

## Islamic International Humanitarian Law <sup>1</sup>

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Research Article

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**Abstract:** Islam means peace hence the main reason for protecting non-combatants, wounded, POW, civilians, and their properties is to bring humanity and establish peace even in warfare.

**Keywords:** Islam, Humanitarian, War, Successors, Noncombatant.

## Introduction

Islam is a natural religion, encompasses every aspect of our daily life; so war is an exceptional aspect of our life, but it is an unwanted phenomenon and its occurrence can never be denied by any ones. Islam has enacted rules and regulations to resist war and also to reduce its losses and those rules and regulation must be considered during the war.

The human brotherhood standards and rules came to being when the Holy Quran was descended upon Prophet Mohammad (Peace Be upon Him by God). Those Arabs who used to bury their daughters alive and did not respect humans but, their lifestyles changed upon the arrival of Islam, and paying respect to human beings have become a religious obligation.

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### **The article aims:**

To prove that Islam introduced humanity into warfare about 14century earlier principles of distinction between combatants and non-combatants:

Protecting women, children, servants, wounded, sick, elderly, peasants, priests, etc and civilian objects & properties: Focus on Islamic jus in Bello and NOT jus ad Bellum: Guidance of the Qur'an, the Sunnah, & the conduct of successors of the Prophet in protecting the wounded, POWs, civilians and their properties.

### **The Methodology of Research:**

In this research, I used the Analytical and Applied Method, analyzed the Quranic texts, Sayings of the Prophet, and views of the Islamic Scholars, and then applied it to the Islamic International Humanitarian Law.

### **The principles and rules ensuring human brotherhood are as follow:**

- 1) **Faith** is the phenomenon by which Muslims are obliged to do respect to all human brotherhood rules and in case of their violation, Muslims are subject to be punished in this world as well as in the hereafter. Allah the Almighty Says:

(ولا يجرمكم شنان قوم على الا تعدلو اعدلو هم اقرب للتقوى).سورة المائدة.

Translation of the meaning:

Animosity with a tribe or particular group of people should not make you commit injustice, do justice, and doing justice brings you to worship.

- 2) **Justice:** is a fundamental principle that prevents humans from envy and encourages them to maintain justice in every aspect of their lives. Moreover, this principle encourages humans to avoid avenging in wars and embrace the art of forgiveness.
- 3) **Education and Correction:** Correction is an important factor in human brotherhood. In other words, correcting a society is better than annihilating that society. In another place of the Holy Qur'an Allah, the Almighty says: There is no coerce in the religion the right and wrong paths have clear contrast. Surah Al Baqara, Verse: 256

In this manner, Islam strongly prohibits every way and technique through which humanity is being annihilated. Besides, mutilation, killing children, and elders are also prohibited with strong words in Islam. (Also See Suliman bin Ahmad Tebrani, Mujam al- Awsat. Page. 267)

- 4) **Forgiveness:** This is an important principle. During wars Prophet Mohammad PBUH had forgiven many people after he became victorious such as Ikrama bin Abo Jahal while Mohammad PBUH was taking the power of the Makkah Also, a group of people attacked Prophet Mohammad PBUH during the Pact of Hudybia but, they were arrested and Holly Prophet forgave them instead of punishing them as criminals.  
See: Mohammad bin Hussain Nishapori, Sahih (correct of) Muslim, DarulEhya, Vol.3, Page 1442

- 5) **Avoiding from Seeking Worldly Desires:** This is also a very strong principle to support human rights. Anyone who fights for lust, racism, and bravery, his fight is considered for seeking the worldly desires, not for Allah SWT.
- 6) **Support for the Weak People:** This is a significant and effective principle which support weak human beings, provide them their rights, and protect them from the cruel people. This principle is mentioned in Surah *Al qasus*, through relating the story of Pharaoh and the Bani Israel (Children) of Israel.
- 7) **Complying with Covenants:** Muslims are very faithful to the pacts and covenants in which human rights are preserved and they are made with others if they are international pacts or national ones. The Holy Qur'an Says: listen to those who believed! Be faithful to the pacts you made...Surah Al Maida. Verse 1
- 8) **Emphasis on Providing Security:** Providing general security for humanity is an Islamic government obligation to ensure the safety of people's life, religion, mind, and wealth. The lives of people should be protected during wars especially the lives of women, children, elders, and those who are not involved in the war. Anyone who deems superiority in color, race, and tribe, Prophet Mohammad PBUH condemned such people with very harsh statements.<sup>2</sup>
- 9) **Accustoming Human Brotherhood:** It is such a principle through which wars can be ended and brings humans to universal brotherhood. In the current era, the main reasons for wars are racism, ethnocentrism, discrimination, and superiority. Islam considers humanity as one society and every human is from one mother and father and superiority is only based on fearing Allah SWT. (Sura al Hujurat)<sup>3</sup>
- 10) **Living in Peace:** The principle of peace is among the most important principles of Islam which are useful for human rights. Allah SWT is lord of all creation and giving food for all creation so no one should step on the rights of others. Prophet Mohammad PBUH says: Wrestler is not the one who beats his opponent in the battle but rather wrestler is one who controls his anger on the time of anger or during the war. <sup>4</sup>
- 11) **Protection of Human Rights:** This is a very useful principle to protect human freedom and dignity. Humans are the best of the creation and the surrogate of Allah SWT on the earth and have its dignity which must be respected. On the dignity of humans has been emphasized in Islamic education. No one is allowed to harm human dignity including (himself or herself) to do that also this human dignity has been saved after death in Islam.

<sup>2</sup>: See Musnad, Ahmad, No: 8736. Narrated by Abu- Hurirah

<sup>3</sup>: Al- Quran, al- Hujurat, verse: 13.

<sup>4</sup>: This Hadith (MuttafaqunAlaih) by Bukhari and Muslim.

### Examples of Islamic Rules about Human Brotherhood:

- 1) **The distinction between neutral people and those in war:** Attacking neutral people during a war is not allowed in Islam. Abdullah ibn Abbaas says that Prophet Mohammad PBUH was giving advice to those going to war and said jus fight for Allah SWT and Islam, do not commit extravagance, do not commit fraud, and do not kill women, children, and elders. Similarly, Allah SWT says in the Holy Qur'an: Fight for the way of Allah SWT with those who fight you and do not do aggression. Allah SWT does not like aggressive people. Sura Al Baqara<sup>5</sup>
- 2) **Paying Respect to the Victims of War:** The meaning of victims of war is those who are wounded, killed, or arrested after a war with them justice needs to be done and their human rights should be respected. Especially, the dead bodies should be respected and their dignities need to be protected and should not be eaten by dogs.<sup>6</sup>
- 3) **Prevention from Destructive Tools:**
  - a. Burning people. Romans and Greeks used to burn people alive from which Prophet Mohammad PBUH prevented Muslims.
  - b. Killing through poisoning is also prohibited by Islam.

Anything that jeopardizes the living beings in the environment such as stopping water from flowing and creating artificial flood or burning gardens and farms are also prohibited in Islam. A religion that does not allow burning farms, how can it allow mutilation?

### Qur'anic Verses relating to War

2:190: Fight in the cause of Allah those who fight you, but don't transgress limits, for Allah does not love transgressors.

2: 191: And slay them wherever you catch them, and turn them out from where they have turned you out: for tumult and oppression are worse than slaughter; but do not fight them at the sacred Mosque, unless they (first) fight you there; but if they fight you slay them. Such is the reward of those who suppress faith.

2: 192: But if they cease, Allah is often forgiving, most merciful.

2: 193: And fight them on until there are no more tumult or oppression, and there prevail justice and faith in Allah; but if they cease, let there be no hostility except to those who practice oppression.

2: 194: The prohibited month for the prohibited month and so for all things prohibited; there is the law of equality. If then any one transgresses the prohibition against you, transgress you likewise against him but fear Allah and know that Allah is with those who restrain themselves.

9:5: But when the forbidden months are past, then fight and slay the Pagans wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem of war, but if they repent and establish regular prayers and practice regular charity, Then open the way for those, for Allah is oft forgiving, most merciful.

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<sup>5</sup> : Al-Quran, Surah –al –Baqarah, verse No: 190.

<sup>6</sup>: See: IbnulQayyam. Zad al- Maad, Vol.3, Page: 187.

9:6: If one amongst the pagans ask you for asylum, grant it to him, so that he may hear the word of Allah; and then escort him to where he can be secure. This is because they are men without knowledge.

### **Introducing humanity in Warfare**

Islam introduced humanity into warfare about 14century earlier principles of distinction between combatants and non-combatants:

Protecting women, children, servants, wounded, sick, elderly, peasants, priests, etc and civilian objects & properties: Focus on Islamic jus in Bello and NOT jus ad Bellum:

Guidance of the Qur'an, the Sunnah, & the conduct of Successors of the Prophet in protecting the wounded, POWs, civilians, and their properties.

### **Protection of Non-combatant in Islam**

“Fighting the name of Allah those who fight you and do not transgress limits: for Allah does not love transgressors”((2:190

Islam makes a distinction between combatants and non-combatants .Quran ordains to fight only with the former and admonishes to fight with the later and hence emphasizes the protection of the later . This verse(2:190) of the Holy Quran has so many interpretations:

Abdullah b. 'Abbas, tabun, 'Umar b. 'Abdul 'Aziz, Mujahid b. Jabr Mawla, Sayeed b. Jubair, & Abi al-AliyaShaybani said, “*allazeenauqatiloonaikum*” in the verse means those who participate in the war against you i.e.women, children, elderly, peasants, servants, monks & those in similar positions cannot be fought with because they do not participate in the war.

In another verse, Allah says, “To those against whom war is made permission is granted to fight because they are wronged” .(22:99Muqatil b. Sulayman said: it means that Muslims should not attack first.

Al-Hassan al-Basri said: the verse prohibits mutilation, exceeding the limits besides prohibiting the killing of women, children, elderly, monks, and the like.

Ibn 'Abbas said: “and don't transgress “means “don't kill women, children, & elderly.” Rawandi said: the verse prohibits the killing of women, children, and those given amen (pledge). (Fiqh al- Qur'an, 1:330-1).

Verse (2: 190) has two other significance: firstly, that fighting is confined to those who fight the Muslims and attack them first & that Muslims should not initiate hostilities.

Secondly, only those who fight with Muslims should be targeted whereas those who do not participate in war, that is- women, children, monks, elderly, maimed, sick and the like should not be fought with this is the principle of distinction

The moment a soldier withdraws fighting he ceases to be a combatant. Instruction relating to this situation is mentioned in the Quran, ”Therefore if they (enemy)withdraw from you but do not fight you and instead send you guarantees of peace then Allah has opened no way for you to war against them”(.4:90

Another verse mentions, “But if the enemy inclines towards peace you also incline towards peace and trust Allah”. (8:61)

### **Sayings of the Prophet (PBUH) relating to non-combatant Immunity**

In another report about the same incident, it is mentioned that when he saw the slain woman he asked as to who killed her and was told that Khalid was responsible for this.

On hearing this he sent a companion to tell Khalid “never, never to kill a woman and a servant” [*la taqtulannazurriyytanwa la 'aseefan*] (Kitab al- Siyar al-Kabir, 4:186, Abdur Razzaq, Musannaf,

hadith no. 9382) Al-Tabrizi, Mishkat al-masabih, hadith no. 3955; Ibn Majah, Sunnan, 2: hadith no. 2842; Al-Nasai, al-Sunnan al-Kubra, 2: hadith no. 8625 and 8626; Imam Baihaqi, Ma'rifat al-Sunnan, hadith no. 5643; Al-Baihaqi, Sunnan, 9:83, Kitab al-siyar. This hadith is also quoted with slightly different words in Abu Ja'far al-Tahawi's Sharh Ma'ni al-Athar, 3:222. There is another version of this report which says: "Never, Never to kill children and a servant." (Ibn Majah, Sunan, 2:948, hadith no. 2842).

### **Prohibition of the killing of servants, doctors in Islam:**

Shoukani said: "the servant has to guard the belongings and the horses and camels and in case he fights, he can be killed." (Al-Sail al-Jarrar, 4:532, Abu Zahra, al-'Alaqa al-Duwaliya fi al-Islam, 99).

M. KhairHaikal: By analogy, all those employees, such as those working in factories, doctors taking care of the wounded and sick soldiers, as well as those in a similar position cannot be killed because they come in the meaning of '*usafa*' (servants) (Al- Jihad wa al-Qital fi al-Siyasa al-Shar'iya, 2:1247).

### **Prophetic instruction for the protection of non-combatant**

The Prophet instructed the Muslim troops sent against the advancing Byzantine army and said: "In avenging the injuries inflicted upon us molest not the harmless inmates of domestic seclusion; spare the weakness of the female sex; injure not the infants at the breast or those who are ill in bed. Refrain from demolishing the houses of the unresisting inhabitants; destroy not the means of their subsistence, nor their fruit-trees and touch not the palm."

Anas (R) reports that the Prophet (PBUH) has said to his dispatching army, "Go in the name of Allah adhering to the community to the messenger of Allah, and do not kill any old and weak person or any children or any women." (Abu Dawud, Sunnan, 2:44, hadith no. 2613)

In another report, the Prophet (PBUH) has said: "go in the name of Allah; fight in the path of Allah those who disbelieve; do not commit perfidy and do not break your pledge, and do not mutilate (bodies), and do not kill women and children and priests." (Bayhaqi, Sunan, 9:90, hadith no.17931, &Shoukani, Nayl al-Awtar, 8:54.)

### **Prophetic instruction for the Protection of wounded**

On conquering Makkah the Prophet (PBUH) did not harm any person or his/her property. Afterward, he ordered an announcer to announce that, "wounded shall not be killed, '*mudbir*' shall not be chased, a prisoner shall not be killed, and whosoever shuts his door shall be immune." (Baihaqi, Sunan, 8:181, hadith no. 16524; Abdur Razzaq, Musannaf, 10:123. hadith no. 18590).

### **Non-combatant Immunity & the conduct of the Successors of the prophet**

When Abu Bakar was sending his army to Syria headed by Yazid b. Abu Sufyan (d.18/693), he told them the following: "I enjoy upon you ten instructions. Remember them: do not embezzle.

Do not cheat.

Do not breach trust.

Do not mutilate the dead,

Do not slay the elderly, women, and children

Do not inundate a date-palm nor burn it.

Do not cut down a fruit tree,

Do not kill cattle unless they were needed for food.

Don't destroy any building.

Maybe, you will pass by people who have secluded themselves in convents; leave them and do not interfere in what they do." (Bayhaqi, Sunnan, 9:85, Shoukani, Nayl al-Awtar, 7:249).

### **Non-combatant Immunity & the Conduct of the Successors of the Prophet**

'Ali b. Abi Talib said to his soldiers during his war with Amir Muawiyah: "If you defeat them, do not kill a man in flight, do not finish off a wounded man, do not uncover a pudendum, or mutilate the dead, do not rip open a curtain or enter a house without permission, do not take any of their property, and do not torture or harm their women even though they may insult your leaders." (Syed Razi, Nahj al-Balagha, trans. and ed., Mufti Jafar Husain, (Lahore: al-Miraj Company, n.d.), 573).

'Umar)R) is reported to have said regarding farmers, "[Be scared of Allah regarding farmers. Do not kill them till they fight you." (Baihaqi, Sunan, 9: 91, hadith 17938) Baihaqi mentions on the authority of Jabir b. 'Abdullah al-Ansari who said that the companions of the Prophet did not kill infidel businessmen (Ibn Abi Shayba, Musannaf, 6:483, hadith no. 33120; Baihaqi, Sunan, 9: 91, hadith 17938).

### **Non-combatant Immunity & the Islamic scholars**

Shaybani laid down the principle of distinction: "It is not allowed to kill the women of '*ahl al-harb*', the children, the mentally retarded nor the aged because Allah says, "and fight in the path of Allah those who fight with you" and not those who can't fight and when the Prophet (PBUH) saw the slain women, he pointed to this by his words, "she was not capable of fighting; go and tell Khalid "never, never to kill woman and servant". (Shaybani, Kitab al-Siyar al- Kabir, commentary, Sarakhasi, 4:196).

Abu Yusuf Yaqub b. Ibrahim mentions that all the above-protected persons, especially the women, the children, the aged, and the priests shall not be killed. (Kitab al-Kiraj, 379).

Kasani reported: "Anyone who is not a combatant his killing is prohibited unless he actually takes part in hostility, or advises about war or encourages others or does something similar." (Kasani, Badai', 7:101).

Imam Malik & Imam Al-Awza'i said: women and children shall not be killed under any circumstances unless they were used by the enemy as a shield; they shall never be hit with arrows and shall not be burnt. (Shoukani, Nayl, 8: 8 & 56).

### **Is Non-combatant immunity absolute?**

No: Non-combatant immunity is not absolute: there are three exceptions when the non-combatants may lose their immunity:

Firstly, if they participate in hostilities; Secondly, if they are killed unintentionally; & Finally if they are used as a shield by the enemy

### **Protection of the Prisoners of War (POW) in Islam**

AlQuran specifically emphasizes on the doing of good to the prisoners of war(POW). Allah instructed to retaliate the bad deeds of the enemy (POW) by doing good to them. It is mentioned in the Holy Quran, 'Nor can goodness and evil be equal. Repel evil with what is better, then will he between whom and you was hatred, become as it were your friend and intimate (.41:34

Feeding the POW is considered a righteous deed by Allah. Addressing those who feed the POW Allah says, "And they feed for the love of Allah, the indigent, the orphan and the captive saying, we feed you for the sake of Allah alone; no reward do we desire from you nor thanks"(76:8-9

Prophet(PBUH)instructed his companions regarding the protection of POW by saying," They are your brothers your associates, Allah has made them subordinate to you. So who is his brother is subordinate to him, he must feed his brother from exactly what he eats, dress his brother in the same clothes what he wears and let his brother live in a house similar to that where he lives; and do not impose any job on them(POW) beyond their capability. If they are given a job to help them in accomplishing that job.

### **The protection of civilian objects in Islamic Law**

Attack on or destruction of foodstuffs, agricultural areas, livestock, and other objects indispensable for the survival of civilians, is prohibited in Islam.

The commandments of Abu Bakr) R) discussed earlier include inter alia, "do not inundate palm-trees, do not burn cultivation, do not cut down fruit-trees, do not devastate a building ...." These instructions also include the prohibition of destroying any building let alone a cultural building.

Since the Arabic word "Aamir' is general, i.e. common noun, it includes cultural as well as other buildings.

### **According to Islamic scholars, what can be taken away from the enemy's land?**

Shaybani said: "Muslims can take away enemy's cows, goats, and other property, or they may leave it because these (things) do not directly strengthen the enemy to fight (the Muslims)." (Shaybani, Kitab al-Siyar al-Kabir, 4:198).

Imam Sarkhasi, while commenting on this text adds that"it is condemnable to leave the weapons or the mules (al- silahwa al-kira') if the Muslim army seized them because leaving them behind would mean that the enemy could use them again against the Muslims."

Both Shaybani, as well as his commentator, never mentioned that anything that the Muslims cannot take away must be destroyed.

### **Protection of Enemy Property in Islam**

The text of the treaty between Umar and the people of Quds as quoted by Tabari which says: He gave protection to their persons, properties, churches, crosses, to the accused and the acquitted and every one of them; and that their churches would neither be destroyed nor damaged nor any premises [from their churches] or the cross [be destroyed or damaged] neither would anything be taken from their properties nor would they be coerced [because] of their religion and none of them would be harmed. (al-Tabari, Tarikh al-Ummamwa al-Muluk, 2:449).

### **Conclusion**

This is a clear fact that Islam has enacted rules for the betterment of human lives and during the war there exist rules which protect the dignity of humans. Moreover, Islam has prohibited all destructive tools which lead to the annihilation of the human race. Human dignity is a mercy of Allah SWT on human which need to be respected. The peaceful and merciful environment must be common for humans until they can have a dignified life in this world and hereafter, So, Islam means peace hence the main reason for protecting non-combatants, wounded, POW, civilians, and their properties is to bring humanity and establish peace even in warfare.

## **Reference**

- 1- Al- Quran
- 2- Al- Snnah
- 3- Musnad, Ahmad, No: 8736. Narrated by Abu- Hurirah
- 4- Al- Quran, al- Hujurat, verse: 13.
- 5- This Hadith (MuttafaqunAlaih) by Bukhari and Muslim.
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