



**THE REPUBLIC OF TÜRKİYE
SOCIAL SCIENCES UNIVERSITY OF ANKARA
INSTITUTE OF SOCIAL SCIENCES**

**FREEDOM OF RELIGION AND BELIEF
IN BEYTULMAKDİS**

Master's Thesis

Akif Tögel

Master of Arts in Quds Studies

January 2023



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DECLARATION

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work. I declare that this thesis is written according to the writing rules of the Social Sciences University of Ankara, Institute of Social Sciences.

Akif Tögel

Signature

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ÖZET

Beytülmağdis’de Din ve Vicdan Özgürlüğü
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Günümüzde, insan hakları kavramının sonuna gelindiğini, içinin boşaltıldığını ileri süren düşünürler olduğu gibi, insan hakları kavramının sürekli bir gelişim içerisinde olduğunu ve halen bu alandaki sorunlara çözüm üretme potansiyelinin olduğu savunanlar da bulunmaktadır. Uluslararası ilişkiler disiplini bünyesinde hazırlanan bu çalışmanın müellifi, bir hukukçu olarak ve insan hakları teorisinden de destek alarak din ve vicdan özgürlüğü ile sınırlı olmak üzere bir araştırma yapmıştır. Şüphesiz uluslararası ilişkiler biliminin dinamikleri ile hukuk biliminin dinamikleri birbirinden farklıdır. Ancak konu, temel bir hakkın kullanılması ve korunması boyutunda uluslararası ilişkiler mekanizmalarının ne düzeyde çözümler üretebileceğine yoğunlaştığı için, ulaşılan bilgiler iki bilim alanının kesişim noktasında yorumlanmıştır.

İnsanlar, uluslararası sözleşmelere ve organizasyonlara, kuruluş amaçları dikkate alındığında temel hakların daha etkin korunması için ihtiyaç duyarlar. İnsan hakları şemsiyesi altında önemli bir yere sahip olan din ve vicdan özgürlüğü ise, uygulama biçimleri ile son yüzyılda dünya genelinde farklı görünüm arz etmektedir. İnsan haklarının evrensel düzeyde kabul edilmesi ve korunması gerektiği önermesinden hareket eden ve tümüden gelişim metodunu takip eden bu çalışma, ilk planda insan hakları kavramını ve gelişimini, ikinci planda din ve vicdan özgürlüğünün kapsamını ve bileşenlerini ele almaktadır. Bu çalışmanın asıl araştırma sorusu ise, Yahudi, Hristiyan ve Müslüman bireylerden oluşan halkı ile, Beytülmağdis (Kudüs) toprakları içerisinde din ve vicdan özgürlüğü konusunda geçmişten günümüze yaşananlara odaklanmıştır. Kadim bir geçmişi ve tarihsel arka planı incelendiğinde üç din mensupları için kutsallığı bulunan ve stratejik konumda olan bu bölge çok çalkantılı dönemler geçirmiştir. Tarihi kaynaklar, bu bölgenin Müslüman yöneticilerin idaresinde olduğu dönemlerde huzurlu olduğunu doğrulamaktadır. Ancak, uluslararası hukukun tüm mekanizmalarına rağmen son yüz yılda işgal altında olan bu topraklarda yaşam hakkı, özgürlük ve güvenlik hakkı gibi en temel insan haklarının dahi defalarca ihlal edildiği bir gerçektir.

Bu çalışma kapsamında, bölgesel düzeyde temel hakların korunması için varlık gösteren mekanizmaların da, din ve vicdan özgürlüğü alanında işgal altındaki bu topraklardan yükselen sese henüz bir çözüm sunamadığı değerlendirilmiştir.

Dünya üzerindeki her insan oldukça değerlidir, temel hak ve hürriyetlere sahiptir ve bu hakların korunması ve yaşatılması aslında tüm insanlar için bir sorumluluktur. Bu araştırma sonucunda, farklı inançlardan insanların bir arada barış içerisinde yaşama tecrübesine sahip bu bölgenin tekrar eski günlerindeki huzurlu atmosferine kavuşması için uluslararası hukuk biliminin ve uluslararası koruma mekanizmalarının daha etkin çalışması gerektiği önerilmektedir.

Anahtar Kelimeler: İnsan Hakları, Din Özgürlüğü, Vicdan (İnanç) Özgürlüğü, Beytülmağdis, Uluslararası İnsan Hakları Hukuku.

ABSTRACT

Freedom of Religion and Belief in Beytulmakdis

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Today, there are scholars who argue that the concept of human rights has come to an end and has been eviscerated, while there are also those who argue that the concept of human rights is in constant development and still has the potential to produce solutions to the problems in this field. The author of this research, which was prepared within the discipline of international relations, has conducted a research limited to freedom of religion and conscience as a jurist and with the support of human rights theory. Undoubtedly, the dynamics of international relations and the dynamics of law are different. However, since the subject focuses on the extent to which international relations mechanisms can produce solutions in the exercise and protection of a fundamental right, the information obtained was interpreted at the intersection of the two fields of science.

People need international conventions and organizations for more effective protection of fundamental rights, given their founding objectives. Freedom of religion and conscience, which has an important place under the umbrella of human rights, has presented different views throughout the world in the last century. Starting from the premise that human rights should be universally recognized and protected and following the deductive method, this study firstly examines the concept and development of human rights and secondly the scope and components of freedom of religion and conscience. The main research question of this study, on the other hand, focuses on what has happened from the past to the present with regard to freedom of religion and conscience in the land of Beytulmakdis (Islamicjerusalem), with its people consisting of Jewish, Christian and Muslim individuals. With its ancient history and historical background, this region, which is sacred to the members of three religions and strategically located, has gone through very turbulent times. Historical sources confirm that this region was peaceful when it was governed by Muslim rulers. However, despite all the mechanisms of international law, it is a fact that even the most basic human rights such as the right to life, right to liberty and security have been repeatedly violated in these occupied territories in the last hundred years.

Within the scope of this research, it has been evaluated that the mechanisms that exist for the protection of fundamental rights at the regional level have not yet been able to provide a solution to the voice rising from these occupied territories in the field of freedom of religion and belief.

Every human being in the world is precious, has fundamental rights and freedoms, and it is the responsibility of all human beings to protect and uphold these rights. As a result of this research, it is suggested that international law and international protection mechanisms should work more effectively in order for this region, where people of different faiths have the experience of living together in peace, to regain the peaceful atmosphere of the historical good days.

Key Words: Human Rights, Freedom of Religion, Freedom of Belief, Bayt al-Maqdis, International Human Rights Law.

INTRODUCTION

The word "right" and its equivalents in other languages have two basic moral and political meanings. These are the meanings of righteousness and authority. In the first, we can speak of something being right, of a situation that is right (just). In the second, we can infer that a person has a right. Rights can also be characterized as the values that human beings have basically because they are human beings apart from other beings. (Donnelly, 1995)

The emergence of the concept of 'natural rights' can be traced back to the late Middle Ages, when it was first discussed in its modern sense. In this period, the idea that human beings have natural inclinations arising from their creation and believed to have been put into human beings by God was dominant. Scholars in this period believed that natural laws could be derived from the natural principles to which natural rights were related. However, by the seventeenth and eighteenth centuries, many scholars were arguing that the theory of natural rights should be stripped of its theological content. According to these scholars, there are rights that can only be achieved through "human intellect", and these rights should be called human rights. In the final analysis, the theological background of the idea of natural rights began to be abandoned in this period.

Indeed, with the American and French revolutions, the idea of natural rights ceased to be an issue discussed only in academic circles, and human rights (*les droits de l'homme*) began to be used as a secularized concept in street protests. At the end of the Enlightenment, the concept of human rights, in its secularized form, was still thought to be derived from natural law. However, in this period, the concept of natural law was basically no more than a moral principle. In the nineteenth century, at the outbreak of the Second World War, Franklin Roosevelt began to articulate it as a concept that needed to be embraced, and after the war, it was brought back to light with the establishment of the United Nations.

Research in the field of fundamental rights shows that religious freedom is not just another freedom among other liberal freedoms. As Rex Ahdar and Ian Leigh remind

us, religious freedom is in fact a "prototypical" liberal freedom that is the cornerstone of the political rights that exist today (Ahdar-Leigh, 2005). In this respect, the question of when people have had freedom of religion and when and to what extent this freedom should be limited are controversial. More importantly, the relationship between freedom of religion and modern concepts of secularism and other fundamental freedoms, such as freedom of expression, continues to be debated. Moreover, the use of the words "religion" and "religious" can be problematic in terms of scope. This is because the problem centers on whether what we know as religion can be defined as a single phenomenon or belief.

The concept of freedom of religion may not evoke the same concept in people's minds everywhere. This is because each religion tends to suggest that its discourse is the sole guardian of the truth and that believers in this religion are obliged to act in accordance with this truth. Because of this tendency, it can be said that there is a tension between religions and religion-based beliefs. The intolerance felt by a believer of one religion towards a believer of another religion creates a problematic area for defining and elaborating freedom of religion and conscience as a fundamental right. For this reason, it is important to state at the beginning of our study that, the right to freedom of religion and belief is far from being upheld everywhere.

A sizable portion of human rights abuses worldwide involve bias or intolerance in relation to the freedom of religion or belief. The 21st century is unfortunately now characterized by a regular occurrence of religiously motivated murders and torture, harassment of minority faiths, forced assimilation of believers, degradation of religious sites, banning of beliefs, and pervasive prejudice.

In this human rights context, this research will focus on human rights practice in Jerusalem (Beytulmakdis). Within this practice, which of the human rights can not be proven and which of them still vital will be investigated.

1.PROBLEM STATEMENT

Since the beginning of the history of humanity, religion has been an important dynamic in the society or the interaction between people as well as for the interaction between individuals and the state.

Many regional and global legal documents acknowledge freedom of religion and belief as fundamental human rights. The inherent worth and equality of every human being is one of the cornerstones of the United Nations Charter. The United Nations organization's member states have vowed to engage in a number of initiatives to further and support the universal recognition of, and observance of, basic freedoms and human rights without distinction of any sort.

After the Ottoman administration in Jerusalem, even today, the occupying Israeli forces dominating this region disregard to the religious freedoms and beliefs of Muslims, Christians and Jews. The primary goal of this study is to identify and evaluate how these rights—particularly the freedom of religion and belief—are being violated in this region.

2.RESEARCH QUESTIONS

Research questions of this study is that;

- 1-What is the scope and historical evolution of the concept of human rights?
- 2-What are the definition and components of freedom of religion and belief?
- 3-What were the religious rights and freedoms of the inhabitants of Beytulmakdis in the terms of Jewish, Christian and Muslim rule and what are the religious rights given until today?
- 4-What are the principles set forth by the Charter of the United Nations on religious freedom and freedom of belief?
- 5-Which religious rights are being used freely and which are blocked for believers in this region today?

3.AIMS AND OBJECTIVES

The aims of this study is;

1-To expose the religious rights and freedoms which were given to both believer and non believer inhabitants of Beytulmakdis region.

2-To examine Charter of the United Nations, United Nations Convention on Civil and Political Rights and also other international documents in terms of freedom of religion and belief.

3-To analyze current religious rights practice in Beytulmakdis region within the framework of United Nations principles and to compare the progress of these rights with historical practice. Depending on the practice of freedom of religion if some violations detected, the objective of this research is to search the international legal actions to prevent these violations. For sure, it is not possible to prevent violations with the help of international community but an international accountability procedure can run through justice to the region. In this context, the decisions of International Court of Justice will be examined, to understand the vision of the Court in terms of freedom of religion and belief.

4.SIGNIFICANCE AND PURPOSE OF THE RESEARCH

According to Charter of the United Nations; Article 18 includes that; every individual is entitled to freedom of thought, conscience, and religion, that involves the freedom to change one's religion or belief and the freedom to publicly and privately practice, teach, worship, and observe one's religion or belief.

While this research has been conducted, the region of Beytulmakdis is under Israel occupation. Occupying Israeli state is a member of United Nations from 1949, and from 2012 State of Palestine is accepted as non-member observer state status in front of United Nations. The Palestinian state's application for full membership of the United Nations is still pending.

As a part of International Law, signatory states must act in accordance with the rights under the agreement. Human Rights violations, in this context requires the

signatory state to be held accountable in international legal arena. In the light of all these regulations, the importance of this research is to determine the violations of freedom of religion and belief in the region, from the perspective of international law and human rights law. In addition, the importance of this study will be carried out to identify the legal mechanisms that may be applied in the face of these violations.

- Academic: In the light of all the regulations related to human rights law, the purpose of this research is to determine the religious rights practice in Beytulmakdis region, from the perspective of international law and human rights law.
- Personal: As a constitutional legal scholar, the issues on human rights are very important. Both in theoretical and practical level and also in international level, all human rights should be studies.

However, some human rights issues and specifically freedom of religion in terms of Beytulmakdis is not studied in Türkiye. A deeper research is needed to brighten this topic in human rights law. Also, the findings of this research will light the development of human rights within the region.

5.FRAMEWORK OF RESEARCH

The word "human rights" first appeared in an international treaty near the end of the eighteenth century, in the French Declaration of the Rights of Man and of the Citizen. (1789)-(*les droits de l'homme*) However, it took until the mid-twentieth century for the term to become widespread. In fact, these two concepts have largely the same philosophical underpinnings. It is possible to say that natural rights are generally derived from natural laws. (Griffin,2008) As will be discussed in this study, it is rather difficult to explain where the term "human rights" comes from.

From an international perspective to human rights, Efforts to improve the concept and scope of human rights have become an important condition for entering into many different agreements with other states. The most apparent manifestation of this is the recognition of the notion of human rights respect as an official requirement for entrance to the European Union. In today's global era, all states have begun to care about how their "human rights record" is evaluated in the international arena. (Clapham, 2007)

Human rights are based on the premise that all individuals should be treated with equal consideration and dignity. Human rights rules on discrimination are inspired by this idea of equality and are developed to ensure social justice on various moral grounds. The idea that individuals should not be treated unfavorably solely on the grounds of sex, color or religion has also elaborated human rights to non-discrimination. (Clapham, 2007)

One of the most controversial aspects of freedom of religion and belief, concerns the right to choose religion or belief. While there are states that have created an area of unlimited freedom for individuals to change their religion, there are also states that assert that the right of individuals to maintain a religion they believe in is very important, and they have reflected these perspectives in the United Nations texts. (Taylor,2005)

It is acknowledged in this context that everyone has the right to believe or not believe in a religion, to pick a religion, to keep believing and follow to a religion, or to alter his or her religion at any moment. Moreover, it is also argued that individuals have the right to be free from restrictions that prevent them from making choices about religious belief. (Pfeffer, 1977) On the other hand, the freedom to maintain one's religious beliefs or to change one's religion is a matter of conscience. Therefore, it should be recognized that external interference in this area of conscience is quite limited. (Krishnaswami, 1960)

The International Covenant on Civil and Political Rights ('ICCPR') is especially crucial in understanding religious freedom. The freedom to have and proclaim one's own religion or belief is widely construed in the ICCPR to encompass the prohibition on compulsion described above. Indeed, Article 18 prohibits interference by States with freedom of religion. It also places the state under a positive obligation to create favorable conditions for individuals to freely select their own views. (Dickson, 1995)

Another theoretical framework of this study is related with the status of freedom of religion in Beytulmakdis during Ottoman reign. In this regard some determinations from this period will give a framework to compare situation of religious rights today. For example, an Italian Jew, David dei Rossi, who visited Jerusalem in the 16th century, remarked on Jewish life in the old city, "*Here we are not in diaspora as in our own nation [Italy]*". [...] *Jews are in charge of customs and tolls here. There are no additional Jewish taxes*". (Peters, 1985)

In this context, similar goodwill was displayed by Prophet Suleiman, who visited the Holy Land as well as resided for a while as; "*The Gentiles who live on the soil of Israel [...] hold the tombs of our holy masters, as well as the synagogues, in great reverence, and they blaze lights at the graves of the saints and swear to supply the synagogues with oil*" (Peters, 1985).

On the subject, Thubron writes as follows: "*At a time when the lands of Europe were racked with persecution, Muslims were consistently tolerant of those of the Jewish faith. Members of these two faiths lived in tolerance.*" (Thubron, 1969) Because of this peaceful atmosphere, the Ottoman Empire was described as "Magnificent" by Western scholars in the sixteenth century. According to Turkish historians, the Ottoman administration experienced its golden age during the reign of Sultan Suleiman, known as the "Lawgiver". According to Arnold: "*The Ottoman Turks waged wars with Europe, established alliances, conquered, occupied and lost territory.*" (Arnold, 1979) Throughout its five centuries of dominance, the Ottoman Empire interacted constantly with European states. After the Ottoman Empire expanded into borders of Eastern Europe, "*there was interaction between the Christian and Muslim populations in the regions close to the border. As a result of this positive interaction, the peasants and people in the border regions believed that they would be governed more competently under Ottoman rule. They also maintained their belief in both the rule of law and religious tolerance.*" (Thubron, 1969)

Indeed, in his research "Jewish Life under Islamic Rule in Sixteenth-Century Jerusalem," Cohen provides examples of the Ottoman authorities' ongoing good attitude and behavior toward Jews. According to Cohen, several of the norms (financial limitations) stated by Islamic jurisprudence were just not followed to the letter of the legislation. For example, Cohen claims that during this period, Jerusalem Jews who were required to pay the jizya tax sometimes did not pay this tax. Those who did pay the tax paid the lowest official rate. Cohen also contends that, contrary to popular belief, the testimony of Jewish litigants and witnesses was credible. In the end, the Muslim authorities supported and safeguarded a secure Jewish living conditions in Jerusalem. (Asali, 1989)

Depending on these two frameworks, the research will focus on both human rights and freedom of religion issues. To understand the development in these issues is very

crucial. Yet, the concept of religious freedom in the Ottoman Empire is not depending on recent international legal documents. However implementation of these rights in Empire was rooted from some moral and religious roots, namely Islam.

6. TERMINOLOGIES

- Natural rights and Human rights context: as previously stated, these two concepts are very interconnected in origin. The concept of rights generally carries a religious and spiritual claim. However, in the last century, this concept has undergone a change, and the doctrine of human rights has supplanted the doctrine of natural rights, which is based on needs and has a secular basis.
- Freedom of religion-belief: The relevance of religious freedom and the growth of these rights within the scope of human rights demonstrates the vital position. Indeed, one of the fundamental components of a democratic society is the freedom of citizens to select and declare their religious views. This is a fundamental right established in numerous international treaties, including the International Covenant on Civil and Political Rights.
- International law: International law is essentially a set of internationally enforceable laws that governments create between them and other countries by sacrificing their sovereign rights. When these rules are brought up and accepted, states are in fact positioning their own countries and citizens. International laws, in general, promote peace, justice, common interests and common trade between countries. It is at the discretion of each state to implement and comply with international laws. However, it is up to the overall authority of the country's government to enforce international laws and maintain agreements with other countries concerned. This weak structure is, in fact, the main reason for the religious freedom abuses in Beytulmaqdis, the topic of our research.

7.INTRODUCTION OF CHAPTERS

Theoretical chapters of this research will be discussed depending on books and articles in this field. Literature articles are focusing on the religious freedom issues from different perspectives. Both legal documents and international relations documents are analyzed, to give a proper focus in this research. Some of the texts are examining Palestine side and the others are analyzing Israeli report on religious freedom. Main international agreements and legal judicial bodies are also enriched this research.

The common idea in the first chapter is to provide a clear look at the theoretical and international framework related to human rights challenges. The genesis of the notion of human rights in general, the problem of hierarchy among essential rights, and whether rights are universal or not are explored in order to construct the theoretical framework of the research. The theoretical foundation is immediately followed by a discussion of international human rights protection mechanisms and the binding nature of international conventions.

The definition of the notion of freedom of religion and belief, as well as the main components that comprise this right within the context of this definition, were examined in the second chapter. Furthermore, the topic of constraints on religious freedom and freedom of belief is addressed in this context.

The third chapter, includes information on the terminological origins of Beytulmakdis as a concept, as well as the historical background and importance of this region. The historical development of the region is also evaluated under three sub-headings, namely the Ottoman state and its aftermath.

The fourth chapter focuses on pre-Islamic practices concerning religious freedom and belief in the Beytulmakdis region, with an analytical assessment of the practices under the Ottoman Empire. Finally, this chapter covers the region's contemporary difficulties following Ottoman rule, as well as the remedies supplied by international processes to these concerns.

CHAPTER I:

THEORETICAL AND INTERNATIONAL LEGAL FRAMEWORK OF HUMAN RIGHTS

1.1.THEORETICAL FRAMEWORK

1.1.1.The Notion of Human Rights

To begin explaining the essence of human rights, the idea of "right" must first be defined. "To have a right" means to be able to perform something or to demand something. Right; while it gives the individual who possesses it the authority to do something, it also sets an obligation to treat and not impede others from utilizing this authority. Human rights refer to the rights which a person has just because he or she is a human being. (UDHR, 1948) Given the multiplicity of perspectives on the notion of human rights, which is now one of the modern world's universalized conceptions and is seen as a *sine qua non* of current existence, it is impossible to provide a comprehensive overview.

Rights proceed in a way that protects human dignity and ensures material and spiritual development. These achievements, which are recognized as uniquely human, are notions that all human beings, and in some cases even the unborn, should have at all times and in all places. For this reason, one does not make any special effort to acquire rights. Being born as a human being is enough to claim rights. In addition, people's color, religion, language, and cultural differences cannot be a precursor to rights. (Doğan, 2004)

When it comes to question as what is the source of the right? Where does the right that authorizes a person come from? There are two primary points of view on this subject. First, the "contract"; the second is the concept of "morality". Human rights, on the other hand, are supreme to all other moral rights. (Cranston, 1973). The right of the human being, which is the highest value, is the core value safeguarded here. The safeguarding of human values is dependent on the protection of human rights. Human rights take precedence over society and state. It indicates as when two rights clash, human rights take precedence. In other words, when choosing between both the principles that govern the

use of public power, such as preserving the general interests of society, protecting the majority's interests, or guaranteeing public good, and human rights, human rights take precedence. All of these public powers are subordinate to human rights. Due to this characteristic, at the stage achieved in international law, a state's or regime's attitude toward human rights is important in evaluating a state order or regime. (Quintavalla & Heine, 2019)

Transition to social life has also accelerated the emergence of the concept of right. A state that says it will meet people's needs has declared that they have some innate rights and freedoms and that it aims to protect them. Seeing that their rights and freedoms are protected, people have agreed to certain restrictions in exchange for assurance. In general terms, a right refers to a situation that a person can claim, claim and use. The right, which is guaranteed under the law, allows the state and society to live through the legal order. Law, which is the insurance and regulator of social life, collects the concept of right and turns it into an order. Social differences have led to the existence and emergence of very different legal rules. Thus, different legal systems tackle the subject of rights in different ways. (Donnelly, 1995)

Human rights are the collection of privileges that individuals enjoy simply and exclusively because they are members of the humankind. Because of this totality, all individuals' rights should be equally shared, regardless of gender, ethnicity, nationality, or economic background. The content of these rights is universal. (Ishay, 2004) This idea has been advanced in connection with the global human rights movement for about fifty years. Human rights are viewed differently by different people nowadays. For some people, turning to the notion of human rights and its protective mechanisms is a genuine and morally justifiable demand for redress of universal injustice. For other families, though, the concept of human rights merely serves as a catchphrase to be avoided. (Clapham, 2007)

People have traditionally lived in groups. Living in a society is possible only if the individuals who make up the society provide an order in which they are at least sure of their lives. Again, the order of society is the expression of the common characteristics, interests and feelings of solidarity of the individuals who constitute it. Therefore, every social order, no matter how primitive it may be, must by definition stipulate rules that protect the basic rights of its constituent individuals, even at a minimum level. Based on

this sociological fact, it can be said that human rights in general have existed since the earliest times. (Cranston, 1973)

Where do human rights come from? Where does humans get these rights and claim against the state? In the moral and legal sphere, the concept of "right" refers to a justified claim or demand on a person, institution or thing. The person with a right claim that he or she is entitled to be treated in a certain way by other people or social institutions. Thus, each claim is a shorthand formula for being morally authorized to interfere with someone else's freedom in a given concrete situation.

As a result, the conceptual underpinnings of the current concept of human rights may be easily traced back to ideas and books commonly used around the end of the 18th century. The American Declaration of Independence, as is well known, states: "*We believe these facts to be self-evident: that all men are created equal; that they are bestowed by their with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.*" In 1789, another international document, the French Declaration of the Rights of Man and of the Citizen (*'les droits de l'homme'*), identified and proclaimed that: "*Men are born free and equal in dignity and rights, and the object of every political association is to protect the natural and inalienable rights of man; these rights are liberty, property, security, and resistance to oppression.*" (Clapham, 2007) Human rights became widely known only in the middle of the 20th century. (Griffin, 2008)

The idea of the existence of a natural law separate from and superior to the law created by humans is very old. It is mostly of divine origin. Proponents of natural law say that everyone should abide by the principles of *natural law*, which are superior and universal principles. Natural law has been used since ancient times to limit power and prevent its abuse. Studies of concretization of natural law followed these developments. Later, natural law introduced the concept of "*natural right*". (Locke, 1764) Moreover, it is argued that these rights are constantly evolving and evolving as a result of a "struggle for rights" between state power and human beings.

Views on natural rights occupy an important place in the history of philosophy. Thomas Hobbes, who lived in the 17th century, is one of the philosophers who comes to mind when we think of natural rights. According to Hobbes, "men are equal by birth" (Hobbes, 1993). This equality is both physical and mental. They are physically equal

because a physically weak person can become capable of killing a very strong person by resorting to deceit or by joining with others.

The "state of nature," according to Locke, is the situation in which individuals live together and in a rational way without a greater authority with the power to decide between them. Agreements forged in nature are legally binding. Individuals make promises to one another and keep them; this is their responsibility. However, Hobbes believes that honoring one's word in the state of nature is not a law that must always be followed if it jeopardizes human survival.

According to Locke, there is no greater authority to make choices regarding people in a state of war, and in this setting, one person virtually crushes the other. Thus according to him, this circumstance differs from the natural state. Locke's state of nature differs from the condition of war. In fact, there is a distinction between these two ideas. Nature is a condition of peace, cooperation, and goodwill in which individuals are equal and free. When people use force against one another unfairly, a state of war is created, yet this should not be confused with the condition of nature. Indeed, the condition of war is nothing more than a violation of nature's laws. (Copleston, 1991).

The eventual aim of the human rights movement is to give these rights legal standing. Once human rights are made legally enforceable, violators will normally continue to enjoy them, but they will be asserting legal rights, not human rights. It is clear that the concept, although embodied in the political sphere based on moral foundations, will not make sense with mere political rhetoric devoid of legal protection. As a result, in order to argue about human rights in a significant way, political views on the subject must be legally justified. It is necessary to be equipped with instruments. (Donnelly, 1995)

Another aspect of the right, is related to the ability to interfere with someone else's freedom. To assert a right is to assert that there is a justifiable reason for interfering with someone else's freedom. This restriction of freedom can occur in the form of either forcing the person to do something or refraining from doing something. The justification for the interference may arise from law or custom, or it may arise from a purely moral reason.

1.1.2. Human Rights Development Throughout History

Human rights, which were founded on the principle of restricting governmental power, primarily meant to defend the person against the state via legal and moral standards. Changes in each and every field have occurred in the sphere of human rights, and afterwards, state organs and public agencies have collaborated to defend and promote the rights gained. Human rights, which aim to raise all human beings to a material and spiritual level worthy of human dignity with the idea that exists at its most basic, reveals its basic ideas in areas related to economic and social rights.

In terms of historical development, human rights first found the opportunity to be realized within states and then started to become the subject of international regulations. The differences within the communities that make up the states have caused the development process of human rights to be different in each society. It is absolutely inconceivable that the state formation, which exists for human beings, would harm human beings. If the state harms people in terms of its existence, it means that the legitimate purpose of the state's existence has disappeared. The existence of the state depends on securing people. The reason for the existence of the state as a concept is not to mistreat or torture its own citizens, but to ensure the welfare and secure development of its people. If ill-treatment and torture, which are diametrically opposed to human rights, gain continuity, they can initiate processes leading to the undermining of the legitimacy of the state and its gradual collapse. People who do not trust the state and do not feel secure under its roof, and the society they form, may become unpredictable over time.

Human rights emerged as an idea at the beginning of the modern era. John Locke was the first to express this idea under the name of natural rights. It has progressed from a topic of moral/philosophical interest to the subject of national and global documents and legal orders. The most known important step was taken with the Bill of Rights in 1688. But this step can be tracked back to the Charter of Medina in 6th century. This Charter, which formed the basis for a city-state comprising Muslims and Jews in Medina, was the first written constitution of history and the earliest known example of human rights document. (Hamidullah, 1994) Following document, Magna Carta Libertatum in the 13th century. Later, the Virginia Declaration, based on the principles of equal liberty and inalienable rights, and the American Declaration of Independence, proclaimed in

1776, followed the same approach. The 1789 French Revolution and the Declaration of the Rights of Man and the Citizen was another development. The 1948 Universal Declaration of Human Rights contains a very extensive list of human rights. This was followed by many international conventions.

Under the framework of human rights, all humans are expected to have access to all essential rights. However, multiple sorts of rights are contained in the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR), and other international conventions. In this analysis, we will examine at these conventions and their origins, stages of implementation, and process of recognition by the global community. The 'usual' manner of defining human rights, as widely recommended in the literature, is to divide them into 'first, second, and third generation' rights. However, as will be seen in the paper, such a classification of rights is of very limited use and can be misleading in some cases.

The Czech lawyer Karel Vasak first put the notion that human rights improvement across generations at the end of the 1970s. (Vasak, 1977) The categorizing of human rights and liberties in terms of generations of rights, demonstrates similarity with the chronological development process of rights and liberties. First generation rights and freedoms are recognized as the first rights earned by humans throughout history. The rights and freedoms of the first generation, also known as classical rights, originated in the 17th and 18th centuries and primarily safeguard the individual against the state. These are known as civil (personal) and social rights and liberties, as well as classical rights. (Vasak, 1977).

According to Tanor, bourgeoisie was the main actor behind these classical rights and freedoms, which was enriched by trade at that time, engaged in a struggle with the aristocracy and emerged victorious from this struggle. The bourgeoisie, with this struggle, led to the emergence of the concepts of freedom and equality. The demands put forward by the bourgeoisie, were only possible with a radical change in social and political order. Accordingly, these rights began to be implemented to a large extent only with the American and French Revolutions (Tanor, 1978).

In general perspective, human rights are about what we are owed from government— It refers to a space/area that is truly ours and that we cannot be deprived of. (Mayers, 2017). To say that we have a certain right by nature or by law is not to say

that we are safe in the actual exercise or exercise of that right; indeed, this statement is merely to say that we can justifiably claim that kind of security (Erdogan, 2005).

The historical process is highlighted in the classification established among centuries, the nature of the connection between the state and human rights, and what it should be. The first generation of rights (political and personal rights) is freedom; the second generation (economic and social rights) is equality; and the third generation (solidarity or peoples' rights) are political legal extensions of solidarity or fraternity concepts. According to some sources, a fourth generation right group has been added to Karel Vasak's differentiation today, such as the right to water and the non-abuse of science. On the other side, Jellinek's categorization between negative, positive, and active status rights is acknowledged as the classical human rights philosophy in the legal identification of human rights. (Jellinek, 1913).

There is a "negative right" not to interfere with or hinder the state from taking action to satisfy a right. The state is not expected to take any active action in the event of negative status rights, and the individuals receives these rights without the state's contribution. Personal rights have traditionally been of this type. For example, the right to life and personal immunity. Individuals can profit without the state's active participation. These rights guarantee the individual an inviolable and autonomous space.

Positive status rights are those that require positive intervention by the state. Individuals can use these rights only with the intervention of the state. This category of right includes economic and social rights such as the right to health, the right to education, and the right to social support. Positive status rights are based on eliminating socioeconomic inequities in society.

The third type of right is active status rights, which allow citizens to engage in the development and exercise of political power. This category includes rights like as voting and being elected, as well as creating and being a member of a political organization, and individuals can determine political decision makers and influence political decisions thanks to these rights. These rights can impose on the state the act of acting both positively and actively. For example, holding elections regularly and safely brings a positive obligation to the state, while not preventing propaganda and being nominated by individuals from the party they want brings negative obligations to the state (Algan, 2007)

Jellinek's classical classification can be criticized. This classification may also reveal the danger that it may result in the existence of a hierarchy among rights. Negative status rights that do not impose a positive obligation on the state may result in more protection than positive rights, which is a dangerous approach in terms of human rights. According to this approach, the state should be like a night watchman. The state's attempt to realize certain rights by assuming positive action restricts the natural rights of other people. Every time the state takes positive action to eliminate poverty and ensure general welfare, it will violate the rights of other individuals (Turhan, 2013).

Religious freedom and freedom of belief is a crucial liberty, that is granted to a person because he/she is a human being, and in cases where it is not recognized, a person cannot continue his/her life in accordance with human dignity. Religious belief, as a manifestation of one's connection with another world, expresses an indispensable value that can make life unbearable if one's expectations are not met. For this reason, religion has a more important and priority place for many people than their own life and the right to live. The transfer of the orders and requirements of religion, which is the result of a "sublime bond" that man has established with a supreme power, to social life has an indispensable importance in terms of establishing a healthy basis for a person's individual and social relations (Taylor, 2005).

Freedom of religion and belief has two aspects facing the individuals. The first of these is to have a conscientious wing and thought, and the other is to reflect this wing and thought to the outside. Religious freedom and freedom of belief safeguards people's will to actualize both their metaphysical beliefs and thoughts, as well as their duties and thoughts in the personal and societal spheres. The first of these protected wills is about freedom of belief and the other is about the expression of belief (Yesil, 2016).

In every country where democracy and secularism are genuine, the principles of freedom of religion and belief, that have such a vital position in human existence, are safeguarded under the label of freedom of religion and belief. This freedom is accepted as negative status right in some countries and positive status right in some countries (Küçük, 2009).

The human rights system is constantly evolving. Its scope is enriched and expanded with new rights and new interpretations. Human rights have grown over time

from fundamental rights of individuals to areas relating to political, social, economic, and cultural activity.

1.1.3. The Hierarchy Issue Among Status Rights

As it is stated above, that there are three statuses in the classification of fundamental rights: negative, positive and active. However, the question is whether if any of the rights in these categories have an importance over the other? For instance, is it possible to compare the right to education, which is considered to be in the positive status rights group, with the right to life, which is included in the negative status rights group?

In this context, the general opinion is that there is no hierarchy between each human right. However, some conceptual misunderstandings have prepared the way for debates regarding the existence of a hierarchy of rights. In that case, making a distinction between "fundamental rights" among human rights and talking about a core area would create a situation that contradicts the acceptance of absolute equality among rights put forward in theory, and would in fact create a hierarchical order among rights as a result. When this regulation is established, some human rights will be protected in the first instance. Or this hierarchy would give legal legitimacy to the protection of different rights at different levels. Some argue that making such a claim goes against the foundations of human rights theory. Because, in the normative context, distinguishing between basic and non-fundamental rights would result in a situation contradictory to human rights. In truth, the world is in a state of rapid change in every subject, and the concept of human rights is no exception.

On the other hand, Jellinek's categorization of human rights as first, second, and third generation rights, or the contrast between essential and universal rights, does not entail the formation of a rights pyramid. First generational freedoms (political and private rights) are legal - political extensions of freedom principles, second generation privileges (economic and social rights) are equity, and third generation liberties (solidarity or peoples' rights) are unity or brotherhood.

International human rights norms provide a holistic approach. It is based on the equality of all people, regardless of differences arising from language, religion, race, gender, nationality and social status. According to human rights principles based on

equality for everyone, segregating people based on race, gender, religion, country, or participation in a collective group is discriminatory and results in abuses of rights. Human rights are indivisible, interconnected, and linked, according to official UN policy. The notion of indivisibility is also mentioned in the 1968 UN Tehran Declaration. The declaration states that human rights and basic freedoms are inseparable, and that civil and political rights cannot be completely fulfilled without economic, social, and cultural rights. (UN Doc. A/Conf. 32/41)

Human rights guaranteed by international conventions create obligations for all states parties and these obligations do not differ according to rights. However, actors and states responsible for protecting and guaranteeing rights create a hierarchy between human rights norms with their actions and subjective approaches. As mentioned earlier, although international human rights conventions do not mention a hierarchy among rights, they do mention fundamental rights and rights that cannot be suspended even in extraordinary situations, and human rights norms are shaped by how actors perceive these norms. (Klein, 2008)

The terminology employed by international courts can help to answer the question of whether there is a hierarchy of human rights. For example, the European Court of Human Rights has regarded the right to life, as expressed in Article 2 of the European Convention on Human Rights, as one of the most fundamental provisions in the Convention, elevating it to the highest level in the human rights ladder. Similarly, the court emphasized the importance of the right to be protected from torture prohibition with the term "one of the most essential principles of a democratic society" and classified torture prohibition as *jus cogens* norm. (McCann v. United Kingdom, 324 Eur. Ct. H.R)

Although the implementation of human rights by placing them in a certain order with a hierarchical approach is viewed with suspicion on the grounds that it violates the principle of indivisibility, it is also argued that grading of rights is inevitable in order to bring effective answers to particular legal and political difficulties. According to this view, some criteria may have to be found even to determine which of the two conflicting rights—freedom of expression and freedom of religion—will prevail under certain conditions in modern societies. At the same time, due to the scarcity of resources necessary for the promotion and implementation of human rights, it becomes necessary to make decisions about the need for relatively gradual implementation of some rights,

the sequencing of rights, and which rights should be supported more or earlier than others. Implementation of rights in this way, does not mean that rights that are not prioritized in practice normatively devalued or weakened human rights, on the contrary, it paves the way for a more effective human rights practice. (Saral, 2021)

On the other hand, the primacy of international humanitarian law over the founding documents of the member states is recognized within the scope of European Community law. The Court of Justice of the European Communities has confirmed the idea of European Community law over national constitutional law. For the very first time, the Luxembourg Court established the notion of the superiority of community law over member-state domestic law. The Court expressly affirmed that no domestic law text, whatever its nature, could be judicially challenged by the law arising from the Treaty, otherwise the legal basis of the community itself would be destroyed. (Costa c. E.N.E.L- July 15,1964)

Human rights can be characterized as legitimizing, important, overriding, institutional and domain-specific, highlighting the boundaries of creative adaptation of human rights in a domain-specific direction in respect to organizations' human rights obligations. (Campbell, 2004)

1.1.4. Are Human Rights Actually Universal?

What does it mean for a right, a situation or a phenomenon to be "universal"? Something is considered universal if it concerns all of humanity and is of world-wide scope, or if it encompasses all beings and objects. Based on this definition, how universal are human rights? What is the feature or scope that makes these rights universal?

It is the value of the human beings/people who are the bearers of these rights. Human rights are ubiquitous since people are precious. Another approach argues that; since the notion of rights is universal, human rights are universal and what their content is or should be can be universally determined. In other words, the definition of rights includes generality and universality despite all kinds of differences, regardless of people's color, language, religion, ideology, culture, geography. Moreover, the universality of human rights involves the universality of rights protection.

Human rights must encompass the protection and implementation of all individuals, independent of various societies and human lives in various parts of the world. Human rights are universal and transcends all boundaries (geographical, cultural, economic, racial, linguistic, religious) and includes the meaning of world people or citizens.

Opposing the universalist view are those who advocate cultural relativism. Cultural relativism argues that, as a social phenomenon, cultures have different customs and traditions, and therefore interpret human rights differently, and that these customs and traditions conflict with each other in ways that are difficult to resolve. The main objection that cultural relativists raise to the universality of human rights is that good and evil vary from culture to culture; accordingly, what is good is what is socially accepted/approved in a particular culture.

Human rights, according to cultural relativists, are about moral principles, and moral principles are formed by cultural agreement, which varies from culture to culture, hence the perception of human rights must fundamentally change from culture to culture. Human rights, according to supporters of this viewpoint, cannot be universal since they must be founded on religion, tradition, and culture. Furthermore, all civilizations are equal, with no one superior to another. In this respect, it is impossible to compare cultures. There is no foundation for human rights; the most challenging aspect of human respectiv is cultural and experiential variations.

According to Donnelly, some shallow arguments that refer to culture and sovereignty without examining human rights violations actually reveal the hypocrisy of the West. Donnelly basically argues that, both "radical" cultural relativism and "radical" universalism have been misinterpreted and human rights have been manipulated in this context. In this context, radical cultural relativism harbors a lot of potential for abuse, which actually uses 'culture' to conceal violations of the state by dominant power holders arising from their exercise of power. Radical universalism, on the contrary, is a very weak concept that completely ignores culture. For human rights are to be enforced, cultural variations must be considered; else, they will be viewed as irrelevant. (Donnelly, 1993)

To be fully universal, human rights require a conceptual underpinning that opposes 'exceptional' viewpoints. To be global, human rights must be harmonious with cultural differences. Universal human rights should not establish a 'fixed' approach; rights and society (culture) "may and should mutually constitute each other". As according

Freeman, the conflict between social norms and individual rights is not inescapable. Human rights have become a "really universal project" as a result of globalization's influence in its multiculturalization. (Freeman, 2008)

The human rights movement has gained legitimacy in the "*Third World*" by concentrating emphasis on social and economic justice. It is critical while studying the concept of human rights that rights achieve legitimacy, including cultural diversity. According to Dershowitz, theories of human rights fall short of explaining the wide-ranging defense of rights encountered today. According to him, the basis of rights need not be culturally or philosophically rooted, rights are in fact a response to common injustices shared by humanity. (Dershowitz, 2004) According to Ramcharan, "Humanity's shared experience of injustice" provides a fertile ground for forming a theory of rights on it," as demonstrated by Dershowitz's argument. (Ramcharan, 2008) Fundamental rights "*of human beings without distinction or exception,*" according to O'Byrne, are actually based on dignity. Indeed, all civilizations have a history of injustice, and demands for human rights as a result of oppressed peoples' struggles frequently drive reforms. When the foundation of human rights is described in these terms, it seems to reason that these rights should be implemented worldwide.. (O'Byrne, 2002)

1.2. INTERNATIONAL LEGAL FRAMEWORK

While drawing the international legal framework, the most important determinant is international agreements. Continuing practices between state or other communities have formed the rules of custom, which are accepted as binding by the parties over time. Sometimes state or other communities did not find it necessary to complete these rules with a treaty, sometimes due to many reasons such as the situations of the states, the power changes between the parties, the wars or the damage to the mutual trust. They needed a written agreement to maintain its bindingness. Likewise, international agreements have started to be made not only between two states but also multilaterally. Even today, with the provisions placed in the last part of the international agreements, it has been made possible for not only the states that were party to that day, but also other states to become parties by signing such agreements years later.

Following World War II, the 1948 Universal Declaration of Human Rights (UDHR) was drafted with the goal of providing more effective and broad assurances to the entire world community for basic human rights that are unique to humans. Furthermore, this proclamation paved the way for the 1966 International Covenant on Civil and Political Rights and the International Covenants on Economic, Social, and Cultural Rights, known as the Twin Covenants. In addition to the Declaration's influence, the United Nations (UN) is tasked with ensuring the sustainable protection for fundamental freedoms and human rights under Article 55 of the UN Charter. The Charter highlights the link between human rights protection and the preservation of international peace and stability. As a result, this sector, which is thought to be within states' national sovereignty, has been included in the ambit of international law.

It is very important to establish a binding treaty for a state as well as making international treaties that are applied and cover almost the whole world. In this context, in order to bind the authority of the state, international treaties should be made dependent on certain rules and forms. Yet, states limit their sovereignty with the international treaties they accept and become a party to. As a result, nations want other party states to meet the duties emanating from the international treaties to which they are parties, and they want the international treaties to to which they belong parties to be legitimate. This is also required for trust in agreements as an area of legislation in the field of international relations.

1.2.1. Binding Status of International Treaties on States

In international legal sphere, theoretically, all states have the power to behave freely and act according to this behavior without a limit. This action gives states a boundary of assaulting other states even occupying them. However, developments in international law create some limits on states via international treaties. These treaties are legal contracts between states on different topics, some of them binding and some of them non-binding.

According to international law, a treaty can be called a Convention, Pact or even Protocol, the content of the document gives its name. Treaties are legally binding agreements between two or more countries that requires ratification. All other treaties,

which not ratified by the parliament of that country are called international agreements, and these documents are not binding for signatory states.

Most of the international treaties constitute after long negotiation process. This process may take years, related with the topic, number of the signatory countries and the core ideas of that document. Depending on the international situation, a country may be part of this treaty after the negotiating process. The treaties should be signed by the representatives of the governments involved this process. Governments ratify treaties by lodging a confirmation document at a styled in the treaty.

Generally, only the text of treaty is legally binding to the states. However, a treaty may contain provisions for future agreements, as can be seen at United Nations Charter. In accordance with the UN Charter, countries which sign the Charter agree to be fully committed by resolutions enacted by UN bodies. UN resolutions are also legally enforceable on UN members and require no extra signature or ratification.

Some judgements of the International Court of Justice demonstrate the binding nature of international treaties. For instance, The International Court of Justice (ICJ) has ruled that Israel's construction of the wall was contrary to the procedural laws of the Hague Regulations of 1907 and the Fourth Geneva Convention. (icj-cij.org) The court found that the wall's building works on the daily lives of the residents of the Occupied Palestinian Territory were detrimental to their daily lives.

Despite the International Court of Justice's opinion, the wall's construction continued, proving that the international laws listed in the court's opinion are ineffectual.

1.2.2. Mechanisms to Protect Human Rights

Religious freedoms and protection of conscience and belief are inextricably linked in the constitutions of liberal democratic states, as well as in international and regional human rights treaties. These guarantees, to some extent, reflect the concerns of individuals tasked with issuing these documents. There are numerous examples of this predicament, each with a misplaced emphasis.

Even though freedom of thought, conscience, and belief is often enjoyed in conjunction with other rights, it is primarily regarded as an individual right. In fact, a society's sense of self recognition can involve a significant degree of religious conviction. This phenomena is reflected in national, regional, and international tools. Although

several European states were officially formed on secularism, separating governmental institutions and representatives from religious institutions, many national constitutions expressly designated a Christian denomination as the state church. Such a system is incompatible with religious freedom unless adequate space and chances are allowed for particular beliefs as well as other religions.

Human rights protection is critical at the supranational, regional, and universal levels, as well as at the national level. The foundation of its significance is the idea of human rights' "human dignity" based on natural law. (Nieuwenhuis, 2012) The process of legality of the human rights issue in terms of the state, that is, the concept of its protection within the framework of judicial mechanisms, has been a pioneer in its creation as human rights law. However, the state bears the primary responsibility for human rights protection. As a result, in the application circumstances of the global human rights system, the remedies afforded by national legislation are sought to be fulfilled first and foremost.

In terms of religious and philosophical freedom, while there is worldwide agreement on the acknowledgment of this right, there is no absolute agreement on the substance and aspects of this right in the phases of document creation and adoption.

At the international level, there are various mechanisms aimed at protecting human rights. However, two mechanisms relevant to the topic of this research will be described further below.

1.2.2.1. UN Special Rapporteur and Human Rights Council

The United Nations Charter is the organization's founding treaty. Although there is no clear rule on religious and believe freedom in the UN Charter, there are several references. Article 55 of the Charter states that "*...universal respect for human rights and fundamental freedoms of everyone, without regard to religion*" is required. Article 76/c of the Charter, on the contrary hand, refers to "*promoting the respect of human rights and basic freedoms of everyone, without discrimination of faith*". As can be seen, the UN Charter strives to ensure the formation of a system based on common principles and human dignity, beyond discriminating for all peoples of the globe and mankind, in terms of religious and believe freedom.

In the context of basic human rights, the UN system prevents freedom of religion and belief in two ways: non-contractual protection and intra-contractual protection. The UN non-contractual protection system deals with gross and non-individual violations of human rights. The non-conventional UN system examines violations of human rights in two ways, special and general procedures. Accordingly, in special procedures, it is possible to foresee a working group on the subject, to appoint a special rapporteur or representative and to prepare reports on certain issues. The sanction element in the UN human rights protection system is not an effective mechanism yet it is only politically related to interstate relations.

The five basic functions of special or thematic procedures are as follows:

“i) Analyzing the thematic issue or country situation on behalf of the international community, ii) advising on the procedures that the appropriate government or other responsible authorities must take, iii) drawing the attention of UN organs and organizations and the international community to specific issues or situations and in this regard, early to warn and encourage preventive measures, iv) to request urgent measures, v) to mobilize international and national communities to address human rights issues, vi) to make recommendations within the framework of monitoring”.

Apart from this, procedures no. 1235 and no. 1503 can be specified from the general procedures envisaged in the UN non-contractual system. In procedure no. 1235, the Human Rights Commission prepares reports on human rights violations received from individuals or non-governmental organizations and takes non-binding advisory decisions. In the procedure no. 1503, the Commission conducts an examination and makes recommendations about the complaints received from persons, groups of individuals, or non-governmental organizations. The applications to be made in the procedure no. 1503 should not be of a political nature, which of the rights envisaged in the Declaration has been violated and the measures to be taken should be clearly stated.

It should also be noted that the Human Rights Council was constituted in 2006 to replace the UN Economic and Social Council's Human Rights Commission and to work exclusively under the UN General Assembly. With this transformation, the Council will be able to hold its ordinary meetings more regularly and conduct its extraordinary meetings more easily than the Commission. The Human Rights Council has obligations within this system to make recommendations on human rights abuses and to take steps

and provide advise on the promotion and safeguarding of civil, political, social, and economic rights. The Human Rights Council is also tasked with making recommendations on violations of religious freedom and belief, as well as actions to be done in this regard.

The UN Human Rights Council appoints an impartial expert in this field as the UN special rapporteur on freedom of religion and belief. The special rapporteur on freedom of religion and belief offers recommendations on how to maintain freedom of religion and belief at the national, regional, and international levels, as well as reminds people to avoid discrimination based on religion and belief. The methodology in this aim is to relay allegations of violations to governments, to conduct country visits regarding specific events, and to publish country reports.

1.2.2.2. UN Human Rights Committee

The Human Rights Committee was formed in Article 28 of the Covenant on Civil and Political Rights to investigate the responsibilities of nations parties to the Covenant. The Committee has three main responsibilities under Articles 40 as well as 41 of the ICCPR. These are i) *examining the reports on the measures measures made by states parties to guarantee the rights enshrined in the Convention*, ii) *preparing a" general comment "and transmitting them to the states parties ,if deemed necessary as a result of these reports*, iii) *examining the applications concerning the state party's breach of the Convention's stipulated rights*. These applications can be in the form of a state application or an individual application.

According to first Article of the Additional Protocol to the Convention, “*Each State party to the Convention and this Protocol shall accept notifications from persons within its jurisdiction who allege that they have been injured parties of a breach by the Contracting State of one of the freedoms provided for by the Convention*” As can be seen, the Committee has the authority to examine and audit individual applications. Accordingly, eighteen independent experts meet three times a year to take the claims and decide on the issue. Persons claiming that their right or rights set forth in the MSHS have been violated may apply to the Committee (article 2). The Committee initially reviews the incoming reports for admissibility; if they adhere to the standards outlined in the third

article, the Committee informs the government that is the recipient of the alleged offence of these claims (art. 4/1). Within six months from the notification, the state should explain the situation by submitting a written report or, if it accepts that there has been a violation and has taken a corresponding action, it should report it in its report (art. 4/2). Some scholars states that, the Committee's decisions are not entirely advisory in nature. However, in Article 5 of the Protocol, it is mentioned that the Committee will only convey its views to the parties.

1.2.2.3. Regional Mechanisms of Protection

The League of Arab States is the regional organization with a relation to Palestine. The Arab States Charter of Human Rights, drafted by the League of Arab States and adopted in 2004, contains fifty-three articles. Article 30 of the Charter regulates religious and conscience freedom in accordance with universal norms. According to Charter, *“the freedom to express one's religion or beliefs or to practice religious observances , whether alone or in society with anyone else ,shall be only subject to such restrictions as are imposed by law and are required in a peaceful society that appreciates human rights and freedoms for the safeguarding the public's safety ,public order ,public health ,or morals ,or the fundamental rights and freedoms of others.”*

In comparison to a global trend of regional organizations promoting and preserving human rights, the League of Arab States is a newcomer in recommending and encouraging governance practices in its Member States, and its attempts are more constrained and weaker than those of many other regional organizations. (Sadri, 2019) In September 2014, the League of Arab States ratified the Arab Court of Human Rights Statute, completing a 20-year process to establish a human rights protection body similar to those in other regions. (Magliveras, 2017) The Arab world, according to Magliveras, urgently requires the Arab Court of Human Rights to fulfill its regional system of preserving and promoting fundamental freedoms. And, because there is no such judicial instrument in the Muslim world, a successful Arab Court of Human Rights would also have the extra benefit of partially serving as the Muslim world's human rights court, given the overlap in membership in the League of Arab States.

Another regional mechanism, the Organisation of Islamic Cooperation (OIC) (previously known as the Organization of the Islamic Conference), was created on September 25, 1969, at the Rabat Summit in reaction to the burning of the Al-Aqsa Mosque in Israeli-occupied Eastern Jerusalem. According to Article 21 of the OIC Charter (Charter of the Organization of the Islamic Conference), the Organization's headquarters are in Jerusalem, although the Secretariat has been in Jeddah since its inception.

The process of forming the OIC Commission on Human Rights went through several stages. The group met for the first time on February 15, 2009, in Jeddah, Saudi Arabia, under the supervision of the OIC Secretary General. Following that, the Secretary-General presented a report on the consultative commission's recommendations to the multinational group of experts for approval, which would complete the Commission's statute. The final document was adopted by the OIC Council of Foreign Ministers in its resolution 2/38- LEG on the creation of an independent and Permanent Commission on Human Rights, held in Astana (Kazakhstan) on June 28-30, 2011.

In conformity with Islamic beliefs, the OIC International Standing Commission on Human Rights would promote civil, political, social, and economic rights as entrenched in OIC treaties and declarations, as well as widely recognized human rights instruments. These objectives show that the mission of the OIC OHCHR is restricted to the advancement of human rights. Various regional human rights organizations, such as the Council of Europe, the Institution for European Security and Cooperation the Inter-American Commission on Human Rights, the Organization of African Unity, and others, are involved in both the promotion and protection of human rights at the regional level. As a result, the Commission is made up of 18 members who have been acknowledged for their expertise in the field of human rights and are chosen by the Council of Foreign Ministers among the applicants submitted by member states.

As according Article 18 of the Statute, the OIC ICOMHRC holds regular sessions twice a year. It may also call extraordinary meetings at the request of Member States or the Secretary-General, with the a simple majority of Member States' consent. The Commission's headquarters will be in one of the OIC Member States, according to the Statute. However, because the host nation has not yet been determined, the Commission holds its sessions at the OIC headquarters or in the countries that have invited the

Commission. The Commission is aided in carrying out its mandate by a Secretariat led by an Executive Director chosen by the Secretary General in collaboration with the Member States. The Commission's working languages are Arabic, English, and French.



CHAPTER II:

A BRIEF OUTLINE OF FREEDOM OF RELIGION AND BELIEF

One of the most important fundamental rights of humanity is the freedom of religion and conscience. Given the role of religion in social life from antiquity, the importance of religious freedom and freedom of belief cannot be overstated. For these reasons, one of the fundamental human rights, freedom of religion and conscience, has been included in all international documents on human rights since the Second World War and is a basic right on which experts unanimously agree. According to Boyle, religious freedom is a historical reality that has arisen, particularly as a result of European and American ideas and experience.

Freedom of religion and belief is a fundamental right that all people enjoy by virtue of their humanity but without which they would be unable to live in a dignified manner. Religious belief has an indispensable value that expresses the human being's relationship with another "realm", is often linked to the belief in eternal happiness and eternal unhappiness, and in these aspects, if not met, makes the life he/she lives unbearable. Therefore, for many people, religion may even be more important than their own life and right to live. Transferring the requirements, rituals or other practices of religion, which expresses a very special bond that human beings establish with the transcendent, to life is of indispensable importance for human beings to be satisfied with themselves and the life they live, and for their relations with other people and society to be based on a healthy foundation. (Boyle, 1993)

There are compelling arguments that religion is the foundation of human rights. The reality that religions regard humans as sacred beings has played a significant role in the development of the human rights paradigm. Religious beliefs, which also are created by a sacred being and assign the purpose for existing to a sacredness, have praised humans and bestowed inherent rights on them. These are fundamentally human rights. As a result, not only is religious freedom a human right, but religion is perhaps one of the source of human rights. Furthermore, the viewpoint first advanced by George Jellinek on this

subject is significant. According to Jellinek, the concept of inalienable human rights arose and evolved from religious freedom. (Jellinek, 1901)

Religious freedom and freedom of belief is as vital for people who believe in God as it is for those who do not. Whatever one believes is acceptable and sacred to that individual. For these considerations, freedom of religion and conscience is seen as a fundamental human right that protects all types of beliefs: “Freedom of religion and belief stands for freedom not only for believers of religions, but also for people who do not have any divine or religious belief. This framework also includes the right for everybody, believers and non-believers alike, not to be compelled to partake in religious practices. Pluralism, a requisite of a democratic society and a value earned at tremendous cost over the years, is founded on this freedom. Furthermore, the autonomy of religious communities is required for plurality in a democratic society.” (Ozipek, 2011)

There are scholars, who see freedom of conscience as the source of all freedoms. According to Erdogan, the basis of humankind’s rights is freedom of conscience and this freedom is the most fundamental human value that must be protected. The right to freedom of belief has brought to the forefront the understanding that it is superior to all rights in that it gives people the right not to do what they think is wrong. Most importantly, at the core of freedom of conscience is the rejection of the use of force to coerce belief. At this point, freedom of belief also protects non-religious moral beliefs such as irreligion or godlessness. Because of this feature, there are thinkers who argue that freedom of conscience is even more important than freedom of religion. Freedom of conscience, which exists in the inner realm of the individual and provides protection for a deep commitment to a belief, is recognized as the most fundamental human value that must be protected and is among the absolute rights that cannot be touched even in periods of extraordinary administrative procedures. (Erdogan, 1993)

Once it comes to defining the right to freedom of religion and belief, the issues of definition are addressed initially. As a result, instead of focusing on the definition, the essential points of the concept should be considered. Religious freedom can coexist with freedom of conscience and worship. In this context, religious freedom and freedom of belief are often explored under four subtopics. These are; freedom to believe or not to believe in a religion, freedom to practice the religion, freedom to apostolise and preach religion, and finally, freedom of religious education and training. (Ozbudun, 2021)

2.1. Definition of Freedom of Religion and Belief

The use of the concepts of "thought, conscience and religion" potentially covers a wide area. However, case law demonstrates that in reality, a little narrower approach is taken. "Belief" and "opinion" are not the same thing. Personal views must meet two conditions in order to be protected. The first requirement is that the believe have attained a particular level of consistency, seriousness, coherence, and importance; the second requirement is that it be deemed a belief compatible with the respect for human dignity. In other terms, the belief must be related to a significant and serious part of human experience and action. Beliefs about assisted suicide, language preferences, or the disposition of the body after death, for example, do not constitute "beliefs" in this sense. Pacifism, atheism, and veganism, on the other hand, are value systems. A political ideology such as communism also falls within this scope. (Robert, 1993)

Freedom of religion is a basic human right that contains the right to believe or not believe in any religious doctrine, to perform the procedures are designed by one's belief or non-belief, to change one's belief, to perpetuate one's belief, to arrange in religious communities, sects requisite by one's belief, to practice the option to leave these organizations whenever one wishes, and to not be forced to believe or not believe in any way. (Basgil, 2016)

Moral freedom also refers to the liberty to adopt or reject a religion or belief. Religious freedom, on the other hand, is defined as the practice of one's religion and beliefs in everyday life, or as the expression of convictions. As a result, there can be no freedom of conscience without freedom of expression. As a result, freedom of conscience cannot exist without freedom of expression and cannot grow without religious freedom. Another point of view is that freedom of conscience intersects with liberty of thought and religious freedom. As a result, it is both the first and last freedom at the same time. In other words, freedom of conscience is the freedom to believe in a religion or to reject all religions according to one's preferences and cannot exist without freedom of thought and freedom of worship. (Robert, 1993)

Another definition of religious and moral freedom is the human being's intrinsic ability to act in accordance with moral rules that he or she accepts and to defend against threats and moral harm. The essence of freedom of conscience lies in the fact that

conscientious decisions cannot be coerced by material means. Thus, freedom of religion and conscience is expressed as the fundamental principle that religious and conscientious decisions cannot be coerced by "material harm" or "threats" that are not inherent in the content of these decisions themselves. Furthermore, "moral faith" or "philosophical faith" refers to the moral imperatives derived from the general standards of reason.

The subject matter of freedom of religion and conscience is, firstly, the possession of a conscientious conviction and, secondly, the expression of this conviction. In other words, this freedom protects both the philosophical-religious beliefs or convictions of individuals, i.e. their deep convictions about the nature of human existence and life, and the outward expression of these philosophical-religious convictions. Therefore, the first dimension of freedom of thought, conscience and opinion is related to freedom of conscience and the second to the expression or "manifestation" of belief. (Basgil, 2016)

Religion has two basic elements. The first of these is faith and the second is worship. Faith is the sincere belief in and embrace of a religion. Worship is the fulfillment of the commands of the religion in which one believes. In other words, worship entails obeying the commands of the religion and avoiding what it forbids. According to one view, faith and worship are complementary and without one, the other is of little or no importance. (Hamel, 1981)

To put it more precisely, "worship without faith is a meaningless act and faith without worship is merely a philosophical belief." (Boyle, 1997) Worship, one of the fundamental elements of religion, consists of one's duties towards one's Creator, one's own self and others. One's duties towards God are worship, prayer and supplication; one's duties towards others are to be moral. Freedom of belief can be defined as the freedom to freely believe in a religion of one's choice without any pressure and to adopt this religion and make it a part of one's conscience. Freedom of worship, on the other hand, means that a person can freely fulfill the obligations of the religion he/she believes in in the manner and language of his/her choice and not be subjected to any official or civil pressure. At this point, freedom of religion can be expressed as freedom of belief and freedom of worship. In this respect, a number of rights emerge for the individual based on the principle of freedom of religion. These rights can be listed as follows: The right to believe, the right to worship and pray freely, the right to education and training, the right to

publication and indoctrination, the right to act in the manner prescribed by religion, and the right to obey personal and social moral rules. (Boyle, 1997)

Religious freedom and freedom of belief are closely linked to two features of the human condition: having a moral conviction and expressing that conviction. Although the concept of freedom of religion is included alongside freedom of conscience and freedom of mind in the Universal Declaration of Human Rights, the extent of both freedom of conscience and freedom of opinion is greater than the scope of freedom of religion. (Ozipek, 2011)

Finally, the connection between freedom of religion and freedom of conscience might be stated as follows: freedom of religion is a type of freedom of conscience, but freedom of conscience does not always imply freedom of religion. In other words, freedom of conscience encompasses not just freedom of religion but also freedom of any political, economic, or philosophical conviction or viewpoint. Thus, religious freedom, or the liberty to adhere to the doctrines of any religion, is a type and special form of freedom of conscience. In this setting, some contend that religious freedom cannot be strictly evaluated by states and limited to traditional religions. According to those who hold this view, new faiths or religious minorities have equal rights as traditional religions. (Boyle, 1997)

2.2. Components of Freedom of Religion and Belief

Religious freedom and tolerance for conscience and faith are frequently inscribed in liberal democratic states' constitutional frameworks, as well as in regional and international human rights agreements. This reflects the worries of individuals who are in charge of creating these materials. Examples abound; probably each has different emphases. For instance, Article 18 of the Universal Declaration of Human Rights states: *"Everyone has the right to freedom of thought, conscience and religion. This right encompasses the freedom to express one's faith, whether individually or collectively, publicly or secretly, through learning, practice, worship, and rituals."*

Article 18 of the 1966 International Covenant on Civil and Political Rights includes a more detailed definition. Every person has the right to freedom of thought, conscience, and religion, as stipulated in the Covenant. States Parties to the Covenant on Freedom of

Thought, Conscience and Religion declares to obey; "No one shall be subjected to compulsion that restricts his or her freedom to declare or embrace a religion or belief of his/her choice". States Parties to this Convention agree to respect their children's religious and moral instruction in line with their own convictions.

These documents encourage freedom of thought, conscience, and religion by prohibiting religious discrimination, since such discrimination plainly has an influence on the practical use of the right. Nevertheless, there is an even more fundamental concept: discrimination based on religion or belief is an affront to human dignity and a violation of the United Nations Charter's principles.

While drawing a general framework about this topic, it is necessary to mention the basic components of freedom of religion and belief.

2.2.1. Freedom to Have/not to Have a Religion

Freedom of religion and belief protects an individual's religious life from outside intrusion. Both individuals and groups are allowed to exercise their beliefs in whichever way they see fit, as long as no one is hurt. Every individual has the right to believe or not believe in any religion or belief that he or she deems appropriate. Not believing is as much an element of religious and conscience freedom as believing. The right and freedom to have or not have any religion, not to be compelled to behave religiously, and not to declare one's belief are all examples of religious and believe freedom. A person cannot be forced to reveal his or her religious beliefs. It is an integral aspect of religious freedom for an individual to organize his or her entire life around the teachings in which he or she understands and to act on those beliefs. (Sambur, 2012)

In this context, the fundamental principle is that people should not be forced to change or declare their beliefs or to adopt certain beliefs, nor should they need the authorization of any authority to hold a particular belief or to change their existing beliefs. The internal sphere is worth protecting. This is because not only outward behaviors, but also the passive dimension, which is the absolute domain, may be subject to violation; moral pressure on individuals by the state or other members of society, continuous

systematic indoctrination may lead to situations that make it possible to enter the sphere of inner thought. (Taylor, 2005)

The protection of this area also imposes certain obligations on the state. Issues such as protecting individuals' beliefs and not forcing them to disclose them come to the fore here. Because in some cases, the state may be the architect of practices that directly affect the inner world of individuals, not only at the stage of revealing beliefs.

Religious freedom and freedom of belief includes both belief and doubt. In other terms, religious freedom and freedom of belief protect not just the religious (believers of any religion or sect), but also people who are unconcerned about religion, those who do not engage in any religion, skeptics, and atheists. (Armagan, 2003) Article 18 of the Universal Declaration of Human Rights and Article 24 of the International Covenant on Civil and Political Rights both recognize this component of religious freedom and freedom of conscience. The concrete guarantee that the right to freedom of religion and belief provides accordingly prohibits the State, from condemning individuals in any way because of their religious beliefs or opinions, exposing them to deprivation of rights and discriminatory treatment, and putting pressure on them to change their beliefs. (Erdogan, 2020)

Freedom to change one's religion or belief, which is among the unrestricted absolute rights of the individual, forms part of the sphere of inherent protection. Determining one's religion or belief is a continuous process of self-definition and expression, and therefore any intentional and unintentional obstruction or interference with this process, in which the individual enjoys the freedom to change religion or belief, would constitute a violation of this area. (Taylor, 2005)

Guaranteeing the freedom to change one's religion or belief also requires guaranteeing the freedom of the individual to obtain information about different religions or beliefs. This is because the individual can only benefit from the freedom to change his/her religion or belief if he/she has access to information and documents on other religions or beliefs. The individual may obtain information about other religions or beliefs from various sources or may voluntarily inform others about their own beliefs. (Murdoch, 2012)

There is a very close relationship between the right to believe or not to believe and the formation of the pluralistic character of society. This right established by freedom is also in a very close relationship with the principle of secularism. For the actual existence of the right to believe or not to believe depends on the state's inability to exert pressure of conscience on individuals. For this reason, adherence to a religious belief or conviction should not be a cause of any benefit or harm to them or to the religion, sect or community to which they belong.

The right of the individual, to believe or not to believe would not be adequately protected if the State were merely passive in this regard. State authority must impose the necessary sanctions against those who seek to influence these beliefs through unlawful means. Otherwise, it cannot fulfill its function as a guarantor of tolerance to ensure the co-existence of religions in a pluralistic society. The State must protect and save religious peace. This is why individual people, as well as religious communities, have the right to religious freedom. (Donmezer, 1999)

2.2.2. Freedom to Practice the Religion

There is a close association between religious belief and the ability to act on one's religious belief. Being able to act on one's religious beliefs might manifest as an expression of thought or as a self-directed activity with no purpose of expression. For instance, an individual may want to give a message while fulfilling his/her religious duties, but at the same time he/she may not want to. Freedom to practice the religion is the freedom to worship and pray according to the methods accepted by the religion one has adopted. After faith, the most important issue in religion is worship. Worship is one's communication with and surrender to God. At this point, worship is also a means of spiritual pleasure and conscientious relief. The purpose of worship is to remember God and to see himself in the presence of God and to isolate himself from worldly passions. Worship is a set of movements, readings and supplications. (Basgil, 2016)

The freedom to practice religion includes the freedom of believers to behave in their personal lives and social relations as required by their religious beliefs. Because religion is not just a belief. Religion is also an active way of life; commandments are a

divine law containing prohibitions. To proceed on this path, to execute the orders of this rule, to refrain from actions and behaviors that are banned, in brief, to do what is required for piety. In this regard, the State is obligated not only to offer services to meet the requirements of religious and conscience freedom, but also not to obstruct people who wish to conduct religious services. (Kaboglu, 2002)

The requirements of practice the religion, mainly consist of individual and collective worship and religious rituals. In addition, such are the duties related to the social life that religion imposes on the believer. The security granted to believers by religious and belief freedom includes the capacity to worship and perform rituals in public. The right to worship also encompasses the right to have religious buildings open to believers and the right to have houses of worship protected from outside intrusion. (Oktem, 2002) One component of religious freedom is freedom of worship, which is a guaranteed right for the individuals. To interfere with this and to prevent the freedom of worship, which is the most natural right of the individual, is a clear violation of the freedom of religion.(Basgil, 2016)

2.2.3. Freedom to Apostolise and Preach Religion

The first difficulty in determining the scope of the manifestation of a belief arises in determining whether the belief in question actually exists and what its status is. This problem, coupled with the problem of proving that the manifestation takes place within the framework of the principles of the belief in question, makes the issue even more controversial. Considering the relativity of the issue and the subjective practices that may arise, it would be an objectionable method to equate a belief with a religious belief in order to solve these problems and to determine the general principles regarding disclosure. For this reason, it is important to emphasize the meaning of the concept of "belief" as expressed in the conventions when making some determinations regarding the manifestation of a non-religious belief. Whether there is a structural or theoretical connection between the belief and the behavior, the place where the individual's behavior occurs, or whether the individual claims that his or her belief is the reason for his or her behavior are important points to be taken into consideration when making this determination. (Evans, 2010)

All religions claim to be the supreme belief system, and they assign the duty of preaching to the believers. However, the fact that a person, who is one of the elements of freedom of religion and belief, can preach and suggest to others in order to spread his/her religious belief, stems from the nature of freedom, not from a religious reference. Banning or penalizing the propaganda activities carried out with the aim of spreading any religious belief is contrary to the freedom of religion. (Arslan, 2001)

It is more difficult for the State to demonstrate the legitimacy of a restriction on an individual's private and solitary worship than it is to demonstrate the need for a restriction on the public worship of a large group. However, the best way of manifesting a religion or belief should be decided by the members of that religion or belief. Some religions or beliefs may require a certain level of collective worship or rituals, while others may mandate purely individual worship. The State should therefore not intervene in the determination of the most appropriate form of manifestation of religion or belief, except to meet an urgent social need.

Individuals clearly have the right to meet in order to worship or execute a religious ceremony. However, it is uncertain whether the right to public manifestation of a religion or believe entitles its adherents to form a legal company in order to spread and develop that religion or belief. In this regard, the question arises as to whether the necessity to create an association or other legal entity falls within the definition of "manifestation" of a religion or belief. Since legal personality is a legal institution rather than a representation of a religious view or believe, it is obvious that such a legal status can be utilized as a tool to manifest the religion or belief in issue. Individuals may need to join permanent groups to make the right to express one's religion or believe more effective. Such organizations may be particularly needed for the provision of certain costly religious paraphernalia, such as the construction of places of worship or religious schools.

2.2.4. Freedom of Religious Education and Training

Another element of freedom of religion is the right to religious education and training. One of the responsibilities of those who believe in a religion towards the religion they believe is to learn, teach, disseminate and inculcate the necessities of that religion. It is a necessity to make an effort for the spread of religion especially in Christianity and

Islam. It is both a duty and a right for a religious person or a clergyman or scholar to teach and teach the necessities of his religion. (Oktem, 2002)

The right to education and training in one's religion is one of the rights and freedoms that fall within the external sphere of freedom of religion and conscience. Education and training are different concepts. Teaching is an objective activity in which general and detailed information on a subject is given and which is academic rather than didactic. Education, on the other hand, is a subjective activity with a predominant didactic aspect, aiming to transform the interlocutor and internalize the subject of education. With this subjective characteristic, education is an activity that aims to impose a certain view on its interlocutor, which means the activity of encouraging the interlocutor to believe in that religion. (Monsma-Soper, 2009)

The freedom to religious education and instruction is a two-dimensional right with active and passive subjects. It comprises the active right to impart religious education and training as well as the passive ability to receive education and training. According to the interpretation of secularism chosen in circumstances where the active topic is the state, the right to training and education has the capacity to be the subject of significant arguments. The state's forced supply of education on the content, worship, ceremonies, and other rituals of a specific religion, in particular, is believed to be contradictory to the idea of the secular state's impartiality towards faiths. However, it is not correct to extend this contradiction in a negative sense by perceiving that the secular state is an institution that is distant from religion, all kinds of religious practices, education and training activities; in fact, the source of the debate is related to the nature of the understanding of secularism adopted. (Erdogan, 2020)

There is nothing unique about the state's provision of religious education and training that entails the transfer of knowledge and culture in conformity with the law on fundamental rights and freedoms. Since this aim of the state's existence is to satisfy the needs of people that public authority can meet, to create, develop, and preserve their basic rights and freedoms, it shouldn't be surprising for the state to meet its citizens' religious education, which is a public need, in line with their demands. Taking the necessary measures, making arrangements, and employing personnel to enable its subjects to perform the necessary worship according to their religious beliefs are among the services that a state, even a secular one, is obliged to provide and fulfill. (Yuksel, 2015)

Freedom to teach necessitates the ability to establish and operate all types of private educational institutions, including religious institutions, as well as public schools. Religious education in state education can only be appropriate with this freedom if it is choice; no one should be forced to receive religious education that contradicts his or her own religious beliefs or conscience. However, it is not a violation of religious and belief freedom to include courses that impart basic cultural knowledge about faiths and moral teachings, as long as they do not take the educational approach of a specific religion and/or sect. (Demir, 2011)

2.3. Limitations of Freedom of Religion and Belief

It is essential that fundamental rights and freedoms are used without restrictions. However, people's abuse of these freedoms has revealed the necessity of limiting these freedoms by law. In this regard, limiting freedom of religion and belief must be proportionate in democratic societies. (Murdoch, 2012)

According to Article 29/2 of the Universal Declaration of Human Rights (UDHR), everyone is already subject to such restrictions as are imposed by law only for the purpose of ensuring adequate recognition and respect for the freedom, rights, and liberties of others.

Every right and freedom, even if not stated in the constitution/basic rights document, has objective limits arising from the nature of that freedom, that is, existing in the nature of properties. In addition, some fundamental rights and freedoms are limited by the constitutions themselves, while they are recognized, and they do not need to be restricted by law. These limits are actually objective limits that belong to fundamental rights. However, these limits are not sufficient according to the ideological and authoritarian nature of the constitutions, and the constitutions themselves impose abstract or concrete limits and prohibitions. The constitutional boundaries determine the guarantee limit of the rights. From this vantage point, the status of the constitutional provisions in the authority-freedom issue can be assessed. (Ozbudun, 2021)

The following are the criteria to be utilized in the restriction of rights: recognition and respect for others' rights and freedoms, protection of others' rights and freedoms, respect for others' prestige, public morality, civil security, public good, public interest,

broad security or public safety, national defense, public health, safeguarding private life, protection of children's interests, the interests of justice, the preservation or interest of the integrity of the country, the prevention of crime, the prohibition of the disclosure of sensitive information, the interest of the financial well-being of the nation, the assurance of payment of taxes or other obligations and penalties.. (Basgil, 2016)

Religion is a social phenomenon as well as a conscientious opinion. It is not possible to limit the religious beliefs of individuals in their inner world, but restrictions can be brought in the social dimension of religious belief and in matters that concern other individuals. Unrestricted and unregulated religious freedom will pose issues for both religious and non-religious individuals. The right to believe, that is a component of religious freedom, is the most basic human right, and it cannot be regulated or forbidden by the state or any other sovereign body. However, according to some scholars, if religious ceremonies, large rites or acts involves at disrupting general security, then restrictions or prohibitions may be imposed. (Basgil, 2016)

Restrictions on freedom of religion may apply to the right to worship, education and training, publication and notification, which have a social aspect, rather than the individual's inner world. Restriction of religious freedoms in terms of worship, on the other hand, can only apply to worship ceremonies of a social nature. Since according to western secular view, worship is a private form of communication between the individual and the God in whom he/she believes, as well as an expression of gratitude, it is not possible in terms of human rights law to subject individual worship to any restrictions. The acts of worship performed in one's own privacy are binding only on oneself and there can be no legal restriction in this respect. However, if religious ceremonies, rituals, which are of a social nature, contain elements that are aimed at disrupting general security or disturbing social peace, only then restrictions or prohibitions can be mentioned.

To summarize, it can be said that the only justification for restricting the right to worship by law is that it is of a nature that disrupts public order and general security. Another subject of freedom of religion that may be subject to restriction is the right to education, training and publication. Since it is an issue that concerns the society as a whole, the right to education, training and publication may also be subject to restriction within the framework of the rules of law generally applicable in the country. Apart from this, subjecting religious education and training and religious publications to a separate

rule or displaying an oppressive management approach in these matters is incompatible with freedom of religion. (Gemalmaz, 2003)

In order for the state to impose restrictions on the principles of a belief, it must know the content of that belief in detail and regulate it without touching its essence. For this, the limits of a belief can only be learned from the believers of that belief. While the state may restrict actions that are the external manifestation of freedom of religion, the internal manifestation, individual convictions and religious beliefs, which are considered the "forum internum", are absolute and therefore cannot be subject to any restrictions. The state should not prevent the exercise of freedom of religion and conscience as long as public order is not disturbed and there is no violation of public morality, health and national security. (Hamel, 1981)

On the other hand, according to the United Nations Human Rights Committee, States should take the issue narrowly when restricting freedom of religion. In other words, States should limit the freedom of religion by giving maximum freedom to as much as possible and limit it to cover only certain purposes, and this restriction should not cause discrimination in any way. (Boyle-Sheen, 1997)

CHAPTER III:

THE CONCEPT OF BEYTULMAKDIS IN TERMS OF TERMINOLOGY AND HISTORY

3.1.THE TERM BEYTULMAKDIS

3.1.1.Terminology

It is a fact that, Jerusalem is first mentioned in Egyptian texts from 19th and 18th centuries BC. (Asali, 1994) The land of Bayt al-Maqdis is very important for the believers of Islam, Christianity and Judaism. Although there are various differences in the main reasons for the importance of this region and city, which is called Jerusalem, Urshalim, Yebus, Aelia, Bayt al-Maqdis, al-Quds or the Holy Land, these differences do not detract from the importance of the region. For example, for Jews, it has a great significance yet Moses commanded the Israelites to enter the Holy Land and also because the Jewish ancestry can be traced back to Abraham. For Christians, on the other hand, it is the land where Jesus lived, was crucified and resurrected. For Muslims, it is very important because other prophets sent before the Prophet Muhammad lived in this region and preached the message, and because it was the starting point of the Prophet Muhammad's Night Journey and ascension to Heaven. Although based on different motives, this importance attributed to the region has also paved the way for today's debates. (El-Awaisi, K., 2019)

The "al-Ard al-muqaddasah" (the holy land) and "the land that We have bestowed Barakah" (the blessed land) mentioned in the Qur'an and the hadiths are much more than a small city with borders known today as Jerusalem. The Prophet Muhammad did not call this area "al-Quds"; rather he used the term "Bayt al-Maqdis". The fact that Bayt al-Maqdis has a rich historical background, is considered holy by all three religions. This land of political rivalry, has played a leading role in determining the past, present and future of the world throughout history, mentioned in the Qur'an as a center of Barakah/fertility, it is also the meeting point of three continents (Asia, Europe and Africa)

and its geopolitical position shows the importance of this land. In addition, the fact that Bayt al-Maqdis is the “land of hope” is another factor that shows its value. As a matter of fact, Prophet Muhammad was brought to Bayt al-Maqdis on the journey of Isrâ after many hardships and ascended to the miracle from there is a presumption that these lands give hope and confidence. (El-Awaisi, 2014)

Throughout history, the Islamic empires and geography reached the peak of honor when Bayt al-Maqdis was liberated and given the value it deserved, and on the contrary, they were weakened and experienced their most humiliating days. Historical experience has shown us that the one who dominates those lands is the one who dominates the world, and it has repeated that it is impossible for Muslims to achieve the honor they deserve without Bayt al-Maqdis. (El-Awaisi, 2014)

Since the revelation of the first verse of Surat al-Isra, scholarly and academic studies have demonstrated that there is an Islamic, cultural, historical and geopolitical connection between Makkah, Bayt al-Maqdis and even Istanbul. This relationship was reflected in practice with the administration of Bayt al-Maqdis from Istanbul for 400 years (1516-1917) under the Ottoman caliphate. Moreover, during the reign of Sultan Abdul Hamid II, the region of Bayt al-Maqdis was administratively connected directly to Istanbul. (El-Awaisi, 2014)

The rulers of the Ottoman Empire, aware of this connection, have always paid special attention to these lands. As a matter of fact, the greatest service the Ottoman sultans rendered to these lands was their protection of Bayt al-Maqdis for 400 years. In addition, the Ottoman rulers, like the Umayyad, Abbasid, Ayyubid and Mamluk sultans, left today an enormous historical heritage in Bayt al-Maqdis. Many religious and historical monuments that have survived to this day in the holy and blessed land are the legacy of the Ottomans to all Muslims. (El-Awaisi, 2014)

3.1.2. Boundaries and Importance

The region of West Asia and North Africa in general, and Palestine (Bayt al-Maqdis) in particular, have an important place in history as the birthplace or connection point of three major religions. Jews trace their historical and religious origins to Sinai and then Jerusalem, particularly as they claim to have established their first state here and the

Jewish Temple, which is considered the foundation of the Jewish faith, was built here during the reign of King Solomon, when they lived their most glorious period in history. (Ari, 2004) On the other hand, Jesus Christ, known as Jesus of Nazareth, was born in Bethlehem in the Christian belief and lived in Jerusalem until 30 A.D., when he is believed to have been crucified and ascended to the heavens.

Jerusalem is the place where many prophets mentioned in the Holy Quran lived. According to Islam, all prophets were Muslim and the final the Prophet Muhammad visited Jerusalem. In the early 620s, he was translocated by Allah, in the Muslim belief, in one night from Makkah to Jerusalem. Prophet Muhammad, accompanied by with the Archangel Gabriel (Gabriel), traveled on a creature named Buraq and landed in al-Aqsa Mosque during al-Isra (the night journey), where they were welcomed by other prophets. Gabriel and Prophet Muhammad traveled through the layers of the sky and in the last layer God revealed to Prophet Muhammad. (Armstrong, 1997)

When it comes to give the boundaries and importance of Beytulmakdis (Islamicjerusalem) which is commonly referred in this research, some groundbreaking research lightens our work. According to Abu-Munshar, Islamicjerusalem is an area of about fifteen thousand square kilometers. It includes not only the walled city of Aelia Capitolina, but also the cities of Jenin, Jericho, Karak, Zoar, Jaffa and the lands between them. (Abu-Munshar, 2007)

Based on a doctoral research on the Qur'an, hadith and other Muslim historical and geographical records, another scholar has drawn the coordinated boundaries of this region. According to this research, (El-Awaisi, 2007) the boundaries of the Islamicjerusalem region has a religious set boundary. The area of Islamicjerusalem encompasses the area surrounding the walled city, which then extends up to a maximum distance of forty Arab miles (85.04 kilometers) from the centre in various directions. To the west is Ramla and its surrounding towns and villages, and twelve Arab miles (25.51 kilometers) from the seashore as well as many cities, towns and villages.

3.2.THE HISTORY OF BEYTULMAKDIS

The names of the region in the western part of the West Asia is known as the Fertile Crescent and are mostly known in history by the names of the kingdoms or peoples who lived there. One of the most frequently mentioned provinces in ancient texts is Canaan. Frequently mentioned in the Torah and other ancient texts, Canaan is the name given to the lands to the south of the Fertile Crescent. It is known that the first inhabitants of this region were the Canaanites (Canaanites, Canaans) who settled here between 5,000-3,000 BC. This region, referred to as "Canaan" in the Bible, corresponds to the land of Palestine as it is approximately known today. The southern and northern coastal regions of Canaan were also named after the peoples who lived there in history: Phoenicia and Philistia (Armstrong, 1997).

3.2.1. Period Before Ottoman Rule

Before the Israelites came to Canaan from Egypt in 12th Century BCE, Canaanite clans lived in this land. Canaan and the Canaanites are mentioned in Egyptian and Phoenician tablets from the 15th century BCE. The name Canaan was used to refer to the land that included Palestine and Syria, and sometimes to the land west of the Jordan River or along the coastline from Acre (Akko) northward. It is estimated that Israelites arrived in the region around 1200 BCE. The first settlement in this region began in 9000 BC, while more extensive agricultural settlement began between 7000-4000 BC according to different sources, also the first walled city in the region was Jericho built around 9000 BCE (Kenyon, 2022). In the Early Bronze Age (3000-2000 BC), Semitic peoples lived here. The recorded history of the region began in the Middle Bronze Age (2000-1550 BC). During this period, peoples such as the Amorites and Hurris lived in the region. In the Late Bronze Age (1550-1200 BCE), the Egyptians dominated the region. During this period, Habiru invasions are mentioned. The Egyptians used this term for invading foreign peoples. In the 13th century BC, during the Late Bronze Age, when the Egyptians and Hittites lost their power, the Israelites entered the region (1250 BCE) and settled in the south of the country. At the same time, people called the Philistines, who are believed

to have come from Crete, were also present in the region. During this period, wars were fought between the Israelites and the native Canaanites and Palestinians (Armaoğlu, 1989).

Jews trace their historical connection to Palestine in general and Jerusalem in particular to the Torah. The Torah is the most sacred of the three main books of the Old Testament. In the Book of Genesis, the Torah speaks of the "Hebrews", the forerunners of the Jewish people. According to the Book of Genesis, the ancestor of the Hebrews was Abraham. According to legend, the name "Hebrew" comes from Abraham, who was born in Ur, the center of Sumerian civilization in Mesopotamia, and later migrated to Canaan. The word Abraham is claimed to mean "father of nations". In Genesis, God is reported to have said to Abraham, "*You will be the ancestor of many nations, and your name will be Abraham from now on*" (Durant-Lambelin, 2013). The second argument is that Abraham's grandfather's name was Abir, which is why the people were called Abirani (Hebrew). The Jews believe that the name of Abraham's grandson, Jacob, was changed to Israel by God (Yahweh). For this reason, this tribe is also called the Children of Israel. The name of the eldest son of Jacob was Judah. This is where the word "Judaism" is claimed to come from. (Durant-Lambelin, 2013). Yet the definitive origin of the terms remain uncertain.

The area surrounding Jerusalem came to be called Judah after the Babylonian exile, a turning point in the history of the Jews. Before the emergence of the Kingdom of Judah, a tribe called Judah lived south of Jerusalem in the 11th century BC. On the other hand, the Torah composed during the Persian period (539-333 BCE) mentions "Mount Judah" and the "Judah Desert". It is likely that Judah referred by Jews to a geographical name for a mountain range south of Jerusalem, which the tribe of Judah took after settling in Canaan. It is very difficult to find information about the origins of the tribe, as much of the information is based on the biblical account. On the other hand, it is known that a tribe from the Euphrates (Ephrata) settled in Bethlehem at the same time. (Armstrong, 1997) It is also possible that a clan from this tribe formed the tribe of Judah. According to the Book of Genesis, the tribe of Judah consisted of five clans, three of which were of Canaanite origin. By the time of David, other clans from the south of the area had joined the tribe of Judah (Armstrong, 1997).

After the advent of Christianity according to historical sources, in 66 CE the Jews in Jerusalem revolted against Roman rule, which was crushed in 70 CE, and the soldiers

of the Roman General Titus destroyed Herod's palace and what is believed to be a Jewish Temple. Titus' soldiers destroyed the entire city. From the year 70 onwards, the Jews were expelled from Palestine and scattered around the world, forming the nucleus of what is known today as the "diaspora". From 132 through 134, under the Roman Emperor Hadrian, Jerusalem was raised to the ground again and rebuilt as a new city named "Aelia Capitolina", expelling all Jews from region of Aelia, and the country was known in Roman times as Syria Palestina. (Lewis, 1996)

In 327, after the Roman Emperor Constantine became a Christian, it was claimed that the rock-cut tomb of Jesus Christ was found under the Temple of Aphrodite in Aelia. In response, Constantine had a basilica built in Aelia and placed the rock tomb of Jesus Christ there. Constantine turned Aelia into a holy Christian city. According to Christianity, Bethlehem was where Jesus was born. Constantine's mother Helena had two new basilicas built in these two places. In the mid-5th century there were claims that the remains of the cross of Jesus Christ had been found. After the discovery of the rock-tomb, Christians developed a sense of pilgrimage by visiting Jerusalem. (Armstrong, 1997)

In the seventh century Persians invaded Aelia in 614 and destroyed its churches and occupied the city for nearly a decade before it was taken by Heraclius who soon after lost it to the Muslims. During their invasion they were joined by Jews, who had been vanished from the city and region of Aelia for five centuries, who helped in massacring the Christians population of the city. On the return of the Byzantine Christians, the Jews were bannised from the city again.

The Muslims with the advent of Islam had a deep rooted connection with Bayt al-Maqdis and during the last phase of the life of the Prophet Muhammad, campaigns towards Syria and the Holy Land were started. However the *Fath* of the city was not achieved during the prophet's lifetime, rather within five years of his death, at the hands of the second Muslim Caliph, Umar ibn al-Khattab. The Muslim takeover of the city and region was a historical turning point as it was both bloodless and allowed non-Muslims to live side by side with the Muslims.

Muslims for the first time in centuries brought the Holy Land peace and prosperity and established a multicultural socitey. This continued for centuries under the Umayyad, Abbasid, and Fatimids, until the arrival of the crusades. During both Umayyad and Abbasid administration, the theological significance of Jerusalem and its role as a source

of religious authority were emphasized. For example, Mu'awiyah, the first Umayyad caliph, declared himself caliph in Jerusalem rather than Damascus, his capital city.. Even after the Umayyads took control of Makkah and Madinah, the Umayyad caliphs maintained to give equal reverence to Bayt al-Maqdis. The Abbasid caliphs treated Jerusalem similarly, and the city remained equally important to subsequent Muslim rulers, all the way up to the Mamluks and the Ottomans, who gave the city religious status equivalent to Makkah and Madinah. Despite its holy relevance, Jerusalem was never the Islamic political capital. The choice of the headquarters of the Islamic Caliphate was strategic; otherwise, Makkah should have been chosen.

The crusades massacring the local Muslim, Jewish and even christian population ruled the region for nearly a century before being disposed by Salah al-Din and bringing the region back under Muslim sovereignty and reestablishing peace and multiculturalism until the arrival of the British in the 20th century.

3.2.2. Period Under Ottoman Rule

Baytulmakdis and the surrounding areas were annexed by Turkish people long before the Ottoman rule and various states were established in the historical process. For the last thousand years, there has been no other ruling power in the region other than the Turkish. Even disregarding the Tulunids and the Ikhshidid dynasty, which were short-lived local governments established in Egypt and Syria in the 9th and 10th centuries under the Abbasids, the Seljuks have ruled the region in 11th century. The Mamluks, also a Turkish dynasty, were slaves of Turkic origin, that dominated the region from the center of Egypt to the middle of North Africa, Palestine, Syria and Southern Anatolia. Hijaz was also under the protection of the Mamluks. The Mamluks dominated the Eastern Mediterranean and the Red Sea. In 1516, with Yavuz Sultan Selim's victories of Marj Dabiq in 1516 and Ridaniye in 1517 against the Mamluks, first Syria including Bayt al-Maqdis, and then Egypt came under Ottoman rule, and the Emirs of Makkah and Madinah declared their subordination to the Ottoman Empire and the Ottoman rule spread to the Arab regions. In the first half of the century, Tripolitania and Yemen came under Ottoman rule and the southern borders of the Ottoman Empire extended from the Persian Gulf to Morocco, Yemen and Abyssinia. Therefore, the expression "since four hundred years",

which refers only to the period of Ottoman rule, is incomplete, if not inaccurate, when describing the Turkish presence in the region. (Cohen, 1973)

The scholars/Ulama of Jerusalem presented the keys of Al-Aqsa Mosque to Sultan Selim, who had proclaimed “*Alhamdulillah I am the possessor of the first Qiblah*”. Thus the Ottomans completed their conquest of the East and declared themselves the undisputed leader of the Muslim world and the guardian of the holy places in Makkah, Madinah and Bayt al-Maqdis. When Jerusalem was takenover in 1517, the Ottoman Empire was a centralized state. In the century following the Ottoman conquest, the Sanjak of Jerusalem retained many of the qualities characteristic of the Mamluk sultanate. The old social institutions, the legal order, cultural norms, and the ruling elite remained in place in the Ottoman order. Although Ottoman history in Jerusalem begins with the reign of Sultan Selim I, who ended the Mamluk rule over Palestine, it was Sultan Suleiman (1520-1566) who restored the city's lost value. (Cohen, 1973) The Ottomans regulated the relations between different religious and sectarian groups in the region through the "millet system", which greatly affected fundamental rights and freedoms, which will be examined in detail in the next section of our study.

Since the Ottoman rule, the Sanjak of Jerusalem was administered under the province of Damascus. However, the city of Jerusalem was made a provincial center and directly connected to Istanbul at a later period. As far as is known, the first attempt to turn Jerusalem into a province occurred in 1756. On this date, Jerusalem was separated from Damascus and governed by a governor for a period of nine months. During the reign of Sultan Mahmut II, reform efforts led to the development of a central bureaucracy and the idea of centralizing provincial organizations. Following the Ottoman-Egyptian war in 1839, Ottoman rule was restored in Syria and Palestine region.

In this new term, Jerusalem was to have a strong administration against Egypt. From 1841 onwards, Jerusalem became the center of the South Palestine region in the restructuring process that started in the Palestinian geography. The northern part of the border line from Rafah to Aqaba, including the districts of Jaffa and al-Khalil (Hebron), began to be administered from Jerusalem. (Cohen, 1973)

In the period when the Ottoman Empire began to weaken and foreign interventions increased, different religious and sectarian groups in Jerusalem began to struggle against each other. The multi-religious, multi-sectarian and multi-cultural structure of the

Ottoman Empire began to be used by Western states as a means of interfering in the internal affairs of the Ottoman Empire during the period when the Empire began to weaken. In the early 1900s, Muslims, Christians and Jews were represented in the Jerusalem municipal council. (Oke, 1982)

In the 19th century, members of Zionist organizations came to Jerusalem and started to search for ways of Jewish immigration. The Ottoman government tried to prevent Jewish immigration on the one hand and to prevent Jews from buying land in Palestine on the other. A decree issued in 1883 allowed only Jews of Ottoman nationality to buy and sell real estate and land, and forbade the registration of land in the name of Jews of foreign nationality. (Oke, 1982)

In 1914, with the entry of the Ottoman Empire into the First World War, some Jewish groups expelled from Palestine due to their harmful activities began to fight against the Ottoman Empire, acting together with the British army. On November 2, 1917, with the Balfour Declaration, the British announced their support for the establishment of a "national home" for the Jewish people in Palestine. On December 9, 1917, one year before the official end of the war, Jerusalem fell to British forces. With General Allenby's entry into Jerusalem, four centuries of Ottoman rule came to an end. (Ataöv, 2004)

3.2.3. After Ottoman Rule

The Palestinian conflict started a new era in 1917, when British General Allenby's soldiers occupied Syria and Palestine. As will be discussed in the final chapter. Zionism achieved its objectives and opened the way for the formation of a Jewish state in Palestine during the British mandate. After it, the tranquil environment of the Ottoman period in Palestine and Jerusalem was never seen again. (Cleveland, 2008)

The Jews welcomed the British occupation, believing it would open the way for the establishment of a Jewish state. After occupying Jerusalem, the British declared it the capital of the mandate and gave guarantees that they would protect the holy sites of the city. The British government expressed its support for the formation of a Jewish state in Palestine in the Balfour Declaration, but only if freedoms of the "non-Jewish peoples" in Palestine were not compromised. (Armaoglu, 1989)

The League of Nations (LN), which was established after the First World War, established a system called "mandate" over the lands of the defeated states and gave the administration of these lands to the victorious states, primarily Britain. In this context, Palestine (including Jerusalem) was given to Britain as a mandate in 1922. (Likhovski, 2006)

Article 23 of the LN Charter, which mentions the "mandate" system, reads as follows:

- "Right after the war, the core recommendations shall apply to colonies and countries inhabited by peoples who have emerged from the sovereignty of the states that formerly governed them and who are not yet capable of self-government under modern world power conditions: The wellbeing and advancement of these peoples is a sacred civilizational duty, and guarantees for the fulfillment of this duty must be provided for by this Charter."
- "The ideal way to put this theory into action is to commit the guardianship of these peoples to those nations that, due to their resources, expertise, or geographical location, are most suited to take on this responsibility and are ready to accept it. They will provide this protection in their position as mandators (mandataires) and on behalf of the League."
- Paragraph 4 of the same article states the following: "Certain communities that were once part of the Ottoman Empire have progressed to the point where their existence as independent nations can be recognized temporarily, given that their government is guided by the organisational advice and assistance of a mandataire until they are capable of self-government. The wishes of these groups must be taken into consideration first and foremost in the adoption of a mandate." (Ari, 2004)

During the British rule, the doors of Palestine and Jerusalem were opened to the Jews scattered all over the world. During this period, the groundwork was laid for a "national homeland" for the Jews rather than a "shared homeland" with the Arabs. The British put the first urban plan for Jerusalem into effect in 1918. With this plan, Jerusalem was divided into four districts. The first zone was the old city inside the walls, where no

new buildings were allowed. The second zone was the green area surrounding the old city, where construction was also forbidden. The third zone was to the north and east of the ancient city, where building required special authorization, and the fourth zone was to the north and west of the old city, where modern development was permitted. The old city was divided as from rest of Jerusalem by this construction. The fourth area set aside for modern construction is the area that would later be known as "West Jerusalem". The effects of this plan are still very much visible in today's Jerusalem. The new city was the area set aside for Jewish settlement. Outside the walls, new colonies for Jewish immigrants were constructed in the 1920s. As a result of this settlement program, there was a large disparity in the population of Jews and Arabs in the new city by the end of the mandate period. (Roberts, 2014)

In 1947, the United Nations (UN), which succeeded the League of Nations after World War II, dispatched a Special Committee on Palestine (UNSCOP). The UN Special Committee on Palestine devised a Palestinian partition plan. After two months of rigorous talks, the General Assembly accepted as Resolution 181 the "Partition Plan with Economic Union" submitted by the Special Committee on Palestine (II). The resolution called for the gradual departure of the British forces from Palestine, the formation of two distinct governments, and the delineation of Jerusalem's borders. This resolution made Jerusalem an international city as a "corpus separatum" under the administration of the UN Guardianship Council. In other words, the Jews' right to a separate state depended on their ceding Jerusalem under international administration. (Mayer-Mourad, 2008)

Britain withdrew its military from Palestine following the passing of UN General Assembly Resolution 181 (II). The Jewish delegation declared the foundation of the State of Israel on May 14, 1948, in the land allotted to Jews by the Partition Plan. Following this, deadly battles erupted in Palestine between both the Arab and Jewish populations. The Security Council declared on July 15, 1948, that the situation in Palestine posed a threat to peace and that failing to comply with the ceasefire resolution would constitute a breach of the peace under Chapter VII of the United Nations Charter. Following that, on July 17, 1948, the warring sides accepted the Security Council's demand for a cease-fire, and on July 20, 1948, a border agreement was reached in Jerusalem through the Armistice Commission, dividing the Arab and Jewish sectors. (Mayer-Mourad, 2008)

By 1967, Israel had defeated the Arab governments in a pre-emptive war and occupied the West Bank and Gaza, as well as eastern Jerusalem and the rest of Palestine. Meanwhile, Resolution 242 urged a cease-fire and Israel's withdrawal from the lands it had occupied during the conflict. The Arab states were defeated once more in the last Arab-Israeli war in 1973 (Cleveland, 2008) and the United Nations Security Council passed Resolution 338, which reaffirmed Resolution 242. With the energy of the 1987-1st Intifada, the Palestinian National Council declared independence in 1988, followed by peace talks that began through diplomatic channels with the Madrid Conference and formally with the Oslo Talks, but terminated with the 2nd Intifada in 2000. During this process, the Oslo Declaration Principles called for the establishment of an independent Palestinian state within five years. (Economic Cooperation Foundation, 1993) Nevertheless, the failing of the peace negotiations, the resumption of mutual violence, the lack of consensus on issues such as settlements and Palestinian immigrants, the status of Jerusalem, and the fact that Palestine is still under Israeli occupation, as well as the failure to come up with a new plan, have made Palestine the subject of debates on whether it is an ontologically a state or not.

On the other hand, an examination of the UN and its subsidiary bodies reveals that Palestine enjoys widespread legitimacy as a state in the international community. Many UN General Assembly and Security Council resolutions have recognized Palestinians' right to self-determination and statehood, demonstrating that international institutions and society regard Palestine as a "State". Indeed, the fact that the UN registered the 1988 declaration of Palestinian independence with Resolution 43/1775 shows that the UN already recognizes Palestine as a state. Following the declaration, the UN General Assembly decided to use the term Palestine in the UN system instead of the Palestine Liberation Organization. In 1998, Resolution 52/50 (UNGA, 1997) granted Palestine observer status, the right to participate in the General Assembly and UN work, and the privilege of representation at international conferences. The fact that Palestine became a member of UNESCO, a UN subsidiary organization, in 2011 and Interpol in 2017, that the Palestinian flag was raised at the UN (British Broadcasting Corporation [BBC], 2015), that Palestine was granted the right to act as a full member for 2019, and that Palestine assumed the presidency of the G-77 shows that international institutions and society treat Palestine as a state, as claimed.

In 2012, Palestine's application for full membership to the UN brought the process to a climax, but this application was not accepted due to the US veto, and after the rejection, the UNSC adopted a resolution on November 29, 2012 that would affect Palestine's status. Palestine's non-member observer status since 1974 was changed to non-member observer state in 2012 by resolution 67/19. This resolution was interpreted by scholars as the birth certificate of the Palestinian state in the international arena, and Palestine gained an important right and prestige by gaining the right to participate in General Assembly votes. However, states such as Belgium, Norway and Denmark declared that the resolution was separate from the recognition of Palestine as a state and that the resolution did not affect Palestine's statehood status. Nevertheless, Palestine's representation at the UN with state status is interpreted as a tacit recognition of Palestine's statehood.

In this respect, the adoption of the Rome Statute and Palestine's accession to the International Criminal Court, which took place after 2012, was a development that reinforced Palestine's statehood status. Article 12/1 of the Rome Statute, stating that a state party to the statute can only recognize the jurisdiction of the court, literally means that only states can be a party to the Rome Statute and can apply to it. In a sense, Palestine's admission to the Rome Statute, to which states can be parties, can be interpreted as a sign that Palestine is an international legal personality and is recognized as a state.

The improved international standing of Palestine has had minimal influence on Israeli human rights abuses in the region. Historically, changes in the governance of the Palestinian territories have had a significant influence on the protection and advancement of its citizens' basic rights. As demonstrated in this portion of the research, when Muslim monarchs were in power, it was always feasible for diverse cultures and individuals from various religions to coexist safely and peacefully.

CHAPTER IV:

AN ANALYSIS OF FREEDOM OF RELIGION AND BELIEF IN BEYTULMAKDIS

From early history, Jerusalem has been a point of intense attention due to the fact that it has been the scene of constant competitions for influence between different nations and religions. The members of all three religions, Islam, Christianity and Judaism have aspired to be the rulers of this city, which they consider sacred, and have put various plans and projects into practice in order to achieve this goal. Considering what is happening in the “Middle East” today independently from the past will leave our evaluations incomplete. In this context, in order to correctly interpret what is happening in Palestine today, it is necessary to analyze its past well.

As previously stated, it is widely assumed that the Canaanites founded the city of Jerusalem. Aside from the city's strategic importance, the titles given to it in very early eras are the first proof that it was regarded as hallowed. (Armstrong, 1997) When various historical sources are examined, it is a fact that Jerusalem was captured by members of different religions throughout history. At this point, it would be appropriate to look at the practices against the existence of other religions in the city in various periods, in terms of freedom of religion and belief.

4.1.IN ANCIENT HISTORY

In this part of the research, freedom of religion and belief will be examined in two periods. The first period will focus Jew and Christian implementations and the second period will focus Muslim implementations starting from Caliph Umar’s Assurance of Saftey through Ottoman Sultan Yavuz Selim’s term. The research especially tries to

reveal components of freedom of religion and belief in ancient history in the region of Beytulmakdis.

4.1.1. The Period Before Islam

In ancient times, Jerusalem was a city where farming families lived and the city had no strategic value. This region was used only as a transit route. (Lewis, 1996) It is already mentioned above that the period when the region began to gain importance in historical sources begins with the Canaanites. It is difficult to gather precise data on the extent to which the fundamental rights to religious freedom and conscience were achieved during this time period. Data on the eras when the region's importance and recognition have grown at the same rate.

In the early 16th century BC, the land of Canaan came under Egyptian control. This was one of the first times, Jerusalem was mentioned in history. At this time, Jerusalem was a city-state of Egypt. The Egyptians did not establish a direct administration in Palestine, but appointed local kings who were subordinate to the Pharaohs. The dominance of the Israelites over the region began a few centuries after Moses with David and Solomon, and it is understood that they lived together with other peoples in the city during this period.

It is known that in the Roman period and later when Christianity was in administration in Jerusalem, Jews were not allowed to enter the city as their Roman predecessors established from the second century CE and some sources claim that Christians would allow Jews once a year and visit the holy city and cry over the destruction of the "Temple". (Buhl, 1986)

Meanwhile, from 1099 onwards, Jerusalem remained in the hands of the Crusaders for nearly a century. During that time, the Crusaders did not allow the presence of other believers in Jerusalem.

4.1.2. The Period from Spread of Islam to the Ottoman Rule

It should be noted that the term "Islam" means exactly "submission to God" and "peace," and that a man is entirely free to choose his faith according to Quranic principles.

Nobody has the authority to force their beliefs on others. "There is no coercion in religion," the Quran says (Quran, 2: 256). The Prophet Muhammad also commands that the word of Islam be conveyed to mankind, who have the right to embrace or reject it. It was the primary reason why the Prophet did not even force a Christian slave serving in his household to adopt Islam. (Mughul, 2015)

As the message of Islam was being propagated by Prophet Muhammad in Makkah from 610, the Persian armies were conquering the Byzantine controlled regions. The Persian armies sacked Jerusalem and the Holy Land, this event was even documented in the Quran (Quran 30: 2-3). When the Persians conquered the Holy City in 614, the Jews; *"rejoiced exceedingly, because they detested the Christians... they purchased Christians out of the reservoir; for they gave the Persians silver, and they bought a Christian and slew him like a sheep... the Jews were left in Jerusalem, they began with their own hands to demolish and burn such of the holy churches ...How many of the people were bought up by the Jews and butchered"* as related by the eyewitness Antiochus Strategos (Conybeare 1910: 508-509). When the Christians took back the city, they did the same to the Jews and massacred the Jews in 628 (Butler 1902: 134). By this time the Prophet had formulated a strategic plan for taking the land of Bayt al-Maqdis and in 628 sent the first Muslim army against the Byzantines in Mu'ta within the region of Islamic Jerusalem.

By 636, thanks to the armies of the Muslim Caliph Abu Bakr, Islam had reached Palestine. The Muslims defeated the Byzantine armies at the Battle of Yarmouk and took control of Palestine. In 638, Patriarch Sophronius of Jerusalem handed Jerusalem over to the Caliph Umar. Umar's takeover of Jerusalem was the most peaceful takeover of the city in recorded history. No attempt was made on the lives or property of Christians; their religious symbols were not burned or destroyed; they were not exiled and their land and property were not expropriated, as was the case in previous conquests. Furthermore, the settlers were not forced to convert to Islam. This was clearly stated in Umar's Assurance of Safety.

Umar, together with Patriarch Sophronius, visited the Church of Anastasis (Holy Sepulcher) where, according to Christian belief, Jesus Christ died and was resurrected. Umar refused to pray in the church on the grounds that Muslims might later convert it into a mosque, and instead prayed in the courtyard. Umar then headed to the site of where

Prophet Muhammed came on the Night Journey and built a mosque within its site, known today as “Umar’s Mosque” inside Al-Aqsa Mosque. (Armstrong, 1997)

According to the “Assurance of Safety” (Aman) concluded by Caliph Umar, Christians were to be protected in their lives and property and their sanctuaries were to be respected. Christians could worship according to their own beliefs and it is said Jews were allowed in the city for the first time in five centuries. (El-Awaisi, 2012) Christian pilgrims from outside the Islamic Empire could visit their holy places. During this period, Christians had the right to restore and repair their own churches. Sometime after the conquest, some 70 Jewish families were allowed into Jerusalem and settled in the southwestern end of the Holy City. The Jews later built a synagogue, that was burnt with Jews in it during crusade. During the Islamic period, Jerusalem was called "Bayt al-Maqdis", as well as Aelia and later Al-Quds (the Holy). One of the greatest Muslim contributions to Jerusalem was the rebuilding of al-Aqsa Mosque and giving the city a three dimensional Muslim image. The building of al-Aqsa with its domes, structures, gates and in its heart the "Dome of the Rock", was commenced during the reign of the Umayyad Caliph Abdul Malik (Abd al-Malik), this turned the city’s skyline to have a clear Islamic identity. During the reign of the Abbasids, many renovations done by the Caliphs, such as Abu Jafar al-Mansur, al-Mahdi and al-Ma’mun. During the 8th and 9th centuries, other Islamic structures were built inside al-Aqsa Mosque enclave.

The system established by the Muslims made it possible for Jews, Christians and Muslims to live together for the first time in Jerusalem. The Abbasid Caliph Harun al-Rahid allowed the Holy Roman Emperor Charlemagne to renovate churches and established a hostel for Christian pilgrims under Muslim sovereignty. In 832, the Abbasid Caliph al-Mamun issued new coins with the word "al-Quds" (holy) on them. This was a new name for the city. From then on, the city was called "al-Quds" by the people in the region. Numerous dynasties ruled under the Abbasids until the Fatimids took over the city for a century and in 1073, Jerusalem fell to the Seljuks. During these periods and particularly during the Seljuk period, Muslim, Christian and Jewish inhabitants of this region lived together in peace. (Armstrong, 1997)

In 1095, the Byzantine Emperor Alexius II asked Pope Urban II to appeal to the European states to recapture Anatolia and Jerusalem from the Muslims. In response, Pope Urban II called on the Christian states to organize a great expedition to the East and to

“liberate” the holy city of Jerusalem. The Crusaders took some Anatolian cities and reached Jerusalem in 1099. The Crusaders took Jerusalem from the Fatimids and committed a massacre in Al-Aqsa Mosque killing tens of thousand of Muslims, besides the Jews and Christians also put to the sword. They looted the city and committed a great massacres. After being a Canaanite, Jewish, Roman, Byzantine and Muslim city, Jerusalem became a Western Christian city in the 12th century. (Madden, 2004)

In 1184, the Crusaders were surrounded by a united Muslim Empire: Salahuddin Ayyubi's Empire. In 1187 Salahuddin Ayyubi entered Jerusalem and took the city without bloodshed. Salahuddin's first act was to clear the al-Aqsa Mosque of Christian symbols and remove the cross from the Dome of the Rock, but Christian shrines were not harmed. After the *Fath*, Muslims who came with the Muslim armies settled in the city, whilst those from North Africa settled in the southwestern neighbourhood of the city named after them, the Magharibah quarter.

From Salahuddin's time, it was possible for people of different religions and beliefs to live together again. During the times when Muslims ruled this region, people of different religions and races were allowed to live together. During the Ayyubid period, Latin pilgrims from Europe were allowed to visit the city. (Madden, 2004)

It is possible to extend the situation of this region on the axis of freedom of religion and belief to very ancient times. However, within the scope of our research plan, we focus on examining a historical era extending from the Ottoman period to the present.

4.2.IN OTTOMAN PERIOD (1516-1917)

4.2.1.Administrative Structure

Jerusalem came under Ottoman rule during the Ottoman military expedition against Egypt during the reign of Yavuz Sultan Selim I. After the Ottoman-Mamluk armies clashed at Marj Dabiq on August 24, 1516 and the battle ended in favor of the Ottomans, the Ottoman army came to Damascus and settled here for the winter. Between September 28 and December 16, the Ottoman army stayed in Damascus for about eighty days. While Yavuz Sultan Selim was in Damascus, Sinan Pasha, who went to the Gaza

region with a group of soldiers, was victorious as a result of his encounter in Gaza in the Sheria region. On December 21, 1516, with the battle called Khan Yunus, Gaza and Jerusalem came under Ottoman rule and continued for nearly four hundred years until December 1917. (Asali, 1989)

4.2.2. Religious Perspective

The Ottoman Empire was characterized as a mosaic of many cultures and religions that brought peace and tranquility throughout people in society without regard for Muslim and non-Muslim, ethnicity, or color. (Mughul, 2015) Within the framework of the values of the Turkish-Islamic civilization, the Ottomans set an example of sharing living spaces with different communities in terms of faith and culture and exhibited a pluralistic social structure. This pluralism in the Ottoman system took the form of protecting and maintaining diversity. Various religious and cultural segments of the society lived together but did not assimilate and preserved their own religion, language and way of life. This multicultural structure was the basis of the Ottoman millet system. In the Ottoman system, education, justice, religion and foundation services were left to each community and carried out by each nation's own organizations. (Armstrong, 1997)

It is vital to highlight that since the inception of Islam, religious freedom has been the cornerstone of all Muslim states' policies toward non-Muslims. The non-Muslim inhabitants residing that under Ottoman empire are referred to, under Shari'ah, as *dhimmi*, and were termed as "*Ahl al-Dhimma*" "those for whose protection the State was accountable". (Al-Qattan, 1999)

During Ottoman administration, the non-Muslim population of Beytulmakdis was organized into religious groups known as *millet*s (nations), an Arabic word that literally translates "those united by a common faith or religious-nation". The millet system, which recognized and controlled the rights and obligations of religious groups, was a distinguishing characteristic of the Ottoman Empire. The millet was one of the empire's primary administrative entities, through which Christian and Jewish communities not only carried out bureaucratic business with the state through the leaders of their community organization, but also preserved their own culture, traditions, history, and

religions. (Hacker, 1982) Each non-Muslim was compelled to assert his/her privileges through religious leaders negotiating with the Ottoman cabinet's minister of justice, much as the minister of foreign powers negotiated with the minister of foreign affairs. Religious communities, on the other hand, had limited autonomy, although they could run their own churches and synagogues, schools, and internal religious tribunals, train and control their clerics, and supervise their charitable enterprises. (Lewis, 1998)

In Jerusalem-like other Ottoman cities-the Jewish and Christian communities no doubt had easily access to their religious practice areas and where congregation members benefited from spiritual and scholarly guidance of rabbis. (Al-Qattan, 1999)

Suleiman the Magnificent allocated a large budget for the repair of Jerusalem, which was visited by Muslim, Christian and Jewish pilgrims. The prosperity of city of Jerusalem was closely linked to the prestige of the Sultan as the Caliph of the Islamic world. During the reign of Suleiman the Magnificent, the city walls, which are still standing today, were repaired. In order to overcome the water shortage in the city, Sultan Suleiman renovated the aqueducts and the cultural life in Jerusalem revived considerably during this period. Respected Islamic scholars settled in Jerusalem and conducted religious and scientific research. (Armstrong, 1997)

As the Ottoman Empire began to weaken and foreign interventions increased, different religious and sectarian groups began to fight against each other in Jerusalem. The multi-religious, multi-sectarian and multi-cultural structure of the Ottoman Empire began to be used by Western states as a means of interfering in the internal affairs of the Ottoman Empire during the period when the Empire began to weaken. In the late 1850s, the first municipality was established in Jerusalem. During the Tanzimat period (1839-1876), the Sanjak of Jerusalem expanded, and in 1872 it was transformed into an independent administration and connected to the central government. In the early 1900s, Muslims, Christians and Jews were represented in the Jerusalem municipal council. (Mayer-Mourad, 2008)

4.3.IN RECENT HISTORY(1917-2023)

4.3.1. From Muslim-Jewish Perspective

In Palestine, the freedom to possess or retain religious beliefs is usually respected. Despite the fact that Muslims comprise the large majority of the population, there is a history of peaceful cohabitation among various religious sects, which is supported by legislation. In practice, however, the geopolitical impact of the Israeli occupation, the delicate lines between religion, ethnicity, and politics, and patterns of social conduct that place some constraints on this right impede the enjoyment of freedom of religious belief. The official religion of the West Bank is Islam, according to Article 2 of the Jordanian Constitution, which is part of the local laws in the West Bank. Nevertheless, in the Gaza Strip, legislation enacted by the Egyptian authority that does not include this order provides complete religious freedom. Both sets of laws guarantee equality and ban religious discrimination, while also recognizing the right to exhibit belief within the typical boundaries laid down in the International Covenant on Civil and Political Rights. Moreover, the 1988 Palestinian Declaration of Independence emphasizes that religious beliefs would be preserved, promises non-discrimination based on religion, and commits "complete dedication to Palestine's cultural and spiritual history of tolerance and tolerant coexistence of religions." (Boyle, 1997)

The 1948 Declaration of the Establishment of the State of Israel, over the land of Palestine, reflects the state's basic stance toward freedom of religion and conscience: "The state will safeguard freedom of religion, conscience, language, education, and culture; it will protect the Holy Places of all religions." The Declaration is neither a constitution nor a statute, but the Israeli Supreme Court declared that this statement "conveys the vision of the state" and ought to be taken into account "when interpreting or clarifying the laws of the State". Furthermore, the legislation recognized the significance of the Declaration by attaching a requirement to the above-mentioned two Basic Laws of 1992 that "these basic human rights shall be guarded in the spirit of the standards set forth in the Declaration of the Establishment of the State of Israel". (Lapidoth, 1998)

All Palestinians should enjoy complete freedom of conscience and the ability to freely practice their religious beliefs, subject only to public order and morals protection.

Each religious community shall have autonomy in its internal affairs, in accordance with the British Mandate High Commissioner's Regulations or Instructions provided by the High Commissioner.

As indicated, the two Basic Laws of 1992 pertain in particular to "Human Dignity and Liberty" and some rights flowing therewith, and "Freedom of Labor". However, while not directly specified in the text, the generic reference to Fundamental Human Rights in terms of Fundamental Principles could be read as an acknowledgement of the applicability of additional fundamental human rights, such as religious freedom. If indeed the Supreme Court accepts this broad interpretation of the two 1992 Basic Laws, it might be interpreted to suggest that laws on religious and conscience freedom are to some extent regarded as superior to ordinary laws. (Lapidot, 1998)

4.3.2. Current Problems in Terms of Components of Freedom of Religion

Consequently, Jerusalem is essential as it is the site of clashes between Christians, Jews, and Muslims after its occupation, and its religious relevance is reflected on the global agenda in a variety of ways by being discussed alongside political issues. The fact that Jerusalem sits at the core of political and religious discussions, and that the topic is frequently addressed without distinguishing between the two, lends the situation a far more unique dimension.

Even though Jerusalem has continuously been claimed by different religions, it now stands out as the heart of three religions' claims to holiness. As a result, for adherents of the three religions, Jerusalem is much more than just a city.

In this context, Jewish claims about the sanctity of the city are based on the statements in the Torah. Here, it is mostly associated with the periods of King David and Solomon and is seen as the heart of Judaism. The Christians' ultimate goal for Jerusalem is that it is the center of the Messianic kingdom to be established on earth, and it has more meaning than any other place in the world due to its role in the life and crucifixion of Jesus. Muslims, on the other hand, attach importance to the city primarily because it is the first Qiblah, the second mosque on earth, and the place where the miraculous event took place. Muslims' embrace of this city means putting the tawhidic tradition, which was derailed in the historical process, back on track. In other words, history is reinterpreted

by placing extremely important figures of history and the monotheistic tradition, such as Prophets Abraham, Dawud, Sulayman and Jesus, in the right place.

Jerusalem has been recognized as a holy city by different religions and races throughout history. As a result, except for the Muslims, those who dominated the city tended to expel members of other religions or different nations while settling here. (Armstrong, 1997) In this sense, it is necessary to mention the first Jewish migration that started in the 1880s due to the antisemitic movements that emerged in Eastern Europe. Later on, there were other migrations to the region and the aim was to bring Jewish groups to what they called "Eretz Israel", a region with historical and religious significance for them. However, there is a striking point in these migrations. Here, a religious connection was established with the theme of returning to the ancestral home or the promised land, while at the same time Zionism, a secular tendency, gained visibility. In addition, this situation entered a new process with the establishment of mandate rule by the British in the region in 1917.

As mentioned in the second chapter, there are four components of freedom of religion, which makes meaningful different parts of this basic right. First component is; freedom to have or not to have a religion, second; freedom to practice religion, third; freedom to apostile and preach religion and the fourth component is; freedom to religious education and training.

It is a fact that some of these four components are related to the inner world of human beings and therefore their effects on the external world are difficult to observe. However, components that are not difficult to detect in the external world, such as the freedom to worship individually and collectively, and the freedom to communicate the values of religion and belief to others, are constantly faced with obstacles in the occupied territories. The occupying Zionists, prevent Muslims from gathering at Masjid al-Aqsa for prayers or sometimes set restrictions on the age of those who can and cannot entre. Also they issue court orders banning Muslims from entering their holiest site, particullay for known active individuals.

While important holy sites may be found across the Holy Land, the Israeli government has imposed limitations on Palestinians who seek to go to worship, which has been chosen for consideration in this article for two reasons: First, the "national security" defense, which is commonly invoked as a rationale, demonstrates its greatest

legal force in administering limited access. Second, because of the territorial conflicts with Palestine that are unique to Jerusalem, Gaza, and the West Bank, the Israeli government may simply impose whatever limitations it sees fit. In this case, the gravity of latent breaches of religious freedom necessitates a thorough examination of the Israeli setting, followed by a rejection of any baseless charges made against religious minority.

The British presence in the region lasted for about thirty years. During this period, on the one hand, rumors spread among Arabs that the Jews would take over Jerusalem and destroy the Al-Aqsa Mosque, and on the other hand, religious Jews wanted to worship near the Buraq Wall of al-Aqsa Mosque. This ended up causing the Buraq Revolt in 1929, and a report was chartered and approved by the League of Nations that also acknowledged that the Western Wall of al-Aqsa, al-Buraq Wall, termed as Muslim; *"To the Moslems pertain the full ownership of, and the sole specialized right to, the Western Wall, recognizing that it forms an integral part of the Haram-esh-Sherif area, which is a Waqf property"*. During their 30-year occupation, the British, on the other hand, created the groundwork for the Zionist state.

The UN General Assembly passed a resolution on November 29, 1947, supporting the formation of two states, Jewish and Arab, on these lands. This resolution also specified that a special authority under the international regime (UN) would be established in Jerusalem, giving it a different status. Thus, Jerusalem was envisioned as a place with international status (*corpus separatum*). After the British disengagement from Palestine, Arabs were recognized as having rights to the eastern parts of Jerusalem, where they are the majority, while the western parts of the city were reserved for the Jews. However, this UN resolution could not be implemented. Because both the Jews and Arabs rejected the resolution and then a war broke out between them. After the British disengagement from Palestine, and as a result of this war, in 1949, Israel seized about eighty percent of the lands of Palestine, more than what was allocated by the United Nations to the Arab sector and gained dominance in the Palestinian region. (Ataöv, 1981)

The United Nations, while on the other hand, focused on maintaining Jerusalem's international status. In response to all of this, some researchers believe that Israel was founded in compliance with a United Nations decision. This means that there are certain UN limitations that Israel has to implement.

Jerusalem was split between Jordan and Israel between 1947 and 1967. While Israel seized the western half of Jerusalem (around 86%), Jordan maintained control of the eastern half (around 14%). This meant that the old city with Jewish, Christian and Muslim holy sites were under Jordanian control. The Jews did not benefit from the holy places in East Jerusalem during this period. Although Jews could not visit Eastern Jerusalem during this period, the Israeli government continued to expand the city and build modern structures in the Western side, which was also out of reach for Palestinians who were expelled from their houses and even many of its villages were ethnically cleansed such as Deir Yasin. (Yasar et al., 2003)

On the other hand, it is also stated that the allegations that Jewish graves were attacked and synagogues were destroyed during the Jordanian administration of East Jerusalem are exaggerated. (Kollek-Pearlman, 1978)

Following the occupation of Eastern Jerusalem, the occupying Israeli government has adopted a 1967 law in the Knesset, which declares that holy sites will be protected against any desecration and that members of different religions will be granted the right to freely enter holy sites. The law also states that violations and desecration of holy sites will be punishable by imprisonment. However, the opposite was actually practiced, with Israel in the first days of the war laying claim to al-Buraq Wall, part of al-Aqsa Mosque, destroying the Magharibah neighbourhood adjacent to it, with all its religious institutions, and ethnically cleansing its population.

In 1980, a major incident concerning the status of Jerusalem occurred. The Knesset passed a resolution designating Jerusalem as Israel's capital. It asserts that Jerusalem is Israel's capital as a whole and united city, and that it houses the head of state, the Knesset, the government, and the Supreme Court. The agreement further specifies that holy sites shall be protected from damage and that people of different religions will have unrestricted access to their sacred sites.

However, the primary source of concern has been limited access to religious places for worship, as emphasized by the UN Special Rapporteur on his visit in 2008. Since 1993, Muslims and Christians have been prevented from entering holy places to worship due to a system instituted by Israeli authorities that includes licenses, checkpoints, and obstacles. This is shown by the everyday hardships endured by

Palestinians who attend prayers at the Al-Aqsa Mosque or the Church of the Holy Sepulchre in Jerusalem, occupying Israel's epicenter of prejudice and repression.

Following occupying Israel's proclamation of Jerusalem as its capital, the UN Security Council passed a resolution expressing concerns about the imminent implementation of a law that would alter the status and character of Jerusalem as a holy city. It was stated that this law violated international law. After the 1967 war, the Chief Rabbi and other Orthodox Jews have made a common statement that generations of Jewish religious leaders have warned against entering any part of the "Temple Mount". This position is also allegedly held by religious non-Zionist Jews.

In addition to all this, from time to time there are attempts to enter the area where al-Aqsa Mosque is located, especially by fanatical Zionist Jews. Recently, the Israeli soldiers and police, who claim that they are trying to ensure the security of these people, have been intervening harshly against the Palestinians who protest against those who enter the Al-Aqsa Mosque, and each time they go one step further and prepare the ground for a *de facto* occupation in the inner area of the mosque. This attitude leads to increased tensions between Jews and Muslims in the region and with repercussions around the world.

For the vast majority of Muslims around the world today, Jerusalem means exactly the same thing - freedom. It is therefore believed that the Islamic world cannot be fully free and independent without the freedom of Jerusalem and ending the occupation.

Some Zionist researchers claim that Jews are deeply attached to Jerusalem, whereas it is not a central place of worship for Muslims, that the real holy shrine of Muslims is the Kaaba, and that no Muslim state has taken Jerusalem as its capital throughout history. (Pipes, 2001) According to these claimants, Jews represent the right side and Muslims the wrong side. However, this approach would mean accepting a history of two thousand-five hundred years as not having happened. It is true that Muslims did not make Jerusalem their capital, but no Muslim state, including the Prophet Muhammad, made Makkah their capital either. This was not because they did not consider it sacred, but on the contrary because of the extreme respect they had for it.

On the other hand, for Muslims, al-Aqsa Mosque enclave is the most important place in Jerusalem. This is because it is associated with being the second mosque on earth built 40 years after the Kabah, from the time of the first human, Prophet Adam. Also it

is associated with other Prophets such as Prophets Abraham, Suleyman and Jesus who are considered as Islamic prophet. Al-Aqsa also considered important for reasons such as being the first Qiblah for Prophet Muhammad's era as well as its role in the miraculous event of al-Isra. In addition to harboring the memories of many prophets. For these reasons, Bayt al-Maqdis has become the most important place between Christians, Jews and Muslims. Whereas, al-Masjid al-Aqsa with the modern Zionist Jewish claims over it has become the most controversial site.

Jerusalem is a very important part of what the Christian world expects from this region. Although the metaphor of a heavenly Jerusalem has been developed and sometimes interpreted as the church, in the early centuries many church fathers expressed various visions of a God-built Jerusalem coming down from heaven. According to these visions; Jesus Christ will come again to this land, the final judgment will take place here, the resurrection will take place here. Because it is seen as so important, and because Christianity has from the very beginning held the idea of living in the end times, all Christian churches throughout history have sought to build a center there.

In this regard, although the Al-Aqsa Mosque is considered by Jews to be an ex-Temple, the pinnacle and central structure of Jewish history, it is understood that this structure is not a temple of Judaism, but a monotheistic place of worshipping, that is, Islam. Therefore, when Caliph Umar entered Jerusalem, he built several symbolic structures in the place of al-Aqsa Mosque and surely there was no temple in that site when he entered Jerusalem. In the historical process, these structures were enriched with additions and the meaning attributed to them was tried to be reinforced. However, the aim here is not to rebuild a stone structure, but to transform a deformed, degenerated and then completely destroyed structure into its original form, a Tawhidic center, just like what was done in Makkah and the Kaabah before. This is why Muslims' interest in it has always been alive.

CONCLUSION

Religion, as a phenomenon that began with human history, has never been erased from human life and there has never been a period without religion. Religion, which should not be seen only as an act of believing and living in accordance with what one believes, is a phenomenon that regulates the social structure, determines the relations between people, offers a way of life not only to the people who believe in that religion but also to all segments of the society, contains commandments and prohibitions and is fed from a divine source. Social groups that are shaped by or influenced by religion cannot live a life free from all kinds of influences and completely isolated within themselves, but are in contact with other groups, political groups and the state in all areas of life. The relationship between religion and political groups and the state has always been controversial. However, when religion and the state and political groups have been in relationship, they have also influenced each other.

Today, when the concept of human rights is weakening day by day, it is even debatable whether these rights should be universally protected. This study, which also examines the historical background of the development of human rights, evaluates the general practices and protection instruments regarding freedom of religion and conscience, which is recognized as a fundamental right. In particular, the need for international and regional protection mechanisms has become even more important within the scope of this research.

There has been no agreement on the definition of human rights since its inception; yet, the notion is now used in a stereotyped fashion to identify the rights that individuals enjoy merely since they are human beings. Islam within the seventh century onward, established religious and human rights from its outset and has been practiced by Muslims throughout the centuries. The tenet of “no compulsion in religion” and the protection of others’ holy sites was the foundation on which Muslims conducted their relations with others. The natural law approach of the 17th and 18th centuries, on the other hand, is tied to the idea that all humanity are free and equal in dignity and rights. The concept of universal human rights, on the one hand, has been debated since the second part of the 1940s. The emergence of this idea during this period can be attributed to the need to

establish a universal human rights system that would not allow such events to occur again, particularly in light of the methodical violation of human rights by autocratic and totalitarian states during the Second World War.

The Universal Declaration of Human Rights has been considered as one of the essential papers in the creation and diffusion of the concept of human rights since 1948. In fact, while this document was not intended to be legally binding, it does serve as a guiding reference in the field of human rights legislation due to the substance that states have transmitted to their positive laws in the continuous issue.

Freedom of religion and belief is, by its very nature, an area in which it is difficult to set a common standard. However, the problems related to this issue emerge under certain headings in relation to the internal and external sphere of freedom. However, it is possible to determine the level of freedom of religion and belief in a state based on the four basic components of this right as presented in this study.

Freedom of religion and conscience has two fundamental principles. The "forum internum", which defines the (internal) dimension of freedom of belief and non-belief, and the "forum externum", which is reflected externally and is basically expressed as the area of freedom. The fact that the forum externum is referred to as the sphere of freedom stems from the fact that freedoms will be experienced mainly in the public sphere and that the real legal dimension of the regime of the law of freedoms will be revealed in the public sphere.

From the earliest times when the Canaanites dominated the region, it has been difficult to trace the basic components that make freedom of religion and conscience meaningful and to access reliable information. During the periods when Jews and Christians ruled in this region, it does not seem possible to say that the members of these religions lived and practiced their beliefs freely.

In terms of freedom of religion and conscience, the period when all the believers living in the region lived in peace was the period when Islam spread to the region starting with Caliph Umar. This climate of peace continued in the structure provided by the Ottoman millet system. Keeping in mind, the foundations and ideas of the millet system have been entrenched into Islamic tradition from the Islamic Medinan and mediaeval ages. Furthermore, it might be claimed that the core ideas of the millet system can be found in the Medina Charter, which was formed by Prophet Muhammad during the post-Medinan

era. According to the Charter, Muslims, Jews, and other religious minorities in Madinah were protected citizen.

Since the foundation of the United Nations mechanism, the conflicts between Palestine and occupying Israel have drawn the attention of the international community. In November 1947, the United Nations General Assembly agreed to partition the occupied Palestinian lands, and the UN established the first peacekeeping mission to monitor the ceasefire lines following the 1948 war.

The occupation of adjacent lands by Israel in 1967 complicated matters even further. Israel took the Sinai Peninsula in Egypt and the Golan Heights in Syria, establishing settlements in both. Israel also occupied Lebanon in 1978 and 1982, and occupied the country's southern half for a long time. Such wars and occupations exacerbated the political crises around the Palestinian question. Even after Israel left Egypt and Lebanon, it continued to occupy Palestinian areas. The construction of new colonies by Israel, as well as the construction of a vast border wall invading and occupying a large portion of Palestinian territory, has made resolving the dispute considerably more difficult.

The Security Council has been unable to take any substantial actions to stop the Israeli-Palestinian conflict since UN Resolutions 242 and 338. The United States' influence has traditionally kept the topic off the Council's decisions. When members of the Security Council have issued resolutions in response to recurring crises, the United States has often exercised its veto in support of Israel. The General Assembly has played a more active and imaginative role in the crises in this region, but its resolutions are not legally enforceable. As a result, many UN resolutions condemning Israel are primarily symbolic. The United Nations could be more effective if UN member states around the world were willing to stand up to US pressure. US policy under Trump has made things worse in this region.

All religious practices' freedom should be recognized. Our assessment is that, restricted access to sacred places for Palestinian Muslims and Christians continues to be a major violation of their religious liberties in terms of, among other things, observances, ceremonies, and worship. Governmental religions should not be used to exploit the freedom and rights of religious minorities under the guise of state discourse.

Although the 1931 League of Nations decision that upheld Muslim claims to Jerusalem's Western Wall included de facto endorsement of Palestinians' genuine religious liberties,

Today, in order to solve the problem of freedom of religion and belief in Jerusalem, proving that one religion's claim of holiness is untrue and trying to destroy the other will only make the problem more intractable. On the contrary, what needs to be done is to turn it into a city of peace, as its name suggests.

As a nutshell, regional and international protection measures for human rights are insufficient to prevent abuses and allow the enjoyment of fundamental rights in the Palestinian territory. To address this shortcoming, it is critical to develop a new and robust international human rights protection system led by Turkey, which has sociologically, historically, and spiritually strong ties with the area as a result of the assembling of economic powers such as the Developing-8 countries.

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