



## The Legal Status of Non-Muslims in the Shiite *Fiqh* and Iranian Laws (1906–2020), written by Saeid Edalatnejad

ZAHRA NAGHSHBAND

*Max Weber Center for Advanced Cultural and Social Studies, Erfurt University*

Numerous scholarly works explore the living conditions of non-Muslims in modern Iran from political-historical and anthropological perspectives, such as Eliz Sansarian’s comprehensive study of non-Muslims (2000), Lior Sternfeld’s research on the social and political experiences of Jews in the twentieth century (2018), and Behnaz Hosseini’s valuable edited volume on ethnic and religious minorities in Iran (2023). However, Saeid Edalatnejad’s recent book stands out by shedding light on the legal status of non-Muslims in Shiite *fiqh* (jurisprudence) and Iranian law from the period of the Constitutional Revolution to 2020. Edalatnejad argues that this framework better illuminates the obstacles preventing non-Muslims from being treated as full citizens in Iran. He examines the unequal status of non-Muslims within the context of the clash between Iranian modernization and religious forces. Edalatnejad seeks to uncover the roots of this inequality by first investigating Islamic Shiite sources and then examining how the legal manifestations of inequality have changed over time, particularly focusing on how non-Muslims have been integrated into state law from 1906 onwards. [1]

In an extensive research examination, Edalatnejad explores the theological bases for the *fiqhī* status of non-Muslims according to early Shiite sources in the first chapter. He argues that while the Quran adopts a concise and conditional good attitude toward non-Muslims (13), the approach of jurists is derived mainly from Shiite *hadith*, particularly under the influence of Mohammad b. Hassan Tūsī (33). The most important point of the chapter, which serves as the foundation of the book’s key argument, is the discourse that considers non-Muslims as *dhimmīs* in Shiite jurisprudence. According to the majority of Shiite jurists since Tūsī, *dhimmīs* refers to Jews, Zoroastrians, and Christians who live under Islamic rule and pay the levy (*jizya*), thereby being accepted and protected within Muslim territory, unlike infidels (*kāfir ḥarbī*) (20). In this discourse, the duties and inferior status of non-Muslims in both social and legal aspects, such as *dīya* (legal compensation), *qīṣāṣ* (retaliation), and inheritance, are emphasized more than their rights. In Chapter Four, Edalatnejad argues that although this *fiqhī* understanding contradicts the modern concept of “nation,” its tone and consequences persisted in the Iranian Constitution, particularly in the penal code, until at least 2020 (187). [2]

In Chapter Two, the author provides an extensive discussion of the historical socio-political context of the Constitutional Revolution. A particularly notable aspect of this chapter, which is not as thoroughly covered in other parts of the book, is Edalatnejad’s meticulous research [3]

into the social aspects, demography, and interactions with non-Muslims, specifically Jews, Zoroastrians, and, to a limited extent, Bahā'is, primarily from 1870 to 1906. He explores the social conditions, religious life, and public attitudes toward non-Muslims, demonstrating how dissatisfaction with local governors persuaded them to participate in the Constitutional Revolution (99). He summarizes the social conditions of non-Muslims as fluctuating between peace and oppression by local powers (92). These governors imposed bribes, taxes, and a distinctive dress code on non-Muslims, making them conspicuous to locals. According to Edalatnejad, Christians experienced relatively better conditions and freedoms compared to other communities, both before and after Constitutionalism. They were never forced to convert (102) and were the only minority allowed to publish their own newspaper between 1906 and 1911 (103).

In a lengthy discussion in Chapter Three, the author illustrates how the concept of “equality before the law” promoted by Constitutionalism appears to challenge Islamic laws. It can be deduced that one unintended solution to this conflict was obscuring and loosening the legal terms and rules regarding non-Muslims. The Constitution established Shiism as the official religion without clarifying the implications of “official,” leaving the legality of other faiths unaddressed, as the author argues. However, as explained in Chapter Five, after the 1979 Islamic Revolution, some specific faiths have been addressed as “recognized religions” (156). Edalatnejad highlights some changes in the legal status of non-Muslims after 1906, such as allowing them to have a “Muslim representative” or elect representatives to manage their relationships with local governors, although this was only established in oral law (114). Nevertheless, in seeking the obstacles to fundamental change, he stresses the problematic function of Article 2 of the Constitution, which states that laws are valid unless they conflict with Islam. According to Edalatnejad, this creates significant tension between civil and religious rules (130). This tension can obstruct any proposed laws promoting equality, such as Article 8, which concerns equal rights for the nation, and Article 97, which addresses equality in taxation. Despite these challenges, the newly established Constitution, under the nation’s rights, offered some protection to religious minorities from the actions of radical Muslims (128). [4]

Over the course of Chapter Three, Edalatnejad highlights that during the Pahlavi era, despite efforts to diminish the authority of Shiite clerics and promote nationalist and unifying tendencies, the legal status of non-Muslims remained largely unchanged. He firmly concludes that none of the *Shah’s* reforms were concerned with people’s rights or promoting democracy. However, he acknowledges that the codification of penal and civil codes did advance people’s rights (140). A notable issue he points out is that the levy on religious minorities was overlooked in the modernization process. The term “forgetting” is crucial for Edalatnejad, as he repeatedly highlights this as a strategy used by jurists regarding some Shiite laws. [5]

The conclusions of the chapter include two strongly worded statements: the aristocratic and courtly nature of the initial constitution’s contributors, and the clerics’ ability to nullify all demands for equality through Article 2 (147). This conclusion, however, appears to arise from a division between the legal and social interpretations of the status of religious minorities. While Edalatnejad briefly describes social conditions, he seldom integrates non-legal data or explores the dynamics between legal and social changes in his final analysis. Consequently, his argument remains one-dimensional, primarily highlighting the paradox between *shari‘ah* and the modern concept of equality. [6]

Chapter Four embarks on an exploration of codification of laws and regulations after the [7]

1979 revolution, providing an extensive examination of the religio-political structure of Iran following the revolution. Although the detailed explanations of legal terms are relevant and shed light on certain prospective dimensions of the book's questions, they tend to overshadow other significant aspects. These include distinctly portraying the social status of each religious minority, detailing their associations and relationships with the government, the number of religious spaces, their political activities, and the extent of their visibility under different governments. This additional context would provide a clearer picture of the situation, moving beyond the inherent ambiguities and paradoxes of the Islamic Constitution.

However, in the most informative and engaging part of chapter four, the author describes the legal debates between representatives of religious minorities and council members over changing and refining terms related to non-Muslims. This section stands out as one of the rare instances where the book voices the perspectives of these communities. One can infer that the ambiguity of terms was used strategically to reach compromises, such as changing "undisputed Islamic principles" to "Islamic laws" and the failed efforts to alter the language from "religious minorities" to "religious communities." The author attributes these changes to the "lessons that Shiite jurists had learned from modernity" (176). [8]

The clarification of legal terms has become more apparent in the 1979 constitution compared to the 1906 version, as indicated by Edalatnejad. For instance, the term "recognized religions" exclusively referred to Judaism, Zoroastrianism, and Christianity. The rights of these recognized religions to maintain separate educational institutions and observe their rituals have also been affirmed. Importantly, Edalatnejad, in his description of the development of civil codes, shows that protests by religious minorities have resulted in significant changes. For example, the legal maxim that deprived the relatives of converted Jews and Zoroastrians of inheritance was amended in 1993 by the Expediency Council to apply only to "unrecognized" non-Muslims. Another notable function of the Expediency Council, described by Edalatnejad as a "secular" institution, was its decision to legitimize the membership of non-Muslims in city councils, contrasting with the Guardian Council's role in the juridical evaluation of laws. [9]

Regarding the penal code, certain preventive penalties and other crimes do not apply to non-Muslims, as the author notes. However, discriminatory laws still exist in areas such as *qīṣāṣ* of life, *dīya*, and *ḥudūd* punishments, particularly for *zinā* (adultery or fornication) (185). The author criticizes the presumption of the Constitution that all laws should apply uniformly to Iranian Muslims, which results in doubly discriminatory practices, such as assigning half the blood money for victimized non-Muslim women compared to men. [10]

In the final chapter, Edalatnejad emphasizes a clear shift from the concept of "duty" to "right," tracing this historical change as a key theme throughout his book. He attributes this progress to the alteration, forgetting, or ignoring of certain Islamic rulings (201). Addressing the significant dilemma Islamic countries face regarding human rights, he maintains: While some Muslim intellectuals view human rights as a "Western imposition," not all inequalities are directly related to the post-colonial context (208). Accordingly, Edalatnejad proposes a "pragmatic and sociological" solution of "ignoring" or "forgetting" certain Shiite laws, rather than interpreting or denying them, as is common in Islamic intellectualism. He suggests that this can be achieved or strengthened by shifting the emphasis in "Islamic identity" away from discriminatory rulings toward new elements (207). However, he does not specify what these alternative defining elements of identity might be, nor does he distinguish his solution from the unintended changes that have occurred during modernization. [11]

Additionally, other questions remain: for instance, whether the apolitical nature of dis- [12]

crimination between Muslims and non-Muslims facilitates this approach of forgetfulness and whether this solution can also effectively address inequalities deeply intertwined with dominant political discourse, such as women's rights and the treatment of Bahā'is. The book also overlooks intersectional discrimination, such as the imposition of the *hijāb* on religious minorities. Furthermore, the particularity of the case of Bahā'is compared to other religious communities remains underexplored, although the author refers to them frequently.

*The legal status of non-Muslims in Shiite Fiqh* highlights the ongoing challenges and marginalization faced by non-Muslim communities in Iran, revealing their distance from being recognized as full and visible citizens. This perspective not only revisits the process of legalizing the status of non-Muslims but also unveils the problematic nature of legal terms and the broader incongruities between modernization and Shia jurisprudence, as well as the role of various institutions in moderating this clash. However, a more comprehensive analysis of the legal status of non-Muslims would require the inclusion of statistical and empirical data regarding their immigration, settlement, religious spaces, and other sociological factors, which could be explored in future research.

[13]

Edalatnejad, Saeid. 2022. *The Legal Status of Non-Muslims in the Shiite Fiqh and Iranian Laws (1906–2020)*. Leiden: Brill.