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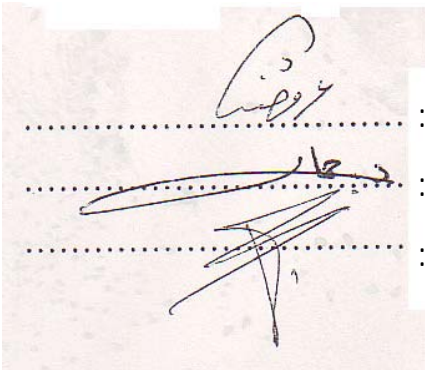
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The Omarian Guardianship- A comparative jurisprudential study

Prepared by: Noor Abu Romi

Supervised by: Dr. Orwa Sabri

Abstract

This study aimed at focusing light on the Omarian Guardianship through explaining the statements of that famous document. It also aimed at mentioning the provisions contained in that document. It dealt with the clarification and comparison between the provisions of the document and the four schools of Islamic jurisprudence: Hanafi, Maliki , Shafi'i and Hanbali .

To achieve the aim of the study, The researcher used the descriptive analytical approach, and compared the provisions contained in the document with the four schools of jurisprudence. The Subject of this study consisted of four chapters and eight Investigations. The reasearcher addressed the naming of the Guardianship, its writing down in Jerusalem, its text, documentation and importance. and also dealt with the Provisions relating to the rituals of dhimmis worship, such as ringing the bell, showing the Cross and the Palm Sunday, raising the voice in prayer, preaching their religion, and burying their dead . The study also addressed the provisions relating to the places of worship for the dhimmis, in terms of the rule of construction of churches, the rule of restoration of houses of worship and their transfer, the rule of owning, and their entry by Muslims. The researcher also dealt with the provisions relating to the issues of social affairs, in terms of the provisions relating to associating with people of the Book, concerning hospitality , consolation and the clinic of their patients, in addition to sitting with them, calling them by their nicknames, shaking hands with them, and the provisions relating to their clothing and ornaments, to wear the ring, the ships and the boats. It also included consent provisions relating to financial transactions, in terms of the provisions relating to alcohol and pork, and their involvement with their money, and the provisions relating to ownership of the dhimmi in the Islamic state, and the provisions of loyalty to the Muslims and breaking the covenant, and not to cheat. Setting aside the provisions of the Covenant because of the appeal of religion, setting aside the provisions of the Covenant because of the attack on the Muslims, and setting aside the provisions of the Covenant, because of non-compliance with the conditions.

This study has concluded that the idea of religious tolerance with dhimmis means Giving dhimmis security for themselves and their money and their houses of worship, and allowing them to perform worship in their houses of worship, And that does not to follow that doctrinal and worshiping differences between Muslims and non Muslims of the dhimmis.

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3 : 2 ﴿الْمُرُؤَاتُ كَذِبَاتٌ﴾ :

5 : 4 ﴿وَعَهْدَنَا إِلَىٰ آبَائِهِمْ وَإِسْمَاعِيلَ﴾ :

: 6 ﴿وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ﴾ :

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﴿ سُبْحَانَ الَّذِي أَسْرَى بِعَبْدِهِ لَيْلًا مِنَ الْمَسْجِدِ الْحَرَامِ إِلَى الْمَسْجِدِ الْأَقْصَا الَّذِي بَنَيْنَا حَوْلَهُ لِتُذَكَّرَ مِنْهُ ﴾

عَيْنِنَا إِنَّهُ هُوَ السَّمِيعُ الْبَصِيرُ 2

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﴿ لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ

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الرُّشْدُ مِنَ الْغَيِّ ^ع فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِرْ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَى ³ ﴿

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58/6	(861)	1937- 1356	.
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﴿ وَالَّذِينَ لَا يَشْهَدُونَ الزُّورَ وَإِذَا مَرُّوا بِاللَّغْوِ مَرُّوا ﴾ :

﴿ كَرَامًا ﴾ 4):

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﴿ وَإِنْ كُنْتُمْ مِنْهُمْ مِمَّنْ بَعْدَ عَهْدِهِمْ وَطَعْتُمْ فِي دِينِكُمْ فَقَاتِلُوا أَيْمَةَ الْكُفْرِ ﴾⁴

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ذهب جمهور الفقهاء من حنفية وشافعية ومالكية إلى جواز تعزية الذمي وعيادته

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﴿ لَا ﴾ :

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يَنْهَكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُم مِّن دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴿٢﴾

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لقد اختلفت آراء المذاهب الفقهية في تعليم المسلم القرآن الكريم للذمي

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﴿ وَإِنْ أَحَدٌ مِنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّى يَسْمَعَ ﴾ :

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1	442/3	(520)	1
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	. 1995- 1415 .	327-326/2	
		.279-278/12	2
	.303/1	311/4	3
		.140/4	4
		.140/4	5
		.51	6
145/14		(676)	7
		. 1392 2	

2 : ﴿حَيَّةٌ مِّنْ عِنْدِ اللَّهِ مُبَرَكَةٌ﴾¹ -2

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 2 عبد القادر، خالد محمد، من فقه الأقطيات المسلمة، ص 148 – 149، وزارة الأوقاف والشؤون الإسلامية، قطر، الدوحة، ط1، 1418هـ - 1998م.
 3 العسقلاني، فتح الباري، 39/11.
 4 293/13
 5 606/4
 6 381 (256)
 7 1115 3 1409 - 1989 .
 8 415/19
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.227/5 1

.605-604/4 2

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.6024 :	12/8	1
.2165 :	1706/4	2
	.147 14	3
.461-460/3	.140/4	4
	.312-311/4	
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﴿ لَا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ

:5

وَرَسُولَهُ، وَلَوْ كَانُوا آبَاءَهُمْ أَوْ أَبْنَاءَهُمْ أَوْ إِخْوَانَهُمْ أَوْ عَشِيرَتَهُمْ ﴾⁴

.279-278/12

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.460/3

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﴿ تَبَّتْ يَدَا أَبِي لَهَبٍ وَتَبَّ ﴾¹

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	.259/7	113/7	1
.221/4	.278-276/12	461/3	149-148/3
	.311-310/4	.129/3	
	.123/5	113/7	2
	.149-148/3	461/3	3

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.514-513

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.113/7	1
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.222/4	324/9	139/4	1
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		.127/3	4

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⁵ ﴿وَمِن رِّبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ﴾

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.207/4

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(2) : ﴿صُرِّتَ عَلَيْهِمُ الدَّلِيلَةُ أَنِّ مَا تُفْقَهُوا﴾¹ :²

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5 .221/4

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7 .221/4 .278/12

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3 البرذعة : الحلس الذي يلقى على الراحلة

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﴿ يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنصَابُ وَالْأَزْلَمُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ ﴾³

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(189)

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.39-38/5

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 207/2 (256)
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 .273/9 3
 .6/11 4
 2236 84/3 5
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.197-196/11

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	.236/2	1
467/2	.136/3	2
	. 1407 1	
.315-314/4	.186/2	3
	.209/4	4
	.211/4	5
	.124/5	
.136/3	.236/2	6
.236/2	.211/4	7
	.315-314/4	

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(1) : ﴿لِيُظْهِرَهُ عَلَى الدِّينِ كُلِّهِ﴾⁷ :⁸

(2) () :⁹ :¹⁰

(3)

1- .236/2

2- 315-314/4

3- .211/4

4- .136/3

5- ابن تيمية، المحرر في الفقه، 186/2.

6- 315-314/4

7- 33 :

8- .315

9- : 37/2 (307)

371/4 . 1416 1 783

538/1 .3620

.2778

10- .315/4

:8 7() : (1

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	.48	1
.306/1	71/10	2
84/8	.159-158/6	3
	.244/2	4
	.71/10	5
.84/8	.159-158/6	6
	.35	7
	.158/6	8

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.418/5 1

.418/5 2

387/5 (385) 3

1424 1 4506 :

236/6 (458)

. 2003- 1424 3

.4506 : () 757/2

.158/6 4

.84/8 5

.301 481/7 6

.301 481/7 7

237/6 8

1126/2 .11786

.6632

.481/7 9

﴿وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ﴾¹

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3 : ﴿ وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا ﴾² -1

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.299/3	486-485/2	.14/6	133	1
	.424/8	.294/4	.488/8	
		.197-196/8		369-368/10
			.141 :	2
	74/4	(1422)		3

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 .2911 .161/4 5
 .2108 125/3 6
 2731 -5 424/4 23 912/2
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.161/4

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133/4

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.133/4

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1318	82/2	(360)	1
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			.7157
		.122/5	2
		.218/4	3
		.317/2	4
		.311/2	5
		510/10	6
:	:	.21491	
	.1727	163/6	
		.593/6	7

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2 : ﴿ وَإِنْ كَفَرُوا مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ

فَقَاتِلُوا أَيْمَةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَنَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ ﴾³ :⁴

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	.281/3	1
	.281/3	2
	.12	3
667/1 () (710)		4
	. 1998- 1419 1	
- 765/2 (686)		5
	. 1994- 1414 2	

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	.26	1
	.765/2	2
	.281/3	3
	.281/3	4
.204/2	.199/3	5

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142/8

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﴿ قَدْ نَلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ

2

وَرَسُولَهُ، وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ ﴾³

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.356/1	.3396/7	1
	.625/2	2
	.29 :	3
	.3397-3396/7	4

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.260/7 .405-404/2 .124/10 1
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 .124/10



.225/3	.602/4	.459/3	1
.225/3	.602/4	.459/3	2
	.223/4	.318/3	3
	.223/4	318/3	4

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491/4	(975)	1
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119/56	(1420)	
. 1985- 1405 2	1278	
.389/3	.318/3	2
99	634/10	3
122	(968)	
.303	(1033 :)	
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	634/10	4



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	.214/4	.281/3	1
		.219-218	2
	.601/4	.611-610/2	3
		.150-149/3	4
		.462-461/3	

: ﴿فَمَنْ تَكْتَفِئَمَا يَنْكُتْ عَلَيَّ نَفْسِي﴾¹ : 2

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	.611-610/2		3
.302/9	512	224/4	4
		.302/9	5
		.224/4	6

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.598-591/6

.352/9 296/9

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.598-595/9

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3	124		﴿ لَا يَنَالُ عَهْدِي الظَّالِمِينَ ﴾
2	125		﴿ وَعَهْدَنَا إِلَىٰ آبَائِهِمْ وَإِسْمَاعِيلَ ﴾
8	256		﴿ لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمَرْ بِاللَّهِ فَقَدْ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ ﴾
68	112		﴿ ضُرِبَتْ عَلَيْهِمُ الذَّلِيلَةُ أَنْ مَا تُقِفُوا ﴾
82	141		﴿ وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا ﴾
72	90		﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ ﴾
3	102		﴿ وَمَا وَجَدْنَا لِأَكْثَرِهِمْ مِنْ عَهْدٍ ﴾
84	41		﴿ وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِّن شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ ﴾
68	60		﴿ وَمِن رِّبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ ﴾
50	6		﴿ وَإِن أَحَدٌ مِّنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّىٰ يَسْمَعَ كَلِمَ اللَّهِ ثُمَّ ابْلِغْهُ مَأْمَنَهُ ﴾
91 29	12		﴿ وَإِن كُنتُمْ لَا تَأْمِنُهُمْ مِّن بَعْدِ عَهْدِهِمْ وَطَعْنُوا فِي دِينِكُمْ فَقَاتِلُوا أَيْمَةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَنَ لَهُمْ لَعَلَّهُمْ يَنْتَهُوْنَ ﴾
94	29		﴿ فَذَلِيلُوا الَّذِينَ لَا يُمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّىٰ يُعْطُوا الْجِزْيَةَ عَن يَدِهِمْ صَافِرُونَ ﴾
81	33		﴿ يُظْهِرُهُ عَلَى الَّذِينَ كَفَرُوا ﴾
2	91		﴿ وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ ﴾
6	1		﴿ سُبْحَانَ الَّذِي أَسْرَىٰ بِعَبْدِهِ لَيْلًا مِّنَ الْمَسْجِدِ الْحَرَامِ إِلَى الْمَسْجِدِ الْأَقْصَا الَّذِي بَنَّا حَوْلَهُ لِنُرِيَهُ مِن آيَاتِنَا إِنَّهُ هُوَ السَّمِيعُ الْبَصِيرُ ﴾
52	61		﴿ تَحِيَّةٌ مِّنْ عِنْدِ اللَّهِ مُبَرَكَاةٌ طَيِّبَةٌ ﴾

23	72		﴿ وَالَّذِينَ لَا يَشْهَدُونَ الزُّورَ وَإِذَا مَرُّوا بِاللَّغْوِ مَرُّوا كِرَامًا ﴾
2	60		﴿ أَلَمْ أَعْهَدْ إِلَيْكُمْ يَا بَنِي آدَمَ ﴾
99	10		﴿ فَمَنْ تَكَفَّ فَإِنَّمَا يَنْتَكُتُ عَلَى نَفْسِهِ ۗ ﴾
57	22		﴿ لَا يَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ وَلَوْ كَانُوا آبَاءَهُمْ أَوْ أَبْنَاءَهُمْ أَوْ إِخْوَانَهُمْ أَوْ عَشِيرَتَهُمْ ﴾
48	8		﴿ لَا يَنْهَكَ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوا مِنْ دِينِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴾
58	1		﴿ تَبَّتْ يَدَا أَبِي لَهَبٍ وَتَبَّ ﴾

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