on one of its usages in *furu' al-fiqh*, the Islamic Law. There *dhimma* appears as *ahd al-dhimma*, the covenant of protection made with non-Muslims in order to recognize them before the law in the Muslim state. While the non-Muslim individual is called *dhimmi*, their community is called *ahl al-dhimma*. Based on this usage, almost all of the studies of *dhimma* are studies of *dhimmis*, which sometimes results in confusion between the concepts of *dhimma* and *dhimmi*. Most of these studies approach the issue from a historical perspective, employing a reductionist approach to historical interpretations of *dhimma* which vary throughout the Islamic history. Such approaches result in *dhimma* to have a negative denotation that clouds it beyond the historical context and make it difficult to understand at its core. The discussion of whether *dhimmis* had enjoyed a certain freedom and autonomy in the Muslim state or they lived under restrictive and oppressive conditions is not in the scope of this study; yet I mention the theoretical background of *ahd al-dhimma* in the third chapter under the section of “*Dhimma in Furu' al-Fiqh*”.

The usages of *dhimma* in daily life, in moral and religious contexts indicate it is not only about *ahl al-dhimma* or *ahd al-dhimma*; nevertheless it can serve to understand these meanings as well. For example, in Egyptian daily language, it is said that “ma ‘andoosh dhimma” meaning “he does not have *dhimma*”, “he is without *dhimma*”, and it is told in order to describe a person who lost his moral integrity, who does not fulfil his responsibilities or promises. Similarly, in Syria it is said “ma ‘induu dhimma” or “bilaa *dhimma*”, “without *dhimma*” to refer someone defrauds and cannot be entrusted with anything. The opposite “‘induu dhimma”, “he has *dhimma*” refers to one’s trustworthiness in trades. Another daily usage of *dhimma* can be frequently encountered in the sermons of a community leader in Turkey as “Bir Yemenli bana zimmetli, bir Suriyeli bana zimmetli” in the meaning “Yemenis are in our *dhimma*, Syrians are in our *dhimma*” in order to indicate the responsibility towards them. Apart from such usages, *dhimma* appears in the books of *ilmihal*, which is a concise manual of Islamic faith, worship, and ethics composed of the knowledge for practicing the religion in daily life. *Dhimma* occurs in the section of

“fasting” with a title of “zimmette sübût bulmuş oruçlar” meaning that “the fasting fixed in *dhimma*”. Based upon these usages of the notion we can ask how a worshiping act relates to *dhimma*, or how someone can be in another’s *dhimma* and what it means. Moreover, it can be asked how *dhimma* refers to something that indicates the dignity and morality of a person? These examples demonstrate *dhimma* has a variety of meanings, which this thesis explore and put in a conceptual framework in the end.

## Literature Review

As mentioned before, almost all of the studies of *dhimma* are the studies of *ahl al-dhimma* which is only one usage of the concept in a part of *furu’ al-fiqh* within Islamic Jurisprudence. For example, Clifford Edmund Bosworth wrote “The Concept of Dhimma in Early Islam”, which is the first part of *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, and dealt with *dhimma* in the historical context where *dhimma* occurs as the “covenant of protection” made with non-Muslims. Another study in dealing with *dhimma* in the historical context is *The Islamic Roots of Democratic Pluralism* by Abdulaziz Sachedina, where he bases the definition of *dhimma* on the article “*Dhimmi*” in the Encyclopaedia of Islam, which says *dhimma* is “the pact or covenant that was accorded by the Muslim state and community to the followers of other monotheistic religions living under their rule, granting them protection and certain restricted rights, and even discriminatory provisions, in exchange for their recognition of Muslim power.”<sup>6</sup> From a different perspective, Abdul Hakim Murad in his article of “Qur’anic Truth and the Meaning of ‘Dhimma’” proposes to re-imagine *dhimma* in a new and more authentic way via the instruments of *ijtihad*. He says *dhimma* is a “form of generosity, a participation in sacred hospitality”<sup>7</sup>; however, today it is not possible to apply the past instantiations since minorities today are not the conquered people. Though proposing a unique approach to interpret *dhimma*, Murad’s approach to *dhimma* is still in the historical context which deals with one meaning of the term within Islamic law. Norman Stillman in the *Medieval*

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<sup>6</sup> Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism*, (New York: Oxford University Press, 2001), 150.

<sup>7</sup> Louis Gardet, *La Cité musulmane: Vie sociale et politique*, (Paris: J. Vrin, 1954), 58. Also see: Abdul Hakim Murad, “Qur’anic Truth and the Meaning of ‘Dhimma’” (Dubai: Kalam Research Media, 2010), 14.

*Islamic Civilization: An Encyclopaedia* defines *dhimma* as “the term used in Islamic law for the covenant of protection (also called *aman*) that exists between the Islamic state and the tolerated members of the Qur’anicly recognized non-Muslim religious communities (Christians, Jews, Zoroastrians, and Sabaeans) who lived permanently within its boundaries.”<sup>8</sup> Stillman as well treats *ahd al-dhimma* as it is the only meaning of *dhimma*. These examples are the interpretations of *dhimma* from the historical point of view, which relates to only one meaning of the concept.

Besides the historical framework, *dhimma*’s description in legal theory can be found in *The Encyclopedia of Islam*, in the article “Dhimma” by Chafik Chéhata where he briefly explains the meanings of *dhimma* within two main bodies of Islamic Jurisprudence.<sup>9</sup> A more comprehensive study from the legal perspective is in *TDV İslam Ansiklopedisi* in the article “Zimmet” written by Eyyüp Said Kaya and Hasan Hacak. They describe *dhimma* as “a legal term that constitutes the basis of the rights and responsibilities of human and mainly corresponds with “personality” in modern legal discourse.” This article presents a broad theoretical framework for the notion in legal sense. *Dhimma* in the legal context is also explored by Ibrahim Rahmani in his article “Mafhum al-Dhimma fi al-Fiqh al-Islami” where he presents the descriptions of *dhimma* in different schools of thought and compares them with similar usages in the modern law. Another study from the legal perspective is *al-Saghir Bayna Ahliyya al-Wujub wa Ahliyya al-Adaa* written by Mahmud Majid bin Su’ud al-Kubaisi. He focuses on the Hanafi doctrine in explaining the legal capacity and *dhimma* as it occurs in the classical Islamic sources. Similar contexts of *dhimma* are analysed in the PhD dissertation “İslam Hukukunun Klasik Kaynaklarında Hak Kavramının Analizi” by Hasan Hacak, and in the articles “Minority Rights in Islam: From Dhimmi to Citizen” and “Adamiyyah and ‘Ismah’: The Contested Relationship between Humanity and Human Rights in Classical Islamic Law” by Recep Şentürk, “İnsan ve Hakları Üzerine Veya İnsan Haklarının Krizi ve Klasik Türk Düşüncesi” by Tahsin Görgün, and "Hanefi Fıkıh Düşüncesinde Vucub-Eda Ehliyeti Ayırımı ve Bu Ayırımla İlişkili İki Mesele" by Asım Cüneyt Köksal. They draw attention to the relation between *dhimma* and *amanah* (the trust), and their connection to three born

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<sup>8</sup> Norman Stillman, *Medieval Islamic Civilization: An Encyclopedia*, ed. Josef W. Meri, (New York: Routledge, 2006), vol.1, 205.

<sup>9</sup> Chafik Chéhata, “Dhimma” in *The Encyclopedic of Islam*, Ed. B.Lewis, Ch. Pellat and Schacht, (Leiden: Brill, 1991), vol2, 231.



rights of human beings namely freedom (*hurriyyah*), inviolability (*‘ismah*), and property (*mulkiyyah*). *Dhimma*'s interpretations in legal theory are important for they lay the foundations of the rights and responsibilities of humankind which go back to the creation of man. These interpretations indicate that human rights and responsibilities find their legitimacy not through a social contract; but through a “metaphysical covenant”<sup>10</sup> made between man and Allah ﷻ at the time of creation.

There are also attempts to extract *dhimma* from the legal frame and focus more on its moral aspect. For this, Mahmoud Ayoub wrote the article “Dhimmah in the Qur’an and Hadith” where he analyses the notion of *dhimma* in the early years of Islam and in *jahiliyyah*. There *dhimma* occurs as something “characterizes the relationship of humanity to God and man’s responsibility in this relationship”. He says that in the Islamic faith and the prophetic tradition, *dhimma* appears as a principle of honour that regulates moral and spiritual relations amongst different communities. Ayoub asserts, however, that *dhimma* was afterwards became a mere name used for minorities and this was mainly because of the jurisprudential interpretations of the word. He mentions *dhimma* in modern everyday language means honor, decency, and truthfulness in that a person without *dhimma* means he is not a true human being. Ayoub draws attention to the moral aspect of *dhimma*; however, while doing so he overlooks the value Islamic Jurisprudence added in *dhimma* which this study explores in the third chapter.

### **Significance**

This thesis introduces the meanings of *dhimma* in the Qur’an, *hadith*, and Islamic Jurisprudence. The study can be considered unique in terms of bringing different meanings of *dhimma* together, interpreting these meanings through a conceptual framework and reading them within everyday space. Based on the meanings explored through these sources, the study draws attention to *dhimma*'s relation to the “self” of human being with a power to act in the world while bearing the responsibility.

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<sup>10</sup> Hilmi Ziya Ülken, *İslâm Düşüncesi: Türk Tefekkürü Tarihi Araştırmalarına Giriş*, (İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi Yayınları, 1946), 81-85. Also see: Hasan Hacak, “Mülkiyet” in *TDV İslam Ansiklopedisi*, (İstanbul: TDV İslam Araştırmaları Merkezi, 2006) vol.31, 543-548. <<https://islamansiklopedisi.org.tr/mulkiyet>>

*Dhimma* deals with the self by merging its individual and collective components. It contributes to make sense of one's "identity" (*ijtima'iyya*) and "difference" (*fardiyya*) within the society. Each individual self is unique, acts freely within the circle of the permissible (*mubahat*), enjoys with the rights, and strives towards perfection (*kamal*) within the possibilities (*imkanat*) given to himself. At the same time, the self belongs to a community which provides an identity to each individual without annihilating their differences. This is where the responsibility finds its meaning. *Dhimma* helps reading the self with its uniqueness and communality in the context of the responsibility.

Additionally, *dhimma* links the self to the transcendence (*ghayb*) and elucidates the self within different time levels. *Dhimma* makes sense of the self starting with the creation of man and his Covenant before coming to the world. On the other hand, the world is the place where the duty (*takleef*) starts; man becomes responsible (*mukallaf*) and bears the responsibility of his Covenant. Besides the responsibilities, man is bestowed with the rights in the world as all the creation is given over the use of man. However, he will be held accountable in the afterlife (*akhirah*) for how he used this privilege. This study elucidates the self of human being through the meanings of *dhimma* by going beyond the worldly time and taking the transcendent aspect into account.

## **Outline**

The thesis composes of four chapters. The first chapter presents the change the self has gone through with secularism. It starts with a brief overview of the secularization process where the human cut his connection with the transcendence, and adopted a secular perspective towards the self and morality. The first chapter also touches upon various accounts of agency which is another concept that can be related to *dhimma*. In the end, it proposes *dhimma* in explaining the self of the human through two metaphysical bases, namely the Covenant and *amanah*.

The second chapter exhibits the usages of *dhimma* in the Qur'an and *hadiths* of the Prophet ﷺ. Regarding *dhimma* in the Qur'an, the chapter analyses the occurrence of the word in the Qur'an both explicitly and implicitly. It explains *dhimma* in the verses where it occurs explicitly in relation to three important concepts and presents

their connection to *dhimma*. Also, the chapter shows how the verses where *dhimma* occurs implicitly demonstrate the rights and responsibilities of human beings. On the other hand, *dhimma* comes in *hadiths* in various contexts either in a single form or in the phrase like *dhimma* of Allah ﷻ and *dhimma* of the Prophet ﷺ. The chapter presents the meanings these two usages denote and the context they occur in. Lastly, it presents the meaning of *dhimma* when it occurs in its single form in the *hadiths*.

The third chapter elaborates the concept of *dhimma* within two main bodies of Islamic jurisprudence, which are *usul al-fiqh* and *furu' al-fiqh*. In *usul al-fiqh*, *dhimma* has a very fundamental meaning constituting the metaphysical basis of the rights and responsibilities of humankind. The chapter examines on which ground the Muslim scholars developed this interpretation. On the other hand, the chapter analyses how *dhimma* operates in *furu' al-fiqh*, and how this meaning relates to its utilization in *usul*. Lastly, the chapter presents the interpretation of the Hanafi School which develops a unique way to deal with *dhimma*.

The fourth chapter is a discovery of *dhimma* in everyday space. It starts with presenting some sociological accounts for everyday life and offers a different way to observe and interpret every day. Then, the chapter draws a conceptual framework for the meanings of *dhimma* explored in the previous chapters. Apart from explaining these meanings through various conceptualizations, the framework also addresses the role of human consciousness and “action” in the realization of *dhimma*. Lastly, the chapter focuses on *ardh* (earth), and its micro level, the road, where the proposed framework is applied through a *hadith* of the Prophet ﷺ.

# CHAPTER 1

## THE MORAL SELF

This chapter starts with a brief overview of the secularization process where modern sciences cut their connection with the transcendence in explaining the human and nature, and develop secular understandings of morality. The chapter explains how theorists have dealt with the “self” in that process and mentions some accounts of “agency”. The self and agency appear as the most relevant notions to *dhimma*, yet they display essential differences. In the end, the chapter presents *dhimma* in order to understand the human self in a more comprehensive way through its two metaphysical bases, namely the Covenant and *amanah*.

### 1.1. Secularism and the Pursuit of the “Immediate Life”

Secularism can be defined as man’s attachment to *al-hayat al-dunya* which is often loosely translated to mean “worldly life”. This translation is because *dunya* means world and *hayat* means life in Arabic which evokes this inaccurate description. However, *al-hayat al-dunya* is an adjective clause, and *dunya* is an adjective derived from the verbal root of *danaa/yadnee*, which means “to come nearer, to get closer”. Therefore, *al-hayat al-dunya* denotes the meaning of “the immediate life”. It indicates the life in the world and its close proximity. It is the life closest to the human, which he lives in before the next one, *akhirah* (afterlife). Due to its nearness, humankind assumes that it is “the life” and pays no attention to what lies beyond, because it is not visible, touchable, and comprehensible by “reason.” Secularism can be described as the process of man’s estrangement from the transcendence and confining himself to “the immediate life”.

The process of secularization goes back to the Copernican revolution, where earth became decentralized in the cosmos and man had lost his significance therein. Seyyed Hossein Nasr states before the Copernican revolution, man was at the centre of the universe as an image of God due to his theomorphic qualities; however, with

the Copernican revolution his anthropomorphic qualities began to be emphasized in defining his place within the cosmos.<sup>11</sup> This opened the way for the human to regard himself as a fallen creature and subjugate nature under his control. During the Renaissance, the Western man lost his interest in religion. And the Cartesian revolution in the 17<sup>th</sup> century resulted in a final separation between matter and spirit. This left the nature open to the inspection of secular sciences where man empowered only by his rational efforts and scientific methods, embarked on the discovery of the world by himself.

Syed Muhammad Naquib Al-Attas states while the term “renaissance” means “newly born”—indicating man’s coming to life through scientific revolutions—the Enlightenment as a continuation of the Renaissance means man’s development and maturity where he starts using his reason and methodologies in scientific developments. During the Enlightenment, the human turned to be a self-ordained individual that, by taking the laws in his own hands to explain himself and nature, designated his “humanity”, “individuality” and “freedom” as legitimate grounds of his endeavours.

Al-Attas defines that process over two conceptualizations:<sup>12</sup>The first is the “disenchantment of nature”, which implies divesting nature from its religious connections and its reduction to a mere physical object which has a functional value only for scientific development.<sup>13</sup> This opens the way for the use of nature irrespective of any boundaries and accountability measures. The second conceptualization is “terrestrialization of man”, denoting man’s loss of significance within the cosmos and his earthly boundedness. Terrestrialized man is deprived of spirit, reduced to a physical being and his “humanity” is elevated in lieu of the sacred. According to this, humankind possesses enough knowledge, power and freedom to decide on what is good or bad for his self and for others. The “disenchantment of nature” and “terrestrialization of man” imply a denial of any

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<sup>11</sup> Seyyed Hossain Nasr, *Man and Nature: The Spiritual Crisis in Modern Man*, (London: Unwin Paperbacks, 1990), 68.

<sup>12</sup> Syed Muhammad Naquib Al-Attas, *Islam and Secularism*, (Kuala Lumpur: Art Printing Works, 1991), 38.

<sup>13</sup> The “disenchantment of nature” also exists in the Qur’an where it does not attribute supernatural qualifications to nature; however, considers it as *amanah*, a trust given to mankind. Therefore, the human is held responsible for protecting nature and making just use of it. What differentiates the “disenchantment of nature” in the Qur’an is the commandment to make use of nature with the idea of *amanah*.

transcendence related to the nature and man. While the first one gave rise to man's acting freely upon nature in accordance with his desires, the second resulted in the deification of man and reliance on himself to determine not only his origins but also his ultimate destiny.

Owen Chadwick interprets secularism as a description of something that happened to European society in the last two hundred years.<sup>14</sup> In this process, Western man's relation to the world has gone through big changes which resulted in some unexpected outcomes:

The reason of the Enlightenment, after jerking its way in the turmoils of revolution, came again into its own, and remade philosophy, and sought to reconstruct society, and to end ancient prejudice and superstition. But its confident mood could not last. Men who expect the impossible run into disillusion. The more they used the reason, the more knowledge they gained; and gaining knowledge was accompanied by its bedfellow, recognition of ignorance. They had thought their confidence due to great learning, and saw now that it sprang from too little learning; that as the questions were solved more questions multiplied. In the reconstruction of thought the old metaphysical questions refused to lie down. In the realm of religion, practice and belief were pertinacious, unexpectedly pertinacious, and showed no sign of vanishing under rational education. In the realm of politics the mighty ideals of liberty and nationalism transformed the states of Europe, their constitutions, societies and frontiers -and still men hungered, and were exploited, and were slaves of unpredictable economic forces, and those ideals of liberty and nationalism were usable, and were used, to clothe the nakedness of power.<sup>15</sup>

In that process, Chadwick identifies morality as the central question of secularism. He asserts that, at the beginning of the 19<sup>th</sup> century, almost everyone was in agreement that religion and morality were indissoluble to the extent that religious education was considered as the only way to live a moral life. However, at the end of the century, Europeans began considering the potential severing of this connection between morality and religion. This resulted in the secularization of morality, liberating it from its theological basis. Chadwick says, apart from a small number of exceptional groups, people never thought of separating morality and religion in the entire history of humankind. Therefore, those who attempted to do that undertook an extremely difficult task which requires finding a moral system without a religious connection and it was something beyond their power.<sup>16</sup> Before that time, there were examples of autonomous theories of ethics but they were fitting the religious

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<sup>14</sup> Owen Chadwick, *The Secularization of the European Mind in the Nineteenth Century*, (Cambridge: Cambridge University Press, 1975), 266.

<sup>15</sup> *Ibid.*, 252.

<sup>16</sup> *Ibid.*, 229.

understanding. Henry Sedgwick, both an agnostic and a utilitarian, realized the difficulty of the quest for a system of scientific or evolutionary ethics which would be worthwhile for all people. He recognized the connection between morality and religion and refused to attack religion in order to preserve morality.<sup>17</sup> Chadwick states at the end people had morality without religion; they were good Christians without embodying the Christian faith.<sup>18</sup> What is put in the place of faith was “humanity”. Although “humanity” is not inherently absolute, it could still be put in the place of the Absolute since morality requires something superior/celestial to adore. Hence, “humanity” is invented as an object of worship, a life purpose for man.

However, humanity’s taking the place of the Absolute was in name, because while its namesake was promoted in the West, the humanity of the rest was precluded from the discussion. Besides, what is seen as absolute was not “humanity” too. People adopted other entities like the state, class, and company as their ultimate reality and defined morality through these entities. For example, Hegel associated morality with obedience of state directives, whereas Marx linked morality to the struggle for the benefit of working class. People started consider the state, class and company as sacred because these are the ones that provide their livelihood. Wages are paid by companies and pensions are given by the state which turns morality into the conformity to such institutions, being a good citizen to the state or a good employee for the company. These structures are standardizing individuals through a feeling of belonging and identities they create. However, they erase the uniqueness of each self. In other words, differences are wiped out at the expense of artificial identities within the modern state, class, and company. The world they create contributes in the separation from the transcendence and conceals what is beyond by leaving people to live in *al-hayat al-dunya*, the immediate life, with a pursuit of all this life could offer them.

## **1.2. The Self**

During the secularization, the self undergoes a similar process of disengagement from the transcendence. This process can be described as a transformation from “He

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<sup>17</sup> Ibid., 231.

<sup>18</sup> Ibid., 237.

who knows himself, knows his Lord.” towards “He who knows himself, knows himself.” It is the process of man’s giving up the vertical and starting to live only on the horizontal by putting himself at the centre of everything. Before, humankind was able to see the manifestations of God in the world and appreciate His creation. By observing nature, man was constantly bearing witness to the utter majesty of his Creator. Even in art, the human was imitating nature as a creation of God. However, with the secularization, humankind started to think that beauty is actually in his actions rather than nature. Nature became a mere object of his mind, an object through which he admits the perfection of his mind. The subject became his “self”, making him proclaim “How great my self is!” and his actions became the subject of art.<sup>19</sup>

This change in perception of the self can be traced back to Pierre Charron, a 16<sup>th</sup> century French Catholic thinker. His book *De La Sagesse*, “Of Wisdom”, is considered to be the first secular ethics book in the West. He writes:

There is not in the World any Advice more excellent and divine in its own Nature, more useful and beneficial to us, nor any at the same time less attended to, and worse practices than that of studying and attaining the *Knowledge* of our selves. This is in Truth the Foundation upon which all *Wisdom* is built, the direct and high Road to all *Happiness*. And sure no Folly can be compared to that which draws off Means Attention, and employs their Diligence and Pains in the Search of other Objects, and fixes them every where, any where, rather than upon themselves: For when all is done, the true Learning is at home, and the proper Science and Subject for Man’s Contemplation, is *Man* himself....The Knowledge of a Man’s self is a Step to the *knowledge* of God: The best and shortest Method we can possible take of raising our Minds up to Heaven. It must needs be so, because there is no other thing capable of being known by us, which carries such lively Streaks, such express Images and Characters, such clear and convincing Testimonies of God, as Man does... That is, *The knowledge of Thee*, which results from the Contemplation of my self, and the Resemblance of the Humane to the Divine Nature.<sup>20</sup>

For Charron, the foundation of wisdom is the knowledge of man himself as a way to reach the knowledge of God. That being said, the true science lies in the study of the self. Man finds the most similar characteristics to God’s in himself; and nothing other than himself is closer to God in the universe. This thinking of the self was a reaction to the Church, which, through the Trinity, had proclaimed themselves as the

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<sup>19</sup> Tahsin Görgün, “Küreselleşen Dünyada Din Dilinin Yeri ve Dini Metinleri Anlama Sorunu” in *Din Dili, Çalıştay Serisi 1*, (İstanbul: 29 Mayıs Üniversitesi Kur’an Araştırmaları Merkezi, 2015), 182. For the change in the view of art and aesthetics from divine to human, see the works of Alexander Gottlieb Baumgarten, German thinker of 18<sup>th</sup> century.

<sup>20</sup> Pierre Charron, *Of Wisom: Three Books*, trans. George Stanhope, (London: Printed for R. Bonwick, 1701), 1-5.



only way to attain the knowledge of God. Amidst this backdrop, Charron's idea of equating knowledge of the self for attaining the knowledge of God would be regarded as quite secular.

Charron's argument to reach the knowledge of God through the knowledge of the self had undergone a change with the following scientific revolutions within what was started to be seen as a mechanistic world. The rise of modern science eradicated the place of God within the universe where the human mind declared its independence from any authority and took total control of the self and nature. Until the 19<sup>th</sup> century there was a collective abandonment of attaining the knowledge of God; theories mainly pursued the knowledge of the self. Later on, however, the self, too, fell into an ambiguity. Nietzsche's proclamation that "God is dead" was actually incorporating a deeper idea that the self is also dead.<sup>21</sup> According to Nietzsche, there was no longer a unity of consciousness, but rather a semblance of unity. This unity came out of the idea that "when there is thinking, there must be something that thinks", a notion dependent on the mainstream belief of designating a doer to every deed. Nietzsche asserts this "overestimation of consciousness, its transformation into a unity, an entity such as "spirit" or "soul"—something that feels, thinks and wills—is actually one of the tremendous blunders of metaphysical tradition".<sup>22</sup> The human himself had killed God after realizing he cannot reach the knowledge of God through the nature within which metaphysics had lost its meaning. Consequently, the self had lost its meaning too, because human possessed value only when seen through the framework of his resemblance to God. The idea that "So God created Man in his own image"<sup>23</sup> indicates the importance of the human as a creature that resembles God.<sup>24</sup> Therefore, when God died the self of the human died as well.

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<sup>21</sup> Barresi and Martin, "History as Prologue: Western Theories of the Self", 44.

<sup>22</sup> Friedrich Nietzsche, *The Will To Power*, trans. Walter Kaufmann, R.J. Hollingdale, ed. Walter Kaufmann, (New York: Vintage Books, 1975), 285-286.

<sup>23</sup> Genesis 1:27.

<sup>24</sup> A hadith similar to this as follows: *Khalaqa Allah ﷻ u adama 'ala suratihi*. It means "Allah ﷻ created Adam in his image." The "-hi" pronoun in "surat" means "his" and in Arabic it can be understood in two ways: first, it is the image of Adam himself. This indicates he is created in an image unique to human being. Second, it can refer to Allah ﷻ and mean that Adam is created in the image of Allah ﷻ. That indicates the idea of human as *khalifatullah*, the vicegerent of Allah ﷻ on earth. Human is the creature of Allah ﷻ that has manifestations of the attributes of Allah ﷻ; though this does not allow to make any resemblance between man and Allah ﷻ in Islam for *Laysa kamithlihi shay'* "Nothing resembles Allah ﷻ in anyway whatsoever."

Charles Taylor distinguishes the self of modern man from that of the ancient times in terms of their relation to the outside world. He defines the ancient self as “the porous self”, that has a channel with the transcendence, e.g. angels or demons as understood within the ancient world. On the other hand, modernity’s self is “the buffered self” which closed himself against the world.<sup>25</sup> In the first case, there was not a strict barrier between the natural and supernatural. However, with modernity, the world became made up of only horizontal level without due regard for the vertical or transcendence.<sup>26</sup> Taylor defines such a change as a disengagement from the world and inclination of humankind towards the internal. For him, it is the “inwardness” which constitutes the basis of the modern notion of the self. It is the internalized self that seeks for answers inside and establishes the rules within. It cuts its relation with the transcendence and also with the meaningful order of the outside world, becoming more and more self-centred.

For Taylor, this inwardness is a process which goes back to Augustine’s idea that the material world is sensible through the senses whereas the spiritual world of God can only be known if one accords with the light of the soul inside:

...the whole Cartesian project owes a great deal to its Augustinian roots and the enhanced place this tradition gave to inwardness... For Augustine, the path inward was only a step on the way upward. Something similar remains in Descartes, who also proves the existence of God starting from the self-understanding of the thinking agent. But the spirit has been altered in a subtle but important way. Following Augustine’s path, the thinker comes to sense more and more his lack of self-sufficiency, come to see more and more that God acts within him. In contrast, for Descartes the whole point of the reflexive turn is to achieve a quite self-sufficient certainty... The thesis is not that I gain knowledge when I turned towards God in faith. Rather the certainty of clear and distinct perception is unconditional and self-generated. What was happened is rather God’s existence has become a stage in *my* progress towards science through the methodical ordering of evident insight. God’s existence is a theorem in *my* system of perfect science...<sup>27</sup>

The self’s inward thinking departed to search for God inside, yet it ended up with a “buffered self” which in the end cuts its relation with God. This buffer incarcerates the self and does not allow it to move towards the vertical. In the modern world, this buffer can be thought as the state, class and company as they surround the human

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<sup>25</sup> Charles Taylor, *A Secular Age*, (Cambridge, MA: The Belknap Press of Harvard University, 2007), 37-43.

<sup>26</sup> Charles Taylor, “What is Secularity” in Kevin Vanhoover and Martin Warner *Transcending Boundaries in Philosophy and Theology* (Aldershot: Ashgate, 2007), 57-76.

<sup>27</sup> Charles Taylor, *Sources of The Self: The Making of the Modern Identity*, (Cambridge: Harvard University Press, 2001), 156-157.

and cut his relation with the transcendence. As mentioned before, these entities put themselves in the place of the Absolute, where the only moral account turns out to be their interests. The modern human defines himself through his country and nation; the political party he votes for; and the company he works for. These “buffers” lead to an eradication of the self and its characterization over linkages, relations, and constructions.

With the effects of deconstruction and postmodernism, there occurred dissolutions of the self. The self has become an outcome of culture rather than being its producer. Numerous sub-branches were derived from the self, such as self-conception, self-image, self-knowledge, self-control, self-narrative, self-confidence and so on. The self has become a topic in any field dealing with the human nature like biology, sociology, anthropology, politics, and neuroscience. In the end, the idea of the self has demised and turned into a vague notion with a lot of hyphenations.

### **1.3. Agency**

The concept of agency is generally described as one’s being the agent of his actions while some definitions focusing on “free will” and define agency as the capacity of the human being to act independently by his free will. This debate of human agency goes back to the Enlightenment where a dichotomy has been made between instrumental rationality and moral, norm-based action in order to explain human will. In the beginning, rationality was the main focus in explaining human will where individuals are considered to be free agents that make rational choices for themselves and for society. An example of that can be seen in Thomas Hobbes’s “Leviathan” in which he depicts the state and society as a massive version of human body created by human agency. This “State” or “Leviathan” or “Commonwealth”, all denoting the same meaning, is constructed by the human with his free will and reason, following the example of God in creation. Nevertheless, the “artificial soul” of that artificial organism is sovereignty.<sup>28</sup> It is a gigantic version of the human, created by the human and having authority over the human. In other words, the human is capable of creating an authority in order to rule himself. Similarly, John Locke’s approach to the society based on social contract also promotes an understanding of agency where

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<sup>28</sup> Thomas Hobbes, *Leviathan (English Works of Thomas Hobbes of Malmesbury)*, ed. Sir William Mollesworth, vol. III (London: John Bohn, 1839), Introduction, s. IX-X.

human beings have the capacity to shape and control the circumstances in which they live. Human agency designates a structure and gives it the legitimacy to shape and control the social togetherness. Under this construct individuals can come together and decide their rights and responsibilities, and define the moral codes. This has been the main focus of agency since the Enlightenment, though the concept has been dealt with by different approaches within different disciplines. Below, I present three examples of the approaches to agency and then will indicate how *dhimma* differs from these approaches in its explaining the self and agency.

Christine Korsgaard defines agency as one's being the author of his actions in the very act of choosing them.<sup>29</sup> This activity of choosing actions can be morally right or wrong for humans. This is because of a distinctive feature of humans which is rationality. She says apart from animals which take their instinct as principle in their actions; human beings while making their choices are aware of the grounds of their beliefs and actions by virtue of their consciousness. They make choices based on a reason which requires a principle. According to Korsgaard, this principle is implicit in the demands of one's agency. One's movements must be caused by his self; they must be one's own movements and not occurred by some forces which are working on him or in him. She defines this process as the process of self-constitution. By choosing one's actions, one is actually making himself who he is; which can also be described as one's unifying himself.<sup>30</sup> In order to be an agent, one needs to unify himself by putting whole self behind his actions. Morality is embedded in such constitutive features of agency and what makes one's actions good or bad is their conformity to categorical and hypothetical imperatives of Kant since the moral basis that she takes into account is the Kantian one together with Platonic justice.<sup>31</sup> One can constitute himself well and act morally good if he governs himself by Kantian principles which are thought to be the "universal principles".

There are also psychological and neuroscientific approaches that deal with action through empirical studies.<sup>32</sup> One example is Anthony Marcel's analysis on the

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<sup>29</sup> Christine M. Korsgaard, *Self-Constitution: Agency, Identity, and Integrity*, (New York: Oxford University Press, 2009), 20.

<sup>30</sup> *Ibid.*, 213-214.

<sup>31</sup> *Ibid.*, Preface xii.

<sup>32</sup> For some examples of these empirical studies see: Johannes Roessler and Naomi Elia, *Agency and Self-awareness: Issues in Philosophy and Psychology*, (Oxford: Clarendon Press, 2003).

relation between the “sense of oneself” as an agent and one’s “awareness of actions”. According to Marcel, a person experiences himself as an agent if he is experiencing the performed actions as his own. Note that the sense of oneself as the source of his doings is not related to his will or intention. It is rather related to one’s feeling responsible for his actions, seeing these actions as his own. He says this is the reason for apologizing when one treads on someone else’s toe although he did not do it intentionally.<sup>33</sup> He mentions while the mainstream empirical psychology considers all awareness is observational and puts a causal relation between agency and awareness; clinical psychology goes for the opposite. Clinical psychology propounds that one does not always need to be aware of his actions in order to be considered as the agent of those actions. There are some empirical researches as well suggesting that consciousness in explaining the sense of agency has been so far misleading and there is not a necessarily causal chain of consciousness in the occurrence of an action.<sup>34</sup> We sometimes have a sense of agency for actions we did not actually perform or did not consciously intend and also we may have not a sense of agency for actions we consciously intended and actually performed.<sup>35</sup> According to this idea, one’s sense of ownership for an action and bearing its responsibility does not necessarily depend on the intentionality of one’s actions.

From a different perspective, Mustafa Emirbayer and Ann Mische propose to disaggregate agency into its temporal components because the agentic processes cannot be understood without a seeing its temporal framework.<sup>36</sup> According to them, human agency appears as a time related social engagement which can be explored in three facets: the past as the habitual aspect of agency, the future where agency appears as a capacity for different possibilities, and the present where agency gives a possibility to merge between past and future as a capacity to see past habits and future plans within one moment. They argue dividing agency such temporal components is the only way to understand its complexity and relational nature.

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<sup>33</sup>Anthony Marcel, “The Sense of Agency: Awareness and Ownership of Action” in *Agency and Self-awareness: Issues in Philosophy and Psychology*, ed. Johannes Roessler and Naomi Elia, (Oxford: Clarendon Press, 2003), 54.

<sup>34</sup> Elisabeth Pacherie, “Self-Agency”, *The Oxford Handbook of the Self*, 442.

<sup>35</sup> *Ibid.*, 443.

<sup>36</sup> Emirbayer and Mische, “What is Agency?”, 963.

Exploring agency within different time levels would contribute in understanding its different components. Yet, confining it to time bounded by the world of “the immediate life” causes failing to notice some crucial aspects of agency. Additionally, human will and action cannot be thought separately from the responsibility component. Responsibility is not always the issue in the studies of agency, since agency is mainly approached as the source of actions without an indication to accountability. An action which is performed either consciously or unconsciously, and either is owned by the agent or not owned; the agent should bear its responsibility, whereas the consequence may vary in accordance with these different situations. Lastly, evaluating an action with moral standards which are the products of the human mind, no matter how much they seem to be rational or universal, gives rise to relativist judgements about the goodness or badness of this action. Examining the self and its action component via *dhimma* may present a different perspective in understanding the self and agency in the context of responsibility. *Dhimma* approaches to the self considering different time levels and finds its meaning within the prophetic tradition which links to the transcendence. Moreover, *dhimma* would consider the individual and collective aspects of the self and the action.

#### **1.4. Dhimma**

*Dhimma* is a term generated by the Islamic tradition in order to shed light on the self of the human being. It relates to the human with regard to act, behave, and perform actions, and be given the authority in the world. This authority is given to man by the Creator at the time of creation for him to be able to act, conduct and deal with the creation on earth as *khalifa*<sup>37</sup>, vicegerent of the Creator. According to this, man is created as the noblest of all creation (*ashraf al-makhlukat*), and held responsible for how he behaves and what is put at his disposal in the world. While man holds the privilege of vicegerency in the world; at the same time he shoulders the responsibility of this privilege. This aspect of the self is rooted in two metaphysical bases, namely *amanah* and the Covenant, which is also related to the notion of *dhimma*.

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<sup>37</sup> Qur'an 2:30

*Amanah* is the trust that is given to mankind to be fulfilled in the world.<sup>38</sup> It can be understood either as a mission or the object of that mission. If we take it as a mission; *amanah* of man is two: First; it is to rule in accordance with Allah ﷻ's rule in the world. This is more than a social or political sense of ruling; it is doing justice to the creation, observing their rights, and fulfilling the responsibilities towards them. Second; it is man's ruling of himself which means the striving towards the perfection in moral sense.<sup>39</sup>

If *amanah* is considered as the object of mission, it is again can be understood in two ways: First; *amanah* is *mawjudat* (creatures) which is given to the benefit of mankind; therefore, human is responsible with making just use of the creature. Second, *amanah* is *imkanat* (possibilities) given to each person, and each individual is responsible for make the best of these possibilities, opportunities, and blessings they have in their lives.<sup>40</sup>

*Dhimma* finds its meaning on the basis of that *amanah*. *Dhimma* is described as what enables human beings fulfil the responsibility of *amanah*. It is the foundation of human action and responsibility designated for each individual in pre-world. 14<sup>th</sup> century Hanafi scholar Abdullah Ibn Masood, also known as Sadr al-Shari'a (747/1346) says the distinctive feature of the human, apart from the "reason" is *dhimma*.<sup>41</sup> He explains "reason" as the tool for understanding the wisdom of man's creation, and capturing the responsibility ascribed to him. However, reason by itself is not enough for him be held responsible, accountable, and to act for the fulfilment of his duty in the world. What gives the human that capacity and eligibility to behave, act on earth; and be responsible for *amanah* on earth is his *dhimma*. It is what qualifies man to have rights and responsibilities in the world.

The Covenant of man with the Creator also plays an important role in elucidating *dhimma*. This covenant took place when Allah ﷻ asked human beings *Alastu bi*

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<sup>38</sup> Qur'an 33:72.

<sup>39</sup> Al-Attas, *Islam and Secularism*, 66.

<sup>40</sup> Tahsin Görgün, "İnsan ve Hakları Üzerine Veya İnsan Haklarının Krizi ve Klasik Türk Düşüncesi", *İnsan Hakları Araştırmaları* 4, 7, (*İnsan Haklarında Yeni Arayışlar Sempozyumu Özel Sayısı*), ed. Lütfi Sunar and Adem Başpınar, (İstanbul: Mazlumder, 2006), 19.

<sup>41</sup> Sadr al-Sharia', *al-Tavzih*, in *al-Talwih ila kashfhaqa'iq al-Tanqih* of Taftazani, Ed. Muhammad 'Adnan Darwish, (Beirut: Dar al-Arqam bin abi al-Arqam, 1998), 348-349.

*rabbikum?* “Am I not your Lord?”, and they answered *Balaa!* “Yes, indeed!”<sup>42</sup> The Covenant is considered as man’s acknowledgment of Allah ﷻ as his *Rabb*, Lord, by which man became responsible for certain obligations (*wujuub*) in the world. *Dhimma* again appears as what qualifies man to have and fulfil these obligations. It is what makes the human qualified for becoming responsible in the world. Being responsible in the world is specific to human beings and distinguishes them from the rest of the creatures. This is because the human is given the “reason”. He holds the authority in the world and rights over the creation. In this regard, *dhimma* indicates an aspect of the self which gives this eligibility, competency to act, conduct on earth, and to deal with other creatures. Also, *dhimma* indicates man’s eligibility to bear the responsibility of his dealings and actions. Man’s Covenant with his Lord shows man has *dhimma* which enables him to perform *wujuub* which occurred as a result of his testimony.

According to Elmalılı Hamdi Yazır, the testimony of this Covenant continuously takes place in the world by witnessing evidences of Allah ﷻ’s existence in creation. He says one important part of that witnessing is the creation of man himself. It is the foremost evidence for man to acknowledge Allah ﷻ as his Lord. According to this, man did not do this testimony by his tongue or his logical reasoning; rather he witnessed and internalized it by his very creation.<sup>43</sup> When human beings were particles unaware of their existence, Allah ﷻ has given them a self-consciousness and a consciousness beyond their selves which is their *fitrah*, the original nature of human, the way upon which man is created. *Fitrah* is also defined as the pattern according to which Allah ﷻ has created all things.<sup>44</sup> From nothing humans are created and obtained a conscious *fitrah*. Allah ﷻ blessed them with a full-fledge reason and cognition, comprehension and expression, will and freedom. According to Elmalılı, this miraculous aspect of creation, out of nothingness, made them to testify their Lord and also made them to undertake *amanah*.

Elmalılı mentions at that stage of creation there had not been any defiance or denial, disbelief, and obstinacy because humankind had not yet become acquainted with the outside world. Man promised *al-‘ubudiyyah* (servitude) to his Lord alone. Elmalılı

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<sup>42</sup> Qur’an, 7:172.

<sup>43</sup> Elmalılı Hamdi Yazır, *Hak Dini Kur’an Dili*, (İstanbul: Huzur Yayınları, 2003), vol.4, 340.

<sup>44</sup> Al-Attas, *Islam and Secularism*, 61.



states this is the origin of religiosity of humanity, as well as the origin of law, morality, social life, and civilization. One's belief in the Creator and obeying Him, in other words one's *iman* and *islam*, are not an outcome of deductive knowledge which can be obtained through reasoning based on external evidences. Rather it is inborn in one's *fitrah*. It is related to man's natural condition of creation. Through introspection of his creation, one can sense his being and knows himself in the essence of his existence. However, for Elmalılı this is not as loud and clear as one's awareness of his own being. It is a hidden, intuitive consciousness lying beneath of one's perception of his self. Its realization calls for sharpening of attention in oneself or/and requires additional internal or external influences. The basis of the faith is the divine intuition inside of the human, perception beyond one's self, an intuition centralized in his *fitrah*. Therefore, this is a *fitri* (related to *fitrah*) covenant occurring in the essence of man's creation. For Elmalılı, the covenant does have a conversation aspect but not in verbal speech as we understood it. Rather the conversation of "alastu bi rabbikum" and "balaa" can be described as a spiritual speech which is similar to the conversation of Allah ﷻ and angels as exemplified in the Qur'an.

According to Attas, it is man's rational soul that God addressed in the Covenant. He classifies the soul of the human being as rational soul and animal/carnal soul. Man can attain the peace, happiness, and freedom only if he curbs his animal soul by bringing it under the control of his rational soul. Attas states any violation of the Covenant would mean a violation to the contract of man's own soul.<sup>45</sup> Man's rational soul is created with a capability for submission to God. This inclination of man is woven in his *fitrah*; and one of the meanings of *fitrah* is the realization of the Covenant.<sup>46</sup> This realization occurs as a sincere submission to his Lord which is manifested as *ibadah*, conscious and willing acts of service. These actions of man are within the scope of *wujuub*. Man's ability to perform these actions indicates that he has *dhimma*, he is competent, eligible for the responsibility.

According to Attas, one of the meanings of *amanah* is man's ruling of himself which constitutes the basis of one's ethical life. Being moral finds its roots in *fitrah* and is related to the self of the human more than an outer factor. Therefore, ethics and morality are related to the *fitrah* of the human according to which he is created. One

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<sup>45</sup> Ibid., 77.

<sup>46</sup> Ibid., 62. Also see: Ibn Manzur, *Lisan al-'Arab*, (Beirut: 1968) vol. 5, 56-57.

would be able to act morally so long as he lives up to his *fitrah* which can be accomplished by following the divine command that guides him to the straight path. He is moral not because of a worldly contract, but because of his soul's Covenant. In fact the sustainability of social organization in the world is rooted in this Covenant:

The man of Islam, the true Muslim, the *khalifatullah*, is not bound by the social contract, nor does he espouse the doctrine of the Social Contract. Indeed, though he lives and works within the bounds of social polity and authority and contributes his share towards the social good, and though he behaves as if a social contract were in force, his is, nevertheless, an individual contract reflecting the Covenant his soul has sealed with God; for the Covenant is in reality made for each and every individual soul. The purpose and end of ethics in Islam is ultimately for the individual; what the man of Islam does here he does in the way he believes to be good only because God and His Messenger say so and he trusts that his actions will find favour with God.<sup>47</sup>

Therefore, morality is rooted in soul's Covenant with his Lord. Its realization brings harmony not only to the self but also to the community as a whole. For Attas, this also reveals the very meaning of justice which is described as "putting everything in its proper place." Putting man in his proper place is his adherence to his Covenant and fulfilment of *amanah* given to him. It is the justice man does to his soul. Doing justice to himself leads to a rightly balanced relationship with his fellow men too. Since this covenant is made with all souls at once, it has both individual and collective aspects.<sup>48</sup> While each member individually lives their life in a way approved by their Creator, they collectively work for the common good since they all undertook *amanah*. They do justice to each individual and to the society which leads to a well-organized social structure.

The souls of the members of that community gathered before coming to the world. Those who united at that time and bear witness to God's existence, also unite in the world with the same purpose of fulfilling that covenant. This is the bond of brotherhood makes them love each other and strive together to fulfil their responsibility of *amanah*.<sup>49</sup> This bond of brotherhood, *ummah*, is formed around the Prophet ﷺ and gave rise to a tradition transmitted throughout generations by *tawatur*.<sup>50</sup> This tradition let each individual preserve their uniqueness, as each of

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<sup>47</sup> Ibid, 74.

<sup>48</sup> Ibid, 73.

<sup>49</sup> Ibid, 74.

<sup>50</sup> Recurrent mode of transmission which leads certainty in the transmission of a Prophetic report. For this three conditions are required: First, the report must be transmitted through channels of transmission sufficiently numerous as to preclude any possibility of error or collaboration on a forgery. Second, the very first class of transmitters must have a sensory of knowledge of what the

them is created single, one and only and has a unique set of opportunities in their lives for which they will be separately held accountable. Besides, this tradition provides its members an identity, a feeling of belonging, and togetherness without demolishing their differences. They share the same tradition transmitted to them by *tawatur* despite of their local differences, ethnicities, and languages. Even these differences contribute to enrich the tradition, make it variegated in different parts of the world. Each member of this community has *dhimma* to make them qualified to be responsible for *amanah*. They are responsible individually within their unique opportunities and collectively as a part of *ummah*.

The following chapter deals with *dhimma* in the Qur'an and *hadith*. *Dhimma* in the Qur'an is closely related to the responsibility of the human and is clarified through various concepts about the self. The section explains the verses about the Covenant and *amanah*, and their relation to *dhimma* in detail in the context of the rights and responsibilities. Similarly, *dhimma* in *hadith* of the Prophet ﷺ mainly occurs in a context of responsibility and presents various examples of daily usages of the notion.

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Prophet said or did. Third, these two conditions must be met at each stage of transmission beginning with the first class and ending with the last hearer of the report. Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*, (Cambridge University Press, 1997), 60-61.

## CHAPTER 2

### DHIMMA IN THE QUR'AN AND HADITH

#### 2.1. Dhimma in the Qur'an

*Dhimma* appears in the Qur'an explicitly in two verses whereas scholars mention five other verses in explaining *dhimma* of the human being, which can be considered to consist of *dhimma* implicitly. In verses [8, 10] of *al-Tawba* *dhimma* is mentioned clearly and denotes the meaning of 'ahd (covenant) providing inviolability to the other party. It is widely translated as "covenant of protection" which is made with non-Muslims in order to give them protection and define their right and responsibilities. I will explain that kind of covenant through three related concepts which are kinship, "madhamma" (decry, blame), and dignity as all are related to *dhimma* in verses mentioned above. The five other verses where *dhimma* appears implicitly, on the other hand, indicate another meaning that lays the foundation of the rights and responsibilities of the human which goes back to the creation of mankind.

##### 2.1.1. Dhimma Explicitly Occurs

The word *dhimma* occurs in the Qur'an explicitly in verses [8, 10] in section *al-Tawbah* which is also known as *al-Bara'ah*. This is the last revealed section of the Qur'an shortly before the demise of the Prophet ﷺ. It is revealed in order to inform the non-believing tribes that their inviolability is no longer applied due to their repeated violations of the agreements. The first six verses of *al-Tawbah* indicate a disavowal from non-believers and how to act in accordance with it. The details and reasons of the disavowal are mentioned in the following verses where the word *dhimma* occurs.

Before dealing with *dhimma* in these verses, it is worth mentioning that *al-Tawba* is the only section of the Qur'an which is not preceded with *basmala*. *Basmala*, the abbreviation of *Bismillah al-rahman al-rahim*, means 'In the name of Allah ﷻ, the most gracious, the most merciful' and is the Islamic phrase to be recited in the

beginning of any action. One of the reasons that this section is not to be preceded by *basmala* is that it is assumed this section is the continuation of *al-Anfal*. It is the section right before *al-Tawba* and has a very similar content to that of *al-Tawba* despite the long time period between their revelations.<sup>51</sup> Another reason that *basmala* doesn't precede *al-Tawba* is that it starts with a *bara'ah*, a declaration of disavowal which would be a contradiction with the meaning of *basmala*. The declaration of disavowal is made to inform non-believers that they are disassociated from the protection of Allah ﷻ and the Prophet ﷺ (*bara'atun min Allahi wa Rasulihi*) due to their unfaithfulness to previous agreements. *Bara'ah* means disassociation, being freed of something. In Arabic it is generally used to express getting rid of a debt and also to stress breaking off a relation with someone as in the phrase: *Bara'tu min fulanin abrau' bara'atan* meaning 'I am absolved from him to the extent that I deny any support or responsibility towards him'.<sup>52</sup> In addition to the cutting of a relation, in this context *bara'ah* conveys a legal and political meaning declaring *inqita* of *ismat*, a termination of inviolability. While the verses declare a disassociation, *basmala* denotes the meaning of *amaan* i.e. peace, assurance and safety. It is due to this contradiction in meanings that the section does not begin with *basmala*.<sup>53</sup>

While the first verse indicates an ultimatum of *bara'ah* from Allah ﷻ and the Prophet ﷺ, the succeeding verses are the explanation of its reasons to public.<sup>54</sup> The main reason is the repeated violations of previous agreements. Note that there are two kinds of non-believers mentioned in these verses. First, there are those who kept their agreements; therefore, they are not included of the scope of that disavowal and their agreements must be honoured.<sup>55</sup> Second, there are those who have revoked the agreements and acted hypocritically. They are those whose protection is abandoned and declared war against. Non-believers are given the duration of four sacred months to get ready for an upcoming conflict. It is emphasized that believers should keep their treaties on their part unless the other party breaches it and in case of a violation the reaction should be the same way. In any case, if a non-believer asks for *amaan*

<sup>51</sup> Elmalılı Hamdi Yazır, *Hak Dini Kur'an Dili*, (İstanbul: Huzur Yayınları, 2003), vol.4, 445.

<sup>52</sup> Ibid., 449.

<sup>53</sup> Ibid., 446.

<sup>54</sup> Ibid., 464.

<sup>55</sup> Qur'an, 9:4.

(assurance) then it should be given to him.<sup>56</sup> Starting from verse 7 the details and reasons of the disavowal are given:

فَمَا اسْتَقَامُوا لَكُمْ ۖ كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلَّا الَّذِينَ عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ  
لَنْ اللَّهُ يُحِبَّ الْمُتَّقِينَ ۗ فَاسْتَقِيمُوا لَهُمْ

7. How can there be for the polytheists a treaty in the sight of Allah and with His Messenger, except for those with whom you made a treaty at al-Masjid al-Haram? So as long as they are upright toward you, be upright toward them. Indeed, Allah loves the righteous [who fear Him].

كَيْفَ وَإِنْ يَظْهَرُوا عَلَيْكُمْ لَا يَرْقُبُوا فِيكُمْ إِلَّا وَلَا ذِمَّةً ۗ يُرْضُونَكُمْ بِأَفْوَاهِهِمْ وَتَأْبَىٰ قُلُوبُهُمْ ۗ وَآكْرَهُمْ فَسِقُونَ

8. How [can there be a treaty] while, if they gain dominance over you, they do not observe concerning you **pact of kinship (ill) or covenant of protection (dhimma)**? They satisfy you with their mouths, but their hearts refuse [compliance], and most of them are defiantly disobedient.

اشْتَرَوْا بِآيَاتِ اللَّهِ ثَمَنًا قَلِيلًا فَصَدُّوا عَنْ سَبِيلِهِ ۗ لَهُمْ سَاءَ مَا كَانُوا يَعْمَلُونَ

9. They have exchanged the signs of Allah for a small price and averted [people] from His way. Indeed, it was evil that they were doing.

لَا يَرْقُبُونَ فِي مُؤْمِنٍ إِلَّا وَلَا ذِمَّةً ۗ وَأُولَٰئِكَ هُمُ الْمُعْتَدُونَ

10. They do not observe toward a believer **pact of kinship (ill) or covenant of protection (dhimma)**. And it is they who are the transgressors.

In verses [8, 10] *dhimma* denotes the meaning of ‘*ahd* (covenant), *amaan* (assurance), and *hurmah* (sanctity).<sup>57</sup> It is a covenant providing inviolability which must be protected and respected. In Arabic it is used as “*fi dhimmatii kadha*” meaning this is in my *dhimma*, incumbent on me, I am responsible for protecting it. The plural of *dhimma* is *dhimam/dhimaam* which means everything that I am to hold, stick to and preserve. It is mentioned non-believers did not observe their pacts and covenants which is made in order to provide them inviolability.

I will explain the meaning of *dhimma* in these verses through its relation to kinship, *madhamma* and dignity.

### **Dhimma in Relation to Kinship**

<sup>56</sup> Qur’an, 9:6.

<sup>57</sup> Al-Qurtubi, *al-Jami’ li Ahkam al-Qur’an*, ed. ‘Abdullah bin ‘abduhuhsin al-Turki, (Beirut: Muassasa al-Risala, 2006), vol.10, 119-120.

The word *ill* occurs right before *dhimma* in the verses. A narration from Ibn ‘Abbas states *ill* is cognation, kinship, and having the same source or relating to the same family. It is the sharing of same characteristics and origins.<sup>58</sup> *Ill* in these verses implies a pledge through kinship that requires mutual protection of both parties.<sup>59</sup> Between *ill* and *dhimma* there is the conjunction letter of و (and) which indicates in Arabic *al-jamm al-mutlaq*, an absolute togetherness without setting a precedence of one over the other. For Arabs blood tie is regarded as a type of social bond which is of utmost importance. Therefore, the value of *dhimma* cannot be less than that of *ill* which occurs as a result of a blood tie.

*Ill* also means brightness due to its purity and obviousness, hence the pledge of *ill* possesses an undoubted clarity.<sup>60</sup> *Dhimma* has a similar obviousness that everyone is aware of in the society as it is a covenant of protection made between two groups. Additionally, *ill* has a meaning of oath derived from its verbal root which denotes to “yell” and “bellow”. Arabs used to raise their voices when they made an oath because the contract made between kinfolks was regarded to be much stronger than other type of contracts.<sup>61</sup> Since *dhimma* is considered to have a similar importance that of an oath contract, it has a similar binding power.

Mehmet Vehbi Efendi (1369/1949), Ottoman scholar of 19<sup>th</sup> century and known with his exegesis of *Khulasat al-Bayaan*, states *ill* means to take an oath on a pact and *dhimma* means to become indebted. The related verse tells that non-believers observed neither their oaths nor the people to whom they became indebted through their covenant.<sup>62</sup> This is due to the fact that partaking in a covenant and accepting the *dhimma* require parties to observe this covenant.

*Shaikh al-Islam* of 16<sup>th</sup> century, Ebussuud Efendi (1490/1574) stresses the contractual nature of *dhimma* stating that *ill* and *dhimma* are kinship and covenant, and it is a must for both parties to adhere to their terms. He adds that *ill* stands for one of the names of Allah ﷻ and any infringement would mean to dispraise the right

<sup>58</sup> Al-Alusi, *Ruh al-Ma’ani fi Tafsir al-Qur’an al-‘Azim wa al-Sabil al-Masani*, ed. Mahir Habbush, (Damascus: Dar al-Risala al-‘Alamiyya, 2015), vol.10, 236.

<sup>59</sup> Muhammad Asad, *The Message of the Qur’an*, (Mecca: Muslim World League, 1964), vol.1, 337.

<sup>60</sup> Al-Qurtubi, *al-Jami’ li Ahkam al-Qur’an*, 119.

<sup>61</sup> Al-Alusi, *Ruh al-Ma’ani*, vol.10, 236.

<sup>62</sup> Mehmed Vehbi Efendi, *Khulasah al-Bayan fi Tafsir al-Qur’an*, (İstanbul: Evkâf-ı İslâmiye Matbaası, 1968), vol.5, 1963.

of Allah ﷻ.<sup>63</sup> The well-known *mufasssir* of the 19<sup>th</sup> century, al- Tabari (310/923) as well remarks that the meaning of *ill*, as it occurs at the end of the names of angels *Jabrail*, *Mikail* and *Israfil* is an indication to Allah ﷻ. Therefore, the meaning of the verses appears as the non-believers neither respected Allah ﷻ and nor the covenant.<sup>64</sup>

Al-Tabari is of the opinion that *ill* is repeated with *dhimma* just like the names of Allah ﷻ, *al-Ghafuur* (The Most Forgiver) and *al-Raheem* (The Most Loving with compassion) which typically come one after another. Similarly, *ill* and *dhimma* are akin, both meaning ‘*ahd* and *mithaaq*, commitment and agreement, found one after the other in verses. Some other scholars too assert *ill* and *dhimma* convey the same meaning of covenant and *dhimma* comes right after *ill* as an explanation. However, Alusi says this is not the preferred opinion of the scholars and most of them lay an emphasis on the distinction of the two words.<sup>65</sup>

### ***Dhimma in Relation to Madhamma***

The reason for *dhimma* to be spelled as such (*dha-ma-ma*) is its violation requires *madhamma* which means to “decry” and “blame”.<sup>66</sup> Alusi explains *dhimma* as a right and he who neglects *dhimma* must be decry. Similarly, Elmalılı Hamdi Yazır states *dhimma* is something that must be protected and preserved, and its violation requires a liability. In this context, *dhimma* stands for an agreement, a trust and a warranty; the breach of which calls for a condemnation.<sup>67</sup> Ebussuud Efendi says both *dhimma* and *ill* imply a right out of oaths and agreements and those who violate it must be dispraised.<sup>68</sup> Fakhr al-Din al- Razi as well states that *dhimma* is something that requires a reprimand on the infringer.<sup>69</sup>

The condemning aspect of the violation of *dhimma* indicates *dhimma* is something social, relating not only to the person but also to the community. *Dhimma* is more than a legal requirement, as the very meaning of the word reveals; it also has a moral

<sup>63</sup> Ebussuud Efendi, *Irshad al-'Aql al-Salim ila Mazaya al-Kitab al-Karim*, (İstanbul: Boğaziçi Yayınları, 2006), vol.1, 355.

<sup>64</sup> Al-Tabari, *Jami' al-Bayan fi Tafsir al-Qur'an*, (Beirut: Dar al-Fikr, 1984), vol.10, 83

<sup>65</sup> Al-Alusi, *Ruh al-Ma'ani*, vol.10, 237. Also see: Norman A. Stillman –“Dhimma” in *Medieval Islamic Civilization: An Encyclopedia*, Ed. Josef W. Meri, (New York: Routledge,2006) vol.1, 205.

<sup>66</sup> Al-Alusi, *Ruh al-Ma'ani*, vol.10, 237

<sup>67</sup> Yazır, *Hak Dini Kur'an Dili*, vol.4, 466.

<sup>68</sup> Ebussuud Efendi, *Irshad al-'Aql al-Salim*, vol.1, 355.

<sup>69</sup> Fakhr al-Din al-Razi, *al-Tafsir al-Kabir/ Mafatih al-Ghayb*, (Beirut: Dar al-Kutub al-'Ilmiyya, 1990/1411), vol. 15-16, 184.



aspect. The breach of *dhimma* will indeed bring legal consequences too as it comes in the verses –e.g. cutting the relationship with the other party and preventing them from performing their old rituals etc. However, the violation first results in demeaning themselves and lowering their reputation in the society which is of utmost importance considering the strong communal relations of their society. This position is a stronger deterrent than any legal measures at that time. However, there is one more step beyond one’s prestige in the eyes of society which is one’s own dignity.

### ***Dhimma* in Relation to Dignity**

Most of the exegeses attract attention to the *dhimma*’s meaning of being pious, abstaining oneself from sin or its bringing of dishonour in a case of infringement.<sup>70</sup> According to al-Tabari, the verses imply that ‘They do not observe Allah ﷻ, kinship, and the covenant, and he who does not keep his agreement deserves to be ashamed.’<sup>71</sup> The connotations of *dhimma* such as being pious and keeping oneself away from evil acts or its bringing shame upon the violator denote a responsibility which relates to the self of the individual. This is actually before any kind of legal or social responsibility; it is a duty of someone towards himself. That is why the violation of it brings a shame on the violator and damages his dignity and honour.

Thinking the other way around, giving *dhimma* to someone is also related to the dignity of the one who provides the protection. It is a must on him to protect that person in any case so long as that person as well remains faithful to the agreement, because there is a mutual commitment, a promise between two parties. If one breaks his promise that would mean a betrayal of himself first and foremost. Then, there is a negative outcome from the part of the society which might be followed by legal consequences. All these indicate that *dhimma* has personal, communal, and legal components.

All in all, the three related notions that appear in verses and in their exegesis - kinship, *madhamma*, and dignity- exhibit some important aspects of *dhimma*. *Dhimma* as the “covenant of protection” has an equal importance with *ill* which is a requirement of kinship, a blood relation standing out with its obviousness and bindingness. Hence, *dhimma* should be protected and honoured, and if not it calls for

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<sup>70</sup> al-Razi, *al-Tafsir al-Kabir/ Mafatih al-Ghayb*, vol.15-16, 184.

<sup>71</sup> Al-Tabari, *Jami’ al-Bayan*, vol.10, 85.

decry and condemnation of the infringer. This damages his reputation in the society and might call for legal measures. More than this, *dhimma*'s connotations of being pious and staying away from the evil indicate *dhimma*'s relation to the self. *Dhimma* is one's responsibility and promise to himself above all and a part of his dignity.

### 2.1.2. *Dhimma* Implicitly Occurs

So far in the verses of *al-Tawba* we have seen the passages where *dhimma* occurs explicitly and means a covenant of protection with social, moral, and self-related aspects. The metaphysical foundation of *dhimma*, on the other hand, had been discussed by Muslim scholars within Islamic Jurisprudence in relation to five other verses of the Qur'an.<sup>72</sup> The interpretation of *dhimma* within these verses lays the foundation of making such a covenant in the world in particular and bearing rights and responsibilities in general.

#### Responsibility of The Covenant: al-'Araf 172

The first verse [7:172] is considered to be very essential for elucidating the creation of human beings. This verse exhibits *dhimma* beyond the worldly covenant of protection and constitutes its transcendent foundations. To make it clearer, Elmalılı makes a distinction between *dhimma bi al-quwwa* (potential) and *dhimma bi al-fi'il* (actual). While *dhimma bi al-fi'il* exists at the time of a covenant made between man and man in the world as we have seen in the verses above; *dhimma bi al-quwwa* exists in an innate agreement between man and Allah ﷻ.<sup>73</sup>

وَإِذْ أَخَذَ رَبُّكَ مِن بَنِي آدَمَ مِن ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَىٰ أَنفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَىٰ شَهِدْنَا أَن تَقُولُوا  
يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ

And [mention] when your Lord took from the children of Adam - from their loins - their descendants and made them testify of themselves, [saying to them], "Am I not your Lord?" They said, "Yes, we have testified." [This] - lest you should say on the day of Resurrection "Indeed, we were of this unaware."

*Dhimma* existing in this divine covenant between man and Allah ﷻ constitutes the foundation of *dhimma* of the worldly covenant between man and man. The Covenant of man with Allah ﷻ occupies a central position in Islam where Allah ﷻ asked *Alastu*

<sup>72</sup> Sadr al-Sharia', *al-Sharh al-Tawdhih 'ala al-Tanqih*, (Qairo : al-Matba'a al-Khayriyya, 1322) vol.3, 154-156.

<sup>73</sup> Yazır, *Hak Dini Kur'an Dili*, vol.4, 467.

*bi rabbikum?* “Am I not your Lord?” man answered *Balaa!* “Yes, indeed!”. According to Elmalili, here *dhimma bi al-quwwa* appears in an innate agreement which is the natural ability of human being to testify Allah ﷻ and His oneness.<sup>74</sup>

With his acknowledgement of Allah ﷻ as his Lord, man promised *‘ubudiyyah* (servitude) to his Lord and became responsible for *huququllah*. This is a term literally denotes “the rights of Allah ﷻ”; however, in this context indicates the responsibilities of the human being either towards Allah ﷻ or towards others as the latter is considered within the scope of the first. Scholars attract attention that there must be a qualification in human beings providing them that eligibility to become responsible with *huququllah*; and according to them that qualification is *dhimma*. Through *dhimma*, man becomes competent for *wujuub* (obligations), for having responsibilities in the world.<sup>75</sup>

### **Responsibility of Amanah (the Trust): al-Ahzab 72**

The second verse in which the notion of *dhimma* is rooted is [33:72]. It tells about the trust given to mankind at the time of creation, for which he is held responsible.

إِنَّا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمَاوَاتِ وَالْأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْإِنْسَانُ إِنَّهُ كَانَ ظَلُومًا جَهُولًا

*Indeed, we offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed, he was unjust and ignorant.*

By acknowledging Allah ﷻ as his Lord, man promised to undertake the responsibility of *amanah* (the trust) which before him was offered to the heavens, earth, and mountains but none of them was able to undertake it. Attas states that because man is created as *khalifa* (vicegerent) of Allah ﷻ who holds the trust of government in this world; *amanah* means to rule according to Allah ﷻ’s law in the world. Ruling in the sense that doing justice to all creatures. Beside this external aspect of ruling; it is also man’s ruling of himself in moral sense.<sup>76</sup> In a similar manner, scholars say *amanah* stands for *al-takleef al-shari’* (duty) for which the human is held responsible in the world and become *mukallaf* (responsible). It must be given to one who is competent

<sup>74</sup> Ibid., 466.

<sup>75</sup> Sadr al-Sharia’, *al-Sharh al-Tawdhih ‘ala al-Tanqih*, vol.3, 154.

<sup>76</sup> Al-Attas, *Islam and Secularism*, 66.

to undertake it willingly and who is trusted to fulfil it as the root of *amanah* is *amena-ya'munu* which means to trust, rely on, and believe.<sup>77</sup> In order to fulfil *amanah*, be capable and eligible for receiving the duty given by God, man should have a specific characteristic that differentiates him from rest of the creature. This is again his *dhimma*.<sup>78</sup>

### Locus of the Deeds: al-Isra 13

Another verse related to *dhimma* is [17:13]. In this verse an old habit of Arab community towards *khayr* (good) and *sharr* (evil) is altered in accordance with the understanding of the religion through a metaphorical usage:

وَكُلَّ إِنسَانٍ أَلزَمْنَاهُ طَائِرَهُ فِي عُنُقِهِ وَنُخْرِجُ لَهُ يَوْمَ الْقِيَامَةِ كِتَابًا يَلْقَاهُ مَنشُورًا

And [for] every person We have imposed his bird upon his neck, and We will produce for him on the Day of Resurrection a record which he will encounter spread open.

Before Islam, Arabs were used to foretell about good and bad in their destiny by looking at the flying direction of birds. If the bird flew from left to right that would mean good fortune whereas if it is the opposite that would mean bad fortune.<sup>79</sup> They were considering the bird as the reason for the good and bad. The verse sheds light on the real reason of them which is man's own actions, attitudes, and inclinations that determine what he will encounter in his fate.

In the verse, the bird symbolizes deeds of the human and the neck is his *dhimma* where the meaning is "We have fastened every man's deeds to his *dhimma*". How a necklace requires a neck to be put on, deeds require a *dhimma* to be associated with. *Dhimma* in this sense is like a locus where deeds of the human exist.<sup>80</sup> Molla Hüsrev (885/1480) states according to the verse, *dhimma* is a prerequisite for deeds, for them to exist; therefore, *dhimma* must exist in each person.<sup>81</sup> Elmalılı clearly mentions *dhimma* in this verse, stating that each person's good or bad fate that will come from 'alam al-ghayb (transcendence) is attached to his *dhimma*. His destiny depends on

<sup>77</sup> Yazır, *Hak Dini Kur'an Dili*, vol.6, 579-580.

<sup>78</sup> Sadr al-Sharia', *al-Sharh al-Tawdhih 'ala al-Tanqih*, vol.3, 156.

<sup>79</sup> Al-Taftazani, *Talwih*, vol.3, 156. Printed in: Sadr al-Sharia's *al-Sharh al-Tawdhih 'ala al-Tanqih*, (Qairo : al-Matba'a al-Khayriyya, 1322).

<sup>80</sup> Sadr al-Sharia', *al-Sharh al-Tawdhih 'ala al-Tanqih*, vol.3, 156.

<sup>81</sup> Molla Hüsrev, *Khashiya 'ala al-Talwih*, vol.3, 154-155. Printed In Sadr al-Sharia's *al-Sharh al-Tawdhih 'ala al-Tanqih*.

his own actions and inclinations in the world; he bears the responsibility of his deeds, the records of which would be shown to him on the day of judgement in an open book.<sup>82</sup>

### Foundation of the Rights: al-Baqara 29 & al-Hud 6

Other verses where *dhimma* is found implicitly are [2:29] and [11:6]. It is distinctively apparent in the first three verses where *dhimma* is the basis of eligibility for having responsibilities (responsibility of *huququllah*, responsibility of *amanah*, and his deeds). However, in these two verses *dhimma* occurs in order to lay the foundation of rights.<sup>83</sup> Note that scholars mention these two verses as examples and draw attention to the fact that all the verses which have a similar content indicate the rights of the human.

هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا ثُمَّ اسْتَوَىٰ إِلَى السَّمَاءِ فَسَوَّاهُنَّ سَبْعَ سَمَاوَاتٍ وَهُوَ بِكُلِّ شَيْءٍ عَلِيمٌ

*It is He who created for you all of that which is on the earth. Then He directed Himself to the heaven, [His being above all creation], and made them seven heavens, and He is Knowing of all things.*

وَمَا مِنْ دَابَّةٍ فِي الْأَرْضِ إِلَّا عَلَى اللَّهِ رِزْقُهَا وَيَعْلَمُ مُسْتَقَرَّهَا وَمُسْتَوْدَعَهَا كُلٌّ فِي كِتَابٍ مُبِينٍ

*And there is no creature on earth but that upon Allah is its provision, and He knows its place of dwelling and place of storage. All is in a clear register.*

The human being has the right to make use of all those blessings on the earth, which are ensured by Allah ﷻ as *rizq*, provision, sustenance for him to be able to continue his life in the world. Therefore, he must be carrying an attribute that makes him eligible for having that right to make use of the creation. Having such a right is again rooted in a qualification of human, which is his *dhimma*.<sup>84</sup> *Dhimma* indicates that a person is capable for having rights to benefit from what Allah ﷻ provides for him and all of that which is on earth. Because man is *ashraf al-makhluqat* (the noblest of Allah ﷻ's creation), the rest of the creation is put for the service of humankind. Elmalılı points out Allah ﷻ created all that is on earth in order to create the human being and make him live contentedly on earth. Allah's making the creation

<sup>82</sup> Yazır, *Hak Dini Kur'an Dili*, vol.5, 488.

<sup>83</sup> Sadr al-Sharia', *al-Sharh al-Tawdhih 'ala al-Tanqih*, vol.3, 156.

<sup>84</sup> Molla Hüsrev, *Khashiya 'ala al-Talwih*, vol.3, 155-156.

subservient to humankind means that for him there is a right to benefit from what is on earth.<sup>85</sup> This is the right obtained upon having *dhimma*.

## 2.2. Dhimma in the Hadith

*Dhimma* occurs in *hadiths* in various contexts either in a single form or in the phrase like *dhimma* of Allah ﷻ and *dhimma* of the Prophet ﷺ. In its single form *dhimma* mostly refers to inviolability of a person, security, and assurance of his life; and others' duty to protect it. This inviolability can be provided as a result of a covenant of protection or simply as a result of another person's –a reputed and prestigious one in the case of *jahiliyyah*- giving protection to someone that he wants to safeguard. On the other hand, *dhimma* of Allah ﷻ and the Prophet ﷺ denote the same meaning, the divine protection over man in this world and in the afterlife. They refer to the same meaning as stated by 'Omar when companions asked for an advice. He told them to "fulfil *dhimma* of Allah ﷻ as it is *dhimma* of the Prophet ﷺ." Note that there are *hadiths* where *dhimma* occurs in a single form and the explanation of *hadith* indicates if it is *dhimma* of Allah ﷻ or another human being.

### 2.2.1. Dhimma of Allah ﷻ

In *hadiths* *dhimma* of Allah ﷻ occurs in relation with three responsibilities namely one's responsibility towards Allah ﷻ, towards oneself and towards other people. Apart from these, *dhimma* of Allah ﷻ passes in *hadiths* in relation with making prayer. Each of these are defined as incentives to attain *dhimma* of Allah ﷻ, the divine protection.

Regarding the responsibility towards Allah ﷻ; *hadith* states "Whoever offers *salaat* (prayer) like us and faces our *qibla* (Ka'ba), and eats our slaughtered animals is a Muslim and is under Allah's and His Messenger's *dhimma* (protection). So do not betray Allah ﷻ by betraying those who are in His *dhimma*."<sup>86</sup> Here *dhimma* comes in the meaning of protection and safety given by Allah ﷻ to a person who fulfils his responsibility towards Him.

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<sup>85</sup> Yazır, *Hak Dini Kur'an Dili*, vol.1, 289.

<sup>86</sup> Muhammad al-Bukhari, *Sahih al-Bukhari*, ed. Muhammad al-Naser, (Dar Tawq al-Najaah, 1422 A.H.) vol.1, 87. (hadith no: 391)

Likewise two other *hadiths* stress the importance of *salaat* (five daily prayers) and particularly the importance of *fajr* (the dawn prayer) in relation to *dhimma* of Allah ﷺ: “Who prayed the morning prayer he is in fact under the *dhimma* of Allah ﷺ.”<sup>87</sup> and “Do not neglect any prescribed prayer deliberately, for whoever neglects it deliberately no longer has the *dhimma* of Allah ﷺ.”<sup>88</sup> In these three *hadiths*, *dhimma* of Allah ﷺ is associated with fulfilling religious requirements and a special stress is put on *salaat*.

Another responsibility associated with *dhimma* of Allah ﷺ is taking care of his own *nafs* (self, life) and his property.<sup>89</sup> Regarding the life, The Prophet ﷺ states “If anyone spends the night on the roof of a house without a protection (stones that prevent him from falling down), Allah ﷺ's *dhimma* (protection over him) no longer applies”<sup>90</sup> because he does not take measures to secure his own life. Regarding the property, *hadith* occurs in the context of having a new dress and points a certain demeanour before starting to use it. The Prophet ﷺ says: “Whoever puts on a new garment and says: Praise be to Allah ﷺ who has clothed me in something with which I conceal my nakedness and adorn myself in my life<sup>91</sup>, then takes the garment that has worn out, or that he had taken off and gives it to charity, he will be under *dhimma*, shelter and care of Allah ﷺ, whether he lives or dies.” *Hadith* indicates there should be a certain manner to be followed in dealing with one's property which in the end brings *dhimma* of Allah ﷺ.

The third responsibility related to Allah ﷺ's *dhimma* is responsibility towards other people. The special case mentioned in *hadith* is not to encroach on others' right of food by stocking it with an intention of selling when the prices rise and to result in anyone to be deprived of food during one night. Prophet ﷺ states: "Whoever hoards food for forty nights is free from Allah ﷺ the Exalted, and Allah ﷺ is free from him.

<sup>87</sup> Muslim al-Naysaburi, *Sahih Muslim*, ed. Muhammad ‘Abd al-Baqi, (Beirut: Dar Ihya al-Turath al-‘Arabi), vol.1, 454.

<sup>88</sup> Ibn Majah, *Sunan Ibn Majah*, ed. Shu’ayb al-Arna’ut, (Dar al-Risala al-‘Alamiyya, 2009), vol.5, 161.

<sup>89</sup> These are considered as the objectives of *Sharia*’ so called *maqasid as-shari’ah* which are always to be preserved and promoted by law. All *Maqasid as-shari’ah* are six: *deen* (religion), *nafs* (life), *‘aql* (intellect), *nasl* (lineage), *irdh* (honor, dignity) and *maal* (property).

<sup>90</sup> Abu Dawud, *Sunan Abi Dawud*, ed. Muhammad al-Hameed, (Beirut: al-Maktaba al-‘Asriyya), vol.4, 310.

<sup>91</sup> Ahmad bin Hanbal, *Musnad Al-Imam Ahmad bin Hanbal*, ed. Shu’ayb al-Arna’ut, (Muassasat al-Risalah, 2001), vol.1, 396.

The prayer in Arabic: الْحَمْدُ لِلَّهِ الَّذِي كَسَانِي مَا أُوَارِي بِهِ عَوْرَتِي ، وَأَتَجَمَّلُ بِهِ فِي حَيَاتِي .

If anyone spent a night in that town and he remained hungry till morning, Allah ﷻ 's *dhimma* for that town came to an end.”<sup>92</sup> Note that here *dhimma* of Allah ﷻ is taken away not only from the person who stocked the food but from the whole town that did not prevent the wrongdoing.

Another *hadith* relates *dhimma* of Allah ﷻ with Muslims' responsibility towards non-Muslims with whom a covenant of protection is made. The Prophet ﷺ says "Indeed, whoever kills a *mu'ahid* that has a covenant from Allah ﷻ and a covenant from His Messenger (ﷺ), then he has violated the covenant with Allah ﷻ, so he shall not smell the fragrance of paradise; even though its fragrance can be sensed from the distance of seventy autumns”.<sup>93</sup> In another *hadith* Prophet ﷺ advises Muslims “to fulfil Allah ﷻ's *dhimma* (the covenant made with non-Muslims) as it is the *dhimma* of your Prophet” and also it is “the source of the livelihood of your dependents”.<sup>94</sup> Therefore, the covenant made with non-Muslims is considered as a covenant with Allah ﷻ and it is a must to abide by it.

Finally, the *dhimma* of Allah ﷻ occurs in *hadith* relating to a prayer the Prophet ﷺ makes when he sets out on a journey. He says “O Allah ﷻ You are the companion on the journey, and the caretaker for the family, O Allah ﷻ, accompany us with your advice, and return us in your *dhimma*, O Allah ﷻ, I seek refuge in You from the difficulties of the journey, and from returning in great sadness.”<sup>95</sup> In this instance, the divine protection is asked through a prayer specifically in the case of travelling, indicating the importance of asking for the divine protection before a difficult task.

One important point to be mentioned about *dhimma* of Allah ﷻ is its timelessness aspect. In the *hadith* stating the prayer for a new garment, *dhimma* of Allah ﷻ is not restricted with worldly life as the Prophet ﷺ says “he will be under *dhimma*, shelter and care of Allah ﷻ, whether he lives or dies.” The protection reaches beyond time in this world and embraces the afterlife. This aspect of *dhimma* is also seen in another *hadith* where the Prophet ﷺ prays in a funeral for the dead: “O Allah ﷻ, so-and-so

<sup>92</sup> Ibn Hanbal, *Musnad*, vol.8, 481-482.

<sup>93</sup> Muhammad al-Tirmidhi, *Sunan al-Tirmidhi*, ed. Bashshar Ma'ruf, (Beirut: Dar al-Gharb al-Islami,1998), vol.3, 72.

<sup>94</sup> al-Bukhari, *Sahih al-Bukhari*, vol.4, 98.

<sup>95</sup> Ahmad bin Hanbal, *Musnad Al-Imam Ahmad bin Hanbal*, vol.15, 111.

The prayer in Arabic: اللَّهُمَّ أَنْتَ الصَّاحِبُ فِي السَّفَرِ وَالْخَلِيفَةُ فِي الْأَهْلِ اللَّهُمَّ اصْنَعْنَا بِصُحْبِكَ وَأَقْلِبْنَا بِدِيَمَتِكَ . اللَّهُمَّ ارْزُقْنَا الْأَرْضَ وَاللَّهُمَّ ارْزُقْنَا السَّفَرَ وَكَاتِبَةَ الْمُتَقَلَّبِ وَهَوْنُ عَلَيْنَا السَّفَرَ اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنْ وَعْنَاءِ السَّفَرِ وَكَاتِبَةِ الْمُتَقَلَّبِ



the son of so-and-so is in your *dhimma* and in your case. Protect him from the trial of the grave and the torment of the fire, for you are the one who keeps the promise and you are the truth. Forgive him and have mercy on him, for you are the oft-forgiving, most merciful.”<sup>96</sup> These examples indicate that *dhimma*, the divine protection, is time-boundless.

### 2.2.2. *Dhimma* of People

The second type of *dhimma* mentioned in *hadiths* is *dhimma* as an inviolability given to a person by some other person. A *hadith* states the provisions when combating with non-Muslims and says at the end of it “If you lay siege to them and they want you to give them *dhimma* of Allah ﷻ and your Prophet ﷺ, do not give them *dhimma* of Allah ﷻ and your Prophet ﷺ, rather give them your *dhimma* and *dhimma* of your fathers and your companions; for if you violate your *dhimma* and *dhimma* of your fathers, that is easier than violating *dhimma* of Allah ﷻ and *dhimma* of His Messenger.”<sup>97</sup> Therefore, *dhimma* of Allah ﷻ and that of His Prophet ﷺ is distinct from *dhimma* of people - towards Muslims or non-Muslims- Muslims are commanded to give their own *dhimma* to non-Muslims who are besieged and asked for protection. Then they are covenanted with and provided inviolability.

*Dhimma*, referred to meaning of a protection provided by a person. This occurs in another *hadith* in relation to Muslims responsibility to guard each other’s *dhimma*. When anyone of them provides *dhimma* to a person, it is the responsibility of the rest of the Muslims to respect his *dhimma* and protect the person under *dhimma*. If someone violates *dhimma* of a Muslim by harming that person under protection, he incurs “the curse of Allah, the angels and all the people, none of his compulsory or optional good deeds of worship will be accepted...”<sup>98</sup> Violation of *dhimma* of a person is encroachment of his right hence all are liable to abide by his *dhimma*.

One example of this happens at the time of the Prophet ﷺ when a Jew gives superiority to the Prophet Musa a.s. over all human beings. Hearing that one of the people of Medina slaps him. However, the Jew has *dhimma*, the protection of Muslims; therefore, he goes to the Prophet ﷺ and complains about the situation: "O

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<sup>96</sup> Ibn Hanbal, *Musnad*, vol.25, 400.

<sup>97</sup> Ibn Majah, *Sunan Ibn Majah*, vol.4, 119.

<sup>98</sup> al-Bukhari, *Sahih al-Bukhari*, vol.3, 20.

Abu-l-Qasim! I have *dhimma* and covenant, so what right does so-and-so have to slap me?"<sup>99</sup> The Prophet ﷺ asked that person why he did that and he made an explanation. In the end, anger appeared on the face of the Prophet ﷺ and said them not to give superiority to any prophet amongst the prophets of Allah ﷻ.

In another *hadith*, Prophet ﷺ says "You would soon conquer Egypt and that is a land which is known as the land of *qirat*.<sup>100</sup> So, when you conquer it, treat its inhabitants well for they have *dhimma* (inviolability) and *rahim* (blood-tie)"<sup>101</sup> or rather than *rahim* he says *sihr* which is relationship occurs as a result of marriage. This means people of Egypt have inviolability and there lays upon Muslims the responsibility to protect them because of their kinship or affinity relationship by marriage.

The Prophet ﷺ states "If a slave runs away from his master, *dhimma* is absolved from him."<sup>102</sup> In this case, *dhimma* occurs in single form which is explained in two ways: First, it might mean *dhimam*, the sanctity and inviolability keeping him safe from any kind of harm. The other meaning is *dhimma* of Allah ﷻ and the Prophet ﷺ meaning their protection, assurance, and guardianship as seen in the section above.

Note that *dhimma* is not a term occurred with Islam, rather it had been using by Arabs in the meaning of a bond of protection that a person gives to someone by declaring it publicly. *Dhimma* was considered sacred and an issue of honour. An example passes in a *hadith*. It was when Abu Bakr r.a. had to leave Mecca and go to Ethiopia because of increasing oppression on Muslims. On his way, a man of high status came across him and prevented him from moving by mentioning his good characteristics and said he is taking him under his protection. People of Quraysh accepted to observe that protection on the condition that Abu Bakr r.a. would do his worshiping inside his home since his recitation of Qur'an publicly was drawing the women and children of Quraysh to Islam. However, after a while Abu Bakr r.a. started to practice religion in a mosque he built in the courtyard of his house. This tempted the people of Quraysh and they asked that man to withdraw his protection. He came to Abu Bakr r.a. and said: "You know the conditions on which I gave you protection, so you should either abide by those conditions or revoke my *dhimma*

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<sup>99</sup> al-Bukhari, *Sahih al-Bukhari*, vol.4, 159.

<sup>100</sup> Qirat is a currency unit used in Egypt at that time and unknown within this society.

<sup>101</sup> Ibn Hanbal, *Musnad*, vol.35, 409.

<sup>102</sup> Ibid., vol.31, 494.

(protection)”<sup>103</sup> and Abu Bakr r.a. answered him "I revoke your pledge of protection and am satisfied with Allah’s protection." Before Islam in the Arab society, providing *dhimma* was a privilege of rich and high status men as their *dhimma* was respected and observed in the society. However, with Islam, giving protection became a right bestowed to Muslims of any status as declared in *hadith*: “*Dhimma* granted by any Muslim is to be secured by all the Muslims, even if it is granted by one of the lowest social status among them.”

The meanings of *dhimma* appeared in the Qur’an and *hadiths*, like the covenant of protection, assurance, safety, inviolability, and the divine protection are all in the context of the rights and responsibilities of the human being. Therefore, *dhimma* is conceptualized within the Islamic Jurisprudence in order to lay the foundation of the rights and responsibilities. Following chapter analyses *dhimma* from this perspective and sheds light on its relation to the self of the human.

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<sup>103</sup> al-Bukhari, *Sahih al-Bukhari*, vol.3, 98.

## CHAPTER 3

### DHIMMA IN ISLAMIC JURISPRUDENCE

This chapter elaborates the concept of *dhimma* within two main bodies of Islamic jurisprudence which are *usul al-fiqh* (literally means roots of law and indicates the theoretical and philosophical foundation of Islamic Law) and *furu' al-fiqh* (literally means branches of law and indicates the Islamic Law). In *usul al-fiqh*, *dhimma* constitutes the metaphysical basis for the rights and duties of the humankind. Muslim scholars developed this interpretation based on the Covenant and the trust (*amanah*) which Allah ﷻ gave to man at the time of his creation. On the other hand, in *furu' al-fiqh*, *dhimma* operates as a function of this theoretical meaning. In the last part of this chapter, I present the Hanafi account that develops a theory of *ahliyya* (legal capacity) and approaches to *dhimma* in a unique way.

#### 3.1. Dhimma in Usul al-Fiqh

##### 3.1.1. An Attribute of Human Being

In *usul al-fiqh*, *dhimma* expresses an attribute by which a person becomes eligible for possession of rights and duties.<sup>104</sup> In Arabic it is stated as *wasfun yaseeru bihi al-insanu ahlan limaa lahu wa limaa alayhi*. While one's rights are expressed with the word *lahu* which means the rights that are on behalf of him; his obligations is expressed with the word *alayhi* which means the rights that are against him, rights of others on him.<sup>105</sup> In this sense, another definition of *dhimma* is given as the quality that makes a person eligible for *ilzaam* and *iltizaam*.<sup>106</sup> *Ilzaam* means one's having

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<sup>104</sup> Sadr al-Sharia', *Sharh al-Tawdhih 'ala al-Tanqih*, (Qairo : al-Matba'a al-Khayriyya, 1322) vol.3, 152.

<sup>105</sup> For a detailed discussion of the concepts of rights and duties in the Islamic Law see: Hasan Hacak, "İslam Hukukunun Klasik Kaynaklarında Hak Kavramının Analizi," (PhD. Diss., Marmara Üniversitesi, 2000), 81-88.

<sup>106</sup> Shahabattin al-Qarafi, *al-Furuq*, ('A lam al-Kutub), vol.3, 231.

an obligation on the others by having rights on them whereas *iltizaam* means one's having an obligation for others as a result of their rights on him.

This meaning of *dhimma in usul al fiqh*, to a large extent corresponds with "personhood" in the modern legal theory though these two display essential differences.<sup>107</sup> This is what makes an individual a proper subject of law; a person in legal sense that bears rights and responsibilities. An individual becomes responsible for the consequences of his actions in the eyes of law through his personhood. This is also expressed with the accountability before the law. One's having *dhimma* enables others to hold him responsible for his actions and expect him to fulfil his responsibilities towards them. Through *dhimma*, an individual becomes accountable not only legally, but also religiously and morally.<sup>108</sup>

Sa'd al-Din al-Taftazani (792/1390) states there is a distinguishing characteristic of humankind versus other creatures which enables him to have rights on others and also others to have rights on him. This characteristic makes a person eligible and capable for bearing responsibilities and provides him distinctive competencies which are unique to humankind. So far from the description of Taftazani, one might think that this qualification is 'aql (intellect) as it is distinctive to human. However, this is not the case as Taftazani draws attention to the fact that certain rights and duties are also valid for the insane. This characteristic special to humankind is *dhimma*, the locus of obligation whereas intellect functions as the tool for comprehension and discernment.<sup>109</sup> A person might lack the mental faculty of 'aql. However, all human beings are born with *dhimma* in contrast to animals.<sup>110</sup>

### 3.1.2. *Dhimma* in Different Schools of Thought

Definition and scope of *dhimma* vary according to the different schools within Islamic jurisprudence. While some theorists define it as an attribute of human being,

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<sup>107</sup> 'Abd al-'Aziz Abu Ghanima, *Tabi'atu Huquq al-Dainin fi al-Tarakati wa Atharuha fi al-Ahkami al-Tarikat*, (Cairo: 1982), 30.

Also see: Eyyüp Said Kaya and Hasan Hacak, "Zimmet" in *TDV İslam Ansiklopedisi*, (İstanbul: TDV İslam Araştırmaları Merkezi, 2006), vol.44, 425.

<sup>108</sup> Recep Şentürk, "Minority Rights in Islam: From Dhimmi to Citizen", ed. Shireen T. Hunter and Huma Malik, in *Islam And Human Rights: Advancing a U.S-Muslim Dialogue*, (Washington: Center for International and Strategic Studies (CSIS), Significant Issues Series, 2005), 73.

<sup>109</sup> Al-Taftazani, *Al-Talwih ila Kashf Haqiq al-Tanqih*, vol.3, 154 in Sadr al-Sharia', *Sharh al-Tawdhih 'ala al-Tanqih*.

<sup>110</sup> Al-Jurjani, *Kitab al-Ta'rifat*, (Beirut: Dar al-Kutub al-'Ilmiyya, 1983), 107.

others lay emphasis on the possessor of *dhimma*, the individual himself and define it as the self of human being. Either being approached as an attribute or the self, the main difference among the definitions lies in the scope of *dhimma*. Shafi'i, Hanbali, and Maliki scholars deal with the issues related to *dhimma* and *ahliyya* (capacity) under the general heading of *takleef* (duty) within Islamic Jurisprudence. On the other hand, Hanafis treated *dhimma* under a separate title of *ahliyya* where they develop a theory to explain *ahliyya* within which they approach *dhimma* in a different way.

Legal theorists from the Hanafi School define *dhimma* on the basis of division of *ahliyya* which is "the capacity" of a human being. They divide it as *ahliyya al-wujuub* and *ahliyya al-adaa* and regard *dhimma* as the source of *ahliyya al-wujuub*. I will elaborate this division in the last part of this chapter. On this basis, Hanafi scholars define *dhimma* as an attribute of a human being through which he becomes eligible for having rights and duties.<sup>111</sup> According to this approach, the origin of *dhimma* is the creation and since then every baby born alive has *dhimma*.

Qarafi (684/1285) from the Maliki School of thought ascribes a more specific meaning to *dhimma*. According to him, *dhimma* is an implicit meaning in *mukallaf* (the responsible person) enables him to generate an obligation on others by having rights on them (*ilzaam*) and enables him to be obliged by others as a result of their rights on him (*iltizaam*).<sup>112</sup> In other words *dhimma* is the eligibility of a responsible person to oblige and be obliged before the law. He restricts *dhimma* by laying the condition of being a *mukallaf* which starts with the age of discernment and puberty; and excludes those who do not meet that condition from the extent of *dhimma*. However, this oppose to the general view of Maliki school which recognizes *dhimma* for child and insane too.<sup>113</sup> Similarly, Bahuti (1051/1641) from the Hanbali school of thought specifies *dhimma* as an attribute of the responsible person (*mukallaf*) that enables him for *ilzaam* and *iltizaam*. However, he verifies *dhimma* also for the child in his same book *Kashshaf al-Qina'*.<sup>114</sup>

<sup>111</sup> Sadr al-Sharia', *Sharh al-Tawdhih 'ala al-Tanqih*, vol.3, 152.

<sup>112</sup> Shahab al-Din al-Qarafi, *al-Furuq*, ('Alam al-Kutub), vol.3, 233.

<sup>113</sup> Abu Ghanima, *Tabi'atu Huquq al-Dainin*, 23.

This definiton of *dhimma* in the usul al-fiqh is: معنى مقدر في المحل يصلح للزام والاتزام

<sup>114</sup> *Ibid.*, 24.

Shafii' School of law offers a different definition for *dhimma*. According to al-'Izz bin Abd al-Salam (660/1262), a leading Shafi'i, *dhimma* is a meaning which implies a locale that qualifies its holder to oblige others and be obliged by others.<sup>115</sup> Since here *dhimma* corresponds with the locality, it is sometimes interpreted as *dhimma* of legal entities like *waqf*, mosque or hospital; along with *dhimma* of individuals. However, attributing *dhimma* to entities results in various theoretical problems in the legal theory; therefore, it is not a preferred usage.

The common idea on which all schools of thought agree is that *dhimma* constitutes the basis for obligations. Hanafis base the rights on *dhimma* along with obligations. Whereas other schools of thought are of the opinion that *dhimma* is only for obligations because the rights of a person exist in *dhimma* of the other party who is obliged towards that person. All in all, if a person can be associated with an obligation, either from his side or from the other side; he must have *dhimma* which would be the basis of that obligation.<sup>116</sup>

### 3.1.3. *Ahliyya vs Dhimma*

*Ahliyya* is one of the most essential topics of Islamic jurisprudence as it is also very much related to *dhimma*. *Ahliyya* and *dhimma* might be mixed or used interchangeably by mistake because of their close denotation; however, they are used to express different meanings in the Islamic jurisprudence.

Linguistically *ahliyya* means the capacity, capability and aptitude. One's having *ahliyya* for something means that he has the capacity for that thing to emanate from him and for others to request that thing from him and his capacity for accepting that request.<sup>117</sup> Terminologically *ahliyya* is defined as one's capacity to be an addressee of obligation, the capacity to oblige and to be obliged.<sup>118</sup> In other words *ahliyya* expresses a person's capacity for the rights and duties to be binding on him.<sup>119</sup> *Dhimma* however, is an attribute that enables one to have that capacity, to be eligible

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<sup>115</sup> Ahmad al-Hanafi, Ghamz 'Uyūn al-Basa'ir fi Sharh Kitab al-Ashbah wa al-Nazair, (Dar al-Kutub al-'ilmiyyah: 1985), vol.4, 6.

<sup>116</sup> Abu Ghanima, *Tabi'atu Huquq al-Dainin*, 25.

<sup>117</sup> Abdulaziz al-Bukhari, *Kashf al-Asrar*, ed. Muhammad al-Mu'tasim Billah al-Baghdadi, (Beirut: Dar al-Kutub al-'Arabiyya, 1997), vol.4, 393.

<sup>118</sup> Mahmud Majid bin Su'ud al-Kubaysi, *al-Saghir Bayna Ahliyya al-Wujub wa Ahliyya al-Adaa*, (Qatar:1983), 81.

<sup>119</sup> Abdulaziz al-Bukhari, *Kashf al-Asrar*, vol.4, 393.

for the possession of rights and duties. *Dhimma* is a characteristic of human that gives one the capacity of *ahliyyah*. It can be explained as *dhimma* is a conjectural entity existing in human being and *ahliyya* is one of most important characteristics of that entity.<sup>120</sup>

*Ahliyya* comes into existence gradually in accordance with one's intellect and mental development. To be able to say a person has *ahliyya*, his intellect and discernment ability should have developed in stages. On the other hand, for *dhimma* the mere life of a person is enough. Each person has *dhimma*; however their *ahliyya* can either be complete or partial in accordance with their mental ability. In other words a person can have *ahliyya* partially; however his *dhimma* is either there or not.

#### 3.1.4. Razi's Criticism of *Dhimma*

There are scholars who oppose the concept of *dhimma* and do not accept its existence. For them *dhimma* is an invented attribute that does not exist in reality and the only meaning of *dhimma* is *ahd*, covenant. According to this view, the source of rights and duties is divine command and the locus of them is the self of the human being; not an invented concept like *dhimma*. The expression of "*thabata fi dhimmatih*" is used to express that an obligation became fixed in one's *dhimma* and in fact means that obligation is fixed in his covenant.

Fakhr al-Din al-Razi, being of them, says that *dhimma* is one of the nonsense of *fuqaha* that the human reason and law are not in need of.<sup>121</sup> According to him, divine command decreed in pre-eternity and therefore it cannot be based on an originated (*muhdath*) concept like *dhimma*. Allah ﷻ commands the fulfilment of the duties and duties become binding for human being. An intermediary concept as *dhimma* between divine command and human being is redundant. Plenty of scholars like Abdulaziz al-Bukhari, Sadr al Shari'a, Molla Hüsrev, Siraj al-Din al-Urmewi, Shahab al-Din al-Qarafî, and Fenari Hasan Çelebi oppose this view.<sup>122</sup> According to them divine command is eternal; however, its applicability to human beings is nevertheless originated and not eternal. They accuse Razi of ignoring the meanings *dhimma* gained within *usul* and *furu' al-fiqh*. *Dhimma* is not different than any other

<sup>120</sup> Abu Ghanima, *Tabi'atu Huquq al-Dainin*, 25-26.

<sup>121</sup> Fakhr al-Din al-Razi, *al-Mahsul*, (Mu'assasah al-Risalah, 1997) vol.5, 320.

<sup>122</sup> Kaya and Hacak, "Zimmet", 427.



concept developed in order to describe, interpret, and expand knowledge within *al-fiqh* as well as in other disciplines.

Abdulaziz al-Bukhari says those who assert *dhimma* does not have any meaning, are the ones who do not perceive the smell of *fiqh*. They argue *dhimma* is one of the nonsense of *fuqaha* that the human reason and law are not in need of. However, *dhimma* is justified by the law and reason as it is proven by *ijma'* (the consensus of opinion, one of the four sources of the Islamic Law) and whoever disclaims *dhimma* is against *ijma'*.<sup>123</sup>

### 3.2. Dhimma in Furu' al-Fiqh

#### 3.2.1. The Container of Obligation

*Dhimma* has another meaning in *furu' al-fiqh* which is closely related to its meaning in *usul al-fiqh*. *Dhimma* in *furu al-fiqh* means the container of obligation.<sup>124</sup> Sometimes it is translated as the seat of obligation<sup>125</sup> however in Arabic it is implied with the word *wi'aa* which means pot, receptacle, and container. Therefore *dhimma* is described as the nominal place where one's obligations, either towards Allah ﷻ or towards people resides. Actually this meaning of *dhimma* in *furu al-fiqh* is a function of its meaning in *usul*. While in *usul*, *dhimma* is the qualification of human being through which he becomes eligible for acquiring rights and responsibilities; in practice *dhimma* expresses an abstract domain, space for these rights and responsibilities. Therefore, in the practical usage it is said that *thabata fi dhimmatih* in order to express the obligations are firm, fixed in *dhimma* of a person. *Dhimma* comes as a place name (*ism al-makaan*) which allows to imagine *dhimma* as a container in which the obligations take place.

Although the meanings of *dhimma* in *usul* and *furu'* are closely related, following example would help to differentiate them: If someone has a debt, the place of that debt is his *dhimma*. This is the *furu'*, the practical meaning. However, in *usul*, theory, *dhimma* appears as the attribute of that person which makes him capable to become indebted to someone else. He can have this debt since he has *dhimma*. Note that here

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<sup>123</sup> Abdulaziz al-Bukhari, *Kashf al-Asrar*, vol.4, 394.

<sup>124</sup> Kaya and Hacak, "Zimmet", 425.

<sup>125</sup> Chafik Chéhata, "Dhimma" in *The Encyclopedia of Islam*, Ed. B.Lewis, Ch. Pellat and Schacht, (Leiden: Brill, 1991), vol2, 231.

the meaning of debt is not only in the financial sense rather it embraces all kinds of duties like the duty of daily prayer which appears in one's *dhimma* as he is obliged to Allah ﷻ in that sense. Considering the rights; while one's obligations take place in his own *dhimma*, his rights exist in the *dhimma* of his debtor. And again what makes him capable of having these rights is his *dhimma*.

The reason for jurists to associate that kind of obligations to *dhimma* is the lack of a physical object in the external world to be identified with that obligation. Until that obligation is fulfilled or an object is assigned to that obligation, it is required to find an abstract place for it to be able to claim its existence. This is because *ma'dum* (non-existent, absent) cannot be the subject of an agreement in the Islamic Law. Therefore, scholars identified *dhimma* as the place of that obligation.

*Dhimma*'s meaning in *usul* and *furu' al-fiqh* are highly interwoven and it cannot be said that *dhimma* corresponds to only one of these meanings as it would result in a loss in the meaning.<sup>126</sup> While the first meaning constitutes a basis for *dhimma* in the jurisprudence, its practical meaning operates as a function of the first.<sup>127</sup> While an individual becomes capable to have rights and duties through his *dhimma*, his duties exist in his *dhimma* until fulfilled.

### 3.2.2. Characteristics of *Dhimma*

*Dhimma* of a person comes into existence at the moment of birth and disappears at the time of death. As soon as a baby is born alive, she has *dhimma* which makes her qualified for the possession of duties; although the duties will gradually be binding on her later on. Therefore the main reason for *dhimma* is the mere fact of life.<sup>128</sup> Accordingly, a human being has rights by birth and these rights are given to him by Allah ﷻ regardless of whether the state recognizes them or not. State is not the source of the rights hence they cannot be taken away from the individuals.<sup>129</sup> Al-Ghazali (505/1111) says one's eligibility for having rights and duties is originated in humanity which is also considered as the source of intellect. Intellect enables one to

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<sup>126</sup> Mustafa Ahmad al-Zarqa, *al-Fiqh al-Islami fi thawbihi al-Jadid*, (Damascus: 1967), vol.3, 190. Also see: Kaya and Hacak, "Zimmet".

<sup>127</sup> Kaya and Hacak, "Zimmet".

<sup>128</sup> al-Kubaysi, *al-Saghir Bayna Ahliyya al-Wujub wa Ahliyya al-Adaa*, 95.

<sup>129</sup> Recep Şentürk, "Adamiyyah and 'Ismah: The Contested Relationship between Humanity and Human Rights in Classical Islamic Law" in *İslam Araştırmaları Dergisi*, 8 (2012), 39-69.

comprehend these rights and duties at a later period. However before that period, human being has the potential for that comprehension which also stems from his humanity.<sup>130</sup> Therefore rights and duties are attached to *dhimma* with birth. The ending time of *dhimma* is discussed by scholars and according to the majority it disappears with death.

It is discussed whether the unborn and the dead has *dhimma*. There are two cases related to their *dhimma* under some exceptional circumstances. For the unborn, the potential delivery of the foetus is a reason for some of her rights i.e. to inherit and bequeath to be preserved and in case she is born alive, she can benefit from these rights.<sup>131</sup> For example if a decedent has an unborn inheritor, in the womb of mother, the share of the baby is awaited until she is born. With the birth she becomes the owner of that share. Likewise, if her parent buys something before the birth and she is born alive she possesses that property. Al-Ghazali considers the life of the foetus as potentially exists and her life will actually exist with the delivery.<sup>132</sup> Therefore, ever since a foetus appears in a womb, she has the right to life as her parents and the society are responsible with protecting her life. That is why abortion is considered as illegal and those who intentionally cause miscarriage have to pay penalty.<sup>133</sup> It has been discussed whether the foetus has a partial *dhimma* considering these rights. However, they are accepted as exceptional cases and the beginning of *dhimma* is specified as the time of birth. Before the birth, foetus is attached to her mother and it cannot be said that she has a *dhimma* but she has the potential for having *dhimma*.

Regarding the deceased there is also an exception for *dhimma*. Some scholars are of the opinion that *dhimma* continues after the death in order to protect certain rights that might occur later on. These are the rights acquired after death as a result of some actions which are performed while alive. For example; if a person dies after setting up a fishing net and fishes are caught after he dies, he would have the right on these fishes although his *dhimma* disappeared with the death. Additionally if he has debts, they continue to exist in his *dhimma* until paid from his heritage. Therefore, some scholars argue *dhimma* gets weakened with the death but does not end until his rights

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<sup>130</sup> Muhammad al-Ghazali, *al-Mustasfa*, trans. Yunus Apaydm, (Istanbul : Klasik , 2006), vol.1, 84.

<sup>131</sup> Al-Sarakhsi, *Usul*, ed. Abu al-Wafa al-fAfghani, (Beirut: Dar al-Kutub al-‘Ilmiyya, 1992), vol.2 , 333.

<sup>132</sup> al-Ghazali, *al-Mustasfa*, vol.1, 84.

<sup>133</sup> Yazır, *Hak Dini Kur'an Dili*, vol.4, 346.

or others' rights on him are fulfilled via his inheritors. However, majority of the scholars accept the disappearance of *dhimma* with death and evaluate such circumstances as exceptions.

*Dhimma* in its original condition is free from any charges. This is a very famous principle in the Islamic jurisprudence articulated as “*al-aslu bara'ah al-dhimma*” meaning one's *dhimma* is originally clear of charges unless proven otherwise by evidence.<sup>134</sup> In the modern legal theory this principle corresponds to “innocent until proven otherwise” which points out that no one can be held accountable for anything if there is not any clear evidence for otherwise.

Another characteristic of *dhimma* is its being unique to each individual as one has only one *dhimma* and it cannot be divided or shared with someone else. *Dhimma* is linked to the self rather than property and this is what makes *dhimma* of a person unlimited.<sup>135</sup> This means a person may become indebted an amount of money more than his wealth, as well as he can owe something that does not belong to him. Moreover *dhimma* is taken as the container of obligation which can either be a sort of material or non-material obligation.<sup>136</sup> Religious duties like fasting and alms also appear in one's *dhimma*.

It has been discussed that whether *dhimma* is the self of human or the covenant. It is said that *dhimma* is *nafsun wa raqabatun laha ahdun*, the self of the human being who has a covenant.<sup>137</sup> This is the covenant made between Allah ﷻ and man at the time of creation. The reason for *dhimma* to be called as the self is to indicate that human being has obligations as a result of that covenant and any obligation which exists in one's *dhimma* is binding for the self on the basis of that covenant.<sup>138</sup> Calling *dhimma* as the self is also a metaphor used in Arabic which is uttering the place of something in order to imply the thing itself. (*Tasmiyyat al-mahal bi ism al-hal*).

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<sup>134</sup> Recep Şentürk, “Minority Rights in Islam: From Dhimmi to Citizen” in *Islam and Human Rights* Ed. by Shireen T. Hunter and Huma Malik (Washington, DC: Center for Strategic & International Studies, 2005), 67-99.

<sup>135</sup> al-Zarqa, *al-Fiqh al-Islami fi Thawbihi al-Jadid*, vol.3, 190.

<sup>136</sup> al-Zarqa, *al-Fiqh al-Islami fi Thawbihi al-Jadid*, vol.3, 191.

<sup>137</sup> Abu Zakariyya al-Nawawi, *Tahrir Alfaz al-Tanbih*, ed. ‘Abd al-Ghaniy al-Daqr (Damascus: Dar al-Qalaam, 1408 A.H.), 343

<sup>138</sup> Tahanawi, *Mawsu'ah Kashshaf Istilahat al-Funun*, vol.1, 826-827. Also see: Mahmud Majid bin Su'ud al-Kubaysi, *al-Saghir Bayna Ahliyya al-Wujub wa Ahliyya al-Adaa*, 86

Therefore, it is said that *dhimma* is the covenant that exists in the self, it is expressed with where it is, the self of human being.<sup>139</sup>

### 3.2.3. The *Dhimma* Agreement

Apart from being the container of obligation in *furu' al-fiqh*, *dhimma* passes in the topics related to non-Muslims with whom the *dhimma* agreement is made. The non-Muslim individuals living under in the Muslim state are called *dhimmi* and their community is called *ahl al-dhimma*. *Dhimmi* literally means a person with accountability and inviolability.<sup>140</sup> This is provided with the *dhimma* agreement which gives the individuals the right to personhood. Through this personhood they are provided rights and charged with obligations in the Muslim state.

Who can have the status of *dhimmi* varies according to different schools of thought. What is agreed upon is that Christians and Jews as *ahl al-kitaab* (the people of book) and the Zoroastrians can have *dhimma*. According to Hanafi School of thought, all non-Muslims except the Arab polytheists can have *dhimma* while Maliki School does not exclude them as well and bestow the *dhimmi* status to all non-Muslims. On the other hand Shafi' and Hanbali Schools give *dhimma* only to *ahl al-kitaab* and Zoroastrians.

*Dhimmis* have the legal status of *dhimmi* either through an agreement called *ahd al-dhimma* or through some other ways like *qarina* (a contextual indication).<sup>141</sup> The *dhimma* agreement is made after inviting the non-Muslims to Islam. If they do not want to accept the religion, they are asked to pay a certain tax in order to have the *dhimmi* status.<sup>142</sup> This agreement is made for ending the war and for non-Muslims to live in their place. The agreement is not binding for *dhimmis* as they have the right to rescind it on condition that they leave the country. On the other hand, it is binding for Muslims and cannot be abolished for no reason because being loyal to agreements is

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<sup>139</sup> al-Kubaysi, *al-Saghir Bayna Ahliyya al-Wujub wa Ahliyya al-Adaa*, 87.

<sup>140</sup> Şentürk, "Minority Rights in Islam: From *Dhimmi* to Citizen", 74.

<sup>141</sup> *Qarina* can be the act of a non-Muslim indicating he accepted *dhimma* of Muslims. For example, if *musta'man* continues to stay in the Muslim state after the time given to him is expired; this is considered as an indication that he has the *dhimmi* status which provides him personhood under the law. (*Musta'man* is a non-Muslim individual resides in the Muslim state for a temporary time and given to assurance to live and travel freely during that period of time. It is similar the person who has a visa.)

<sup>142</sup> Ahmad bin Hanbal, *Musnad*, vol.38, 78.

a binding duty. Muslim party can only abolish the agreement if the other party breaks it by violating terms of the agreement or betraying the state.

*Dhimmi*s have the same rights and responsibilities with Muslims except the right to public administration and some specific issues related to their religion. The general principle is articulated as *lahum ma lanaa wa 'alayhim ma 'alayna*, “They have the same rights and the same duties as us”, which indicates *dhimmi*s are fully and equally a part of the Muslim community.<sup>143</sup> Prophet ﷺ said whoever makes an injustice to a *dhimmi*, violates his rights, lays on him an obligation more than his capability and takes something from him without his consent, the Prophet ﷺ himself will be his prosecutor on the day of judgement.<sup>144</sup> Similarly he states whoever kills a *dhimmi* will not be able to smell the fragrance of paradise which can be sensed from the distance of seventy autumns.<sup>145</sup>

Apart from the freedom of religion *dhimmi*s are given the right of inviolability through which their lives and properties are protected. Otherwise is considered as *haraam* (forbidden) and the punishment varies according to different schools of thought. Additionally, they have the freedom of residence and travelling the only exception of which is the sacred places of Muslims. *Dhimmi*s have no difference than Muslims in terms of working and trading too. Even the commodities and transactions they deal with are forbidden in Islam, they are allowed trade it if their religion allows them to do so. Besides, *dhimmi*s enjoy public services and social security. An example is the assurance Abu Bakr gave to *dhimmi*s in Hira. He granted the tax immunity and financial support from the state treasury for old people who are not able to work anymore, for the ones who have an accident and for the wealthy people who impoverished and are started to be given charity by others.<sup>146</sup> Regarding the political rights, *dhimmi*s are not able to be the head of the state likewise they cannot be assigned as high level public officials like governor, judge, and army commander. According to the majority of jurists they are not allowed to take place in other public services as well, although some scholars allow that. In the jurisdiction, *dhimmi*s have

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<sup>143</sup> Tariq Ramadan, *In the Footsteps of the Prophet: Lessons from the Life of Muhammad*, (Oxford: Oxford University Press, 2007), 89.

<sup>144</sup> Abu Dawud, *Sunan Abi Dawud*, vol.3, 170.

<sup>145</sup> Muhammad al-Tirmidhi, *Sunan al-Tirmidhi*, ed. Bashshar Ma'ruf, (Beirut: Dar al-Gharb al-Islami, 1998), vol.3, 72.

<sup>146</sup> Ahmet Yaman, “Zimmi”, in in *TDV İslam Ansiklopedisi*, (İstanbul: TDV İslam Araştırmaları Merkezi, 2006), vol.44, 437.

autonomy in the fields like family, inheritance, and some issues of the criminal law which are related to their religion. However, they are free to apply to the Muslim court if they want their case to be tried there.

The responsibilities of *dhimmi*s include accepting the sovereignty of Islam and respecting the religion, laws, and traditions of Muslims. Additionally they are expected to not to disturb public peace. The issues which are not related to their religion and special juristic cases between themselves are solved by the Islamic law. They are responsible with paying the taxes of *jizya*, *kharaj* (the land tax), and *'ushr* (tariff) depending on their possession of land or trade. However, who are obliged to pay these taxes are the males who are being of age and mentally sane, are also physically healthy and financially capable. Women, minors, elderly, insane, and physically disable or who are not able to work, the poor and according to the view of the majority the clergymen as well are exempted from the taxes. Additionally, those who contributed to the defence of the country or are in the service of the state are exempted from paying the taxes as well.<sup>147</sup>

There are certain restrictions mentioned in the *fiqh* books which are applied in accordance with the social and political circumstances. For example; *dhimmi*s are not allowed to ride horse or pedigree camel and to ornament the mounts of their animals. Saddles and harness of their mounts should be different than that of Muslims. The model and colour of their dresses and caps should not be similar to that of Muslims as well and they are not allowed to grow beard. Their signets should not be in Arabic and they should not have the cognomen and agnomen that Muslims have. They should wear a necklace indicating that they are non-Muslim. They are not allowed to wear a specific type of belt called *zunnar*. Also they cannot build their houses higher than the houses of Muslims.<sup>148</sup> Note that such restrictions are judicial opinions applied in history in order to emphasize the sovereignty of the Muslim state, maintain the safety and prevent confusion in the identities; and were in force at certain times.<sup>149</sup>

### 3.3. Hanafi Doctrine

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<sup>147</sup> Yaman, "Zimmi", 437.

<sup>148</sup> Ibn Qayyim al-Jawziyya, *Ahkam Ahl al-Dhima*, (Beirut: Subhi al-Salih, 1994), vol.2, 735-775. Also see: Yaman, "Zimmi", 438.

<sup>149</sup> A. S. Tritton, *The Caliphs and Their non-Muslim Subjects*, (London: Humphrey Milford, 1930), 8.

Scholars of the Hanafi School developed a different method in explaining *ahliyya*. This method of the Hanafi School also sheds light on the concept of *dhimma*. First, Dabusi (430/1039), a scholar of Central Asia, played a pioneering role in dealing with *ahliyya* under a separate heading within *usul al-fiqh*. His approach is followed by Bazdawi (482/1089), Sarakhsi (490/1090), and later on by Molla Hüsrev (885/1480) and gave rise to a distinct tradition in the matter of *ahliyya*. This approach clarifies some philosophical issues related to the capacity of the human being and depends on the division of *ahliyya*.

Hanafi scholars developed this model in order to recognize children and insane as subjects of law. Before, this issue had resulted in some paradoxes in defining the personhood of the child and the insane within the legal system. While their lack of discernment and intellect (*'aql*) excluded them from having obligation (*mukallafiyah*); they still bore certain rights and duties. In order to define these rights and duties Hanafi scholars clarified the issue via the division of *ahliyya*, and recognized *dhimma* for each individual regardless of their mental capacity.

### 3.3.1. Division of *Ahliyya*

Hanafi jurists divide *ahliyya* into two categories as *ahliyya al-wujuub* (capacity to have rights and obligations)<sup>150</sup> and *ahliyya al-adaa* (capacity to act). *Ahliyya al-wujuub* indicates that a person is an addressee of rights and duties and has the capacity to oblige and be obliged. Whereas *ahliyya al-adaa* indicates his actions are taken into consideration in the eyes of law, that person is competent for his actions to bear legal consequences.<sup>151</sup> Muslim scholars based the first type of *ahliyya* on *dhimma* and the second on *'aql* (intellect) and *tamyeez* (mental capacity) of human.

One's having *ahliyya al-wujuub*, does not require him to fulfil the rights and obligations on him. It is an indication of his potential capability for these. Their fulfilment would be binding on him when he has *ahliyya al-adaa*. Legal theorists

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<sup>150</sup> The equivalents of the Islamic jurisprudential terms in English are open to discussion. Although I clarified *ahliyya al-wujuub* as "capacity to have rights and obligations" and *ahliyya al-adaa* as "capacity to act"; a better description would be Noam Chomsky's conceptualization of "competence" and "performance" in the context of rights and responsibilities.

<sup>151</sup> Dabusi, *Taqwim al-Adilla*, Ed. Khalil al-Mays, (Beirut: Dar al-Kutub al-'Ilmiyya 2001), 417. Also See: Asım Cüneyt Köksal, "Hanefi Fıkıh Düşüncesinde Vücut-Eda Ehliyeti Ayırımı ve Bu Ayırımla İlişkili İki Mesele" , *İstanbul Üniversitesi İlahiyat Fakültesi Dergisi*, (2012), 105-122.



define *dhimma* as the basis of *ahliyya al-wujuub*, the locus of the rights and duties and emphasized that *dhimma* operates as the precondition for that type of *ahliyya*.<sup>152</sup>

The only condition for a person to have *ahliyya al-wujuub* is for him to be alive. It does not depend on the level of intellect or comprehension as a little child, a *mumayyiz* (child with certain discernment ability) and a person of full age are the same in terms of having *ahliyya al-wujuub*. Al-Ghazali defines this type of *ahliyya* as the capacity for duty to be attached to one's *dhimma*.<sup>153</sup> That is why sometimes this type of *ahliyya* is considered as identical with *dhimma* which is actually its basis. The difference between these two is indicated in *usul* sources. *Dhimma* is an attribute, a part of the self via which a person becomes capable having rights and duties. On the other hand, *ahliyya al-wujuub* is that capacity itself. This capacity of *ahliyya al wujuub* is based on *dhimma* which is mostly defined as *wasf*, an attribute of the human being.<sup>154</sup> By being born alive a person has *dhimma* and upon the existence of *dhimma*, *ahliyya al wujuub* comes into being. In other words, *dhimma* of a baby occurs and the capacity for rights and duties comes upon her *dhimma*. It is said that "*thabata fi al-dhimma*" to express the existence of an obligation in *dhimma* because *wujuub* (the obligation) can only be attached to *dhimma*.<sup>155</sup>

The difference between two types of *ahliyya* becomes clear in the example of a child and an adult. Possession of rights and duties is the same for the child and adult while the performance of duties is aborted from the child because of his childhood. However, the child has the essence of these duties by virtue of his *dhimma*. While *ahliyya al-wujuub* exists in each individual self; *ahliyya al-adaa* appears either as complete or limited depending on 'aql (intellect) and *tamyeez* (mental capacity) of a person. *Mumayyiz* - the child above a certain age with comprehension ability- is considered to have limited *ahliyya al-adaa* as some duties start to be binding on him. Then at the time of puberty he gains full *ahliyya al-adaa* and becomes responsible for all duties that the Lawgiver ascribed to him.

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<sup>152</sup> Al-Kubaysi, *al-Saghir Bayna Ahliyya al-Wujub wa Ahliyya al-Adaa*, 83.

<sup>153</sup> Al-Ghazali, *al-Mustasfa*, vol.1, 84.

<sup>154</sup> Abu Ghanima, *Tabi'atu Huquq al-Dainin*, 26.

<sup>155</sup> Dabusi, *Taqwim al-Adilla*, 417. Also see: Al-Sarakhsi, *Usul*, vol.2, 333; Abdulaziz al-Bukhari, *Kashfal-Asrar*, vol.4, 394.

### 3.3.2. Theory of *Asbaab* (Causes)

It has been debated whether the basis of obligation in *dhimma* is the divine message or some causes designated for each obligation by the Lawgiver. According to *Ahl al-Hadith*, *Zahiris* and many other jurists the obligation occurs in *dhimma* based on the divine message. The command of Allah ﷻ is the only reason for an obligation to exist in *dhimma*. Hanafis on the other hand claim that each command of Allah ﷻ has a specific cause upon which duties occur in *dhimma*. Note that, these causes are different than *'ilal* (the “operative cause” or “ratio legis” of the analogical deduction-*qiyas*). These causes come along with each command as an indicator in order to make it easier for people to understand the divine command. Hanafis are of the opinion that these causes are as well created by the Lawgiver and the ultimate reason of the obligation is the divine command. Hanafi scholars explained it that way because they were accused for linking the duty to some external causes rather than the divine command. They stress that the *wujuub* (obligation) is linked to causes apparent to humans because *ijab* (decreeing of Allah ﷻ) is hidden from the creatures and it is not possible to know it to the core.<sup>156</sup>

There are three concepts regarding *wujuub* (obligation) and *adaa* (performance). Scholars entitled *asl al-wujuub* to indicate the *wujuub*, the obligation itself. And they divided *adaa* into two parts as *nafs al-adaa* and *wujuub al-adaa*. *Nafs al-adaa* is the *adaa* itself, the performing act of an obligation that clears it from *dhimma*. On the other hand, *wujuub al-adaa* indicates that an obligation becomes binding in one's *dhimma* and it is a must to fulfil it at that moment. This differentiation is made based on the idea that not every obligation demands an immediate performance.<sup>157</sup> For example if a debt is paid before its due date; it is paid based on *asl al-wujuub*, the obligation itself. However, *wujuub al-adaa*, the bindingness for the performance occurs at the due date which has not come yet.

According to Hanafi scholars, *asl al-wujuub* depends on causes and *wujuub al-adaa* depends on the divine message. While *asl al-wujuub*, the obligation exists in *dhimma* based on some causes; divine command is for indicating the necessity of fulfilment, the latest time for performance. For example, the fasting of Ramadan is obligated and

<sup>156</sup> Al-Sarakhsi, *Usul*, vol.1, 100.

<sup>157</sup> Köksal, "Hanefi Fıkıh Düşüncesinde Vücut-Eda Ehliyeti Ayırımı ve Bu Ayrımla İlişkili İki Mesele", 111.

fixed in *dhimma* as a result of sighting the crescent of Ramadan at the first night of the month. This is the apparent cause designated by the Lawgiver for people to understand the obligation. On the other hand, the divine command that orders people to fast in Ramadan is for the fulfilment of fasting during the month. Similarly, daily prayer is commanded in the Qur'an and the apparent cause of each prayer is the time of that prayer.

The theory of causes is first developed by Dabusi. He states that the divine message is for the fulfilment of the duty which occurs upon its cause.<sup>158</sup> The reason for making that differentiation is the divine command is decreed once and does not repeat; nevertheless, the obligations are required to be performed continuously which must be attached to something recurring. These repetitive causes are indications created by the Lawgiver for the comprehension of people.

### 3.3.3. *Amanah* and Three Fundamental Rights

*Dhimma* is not only the theoretical basis of one's rights and obligations but also constitutes their metaphysical foundation. According to this, the ultimate legitimacy of the actions that lead to a legal consequence is rooted in *amanah* (the trust) and the divine covenant. Man can bear the responsibility of *amanah* and the Covenant because he has *dhimma*. This is why *dhimma* is also used in the meaning of covenant.<sup>159</sup> *Dhimma* is considered to be the origin of the right to claim regarding the right holder and the origin of commitment regarding the obligated. In this meaning *dhimma* is the origin of the demand. Any demand finds its legitimacy in this divine covenant and in the *dhimma* of human being.<sup>160</sup>

The division of *ahliyya* as *ahliyya al-wujuub* and *ahliyya al-adaa* would better reveal the relation between *dhimma*, and rights and obligations. As stated before, *ahliyya al-wujuub* is human capacity to bear rights and obligations. Dabusi associates that type of *ahliyya* with the trust that God bear upon man.<sup>161</sup> According to this, man undertook the trust with his *ahliyya al-wujuub*, with his capability to be entrusted with the divine command, his capability to consciously and willingly worship the

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<sup>158</sup> Dabusi, *Taqwim al-Adilla*, 418.

<sup>159</sup> Tahanawi, *Mawsu'ah Kashshaf Istilahat al-Funun*, vol.1, 826-827.

<sup>160</sup> al-Zarqa, *al-Fiqh al-Islami fi Thawbihi al-Jadid*, vol.3, 182

<sup>161</sup> Dabusi, *Taqwim al-Adilla*, 417.

Creator. This capacity to undertake the trust and fulfil its requirements is rooted in *dhimma* because *dhimma* enables man to *have ahliyya al-wujuub*. He states that *dhimma* is the foundation of *ahliyya al-wujuub* and ‘*aql* is the foundation of *ahliyya al-adaa*. A person is expected to fulfil his obligations when he reaches to a certain level of intellect and comprehension ability, as ‘*aql* is the precondition for his actions to bear legal consequences. Similarly, Elmalılı Hamdi Yazır states the “personhood” of each human being starts with this Covenant at the time of creation and continues its progress until puberty. Before puberty all actions which are in favour of the child including the foetus period are taken into consideration before the law like the right of inheritance.<sup>162</sup>

Herein, scholars make an addition to ‘*aql* and *dhimma* for the human to be able to properly fulfil *amanah* in the world. For this they mention three basic rights of the human: *Hurriyya* (freedom), *mulkiyya* (property) and *ismat* (inviolability). Al-Sarakhsi articulates it as:

Upon creating human beings, Allah ﷻ graciously bestowed upon them ‘*aql* (intellect) and *dhimma*. This was to make them ready for duties and rights determined by Allah ﷻ. Then He granted them *ismat* (inviolability), *hurriyyah* (freedom), and *mulkiyyah* (property) to let them continue their lives so that they can perform the duties they have shouldered. These rights to inviolability, freedom, and property exist with the human being either he is *mumayyiz* (with a certain discernment ability) or not. *Dhimma* also enables him to have rights, and the insane/child and the sane/adult are the same concerning these rights since then they are born..<sup>163</sup>

Performance of the duties is associated with three essential rights. *Ismat* means the inviolability and provides the immunity for the life, intellect, faith, lineage, and property of a person which are considered as *maqasid al-sharia*, the objectives of the Islamic law. It is first and foremost requirement for man to be able to fulfil his duties in the world. *Hurriyya* (freedom) is another basic requisite for one to fulfil his duties towards Allah ﷻ and towards fellow humans in this world. It enables human to act in accordance with his will and make preferences. *Mulkiyya*, the right to property enables human to deal with the goods in the world and make use of them while

<sup>162</sup> Yazır, *Hak Dini Kur'an Dili*, vol.4, 346.

<sup>163</sup> Al-Sarakhsi, *Usul*, vol.2, 333 The passage in Arabic is:

لأن الله تعالى لما خلق الإنسان لحمل أمانته أكرمه بالعقل والذمة ليكون بها أهلاً لوجوب حقوق الله تعالى عليه، ثم أثبت له العصمة والحرية والملكية ليقتضى فيتمكن من أداء ما حمل من هذه الأمانة. ثم هذه الحرية والعصمة والملكية ثابتة للمرء من حين يولد، المميز وغير المميز فيه سواء، فكذاك الذمة الصالحة لوجوب الحقوق فيها ثابتاً له من حين يولد يستوي فيه المميز وغير المميز

Also see: Recep Şentürk, “Minority Rights in Islam: From Dhimmi to Citizen”.

performing his duties. Dabusi thinks *ahliyya al-wujuub* is built upon *dhimma* and it cannot be completed without these three fundamental rights of property, freedom, and inviolability. These are *karamats* (distinctive competencies) granted to human being for him to be able to fulfil the rights of Allah ﷻ in the world.<sup>164</sup> These fundamental rights cannot be restricted or taken away by another individual as they are born rights bestowed upon all men by Allah ﷻ at the time of their creation.<sup>165</sup>

*Dhimma* is interpreted by the *usul al-fiqh* scholars as an attribute of the human. This attribute enables man to acquire rights and responsibilities in the world. The rights of man are based upon him being the vicegerent of God (*khalifatullah*) in the world, and his responsibilities are based upon the Covenant and *amanah*. Apart from being a very essential attribute of the human self, *dhimma* is also defined as “the self that has a covenant” since it is the self of the human being that made the Covenant with God. In this definition *dhimma* unites the self with the Covenant, makes sense of the self through the covenant. Each individual self sealed it with God at the time of their creation and came to the world as responsible creatures. This responsibility (*mukallafiyah*) makes human beings distinct from the rest of the creatures. It is a part the self and the meaning of the creation as the human is not an idle being which is left aimless in the world.<sup>166</sup> The human self gains meaning as the vicegerent of God in the world with ‘*aql* and *dhimma*. While enjoying with certain rights in the world, he is held accountable for *amanah* and granted distinctive competencies - inviolability, freedom and property- for the fulfilment of this *amanah*. *Dhimma* helps us to make sense of the self in this context where *dhimma* refers to the self with regards to have rights and responsibilities in the world.

Following chapter elaborates *dhimma* of the human in everyday space through the hadith “rights of the road”.

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<sup>164</sup> Dabusi, *Taqwim al-Adilla*, 417.

<sup>165</sup> Hilmi Ziya Ülken, *İslam Düşüncesi*, (İstanbul: Ülken Yayınları:1995), 73.

<sup>166</sup> The Qur’an, 75:36.

## CHAPTER 4

### DHIMMA IN EVERYDAY SPACE

In this chapter, I mention some sociological accounts for everyday life and present a unique way to see, read, and interpret everyday, which is *sunnah*. Then I touch upon the role of *dhimma* in connecting daily life with the transcendence which is mostly absent in the modern sociological analysis of everyday. In the second part, I propose a conceptual frame collecting different meanings of *dhimma* that have been analysed so far in the previous chapters. The framework also addresses the role of human consciousness and “action” in realization of *dhimma*. In the last part, I focus on *ardh* (earth), and its micro level, the road, and apply the proposed framework to the road through the hadith “rights of the road”.

#### 4.1. Everyday Life as a Unit of Analysis

Everyday analysis allows for studying the hidden details within the ordinary levels of daily life. This gives an opportunity to observe and interpret the social relations in their natural course. In this unit sociology zooms in to see more detailed parcel of macro in order to capture the complexities of social life, which do not appear in macro analysis. In everyday analysis, individuals are viewed in their natural context, which allows moving toward the inside; like seeing everyday attitudes, behaviors, perceptions, and meanings experienced by people.<sup>167</sup>

##### 4.1.1. Sociological Approaches to Everyday

Sociologists approach the everyday from different perspectives and explain the human behaviour within everyday in accordance with their social theories.

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<sup>167</sup> Patricia A. Adler, Peter Adler, Andrea Fontana, “Everyday Life Sociology”, Annual Review of Sociology Vol.13, (1987), 217-235.

From a Marxist perspective, Lefebvre analyses the modernization process in everyday life. For him, by looking through the lenses of everyday, one can capture the power relations, capitalism, consumerism, and alienation of people in the city. He analyses the use of language and rhetoric, which are employed by the power holders as the mechanisms of oppression. The city is the place that provides a full-scale understanding of the everyday and it is also the place of an expected upheaval that can alter the social and political structure. Lefebvre argues in order to discover that potential, one should open his eyes and look at the social reality in everyday life without going through the ambiguity of metaphysics:

Our search for the human takes us too far, too 'deep', we seek it in the clouds or in mysteries, whereas it is waiting for us, besieging us on all sides. We will not find it in myths — although human facts carry with them a long and magnificent procession of legends, tales and songs, poems and dances. All we need do is simply to open our eyes, to leave the dark world of metaphysics and the false depths of the 'inner life' behind, and we will discover the immense human wealth that the humblest facts of everyday life contain.<sup>168</sup>

For a different point of view, Agnes Heller considers the time and space of everyday as anthropomorphic because people always think about time and space in terms of their “now” and “here”. Although the concept of space is imported from science, its scientific understanding has no effect on the everyday practices. For example, right and left, up and down can diverge depending on one’s situation and perspective. These are defined in terms of the person who is at the centre of his own space. Heller defines the spatial frontier of a person in terms of the area in which he can act. She calls it “the effective radius of his actions”. For example, the effective radius of a villager that has always lived in his village is limited to the area of the village. She limits the space of a person with the radius of his physical activities.

For Heller, “everyday time” is also anthropomorphic though it has objective and subjective aspects. Sunrise and sunset, phases of the moon, the time on the clock are same for everyone and measurable in same units; however, the density and rhythm of time may differ for each person. She mentions the “irreversibility of time” and relates it to belief in religion. According to this, one of the reasons that people feel the need of religion is to deal with the negative feelings that the irreversibility of time creates. Since people have difficulty to accept the fact that time is not reversible, they

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<sup>168</sup> Henri Lefebvre, *Critique of Everyday Life*, trans. John Moore, (New York: Verso, 1991), 132.

take refuge in religion which presents hard circumstances of life as the will of God, allows for the repentance of sins, and promises an eternal life. Heller says “The freer a man’s relationship is with his own fate, the more consciously will he be able to accept the fact of irreversibility and the less need will he have of religious comfort.”<sup>169</sup> However, she says, most people are not able to give up that comfort and religion operates as an organizer of everyday life. Actually this is the role of religion because embracing faith means more than simply believing in it, but to regulate one’s life in accordance with its demands. She says “a religion which no longer shapes everyday life in this way has manifestly become a mere formality.”<sup>170</sup> According to this, religion plays the role of a shelter for people who want to escape from the harsh realities of life; but at the same time is not performed actively in everyday lives of people, which in the end turns out to be a mere formality.

Another approach to the everyday is to consider it as a “performance play”. Erving Goffman describes everyday life as theatre and divides it into two main spaces as the front stage and the backstage. This division enables actors to role-play and manipulate the impressions of others on them.<sup>171</sup> Similarly, Guy Debord treats everyday life as a theatre stage where people do not do things quietly and turn everything into a spectacle.<sup>172</sup> In these approaches, the view of “others” is the main determinant of everyday attitudes of a person. Fragmented identities, role playing, attracting the attention of others, manipulating the views of others, and demonstrating one’s life exuberantly appear as the centre themes of everyday life.

Within these frameworks, everyday life is mostly approached from a pragmatist/materialist perspective in which the transcendence is absent. Religion appears as a formality, something that people only see as an asylum which does not penetrate into the life. This gives rise to an anthropomorphic view where the human stays the centre of everyday time and space, and everything else is flowing around him. In this centrality life turns into a spectacle, which raises the curiosity of others and results people to playact. In the end, human being, rather than “opening his eyes”

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<sup>169</sup> Agnes Heller, *Everyday Life*, trans. G.L. Campbell, (London: Routledge&Kegan Paul, 1984), 240.

<sup>170</sup> *Ibid.*, 94.

<sup>171</sup> Erving Goffman, *The Presentation of Self in Everyday Life*, (University of Edinburgh Social Sciences Research Centre, 1956) 38, 162.

<sup>172</sup> Guy Debord, *Society of the Spectacle*, (Bread and Circuses Publishing, 1967).



and “looking at the social reality in everyday life;” is left to live a factitious life in which his connection to the transcendence is cut.

#### 4.1.2. Interpreting Everyday Through Sunnah

*Sunnah* of the Prophet ﷺ is defined as the total of his words (*qawl*), model actions (*fi'l*), and silent confirmation (*taqrir*) of others' acts. *Sunnah* presents a comprehensive perspective for Muslims to see and live the everyday life. They confirm in the testimony (*kalima al-shahada*) that the Prophet ﷺ is 'abd (servant) and *rasuul* (messenger) of Allah ﷻ for this is a part of the faith. He is a *rasuul*; the final messenger for humankind<sup>173</sup>, a mercy for all of the creatures<sup>174</sup> and an exemplar par excellence<sup>175</sup> which differentiates him from other people. He is also 'abd, a servant of God, which indicates he is not different than others in being a human, other than his receiving the divine revelation.<sup>176</sup>

*Sunnah* comprises of civil actions in everyday life. These civil actions are always in connection with the transcendence, instructed by Allah ﷻ as the Prophet ﷺ does not speak from his own inclination.<sup>177</sup> One of the most important characteristics of *sunnah* is keeping a balance (*i'tidal*) between the worldly and otherworldly activities. That balance is explained in the *hadith* which mentions three companions came to the Prophet ﷺ and the first said he will pray throughout the night forever; and the second said he will fast throughout the year without breaking his fasting; and the last one said he will stay away from women and will never marry. Thereon, the Prophet ﷺ told them: "By Allah ﷻ, I am more submissive to Allah ﷻ and more afraid of Him than you; yet I fast and break my fast, I do sleep and I also marry women. So he, who does not follow my tradition in religion, is not from me (not one of my followers)."<sup>178</sup>

In order to keep the balance in everyday activities, the Prophet ﷺ divided the day into three parts; one third is for Allah ﷻ, one third is for his family and one third is for the companions. However, he continued to see the wisdom in the ordinary levels of

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<sup>173</sup> Qur'an, 34:28.

<sup>174</sup> Qur'an, 21:107.

<sup>175</sup> Qur'an, 33:21.

<sup>176</sup> Qur'an, 18:110.

<sup>177</sup> Qur'an, 53:3.

<sup>178</sup> al-Bukhari, *Sahih al-Bukhari*, vol.7, 52.

everyday life and extracted lessons by contemplating on them. For example, the Prophet ﷺ indicated the similarity between the heart and a feather blown by the wind in the desert.<sup>179</sup> He likened the superiority of the ‘*alim* (the learned man) over the ‘*abid* (the devout worshipper) to the superiority of the full moon over the rest of the stars.<sup>180</sup>

#### **4.1.3. *Dhimma* Connecting the Transcendence and Everyday**

The *sunnah* manifests as the everyday implementation of the faith, which is rooted in the transcendental. Between the transcendental and everyday, the *dhimma* of man plays the role of a medium between two levels of existence. At the transcendent level, man acknowledged Allah ﷻ as his Lord and undertook the responsibility of *amanah*. At that time, man had a potential *dhimma* which constitutes the metaphysical basis of the rights and responsibilities. On the worldly level, man actualizes the requirements of the Covenant and *amanah* by acting in a way that is decreed by God, and thought and exemplified by the messengers e.g. *sunnah*. This everyday actualization of the faith, the practices, occurs upon *dhimma*, the attribute enabling the human for acquiring rights and responsibilities. Therefore, one’s acknowledgement of the faith is related to eternal and epistemic levels of time while the practice of faith is always linked with the spatial and temporal dimensions of everyday life. The first realization of faith is between man and his Lord, which took place in the pre-world; whereas its practices manifests in this world and penetrates into everyday space as civil actions. In the following, I will present a conceptual frame, which brings together the different meanings of *dhimma* in different time levels and then apply it to everyday space.

#### **4.2. The Conceptual Frame of *Dhimma***

Based on all the source, there seem to be two main types of *dhimma*: ‘potential’ and ‘practical’. The potential *dhimma* exist in the transcendental level, at the time of the Covenant of man and God. This is man’s ability and eligibility to bear responsibility of the divine command and *amanah*. On the other hand, the practical *dhimma* exists at the time of the performance of faith in the world of action and interaction. Practical *dhimma* composes of three overlapping layers as legal, relational, and

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<sup>179</sup> Ibn Majah, Sunan Ibn Majah, vol.1, 34.

<sup>180</sup> Abu Dawud, Sunan Abi Dawud, vol.3, 370.

moral; which I explain in detail below. Moreover, man has different types of consciousness for potential and practical *dhimma*. At the time of man's creation, he has "the full consciousness" (الإدراك التام) which is his testification of his Creator when He asked man "Am I not your Lord" and he answers "Yes, indeed!". In the world, man has "the innate consciousness" (الإدراك الفطري) which is a hidden comprehension ability centralized in one's *fitrah*. Its occurrence gives human awareness that he has *dhimma* and he is responsible. However, one's coming to that realization through the innate consciousness is not enough for him to actively fulfil his responsibilities in his *dhimma*. This requires an increase in knowledge and *taqwa* (being conscious of God's existence and living accordingly) which in the end takes him to the last step: 'the action' (العمل); the active performance of the responsibilities.

#### 4.2.1. Potential *Dhimma*

Upon creation, mankind testified Allah ﷻ as their Lord and thus shouldered a great *amanah*, which before mankind was offered to the heavens, earth, and mountains none of which could bear that responsibility. Man accepted the responsibility of *amanah* which can be fulfilled by a unique qualification of him, which is his *dhimma*. At that time, man had the potential *dhimma* which is to occur in the world in actual sense. Man's recognition and embracement of faith in pre-eternity constitutes the transcendent dimension of *dhimma*. The consciousness at that level is "the full consciousness" (الإدراك التام). Elmalılı states that man's testification of his Lord happened as a result of the miraculous event of the creation out of nothingness. At that stage of creation, there had not been any disbelief, defiance, or denial in humans because they had not yet become acquainted with the outside world. Man promised *al-'ubudiyyah* (servitude) and this is the origin of religiosity of humanity; as well as the origin of law, morality, social life, and civilization.<sup>181</sup>

#### 4.2.2. Practical *Dhimma*: Legal, Relational, and Moral

*Dhimma* of the human being occurs in actual sense on *ardh* (earth) where man is sent as the vicegerent of Allah ﷻ. There he is able to enjoy rights and bear responsibilities through this *dhimma* which can be classified as "legal", "relational", and "moral". Human is accountable for fulfilling the imperatives of his legal, relational, and moral

<sup>181</sup> Yazır, *Hak Dini Kur'an Dili*, vol.4, 339.

*dhimma* which are eventually overlapping layers; but the categorization is to indicate their particularities.

Legal *dhimma* refers to the responsibility for observing *hududullah*, which is the line that should not be crossed between the forbidden and the permissible according to the Islamic Law (*shari'a*). By acknowledging his rights and duties (either towards Allah ﷻ or towards other people) one is able to observe the legal *dhimma*, the boundaries in a legal sense.

Relational *dhimma* includes the meaning of protection and indicates a relational responsibility. The relational *dhimma* can be understood in two ways: first, it is the protection granted to non-Muslims through a covenant. It occurs in the Qur'an explicitly and explained in the section of "*Dhimma* in the Qur'an". Second relational *dhimma* is among Muslims depending on their bond of *wilaya*. Allah ﷻ says in the Qur'an:

*The believing men and believing women are awliya' (allies) of one another. They enjoin what is right and forbid what is wrong...*<sup>182</sup>

*Awliya*, plural of *waly*, is translated as "allies". It means being close to someone, as a friend and supporter, acting on behalf of him, and being responsible for him. While *dhimma* with non-Muslims has a contractual nature, *dhimma* amongst Muslims is communal, based on a shared faith. Both denote a relational meaning and a kind of responsibility; either towards non-Muslims in terms of observing their rights or towards Muslims in terms of *enjoining the right and forbidding the wrong*. Two relational *dhimma* appear in one *hadith* stating "The (*dhimma*) protection granted by any Muslim is to be secured by all the Muslims, even if it is granted by one of the lowest social status among them." This protection can be given to any non-Muslim by a Muslim. It is a special version of which is granted by the state to non-Muslims as a whole. This one *dhimma* must be observed by all Muslims as the *hadith* literally states: *dhimmatu al-muslimina wahidatun, yas'aa biha adnahum*, "*dhimma* of Muslims is one and even the humblest of them can undertake the responsibility". This incorporates the meaning that Muslims are *awliya*, friend, and supporters of each other. In terms of rights and responsibilities there is no difference between a

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<sup>182</sup> Qur'an 9:71

low and a high status; the responsibility is a joint responsibility requiring everyone to undertake it.

Third level of practical *dhimma* is moral *dhimma* which is most frequently used in daily language in order to express one's moral responsibility towards other. It implies one's involvement of his responsibilities; his fulfilling of promises, taking care of the responsibilities. To observe moral *dhimma* requires care, attention, and mindfulness. We can see its usages in daily language both in Turkish and Arabic in different ways. In Turkish it is said that "bana zimmetli" meaning something is associated to my *dhimma*, is given to my *dhimma*; under my responsibility. Therefore I have to protect it, undertake its responsibility, and observe its rights. For example, if we say "Uygurlar bize zimmetli" that means Uyghurs are in our *dhimma*, under our responsibility and protection. Likewise, a baby is considered to be in her mother's *dhimma*. Giving birth can make a woman a mother biologically, but as long as she does not bear the responsibility of her baby in her actions, she is a bad mother and does not fulfill the responsibility in her *dhimma*. Similar relation applies to a wife and husband. Although in daily language, this is mostly used for man's responsibility towards woman; it is a mutual *dhimma* of care. When we say Saime (the wife) is in *dhimma* of Hamza (the husband), it indicates more than a mere protection; it is an embracement, attentiveness, carefulness, and fulfilment of responsibilities towards her. As much as Saime is in *dhimma* of Hamza; Hamza is in Saime's *dhimma*. She as well embraces him, bear responsibilities towards him. This type of *dhimma* indicates honour, dignity, and righteousness of a person. In Egypt, in order to describe a dishonest person, it is said that "ma 'andoosh dhimma", he does not have *dhimma*, he is without *dhimma*. This implies that he lost moral integrity and cannot be entrusted with anything. Having *dhimma* and fulfilling its requirement indicate honesty, truthfulness, and good morals.

Note that all these levels of *dhimma* have intersections. The relational *dhimma* in the meaning of protection of each other's rights is the part of *dhimma* in the legal sense. Because preserving these responsibilities either towards Muslims or non-Muslims is a part of the Islamic Law. Likewise, observing *hududullah* related to the protection meaning as *hududullah* is in a sense protecting and abiding by the laws of Allah ﷻ. Moral aspects intersect with both the relational and legal *dhimma*. Keeping

agreements constitutes a part of Islamic ethics and infringement of such a right of a Muslim or a non-Muslim is considered to be immoral outside even of its legal consequences. The very meaning of *dhimma* indicates its violation brings disgrace (*madhamma*) on the violator.

These three types of *dhimma* can be recognized through “the innate consciousness” (الإدراك الفطري) and be actively performed with enlarging one’s “knowledge” and “*taqwa*”. The innate consciousness indicates one’s embracement of the faith in the world. It is a hidden intuition centralized in one’s *fitrah*. Once one has that consciousness, he realizes he has been given *dhimma* and he is responsible for fulfilling its requirements upon him. Elmalılı says this does not occur through deductive knowledge based on reasoning or external evidences. Rather it develops with sharpening of one’s attention in oneself or/and it may require additional internal or external influences that make him recognize it. However, this realization is not enough for one to perform his responsibilities actively. The “action” (العمل), fulfilment of responsibilities towards Allah ﷻ and towards other people occurs with the increase of one’s knowledge (علم) and *taqwa* (تقوى). *Taqwa* is generally translated as piety and means being conscious of Allah ﷻ and living accordingly. It is not only fear of Allah ﷻ, but also the love for Him and employing right conduct as result of these two. Knowledge and *taqwa* are what urge a person to pray and fast; the mother to take care of her baby, and the husband to fulfil his responsibilities towards his wife. “Action” can also be expressed with the concept of *i’mar al-ardh*, literally means “the construction of earth”. It is developing, enhancing, cultivating, and preserving the earth through building roads, dwelling places, villages, cities, and preserving their habitat and beautifying them with the human hand. This is because man is chosen as the vicegerent of God on earth and the earth with all what it has is entrusted to his *dhimma*. This is again fulfilled with increase in the level of knowledge and *taqwa*; which makes a human conscious about constructing earth in a way suitable with the nature. By this means, he makes the building and dwelling in a way that enables sharing space, and preserving nature without enforcing anything contradictory to the creation. Increase in knowledge and *taqwa* is actually an increase in one’s faith which is related to the tenet of *sami’na wa ata’na*<sup>183</sup> meaning “we hear

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<sup>183</sup> Qur’an 21:51

and we obey". It is not only hearing rather hearing and receiving the divine law and obeying it beyond any doubt.

### 4.3. Manifestations of Dhimma in Space

#### 4.3.1. Earth (*Ardh*) in Relation to Man

*Ardh* occurs in the Qur'an in the meaning of earth and it is where man is sent as *khalifa* (vicegerent) of Allah ﷻ.<sup>184</sup> However, this does not make human the ultimate authority in the world. On the contrary; he is accountable to fellow people and future generations; and accountable to Allah ﷻ for how he behave towards the creation on earth. Having rights on earth makes him responsible with making legitimate use of it, preserving its harmony, and making it a dwelling place for the period of time that he lives therein. This is because man is only for a temporary time on this earth as a vicegerent and Allah ﷻ is the real owner of it.

The Qur'an says earth and all that is on the earth is subjected to human and given to his service.<sup>185</sup> He has the right to benefit from the creatures on earth which makes him responsible. Human is held responsible with *i'mar al-ardh* (إعمار الأرض), the act of construction on earth. Its root is *'umr/'amara* (عمر) meaning age, life, lifespan, to keep living; and at the same means building, constructing, dwelling in, inhabiting, and making prosperous. Allah's *isti'mar* (استعمار) of people on earth occurs in the Qur'an<sup>186</sup> and means His making the world prosperous with the hands of people by giving life (*'umr*) to them. While getting older and continuing to live on earth, human beings are liable to construct and prosper the earth (*isti'mar*).

The Qur'an says Allah ﷻ made the earth *mahd*<sup>187</sup>, a cradle for human. Razi states how a cradle provides a resting place for a baby; earth is like a resting place for human thanks to the facilities it provides to people.<sup>188</sup> According to Razi, the earth's becoming subjected to humans means that, although there is not anything more solid than a rock, rougher than iron and more fearful than fire, Allah ﷻ created them in a way that human can harness and benefit. Even the strongest animals are in the

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<sup>184</sup> Qur'an, 2:30; 35:39.

<sup>185</sup> Qur'an, 45:13; 14:33; 31:20.

<sup>186</sup> Qur'an, 11:61.

<sup>187</sup> Qur'an, 43:10.

<sup>188</sup> Fakhr al-Din al-Razi, *al-Tafsir al-Kabir*, trans. Suat Yıldırım, (Ankara: Akçay Yayınlar, 1988), vol.9, 620.

service of the weakest human and this is earth's becoming subservient to human<sup>189</sup> Allah ﷻ made the earth *dhalul*<sup>190</sup>, malleable, manageable, tamed for people and this enables people to build upon earth and cultivate it and also enables the dead and living to shelter therein.<sup>191</sup>

The way that *ardh* is created encourages the human to contemplate on the creation that exist on it and see the *ayats* (words, signs) of Allah ﷻ. Attas says:

Islam sees in Creation, in the heavens and the earth and what lies between; in the sun and the moon and the stars; in the alternation of night and day; in the fecundating winds and life—giving rains and canopic skies; in the surging, spreading seas and the majestic mountains; in the rivers and fields and the multiplicity of varying colours and qualities; in the sustaining grains and fruits and in the animals and plants and minerals; in all these and their outer and inner workings and in the forces of nature and many more that we do not know; in man and his mate of like nature and the love set between them; in our creation and procreation, our ships and habitations and fabrications; in everything in the farthest horizons and in our very selves— the Signs of Allah ﷻ.<sup>192</sup>

The creation of the earth resembles the creation of man because human being is created from the earth.<sup>193</sup> There are *hadiths* which point out that each human being carries the characteristics of different types of soils in terms of colour; being red, white, black, or a mixture of these; and also in terms of their mould; being smooth or rough.<sup>194</sup> Apart from the physical resemblance, man and earth both have signs to be read and interpreted that indicate their creator. For example; there is a continuity and harmony in their nature through procreation, which sustains the lineage of human beings and the balance in nature. Man can observe and contemplate the death and resurrection, which takes place on the earth; as a reminder of that which is inevitable for him too.<sup>195</sup>

The Qur'an says "On earth will be your dwelling-place and your means of livelihood - for a time."<sup>196</sup> The earth provides a habitat for man and there he makes his living by benefitting from its provisions. He utilizes what is created for him to make tools in order to make his dwelling, building the environment and making his livelihood.

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<sup>189</sup> Ibid., vol.8, 247.

<sup>190</sup> Qur'an, 67:15.

<sup>191</sup> al-Razi, *al-Tafsir al-Kabir*, vol.10, 591.

<sup>192</sup> Al-Attas, 40-41.

<sup>193</sup> Qur'an, 22:55.

<sup>194</sup> Abu Dawud, *Sunan Abi Dawud*, vol.7, 78.

<sup>195</sup> Qur'an, 2:164.

<sup>196</sup> Qur'an, 2:36.



Jamel Akbar emphasizes two aspects to consider when building the environment: first is the condition of the elements and second is their relation to responsibility.<sup>197</sup> According to this, each object has its own condition or state, which should inform the way they are treated by the user. If humans have the right to make use of these objects, then they are responsible for making the legitimate and best use of it that fits the condition of the objects. This responsibility is embedded in and shared amongst all humans who are to own, use, or maintain these things. Whenever one looks at an environmental situation, he can see traces of the fulfilment of human responsibility towards nature or its profound lack as displayed in the material form.

Besides the material form of building the environment, earth also provides a habitat that allows people to live together, interact with each other, and enables spheres used publicly. This domain of habituation and interaction is best observable in everyday life and on this everyday level, one can see the manifestations of *dhimma*. In the following part I focus on the road as a micro level of *ardh* where the human responsibility on earth within the everyday life can be explored through *dhimma*.

#### **4.3.2. The Road and Its Rights**

The road is a micro domain of the earth and constitutes a part of the public sphere. On a road one can talk about the rights and responsibilities of people either being passengers, drivers or dwellers by the roadside. However, the Prophet ﷺ draws attention to the rights of the road, a space, which eventually relates to all those who use the road. This perspective displays an important aspect in dealing with space: It has both material and immaterial components. The road occupies a place in space, has a material existence which is indicated with the term “*hayyiz*”. This is the spatial domain occupied through three dimensions of a material thing. The pavement or stones of a road have that *hayyiz* in space; if they are taken out of that *hayyiz*, it becomes empty. On the other hand, the road is not only a transportation issue or a place between houses. It is also a habitat; it imbibes a sphere, which is the non-physical being, the surrounding that allows a space for interaction. It is expressed with the word “*majaal*” meaning the relational realm, the public sphere that the road provides. In the hadith of the rights of the road, Prophet ﷺ draws attention to that

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<sup>197</sup> Jamal Akbar, *Crisis in the Built Environment: The Case of The Muslim City*, (Singapore: Concept Media, 1988), 15.

communal dimension of space via its material being. That is why this hadith became famous with the title of *adab al-tareeq*, “the manners of the road”; though it is expressed as *haqq al-tareeq* “the right of the road” in the hadith. Road is the *hayyiz*, material existence; while the manners or rights of the road indicate it is *majaal*, a relational space. Eventually, rights of the road are the responsibilities of people towards each other and towards the road in order to maintain and enhance its “condition”. The hadith that defines the rights of the road in al-Bukhari and Muslim is as follows:

The Prophet s.a.w. said to his companions “Avoid sitting on road sides.” The people then said, “O Messenger of Allah ﷺ (peace be upon him), there is no other alternative but to sit there to talk.” So he said, “If you have to sit at all, then fulfill the rights of the road” They asked, ‘What are the road’s rights?’ He replied, “Lowering your gaze, abstaining from doing any harm, returning salutations, enjoining the right (*al-ma'ruf*) and forbidding from evil deeds (*al-munkar*).”<sup>198</sup>

Upon the warning of the Prophet ﷺ to the companions to not to sit by the roadside; companions told him that it is impossible for them to do that for it is their place for gathering and talking. Ibn Hajar (852/1449) explains that the Prophet ﷺ’s prohibition of their sitting was not to teach them something forbidden in Islam rather to indicate *aslah*, the more befitting, proper, and right conduct to do. However, when companions said they do not have any other place to gather and talk, the Prophet ﷺ taught them the proper way of making use of a public place so that they do not fall short of performing their responsibilities. Ibn Hajar also indicates that the better conduct is simply not to sit there, yet he who sits there and fulfills these responsibilities will be rewarded.<sup>199</sup> If the sitting was completely forbidden, companions would not have said that this is impossible for them; which indicates that they can sit and share this place; however, on condition that to fulfil the requirements.

There are four rights of the road mentioned in *hadith* whereas other rights occur in different narrations of this *hadith*. Ibn Hajar states all rights of the road which are mentioned in *hadiths* are actually fourteen: Lowering the gaze, abstaining from doing harm, returning the greetings, spreading the greetings, enjoining the right and forbidding from the evil, guiding the one who asks the way, invoking the compassion

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<sup>198</sup> al-Bukhari, *Sahih al-Bukhari*, vol.3, 132. Also see: Muslim, *Sahih Muslim*, vol.3, 1675.

<sup>199</sup> Ibn Hajar Al-‘Asqalani, *Fath al-Bari Sharh Sahih al-Bukhari*, (Beirut: Dar al-Ma’rifah,) vol.5, 113.

of Allah ﷻ upon one who sneezes (i.e. by saying *yarhamukallah*), talking decently, helping the oppressed, assisting the wronged, guiding the passer-by, helping people in lifting their bags, increasing the remembrance of Allah ﷻ and an addition that he does not mention is guiding the blind.<sup>200</sup> He collects all these in a poetry as follows:

جمعت آداب من رام الجلوس على الطر \*\*\*  
 بق من قول خير الخلق إنساناً  
 أفش السلام ، وأحسن في الكلام وشم \*\*\*  
 مت عاطساً ، وسلاماً رد إحساناً  
 في الحمل عاون ، ومظلوماً أعن وأغث \*\*\*  
 لهفان ، أهد سبيلاً واهد حيراناً  
 بالعرف مر ، وأنه عن نكر ، وكف أذى \*\*\*  
 وغض طرفاً وأكثر ذكر مولانا<sup>201</sup>

*Here is a collection of desirable etiquettes for those who seat by the roadsides \*\*\*  
 From the words of the best of the humankind*

*Spread the greetings and make your talking decent \*\*\* Say yarhamukallah to who  
 sneezes and in the best way return the greetings*

*Help in lifting bags and assist the wronged \*\*\* Help the oppressed and guide the  
 stray and passer-by*

*Enjoin the right, forbid from the evil and abstain from doing harm \*\*\* Lower your  
 gaze and increase the remembrance of Allah ﷻ*

Ibn Hajar explains first four rights as the road as follows: *Ghadd al-basar*, lowering the gaze is especially towards women who are passing on the road because gazing upon them results disturbance of them and corruption in the society. *Kaff al-adhaa* means abstaining from doing harm and is explained as not to cause a humiliation or degradation of the ones who are passing and not to backbite. It ensures the safety and security of the passengers. *Radd al-salaam*, returning the greetings is *ikraam*, it is for greeting or receiving the people and considered as one of the rights of a Muslim upon the other. Enjoining the right and forbidding from the evil is one of the Islamic teachings which indicate acting in accordance with *shari'a*; doing what Allah ﷻ commands and abstaining from what He forbids.<sup>202</sup>

These rights of the road indicate that road as habitat requires people to fulfil some legal and moral responsibilities towards each other. Legal requirements enhance the safety and security of the road and in case of encroachment bring legal

<sup>200</sup> Tabarani, *Mu'jam al-Kabir*, vol. 22, 138

<sup>201</sup> Al-'Asqalani, *Fath al-Bari Sharh Sahih al-Bukhari*, vol.11, 11.

<sup>202</sup> *Ibid.*, vol.5, 113.

consequences. On the other hand, moral and ethical codes are for making the surrounding more liveable and for enhancing the relations of people. The rights of the road mentioned in the other narrations like talking decently, helping the oppressed, guiding the passer-by or helping people in lifting their bags can be considered as moral responsibilities of people towards each other. However, there is something beyond the moral and legal, which is *ihsaan*, beneficence, doing what is *husn*, which is a term that incorporates the meanings of good, true, and beautiful. Moral responsibilities can be considered as a part of *ihsaan* like helping in lifting bags. However, this is what people can expect from each other and in case of ignoring one can be discommended. On the other hand, *ihsaan* is done out of one's beneficence without external expectations. Beautifying the road by providing facilities for the passers-by is one example of *ihsaan*. This is why planting trees for people to benefit from its shadow and building *sabeel* are encouraged and became a part of the Islamic civilization. *Sabeel*, which also means road and way, is a water fountain built by the roadsides in order to provide free water for the passers-by. It is for beautifying the road and a part of the traditional environment. Jamel Akbar mentions that in the traditional environment the road is shared and owned by all collectively; and used and controlled by them too which he argues is a unified form of submission.<sup>203</sup> It is the consensus among jurists that all public spaces including the road are owned by Muslims collectively and not by any authority. This collective ownership is sustained by the principle that any person may act or change elements on the road so long as he does not cause any harm to the public and no one objects to that change. For example, if one decides to plant a tree or build a *sabeel* by the roadside he does not need to ask permission of the collective opinion. However, if his actions cause damage, then even one person's objection is considered like the objection of all. Note that a *dhimmi* as well has the right to object to something that is made by a Muslim on the road.<sup>204</sup>

Thinking of the road as a communal space, fulfilling legal and moral responsibilities there, and performing acts of *ihsaan* can be better understood in the context of *dhimma*. The following section will explore the communal aspect of the road through a holistic framework within which the road is considered in *dhimma*.

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<sup>203</sup> Jamel Akbar, *Crisis in the Built Environment*, 55.

<sup>204</sup> *Ibid.*, 114-115.

### 4.3.3. The Rights of the Road Through *Dhimma*

Earth and all what is on earth are made *musakhhar* (مسخر), subjected to (and given over to the use of, tamed for) man and he has the eligibility for *tasarruf* (تصرف), the authority to behave and act on earth. This is the aspect of the self *dhimma* indicates. *Dhimma* sheds light on the human self with regards to being given the privilege of authority over creation and acting upon and through them, which consequently makes one responsible. The right to make use of the creation and responsibility towards the creation is by virtue of one's *dhimma* which is given to each self at the time of the Covenant. This is what this thesis calls "the potential *dhimma*". It is also what enables mankind to undertake the responsibility of *amanah*. At that time mankind had a full consciousness, not involved in or affected by worldly life and clear of any kind of denial and disbelief. Thus, all human beings testify the oneness of their Lord without hesitation.

On earth one can observe the manifestations of "the practical *dhimma*" as legal, moral, and relational. The road presents a good example that comprises of all these as a part of everyday life. Once man considers the road and passers-by as a part of *amanah*, and considers the oppressed and wronged, old people and the blind in his *dhimma*, he acts rightly towards them. One only lowers his gaze to respect the dignity of others if he considers their protection to be within his *dhimma*. This can be considered as a part of legal *dhimma* since lowering the gaze towards the non-*mahram* is commanded by the Islamic law. This also provides the safety and security on the road. Similarly, enjoining the right and forbidding from the evil is possible if one considers this responsibility towards fellow people is in his *dhimma*. This can be considered as a part of legal *dhimma* because "enjoining the right and forbidding from the evil" is considered as *waajib*, a required act by the Islamic law.<sup>205</sup> Helping the oppressed and assisting the wronged can be thought as a part of relational *dhimma* as those are under protection either through a contract in the case of non-Muslims or through *wilaya* in the case of Muslims. On the other hand, returning and spreading the greetings, talking decently, helping in lifting bags may fall under the category of moral *dhimma*. Remembrance of Allah ﷻ is also a part of moral *dhimma* as this indicates a moral responsibility towards Allah ﷻ.

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<sup>205</sup> Al-Ghazali, *Ihya' 'Ulum al-Din*, (Damascus: Dar al-Fayha' and Dar al-Manhar Nashirun, 2010), Vol. 3, 338-339.

However, the manifestation of these behaviours as such requires a certain level of consciousness. Man realizes faith in the world through his innate consciousness. This is his *fitrah*'s inclination towards understanding that he has *dhimma* and he is held responsible in the world. Yet, this is not enough for him to get to the level of "action" (*'amal*) because action is only possible through knowledge and *taqwa*. For example, invoking the compassion of Allah ﷻ upon one who sneezes by saying *yarhamukallah* requires a certain level of knowledge that not each Muslim is aware of. Similarly, lowering the gaze, increasing the remembrance of Allah ﷻ or talking decently on the road may occur with one's having more *taqwa*. As I mentioned before, these are all intersecting categories and there are occasions that legal, moral, and relational is the same. There are also the acts of *ihsaan* such as building *sabeel* or planting trees by the roadside. These are also performed with a feeling of responsibility towards the passengers and considering them in *dhimma*, yet acts of *ihsaan* are done out of one's benevolence and generosity.

If we were to collect all these actions, the manifestations of *dhimma*, under one concept it would be *i'mar al-ardh*, the construction of the earth. Construction can be building, making settlements, cities, villages, roads and bridges, which advances human life and give rise to civilization. Also construction can be promoting civility, enhancing human relations, making the earth a more prosperous and beautiful place to live. Thus *i'mar al-ardh* can only be comprehended when considering the earth as part of man's *dhimma* which requires him to act responsibly and uprightly in the world as the vicegerent of Allah ﷻ. It is for the same reason that Raghīb al-Isfahani (502/1108) mentions three reasons of man's creation<sup>206</sup> which are: 1.Servitude (*'ubudiyya*)<sup>207</sup> 2.Constructing the earth (*i'mar al-ardh*)<sup>208</sup> 3.Vicegerency (*Khilafa*)<sup>209</sup>. All these indicate that man is responsible by his very creation and the self of the human becomes meaningful with the responsibility. The Self is responsible for servitude to his Lord which is a requirement of his Covenant. The Self is responsible for constructing the earth in a proper way as he is the vicegerent of God in the world. The Self is also responsible for the vicegerency; ruling the world with justice and ruling of man himself morally.

<sup>206</sup> Raghīb al-Isfahani, *Tafsīl al-Nash'atayn wa Tahsīl al-Sa'adatayn*, ed. Abdulmajid al-Najjar, (Beirut: 1988), 104-105.

<sup>207</sup> The Qur'an, 51:56.

<sup>208</sup> The Qur'an, 11:61.

<sup>209</sup> The Qur'an, 2:30.

## CONCLUSION

This thesis is a study of *dhimma*, the way of manifesting and explaining the self in the Islamic tradition. It is the self with the power to act on earth and act with responsibility. I searched for the basis of its accountability in the Qur'an, *hadith* of the Prophet ﷺ, and Islamic Jurisprudence all of which provide several of meanings of *dhimma*. By putting these meanings in a framework, I drew attention to their overlapping. Based upon that, we can think of *dhimma* as an explanation of the self with regard to be given the privilege of the authority on earth and laid the burden of the responsibility. I argued that this perspective presents a comprehensive approach to the human self.

*Dhimma* in the Qur'an, *hadith*, and its interpretation in *usul* and *furu' al-fiqh* demonstrate that: *Dhimma*, by its meaning of 'ahd, indicates a covenant. This is first and foremost man's Covenant with Allah ﷻ, his testimony of His Lordship and promise of servitude. *Dhimma* tells us man has *amanah* to be fulfilled in the world for he is chosen as *khalifatullah* on earth. The earth and all what is on earth became subservient to man, which means that man has a right over the creation. This is by virtue of his *dhimma*. However, he is not left aimless and lawless as he is morally and legally held responsible. He is responsible to make legitimate use of provisions on earth. This is again by virtue of his *dhimma*. *Dhimma* indicates the self of human in the context of rights and responsibilities. It is what enables the human to have rights and bear responsibilities. This view of the self makes one aware of his responsibilities, fulfil his promises and keep his agreements. Ali r.a. says "My responsibility (*dhimma*) is pledged for (the truth of) what I say, and I am answerable for it."<sup>210</sup> Bearing and fulfilling responsibilities is related to the very self of the human being. It is also related to the *fitrah* (the original human nature) upon which he is created as *fitrah* is rooted in the Covenant. While the Covenant is the embracement of faith in pre-world, the practice of it occurs on earth.

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<sup>210</sup> Edward William Lane, *An Arabic English Lexicon*, Vol.3, 976-977.

The practices of faith are the manifestations of *dhimma*, the bearing of responsibility in everyday space. This practice is best exemplified in *Sunnah* of the Prophet, which also teaches the decorum to be maintained on a road. One can act on a road morally only if he feels the responsibility towards the road and passers-by and considers them in *dhimma*, within the responsible Self. *Dhimma* helps us to understand the drives behind enjoining the right and forbidding the wrong on the road. It makes sense of receiving and spreading greetings, and beautifying the road.

Rights of “the road” can be considered as the responsibilities of man. If one metaphorically considers everyday space as “the road” and “the other” as those who walk on “the road”; the rights of the road expands to the moral responsibility of the self in the all aspects of life. These responsibilities are manifested as *i’mar al-ardh*, the construction of earth. It is one of the reasons of man’s creation as referred in the Qur’an by the word *isti’mar*, Allah’s making the earth prosperous with the hand of human over the course of his living, his ‘*umr*. *I’mar* is the action performed after one’s coming to the realization that he has *dhimma*, he is held responsible. *I’mar* occurs in a true manner only if accompanied by knowledge and *taqwa* (being conscious of God’s existence and living accordingly). It requires paying attention to the natural condition of things on earth and acting in the best way conformed to this natural condition. Therefore, it requires a certain level of consciousness and piety. *I’mar* is performed both materially and spiritually for “the road” is both a *hayyiz* and *majaal*, having a physical existence and a habitat. *I’mar* composes of enhancing this habitat too, the non-physical, relational component of the road.

This approach provides the self the uniqueness and togetherness, *fardiyya* and *ijtima’iyya*, difference and identity. Each person is unique, bestowed with different opportunities, means, and blessings in the world. Therefore, each person is responsible individually and will be held accountable individually for how they lived their lives. However, this uniqueness does not turn the self into an “inward thinking”, self-centred being. *Sunnah*, the way and tradition of the messengers, gives people an identity within a community. Their belonging to a community does not annihilate the uniqueness of the individuals. There is a balance between individuality and collectivism. Each individual self is unique, acts freely within the circle of the permissible (*mubahat*) and strives towards perfection (*kamal*) within the possibilities



(*imkanat*) given to himself. Also they belong to a community where they bear certain responsibilities which protect them from lawlessness. These individuals are *awliya* of each other, friends and supporters. Their “*dhimma* is one” which means that *dhimma* of one is like *dhimma* of the other; all must observe each other’s *dhimma*. Besides, all must observe the responsibility of protection, *dhimma*, given to any other individual.

Imagining the self through *dhimma* would help the human realize the reason of his creation. He becomes aware of the great responsibility, *amanah*, given to him and strives for its fulfilment. *Dhimma* makes sense of the “identity” and “difference” of the self which would heal the self-centeredness and fragmented identities of modern man.



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